27.06.2023
Item no.5.
Court No.19.
AB

C. O. 2126 of 2022

Sri Manik Lal Bera
Vs
Sri Nitai Maity

Mr. Saptarshi Kr. Mal ....for the Petitioner.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K. R. Ahmed,
Mr. Rudranil Das .....for the Opposite Party.

This revisional application has been filed against an order dated May 19, 2022, passed by the learned Civil Judge (Junior Division), 1st Court at Contai in J. Misc. Case No.24 of 2016.

By the order impugned, the learned Court below rejected the application for amendment of the Schedule of the preemption application on the ground that the same was belated and had been filed when the evidence was closed.

The learned Court also found that a new claim for pre-emption, in respect of a different property, other than the suit property, could not be incorporated as the claim was barred by limitation.

Mr. Mal, learned advocate appearing on behalf of the preemptor submits that a minor correction in the Schedule of the application would not change the nature and character of the suit. He further submits that only after the evidence was closed, the petitioner realized the mistake and sought to correct the same. According to Mr. Mal, apart from the said insertion of a particular plot in the Schedule of the Plaint, there were other formal amendments sought for, which, if allowed, would not change the nature and character of the suit.

Mr. Mukherjee, learned advocate appearing on behalf of the preemptee submits that the learned Court below had rightly rejected the application for amendment as the claim was time-barred. The petitioner had filed a suit for preemption on the ground of co-sharer ship in respect of plot no.486. By way of an amendment, the petitioner sought to claim preemption on the ground of contiguous ownership in respect of plot no.485. This prayer for preemption on the ground of vicinity/contiguous ownership was barred as the same was made beyond four months from the date of transfer.

Thus, according to Mr. Mukherjee, the order impugned does not call for any interference.

Heard learned advocates for the respective parties.

Having perused the Schedule of amendment, this Court is of the view that apart from point no.1 in the Schedule of Amendment, no other point can be allowed to be incorporated. Each and every point from

(ii) to (vi) deals with averments, which were necessary to be incorporated to plead the right of preemption on the basis of contiguous ownership or vicinage in respect of plot no.485. Such claim is time barred as the transfer took place on June 6, 2016 and the application for amendment to incorporate right of pre-emption on the ground of vicinage was filed on December 4, 2019. The limitation prescribed is four months from transfer and the delay cannot be condoned. The date of transfer will be taken as the date when the same was entered in the volume. Reference is made in ***Lekha Duary vs. Ranjit Rana & anr.*** decided in ***C.O.2103 of 2010.***

The Hon'ble Apex Court held that Section 5 of the Limitation Act will not be put to use to condone the delay in filing the application.

In the matter of ***Gopal Sardar vs. Karuna Sardar*** reported in ***(2004) 4 SCC 252,*** the Hon'ble Apex Court held as follows:-

> "Section 8 of the Act prescribes definite period of limitation of three months or four months, as the case may be, for initiating proceedings for enforcement of right of pre-emption by different categories of people with no provision made for extension or application of Section 5 of the Limitation Act. When in the same statute in respect of various other provisions relating to filing of appeals and revisions, specific provisions are made so as to give benefit of Section 5 of the Limitation Act and such provision is not made to an application to be made under Section 8 of the Act, it obviously and necessarily follows that the legislature consciously excluded the application of Section 5 of the Limitation Act. Considering

the scheme of the Act being self-contained code in dealing with the matters arising under Section 8 of the Act and in the light of the aforementioned decisions of this Court in the case of Hukumdev Narain Yadav, Anwari Basavaraj Patil and M/s. Parson Tools (supra), it should be construed that there has been exclusion of application of Section 5 of the Limitation Act to an application under Section 8 of the Act. In view of what is stated above, the non- applicability of Section 5 of the Limitation Act to the proceedings under Section 8 of the Act is certain and sufficiently clear. Section 29(2) of the Limitation Act as to the express exclusion of Section 5 of the Limitation Act and the specific period of limitation prescribed under Section 8 of the Act without providing for either extension of time or application of Section 5 of the Limitation Act or its principles can be read together harmoniously. Such reading does not lead to any absurdity or unworkability or frustrating the object of the Act. At any rate in the light of the Three-Judge Bench decision of this Court in Hukumdev Narain Yadav case (supra) and subsequently followed in Anwari Basavaraj Patil case (supra), even though special or local law does not state in so many words expressly that Section 5 of the Limitation Act is not applicable to the proceedings under those Acts, from the scheme of the Act and having regard to various provisions such express exclusion could be gathered. Thus, a conscious and intentional omission by the Legislature to exclude application of Section 5 of the Limitation Act to the proceedings under Section 8 of the Act, looking to the scheme of the Act, nature of right of pre-emption and express application of Section 5 of the Limitation Act to the other provisions under the Act, itself means and amounts to "express exclusion" of it satisfying the requirement of Section 29(2) of the Limitation Act."

The law is well settled that an application for preemption on the ground of vicinage has to be filed within four months from the date of transfer. In this case, it was filed beyond three years.

In the matter of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & anr.*** decided in ***Civil Appeal No.5900 of 2022***, the Hon'ble Apex Court held as follows:-

> "**70.**(iii) The prayer for amendment is to be allowed (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and (ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations)."

Hence, the order impugned does not call for any interference, save and except that it is modified by allowing the petitioner/preemptor to amend the plaint by incorporating Clause (i) of the Schedule of Amendment, which reads as follows:

> *"(i) In the page no.2, point no.2 of plaint, after the words "possession of 1/3rd share in" – the following lines shall be written – "case plot no.486 as mentioned in".*

The amended plaint shall be filed within three weeks from date. If necessary, additional written statements be filed within a week thereafter. The suit shall proceed in accordance with law.

Since the suit is at a mature stage, the Court believes that the same should be disposed of within four months from the next date fixed.

C. O. No.2126 of 2022 is, accordingly, disposed of.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Sarkar, J.)