

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O 945 of 2019

**Atul Mahato
Vs.
Dharanidhar Mahato & Anr**

For the Petitioner	:	Mr. Kashiswar Ghosal
For the Opposite Parties	:	Mr. Prosenjit Mukherjee Mr. N. K. Das
Heard on	:	09.02.2024
Judgment on	:	16.02.2024

Ajoy Kumar Mukherjee, J.

1. This application has been directed against judgment and order dated 24.09.2018 passed by the learned Additional District Judge, 3rd court Purulia in Miscellaneous Appeal no. 24 of 2015. By the impugned judgment learned court below has affirmed the judgment and order dated 30.07.2015 passed by learned Civil Judge (Junior Division), Purulia in Misc. (pre-emption) Case no. 9 of 2000.

2. Opposite party no. 1 herein namely Dharani Dhar Mahato filed aforesaid pre-emption case contending that the suit property being R.S. Plot No. 2395 has been recorded in the names of Padok Mahato and Robi Mahato in equal share, each having eight annas share therein but since they have amicable partitioned the suit property Robi Mahato was in

exclusive possession of the case plot having an area 2.72 acres and after his death the said property devolved upon his two sons i.e. the opposite parties herein namely Dharani Dhar Mahato and Prahlad Mahato and accordingly the opposite parties are the alleged co-shares to each other in the said property having interest of 1.36 acres of land.

3. Further case of the pre-emptor /opposite party no.1 is that on 01.02.2000 the opposite party no.2 herein sold a portion of his shares in the case plot by a registered sale deed in favour of the present petitioner measuring 16 ½ decimals without disclosing the same to the opposite party no. 1. Moreover opposite party no. 1 has lands contiguous to the case property and as such he is entitled to pre-empt the said property.

4. The petitioner herein filed objection in the said pre-emption case and denied all material allegations made in the pre-emption application. The petitioner as opposite party had taken specific defence;

- (i)** That the opposite party no.1 had full knowledge about said sale as the opposite party no.2 requested him to purchase it but he was not ready to pay actual value.
- (ii)** The opposite party no.1 was not a co-sharer at the relevant point time.
- (iii)** The opposite party no. 1 has no land contiguous to the case property.

5. The learned trial court after hearing the parties and on perusal of materials on record was pleased to allow the prayer of the opposite party no.1 and passed order of pre-emption by the judgment dated 30.07.2015.

6. Being aggrieved by that judgment and order, petitioner herein preferred aforesaid miscellaneous appeal being Misc. Appeal no. 24 of 2015 before the learned District Judge, Purulia. The opposite party no.1 contested the said Appeal by filing objection wherein he had denied all materials allegations. Said appeal came up for hearing before the appellate court on 24.09.2018 and the court below by the impugned order has been pleased to affirm the judgment passed by the Trial Court and thereby dismissed the appeal.

7. Mr. Ghosal learned counsel appearing on behalf of the petitioner being aggrieved by the concurrent findings of the courts below contended before this court that the Courts below without considering the facts and circumstances of the case arrived at a decision not tenable in the eye of law. In fact both the courts below failed to appreciate the evidence placed before the courts below on behalf of the petitioner and did not assign any reason as to why they have disbelieved the evidences adduced on behalf of the pre-emptee/petitioner herein and appreciated only those portion which goes in favour of opposite party no.1. The courts below ought to have held that the opposite party no.1 was no longer a co-sharer of the opposite party no.2 at the relevant time, when the disputed plot was sold to the petitioner.

8. Mr. Ghosal further submits that DW-1 in his evidence has categorically stated that before selling the property to the petitioner the opposite party no.2 approached the opposite party no.1 but he was not ready to pay the actual value of the land in question and for which the opposite party no.2 was compelled to approach the petitioner. He further submits both the courts below failed to appreciate that the petitioner has

proved exhibit A, B, C, D before the Trial court to show that the opposite party had sold all the contiguous plots and as such he is not a co-sharer in respect of the case property. Moreover the transferred plot happens to be a demarcated area and as such right of pre-emption does not exist. Accordingly Mr. Ghosal prayed for setting aside the order impugned as according to him both the judgment passed by the courts below suffers from illegality and material irregularity.

9. Mr. Mukherjee learned counsel appearing on behalf of the opposite party submits that the petitioner herein is neither a co-sharer nor contiguous land holder and he is a stranger purchaser. Moreover opposite party no.2 never intimated opposite party no.1 before selling the case property measuring 16 ½ decimals. He further submits that the petitioner herein Atul Mahato admitted in his show cause reply that there are other heirs of Rabi Mahato and the lands of Rabi Mahato have never been partitioned and the heirs of Rabi are possessing the land as per their convenience. He further submits that though in the show cause reply to the application under section 8 of the West Bengal Land Reforms Act 1955 petitioner had admitted that the case land is an unpartitioned land but surprisingly in the supplementary affidavit the petitioner has now change his stand and contended that the land has been amicably partitioned between the parties. However petitioner herein failed to show any document in support of partition. It clearly appears from the Mouza Map that the opposite party no.1 are the owners of the several plot of lands adjacent to the case plot being R.S.Plot no. 2395 which is also reflected in the schedule of pre-emption application that in the western side and the eastern side

there exists different plot of land being plot no. 2390, 2392 and 2391 occupied by opposite party no. 1 herein Dharani Dhar Mahato. The Record of Rights also speaks that opposite party no. 1 Dharani Dhar Mahato is a recorded owner in respect of RS/LR Plot no. 2393 measuring about 12 decimal of land and also the recorded owner in respect of the adjacent plot/land being plot no. 2395 , 2390 and 2392. It is also evident from the record of right that Prahlad Mahato being the seller, also the recorded owner in respect of plot no. 2393 and adjacent plot of land and it appears from both the Records of Rights of Prahlad and Dharani Dhar Mahato that both the brothers are still co-sharer in respect of different plots being plot nos. 2393, 2395, 2392 and 2390. Accordingly opposite party no. 1 submits that the present Revisional Application devoid of merit and is liable to be dismissed with cost. Opposite party no.1 in support of his contention has relied upon following judgments

- (i) Ratipati Bandyopadhyay Vs. Mrinalini Debi,** reported in **2006 (4) CHN 440.**
- (ii) Kinkar Mahata Vs. Sajan Mahata,** reported in **2005 3 ICC 5 (CAL).**
- (iii) Misri Shaw Vs. Belur Mijunjamayee Gadar Institution** reported in **1978 (1) CLJ 532.**

10. I have considered submissions made by both the parties.

11. In the present context the petitioner herein has raised firstly the question that the opposite party No. 1 (pre-emptor) had full knowledge about proposed sell but he had refused to purchase the same at the relevant point

of time and for which the opposite party No. 2 had to approach the petitioner/pre-emptee, though in support of such contention no independent cogent evidence has been placed by the petitioner herein before the Court below. Petitioner herein further contended that the opposite party No. 1 was not a co-sharer at the relevant point of time since the property was partitioned and demarcated specifically and a such right to pre-emption does not exist as the entire share was transferred and he further contended that the opposite party No. 1/Pre-emptor has no land after transfer contiguous to the case property which is evident from Exhibit – ‘A’, ‘B’, ‘C’ and ‘D’.

12. While dealing with such issue the Trial Court found from the evidence of OPW 1 and OPW 2, who admitted in their cross-examination that the petitioner /pre-emptor is the co-sharer of Prahlad Mahato. Similarly, OPW 1/pre-emptee in cross examination has also admitted that the petitioner/pre-emptor has land in the east and west of his purchased lands. Accordingly, relying upon the evidence of the parties and the description of the schedule in the impugned deed marked Exhibit-1 the Trial Court came to a conclusion that the pre-emptor is a co-sharer as well as contiguous landholder in respect of the suit property.

13. In answer to the question as to whether Prahlad sold his entire share in favour of opposite party No.1/ pre-emptee, the Trial Court found that Prahlad Mahato had right, title, interest and possession over 1.36 acres of land in the case plot and since by way of Deed in question only 16½ decimals of land have been sold in favour of the opposite party No. 1 and

since from the description of the boundary of the property described in the Deed it reveals that to the north of the said property there is land of Prahlad Mahato, so the Trial Court came to a finding that Prahlad did not sell his entire share in the plot in favour of the opposite party No. 1 by the impugned deed. While considering the case of the petitioner, the Appellate Court also came to a finding that evidence on record as well as pleading of the parties makes it clear that Dharani Dhar Mahator and Prahlad Mahato were co-sharer in respect of the land which they inherited from their father.

14. The Appellate Court also disbelieved the petitioner's contention that Dharani Dhar Mahato refused to purchase the case plot in spite of being informed about the intention of the seller to sale the case land, in the absence of any document or notice in support of such contention. Accordingly, relying upon the evidence and the documents placed on record, the Court below also affirmed the judgment passed by the Trial Court.

15. It is well settled that power under Article 227 of the Constitution of India is one judicial superintendence and cannot be exercised to upset the conclusion on facts arrived at by the Court of facts, unless there appears gross wrong or unjust finding in the impugned order or Courts conscience or the conclusion were so perverse that it becomes absolutely necessary in the interest of justice for the Court to interfere.

16. In fact the powers under Article 227 of the Constitution of India are to be used sparingly. While High Court exercise its supervisory jurisdiction under Article 227, it has to confine itself only to see whether the Courts below have upset within the parameters of its jurisdiction or not. Since, the

High Court is not exercising its jurisdiction as an Appellate Court, it is not open to it to review or reassess the evidence upon which the Courts below have come to the concurrent finding.

17. In the present context I do not find any perversity in the findings of the Court below regarding the entitlement of the pre-emptor to get an order of pre-emption on the basis of evidence adduced by the parties including the documents placed on record and as such interference of High Court is absolutely not called for where courts below rendered findings on proper appreciation of facts and evidence adduced by the parties and has not committed any jurisdictional error.

18. In the light of the aforesaid discussion I do not find any merit to allow the present application.

19. C.O. 945 of 2019 is accordingly dismissed.

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.)