

(1942) 08 CAL CK 0024
In the Calcutta High Court
Case No : Civil Revision Case No. 434 of 1942

Ajay Kanta Poddar and Another

APPELLANT

Vs

Sushila Sundari Poddar and Others

RESPONDENT

Date of Decision : 06-08-1942

Acts Referred:

Citation : (1942) 08 CAL CK 0024

Judgement

Henderson, J.—This Rule is directed against an order allowing pre-emption under sec. 26F of the Bengal Tenancy Act in favour of Opposite Parties Nos. 1 and 2. The Rule is pressed on two grounds. Opposite Parties Nos. 1 and 2 deposited Rs. 375 as the consideration money under sub-sec. (2). The Petitioners' case is that the consideration money was really Rs. 375 on account of the land and Rs. 25 on account of the structures, making a total of Rs. 400.

2. Under that sub-section the Opposite Parties were bound to deposit the amount as stated in the notice under sec. 26C. Mr. Chatterjee has pointed out to me that this point was never raised in either of the Courts below and it involves a question of fact, that is, what sum of money was mentioned in the notice: it is therefore impossible for me to deal with it in revision.

3. The second ground is that the Opposite Parties pre-emptors are bound to reimburse the Petitioners for the money they have spent in improving the property since their purchase. It is not disputed that the learned Judge was correct when he held that there is no provision for this in the statute. The question remains however whether the Petitioners can claim this under the ordinary law.

4. Here again questions of fact are involved. The Petitioners can only succeed on proving facts which would establish an equity in their favour. Their petition of objection sets out facts which could raise such a claim. Issues are not framed in proceedings of this kind and the parties are always rather hazy as to what sort of evidence they ought to bring. It is common ground here that neither side directed their attention to this aspect of the case and the proper evidence is not

on the record.

5. The Rule is made absolute, the orders of both the Courts below are set aside and the case is remanded to the first Court for a decision on the point whether the Petitioners are entitled to be reimbursed for the money spent in these improvements. Both sides will be at liberty to adduce evidence and the Opposite Parties will be entitled to challenge the Petitioners' case that the expenditure in question amounted to Rs. 130. I make no order as to costs except to say that in the lower Appellate Court both sides will bear their own costs.