

21.2.2024
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Ct. no. 652
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C.O. 4201 of 2016

Shyamal Kumar Nandi
Vs.
Paritosh Bhadra & Anr.

Mr. Shamit Sanyal	
Ms. Priyakshi Banerjee	for the Petitioner
Mr. Soumyadeep Biswas	...for the O.P. no. 1

This application has arisen against the judgment and decree dated 16th July, 2016 passed in Misc. Appeal no. 5 of 2015 by the learned Additional District Judge, 3rd Court, Krishnanagar.

Opposite party no. 1 herein namely Paritosh Bhadra as preemptor filed aforesaid preemption case being Misc. preemption case no. 13 of 2009.

Learned Trial court after contested hearing, was pleased to dismiss the prayer for preemption. Being aggrieved by that order, the preemptor/opposite party no. 1 herein preferred Misc. appeal before the appellate court being Misc. Appeal no. 5 of 2015 and learned court below after hearing the parties, was pleased to set aside the order passed by the Trial court and was pleased to allow the prayer for preemption in favour of the preemptor, Paritosh Bhadra.

During the course of hearing, learned counsel for the petitioner filed supplementary affidavit and referring Xerox copy of a deed, contended that the property in connection of which pre-emption was sought for, was transferred by the pre-emptor, in favour of his wife, Arati Bhadra on 16th April, 2014. It further appears that the Trial court passed the judgment in connection with aforesaid preemption application being Misc. preemption case no. 13 of 2009 on 10th September, 2014 i.e. after execution of the aforesaid deed of gift. Accordingly pre-emptor lost his ownership before passing the final order in the pre-emption case over the land based on which pre-emptor Paritosh Bhadra sought for pre-emption but surprisingly in spite of having no title in the property after transfer, he continued the trial of pre-emption case without disclosing the fact of transfer to the court.

Learned counsel for the opposite party concedes that property appeared in the deed and the pre-emption Application are the same. It was not known before the Trial Court when the judgment was passed that the pre-emptor lost his locus standi to proceed with the case and it was also not known to him as to whether the transferee was at all interested to proceed with the preemption application or not and practically the orders by trial court and appellate court were passed in respect

of a person, who has no locus standi to proceed with the application after transfer.

In such view of the matter, the judgment passed by the Trial court in preemption case no. 13 of 2009 as well as judgment passed by Appellate court in Misc. Appeal no. 5 of 2015 dated 10th September, 2014 and 16th July, 2016 respectively are hereby set aside.

Liberty is hereby given to the transferee, Smt. Arati Bhadra for making prayer for adding herself as a party before the Trial court in the said pre-emption proceeding and in the event of making such prayer before the Trial court by Smt. Arati Bhadra within a period of six weeks from the date of communication of the order, the Trial court will decide such application in accordance with law, without being influenced by any observation made herein. It is further clarified, if the court below decides any such application in favour of aforesaid donee Smt. Arati Bhadra, then he will make a de novo trial for disposal of the said preemption application, subject to other provisions of law, without being influenced by earlier observations.

C.O. 4201 of 2016 is accordingly disposed of.

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.)