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**2024**  
  
Ct. No. 04  
  
ab

**SAT 244 of 2023**  
**IA No. CAN 1 of 2024**

**Chandranath Bera**  
**Vs.**  
**Smtya Tanushree Maity and others.**

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**Mr. Tanmoy Mukherjee,**  
**Mr. Bibekananda Tripathy.**  
**... for the appellant.**

The Counsel for the appellant submits that the deficit Court Fees has already been put in vide Document No. 1 dated 28<sup>th</sup> February 2024.

The office is directed to tag the deficit Court Fees with the Memorandum of Appeal immediately.

The seminal point urged in the instant appeal at the time of admission is that upon death of the original plaintiff, who was admittedly a Class 1 heir within the purview of Section 22 of the Hindu Succession Act, 1956 (hereinafter referred to as “said Act”), her heirs and legal representatives cannot carry forward her claim as the preferential right envisaged under Section 22 of the said Act is personal one.

The support is lend to a Single Bench judgment of the Punjab and Haryana High Court in case of **Kamal Goel vs. Purshotam Dass**, reported in **AIR 1999 Punjab and Haryana 254** wherein it is held that the right postulated under Section 22 of the said Act being personal one and, therefore, the right to sue does not survive upon the heirs.

A prelude to the litigation is required to be recapitulated and adumbrated before embarking upon the core issue, as indicated herein above. Admittedly, the property belonged to Sukeshi Maity and upon her death it devolved upon her sons, daughters and the husband in accordance with Section 15 of the said Act. Apart from the original plaintiff, all other successors of the Sukeshi

Maity sold, transferred and conveyed their shares in favour of the appellant and upon coming to know of the factum of divestation of right, title and interest by the aforesaid successors, a suit came to be filed at the behest of one of the co-sharers/co-owners being the original plaintiff before the Civil Court.

A plea is sought to be taken by the contesting appellant that they are the bargadars in respect of the larger property and, therefore, acquisition of right, title and interest of his superior cannot be regarded as a right restricted under Section 22 of the said Act. It was also sought to be contended that the property being an agricultural land, the preemption is maintainable under Section 8 of the West Bengal Land Reforms Act, 1955 and not under Section 22 of the said Act.

On the conspectus of the aforesaid facts emerged from the respective pleadings, the parties adduced evidence and both the Courts below concurrently held that the preferential right under Section 22 of the said Act is unaltered and cannot be defeated on such score.

Indubitably, during pendency of the suit, the original plaintiff died and the widow, sons and daughters were duly substituted in the said suit and continued with the said suit.

The point, as indicated in the opening paragraph of the judgment, does not appear to have been taken before the Court of original jurisdiction as well as the Appellate Court, but as a point of law based upon the facts emerged from the record, such plea has been taken before us.

Before we delve into the aforesaid issue, we feel it prudent to consider the right conferred under Section 22 of the said Act in the manner sought to be agitated before us by the Counsel for the appellant. It would be profitable to quote Section 22 of the said Act, which runs thus:

“22. Preferential right to acquire property in certain cases.- (1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determine, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.-In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.”

It is manifest from the bare reading of the language used in the aforesaid provision that a right is conferred upon a Class 1 heir to claim a preference in the event an interest in the immovable property or a business carried on by the deceased dying intestate is proposed to be transferred to a third party. The question still begging an answer whether the interest in the immovable property of an intestate would be regarded as a personal right or an interest, which does not run through the immovable property capable of being devolved upon the heirs and successors by virtue of the provisions contained in the said Act. In other words, whether the interest can be perceived as a personal interest or the interest running with the land capable of being devolved upon the successors under the law of succession.

The phrase “interest in any immovable property” has to be construed as an interest akin to a right and the title conferred upon the successors, who would still be regarded as an owner of the property by virtue of a devolution under the said Act. The owner of the property enjoins multiple rights including the right to alienate, transfer and encumber, which in no way to be imagined being personal so that such interest or the right shall not pass to the successors. The devolution of an interest of the predecessor in respect of her/his estate connotes the passing of such interest amongst the heirs/successors recognized under the said Act. Precisely for such reason, the successors/heirs are regarded to have stepped into the shoes of their predecessor and are bound by any act or the things done during their lifetime and cannot take any defence de hors the act and the thing done by the predecessor nor can elevate their status above the status of their predecessor. The aforesaid principle is well founded on the legal maxim “*nemo dat quod non habet*” meaning thereby a person cannot give what he does not have.

Taking a pedantic view that the interest in respect of an immovable property is a personal interest of Class 1 heir would offend the legislative intention underlying the incorporation of the provisions relatable to a preferential right. The matter can also be viewed from another angle. The word “Class 1 heir” has to be understood in a broader and pragmatic manner and it is inconceivable that in the event of the death of the original plaintiff before the institution of the suit, the substituted heirs are not recognized as Class 1 heirs and, therefore, we do not find any incongruity that even after the death of the original plaintiff during pendency of the suit, they would lose the status of Class 1 heirs.

It is no doubt true that so long the original plaintiff remain alive, the right upon the substituted plaintiffs do not come into play, but on the death of the original

plaintiff, the right or the interest, which runs through the land, can be pursued by her successors and heirs as they stepped into the shoes of Class 1 heirs, as the interest, which runs through the land cannot be regarded as personal.

The personal right as known in the legal parlance is such right, which is attached to a person and does not pass on to his heirs as it perishes on his death. The Law of Tort can also be considered in this regard as a personal right, which is incapable of being passed on to the heirs provided such wrong does not run through the land or something, which is otherwise recognized in law.

We are unable to comprehend the notion of personal right under Section 22 of the said Act, as held by the Single Bench of Punjab and Haryana High Court, as we find that the learned Single Judge omitted to take into consideration that what is passed on under the provision is the interest in any immovable property, which is capable of being inherited by virtue of law of succession. Any other interpretation would run counter to the legislative ethos and would undermine the law of succession enacted in this regard.

We, thus, do not find that there is any involvement of substantial question of law in the instant appeal. The appeal is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of the dismissal of the appeal itself, the connected application for stay being CAN 1 of 2023 has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

**(Harish Tandon, J.)**

**(Partha Sarathi Sen, J.)**

