

(2019) 01 CAL CK 0114

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (Co) No. 4533 Of 2006

Abul Kasem Laskar

APPELLANT

Vs

Mstt. Nurjahan Bibi & Ors.

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 8
Constitution Of India, 1950 — Article 227

Citation : (2019) 01 CAL CK 0114

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Gopal Chandra Ghosh, Sandip Das, Ashish Chandra Bagchi, Satyajit Mondal, Suranjan Mondal, Ratul Ghosh

Final Decision : Disposed Off

Judgement

The instant revisional application under Article 227 of the Constitution of India involves a pure question of law.

On September 18, 2012 a co-ordinate Bench of this court framed a question as to whether under section 8 of the West Bengal Land Reforms Act, 1955 a contiguous plot owner as the revisionist, the respondent in the appellate court below, can claim preemption when an adjoining plot owner has sold his entire share and not a portion of his share.

The admitted facts as emerge are that the revisionist/preemptor is an adjoining/contiguous owner. A plot of land was sold, albeit on three several dates in the same month, by the opposite party to a third party. The opposite party registered the three sales on a single day. The three sales as well as the registration occurred within a span of fifteen days.

The revisionist as a contiguous tenant asserted a right of preemption on the opposite party's land sold without notice to him.

The first court allowed preemption and directed the revisionist to deposit the sale

of amount with 10% additional amount in terms of the 1955 Act. Aggrieved, the first opposite party preferred an appeal being Misc. Appeal No.6 of 2006 before the Additional District Judge, Diamond Harbour that was disposed of setting aside the judgment of the first court on August 10, 2006.

The first opposite party herein would argue that section 8 would have application only if he had sold a portion of his land. The vendee from the original owner would contend before me that he purchased the property albeit on three several dates in three several portions, but that the same was registered on a single day as a consequence whereof there must be deemed to have sold his entire land and not any share thereunder. According to him, therefore, section 8 of the 1955 Act has no manner of application in this case.

Per contra, learned advocate on behalf of the revisionist would first rely upon a decision of the Hon'ble Supreme Court in the case of Chhana Rani Saha v. Mani Pal passed in Civil Appeal No.5905 of 2009 on November 15, 2017 that subsequently came to be relied upon by a Division Bench of this court in the case of Niyamul Haque v. Alauddin Sk in CO No.1164 of 2015 which was heard along with number of other civil revision applications and judgment was delivered on August 8, 2018. The essence of the judgment of the Hon'ble apex court as followed by the Division Bench of this court mentioned hereinabove is that there are three categories of persons conceived of under section 8 of the 1955 Act who can claim a right of preemption. The first category is a bargadar (share cropper); the second one being a co-sharer in the said land; and the third, a contiguous owner/tenant of an adjoining land. The Supreme Court had held that even if the entire land is sold, while the first right accrues to a bargadar, the right equally accrues, if there is no bargadar, on a contiguous tenant to preempt purchase of such land.

The argument of the opposite party, therefore, in my view, would have the effect of defeating the rights of a contiguous owner when he asserts that any right of preemption can only arise, if a portion of his land is sold; and shall not arise, if the entire land is sold. The Hon'ble Supreme Court addressed this very issue in the Chhana Rani Saha's case (supra).

In view of the above, the judgment of the first Appellate Court dated August 10, 2006 passed by the Additional District Judge, Diamond Harbour in Misc. Appeal No.6 of 2006 stands set aside.

The judgment of the first court dated February 21, 2006 passed by the Civil Judge (Jr. Division), 2nd Court at Diamond Harbour in Misc. Case No.1990 shall revive. The terms and conditions stipulated in the said judgment shall be complied with by the revisionist within a period of one month from date.

With the above observations, the revisional application stands disposed of. No order as to costs.

Certified website copy of this order, if applied for, shall be given to the parties.