

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**CO 2837 of 2025
Sri Ramesh Chandra Maity
Vs.
Sri Haresh Chandra Maity & Ors.**

For the Petitioners : Mr. Tanmoy Mukherjee, Ld. Advocate
Mr. Souvik Das, Ld. Advocate
Mr. K.R. Ahmed, Ld. Advocate
Mr. Rudranil Das, Ld. Advocate

Heard on : 07.08.2025

Judgment on : 07.08.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the opposite party no.5 in Judicial Misc. (Preemption) Case No. 12 of 2024 and is directed against an order being no.17 dated July 18, 2025 passed by the learned Civil Judge (Junior Division), 1st Additional Court at Contai.
2. By the order impugned the application for stay of all further proceedings in the Judicial Misc. (Pre-emption) Case No. 12 of 2024 stood rejected.
3. The opposite party no.1 filed an application under Section 8 and 9 of the West Bengal Land Reforms Act, 1955 being Judicial Misc.(Pre-emption) Case No. 12 of 2024. The opposite party nos. 2 to 5 are the pre-emptees. The petitioner is the vendor of the opposite party nos. 2 to 5 herein.

4. The subject matter of the preemption case is the deed of sale executed on February 5, 2024. The petitioner filed a suit being Title Suit No. 226 of 2024 praying for a declaration that the deed executed on February 5, 2024 being Deed no. 1279/ 2024 is illegal, void not acted upon and is not an out and out sale deed and for a declaration that the said deed was a security for a loan transaction.
5. The petitioner filed an application praying for stay of all further proceedings of the pre-emption miscellaneous case till the disposal of Title Suit No. 226 of 2024.
6. Mr. Mukherjee, learned advocate appearing for the petitioner submits that the deed which is the subject matter of the pre-emption case is under challenge at the instance of the petitioner in a properly constituted title suit praying for declaration that the said deed is void and not an out and out sale deed. He further submits that considering the scope of the title suit the pre-emption miscellaneous case ought to have been stayed by the learned trial judge as in the event the petitioner succeeds in the suit the cause of action for filing the miscellaneous case would not survive.
7. The learned trial judge rejected the application for stay on the ground that it is only after the rejection of the application filed by the opposite party nos. 2 to 5 herein praying for stay of the pre-emption case the petitioner had approached with the prayer for stay.
8. It is not in dispute that even after service of summons, the petitioner herein did not enter appearance in the pre-emption case and filed the application for stay only after the prayer of the opposite party nos. 2 to 5 for stay of all further proceedings of the pre-emption case stood rejected.

9. The larger issue would be as to whether the pre-emption case ought to have been stayed on the ground of pendency of a title suit challenging the deed of transfer which is the subject matter of the pre-emption case.
10. Section 8 of the West Bengal Land Reforms Act, 1955 confers right on co-sharer of a raiyat in the plot of land, the bargadar in the plot of land and co-sharer of a raiyat in the adjoining plot to apply for transfer of the portion or share of the plot of land which has been transferred by a raiyat to any person other than a co-sharer of a raiyat in the plot of land.
11. It is not in dispute that a portion of the plot of land was transferred by the petitioner in favour of the opposite party nos. 2 to 5 by a registered deed of conveyance.
12. Section 9 (1) of the West Bengal Land Reforms Act provides that the munsiff, upon being satisfied with the conditions for allowing an application for transfer of the plot in question shall make an order that the portion or share of the plot of land be transferred to the applicant and on such order being made the portion or share of the plot of land shall vest in the applicant.
13. Subsection 2 of Section 9 of the 1955 Act states that when any person acquires the right, title and interest of the transferee in such plot of land by succession or otherwise, the right title and interest acquired by him shall be subject to the right conferred by subsection (1) of Section 8 on a co-sharer of the raiyat in a plot of land on a raiyat possessing land adjoining the plot of land or bargadar.
14. Section 10 of the 1955 Act deals with the consequences of an order for transfer. It states that on an order under Section 9 being made the right,

title and interest of the raiyat and of the transferee of any person mentioned in sub-section 2 of Section 9 who acquires any right, title and interest in the plot of land shall vest in the raiyat whose application for transfer has been allowed by the revenue officer or by the munsiff or after the commencement of Section 8 of the West Bengal Land Reforms (Amendment) Act, 1971, by the Additional District Magistrate or after the commencement of the West Bengal Land Reforms (Amendment) Act, 1972, by the District Judge on appeal.

15. Section 9(2) makes it abundantly clear that the right of preemption which accrued upon execution of a deed of sale would survive even if a person subsequently acquires any interest of the transferee by succession or otherwise. Thus it is evident that it is only the right, title and interest of the raiyat and of the transferee shall only vest in the raiyat whose application for transfer has been allowed.

16. Thus this Court is of the considered view that the petitioner herein cannot be said to be prejudiced even if the pre-emption application is allowed to proceed as even in case the pre-emptor/opposite party no.1 succeeds in the application under Section 8 it is only the right, title and interest of the raiyat and the transferee that will vest upon the applicant. If according to the petitioner no right, title and interest stood transferred in favour of the pre-emptee by virtue of the impugned transfer nothing can be said to have vested pursuant to the order, if any, passed on an application under Section 8 and 9 of the 1955 Act. Moreover, the preemptor is also a party in the Title Suit. Therefore, the respective parties shall have an opportunity to raise all points in the Title Suit and also place all relevant materials including the

orders and judgments, if any, passed in the preemption case in the event the same is disposed of prior to the Title Suit.

17. That apart, the petitioner has only filed a suit for declaration that the deed in question is void and not an out and out sale deed. Till any such declaration is made, a statutory right flowing from the said transfer cannot be said to have become non-est in the eye of law. Merely on the basis of the contention that if the petitioner succeeds in the suit, the cause of action in the preemption case would not survive, cannot be a ground to stall a preemption case seeking to enforce a statutory right running with the land.

18. Thus this Court is of the considered view that no ground has been made out by the petitioner for stay of all further proceedings of the pre-emption case till the disposal of the title suit. The ultimate conclusion of the learned trial judge rejecting the application for stay does not warrant interference in exercise of powers under Article 227 of the Constitution of India.

19. Accordingly, C.O. 2837 of 2025 stands disposed of with the aforesaid observations without interfering with the order impugned.

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

21. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)