

11.09.2024
(D/L-9)
Ct. No.4
(Naba)

**F.M.A.T. 247 of 2024
With
CAN 1 of 2024**

**Hanif Fakir
Vs.
Jasimuddin Fakir & Ors.**

Mr. Abhilash Chatterjee.
... for the Appellant.

1. Heard learned counsel for the appellant.
2. The appellant is the plaintiff in the suit seeking to invoke the principle of pre-emption under the Muslim Personal Law.
3. The claim of the appellant in a nutshell is that the original owner (proforma defendant) died *intestate*. He left behind his wife and the plaintiff. He also left behind a daughter who has also been made a proforma defendant in the suit. The plaintiff's mother has executed a registered deed of gift in favour of the plaintiff's sister.
4. Based on such facts the appellant asserted his right of pre-emption in terms of the Mohammadan Law specifically Section 236 thereof which reads as follows:

“S 236. Demands for pre-emption : No person is entitled to the right of pre-emption unless –

(1) he has declared his intention to assert the right immediately on receiving information of the sale. This formality is called talab-i-mowasibat (liberally, demand of jumping, that is, immediate demand) : and unless

(2) he has with the least practicable delay affirmed the intention, referring expressly to the fact that the talab-i-mowasibat had already been made, and has made a formal demand –

(a) either in the presence of the buyer, or the seller, or on the premises which are the subject of sale, and

(b) in the presence at least of two witnesses. This formality is called talab-i-ishhad (demand with invocation of witnesses).”

5. As per application filed for injunction under Order 39 Rule 1 and 2, it is the case of the plaintiff that the defendants and proforma defendants jointly came to the residence of the plaintiff in April, 2024, when they had openly declared that the land has been transferred in respect of which the plaintiff as a co-sharer is seeking to invoke his right of pre-emption.

6. It is also obvious from the averments made in the application that the principle defendant had again come to the land for the purposes of taking measurements, which as per the plaintiff's claim was resisted by him. It is on this date (19th May, 2024) that he claims to have made a demand for pre-emption (shufaa). It is a specific case of the plaintiff that he had knowledge regarding transfer of the land in respect having been effected much earlier, i.e. in April 2024 itself.
7. Considering the facts and circumstances as spelled out in the application under Order 39 Rule 1 and 2, the learned Trial Court has recorded that the transfer having already been effected by registered deed of sale, a case was not made out for grant of ad interim injunction and has proceeded to direct for issuance of notice upon the defendants within seven days.
8. The learned counsel for the appellant submits that no reasons have been assigned in the order rejecting the prayer for ad interim injunction.
9. It is submitted that the order in fact is a non-speaking order, and such an order has consistently been frowned upon by this Court as well as the Hon'ble Apex Court. In this connection, he relies upon a decision of the coordinate Bench in the case of **Sourav Sarkar**

Vs. Hirak Ranjan Sarkar & Another reported in ***2022 SCC OnLine Cal 3840 : (2023) 1 ICC 271.***

10. The proposition put forward by the learned counsel for the appellant needs no emphasis. Non-assigning of reasons is, therefore, not in accordance with law.
11. Though the proposition is correct, it is for us to see whether the same applies in the present case where the Trial Court under order dated 10.06.2024 has declined the prayer for ad interim injunction and proceeded to issue notice on the defendants.
12. We find from the Trial Court's order that the facts noted above have been taken note of by the Trial Court and considering the fact that the sale has already been effected as per admitted claim of the plaintiff in his application under Order 39 Rule 1 and 2, the prayer of ad interim injunction has been refused/declined.
13. From perusal of the order, therefore, the reasons for not granting an ad interim injunction are *prima facie* obvious and evident.
14. Without expressing any opinion on the merits of the claim, since the application is still pending, we find no merit in the submission of the learned counsel for the appellant that from the order the

reasons for declining the prayer for ad interim injunction cannot be culled out.

15. In view of the finding above, we find no reason to interfere with the order dated 10.06.2024.

16. The application as well as the appeal stands disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)