

December 19, 2023
Sl. No.16
Court No.19
s.biswas

CO 4299 of 2023

Panchu Gopal Mondal
vs.
Urmila Das and others

Mr. Soumava Mukherjee

... for the petitioner

The petitioner is the preemptee who is aggrieved by the order dated September 22, 2023 passed by the learned Civil Judge (Junior Division), Dubrajpur at Birbhum in connection with Misc. (Preemption) Case No.30 of 2022.

The petitioner's preemption application under Order 7 Rule 11 of the Code of Civil Procedure was rejected by the learned court below. The learned court was of the view that the right of preemption could not be enforced for an indefinite number of transactions. It is exercisable only on the first transaction, that is, when the right to sue first arises. In this case, as per the plaint, the cause of action arose on December 12, 2022, for the first time when the proforma opposite parties transferred the suit to the petitioner. Manab Ghosh was the subsequent purchaser.

The petitioner contends that the property was sold to Manab Ghosh on December 17, 2022 at a consideration amount of Rs.7,99,000/- and the preemption application was filed by depositing the

value of transaction between the vendor and the petitioner at Rs.4,02,328/-.

It is well-settled that an application under Order 7 Rule 11 of the Code has to be decided on a meaningful reading of the plaint. The cause of action as disclosed in the plaint should be the only consideration for the court.

The subsequent case of the petitioner that the property was sold to another person before the preemption application was filed, is a matter of evidence, which cannot be decided at the initial stage of the suit. Although, the reasoning of the learned court may not be very happy, this court finds that the plaint cannot be rejected at the threshold. The cause of action against the petitioner had been disclosed. The application has been filed by depositing the consideration amount along with 10% statutory interest. Whether the said suit is maintainable against the petitioner, in view of the fact that the petitioner had subsequently transferred the property to other person, will be decided on evidence. The contention of the petitioner and the documents relied upon by the petitioner cannot be looked into at the time of consideration of the application for rejection of the plaint.

Thus, the revisional application is disposed of without any orders. The petitioner is at liberty to

raise the point of maintainability and the said issue shall be decided as the first issue amongst other issues.

The learned court shall proceed expeditiously with the preemption application and dispose of the same within the next seven months, positively.

There shall be no order as to costs.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)