

Ct.
No.
652

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2023

C.O. 2868 of 2019
Dilip Kumar Mondal
-Versus-
Md. Sahabub Karim & Ors.

Mr. Pinaki Ranjan Chakraborty
Mr. Amal Kumar Banerjee ...For the Petitioner

Order No. 48 dated April 17, 2019 passed by the learned Civil Judge (Junior Division), 2nd Court at Rampurhat, Birbhum in connection with Misc. Preemption Case N0. 36 of 2014, has been assailed in the instant Revisional application.

Petitioner contended that the petitioner as plaintiff filed an application under Section 8 of the West Bengal Land Reforms Act, 1955 in the year 2014 in connection with Plot Nos. 3317, 3316 and 3315 of Mouza - Barturigram.

Petitioner further states that Dilip Kumar Mondal and Bhimpada Mondal were the original owners of the suit property by purchase and since purchase they were in possession of the same. Aforesaid Bhimpada Mondal transferred the suit property in favour of Gour Chandra Mondal by a registered Deed of Gift. Said Gour Chandra Mondal died leaving behind his mother, wife, daughter and son as his legal heirs. Wife and daughter became owners of 2/3rd share in the suit property after demise of Gour Chandra Mondal. Plaintiff/petitioner's case is, being the co-sharer of suit property, without giving any notice to him, the suit property was transferred in favour of the opposite party Nos. 1 and 2. When petitioner came to know, he immediately filed an application before the learned Civil Judge (Junior Division), 2nd Court at Rampurhat, being aforesaid Misc Preemption Case No. 36 of 2014.

In the Court below the petitioner/plaintiff filed an application for amendment of the plaint in order to incorporate the plot No. 3323 in the said preemption application as by the self-same Deed the said property being plot No. 3323 was also transferred. The said application for amendment came up for hearing before the Court below and the Court below after hearing the parties was pleased to reject the said prayer for amendment.

Being aggrieved by the said order Mr. Pinaki Ranjan Chakraborty, learned Counsel appearing for the petitioner submits that the order impugned is illegal and the learned Court below has acted with irregularities in not considering the said application in its proper perspective. He also failed to appreciate the correct proposition of law and he failed to consider that the plot, where petitioner is the co-sharers, without giving any notice to him said property was transferred to opposite party nos.1 and 2. Accordingly, he has prayed for setting aside the order impugned and prayed for allowing the prayer for amendment.

On perusal of the schedule of amendment it appear that by way of amendment petitioner wants to incorporate Plot No. 3323 in the schedule of the plaint and the petitioner sought for preemption in respect of the said plot No. 3323 also along with other plots.

Learned Court below while disposing of the said application observed that the deed was admittedly executed on 30th May, 2014 whereas the prayer for amendment has been sought to be incorporated in the prayer for preemption in connection with the plot No. 3323 on 18th January, 2019 i.e., after about five years of the execution of the Deed of

Sale. Accordingly, The Court below held that in respect of the non-notified co-sharer, right of preemption can be exercised within a period of one year from the execution of deed in view of the various judgments pronounced by this Hon'ble Court. Accordingly, it is apparent that in spite of specific knowledge in the year 2014, they have not sought for pre-emption in connection with the Plot No. 3323, though they have made prayer for preemption in connection with the other properties mentioned in the said deed of transfer. Accordingly, the present prayer for preemption in connection with the plot No. 3323 which was transferred by the self-same Deed, is barred by limitation which is apparent from the face of the record.

Having considered the facts and circumstances of the case it appears that the plaintiff's prayer for preemption in connection with the plot No. 3323 through the impugned Deed dated 30th May, 2014 is barred by limitation which is apparent from the face of the record. Where it is clear on the facts of the case that the plea of pre-emption in respect of plot no.3323 raised by way of amendment is time barred, on the date of application for amendment, prayer for amendment cannot be allowed. This is also because generally an amendment once allowed will relate back to the date of filing of the plaint, which may cause prejudice to the opposite party, in connection with valuable right, which he might have acquired in the meantime.

In view of such matter I find nothing to interfere with the order impugned.

The revisional application, being C.O. 2062 of 2019 is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)