

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Siddhartha Chattopadhyay

C.O. No. 2207 of 2014

Biswanath Dolui

Vs.

Tinkari Dolui

For the Petitioners

: Mr. Asok Kr. Janah
Mr. Wasim Ali
Mr. Krishna Deo Das
Mrs. Pampa Dey (Dhabal)

For the Opposite Party

: Mr. Bikash Ranjan Bhattacharya, Sr. Adv.,
Mr. Suman Sankar Chatterjee
Mr. Santanu Maji

Heard On

: 27.07.2015, 12.08.2015, 13.08.2015.

C.A.V. On

: 13.08.2015.

Judgment Delivered On

: **07.09.2015**

SIDDHARTHA CHATTOPADHYAY, J.

This disgruntled petitioner, after a long circuitous journey, has come before this forum with a prayer for setting aside the judgments passed by the Learned Trial Court as well as by the First Appellate Court.

2. In This revisional application the petitioner contended that he had filed an application under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955, against the opposite party for preemption in respect of 50 decimals of land out of three plots being 19 decimals out of Plot No. 1431 measuring 1 Acre 14 decimals and 29 decimals out of Plot No. 1431, comprising 1 Acre 76 decimals and 02 decimals out of Plot No 1431/2331, comprising 9 decimals and his such application was registered as L.R. Miscellaneous Case No. 1 of 2007.

3. Gobordhan Kumar who died leaving behind his two sons Harsha Bardhan Kumar and Shyamal Kumar and his wife Sabitri Rani Kumar and two daughters Maya Rani Ghosh and Mamata Hazra. According to him, schedule 'Ka' to the plaint initially belonged to Harsha Bardhan Kumar who died issueless leaving behind his wife Smt. Baby Kumar as his only legal heir and successor. Subsequently, said Sabitri Rani Kumar died leaving behind his son Shyamal Kumar and two daughters Maya Rani Ghosh and Mamata Hazra as her legal heirs. Shiba Prasad Kumar gifted his 1 Acre 21.2/3 decimals of land of Plot Nos. 1431, 1432 by registered deed of gift being Plot No. 4344 for the year 1998 in favour of his son Nemai Kumar and delivered possession to him.

4. Santosh Kumar died before passing of Hindu Succession Act leaving behind his wife Sudha Rani Kumar, who on 30.03.1963 sold her inherited property in favour of Harsha Bardhan Kumar and Shyamal Kumar in respect of the Plot No. 1431, which was previously Danga in nature and area of this was land 1 Acre 28 decimals. The said Plot No. 1431 measuring 1 Acre 16 decimals recorded as bank of a tank and the rest 12 decimals has been recorded as Bata Plot No. 1431/2331 at the time of R.S.R.O.R. The petitioner claims to have his bargadarship for the last 40 years and his name has been recorded in R.S.R.O.R. as 'bargadar'. The petitioner has developed the Plot Nos. 1431

and 1432 to a great extent. Thereafter, the owner of the suit plots decided to sale the suit property and against that the present petitioner instituted a Title Suit bearing No. 20/1998 and obtained the order of injunction. Defendants of that suit sought for preemption to sale out his share in the suit property and the petitioner purchased the same having preferential right and by such purchase the petitioner had become co-sharer in the suit plot. It is also specifically averred that he has the longest common boundary with the suit property.

5. Suddenly on 31.01.2007 he came to know that the opposite party has purchased the 'Kha' schedule property from Baby Kumar. After a thorough search from Registry Office, he came to know that it was registered in 2006. According to him, only a sum of Rs. 10,000/- (Rupees Ten Thousand Only) was paid for the said plot but the opposite party in collusion with his vendor showed an inflated price of Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand Only) only to deprive the present petitioner.

6. It appears from the record that opposite party contested in the said case and has tried to establish the other side of the shield. According to him, Baby Kumar, has sold her entire property and the present petitioner knows about the sale and he was offered to purchase the suit land but he refused. On the contrary, he has taken a sum of Rs. 10,000/- (Rupees Ten Thousand Only) as brokerage.

7. It appears from the record that both the Learned Courts below had rejected the he petitioner's case mainly on two counts. Learned First Appellate Court by referring following judgments reported in (2013) 3 WBLR (CAL) 271 (Biswanath Sarkar & Another Vs. Sunit Kumar Saha), 2013 (3) ICC 172 (Ajit Mondal and Others Vs. Tapan Kumar Ghanna & Others), 2012 (4) CHN (CAL) 148 (Sribas Ch. Das Vs. Jiban Krishna Biswas), 2013 (4) ICC 437, Ujjal Kumar & Another Vs. State Bank of India & Others, 2013 (4) ICC Page 618, (Basanti Mondal and Others Vs. Srikanta Mondal), dismissed his application.

8. It is contended that Baby Kumar had 57 decimals of land but out of that she has sold 50 decimals and 7 decimals of land is still owned by Baby Kumar. Therefore, it is not correct that entire share of Baby Kumar has been transferred in favour of the opposite party. Opposite party has submitted that there is no pleading to the effect that Baby Kumar sold out of 50 decimals of land out of 57 decimals of land. It appears from the judgment of the First Appellate Court that the petitioner filed an application for incorporating that fact but it was turned down by the Learned Court below. On perusal of the impugned judgment of the Learned First Appellate Court it transpires that the present petitioner purchased $21\frac{2}{3}$ share of land in total of Plot No. 1431 and 1432.

9. The said deed is marked Exhibit 4 and Exhibit 5 is a 'barga' certificate in respect of Plot No. 1431. Therefore, 'barga' right of present petitioner cannot be ruled out. Learned First Appellate Court has come to the conclusion that the present petitioner has the longest common boundary of Plot No. 1431/2331.

10. At the time of argument Learned Counsel appearing on behalf of the petitioner has referred to the following judgments reported in :

- (1) 2004 (4) CHN 349
- (2) Unreported decision – CO 345 of 2015 with CAN 2170 of 2015
- (3) 2015 (2) CHN (Cal) 228

11. After going through all these judgments I find that the ratio of the judgment would be that the "co-sharer of a raiyat in a plot of land" means a person other than the raiyat, who has an un-demarcated interest in the plot of land along with raiyat. In the case before me, it has been established that there is no registered deed of partition between the parties. There is no two-opinion on the position of law that if statute prohibits partition of a particular class of property except by way of registered document, then unless partition is effected by a registered deed there can be no partition in

accordance with law even if, the parties actually made oral partition. In such a case, if the co-sharers remain in occupation of a particular demarcated portion by such mutual arrangement, for such arrangement their un-demarcated interest in the plot is not extinguished. In the eye of law, they remain co-sharer so long there is no registered deed of partition notwithstanding the fact that each of the co-sharers are in occupation of a particular demarcated portion. Therefore, so long there is no partition in accordance with the provisions contained in Section 14 of the Act, the parties remain as a co-sharers of those plots of land and have un-demarcated interest in the entire plot in question.

12. Since it has been established that the present petitioner is a 'bargadar' as well as contiguous land owner having longest common boundary has certainly a right to preempt.

13. Learned Counsel appearing on behalf of the opposite party has submitted that the present petitioner did not deposit the consideration money as is required under the law. According to him, he was under an obligation to deposit entire consideration money along with 10% extra for claiming his right but in this case he has not done it. Learned Counsel appearing on behalf of the petitioner has referred to decisions reported in 98 CWN Page 758 and 2015 (3) CHN (Cal) 186. The aforesaid judgments go to show that non deposit of the consideration money is not at all fatal because there is no penal consequence which was under Section 26 F of Bengal Tenancy Act. It further transpires from the aforesaid judgments that as per Section 9, of W.B.L.R. Act it is the duty of the munsif to assess value of the price and thereafter he shall direct the petitioner to deposit the said sum. It appears from the record that the present petitioner has himself prayed for appointment of valuation commissioner. Learned Trial Court has allowed that prayer. Accordingly the valuation commissioner has submitted a report after taking evidence of both sides and the Learned Trial Court has accepted that value. In spite of that the

petitioner had not deposited the money as was assessed by valuation commissioner. There is no iota of evidence that the petitioner has produced better evidence nullifying the valuation commissioner's report. It is not stated in Section 9 itself how the munsif will conduct the enquiry. The petitioner himself applied for appointment of valuation commissioner and the Learned Court below has passed an order for appointment of valuation commissioner. Valuation Commissioner submitted the report after taking evidence of both sides. Before the end of the trial the petitioner did not deposit that amount. It appears to this Court that the present petitioner intended to see from which side the wind blows and then to trim his journey towards that end. In my considered view the said decision which has been relied upon by the present petitioner does not fit in this case because factual aspect is quite different. Needless to say that preemption right is a very weak right, and, therefore, it was the duty of the pre-emptor to comply with the provisions as mentioned under Section 8 and 9 of W.B.L.R. Act.

14. In such circumstances, I am of the view that the petitioner is not entitled to any relief as prayed for. However, he is at liberty to withdraw the money which has been deposited in the Learned Court below on proper application. Order of the Learned Courts below is affirmed. No cost. The revisional application stand dismissed.

15. Let a copy of this order be sent to the Learned Court below for information and taking necessary action in accordance with law.

16. Urgent certified photocopy of this Judgment and Order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Siddhartha Chattopadhyay, J.)

A.F.R./N.A.F.R.