

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 2533 OF 2024

MITHU MONDAL & ORS.

VS

PRASANTA MONDAL & ANR.

For the Petitioners : Mr. Supratick Syamal, Adv.

Mr. Rajarshi Mitra, Adv.

For the Opposite

Party No. 1 : Mr. Nilanjan Bhattacharjee, Adv.

Mr. Akash Adak, Adv.

Last heard on : 30.06.2025

Judgement on : 14.08.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This revisional application is directed against an order dated 16.4.2024 passed by the learned Additional District and Sessions Judge, Fast Track Court II, Howrah in Misc. Appeal No. 77 of 2015 reversing the judgement and order passed by learned Civil Judge Junior Division, 5th Court, Howrah in connection with LR. Misc. Case No. 32 of 2011. The fact leading to filing of this case is that the predecessor interest of the present petitioners Latika Rani Mondal was a co-sharer of the property where a portion of the property was transferred by the Opposite Party No.2/husband of Latika in favour of Opposite Party No.1 behind the knowledge of Latika the mother of the present

petitioners, that is the original Pre-emptor. After hearing the learned advocates and considering the materials on record the judgement was passed by the Trial Court in favour of her which was reversed by the Learned Appellate Court but before filing any revisional application, the original Pre-emptor died on 28.3.2024, leaving and surviving the petitioners herein as her only legal heirs.

2. The Misc. Case under West Bengal land Reforms Act was filed against the opposite parties claiming to be the co-sharer of the suit property in respect of the deed of transfer dated 1 July 2011. The property originally belonged to one Anil Chandra Naskar and Sunil Chandra Naskar, and while they were in possession one of the co-sharer namely Anil Naskar transferred 6 ½ satak of land (4cottah approx.) out of his 12 and ½ satak to the Opposite Party No. 2 by a registered deed of sale on 21.6.1975. Said Anil Chandra Naskar subsequently transferred the rest of his share to the mother of the petitioners that is the original Pre-emptor by registered deed of sale dated 29.5.1981. Since thereafter, the mother of the petitioners and opposite party No.2 who are the parents of the present petitioners started residing there by raising structure and installed one factory shed in respect of their undivided property out of 50 Shatak as Co sharer .

3. It is the case of the petitioner that the opposite party No.2 took loan of ₹1, 20, 000 from Opposite Party. No. 1, as he was in dire need of money and kept the property mortgaged measuring 6 ½ satak of land to the Opposite Party No. 1 though the deed of sale was executed in favour of Opposite Party No.1 on 1.7.20.11. It was the understanding between the parties that said 1 ½ cottah of land will remain mortgaged to the O.P. No. 1 till the dues are cleared and this transaction was made beyond the knowledge of the original pre-

emptor and both the parties though lived under the same roof, was not appraised.

4. Therefore a fraud has been practised upon the mother of the petitioners beyond her knowledge on 1.7.11 and subsequently on 10.8.11, when the opposite No.1 tried to take possession of the suit property and she came to know such fact of transfer and after getting the certified copy of the deed on 16.8.2011 the mother of the petitioners further came to know that in the recital part, nothing was mentioned about the mortgage. Furthermore no notice under Section 5(5) of W.B.L.R Act has been served upon the-pre-emptor, the mother of the petitioners. After that she filed the application under section 8 and 9 of West Bengal land Reforms Act 1955 on 3.11.2011.
5. The case of the Opposite Party on the other hand is that both the petitioner and the Opposite Party No 2, being husband and wife and married couple lead their conjugal life happily in the same house and under the same roof and hence the plea of not having any knowledge about an execution of a deed by the husband is prima facie not acceptable. The proceeding is totally fraudulent and is filed in connivance with Opposite Party No. 2 who is the husband of the petitioner in order to defraud the petitioner No 1, and therefore the petitioner, is not entitled to any relief. The petitioner has suppressed the material fact before the Court and her claim is hit by principles of estoppel waiver and acquiescence. That apart the claim itself is barred by limitation.
6. The learned Trial Court on 19.3.2015 decreed the Misc. case against the opposite parties and directed the consideration money of ₹1, 68, 000 in respect of the case property to be paid by the petitioner and to submit the receipt showing the payment of the rest of the amount within 15 days from the date of

the order. It was further directed the right title and interest in respect of the suit property, which the O.P. No.1 acquired by the impugned registered deed on July 1, 2011 will be rested upon the petitioner upon payment of the rest amount. The Opposite Party No.1 was given the liberty to withdraw the money as deposited by the petitioner in connection with the case. Furthermore, the opposite party 1& 2 were restrained by an order of permanent injunction from making any change of nature and character, and from making any construction in the case in hand. This judgement was reversed by the learned appellate court in the appeal preferred by the O.P. NO.1, challenging the said order a Misc. Appeal was filed and learned court after hearing both the parties reversed, the judgement delivered by the Court of Civil Judge Junior Division. Being aggrieved, thereby the instant revision application has been filed.

7. The Opposite Party No. 1, though tried to impress upon the court in his written objection that it was the request made on behalf of the Opposite Party No.1 on repeated occasion, the present Opposite Party No. 2 agreed to purchase the property, but O.P. No. 2 did not deliver the possession of the suit land to the opposite party No.1 and on August 10, 2011 on being asked by the petitioner for the first time directed the petitioner about purchase of suit property by him. According to him, the petitioner had full knowledge about such fact of purchase prior to the registration of the deed of sale. The sale deed as annexed with the petition clearly reveals that Bishwanath Mandal sold the property to Prasanta Mandal, and he became the absolute owner of the suit property. In the said deed it was categorically mentioned that no legal heir can claim any right title and interest in respect of the suit property, and if any such claim is made, the same will be rejected being not maintainable. Therefore, the

petitioners or their, mother since deceased never had any share in respect of the same property. In the written objection to the said application under section 8 of W. B. LR act, the Opposite Party No.1 disclosed that the long back after purchase of the petitioner, one Sunil Chandra Patra and Lokkhi Kanta Patra, both purchased the Southern part of petitioner's purchased specific demarcated part of plot number 369 that is the suit plot, measuring an area of 3 & 2 decimals, respectively having the longest common boundary in respect of the petitioner's demarcated Property, but despite of that the petitioner never came forward to exercise her alleged right of pre-emption against said Patra Brothers at any point of time, and having full knowledge about the deed of sale of 2011, and that the possession was handed over to the Opposite Party No. 1 in presence of the opposite party No 2 has filed the case for pre-emption only in order to delay the process of handing over the possession.

8. It is also the case of the Opposite Party No 1.that the consideration price of ₹1, 69,000 was determined by the Authority and it is denied that

Rs.1, 20, 000/- the actual sale price instead of ₹1, 59, 000 as mentioned in the deed of sale or payment to the Opposite Party No. 2 by the Opposite Party No 1. Originally a sum of ₹1, 68, 000 was paid by the Opposite Party number 1 to the Opposite Party No. 2 and he in collusion and connivance with the predecessor in interest of the present petitioners being his wife to show their alleged bona fide has deposited a sum of ₹ 1, 32,000 only in court in order to sell the said part to the other purchaser at higher consideration price by forfeiting a sum of ₹48,000/- of the Opposite Party No 1. It was further claimed that since the Opposite Party No. 2 Bishwanath Mondal is the vendor of the opposite party No 1 and the petitioner is the successor of said vendor in the

eye of Law the petitioner is estopped from claiming any relief or inspect the said registered deed of sale and has no right to file the case. At the time of presentation of the sale deed for registration on July 1, 2011, the copy./set of notice as per the provisions of section 5(1)(b) (ii) of the WBLRT Act and also of Section 5 (4) of this act were also submitted before the registering officer and only after fulfilling the formality the deed was accepted by the registering officer and therefore the duty on the part of the Opposite Party No.1 for submitting the notice of service was discharged by Opposite Party No1.

9. It is undisputed that both the petitioner and the Opposite Party No.2 are husband and wife and leading their conjugal life under the same roof therefore it is difficult to believe the stand of the petitioner about lack of knowledge about the execution of said registered deed of sale dated July 1, 2011 as alleged by the Opposite Party No. 2 that is the husband of the petitioner in favour of the O.P. no 2 and the application under Section 8 of the WBLR Act was filed on 3.11.11. In ¹ **Gopal Sardar vs Karuna sardar** it was decided that Section 5 of the limitation Act will not lie as there is no extension of the suit in law. It was held:-

'We conclude that Section 5 of the Limitation Act cannot be pressed into service in aid of a belated application made under Section 8 of the Act seeking condonation of delay. The right of pre-emption conferred under Section 8 is a statutory right besides being weak, it has to be exercised strictly in terms of the said Section and consideration of equity has no place. On the facts found in these appeals, applications under Section 8 were not

¹ AIR 2004 SC 3068

made within four months from the date of transfer but they were made four years and six years after the date of transfer respectively which were hopelessly barred by time. Benefit of Section 5 of the Limitation Act not being available to the applications made under Section 8, Section 3 of the Limitation Act essentially entails their dismissal.'

Therefore prima facie the proceeding is barred by limitation.

- 10.** That apart the Learned Appellate Court considered the fact that there was transfer of adjoining Southern part of the petitioners portion in the suit plot, but the petitioner never act for pre-emption as such her claim suffers from doctrine of estoppel.
- 11.** Fact remains the original owner, transferred 6 ½ of land that is 4 cottah approxly out of his 12 ½ Shatak share to the husband Op no. 2 and subsequently said Anil Naskar/original owner transferred his rest share to the petitioner's mother by Registered Deed of sale dated 29/5/1981 and since thereafter both of them started residing therein by raising structure and installed one factory shed. Dispute cropped up as the entire consideration money in terms of sale deed for the year 2011 was not paid to the opposite party No1 and Latika /original petitioner refused to hand over the possession of the suit property which was transferred by the opposite party No2 /husband of the pre-emptor in favour of opno.1 and she filed the proceeding under Section 8 of WBLR Act, praying for pre-emption, being a co-sharer of the property transferred in favour of the O.P. No. 1 by O.P. No. 2 ON 3.11.11. Now the question arises where the consideration amount is paid is part and

possession also not handed over whether the sale could be said to be valid in the eye of law.

12. At this stage, it is appropriate to quote Section 8 and 54 respectively of the Transfer of Property Act

*Section 8; **Operation of transfer.**- unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof. Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; and, where the property is machinery attached to the earth, the moveable parts thereof; and where the property is a house, the easements annexed thereto, the rent thereof; accruing after the transfer, and the locks, key, bars, doors, windows, and all other things provided for permanent use therewith; and where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer; and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.*

*54; **“Sale” defined.**- “Sale” is transfer of ownership in exchange for a price paid or promised or part-paid part-promised. **Sale how made.**- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards,*

*or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible, immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. **Contract for sale.**- a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.*

13. The above definitions show that in order to constitute a sale, there must be transfer of ownership from one person to another and the transferor cannot retain any part of his interest or right in that property otherwise, it would not be a sale. So far, the price paid is concerned, it is undoubted that price constitutes an essential ingredient of the transaction of the sale. It was observed in various decision, the word 'price paid' or promised or part paid and part promised indicate that actual payment of the entire amount of consideration money at the time of execution of sale deed may not be a sine qua non to the completion of the sale .In a decision reported in² ***kaliaperumal versus Rajagopal and another***, the Hon'ble Supreme Court considered the issue of "price paid" and observed,

'It is now well, settled that payment of entire price is not a condition precedent for completion of the

² 2009 (4) SCC 193

sale by passing of title, as Section 54 of Transfer of Property Act, 1882 defines sale as a transfer of ownership in exchange for a price paid or promised or part paid part promised. If the intention of parties was that title should pass to the purchaser, even if the sale price or part thereof is not paid in the event of non-payment of price or balance price, as the case, maybe thereafter, the remedy of the vendor is only to sue for the balance price’.

The Supreme Court in the matter of **Kalia perumal (supra)** wherein it has observed at paras 18 & 19: observed

18. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, and the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.

19. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties

can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of Evidence Act.

The aforesaid judgment rendered in the matter of Kalia perumal (*Supra*) was considered by the Supreme Court in the matter of **Yogendra Prasad Singh v Ram Bachan Devi**³ The Supreme Court held that normally, on the execution and registration of the sale deed, the sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally. It was observed specifically in para 12:

“12. A sale deed of an immovable property is executed in accordance with Section 54 of Property Act 1882. There cannot be any dispute that normally on the execution of a Registered Sale Deed by the owner of the Property, the title in the property subject matter of the Sale Deed stands transferred of the purchaser. Considering the principles laid down in Sub Section 4(5) of Section 55 of T.P. Act 1882, the seller will have a charge over the property subject matter of the sale for unpaid consideration and he can enforce the charge by filing suit”

14. Therefore, the observation of the Learned Appellate Court that since the consideration amount was not paid, the sale is invalid is not tenable in the eye of law. The plea of the mother of the petitioners about lack of knowledge about the execution of the deed of sale in respect of the share of the opposite party No.2, by the Opposite Party No.2 himself being, her husband is beyond

³ 2023 IN SC 658

acceptance in absence of any such cogent material or evidence adduced before the court. In the deed itself, nowhere, it was mentioned that the property will remain mortgaged till the actual payment was made, rather, it reveals the contradictory version and the intention of the O.P. No. 2 who categorically stated that no other legal heir can made any claim about the said portion of the property. Furthermore the deed clearly states that the property is transferred in favour of O.P. No. 1 hence the stand of the petitioners about the ostensible ownership fails.

- 15.** Admittedly, the predecessor in interest of the present petitioners and the wife of Opposite Party No.2, purchased the respective properties by virtue of two separate deed of sale dated 21.6.1975 and 29.5.1981 from the same owner. By virtue of the said deed of transfer of 2011 the opposite party no 2 transferred 1 cottah 8 chittack which is mentioned as DEMARCATED (map surat).

The Learned Trial Court recorded the evidence of the parties and arrived at a finding that since a portion of the share of the O.P. NO.2 was transferred the petitioner and O.P. NO. 2 were co-sharer and hence she is entitled to maintain the application for pre-emption. Furthermore, the O.P. No. No 2 the husband of the predecessor in interest and the father of the present petitioners did not adduce evidence however his evidence will not have much relevancy since the execution of the said deed has not been challenged.

- 16.** So in summing up the entire case it appears that the admittedly the O.P. no. 2 was the owner of the disputed property which he transferred by virtue of a deed of sale executed on 1.7.11 in favour of the O.P. no.1 which mentioned the property as specific demarcated but the total consideration price was not paid

and the possession was also not handed over. The petitioner's mother being the joint owner and wife of the vendor had no knowledge about such transfer and came to know when the O.P No.1 came to take possession of the same and thereafter she filed the application under section 8 of the W.B.L.R Act 1971 after expiry of statutory period so the petition is barred by limitation since the petitioner failed to prove the date of knowledge of the execution of the said deed of sale. She further failed to prove that the property was mortgaged on account of repayment of the loan taken by the husband /O.P. No 2 and that is the reason the possession of the same was not taken. Once the sale deed is registered and the maximum part of the consideration has been paid with the specific averment if the deed curtailing assertion of any claim over the property transferred by any of his legal heirs the stand of the petitioner about ostensible ownership also fails. The most important point is that the petition never denied the execution of the deed rather was aware about a loan of Rs. 1, 20,000 taken by her husband from O.P. no 1.

17. Therefore in all aspect the petitioner's case fails and hence the order of the Learned Appellate Court is hereby to be affirmed.

18. The civil Revision Application stands rejected.

19. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)