

04.03.2025
Sl. No. M/L53
g.b.
Court No.06
265719

CO 449 of 2025

Abdus Sattar Mondal @ Abdus Sattar & Ors.
-Vs-
Ajad Ali Ansari

Mr. Debdutta Basu
Mr. Kingshuk Mondal
.....For the Petitioners

This application under Article 227 of the Constitution of India is at the instance of the pre-emptor in Misc. (Pre-emption) case no. 45 of 2021 and is directed against the order No. 18 dated 14.08.24 passed by the learned Civil Judge (Junior Division), 1st Court, Berhampore, Murshidabad.

The co-sharer of the petitioners, namely, one Abdur Rajjak Mondal transferred his share in the property in favour of one Ajad Ali Ansari i.e. the opposite party herein vide sale deed dated 6th of August, 2021. The petitioner filed the application under Sections 8 and 9 of the West Bengal Land Reforms Act being Misc. (Pre-emption) case no. 45 of 2021 in respect of the transfer vide the said deed. During the pendency of the pre-emption case Abdur Rajjak Mondal filed a suit being title suit no. 155 of 2022 before the learned Civil Judge (Junior Division), 1st Court, Berhampore, Murshidabad praying for declaration that the said sale deed is void ab initio. In the said suit the parties, namely, Abdur Rajjak Mondal and

Ajad Ali Ansari entered into a compromise and the compromise decree was passed on 26th September, 2022. By virtue of the said compromise decree the sale deed dated 6th August, 2021 was declared to be void ab initio. Subsequently the said Abdur Rajjak Mondal transferred the self-same property to the wife of Ajad Ali Ansari by a sale deed dated 9th December, 2022.

The petitioner filed two applications, one under Order 1 Rule 10 (2) of the Code of Civil Procedure and the other under Order VI Rule 17 of the Code of Civil Procedure.

The petitioner sought for addition of the wife of Ajad Ali Ansari as an opposite party in the pre-emption case and to amend the pre-emption application by incorporating the subsequent facts which has occurred during the pendency of the pre-emption application. The aforesaid applications under Order 1 Rule 10 (2) and Order VI Rule 17 of the Code of Civil Procedure stood rejected by the impugned order.

Mr. Basu, learned advocate appearing for the petitioner submits that the co-sharer of the petitioner practised fraud upon the petitioners by entering into a compromise decree with the opposite party herein and subsequently by transferring the self-same property in favour of the wife of the opposite party herein with a view to make the pre-emption case infructuous. He submits that the wife of Ajad Ali Ansari is, therefore, a necessary

party in the pre-emption case and the subsequent events are to be incorporated as the same are necessary for the purpose of effective adjudication of the Misc. case.

The compromise decree between Abdur Rajjak Mondal and Ajad Ali Ansari is not under challenge. The effect of the compromise decree is that the sale deed which was the subject matter of the pre-emption application being Misc. Pre-emption case no. 45 of 2021 was declared to be void ab initio.

In view thereof, the question would be as to whether the right of pre-emption would continue even after the compromise decree has been passed. It is not in dispute that the transfer by Abdur Rajjak Mondal in favour of wife of Ajad Ali Ansari was made some times in the year 2022 and no prayer for pre-emption with regard to such transfer has been made by the petitioner herein within the time limit stipulated under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955.

Addition of the wife of Ajad Ali Ansari in the instant pre-emption case would enlarge the scope of the said Misc. case. It is well settled that a party should not be added if it would result in enlarging the scope of enquiry in the proceeding where addition is sought.

This court, therefore, is of the considered view that the wife of Ajad Ali Ansari is neither a necessary party nor the presence of the said party is necessary for the purpose of effective adjudication of the Misc. case.

The facts relating to the passing of the compromise decree and the subsequent transfer are independent cause of action and the same cannot be said to be germane in the instant pre-emption case. The said facts cannot be said to be necessary for deciding the real controversy in the pre-emption application.

The learned Trial Judge was right in holding that addition of Abdur Rajjak Mondal and Firdous Bibi will not help in proper disposal of the instant case and also that the proposed amendment, if allowed, would change the nature and character of the pre-emption case.

For the reasons aforesaid, this court is not inclined to interfere with the order impugned.

Accordingly, CO 449 of 2025 stands dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties after completion of all necessary formalities.

(Hiranmay Bhattacharyya, J.)