

10.4.2023
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Ct. no. 652
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CO 3783 of 2018

**Smt. Anima Garai
Vs.
Shankar Chandra Garai & Ors.**

Mr. Dulal Dey
Mr. Subrata Sikdar ...for the petitioner

Mr. Lutful Haque
Mr. Moniruzzaman
Mr. Jahangir Badsa ...for the O.P. no. 1

Being aggrieved and dissatisfied with the order dated 28.11.2013 passed by the learned Additional District Judge, Birbhum at Rampurhat in Misc. appeal no. 1 of 2013 which was preferred against the trial court's order dated 23.11.2012 passed in Misc. (Preemption) case no. 64 of 2011 by learned Civil Judge, Junior Division, 2nd court, Rampurhat, present application under Article 227 of the Constitution of India has been preferred.

The petitioner contended that the opposite party no. 1 herein claiming ownership of 8 annas share in respect of the entire land measuring 19 satak, situated under Dag no. 351, LR Khatian no. 149 of Mouza- Despalsa has filed said Misc. (preemption) case against the petitioner and opposite party nos. 2 and 3. It is his specific case that the opposite party nos. 2 and 3 are owners of 8 annas share in respect of said land measuring 9.5 decimal of land out of 19 satak. However, learned trial

court while adjudicating the said issue, was pleased to held that considering the evidence of opposite party nos. 2 and 3 that they have sold 8.5 demical of land i.e. their entire share that they have inherited from their father, Pasupati Gorain, the court below was pleased to reject the preemption case on the ground of transfer of their entire share.

Being aggrieved by the said ex parte order dated 23.11.2012 passed by learned Civil Judge, Junior Division, 2nd court, Rampuhat, said Misc. appeal was preferred before the learned District Judge, Birbhum which was subsequently disposed of by the learned District Judge, Birbhum at Rampurhat being Misc. appeal no. 1 of 2013 by the impugned order dated 28.11.2013.

By the impugned order, the leaned appellate court was pleased to held that from the certified copy of deed, marked as exhibit 1, it reveals that the total area of the land is 19 decimals and the opposite party no. 2 and 3 are the owners of 8 annas share that is 9.5 decimals and out of said 9.5 decimals, opposite party nos. 2 and 3 have sold 8.5 decimals of land in favour of opposite party no. 1. Therefore, the appellate court came to the conclusion that the entire share of the suit property was not sold in favour of the opposite party no. 1 by opposite party nos. 2 and 3 and accordingly, the appellate court held that the preemption case is maintainable and allowed the appeal

against the opposite party nos. 1 to 3 and thereby the appellate court set aside the order which was passed by learned Civil Judge, Junior Division, 2nd court, Rampurhat.

Now, learned counsel for the petitioner, before this court submits that admittedly the suit property i.e. suit plot no. 351 is a “Doba” measuring total area of 0.19 acre. He further referred a judgment of Supreme Court in the case of S.K. Arsed Ali and Anr. vs. S. K. Fazle Hakani reported in (1996) 2 SCC 58 and also a judgment of this court in the case of Sk. Abhul Sovan Vs. Sk. Abdul Mallick & Ors. reported in 1986 SCC Online Cal 71, to establish that the land which has been characterised as “Doba” does not come within the purview of Section 8 of the West Bengal Land Reforms Act.

On the contrary, learned counsel for the opposite parties referred a judgment of this court in Basanti Mondal vs. Srikanta Mondal reported in 2014(2) CHN (CAL) 314 and another judgment of Sabri Properties Pvt. Limited vs. CTS Industries Limited in C.O. 561 of 2013, in support of his contention that in terms of West Bengal Land Reforms Amendment Act of 1981, land means land of several description and includes tank and tank fisheries etc. as defined in Section 2(7) of the West Bengal Land Reforms Act, 1955 which came into effect from 7th August, 1969 and as such, according to him, “Doba”

comes within the definition of land under Section 8 of the West Bengal Land Reforms Act.

Since this issue has not been dealt with either by the trial court or by the Appellate court and the judgment is confined to the only issue as to whether the entire share of the property has been transferred by the opposite party nos. 1 and 2 or not, the case is remanded to the trial court for making fresh adjudication on all the issues including present issue and to write a judgment afresh within a period of six months from the date of communication of the order. For this purpose, the trial court will be at liberty to take additional evidence, if required to adjudicate issues involved in the pre-emption case. The impugned judgement dated 28.11.2013 and the impugned order of the trial court dated 23.11.2012 are hereby set aside.

Accordingly, C.O. 3783 of 2018 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)