

Ct. 01.03  
No. 2024  
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akb

**C.O. 259 of 2020**  
**Bappaditya Nag**  
**Vs.**  
**Prasanta Kumar Nag & Ors.**

**Mr. Anjan Banerjee**  
**Mr. Anindya Ghosh**  
**Mr. Apurba Ghosh**  
**Mr. Prosenjit Roy**                      **...For the Petitioner**

**Mr. Arijit Bardhan**  
**Mr. Ratikanta Pal**                      **...For the Opposite Parties**

Petitioner herein, being a co-sharer filed an application for preemption of his preferential right under Sections 8 and 9 of the West Bengal Land Reforms Act, being PMC 7 of 2016 before the learned Civil Judge (Junior Division), 1<sup>st</sup> Court, Arambagh. The said preemption case was ultimately decided in favour of the petitioner herein and by an order dated 18<sup>th</sup> November, 2016 the decree was put into execution, vide Execution Case No. 8 of 2016 and on satisfaction of that execution case, the possession was also handed over to the petitioner herein.

In respect of the self-same property and in connection with the self-same transaction, opposite party No. 1 herein earlier filed a preemption case against the opposite party Nos. 2 and 3 herein for exercising his right of preemption in connection with the suit property being preemption case No. PMC 35 of 2015, which is still pending.

Petitioner submits that in that pending preemption

case the opposite party No. 1, knowing fully well that the suit property has already been transferred in favour of the petitioner herein and right title interest has already been vested by virtue of the order of the Court dated 18<sup>th</sup> November, 2016 filed one application under Order I, Rule 10(2) of the Code, for adding the petitioner herein as a co-opposite party in the said proceeding. The Court below by the impugned order has been pleased to allow the prayer made by the opposite party No. 1 and has added the petitioner herein as opposite party in the said proceeding.

Challenging that order Mr. Anjan Banerjee, learned Counsel appearing on behalf of the petitioner submits that the Court below would not have allowed the prayer for addition in view of the fact that the application itself is barred by limitation and instead of filing application for adding him as party, he ought to have preferred an appeal before the Appellate Authority and as such the order is palpably wrong and is liable to be set aside.

Mr. Arijit Bardhan, learned Counsel appearing on behalf of the opposite parties submits that for proper and effective adjudication of the earlier preemption application initiated by the opposite party herein presence of the present petitioner is required and since he is a necessary party for the

said adjudication, the court below has committed no mistake in adding him as party in the said proceeding and accordingly the impugned order is justified and does not call for any interference by this court invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made by both the parties and I have gone through the order impugned. It is not in dispute that by dint of the later pre-emption application, being PMC 7 of 2016, the petitioner herein obtained possession by executing the order passed in his favour in the said proceeding in connection with the self-same land and self-same transaction.

However, since the opposite party herein has contended that his prayer for pre-emption was filed earlier, so he is the appropriate person in whose favour the order of pre-emption is required to be passed and for that when he has made a prayer for reopening the petitioner's later pre-emption case being PMC 7 of 2016, let me consider whether petitioner has fulfilled the conditions to be added as a party in terms of order I, Rule 10(2) of the code.

Before going to further details let me reproduce order I, Rule 10(2) of the Code.

*(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly*

*joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.*

According to said provisions the words “and settle all the questions involved in the suit” is important and it implies for adjudication of all the questions pertaining to the subject matter of the suit. In the present context if the petitioner be not added, there is every likelihood of multiplicity of suits since the result of the suit will not bind him and thereby if his right title interest in the property is affected in case opposite party succeeds, then he might have to seek his remedy by separate proceedings.

As the petitioner has a direct and substantial interest in the suit property, so even if no relief may have been claimed against him by the opposite party herein, still he is a party, whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour or against whom, a decree is to be made. In fact the power of the court to add petitioner, cannot depend solely on the question whether petitioner herein has interest in the suit but whether his right is going to be affected, if he is not added as a party.

In such view of the matter, I do not find any illegality or perversity in the order impugned and for that the order impugned is not required to be interfered by invoking jurisdiction under Article 227 of the Constitution of India.

The Application, being C.O. 259 of 2020 is accordingly dismissed.

However, since the pre-emption application is pending for a considerable period of time, the court below will dispose of the application as expeditiously as possible.

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

**( Ajoy Kumar Mukherjee, J.)**