

C.O. 100 OF 2020

11.03.2024

Sl no. 94

Ct no. 652

P.M.

Bapi Shyam

- Vs -

Dilip Kumar Kesh

Mr. Tirthankar Dhali

Mr. Sayantan Adhya

... for the petitioner.

Mr. Ankit Agarwala,

Mr. Nilay Sengupta,

Ms. Alotriya Mukherjee

.. for the respondent.

Being aggrieved by the order dated 28th June, 2019 passed by Additional District June, 4th Court, Purba Bardhaman in connection with Misc. Appeal Case No. 31 of 2015 the present application has been preferred.

Petitioner's case is that in the year 2008 Ajit Kuma Kesh the original owner of suit plot gave proposal to the co-sharers including the pre-emptor/ opposite party herein for the purpose of selling his entire share. But at that point of time the opposite party herein was not willing or capable of purchasing the entire share of Ajit Kumar Kesh. The nature of the said property is pond. However despite showing unwillingness to purchase the said share in respect of the disputed property, at the time of impugned transaction, the opposite party herein just

to harass the petitioner, herein preferred an application under Section 8 of the West Bengal Land Reforms Act claiming the pre-emption over the disputed property vide pre-emption case No. 19 of 2008.

It was alleged in the pre-emption application that the opposite party herein is a co-sharer of the disputed property and that the land purchased by the pre-emptee from aforesaid Ajit Kumar Kesh is situated contiguous southern side of the share of the opposite party herein.

The petitioner/pre-emptee filed written objection. During the trial it was argued that the plot of land is a pond and Ajit Kumar Kesh has no share left after the said transfer of his entire share to the petitioner herein by way of sale. Therefore, the petitioner has no right to pray for pre-emption against the petitioner.

The learned Trial Court being satisfied on the point that said Ajit Kumar Kesh has transferred his entire share to the petitioner by way of sale in presence of the factum of non-willingness of the petitioner along with the other co-sharers to purchase the said entire share of Ajit Kumar Kesh, at that relevant point of time, court was pleased to

dismiss the said claim of the opposite party vide judgement and order dated 15.06.2015.

Being aggrieved by that order the preemptor preferred appeal being aforesaid Misc. Appeal No. 31 of 2015, challenging the legality and propriety of the order. It was argued before the Appeal Court that the preemption cannot be claimed in respect of the unpartitioned plot and also because disputed land being a pond is not partible and therefore, appeal is liable to be dismissed.

However, learned First Appellate Court after considering the submission made by the parties was pleased to allow the appeal by setting aside the judgement and order dated 15.06.2015 and passed order of preemption in favour of the opposite party herein.

Being aggrieved by that order learned Counsel appearing on behalf of the petitioner submits that the entire property was sold to the pre-emptee and as such preemption does not lie. He further submits that rest .03 decimal of land was subsequently sold during the pendency of the preemption application which had taken away his right to claim for preemption. In this context he relied upon judgement passed by Co-ordinate Bench of this Court in **Sk.**

Abdul Azis Vs. Mst. Samidanessa Bibi reported in **1987 (1) CLJ 137.**

Learned Counsel appearing on behalf of the opposite party submits that at the time of impugned transaction the original Ajit Kumar Kesh had retained .03 decimal of land and as such the entire plot of land had not been sold, only share of a plot of land was transferred.

It further appears from the Deed No. 3574 dated 25th November, 2009 that the original owner had sold .03 decimals of land from the suit plot to the same preemptee i.e. Bapi Shyam after the impugned transaction by way of deed of gift. Accordingly the entire share of the suit plot had not been transferred at the time of petitioner's cause of action for filing the Application.

Distinguishing the judgement referred by the opposite party passed in **SK. Abdul Aziz (supra)** he submits that said case law is not applicable in the present context, since preemptor herein never lost his right title interest in the adjacent suit land during the pendency of the suit or afterwards.

I have considered the submissions made by both the parties. On perusal of the materials on record and also in view of the argument placed by the

parties, it appears that the main issue raised herein is whether the entire share in the suit plot had been transferred in favour of the pre-emptee or not so that pre-emptor's right of pre-emption can be extinguished.

It appears that the entire share has not been transferred when the cause of preemption arose as the original owner had retained .03 decimals of land which he gifted subsequently in favour of the pre-emptee and on the contrary pre-emptor never lost his right to pre-empt not only at the time of disputed sale but also at the time of institution of the pre-emption proceeding, or afterwards. He has retained his tenancy intact all along.

In such view of the matter I do not find any merit in the present application.

C.O. 100 of 2020 is, thus, dismissed.

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.)