

10.10. 2023
item No.166
n.b.
ct. no. 652

C.O. 4263 of 2016

**Sri Bibekananda Bera
Vs.
Anirban Jana & Anr.**

Mr. Asish Chandra Bagchi,
Ms. Malyasree Maity,
..... for the petitioner.
Mr. Tanmay Mukherjee,
Mr. Soumava Mukherjee,
Mr. Subhankar Chatterjee,
..... the opposite parties.

This is an application under article 227 of the constitution of India against the Judgment dated 28.1.2016 passed by the learned Second Court Additional District Judge, Purba Mednipur at Tamluk in Miscellaneous Appeal No. 9 of 2013 tried analogously with Miscellaneous Appeal No.8 of 2013 against order No.123 dated 7.9.2012 passed by the Learned Second Court of Civil Judge(Junior Division), Tamluk in Judicial Miscellaneous Case No.37 of 2003.

The petitioner filed an application for pre-emption under Section 8 & 9 of the West Bengal Land Reforms Act. The opposite parties herein contested the said case by filing written objection contending that the petitioner is not an adjacent raiyat and that the entire share of the transferor has being transferred. The petitioner seeks pre-emption on the ground of vicinage. However, the Trial Court after hearing the parities was pleased to dismiss the

aforesaid Judicial Miscellaneous case no.37 of 2003 and petitioner being aggrieved by that order preferred appeal before the Learned District Judge, Purba Medinipur which was subsequently transferred to the Additional District Judge, Tamluk. The said appeal was also dismissed by the Court below by the impugned Judgment dated January 28, 2016. Against the order of dismissal by the Court below, the present application under article 227 of the constitution of India has been preferred on various grounds including the ground that the opposite parties are estopped from challenging the recitals of their own deed of title and that there exists a small strip of land, meant for passage between the land of the preemptor and the pre-emptee which does not effect the claim of pre-emption on the ground of vicinage but court below failed to consider the same. Furthermore, the court below failed to appreciate that when the deed no.774 was executed, the entire share of the rayot was not transferred.

However, at the time of hearing Mr. Tanmoy Mukehree, learned advocate appearing on behalf the opposite parties raised preliminary objection which needs to be adjudicated before going to the merits of the case.

In view of the judgment passed by the Hon'ble Apex Court in **Barasat Eye Hospital Vs. Kaustabh Mondal reported in (2019) 19 SCC 767** and which was also subsequently followed in the judgment in **Abdul Matin Mallick Vs. Subrata Bhattacharjee(Banerjee) & Ors., Mr.**

Mukherjee contended that from the recital of the deed, it appears that the consideration price appearing in the deed is Rs.2,00000/- out of which the pre-emptor/petitioner herein till this date admittedly deposited only Rs.1,15,500/-. The rest amount he had not deposited on the ground that he had filed an application under Section 9 of the West Bengal Land Reforms Act 1955 for causing enquiry as according to the petitioner/pre-emptor, the consideration price appearing in the deed is inflated sum and does not reflect the actual consideration money passed during the transaction.

Mr. Mukherjee, learned advocate appearing on behalf of the opposite party further contends that Section 8 of the West Bengal Land Reforms Act makes it clear that on deposit of the consideration money together with a further sum of 10% of that amount, the petitioner can only go for seeking enquiry invoking the provision under Section 9 of the Act 1955. He further contends that without depositing the entire consideration price appearing in the deed, he has no right to seek enquiry under Section 9 of the Act of 1955. Here, admittedly the pre-emptor/petitioner has not deposited the entire consideration money and as such, the ratio laid down by the Appellant Court in **Barasat Eye Hospital(sura)** as well as **Abdul Matin Mallick(sura)** clearly attracts in the present context. He also referred a judgment passed by a co-ordinate bench of this Court in C.O.1994 of 2022 on

the self-same point and accordingly prayed for dismissal of the present application.

Learned advocate Mr. Bagchi appearing on behalf of the petitioner of this case raised strong objection on this preliminary point and contended that while the judgments passed by Apex Court as relied upon by the opposite parties herein, did not consider the provision as laid down in Section 9 of the Act of 1955. According to Mr. Bagchi, the Word “consideration money” appearing in Section 8 and Section 9 means the consideration money, which stands after the enquiry as prayed under Section 9 is completed and not the consideration money which is apparently appearing in the recital of the deed. He further contended that if the amount of consideration money appearing in the deed is taken to be the “consideration money” meant for Section 8 of the Act, then, Section 9 would have no application in the eye of law. In this contest, he quoted relevant portion of the provision of Section 9 of the Act 1955, which says that “.....*the Munsif may after such enquiry as it considers necessary, direct the applicant to deposit such further sum, if any, within the time specified and on such sum being deposited.....*” means that the pre-emptor is not required to deposit the entire consideration money as appearing in the deed when his case is that the amount appearing in the deed is inflated one. He submits that the preliminary

objection as raised by Mr. Mukherjee, learned advocate, has got no substance and liable to be rejected.

I have considered the submissions made by both the parties. In the judgment of **Barasat Eye Hospital(supra)** the issue with regard to the mandatory requirement of Section 8 of West Bengal Land Reforms Act to deposit the entire consideration money along with 10% thereof with the pre-emption application is no more res integra. The said decision has also been followed by the Hon'ble Supreme Court in the matter of **Abdul Matin Mallick(supra)**.

It has been clearly held in the **Barasat Eye Hospital(supra)** that the pre-requisite to endeavor to exercise this weak right is the deposit of the amount of sale consideration and the 10% levy on that consideration as otherwise section 8(1) of the said Act will not be triggered off apart from making even the beginning of Section 9(1) of the Act otiose. It was further observed that the provisions of Sections 8 and 9 of the Act must be read as they are. It cannot be said that a discretion can be left to the pre-emptor to deposit whatever amount, in his information is the appropriate consideration, in order to exercise a right of pre-emption. The court also apprehended that if such a discretion is given to the pre-emptor without deposit of full consideration, would give rise to speculative litigation, where the pre-emptor by depositing smaller amount, can drag on the issue of the

vendee exercising rights in pursuance of the valid sale deed executed.

As in the present case admittedly the entire consideration amount as appearing in the deed has not been deposited, the preliminary objection raised by the opposite party is sustainable.

In view of the aforesaid settled position of law C.O. 4263 of 2016 is dismissed.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)