

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 1085 of 2022

Ajit Kumar Bhunia @ Ajit Bhunia & Ors.

VERSUS

Prabhash Chandra Maity & Anr.

For the petitioners:

Mr. Rabindranath Mahato, Adv.

Mr. Aritra Shankar Roy, Adv.

Mr. Sudeep Sanyal, Adv.

For the opposite parties:

Mr. Snehasis Jana, Adv.

Mr. Chandrachur Lahiri, Adv.

Judgment on: January 19, 2024

Biswaroop Chowdhury,J:

The petitioners before this Court are the opposite parties in a case under Section 8 and 9 of the West Bengal Land Reforms Act 1955 and respondent in the appeal before the appellate Court which decided the appeal against order of Trial Judge passed in case under Section 8 and 9 of the West Bengal Land Reforms Act and is aggrieved by the said Order dated December 22, 2021 passed by Learned Additional District Judge, Re-designated Court at Midnapore District Midnapore (West) in Misc Appeal No 9 of 2015, being the appellate court.

The case of the opposite parties before Learned Trial Court may be summed up thus:

1. The father of the opposite parties namely Haripada Maity had 4 anna share ie. 4 decimal in R.S. plot No. 1158 16 decimals in total. The R.S. plot No. 1158 has been renumbered as 1297 during LR operation. LR ROR in respect of 4 decimal in LR plot no. 1297 stands in the name of Haripada Maity.
2. On 13/11/1984 Haripada Maity gifted out 4 decimal in RS plot no 1158 along with other property to his three sons who are the present opposite parties and Ajit Kr. Maity. The said registered deed of gift was duly accepted by the opposite parties and Ajit Kr. Maity. Thus the opposite parties along with their brother Ajit Kr. Maity possess the gifted property. Hence the opposite parties are the co-sharers in RS dag no. 1158 having $2 \frac{2}{3}$ share.
3. One Sudhir Ch. Maity is one of the co-sharer in respect of the plot no. 1158 having 8 decimal land in plot no-1158.
4. The opposite parties, Sudhir Ch. Maity and other co-sharers possessed the disputed plot no. 1158 as per their shares and no partition was held among the co-sharers.
5. Thereafter, Sudhir Ch. Maity sold out Ka Schedule property measuring 8 decimal to the petitioners by registered deed of sale, which the opposite parties came to know from the people.

6. The opposite parties obtained a certified copy of the sale deed on 07/04/2008 and came to know that on 31/08/1996 Sudhir Ch. Maity has sold out Ka Schedule property by registered deed of sale at a consideration money of Rs. 30,000/- and the said sale deed was entered in the volume on 18/03/2008.
7. The petitioners are totally strangers to the disputed RS plot no. 1158 whereas the opposite parties are the co-sharers of the disputed plot. Thus the opposite parties are entitled to pre-empt Ka schedule property.

The petitioners contested the case by denying all the material allegations. According to the petitioners Sudhir Ch. Maity was individual Rayat in respect of RS Plot no 1158. The petitioners contended that the father of the opposite parties was not a co-sharer in respect of the property of Sudhir Ch. Maity in the disputed plot. Haripada Maity had a separate plot of land in dag no 1158. There was no relation in between plot of land of Sudhir Ch. Maity and Haripada Maity. It was further contended by the petitioners that Sudhir Ch. Maity had demarcated his plot of land from the other co-sharers of plot no. 1158 out of mutual arrangement and thus he enjoyed his share as his entire plot of land. The opposite parties never possessed any undemarcated interest or undemarcated possession in the plot of land of Sudhir Ch. Maity in disputed plot no. 1158. It was also contended by the petitioners that they were Bargadar in the plot of land of Sudhir Ch. Maity in the disputed Plot and have been cultivating the same and delivering the produce on proper receipt when Sudhir Ch. Maity expressed his desire to sell out the entire 8 decimal of Land in the

disputed plot then the opposite parties agreed to purchase the same at a very lower rate than the market value to which Sudhir Ch. Maity did not agree. The opposite parties were thus annoyed and the petitioners expressed their desire to purchase the same. Thus according to the petitioners, they in the said circumstances purchased Ka schedule property on 31/08/1996 which was within the knowledge of the opposite parties.

Learned Trial Court upon considering Misc Case 15/2008 on evidence was pleased to dismiss the same by observing as follows:

‘Thus is view of decision cited by OPs by Hon’ble Calcutta High Court ruling being CO no. 2987 of 2004 decided on 17.1.05 Kinkar Mahato & ors Vs Sahan Mahato & ors wherein it was held that “The the said provision makes it clear that it is only when a co sharer/raiyat transfer a portion of the share of his interest in the plot of land then only the right of pre emptio can be exercised by the aforesaid persons.” When entire interest of rayat in the plot of land in question were sold out by rayat in favour of the preemptees as such the right to exercise preemption has not accrued on the preemptees.

Now from taking the ratio from those above decisions of Hon’ble High Court, I find that in the instant case Sudhir Ch. Maity has sold out his entire 8 decimal of land in the disputed plot to the OPs, as such then entire share of Sudhir Ch. Maity has been sold out and no part of it is retained by Sudhir Ch. Maity. Hence there can be no case for preemption.

Accordingly, I am to hold that the petitioners are not entitled to get any decree or relief U/S 8 and 9 of the W.B.L.R. Act as the case is not maintainable in view of the above ruling of Hon'ble High Court and the same is liable to be dismissed.'

The opposite parties being aggrieved by the Judgment/Order dated 05/12/2014 passed by Learned Trial Court preferred an appeal before the Learned District Judge Paschim Midnapore being Misc Appeal No. 9 of 2015. The said Appeal was assigned to the Learned Additional District Judge Re-Designated Court Paschim Midnapore.

By judgment/Order dated 22/12/2021 the Learned Appellate Court was pleased to allow the appeal preferred by Appellants/opposite parties.

The petitioners being aggrieved by the Judgment/Order dated 22nd December 2021 passed by Learned Additional District Judge Re-Designated Court Paschim Midnapore in Misc Appeal No. 9 of 2015 has come up before this Court with the instant Revisional Application.

It is the contention of the petitioners that the Learned Additional District Judge acted illegally and with material irregularity in holding that the application for pre-emption is not barred by limitation in as much as the registration of the deed having been completed on September 2, 1996, the application for pre-emption filed in the month of March 2008 is barred by limitation. It is further contended that the Learned Appellate Court acted illegally and with material irregularity in allowing the application for

preemption in as much as the entire share of the vendor having been transferred by the impugned deed, the application for preemption is not maintainable. It is also contended that the impugned order of the appellate Court if allowed to stand would occasion failure of justice and cause irreparable loss and injury to the petitioners.

Heard Learned Advocate for the petitioners and the Learned Advocate for the opposite parties perused the petition filed and materials on record. In the instant case although the petitioners have raised other grounds apart from the point of limitation but as the argument is made only on the point of limitation this Court thinks fit to confine consideration of the case only on the point of limitation.

Learned Advocate for the petitioner submits that the petitioners purchased the suit property by virtue of a registered deed of sale. Such registered deed of sale was executed on August 31, 1996, which was presented before the Additional District Sub-Registrar, Daspur on September 2, 1996. According to Section 52(1) of the Registration Act, 1908 there is an endorsement on the reverse side of the first page of the deed. It is further contended that the deed of sale was duly copied in the book no. I. Vol-73. Pages 69 to 76 according to Section 52(c) of the Registration Act 1908. It was copied under entry No. 2881 for the year 1996 according to provision of Section 53 of the Registration Act 1908. On the same day the registration of the aforesaid sale deed was completed and the Additional sub-Registrar Daspur endorsed a certificate on

the reverse side of the last page of the deed containing the word 'registered' together with the number and page of the book where the document has been copied according to Section 60(1) of the Registration Act 1908. The said certificate has been sealed and dated by the Additional District Sub-Registrar Daspur on the reverse side of the last page of the deed according to the provision of Section 60(2) of the Registration Act 1908. Such certificate has been issued on September 2, 1996. It is also submitted that according to provision of Section 61(2) of the Registration Act 1908, the registration of the sale deed has been completed on September 2, 1996 and the opposite party obtained the certified copy of the aforesaid registered deed of sale dated August 31, 1996 from the office of the Additional District Sub-Registrar, Daspur according to Section 57(1) of the Registration Act 1908. Learned Advocate submits that in the year 2008, the opposite parties filed the application under Section 8 and 9 of the Land Reforms Act 1955, before the Court of the Learned Civil Judge Junior Division at Ghatal District: Midnapore (West) against the defendants, *inter alia* praying for preemption of the suit property and other consequential reliefs. Learned Advocate further submits that the application for preemption filed by the opposite parties is barred by law of limitation as the period of limitation for filing preemption application by the non-notified co-sharer is one year from the date when the registration of the instrument of sale is completed as per Section 61 of the Registration Act 1908. Learned Advocate also submits that as the pre-emption application is barred by limitation the

judgment and order dated December 22, 2021 passed in Misc Appeal No. 9 of 2015 is required to be set aside.

Learned Advocate for the opposite parties submits that the question of limitation was not urged by the petitioner in the Courts below and as such no issue was framed about this point and it is for the first time that this plea has been taken by the petitioner before this Court. Learned Advocate further submits that the Appellate Court was careful to look into this aspect of the matter and it came to the conclusion that the sale deed dated 31.08.1996 was finally registered on 18.03.2008. Learned Advocate also submits that it is settled law that a deed is not registered till the provisions of Section 61 of the Registration Act has been complied with. An application for pre-emption filed before the completion of registration cannot be thrown out but at the same time cannot be heard either. It is submitted by Learned Advocate that confusion has been orchestrated by an attempt to mislead the Court and practice fraud upon it by annexing a purported certified copy of the sale deed dated 31/08/1996 and vehemently asserting that the deed was registered in 1996. It is on the basis of this that the plea of limitation has been raised before this Court for the first time. Learned Advocate submits that the certified copy of the deed produced before this Court at pg-33 does not bear the signature of the Addl. District Sub-Registrar Daspur. It is submitted that only the seal of the office is on the page but no signature and date evidencing that the deed remained incomplete. The application for pre-emption having been made within

one month from the date of registration of the document is not barred by limitation at all.

Learned Advocate relies upon the following Judicial decisions :-

- **Bhaguvati Prasad Sah and others Vs Bhaguvati Prasad Sah and Anr.** {Reported in (1964) 5 SCR. 105.}
- **Narendra Kumar Singh Vs Gursharam Kaur** {Reported in 2015 SCC Online Cal 6488.}
- **Naymul Haqul Vs Allauddin SK** {Reported in 2018 SCC Online Cal 11495.}
- **Dilip Kumar Dhara Vs Ranjit Kumar Mondal** {Reported in AIR 2019 Cal 67.}

Before proceeding to adjudicate the validity of the order passed by the appellate Court first of all it is necessary to consider Section 8 of the West Bengal Land Reforms Act 1955 and Section 61 of the Indian Registration Act.

Section 8 of the West Bengal Land and Land Reforms Act 1954 Provides as follows:

“8. Right of purchase by co-sharer or contiguous tenant. - (1) if a portion or share of a plot of land of a raiyat is transferred to any person other than a co-sharer of a raiyat in the plot of land, the bargadar in the plot of land may, within three months of the date of such transfer, or any co-sharer of a raiyat in the plot of land may, within three months of the service of the notice

given under sub-section (5) of section 5, or any raiyat possessing land adjoining such plot of land may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction, for transfer of the said portion or share of the plot of land to him, subject to the limit mentioned in section 14M, on deposit of the consideration money together with a further sum of ten per cent of that amount:

Provided that if the bargadar in the plot of land, a co-sharer of raiyat in a plot of land and a raiyat possessing land adjoining such plot of land apply for such transfer, the bargadar shall have the prior right to have such portion or share of the plot of land transferred to him, and in such a case, the deposit made by others shall be refunded to them:

Provided further that where the bargadar does not apply for such transfer and a co-sharer of a raiyat in the plot of land and a raiyat possessing land adjoining such plot of land both apply for such transfer, the former shall have the prior right to have such portion or share of the plot of land transferred to him, and in such a case, the deposit made by the latter shall be refunded to him:

Provided also that as amongst raiyats possessing lands adjoining such plot of land preference shall be given to the raiyat having the longest common boundary with the land transferred.

(2) Nothing in this section shall apply to –

(a) a transfer by exchange or by partition, or

(b) a transfer by bequest or gift, or hiba-bil-ewaz, or

(c) a mortgage mentioned in section 7, (d) a transfer for charitable or religious purposes or both without reservation of any pecuniary benefit for any individual, or

(e) a transfer of land in favour of a bargadar in respect of such land if after such transfer, the transferee holds as a raiyat land not exceeding one acre (or 0.4047 hectare) in area in the aggregate.

(3) Every application pending before a Revenue Officer at the commencement of section 7 of the West Bengal Land Reforms (Amendment) Act, 1972 shall, on such commencement, stand transferred to, and disposed of by, the Munsif having jurisdiction in relation to area in which the land is situated and on such transfer every such application shall be dealt with from the stage at which it was so transferred and shall be disposed of accordance with the provision of this Act, as amended by the West Bengal Land Reforms (Amendment) Act, 1972.”

As sale of an immoveable property above Rs. 100/- (Rupees one hundred) is required to be effected by registered instrument it is also necessary to consider Section 52, 58, 59, and 60 of the Registration Act 1908.

Section 52, Section 58, section 59 and section 60 of The Registration Act 1908 provides as follows:

Section 52. **Duties of registering officers when document presented-**

- (1)
 - (a) The day, hour and place of presentation, [the photographs and finger prints affixed under section 32A], and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it;
 - (b) a receipt for such document shall be given by the registering officer to the person presenting the same; and
 - (c) subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefore according to the order of its admission.
- (2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

Section 58 **Particulars to be endorsed on documents admitted to registration-**

- (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely :-
 - a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the

representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

- b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and
- c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

Section 59 Endorsements to be dated and signed by registering

officer- The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

Section 60 Certificate of registration-(1) After such of the provisions of section 34,35,58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the document has been copied.

- (2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in section 59 have occurred as therein mentioned.

Section 61 Endorsements and certificate to be copied and document returned-

- (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No.1.
- (2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

Thus section 61 provides as to when registration of a document is complete.

In the instant matter the petitioner has raised the point of limitation for the first time before this Court alleging that the sale was complete on September

2 1996 and not in the year 2008, thus the application under Section 8 and 9 of the opposite parties is barred by limitation.

Now with regard to the point of limitation raised by the petitioner it is necessary to consider the following Judicial decision.

Bhaguvati Prasad Sah and others Vs Bhaguvati Prasad Sah and anr.

{Reported in (1964) 5 SCR - 105}

The Hon'ble Supreme Court in the case of Bhaguvati Prasad Sah (supra) observed as follows:

The next point raised by the Learned Counsel is that the ceremonies of pre-emption performed in the case were premature, as the sale was completed only on October 20, 1949. This Court, by a majority, held in *Ram Saran V. Domini Kuer* that the registration under the Registration Act is not complete till the document to the registered has been copied out in the records of the Registration Office as provided in Section 61 of the Act. Learned Counsel contends that a perusal of the sale deed dated October 10, 1949, ex facie shows that it was copied only on October 20, 1949. The question as to when a document was copied out in the concerned register is certainly a question of fact. The argument was not raised either before the trial court or before the first appellate court. No issue was framed on the point. It was raised for the first time before the High Court. The Learned Judges of the High Court pointed out that if the appellants wanted to take advantage of the said point, it was their duty to have raised it either in the trial court or in the first appellate court

and to have adduced evidence by calling for the register from the registration department to show on what detail actual copying of the record was made under Section 61 of the Registration Act. In the circumstances, the Learned Judges refused to allow the appellants to raise the point. The High Court, in our opinion, was certainly right in disallowing the appellants from raising the question of fact for the first time in sec-appeal. If the plea had been taken at the earliest point of time, the respondents might have had many defences and might have explained the various dates found on the document. We cannot allow the appellants to raise said plea.'

It is also well settled that cause of action to maintain an application for pre-emption must satisfy the transfer of the concerned land, which clearly means that the transfer must be by effecting a sale deed following the transfer of Property Act read with the Registration Act 1908. Once the sale is not complete in terms of Section 8 of the West Bengal Land Reforms Act 1955, obviously it could be said that there was no transfer in the eye of law in terms of Section 8 of the West Bengal Land Reforms Act 1955.

Upon considering the judicial decisions relied it can be safely concluded that as the point of limitation was not raised before the Learned Trial Court, nor before the Appellate Court and the point of limitation involves issue as to when the sale of the suit land was made, there is no scope to permit the petitioners to raise the same. The said issue being a question of fact ought to have been raised before Trial court and evidence ought to have been adduced.

However as courts of law has obligation to see from the petition filed and materials on record and satisfy as to whether the said claim is barred by limitation it is necessary to consider as to whether the Learned Trial Court and Learned Appellate Court addressed themselves on the point of limitation. The observation of the Learned Appellate Court is as follows:

‘Here the original transfer was made in the year 1996 but the final registration of the deed was done in the month of March 2008. Therefore the date of final registration will be taken as a date of transfer and not the date on which the deed was presented for registration would be taken and the pre-emption case was filed on 17.04.2008 which is well within the period prescribed by the act. The question of delay in filing the case does not stand.’

The petitioner could not satisfy this court as to how the findings of the Learned Appellate Court can be termed perverse. Thus this court does not find any ground to interfere with the findings of the Learned Appellate Court. Thus this petition fails and the same is dismissed.

Hence this Revisional Application stands dismissed. The Order dated December 22,2021 passed by Learned Additional District Judge Re-designated Court at Midnapore, District- Midnapore(West) in Misc Appeal No- 9 of 2015 is affirmed. However in the facts and circumstances of the case there shall be no order as to costs.

(Biswaroop Chowdhury,J)