

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 3378 OF 2024

SRI RAMPADA JANA

VS

SRI MANIKLAL SAMANTA

**For the Petitioner : Ms. Usha Maity, Adv.
Mr. Sukanta Das, Adv.
Mr. Sakya Maity, Adv.**

**For the Opposite Party : Mr. Partha Pratim Roy, Adv.
Ms. Poulami Chakraborty, Adv.**

Last heard on : 26.08.2025

Judgement on : 10.11.2025

Uploaded on : 10.11.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This revisional application is directed against the judgement and order of reversal passed on 29th day of June, 2024 by the Learned Appellate Court in Misc. Appeal No.180 of 2023, setting aside the Judgement and order dated 19th October 2023 passed by the Learned Civil Judge (Jr.Div.) Ghatal, Pashim Medinipur whereby the pre-emption suit was dismissed.

Genesis of the case

- 2.** The suit property originally belonged to one Ganesh Chandra Maity who died before Promulgation of Hindu Succession Act 1956, leaving and surviving his only son Krishna Chandra Maity and four daughters namely Kumari Rushibala, Kusum and Basanbala .Being the sole male heir, said Krishna Chandra inherited the entire property as the Hindu Succession Act was not promulgated at that point of time. The pre-emptor /Opposite Parties are the widow and son of Ramsaran who was the only son of Rushibala, the sister of Krishna Chandra.
- 3.** On 13th January, 1959 Krishna Chandra Gifted 1/3rd Share of his landed properties in favour of Sital Duary who was the son of Basanabala the other sister and 2/3rd share in favour of Ramsaran by way of two Registered Deeds of Arpannama. Ramsaran died after promulgation of the Hindu Succession Act 1956, leaving behind his widow Kamala Samanta and Maniklal and the entire property devolved upon them as the legal heirs of Sital Duari .Sital Duari transferred his entire share of the suit property on 14th June ,2001 by way of Registered deed of Sale in favour of Rampada the petitioner herein at a consideration of Rs. 4,24,500/- but on account of deficit Stamp duty the registration was completed only on 4th September ,2003. Maniklal Samanta claimed as the pre-emptor, deposited the value of suit property in the schedule of pre-emption application a sum of Rs. 4, 66,950/- before the Learned Court and filed the application under section 8/9 of the W.B.L.R Act of 1955.
- 4.** An application was filed by the pre-emptor /Opposite Party Maniklal Samanta and his mother, Kamala Samanta exerting their right of pre-emption being

Misc. Case no. 20 of 2003. The present petitioner /purchaser being the pre-emptor contested the proceeding filed under Section 8 and 9 of the West Bengal Land Reforms Act,1955 by filing written objection and denied the claim of the pre-emptor with specific objection against the claim of partial pre-emption and also that they are co-sharer with the pre-emptor. Judgement and order dated 19th October 2023 passed by the Learned Civil Judge (Jr.Div.) Ghatal, Pashim Medinipur whereby the pre-emption suit was dismissed. The Learned Appellate court reversed such order.

5. This revisional application has been filed challenging the judgement and order passed by the Learned Appellate Court reversing the judgement of the Trial Court in the second round of litigation on 29th June, 2024.

Submission made by the petitioner

6. The first point of preferring this appeal assailed by the Learned Advocate Mrs. Usha Maity relates to maintainability of the pre-emption application itself on the ground that said Ram Saran Samanta was not the co-sharer with Sital Chandra Duari and accordingly his legal heirs also cannot be the co-sharer. It is contended by the Learned Advocate that the property was sold to Rampada Jana by Registered sale deed executed and Registered on 14th June ,2001 and 4th September 2003 respectively is not a co-sharer property and accordingly the application for pre-emption submitted by the pre-emptor is not maintainable. It is submitted that the common owner Krishna Chandra while gifted 1/3rd and 2/3rd share within a total area of 3.55 acres with specific demarcation and rent/khajna both Sital and Ram Saran became the absolute owners of their respective portions and not the co-sharer to each other. Both of

their names was recorded in the Record of rights as separate Raiyat with separate Khatian Number and both of them are raiyat and not co-sharer. Therefore the prayer made by the applicants for preemption by the wife and son of Ram Sharan is not maintainable.

7. It is further contended that the Opposite Parties failed to establish their right over 5 plots being no.19, 697 and 42 of Mouza Baneshwarpur regarding which claim has been made for pre-emption by filing this application, are not found mentioned in the deed executed by Krishna Chandra in favour of Sital. By virtue of consolidated application the opposite party first time mentioned about oral gift of some properties and the submission made before the Trial Court that those plot nos. were actually gifted to both the nephews by oral gift. The present petitioner filed their written objection denying the said contention. In this regard she relied upon the decision of Full Bench reported in ***Madan Mohan Ghosh vs Sishubala Atta***¹ (***Narendra Kumar Singh vs Smt Gursharan Kaur***)².

8. It is further argued that anybody claiming his right as pre-emptor by filing an application, must show that he is a co-sharer adjoining of the holding, a portion of share of which has been transferred to a non-co-sharer and in the event of his failure to prove he cannot claim to have any right of pre-emption as was enumerated under Section 26(f) of Bengal Tenancy Act, as observed by the Full Court. That apart when demarcated portion of a plot of a Raiyat is transferred by the original owner, the purchaser does not become co-sharer

¹ 76 CWN 1058

² 2016 (2) WLR (CAL) 314

with the original owner .In this regard relied upon the decision of **(kinkar mahato vs Sham mahato)**³.

9. The other point raised by Mrs. Maity that the concept of partial partition is alien and the right of pre-emption is not a right to the things sold but a right to the offer of a thing about to be sold and this right is called inherent right. The right being a weak right, it can be defeated by all legitimate methods .In this regard the learned advocate relied upon the decision of **(Bishan Singh vs Khajan Singh)**⁴. She further relied upon **(Biharilal roy vs Pulin Behari pal)**⁵, **(Surabala Basu vs Rukmini Kanta Barman Roy)**⁶, **(Rampada Jana)**⁷, **(Surendranath Jana vs Abhimanyu Jana)**⁸ **(Mattu Devi (smt.-vs damodar lal)**⁹, **(Rabindranath Kundu vs Suidhir Hira)**¹⁰ **Labanyaprabha devi vs Parulbala Devi)**¹¹ **(Khatejannessa & anr vs Mahammad Abdul Khalique)**¹²

10. The further point argued that the pre-emption is a statutory right and weak right to be exercised strictly in terms of section 8 and consideration of equity do not apply as held in **(Gopal sardar vs karuna sardar)**¹³, **(Kumar Gonsusab vs Mahammad Miyan)**¹⁴, **(Gouranga Kundu vs Sarathi Halder)**¹⁵, **(Sk. Samser Ali vs Sarina Bibi)**¹⁶ . **(Patel Motobhai vs Binubhai)**¹⁷.

³ 2005(3) ICC 05

⁴ AIR 1958 (SC) 838

⁵ 38 CWN 654

⁶ 42 CWN 288

⁷ 2020(1) CLJ 135

⁸ 1980(1) CLJ 135

⁹ 2001 (6) SCC 330

¹⁰ 2018 (4) WBLR (CAL) 352

¹¹ 77 CWN 272

¹² 44 CWN 981

¹³ (2004) 4 SCC 252

¹⁴ 2008 (10) SCC 153

¹⁵ 2017 (3) CHN (caL) 201

¹⁶ (2012) 2 CHN (CAL) 694

11. Furthermore an application for pre-emption in respect of homestead (Bastu Land) is not maintainable and such issue is still pending decision before the Special Bench and relied upon a decision reported in **(Punit Singh vs Gour @ Gobinda Chandra Das)**¹⁸. More so the pre-emptor did not deposit the full amount of consideration money with 10% additional amount is mandatory .In this regard relied upon the decision of **Barasat Eye Hospital vs Kaustabh Mondal**¹⁹ reported in, **(Abdul Matin Mullick vs Subrata Bhattacharya)**²⁰.

12. The petitioner cannot add 5 more plots other than 21 plots of the disputed sale deed purchased by Rampada Jana from Sital Chandra Durai claiming to be the co-sharer of these plots .Plot nos 10,16,17,42 were not gifted either to Sital or Ramsaran by Krishna Chandra. Therefore the question falls for consideration whether the pre-emptors are at all the co-sharer of those 5 plots as contained in the Registered Sale Deed dated 14.6.2001 and registered on 4.9.2003 and concept of partial partition cannot be accepted being alien. Accordingly prays for setting aside the order passed by the Learned Appellate Court.

Submissions made on behalf of the opposite party

13. The Learned Senior Advocate Mr. Partha Pratim Roy on the other hand representing the Opposite Party raises strong objection to the contention made on behalf of the petitioner that the predecessor of the opposite party was not a co-sharer of the suit property. It is his argument that pursuant to the deed of Sale executed by Shital Duari in favour of Rampada Jana the schedule of

¹⁷ 1996 (2) SCC 585

¹⁸ 2007(3) WBLR (cal) 93

¹⁹ 2019 (19) SCC 767

²⁰ AIR 2022 (SC) 2175

properties mentioned in the deed, described the plot numbers of the properties and the description with specific areas and the extent of shares which were transferred which included the disputed properties situated in both Baneswarpur and Basudevpur Mouza .

14. It is his contentions that the co-sharers being the legal heirs of Ramsaran Samanta in the disputed plots along with Shital Chandra Duari and in gross violation of Section 5(5) read with Section 8 and 9 of the West Bengal Land Reforms Act, 1955 said Sital transferred in favour of a stranger purchaser namely Rampada Jana by way of sale. That apart out of 26 plots he claims pre-emption only in respect of 25 plots as being the owner he left out plot no.1863 LR plot no.1431 which was also transferred through the same deed of sale and in the consolidated application under section 8 of W.B.L.R Act it has been categorically mentioned .He further submits that in ***Biswanath Sarkar & Anr vs Sunit kumar Saha***²¹ reported in and in case of ***Sajan Ali vs Sk Saber Ali***²² reported at it was decided that unless there is no clear demarcation of the suit plot the said sale in favour of the stranger person is required to be set aside.

15. It is further contended that partial pre-emption is permissible when Sale of several properties appertaining to different plots in one deed of transfer and Sale to a stranger as well as to a co-sharer in one deed of transfer. In this regard relied upon the decision reported in²³ ***Kalipada Ghosh v. Paresh Nath Mal & Ors.*** Another judgement relied upon reported in ***(Satish Chandra***

²¹ 2013 (3) WBLR 271 (cal)

²² 2015 (3) CHN 689 (cal)

²³ 1980 (2) CHN pafe 128

Kulia vs Kalipada Maity)²⁴. The Learned Counsel distinguished the decision relied upon **by Mrs. Maity of Barasat Eye Hospital & Ors. vs Kaustabh Mondal (supra)** whereby the pre-emptor is required to deposit the full amount of the consideration price at the time of filing of the application and such amount cannot be deposited subsequently by taking resort to the provisions of Section 5 of the limitation Act 1963. In order to buttress the stand taken by the petitioner, the Learned Counsel relied upon the decision reported in **(Kalipada Ghosh vs Paresh Nath Mal & ors)**²⁵, and **CO No. 152 of 2012 (Ira Mistry vs Smt. Rupali Momndal)**²⁶ on partial preemption.

16. It is further argued that since the prayer made in respects of all the plots mentioned in the impugned deed excepting plot no. 1463 only therefore the petitioner deposited the consideration money as mentioned in the impugned Deed along with 10% interest in respect of all the plots except plot no. 1463 which are subject matter of pre-emption and is sufficient to meet the requirement of depositing the consideration price of the disputed Sale sought to be pre-empted. Therefore the plea taken by the present petitioner for non-depositing of the consideration amount as mentioned in the deed is not correct and the preemption application cannot be rejected on the ground of “Short deposit”. Further put reliance on a decision reported in **Sabri Properties vs CTS Industries**²⁷ to counter the submission of the petitioner that Section 8 application under W.B.L.R Act the Bastu Land is not maintainable. Accordingly prayed for dismissal of this revisional application.

²⁴ 1977 (2) CLJ 480

²⁵ 1980(2) CHN 128

²⁶ 1990(1) CLJ 461

²⁷ 2015(2) CHN 410

Analysis

17. Heard the submissions of both the Learned Advocates .On comprehensive evaluation of the factual matrix coupled with the material on records and the submission advances on behalf of both sides it incontrovertibly commands that the petitioners/Kamala Samanta and ors. are the pre-emptor who intends to pre-empt the disputed deed executed in favour of the Opposite Party on 14.6.2001, filed the suit under the statutory provisions of the West Bengal Land Reforms Act, 1955. The cheered history of the case transpires that on previous round of litigation both the Learned Trial Court as well as Appellate Court allowed the prayer of the pre-emptor but was turned down by a co-ordinate Bench of this Court which subsequently travelled up to Hon'ble Supreme Court and on remand again the prayer was refused by the learned trial court and the Learned Appellate Court set aside the said judgement of the Trial Court and allowed the prayer of the Opposite Party herein, giving rise to this revisional application.

18. The Learned Appellate Court reversed the order of the Learned Trial Court mostly on the following points a) the petition cannot be dismissed on the ground that it has been instituted before completion of registration, b) affirms the findings of the trial court that the transferees have acquired co-sharership on the plots mentioned in the schedule c) the case is not defective on the ground of partial pre-emption and lastly d) the trial Court erroneously and refused the right of pre-emption over plot no. 10 and 42 under Baneswar Mouza .The learned Appellate Court further passed the order to that extent that the right title interest and possession of the suit land under the suit plots,

except the plot no. 1463 are acquired by the appellant by virtue of a sale deed dated 4.9.2003 shall vest with the appellant/Opposite Party herein and directed Rampada Jana to deliver the possession of the said land to the appellants /petitioners within a period of 6 months .

19. The ownership of Ganesh Chandra Maity who survived by his son namely Krishna Chandra Maity and four daughters is undisputed. After demise of said Ganesh in view of the prevailing law of inheritance (Hindu Succession Act 1956 not promulgated) Krishna Chandra became the absolute owner of the entire property .He was issueless and lived with the nephews who looked after him and he transferred some of his land by virtue of deed of gift to both the nephews .Later on said Krishna Chandra probably transferred the remaining properties to both the nephews by way of oral gift as can be found from the record .The transferred share was $\frac{1}{3}$ rd to Shital Chandra and $\frac{2}{3}$ rd to Ram Saran Samanta by way of registered deed of gift and they were in absolute possession of their respective properties and recorded their names in the record of rights On demise of Ramsaran the present opposite parties, his legal heirs inherited the share by virtue of Hindu Succession Act. The dispute cropped up as Sital Chandra Duari on 14.6.2001 executed a deed of Sale and thereby transferred to the stranger purchaser without notice u/s 5 of Land Reforms Act ,1955 and being non notified co-sharer, the petitioners/appellants Maniklal Samanta intended to invoke his right of pre-emption and filed the suit.

20. The genesis of the dispute primarily rest on the question whether both Ram Saran Samanta and Sital Chandra Duari became the co-sharer by dint of the deed of gift executed in their favour by their uncle Khishna Chandra in

respect of the disputed plots of land or not and if so whether the right of pre-emption accrued in favour of the pre-emptor or not and also the order passed by the Learned Appellate Court requires any interference or not.

21. In order to decide the first limb of argument it is necessary to look into the specific provision which has been invoked by the pre-emptor. Section 8 of W.B.L.R Act 1955 speaks of the right of purchase by the co-sharer or contagious tenant.

8.If a portion or share of a plot is transferred to any person other than a[co-sharer of a raiyat in the plot of land]may within three months of the date of such transfer ,or]any [co-sharer of a raiyat in the plot of land]may within three months of the service of the notice given under subsection (5) of section (5) or any raiyat possessing land [adjoining such plot of land]may within four months of the date of such transfer apply to the [munsif having territorial jurisdiction]for transfer of the said portion or [share of the plot of land]to him ,subject to the limit mentioned in [section 14M,] on deposit of the consideration money together with a further sum of ten per cent of that amount:

[Provided that if the [bargadar in the plot of land], a [co-sharer of a raiyat in a plot of land] and a raiyat possessing land[adjoining such plot of land] apply for such transfer, the bargadar shall have the prior right to have such portion or [share of the plot of land] transferred to him, and in such a case, the deposit made by others shall be refunded to them:]

[Provided further that where the bargadar does not apply for such transfer and] a [co-sharer of a raiyat in a plot of land] and a raiyat possessing land [adjoining such plot of land] both apply for such transfer, the former shall have

the prior right to have such portion or [share of the plot of land] transferred to him, and in such a case, the deposit made by the latter shall be refunded to him:

[Provided also] that as amongst raiyats possessing lands [adjoining such plot of land] preference shall be given to the raiyat having the longest common boundary with the land transferred.

(2) Nothing in this section shall apply to-

(a) a transfer by exchange or by partition, or

(b) a transfer by bequest or gift [or heba-bill-ewaz,] or

*(c) a [***] mortgage mentioned in section 7, or*

(d) a transfer for charitable or religious purpose or both without reservation of any pecuniary benefit[for any individual, or]

[(e) a transfer of land in favour of a bargadar, in respect of such land if after such transfer, the transferee holds as a raiyat land not exceeding one acre(or 0.4047 hectare) in area in the aggregate.]

[Explanation-All orders passed and the consequences thereof sections 8, 9 and 10 shall be subject to the provisions of chapter IIB.]

[(3) Every application pending before a Revenue Officer at the commencement of section 7 of the West Bengal Land Reforms (Amendment) Act, 1972 shall, on such commencement, stand transferred to, and be disposed of by, the Munsif having jurisdiction in relation to the area in which the land is situated and on such transfer every such application shall be dealt with from the stage at which it was so transferred and shall be disposed of in accordance with the provisions of this Act, as amended by the West Bengal Land Reforms(Amendment) Act, 1972.]

The Learned Appellate Court on scrutiny of the documentary evidences arrived at a conclusion that the original owner did not transfer demarcated lands while transferring in favour of his nephews and Exhibit A shows the specific quantum of land out of total area of land and there is no whisper in any deeds regarding with regard to the boundaries and therefore they have acquired co-sharer ship on the plots.

Mrs. Maiti the Learned advocate representing the petitioner raised the first point that the status of the predecessor of the parties herein over the land are not that of co-sharer and therefore the opposite parties never had the right to pray for preemptive rights . Therefore the law laid down in this regard and the facts of this case be first ascertained.

22.In the decision relied upon by the learned Advocate of the petitioner in **Rabi Kumar Dass & ors vs Chittaranjan Das and anr²⁸** the concept of co-sharer was discussed and it was held that where the absolute ownership of a person is admitted and he gifted some portions to his son ,the son cannot claim to be the co-sharer of the father because he became the absolute owner of the gifted portion and subsequent transfer by said father to other person also does not entitled them to be the co-sharer but the absolute owner in respect of the properties. The same view was reiterated in the decision relied upon in **Subal Mondal (supra)** where it was further held by a co-ordinate Bench of this court that if a common owner transfers specific portion out of the entire plot with defined areas and boundaries to different purchasers then those purchasers do not become the co-sharers to each other.

²⁸ 2006 (4) CHN 302

In the case of **Arindam Joardar (supra)** it was held by a co-ordinate Bench of this Court that a property can be identified either by demarcation or by any other specific description .Where the deed of gift clearly specifies the property and is accepted the property remains in exclusive possession of his respective portion of the suit plot the said demarcated property when sold then the petitioner would not have the right to claim pre-emption.

23.In the case of **Sk. Samser Ali vs Serina Bibi(supra)** the petitioner produced the record of rights showing their names recorded in respect of the disputed plot .The Petitioner purchased 26 satak out of 80 satak prior to purchase by the opposite party .The sale deed disclosed that a well demarcated portion has been sold .It was held by the Learned co-ordinate Bench that when an original owner has sold a well demarcated portion it does not attract Section 14 and the said purchaser does not become the co-sharer along with the original owner. Admittedly the remaining portion of the larger property owned by the Opposite Party no.2 being the original owner sold the same to the Opposite Party no.1 and thus it cannot be said that a portion or a part of the plot of land was sold .To attract provisions under Section 8 of the West Bengal Land Reforms Act there must be a sale of a portion or a part of the entire plot of land which would be evident from the language assigned in Section 8 of the said Act. In a decision of Full court on reference **Madan Mohan Ghosh and oths vs SishuBala Atta (supra)** in paragraph 19 it was held ;

19.That anybody making an application before the court in exercise of his right of pre-emption under section 26F must show that he is a co-sharer tenant of the holding of a

portion or share of which has been transferred to a non-co-sharer .If he fails to prove that he is a co-sharer tenant of the holding in question ,he cannot claim to have any right of preemption under section 26F .The primary question which has to be decided in connection with an application for pre-emption under section 26F is, whether the applicant is a co-sharer in the tenancy or not .In case it is found that that he is a co-sharer in the tenancy his application will be held maintainable and he will be entitled to exercise his right of pre-emption ,but if he fails to prove the same his application will be dismissed on the ground that he has no such right under section 26F.It is pertinent to mention herein that the whole of the Bengal Tenancy Act including 25F thereof for pre-emption has been expressly repealed w.e.f 25th September ,1965.

In the decision of **Narendra Kumar Singh and Anr vs Smt Gursharan Kaur & ors (supra)** it was held that an application for pre-emption is maintainable when a co-sharer has diverted his entire share or portion of land to a third party than the raiyat. Demarcated portion of land if sold by the original owner of a plot of land, the purchaser does not become the co-sharer with the original owner.

In **kinkar Mahato(supra)** the co-ordinate Bench of this Court observed that the right of pre-emption exercised either by the co-sharer raiyat or by the adjoining land owner or by the bargadar only when a portion or share of a plot

of land of a raiyat is transferred to any person other than the co-sharer raiyat in the plot of land. The learned Judge was of the view that the provision of W.B.L.R Act makes it clear that the pre-emption can be exercised either by the co-sharer raiyat or by the adjoining land owner or by the bargadar only when a portion or share of a plot of land of a raiyat is transferred to any person other than the co-sharer raiyat in the plot of land .Further observed that only when a co-sharer raiyat transfers a portion of the share of his interest in the plot of land then only the right of pre-emption can be exercised by the aforesaid persons . . According to the submission of the learned advocate of the opposite party there are conflicting views on the interpretation of the word ‘or’ in section 8(1) of the W.B.L.R Act 1955 .While Kinkar Mahato interpreted the word “or”as “of” the subsequent decisions in Biswanath Sarkar and Sk.Sajan Ali held the word ‘or’ to be disjunctive .As to whether the word ‘or’ should be read as ‘of’ as held in kinkar mahato or it should be treated as disjunctive was resolved in view of Chhana Rani Saha where the Hon’ble Supreme Court held the word ‘or’ has to be read as ‘or’ only and not ‘of.’

Therefore when the law is found to be settled on this issue of determination of co-sharership it is necessary to look into the deeds where by the original owner transferred the plot of land.

24. On perusal of the deed of gift of Ramsaran Samanta being Deed No. 979/ 1959 marks as Exhibit 1 and the deed of Sital Duari being 1002 /1958 marked Exhibit A, it transpires that those specifically used the word that specifically demarcated (chinito bontan) as possessed by the donar which primarily shows that a well demarcated plots were transferred by way deed of

gift and it is quite apparent that the said deed of gifts were duly accepted and recorded their names . That apart said Krishna Chandra transferred some plots from his own land of 3.55 acres with specific demarcation and rent khajna of Rs. 9 .01 within total rent khajna of Rs 27.04 appertaining to R.S Khatian No 376 under Bansewar Mouza which in turn has been sold to the petitioner by Sital alongwith other properties . In this case admittedly said Sital's name was duly recorded in the record of rights showing possession of those land exclusively by him as 16 annas owner in respect of land measuring 1.18-1/3 acres within 3.55 acres .Similarly the name of Ram Saran Samanta was recorded in L.R Record of rights under khatian no. 296 and after his demise his wife 's name recorded in L.R Khatian No 634 and name of Maniklal Samant a was recorded in L.R khatian no. 586 which stands in total 2.36-2/3rd acres and as the entire share was transferred by Krishna Chandra with specific demarcation in their favour both the transferee became the absolute owners of the property gifted by Krishna Chandra and hence they are not the co-sharer with each other .

25. Therefore from above judicial pronouncement it can be found that all along the view expressed by different courts that an application under section 8 of W.B.L.R Act is maintainable only when a portion or share of a plot of land of a Raiyat as opposed to the entire plot is transferred. The three judges special bench of Sk. Sarafat Ali (supra) reiterate such proposition that preemption under Section 8 of the Act lies only if a portion or share of land of a Raiyat and not the entire plot is transferred to the preemptee . Accordingly this Court is unable to accept the observation made by the learned Appellate Court that those two nephews acquired co- sharer ship, in view of the discussion made

herein above on the touchstone of the law laid down in this regard. From the various decision as relied upon it is no more res Integra that if a well demarcated portion is sold to a third party the owner of remaining portion do not become a co-sharer with the said third party and in order to claim a right of pre-emption, it is sine qua non that the applicant must first establish that he is a co-sharer.

26. The learned Court further observed that the plot no 10, 42 and 697 out of several other plots were not found in the deed of gifts which means the appellants and the vendors did not derive any right title or interest on those plots from Krishna Chandra. The submissions made before the court that record of right was in the name of Ramsaran as an occupier and therefore he has a better title than the pre-emptor. The learned appellate court relied upon the decision in **Chander and ors vs Ghisa Ram & Anr²⁹** where it was decided that an entry in a record of right is presumed to be correct and the onus to rebut the presumption lies on one who asserts that it is not correct and thereby held that the appellants have the lawful possession over the plot No. 10 and 42 of Baneswar Mouza .

27. It is also a settled proposition of law that in a proceeding of pre-emption the question of title in respect of the title deeds rarely come up for adjudication as the right of pre-emption is not a personal right and is attached with the land.

28. In view of the order of the co- ordinate Bench of this court the matter was remanded for hearing afresh which was affirmed by the Hon'ble Supreme Court. Later on an application for amendment was filed by the applicant but it

²⁹ AIR 1981 SC 695

was refused by the learned trial court. The Co-ordinate Bench of this court granted liberty to the petitioner to incorporate the defence of partial pre-emption and accordingly a consolidated application was filed specifically mentioning that the applicants/petitioners are not the co-sharer in plot no 1463 LR R.S1431 nor a contiguous plot holder and hence no right of pre-emption was claimed on the said plot of land .

29. This Court is not in disagreement with Mrs. Maity so far the law laid down in this regard that unless it is established the pre-emptor is a co-sharer he cannot assail his right of pre-emption and that the pre-emptor herein is not a co sharer .The further point raised so far the plot nos. 10.697,16,17 and 42 are concerned that those plots were not gifted by Krishna Chandra either to Sital or Ramsaran so without having nexus, pre-emptive right over those plot of lands are not maintainable.

30. In this case by the consolidated petition the applicant/opposite party tried to establish a story of oral gift made by said Krishna Chandra but such contention has been negated by the present petitioners. Section 123 of the Transfer of property Act is clear on this issue that gift of immovable property irrespective of any value must be affected by way of a registered instrument and the concept of oral gift is not acceptable. In Exhibit B the impugned Sale deed the portions of plot were mentioned as 10,42 and 697 but while maintaining an application to exert the right of pre-emption the applicant must show how he derived that title or he is the co-sharer of such land and or they are contiguous owner of plot of land admittedly those plots are not found in the deed of gift of Krishna Chandra. The opposite party never claimed pre-emption on the ground of contiguous land owner .The record of right also

suggests that the plots of land 10 and 42 stood in the same of Ramsaran but the opposite party herein in his application under Section 8 of the Act, did not make a single whisper how he derived his right of pre-emption over those plot of land. That apart both the learned Court rightly held that the revenue record neither creates nor extinguishes title to the property and lacks any presumptive value on title. In the decision of **Gopal Chandra Mondol** the Co-ordinate Bench took note of **Labanya Bala Devi vs Smt Parul Bala devi & Ors**³⁰ and held that in order to invoke the right of pre-emption under Section 8 of the Act of 1955 the pre conditions as embodied therein have to be fulfilled .The co-sharer of a raiyat in a plot of land is found in the definition in Section 2 (6) as a person other than raiyat who has an un-demarcated interest in plot of land along with the Raiyat .If a Raiyat being the sole owner of the entire plot of land sells a well demarcated portion of land to different purchasers through different kobalas then each purchaser becomes the sole owner of the demarcated portion purchased by him and none of them become co-sharer of the demarcated land sold out to the other purchasers. In this regard the judgement relied upon by the Learned Advocate Mrs Usha Maity is to be looked upon as the similar question arose before the Co-ordinate Bench of this court in the case of **Rabindra Nath Kundu and anr vs Sudhir Hira (supra)** where it was held by a co-ordinate Bench of this court that 'in case of sale of land in different plots pre-emptor cannot be allowed to pre-empt a particular land covered by the impugned deed of sale .It must take whole or nothing.

31. In a catena of decision the extent of the right of pre-emption is defined as a weak piece of right and is a statutory right to be exercised strictly in terms of

³⁰ 77 CWN page 272

Section 8 and consideration of equity do not apply. In **Bishan Singh and ors vs Khazan Singh and anr**³¹ it was held that The Act defines the right and provides a procedure for enforcing that right. It does not enlarge the content of that right or introduce any change in the incidents of that right. The Hon'ble apex court further held that the right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to sold .This right is called the primary or inherent right.

32. This view has been reiterated in the decision of **Kumar Gonsusab and ors vs Mohhamed Miyan urf baban and ors (supra)** ,that there is no equity in favour of pre-emptor and pre-emptee is entitled to defeat the law of preemption by any legitimate means .Right to pre-emption is a weak right not favored by court and hence court cannot go out of the way to help the pre-emptor. In the said case the original owner Bijoy Krishna Hira sold 11 decimal to Santosh Kumar Hira who in return sold 9 decimal to Sudhir Hira retaining 2 decimal of land and it cannot be ascertained that said Sudhir Hira by virtue of purchase became co-sharer with Bijoy Krishna Hira in the said plot of land .

The Learned Judge took note of a case of **Smt. Ira Mistri vs Smt Rupali Mondal & Anr**³² as relied upon by the learned advocate representing the opposite party , that

“the right of preemption is a weak right and in case of preemption it is the impugned deed of Kobala which is preempted and not the land so ,in case of a sale of lands in different plots ,a preemptor cannot be allowed to pre -empt a particular land covered by impugned deed of Sale .The right of preemption cannot be lightly exercised with

³¹ AIR 1958 SC 838

³² C.O. No. 152 OF 2012

respect to one or some of them .It is the right as substitution taking in the entire bargain .It must take the whole or nothing .That apart the circumstances of sale of several properties to different holdings in one deed of transfer has not been substantiated in the given facts of the case before the learned courts below ,Therefore the partial preemption ought not have been allowed ,ergo ,the application for preemption is liable to be dismissed.”

33. The Learned Counsel relied upon another decision reported in³³ **Umapati Manna vs Becharam Manna & ors**³⁴, where the learned trial court held that the suit for partition was not bad for partial partition which was set aside and remanded back by the learned District Judge and in the Second Appeal the order of Learned District Judge was set aside on the ground that there is no material on record that the parties to the suit by themselves and to the exclusion of any other person jointly held as co-sharer any property other than the dwelling house .

34. In this case it is unambiguously clear that such LR plot of 1463 of Basudev Mouza belongs to separate holding and cannot be dragged into the mischief of partial pre-emption. The learned Appellate Court also accepted the view expressed by the Learned Trial Court in this regard and this court also do not find any reason to interfere with the concurrent finding on this issue .The learned appellate court further observed that the entries in plot no.10 and 42 are not in dispute and the entries in R.O.R proves the possession of the parties on such land and the lawful right of the parties are not questioned but did not consider that the opposite party could prove their lawful possession on plot

³³ 1989 SCC online cal 204

³⁴ (1990) 1 CAL LJ 461

no. 697 and held that the learned trial court committed error in refusing the right of pre-emption of the appellant over plot no. 10 and 42 under Baneswar Mouza. This Court is unable to accept such observation in view of the fact the Opposite Party could ever prove that under the same deed of gift those plot of land was transferred so even if it is found that the record of right is in the name of the vendor of the opposite party the same cannot be the subject matter of preemption against this petitioners as the Opposite Party failed to establish that they became co-sharer in respect of those plots of land.

The learned Trial Court rightly observed that the provision of Transfer of property Act 1887 bars the scope of oral gift and therefore the Opposite Party/ preemptor cannot claim to be the co-sharer of those property and hence no right accrues over those properties and thus In this regard this Court is find no reason to interfere since the opposite party acquires no preemptive right.

35. So far the third limb of argument is concerned which pertains to short deposit it is argued that pursuant to the decision of ***Barasat Eye Hospital (supra)*** such deposit with additional amount is mandatory .The value of the suit property was described in the schedule of the application for pre-emption was Rs. 4, 24500/- and the preemptor deposited a sum of Rs. 4, 66,950/- before the Learned Court. It is the mandatory provision to deposit the entire consideration money with 10% additional amount and if not complied the application is not maintainable. It is assailed by the learned advocate representing the Opposite Party that the prayer for pre-emption was made in respect of all plots mentioned in the impugned deed excepting R.S plot No.1463 only and the consideration amount mentioned in the said Deed is Rs. 75,000/- .Therefore the Opposite Party deposited the consideration money as

mentioned in the impugned Deed along with 10% interest in respect of all the plots except plot no. 1463 which is not the subject matter of pre-emption and the amount deposited is sufficient to meet the requirement of depositing the consideration price of the disputed sale sought to be pre-empted and hence the application cannot be rejected on the ground of short deposit.

36. In the amended application filed by the pre-emptor/opposite party specifically excluded their claim from the plot no. 1463 R. 1431 consisting of 30 decimal. In the written objection it was contended that in plot no.10/697 and 42 in lot no. 1/2/3 the claim for pre-emption cannot be sustained. The learned Trial Court held this issue in favour of the present Opposite Party since the amount was deposited through three separate transactions and two of such was prior to the accrual of the cause of action but within limitation and further considered the same to be treated as paid not in instalment. This point was therefore not under challenge and before this Court the issue is not required to be further considered.

Conclusion

37. Therefore in summation of supra conclusion can be arrived at the learned appellate court was erroneous in holding that the parties are co-sharer and therefore acquires a preemptive right. Furthermore this Court is unable to concur with the view of the learned appellate court that the opposite party proved that they had lawful possession over the suit plot no. 10 and 42 and thereby accrued the right to maintain the application under Section 8 of W.B.L.R Act has failed to establish that he is either co-sharer or contiguous plot holder of the scheduled properties which were transferred including 5 plots of land. The opposite party waived their claim so far the plot no. 1463,

1461 and therefore the claim of the preemptive right over the scheduled plot of land is not maintainable and hence question of partial partition does not arise.

38. Hence this revisional application stands allowed. The judgement and order passed by the Learned Appellate Court dated 29th day of June, 2024 is hereby set aside.

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

(CHAITALI CHATTERJEE DAS, J.)

