

(1938) 08 CAL CK 0003
In the Calcutta High Court
Case No : Civil Rev. No. 1164 of 1937

Beni Madhab Karmakar and Others

APPELLANT

Vs

Taherannessa Bibi and Others

RESPONDENT

Date of Decision : 04-08-1938

Acts Referred:

Citation : (1938) 08 CAL CK 0003

Judgement

Biswas, J.—This Rule arises out of an application made under sub-sec. (4) (a) of sec. 26F of the Bengal Tenancy Act, following on a transfer of an occupancy holding. The applicant was one Munshi Julfukar Ali, Opposite Party No. 24, who claimed to have acquired the interest of two of the co-sharer landlords of the holding by a kobala, dated the 14th October, 1936. There were in all as many as 24 co-sharer landlords. The tenant's interest in the holding had been sold on the 24th July, 1936, and notice of the transfer was thereupon given to the co-sharer landlords under sec. 26C. On receipt of such notice three of them, being the present Petitioners, decided to exercise the right of purchase, sometimes mis-described as the right of pre-emption, which they were entitled to under sub-sec. (1) of sec. 26F. They accordingly applied in this behalf on the 13th October, 1936. This application was within time, having been made within two months of the service of the notice of transfer, and was accompanied by the requisite deposit under sub-sec. (2). None of the remaining landlords made any application for purchase, nor did any of them apply under sub-sec. (4)(a) to join as co-applicants in the Petitioners' application. On the 14th December, 1936, however, Munshi Julfukar Ali put in his application under this sub-section. This was resisted by the present Petitioners, but the learned Munsif allowed the application. Hence the present Rule. The first question is whether this application of Munshi Julfukar Ali was barred by limitation. Sub-sec. (4) (a) of sec. 26F provides that when an application has been made by a co-sharer immediate landlord under sub-sec. (1), any of the remaining co-sharer landlords may within the period of two months referred to in that sub-section, that is to say, two months from the service of notice issued under sec. 26C or 26E or within one

month of the application, whichever is later, apply to join in the application. Admittedly no notice of the transfer had been served in this case on Munshi Julfuker Ali and there could not, therefore, be any question of his applying within two months of the service of any such notice. It is said, however, that notice of transfer had been served on his vendors, Opposite Parties Nos. 11 and 12, on the 8th October, 1936, and that the limitation of two months should run against him from this date. I do not think that service of notice on his vendors may be regarded as service of notice on him for this purpose. The first period of limitation prescribed in sub-sec. (4) (a) cannot, therefore, apply in his case. The question is whether he comes within the second alternative mentioned in that sub-section, which, as already pointed out, provides for a period of one month of the application for purchase under sub-sec. (1). Sec. 188, sub-sec. (1), proviso, cl. (i) no doubt contemplates that a co-sharer landlord applying under sub-sec. (1) of sec. 26F must make all the other co-sharer landlords parties to the application, but there is no express provision in the Act for service of notice of such application on them, as there is for service of notice of transfer of the holding in sees. 26C and 26E. It is difficult to see how in the absence of any such provision the reckoning of limitation from the date of the application under sub-sec. (1) can at all be justified. Having regard to the important rights given to co-sharer landlords under sub-sec. (4) (a), and also to the disabilities imposed by the latter part of the sub-section, I think it was necessary to have provided for service of notice of a co-sharer landlord's application under sub-sec. (1) on the remaining co-sharer landlords, if it was intended to apply the special rule of limitation reckoned from the date of such application in all cases. As it is, there is a lacuna in the Act in this respect. In the present case, however, even if the Act did contain any such provision for notice, it would not have helped very much, seeing that the application under sub-sec. (2) was made on the 13th October, 1936, and Munshi Julfuker Ali acquired his interest as a co-sharer landlord on the day following. This must, therefore, be treated as a case not covered by the provisions of the Act. It cannot be contended, and is not in fact contended by the Petitioners that Munshi Julfuker Ali did not or could not acquire the right to apply under sub-sec. (4) (a) as a co-sharer landlord, merely because he acquired his interest after the date of transfer of the occupancy holding or after the date of an application for purchase by some of the co-sharer landlords. It is true that he did not come with his application within any of the specific periods of limitation prescribed in sub-sec. (4) (a), but that is because, as pointed out above, he had not had the notice which was essential in order that this special limitation might operate against him. If then Munshi Julfuker Ali was a person otherwise competent to apply under sub-sec. (4) (a), it would be wrong, in my opinion, to shut him out of his right on the plea of this special limitation, although on the facts it was inapplicable in his case. The principle has been recognised in several decisions of this Court, among which reference may be made to the cases of *Surjya Kumar Mitra v. Noabali* ILR 59 Cal. 15 (1931) and *Gajendra Nath Mandal v. Kunja Behari Mistri* 40 C.W.N. 506 (1936), that in such cases the applicant will not be bound by the special rule of limitation prescribed in sub-sec. (4) (a), but

may make his application within a reasonable time of his knowledge of the sale of the occupancy holding. See also *Sachindarra Nath Chakravartty v. Trailakya Nath Chakravartty* 40 C.W.N. 1023 (1936). On the facts in this case I do not think it can be said that a delay of one month beyond the specific period of limitation laid down in the sub-section was unreasonable. I consequently hold that Munshi Julfuker Ali's application was not barred by limitation.

2. The next question is as to Munshi Julfuker Ali's right to apply. The Petitioners' contention is that it is only a person who was a co-sharer landlord at the time of transfer of the holding who is competent to apply under sub sec. (4) (a). This, to my mind, would be to put an unduly narrow construction on the provisions of sec. 26F, and is in fact opposed to what the learned Advocate for the Petitioners conceded in his arguments on the question of limitation. The test in my opinion should be whether or not the applicant had the status of a co-sharer at the time of his application. If we look at the whole scheme of the provisions made in the new sections which were introduced in the Bengal Tenancy Act by the amendments of 1928 regarding the transfer of occupancy holdings and the rights of landlords and tenants upon such transfer, it is quite clear that the intention is that these provisions should be construed with a view to enlarge rather than restrict the rights of the parties inter se. It is also to be observed that so far as the landlord's right of purchase is concerned, this is principally a matter between the transferee of an occupancy holding on the one hand and the landlord on the other, and if the transferee does not or cannot raise any objection to purchase by the landlord, it is not intended to give an opportunity to one co-sharer landlord to raise a dispute with another. In this case it will be seen that the transferee does not oppose the application of Munshi Julfuker Ali, but it is resisted only by some of the other co-sharer landlords. Be that as it may. I do not think there is anything in sec. 26F which constrains me to hold that the expression "any of the remaining co-sharer landlords" in sub-sec. (4) (a) refers only to any such landlords on whom notice of transfer of the holding or notice of an application under sub-sec. (1) could be served. It is quite possible that persons who are landlords at the time of the sale of the holding may not be landlords at the time that an application for purchase is made, and similarly, persons who may be landlords at the time of such an application may not be landlords at the time when an application is made under sub-sec. (4) (a). There may be a change in the personnel of landlords by reason of death: in such a case it is conceded that the right to apply would not be lost. If so, it is difficult to see why the right would be lost in the case of an assignment, creation or devolution of interest. The learned Munsif in my opinion was quite right in rejecting the objection raised by the Petitioners as to the competency of the application of Munshi Julfuker Ali. The result is that the Rule is discharged with costs. I assess the hearing-fee at two gold mohurs.