
(2013) 04 CAL CK 0036
In the Calcutta High Court
Case No : Co. No. 2973 of 2012

Ajit Mondal and Others

APPELLANT

Vs

Tapan Kumar Ghana and Others

RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Registration Act, 1908 — Section 61

West Bengal Land Reforms Act, 1955 — Section 14M, 5, 5(5), 8, 8(1)

Citation : (2013) 2 CALLT 572 : (2013) 2 CHN 671 : (2013) 3 WBLR 194

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Aniruddha Chatterjee and Mr. Kushal Chatterjee, for the Appellant; Basudeb Gayan, for the Respondent

Judgement

Sanjib Banerjee, J.—A seemingly settled position at law appears to have been disturbed by a recent judgment of this court that has resulted in the order impugned being passed. The issue involved is as to the time available to a non-notified co-sharer to apply for pre-emption u/s 8 of the West Bengal Land Reforms Act, 1955. The parties do not dispute the facts as recorded in the appellate order of June 13, 2012 that has been assailed herein. The opposite party Nos. 1 to 4 herein filed a petition under Sections 8 and 9 of the said Act of 1955 seeking to purchase the "Ka" schedule property which they claimed to be a part of the "Kha" schedule property. According to the petitioners in the pre-emption proceedings, one Sital Prasad Mondal was the owner of half share of the "Kha" schedule property and the other half of such property was owned by Madan Mondal and Bankim Mondal. Upon the death of Bankim, Madan inherited Bankim's share. Thus, Sital and Madan became the joint owners of the "Kha" schedule property in equal share. Sital and Madan transferred such property in favour of Netai Sau and Samar Chandra Sau by a registered deed of March 13, 1969. Netai transferred 4/5 decimal of land in plot No. 1426 in favour of the fourth petitioner in the pre-emption proceedings by a registered deed of sale

dated December 27, 1991. Following the death of Netai thereafter, by a registered deed of sale of March 31, 1995, the heirs of Netai transferred a part of the land covered by plot No. 1426 and another part of the land covered by plot No. 1427 in favour of the first three petitioners in the pre-emption proceedings. The petitioners in the preemption proceedings, thus, became co-sharers of plot Nos. 1426 and 1427 along with Samar Chandra Sau. Samar transferred a part of his holding in plot No. 1426 and another part of his holding in plot No. 1427 in favour of the petitioners in this court by a registered deed of sale of August 30, 1999. It is such transfer that was sought to be pre-empted.

2. It is the case of the petitioners in the pre-emption proceedings that no notice of such transfer was given to the petitioners in the pre-emption proceedings, being the opposite party Nos. 1 to 4 herein. The petitioners in the pre-emption proceedings did not indicate in the petition the date when they came to know of the impugned transfer. The parties have referred to the petition filed under Sections 8 and 9 of the said Act of 1955 and there is no dispute on such score. The pre-emption petition was lodged on July 7, 2002, which was within three years of the date of registration of the impugned transaction. The impugned transfer is referred to in the pre-emption petition as the "Ka" schedule property and the petitioners in the pre-emption proceedings claimed that they had a right to seek an order of pre-emption over such property.

3. A point of limitation was raised and the second petitioner in the preemption proceedings, in course of his cross-examination, admitted that he had knowledge of the impugned transaction in 1999. The parties in this court are agreed on such aspect on the basis of the recording of the oral evidence of the second petitioner in the pre-emption proceedings which, however, does not form a part of the present petition.

4. The petitioners herein claim that since the right asserted by the petitioners in the pre-emption proceedings was as non-notified co-sharers, the petition under Sections 8 and 9 of the 1955 Act was barred by the laws of limitation. The petitioners herein contend that it is beyond question that proceedings for preemption are regarded as original proceedings and Section 5 of the Limitation Act would not apply thereto. They suggest that the period within which a petition under the relevant provision has to be carried to court has been indicated in Section 8 of the 1955 Act and, unless the petitioners in pre-emption proceedings demonstrate good cause under Sections 4 to 24 of the Limitation Act, the time prescribed u/s 8(1) of the 1955 Act has to be adhered to.

5. The petitioners refer to a judgment reported at Gopal Sardar Vs. Karuna Sardar, for the proposition that proceedings u/s 8 of the 1955 Act have to be regarded as original proceedings. They next cite a decision reported at Aparna Ghosh and Another Vs. Sarupchand Roychowdhary and Others, for the proposition that Section 17 of the Limitation Act would be applicable to proceedings u/s 8 of the 1955 Act even though Section 5 of the Limitation Act would not apply thereto. The petitioners urge that the issue as to the period of

limitation applicable to the case of a non-notified co-sharer was concluded in the judgment reported at Prasanna Kumar Nag and Others Vs. Prokash Chandra Poddar alias Jaiprakash Poddar which held that the "prescribed period of limitation for filing ... for pre-emption on the ground of co-sharership by non-notified co-sharer will be one year from the date of completion of such sale."

6. In the order impugned of June 13, 2012, the lower appellate court noticed the decision of Prasanna Kumar Nag and another judgment of co-ordinate jurisdiction of this court reported at (2012) 1 WBLR (Cal) 571 (Tapan Kumar Ghana v. Sankari Bala Santra) and concluded, in the face of the divergent legal views expressed in the two judgments, that the later decision had to be accepted. The legal questions that arise herein are as to whether the law as enunciated in Tapan Kumar Ghana is correct and whether the lower appellate court accepting the later decision was the appropriate application of the doctrine of precedents.

7. Section 8(1) of the said Act of 1955 is relevant in the present context as the other sub-sections have no bearing on the primary legal issue that has arisen herein. Section 8(1) of the said Act of 1955 refers to Section 5(5) of the same statute. Such provision mandates notices to be served on the co-sharers of the plot of land upon the transfer of a portion or share of the relevant land. It is necessary first to notice Section 8(1) of the said Act of 1955 to cull out the portion thereof relevant for the present purpose:

8. Right of purpose 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: ...

(2) ...

(3)...

8. Since the petitioners in the pre-emption proceedings assert as co-sharers of the plot of land a portion or share whereof has been transferred to a person other than a co-sharer of the raiyat, the petitioners in the pre-emption proceedings could have applied u/s 8 of the said Act of 1955 within three months of the receipt of the notice u/s 5(5) of the said Act of 1955. Even if the petitioners in the pre-emption proceedings are regarded as raiyats possessing adjoining land, they could have applied u/s 8 of the said Act of 1955 on the ground of vicinage within four months from the date of the transfer.

9. It must first be appreciated that pre-emption is a weak right. It is in the nature of a prescription that is an exception to the general right in common law of a person to obtain a property of his choice. It is fundamental that such right as conferred by a statute has to be exercised in the manner indicated or not at all. For a petitioner invoking Section 8 of the said Act of 1955, such person has first to demonstrate that a portion or a share of a plot of land has been transferred by a raiyat (loosely, the holder of the land) to a person other than to a co-sharer of the raiyat in the plot of land. Though it may not be relevant in the present context, but it is obvious that the expression "a portion or share of" would also include the entirety of the holding of the transferor raiyat and it cannot be said that if a raiyat transfers his entire share in a plot of land to an outsider, the provisions of Section 8 of the said Act of 1955 would not be attracted.

10. So that the prescription or statutory right u/s 8 of the said Act of 1955 can be meaningfully exercised by a co-sharer, the statute requires a notice to be served on the co-sharer in the event another co-sharer in the same plot of land transfers the entirety or any part of his share in the relevant plot of land to a person other than another co-sharer in the relevant plot of land. There are three sets of persons who have been conferred the right to pre-empt u/s 8(1) of the said Act of 1955: a bargadar in the plot of land; any co-sharer of the transferor raiyat in the plot of land; and, any raiyat possessing land adjoining the transferred plot of land. But the provision treats the three classes of persons who have been conferred the right in varying manner. To any student of the history of the rights pertaining to land in this part of the world, it would be obvious as to why the statute has preferred the rights of a bargadar to the rights of a co-sharer and the rights of a co-sharer to the rights of a raiyat holding contiguous land in the first two provisos to Section 8(1) of the said Act of 1955. The period within which the rights can be exercised by the three classes of persons have also been variously provided. Despite Section 8 of the said Act of 1955 undergoing a metamorphosis from the form in which it was originally enacted, it has remained undisturbed for well over a decade and it is a pity that there are divergent opinions on its application and interpretation in its several clauses.

11. Unlike a bargadar, who has a fixed period of three months from the date of transfer, and a raiyat of a contiguous land, who has four months from the date of transfer, to assert the right of pre-emption u/s 8 of the said Act of 1955, a co-sharer of the transferor raiyat in the subject plot of land is given a higher right. There is no obligation under the said Act of 1955 on either the transferor or the transferee of any parcel of land to prepare any notice in the prescribed form or deposit fees for the service thereof on the bargadar in the plot of land or on the raiyats possessing land contiguous to the subject plot of land. The statute however, mandates, for understandable reasons, that a co-sharer of the plot of land be notified of a transfer of a portion or share thereof. The limitation, in the case of a co-sharer of a transferor raiyat in the subject plot of land, is reckoned from the date of service of the notice u/s 5(5) of the said Act of 1955. The

expression "plot of land" in the opening limb of Section 8(1) of the said Act of 1955 refers not to the holding of the transferor raiyat but to the land that the transferor raiyat holds in joint ownership with the co-sharer raiyat. The date of transfer that is relevant is the date of registration of the document and its entry into the appropriate public records in accordance with Section 61 of the Registration Act, 1908.

12. It cannot be lost sight of that the purpose of the notice u/s 5(5) of the said Act of 1955 - as in the case of every notice in any ordinary case - is for the benefit of the noticee: for the noticee to be made aware of the state of things as alluded to in the notice. In the case of a co-sharer raiyat, the statutory right prescribed in Section 8 of the said Act of 1955 can be exercised within three months of the service of such notice on such co-sharer since it is such notice that makes the co-sharer raiyat aware of the transfer. The statute confers a right which is hedged with a condition. If it is the statutory right which is to be exercised, the condition attached to the exercise of the right must be fulfilled or the right cannot be exercised at all. That is elementary.

13. That proceedings u/s 8 of the 1955 are original proceedings is evident from the provision itself. At any rate, the Supreme Court decision in Gopal Sardar has recognised such obvious position at law. The Supreme Court judgment was rendered in the context of whether Section 5 of the Limitation Act would apply to a petition filed u/s 8 of the said Act of 1955. The judgment noticed a decision of this court reported at Serish Maji Vs. Nishit Kumar Dolui, Serish Maji reached a Division Bench on a reference since there was a divergence of opinion as to whether Section 5 of the Limitation Act applied to petitions u/s 8 of the said Act of 1955. The Division Bench held that it did not. The Supreme Court endorsed such view in Gopal Sardar. The Supreme Court referred to Section 29(2) of the Limitation Act and concluded as follows at paragraph 13 of the report:

13. Section 8 of the Act prescribes definite period of limitation of three months or four months, as the case may be, for initiating proceedings for enforcement of right of pre-emption by different categories of people with no provision made for extension or application of Section 5 of the Limitation Act. When in the same statute in respect of various other provisions relating to filing of appeals and revisions, specific provisions are made so as to give benefit of Section 5 of the Limitation Act and such provision is not made to an application to be made u/s 8 of the Act, it obviously and necessarily follows that the legislature consciously excluded the application of Section 5 of the Limitation Act. Considering the scheme of the Act being a self-contained code in dealing with the matters arising u/s 8 of the Act and in the light of the aforementioned decisions of this Court in the case of Hukumdev Narain Yadav, Anwari Basavaraj Patil and Parson Tools it should be construed that there has been exclusion of application of Section 5 of the Limitation Act to an application u/s 8 of the Act. In view of what is stated above, the non-applicability of Section 5 of the Limitation Act to the proceedings u/s 8 of the Act is certain and sufficiently clear. Section 29(2) of the Limitation

Act as to the express exclusion of Section 5 of the Limitation Act and the specific period of limitation prescribed u/s 8 of the Act without providing for either extension of time or application of Section 5 of the Limitation Act or its principles can be read together harmoniously. Such reading does not lead to any absurdity or unworkability or frustrating the object of the Act. At any rate, in the light of the three-Judge Bench decision of this Court in Hukumdev Narain Yadav case and subsequently followed in Anwari Basavaraj Patil case even though special or local law does not state in so many words expressly that Section 5 of the Limitation Act is not applicable to the proceedings under those Acts, from the scheme of the Act and having regard to various provisions such express exclusion could be gathered. Thus, a conscious and intentional omission by the legislature to apply Section 5 of the Limitation Act to the proceedings u/s 8 of the Act, looking to the scheme of the Act, nature of right of pre-emption and express application of Section 5 of the Limitation Act to the other provisions under the Act, itself means and amounts to "express exclusion" of it satisfying the requirement of Section 29(2) of the Limitation Act.

14. Section 29(2) of the Limitation Act extends the application of Sections 4 to 24 of such Act to any special or local law prescribed for any suit, appeal or application to the extent to which the applicability of such provisions are not expressly excluded by such special or local law. Indeed, the prescription of limitation as recognised in Section 3 of the statute is subject to the exceptions as stipulated in Sections 4 to 24 thereof.

15. In Aparna Ghosh, a Single Bench of this court held that Section 17 of the Limitation Act would apply to proceedings u/s 8 of the said Act of 1955 since nothing in Section 8 of the said Act of 1955 or elsewhere in such statute excluded the operation of Section 17 to such proceedings. Section 17 of the Limitation Act deals with fraud or mistake and excludes the time for limitation to start running if on account of fraud or mistake, a plaintiff or an applicant had no knowledge of a fact that would have given the plaintiff or an applicant a cause of action to launch appropriate proceedings. However, the clock of limitation, so to say, would begin to tick upon the plaintiff or the applicant discovering the fraud or mistake, subject to the restrictions imposed by the section. Section 17 has a general part to it in sub-section (1) thereof and a specific part confined to the execution of a decree or order in sub-section (2) thereof. The distinction between sub-section (1) and sub-section (2) of Section 17 is that a plaintiff or an applicant covered by a situation in sub-section (1) has the benefit of the entirety of the period prior to the discovery of the fraud or mistake being excluded; but a decree-holder covered by sub-section (2) thereof has the benefit of a further year from the date of the discovery of the fraud or the like situation.

16. In the case of a co-sharer of a transferor raiyat to whom the substantive right u/s 8 of the said Act of 1955 has been extended, the period of limitation would not start to run if the notice had not been served and if, despite exercise of due diligence by such co-sharer, the factum of the transfer remained unknown

to such co-sharer by reason of any fraud perpetrated on such co-sharer or on account of any mistake. But upon the period of limitation beginning to run (in the same sense as the cognate form of the expression is used in the third column of the schedule to the Limitation Act), the co-sharer of a transferor raiyat in the relevant plot of land will have a period of three months within which the right conferred on him u/s 8 of the said Act of 1955 has to be exercised. It is the date of receipt of the notice that is relevant for the purpose of limitation in the case of a co-sharer of the transferor raiyat in the relevant plot of land. If, as recognised above, the purpose of the notice u/s 5(5) of the said Act of 1955 is to make the co-sharer aware of the transfer of all or a part of the land held by a co-sharer raiyat, it is the date of knowledge that is of relevance even if the petitioning co-sharer u/s 8 of the said Act of 1955 is given the benefit of Section 17 of the Limitation Act.

17. The judgment in Gopal Sardar refers to Article 97 of the schedule appended to the Limitation Act but does not appear to have expressly held that the period recognised under Article 97 would apply to the exercise of a right u/s 8 of the said Act of 1955. However, Prasanna Kumar Nag interpreted Gopal Sardar to imply that Article 97 of the schedule to the Limitation Act would apply to a non-notified co-sharer seeking to exercise the right u/s 8 of the said Act of 1955. But the apparent anomaly in Prasanna Kumar Nag is irrelevant in the present case since the petitioner u/s 8 of the said Act of 1955 in this case did not plead fraud or mistake nor did it claim to have been filed within a year of the discovery of any alleged fraud or mistake. In any event, the petition in this case was filed well beyond a year and three months of the registration of the impugned transfer. The anomaly in Prasanna Kumar Nag is left to be resolved in a case where the period assumes significance. Without needlessly labouring over the period of limitation indicated in Prasanna Kumar Nag, the legal principle that can be garnered therefrom is that a petition u/s 8 of the said Act of 1955 should, for all practical purposes, be regarded as a plaint in a suit; as a consequence whereof Article 137 of the schedule to the Limitation Act will have no manner of application thereto.

18. The judgment in Tapan Kumar Ghana that was relied upon by the lower appellate court cannot, however, be considered to be good law since it is contrary to the previous judgment of a Bench of co-ordinate jurisdiction in Prasanna Kumar Nag. Indeed, Tapan Kumar Ghana failed to appreciate the import of the Supreme Court pronouncement in Gopal Sardar as Tapan Kumar Ghana found that Article 137 (erroneously referred to as Section in the judgment) would apply to proceedings u/s 8 of the said Act of 1955 despite the Supreme Court decision to the contrary in Gopal Sardar as evident from the discussion therein at paragraphs 7 and 19 of the report. However, merely because a previous judgment of a Bench of co-ordinate jurisdiction misread a judgment of a superior forum would ordinarily not permit a subsequent Bench of co-ordinate jurisdiction to ignore the previous decision of the Bench of co-ordinate jurisdiction. In the case of Tapan Kumar Ghana, however, the decision is contrary to the judgment in Prasanna Kumar Nag of a Bench of co-ordinate jurisdiction which Tapan Kumar

Ghana did not notice.

19. As to the canons of the doctrine of precedents, reference may be made to a judgment reported at *Texmaco Ltd. Vs. Tirupati Buildstates Pvt. Ltd.*, Paragraphs 4 and 5 of the report appear to be apposite in the context.

4. Before any discussion can be attempted on the legal proposition as to whether Section 42 of the 1996 Act would have any bearing on a request u/s 11 of that Act to a Chief Justice or his designate, some fundamental rules as to judicial propriety need to be established. The discussion must be prefaced with a note that certainty and consistency are at the root of a mature judicial system. A legal pronouncement of a superior forum, in our hierarchical structure, when cited before an inferior forum is binding on the inferior forum, subject to the condition that the authority of the superior forum is not *per inquirium*. The expression "*per inquirium*," in the context of a judicial opinion, literally implies that a judgment has been rendered in ignorance of law. A judgment can be said to have been rendered in ignorance of the law and, therefore, having no binding value, if such judgment is contrary to any statute or it is contrary to the judgment of a superior forum. If a judgment of a Division Bench is placed before a single Judge of the same High Court, then the law recognised in such judgment is binding for all practical purposes unless the judgment is patently contrary to the applicable statute or it is contrary to a Supreme Court judgment. If, however, the Division Bench judgment notices a Supreme Court judgment and reads a legal issue discussed in the Supreme Court judgment to imply something that the Supreme Court decision clearly does not say, it is such interpretation which is binding on the single Judge of the same High Court and the single Judge has no room to interpret the Supreme Court judgment in any natural or ordinary way other than as read by the Division Bench. If a Single Bench judgment of a High Court on a point of law is cited before a subsequent Single Bench of the same Court, it is binding on the later Single Bench. The only recourse that the subsequent Judge may have, if he does not agree with the previous opinion, is to refer the matter to a larger Bench. The case is similar if a Division Bench judgment is cited before a subsequent Division Bench of the same Court and the subsequent Division Bench does not agree with the view expressed in the previous one.

5. The matter is slightly different if a Supreme Court judgment is cited before a High Court. As to the binding nature of Supreme Court judgments, *inter se*, it is elementary that a Constitution Bench judgment will prevail over judgments of the Supreme Court rendered by lesser Benches. If, however, there are two Supreme Court judgments of varying import on the same point of law delivered by Benches of co-ordinate strength without the later judgment noticing the previous view, the High Court - be it a Division Bench or a Single Bench - has the option to choose the one more suited to the case at hand. However, the choice arises only in a situation where the subsequent Supreme Court judgment has not noticed or considered the previous view of the Supreme Court rendered by a Bench of the same strength. If the subsequent Supreme Court Bench of the

same strength has noticed the previous view and has read it down, it is the subsequent view which becomes binding.

20. A further reference may be made to a judgment reported at *GMS Marine Company Limited Vs. The Owners and Parties Interested in The Vessel M.V. Vinashin Sky*, where the legal position has been discussed with reference to several judgments of the Supreme Court and of this court at paragraphs 107 to 111 of the report:

107. In a Division Bench judgment of this Court reported at 2007 (4) CHN 605 (*Upananda Chatterjee v. State of West Bengal*) it was held, on the basis of the Supreme Court dictum in *The State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others*, that if it appeared that divergent views on the same question of law had been expressed in judgments of two Benches of equal strength, the earlier judgment would be binding unless the subsequent judgment was based on a change in law or on a binding precedent rendered after the earlier judgment. The following passage at paragraph 19 is relevant:

19. ... It is now settled law that in case of conflict of the decision of two Benches of equal strength, the former will prevail unless the principle laid down in the former one has been overruled by a Superior Court or unless due to change of law, the former one is no longer applicable. The latter Division Bench, as it appears from the judgment placed before us, has disagreed with the view taken in the case of *Aloke Pramanik* on the ground of misapplication of the principles laid down in the decision of the Supreme Court in the case of *K. Narasimhiah Vs. H.C. Singri Gowda*, , to the facts of the said case and for non consideration of some other decisions of the Supreme Court laying down the principles to be followed in deciding whether a statutory provision is mandatory or not. In our view, once a Division Bench, has taken a stance that a particular decision of the Supreme Court is applicable in the facts of a case and by relying upon such decision comes to a conclusion on a particular facts of a case, the latter Bench, if it intends to disagree in the similar facts, should refer the matter to the learned Chief Justice for constitution of a Larger Bench. ...

108. In *Bhudan Singh*, which the plaintiffs had cited, a similar sentiment was expressed. In *Kalika Kuer* the Supreme Court observed at paragraph 10 as follows:

10. ... In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter

will have to be resolved only in two ways -- either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. ...

109. The Kalika Kuer judgment also discussed the meaning of the expression "per incuriam" and quoted with approval a passage from paragraph 578 of the Halsbury's Laws of England (4th Ed.) Volume 26 on "Judgment and Order":

A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the court had not the benefit of the best argument, and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake.

110. Judge-made law relating to binding precedents is founded on the need for predictability and certainty regarding the law. It is a rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, three Judges of the Supreme Court observed:

19. ... If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.

111. The rule relating to binding precedents is connected to the principle of stare decisis. In its full form the principle is contained in the Latin maxim, stare decisis et non quieta movere, which means to stand by decisions and not to disturb what is settled. The adage has also been explained as, "those things which have been so often adjudged ought to rest in peace." As the Constitution Bench in Waman Rao and Ors Vs. Union of India (UOI) and Others, noticed, the doctrine of

stare decisis is the basis of common law. It originated in England and was used in the colonies as the basis of their judicial decisions. The genesis of the rule may be sought in factors peculiar to English legal history, the most important of them being the absence of a code. The Normans forbore to impose an alien code on a half-conquered realm, but sought instead to win as much widespread confidence as possible in their administration of law, by the application of near uniform rules. The older the decision, the greater its authority and the more truly was it accepted as stating the correct law. As the gulf of time widened judges became increasingly reluctant to challenge old decisions. The principle of stare decisis is also firmly rooted in American jurisprudence. It is regarded as a rule of policy which promotes predictability, certainty, uniformity and stability. The legal system, it is said, should furnish a clear guide for conduct so that people may plan their affairs with assurance against surprise. It is important to further fair and expeditious adjudication by eliminating the need to relitigate every proposition in every case. In *Waman Rao*, the Supreme Court quoted with approval from H.M. Seervai in *Constitutional Law of India* where the author had pointed out how important it was for judges to conform to a certain measure of discipline so that decisions of old standing are not overruled for the reason merely that another view of the matter could also be taken.

21. Since the petition in this case u/s 8 of the said Act of 1955 was carried to the trial court beyond the period of three months from the date of the applying co-sharers being aware of the transfer, the petition was clearly barred and could not be proceeded with. It is also observed that the lower appellate court ought to have been guided by the earlier decision of a Bench of co-ordinate strength of this court rather than the later one, since the later judgment in *Tapan Kumar Ghana* did not notice *Prasanna Kumar Nag* that was binding on the later Single Bench.

22. CO. No. 2973 of 2012 is allowed by setting aside the judgments and orders of the lower appellate court and the trial court and by dismissing the petition relating to Misc. Case No. 25 of 2003 filed before the Civil Judge (Jr. Division), Additional Court in Tamruk. There will be no order as to costs. Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.