

(2015) 05 CAL CK 0060
In the Calcutta High Court
Case No : C.O. 1930 of 2007

Asita Mishra and Others

APPELLANT

Vs

Ganesh Chandra Mukhopadhyay

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 14, 8

Citation : AIR 2015 Cal 170 : (2015) 2 CALLT 538 : (2015) 4 CHN 530

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : Rameswar Bhattacharjee and Jamuna Saha, for the Appellant

Final Decision : Disposed off

Judgement

Arijit Banerjee, J.—In this revisional application the petitioner challenges the judgment and order dated 7th February, 2007 passed by the Ld. Additional District Judge, 1st Court at Bankura in Misc. Appeal No. 7 of 2005 reversing the judgment and order dated 19th March, 2005 passed by the Court of the Civil Judge (Junior Division), 1st Court, Bankura in J. Misc No. 8 of 1998. The Trial Court had allowed the petitioner's application for pre-emption under Section 8 of the West Bengal Land Reforms Act. The First Appellate Court reversed the decision of the Trial Court.

2. The petitioner is the owner of plot No. 20/8161. The owner of the adjacent plot of land being plot No. 20/6413 was one Gobindalal Chattopadhyay. Gobindalal sold his said plot to the opposite parties by executing a sale deed dated 14th July, 1997. The sale deed was registered on 16th January, 1998.

3. On or about 7th April, 1998 the petitioner made an application under Section 8 of the West Bengal Land Reforms Act before the Civil Judge (Junior Division), 1st Court, Bankura being J. Misc. No. 8 of 1998 for preempting the aforesaid sale of plot No. 20/6413. The petitioner asserted his right of pre-emption on the basis of vicinage as also on the basis of being a co-sharer of the original plot No. 20.

4. During the pendency of the pre-emption application before the Trial Court the West Bengal Land Reforms Act, 2000 came into force whereby the word "holding" was substituted by the word "plot" in, inter alia, Section 8 of the 1956 Act. The opposite parties argued that since the entirety of plot No. 20/6413 has been sold by Gobindalal, in view of the amendment, Section 8 of the West Bengal Land Reforms Act no longer applied. However, it was argued on behalf of the petitioner that when the substantive law is altered during the pendency of an action, the right of the parties are decided according to the law as it existed at the time of institution of the action.

5. The Ld. Trial Court found that the suit land was adjacent to the petitioner's land. The suit land constituted only a part of the holding of Gobindalal who owned land also in Calcutta and, hence, Gobindalal had not transferred the entirety of his holding. The Ld. Trial Court also held that there was no partition by metes and bounds between the suit land and the petitioner's land being the "Kha" schedule property and "Ka" schedule property respectively and, as such, the petitioner is a co-sharer in respect of the suit land. Accordingly both on the ground of vicinage and co-sharership the Ld. Trial Court allowed the petitioner's pre-emption application.

6. Being aggrieved the opposite parties preferred an appeal before the Additional District Judge, 1st Court, Bankura being Misc. Appeal No. 7 of 2005.

7. The Ld. 1st Appellate Court held that the 2000 amendment to the West Bengal Land Reforms Act, 1956 and in particular Section 8 thereof took effect from 7th August, 1969 and as such, the Ld. Trial Court should have considered the amended provision of Section 8 of the West Bengal Land Reforms Act. Going by the amended provision of Section 8 of the West Bengal Land Reforms Act, Gobindalal transferred the entirety of his plot No. 20/6413 and, as such, Section 8 of the 1955 Act would not be attracted. The Appellate Court also held that the suit plot had been carved out from original plot No. 20, was demarcated and was in exclusive possession of the owner thereof and, as such, the petitioner's claim of co-sharership could not be sustained. The lower Appellate Court, accordingly, allowed the appeal and set aside the order of the Ld. Trial Judge. Being aggrieved, the petitioner is before this court by way of the instant revisional application.

8. None appears to oppose this application in spite of notice.

9. Appearing on behalf of the petitioner Mr. Bhattacharjee, Ld. Senior Counsel contended that as on the date of the institution of the pre-emption application, there was no amendment to Section 8 of the West Bengal Land Reforms Act. Although the amendment of 2000 was made with effect from August, 1969, the pre-emption application should be decided in accordance with the law as it stood as on the date of the initiation of the pre-emption application. In this connection, Mr. Bhattacharjee relied on a decision of the Hon'ble Supreme Court in the case of Glaxo Smith Kline PLC and Others Vs. Controller of Patents and Designs and

Others, AIR 2009 SC 1147 : (2008) 38 PTC 1 : (2008) 12 SCALE 284 : (2008) AIRSCW 3541 : (2009) AIRSCW 376 : (2009) AIRSCW 698 : (2008) 3 Supreme 290 : (2008) 2 Supreme 209 : (2008) 6 Supreme 446 . At paragraph 7 of the said judgment the Supreme Court referring to one of its earlier judgments, observed that when pre-existing right of appeal continues to exist, by necessary implication the old law which created the right of appeal also exists to support the continuation of that right and, hence, the old right must govern the exercise and enforcement of that right. In the absence of contrary intention in repealing the enactment, rights under the old statute are not destroyed. Right to proper consideration of an application by a statutory authority remains alive even after repeal of the enactment under which the consideration had been sought. Mr. Bhattacharjee also relied on a decision of the Supreme Court in the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, AIR 1957 SC 540 : (1957) 1 SCR 488 , wherein it was observed that the right of appeal is a vested right and such a right to approach the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced, such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of decision or at the date of the filing of the appeal. Mr. Bhattacharjee also relied on a decision of the Federal Court in the case of Venugopala Reddiar and Another vs. Krishnaswami Reddiar alias AIR 1943 24 (Federal Court) , wherein it was held that an action lawfully commenced under a law for the time being in force has to be carried to its logical conclusion in accordance with the law as it stood when the action was commenced and not in accordance with any amendment in the law which might have been effected after constitution of the action. Finally Mr. Bhattacharjee relied on a decision of this Court in the case of Bhadreswar Bera Vs. Mathura Mohan Shaw and Others, (2004) 4 CHN 349 whereof this Court observed that the amendment in the West Bengal Land Reforms Act by incorporating the words "plot of land of a raiyat" instead of the words "holding of a raiyat" has not altered the position of law in any way.

10. Mr. Bhattacharjee then argued that the first Appellate Court also erred in negating the petitioner's claim on the basis of co-sharership. Admittedly plot No. 20 was never partitioned in accordance with the provisions of Section 14 of the West Bengal Land Reforms Act. An amicable or informal partition would not affect ownership . So long as plot No. 20 is not partitioned by way of registered deed or under order of Court, the petitioner remains co-sharer of the said plot. He further submitted that in any event the petitioner is entitled to succeed in her claim for pre-emption on the basis of vicinage.

11. I have carefully considered the submissions made by Mr. Bhattacharjee and I find substantial merit therein. In my opinion, an action which was good and maintainable as per the law that was in force at the time of institution of the action, cannot become bad by reason of subsequent amendment in the law in question. Rights and obligations of the parties to a legal proceeding have to be

decided in accordance with law that was in force at the time of filing of the legal proceeding. Hence, maintainability of the petitioner's claim of pre-emption has to be decided in accordance with the law as it stood as on the date of institution of the application for pre-emption which was sometime in 1997. Admittedly, as on that date the petitioner was entitled to successfully maintain her claim for pre-emption.

12. I am also in agreement with Mr. Bhattacharjee's contention that since there has been no partition of the original plot No. 20 in accordance with the provisions of Section 14 of the West Bengal Land Reforms Act, there is no partition of the said plot in the eye of law. As such, the petitioner remains a co-sharer in respect of plot No. 20.

13. For the reasons aforesaid, I am unable to sustain the judgment and order of the First Appellate Court and the same is set aside. The judgment and order of the Ld. Trial Court is restored. The petitioner's claim for preemption succeeds. There will, however, be no order as to costs.

14. This application is accordingly disposed of.