

M/L- 68
06/03/2025
Ct. No.-6
Aritra

C.O. 464 of 2025

**Nataraj Saha
Versus
Mir Year Bus & Ors.**

Mr. Partha Pratim Roy
Mr. Samrat Chakraborty
...for the petitioner

Mr. Roy learned advocate appearing for the petitioner files the certified copy of the judgment and order passed by the learned Trial Judge. The same is taken on record. The learned advocate on record of the petitioner is directed to tag the certified copy of the Trial Court along with this civil revision application.

This application under Article 227 of the Constitution of India is at the instance of the pre-emptor and is directed against an order dated December 12, 2024 passed by the learned Additional District Judge, Rampurhat, Birbhum in Miscellaneous Appeal No.7 of 2010 reversing the order dated April 12, 2010 passed by the learned Civil Judge (Jr. Div.), 1st Court at Rampurhat, Birbhum in Miscellaneous Preemption Case No.17 of 2013.

The petitioner herein filed an application under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 which was registered as Misc. Preemption Case No.17 of 2013. The preemption case was allowed by the learned trial judge by an order dated April 12, 2010.

The opposite party No.1 herein preferred a Misc. Appeal against such orders, which stood allowed by the impugned orders.

It is the specific case of the petitioner that no notice under Section 5(5) of the 1955 Act was served upon the petitioner. The petitioner filed the application for preemption on April 3, 2003 as a non-notified co-sharer. The deeds which are the subject matter of the application for preemption were registered on April 4, 2000.

The short question that arises for consideration is whether the application for preemption in respect of the deeds registered on April 4, 2000 was filed within the prescribed period of limitation.

It is well-settled that in case preemption is sought by a non-notified co-sharer the period of limitation shall be governed by Article 97 of the Limitation Act. For effective adjudication of the dispute involved in this application Article 97 of the Limitation Act is extracted hereinbelow:-

“97. To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract.

One year.

When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject-matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument is registered.”

After going through the preemption application this Court finds that it has been specifically stated that the deeds were registered on April 4, 2000. The case made out by the petitioner in the application for preemption was that he came to know about such transfer only on March 20, 2003 and, thereafter, the application for preemption was filed on April 3, 2003. In the application for preemption it has not been specifically stated as to when the purchaser took physical possession of either the whole or part of the property under the sale which was sought to be impeached. It is not the case of the petitioner that the subject matter of sale does not admit of physical possession of the whole or part of the property.

In view thereof this Court is of the considered view that the period of limitation of one year, as prescribed under Article 97, in the case on hand would start running with effect from the date when the instrument for sale was registered. It is not in dispute that the deeds of sale was registered on April 4, 2000 and the application for preemption was filed after one year from the date of registration of the sale deeds.

In view thereof this Court holds that the application for preemption was *ex facie* barred by limitation.

The learned trial judge decided the issue of limitation in favour of the petitioner without assigning

cogent reasons in support thereof. The learned judge of the First Appellate Court rightly took note of the decision of the Hon'ble Supreme Court in the case of **Gopal Sardar vs. Karuna Sardar** reported at **(2004) 4 SCC 252** and rightly held that Article 97 of the Limitation Act shall apply in respect of an application for pre-emption at the instance of a non-notified co-sharer.

In view thereof there is no necessity for this Court to delve upon the other issues raised in the preemption application. This Court finds that the learned Judge of the First Appellate Court was right in holding that the application for preemption was barred by limitation.

For the reasons as aforesaid this Court is not inclined to interfere with the judgment and order dated December 12, 2024 passed by the learned Additional District Judge, Rampurhat in Misc. Appeal (Pre-emption) No.7 of 2010.

CO 464 of 2025 stands dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)