

18.03.2026
Item No. 28
Ct. No. 30
Aloke

CO 4053 of 2023

Ratan Kumar Roy & Anr.
Vs
Subhasis Dalal

Mr. Kartick Kr. Bhattacharya
Mr. Tirtha Pati Acharya
Mr. Soumashree Dutta
Ms. Papiya Naskar
... for the petitioners

Mr. Shyamal Kr. Das
Mr. Pronojit Ray
... for the opposite party

1. The civil revision has been preferred against the judgment and order dated 27.07.2023 passed by the learned Additional District & Sessions Judge (3rd Court), Suri, Birbhum, in connection with Misc. Appeal No. 9 of 2017 thereby affirming the judgment and order dated 23.03.2017 passed by the learned Civil Judge (Junior Division), 1st Court, Bolpur, Birbhum, in Misc. (Pre-emption) Case No. 54 of 2012.
2. Petitioners state that by virtue of the registered Deed of Conveyance dated 09/05/2012 the petitioners became the sole and absolute owners of all that piece and parcel of land measuring about 1/8th share out of the 1/4th share of the said two storied building standing on all that piece and parcel of land measuring about 6 decimals lying and situated at Mouza- Kalikapur, J.L No. 98, L.R. Khatian No. 583, L.R. Khatian

No. 98 at R.S. and L.R. Dag No. 644 within the jurisdiction of Bolpur Police Station, District-Birbhum and accordingly he paid revenue taxes to the concerned B.L. & L.R.O as well as to the concerned municipality.

3. The petitioner states that the respondent/opposite party on 16.12.2022 purchased the 3/4th share of the said two storied building from the legal heirs of said Dharmadas Dalal vide a registered Deed of Conveyance being Registered in Book No. I, CD Volume No.27, Pages from 189 to 201, being no. 11303 for the year 2011, before the office of the District Sub-Registrar, Birbhum and on 13/07/2012 the two daughters of Late Bimal Chandra Dalal transferred their share being 1/8th share of the total area of the 1/4th share of the said two storied building to the Pre-emptor/Respondent/Opposite Party herein vide registered Deed of Gift being Registered in Book No.I, CD Volume No. 19, Pages from 1479 to 1490, being no. 06459 for the year 2012 before the office of the Additional District Sub-Registrar, Bolpur, Birbhum.

4. Petitioners state that the Pre-emptor/Respondent/Opposite Party herein allegedly claiming himself to be a co-sharer in respect to 7/8th share of land with structure

lying and situated at R.S. and L.R. Dag No. 644 lying, Mouza-Kalikapur, J.L No. 98, L.R. Khatian No. 583, within the jurisdiction of Bolpur Police Station, District-Birbhum, filed an application under section 8 of the West Bengal Land Reforms Act, registered as Misc. Case (Pre-emption) No. 54 of 2012 before the Court of learned Civil Judge (Junior Division) the 2nd Court, Bolpur, Birbhum against the petitioners alleging that the said 1/8th share was sold, without serving a notice upon him under Section 5(5) of the West Bengal Land Reforms Act and thus exercised his right as a non notified co-sharer.

5. Misc. (Pre-emption) case no. 54 of 2012 filed against the petitioners was decreed in favour of the opposite party herein as follows :

"that the application u/s 8 of the WBLR Act is allowed on contest against the O.P. The right, title and interest of the suit property is hereby stand transferred in favour of the petitioner."

The right, title and interest in respect of the suit property vests upon the petitioner with immediate effect. O.P. is at liberty to withdraw the consideration amount deposited by the petitioner."

6. Misc. Appeal No. 09/2019 filed by the petitioners has been dismissed on 27.07.2023.

7. Being aggrieved the petitioners have preferred the revision on the grounds as follows :

“i) The trial Court failed to consider that the original owners were not impleaded as parties as they could have proved whether notice has been served or not.

ii) That the opposite party had not acquired any right as co-sharer on 09.05.2012, when the petitioners had acquired their undivided 1/8th share, as the remaining undivided 1/8th share was acquired by the opposite party herein, only on 13.07.2012, that is subsequently.”

8. Admittedly, at the time of execution of sale deed dated 09/05/2012, the Pre-emptor/Respondent/Opposite Party herein was the owner only in respect of 3/4th share of the said two storied building.

9. The petitioners state that 3/4th share in the building was inherited (by way of a Will) by the legal heirs of Dharmadas Dalal. The remaining 1/4th by the legal heirs of Bimal Chandra Dalal. The respective shares are demarcated and in possession of the respective owners.

10. The petitioners furthers contended that the present petitioners/pre-emptees have purchased a portion of demarcated share in the suit property and as such the preemptor is not a co-sharer.

11. The next contention of the petitioners herein is that that the disputed property in question is characterized as "Shop" which is a 'Bastu' land and located within the jurisdiction of Bolpur Municipality and being a homestead and non-agricultural land, the 1973 Act would not be applicable.

12. It is the contention of the petitioners herein that the vendors therein sold a well demarcated portion to the Pre-emptor/Respondent/Opposite Party herein and being a subsequent purchaser the Pre-emptor/Respondent/Opposite Party herein cannot claim a right as co-sharer in the respective shares of suit property, since if the original owner sold a well-demarcated portion to the purchaser, pre-emption under section 8 of the said act does not lie.

13. Vide the impugned order dated 23rd March, 2017, the trial Court decided as follows:-

"Same view is taken by Hon'ble Calcutta High Court in CO no. 3502/14 wherein it was held as under:-

"Bestowing upon an anxious consideration to the rival submissions of the parties, I find that the definition of the land having undergone a revolutionary change and land of every description having now come to the purview of the Act, the distinction so long made between agricultural and non-agricultural land for the purpose of granting relief under Section 8 and denying such relief to a raiyat holding non-

agricultural land has now been wiped out, therefore, Section 8 would be now attracted in respect of land of every description in as much as, the change in the definition of land in Section 2(7) of the Act, non-agricultural land also comes within the purview of the West Bengal Land Reforms Act, then no such occasion would now arise for a raiyat holding non-agricultural land to apply under Section 24 of the West Bengal Non-Agricultural Tenancy Act for the purpose of preemption and application for pre-emption under Section 8 of the Act would be maintainable in respect of a land in the nature of 'Bastu'."

In the light of above discussion this Court holds that the petitioner has succeeded to prove his case and this Court holds that the petitioner has preemptive right to purchase the case property.

In result the case succeeds.

C.F. paid is found sufficient.

Hence, it is,

ORDERED,

that the application u/s 8 of the WBLR Act is allowed on contest against the O.P. The right, title and interest of the suit property is hereby stand transferred in favour of the petitioner.

The right, title and interest in respect of the suit property vests upon the petitioner with immediate effect. O.P. is at liberty to withdraw the consideration amount deposited by the petitioner."

14. In appeal, the Court held:-

"No evidence has come from the side of the opposite parties (appellants herein) to establish that the partition had taken place in between Dharmadas Dalal and Bimal Chandra Dalal in the year 1950. It

is not the case of the opposite parties that the partition has taken place in between the successors by metes and bounds. OPW-1 has stated in his cross-examination that he has purchased half of the 1.5 decimals undivided land of Bimal Chandra Dalal. The schedule of Exbt.A (impugned deed) goes to show that the OPs purchased undivided land out of 6 decimals and the land so sold by the impugned deed do not bear the boundaries and the boundaries which are shown in the deed are the boundaries of the entire suit plot. The reported decision as cited from the side of appellants has no application in this case as because in a reported decision the donees were allotted three separate demarcated portion and they were enjoying the same as exclusively owners and no one came to be a co-owner of other. In the instant case, either the parties or their predecessor were not enjoying any demarcated portion in the suit plot as exclusive owners and their right of co-ownership does cease.

In view of the above discussion I think that the partition is not taken place either in between Dharma Das Dalal and Bimal Chandra Dalal or thereafter, amongst their successors and the appellants have purchased undemarcated portion of land in the suit plot. I also think that so long there is no partition in accordance with law, the respondent remains a co-sharer in the suit plot and he has undemarcated interest in the entire suit plot and the

appellants are nothing but a stranger/purchaser to the suit plot.

I do not find any reason to interfere with the impugned judgment passed by the Ld. Court below.

Accordingly, the instant appeal fails.

Court fees is properly stamped.

Hence, it is,

ORDERED

that the instant appeal be and the same is dismissed on contest against the respondent.

The Judgment and Order dated 23-03-2017 passed by the Ld. Civil Judge(Jr. Divn.), 1st Court, Bolpur, Birbhum in Misc. (Pre-emption) No.54 of 2012 is hereby affirmed.”

- 15.** Petitioners herein submit that the issue herein is in reference before a larger Bench.
- 16.** Opposite party herein by way of written notes has relied upon the judgment of a Coordinate Bench of this Court in **CO 3502 of 2014, Sri Ranjit Kumar Mondal vs Sri Pankoj Mukhopadhyay & Ors. decided on 23.12.2015**, in support of his case that Section 8 of the WBLR Act shall apply in respect of land of every description in view of the change in the definition of land in Section 2(7) of the Act and as such no application under Section 24 of the West Bengal Non-Agricultural Tenancy Act is necessary.

17. Thus relying upon the judgment in ***Sri Ranjit Kumar Mondal vs Sri Pankoj Mukhopadhyay & Ors. (Supra)***, an application for pre-emption under Section 8 of the Act would be maintainable in respect of a land in the nature of 'Bastu'.

18. In the present case, the issue raised by the petitioners is that the opposite party is not a co-sharer having purchased demarcated 3/4th share in the suit property and the petitioners have purchased 1/8th share of a demarcated portion of which the opposite party acquired 1/8th share, subsequently and as such has no right of pre-emption on the ground of co-sharership.

19. Admittedly, the opposite party herein has acquired demarcated 3/4th share in the disputed property. The remaining 1/4th has been purchased by the parties herein to the extent of 1/8th share each by the petitioners prior to the opposite party.

20. There is no dispute regarding deposit of the mandatory amount in this case. As such the reference before a larger bench is not relevant to the present case.

21. The view as to keeping a case pending, when the issue involved is before a larger bench in reference has been answered by a co-ordinate bench in ***Smt. Sovana Dey vs Sri Tapaban***

Dey, CO 2072 of 2007, on 10.08.2022,

wherein the Court held:-

*“22. In any event, I am of the opinion that the views expressed by learned Single Judges of this Court in the cases of **Smt. Kamala Rani Roy & Ors. v. Sri Sambhu Sen & Ors.** (Supra) and **Golam Kibria Mallik v. Sk. amar ali & ors** (supra) should be followed until the larger bench decides the reference, those prior views being of coordinate benches. In this connection I may refer to the decision of the Hon’ble Supreme Court in the case of **M.S. Bhati v. National Insurance Company Ltd.; (2019) 12 SCC 248** where at paragraphs 10 and 11 of the reported judgment the Supreme court observed as follows:-*

“10. The learned Counsel further submitted on the alternative plea that the decision in Mukund Dewangan has been reserved for reconsideration by a larger Bench in Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi by a two-Judge Bench of this Court on 3-5-2018.

11. The law which has been laid down by a three-Judge Bench of this Court in Mukund Dewangan binds this court. As a matter of judicial discipline, we are duty-bound to follow that decision which continues to hold the field.”

*23. I am of the considered view that since coordinate Benches of this Court in **Smt. Kamala Rani Roy & Ors. v. Sri Sambhu Sen & Ors.** (supra) and **Golam Kibria Mallik v. Sk. amar ali & ors** (supra), took one view and subsequently a coordinate bench took a different view and referred the matter to a larger bench, judicial discipline requires that I follow the earlier view which still holds the field and has not yet been differed from by a larger bench.”*

22. The dispute raised is that the opposite party herein cannot claim his right under Section 8 of the Act as a co-sharer as he has

purchased a demarcated share in the suit property and is thus not a co-sharer.

23. The appellate Court in the order impugned came to the specific finding that the **disputed property is not a partitioned property**, as no evidence could be placed to prove the same.

24. It thus appears that the parties herein have purchased undemarcated specific portions/shares in the disputed property.

25. In **Sk. Sajhan Ali & Ors. vs Sk. Saber Ali & Ors., 2015 3 CHN 689**, the Calcutta High Court held:-

“.....Therefore, so long there is no partition in accordance with the provisions contained in Section 14 of the Act, the pre-emptor, in spite of his possession in a demarcated portion of plot Nos. 1033 and 85, remains a co-sharer of those plot of land and has un-demarcated interest in the entire plots in question. I, thus, find no substance in the aforesaid contention raised by Mr. Bagchi.

36. To add a few words, it would be relevant to take note of Section 14 of the said Act, which recognised the partition of a plot of land amongst the co-sharer of raiyat to be made either by a registered instrument or a decree or the order of the Court. There is no concept of oral partition recognised under the West Bengal Land Reforms Act, 1955, which may otherwise be permissible by way of any custom or usage or contract. Section 3 of the said Act which runs thus:-

Section 3. Act to override other laws. The provisions of this Act shall

have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any custom or usage or contract, express or implied, or agreement or decree or order or decision or award of a Court, tribunal or other authority.

37. Thus it makes all the Acts inconsistent with the said Act and gives primacy to the provision of the West Bengal Land Reforms Act over the same.....”

26. The predecessors of the transferors of the parties herein were owners and had their respective shares 5:1 in the disputed property by way of means not disclosed. The record of rights also records their respective shares and their possession in a property which is ‘Bastu’ in nature.

27. A ‘Bastu’ property requires partition by metes and bounds either by a registered deed or through Court even if demarcated portions are occupied and transferred as per their respective shares (Sk. Sajhan Ali (Supra)).

28. Without such partition taking place, the property, herein a two storied building, remains an undivided property and the opposite party herein a co-sharer.

29. Section 8 of the West Bengal Land Reforms Act, 1955, lays down:-

“8. Right of purchase by co-sharer or contiguous tenant.-

– (1) If a portion or share of a [plot of land of a raiyat] is transferred to any person

other than a [co-sharer of a raiyat in the plot of land] [the bargadar 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 sub-section (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 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 the 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 hiba-bil-ewaz, or

- (c) a mortgage mentioned in section 7,
- (d) a transfer for charitable or religious purposes 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 under 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 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 provision of this Act, as amended by the West Bengal Land Reforms (Amendment) Act, 1972.”

30. In *Smt. Sovana Dey vs Sri Tapaban Dey*

(Supra), the Court further held:-

“21. I am conscious that a learned Judge of this Court in the case of **SK. Abdul Odud Ali v. Emanulla Khan & Ors.** (Supra) has referred to a larger bench the question as to whether or not a pre-emption application under Section 8 of the said Act on the ground of co-sharership can be rejected at the threshold for non-deposit of the entire amount that the pre-emptor is statutorily required to deposit. Such reference has been made on the basis of one sentence at paragraph 23 of the Hon’ble Supreme Court’s decision in **Barasat Eye Hospital & Ors. v. Kaustabh Mondal** (supra), to the effect that the case of a

co-sharer would rest on a different ground. In my opinion and with the greatest of respect to the learned Judge, that sentence cannot be read in isolation and no inference can be drawn therefrom to the effect that the Hon'ble Supreme Court has said that the requirement of making statutory deposit as a pre-condition for exercise of right of pre-emption would not apply when the claim of pre-emption is made on the basis of cosharership. In my understanding, no such distinction has been made between a pre-emptor claiming on the basis of co-sharership and a pre-emptor claiming on the basis of vicinage."

31. Thus, Section 8 of the 1955 Act, does not make any distinction between a co-sharer and a contiguous owners, in respect of their right of pre-emption.
32. The right to apply for pre-emption is same for a co-sharer and a contiguous owner.
33. The opposite party admittedly has acquired right in respect of 3/4th share in the disputed undivided property and has also claimed pre-emption as **a non-notified co-sharer**.
34. There is no dispute as to the amount of consideration or the amount deposited along with interest, as mandated at the time of application.
35. Admittedly, a share of the property has been sold and not the entire property.
36. The issue in this case is not part of the reference before a larger Bench.

37. Thus, as no partition of the 'Bastu' property could be proved, the opposite party herein, being a non-notified co-sharer, has rightly exercised his right of pre-emption.

38. The impugned order thus being in accordance with law requires no interference.

39. C.O. 4053 of 2023 stands dismissed.

40. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Dutt (Paul), J.)