

(2017) 04 CAL CK 0001
In the Calcutta High Court
Case No : 3730 of 2015

Ganesh Chandra Paul

APPELLANT

Vs

Smt. Maya Paul & Anr.

RESPONDENT

Date of Decision : 03-04-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
West Bengal Land Reforms Act, 1955, Section
8 - Right of purchase by co-sh

Citation : (2017) 04 CAL CK 0001

Hon'ble Judges : Ashis Kumar Chakraborty

Bench : SINGLE BENCH

Advocate : Partha Sarathi Bhattacharyya, ?Raju Bhattacharyya

Judgement

1. This revisional application under Article 227 of the Constitution of India, at the instance of the pre-emptor in a proceeding for pre-emption under the West Bengal Land Reforms Act, 1955 (hereinafter referred to as "the said Act") is directed against the judgment and order dated May 18, 2015 passed by the learned District Judge, Uttar Dinajpur, at Raiganj.

2. The petitioner filed the pre-emption case, being Misc. Case. No. 90 of 2010 under Section 8 of the said Act, against the opposite parties for pre-emption of the sale effected through the registered sale deed No. 4039 dated June 11, 2010 executed by Ratna Paul, Bibhuti Paul and Adyanath Paul in favour of the opposite parties on the ground of being co-sharers of the suit land, as also as the adjoining owner of the suit land. The suit land in respect of which the petitioner has sought to enforce his right of pre-emption is .07 acres out of .014 acres of land at J.L. No. 146, L.R. Khatina No. 128,659 of R.S. and L. R. Plot No. 124.

3. The opposite parties contested the above pre-emption case filed by the petitioner and filed their written statement. After considering the oral and documentary evidence adduced by the respective parties, by order February 17,

2014 the learned trial Judge allowed the pre-emption application filed by the petitioner, subject to the payment of balance of the actual consideration amount of Rs.88,000/- to the Court within thirty days from that date. The learned trial Judge further declared that the right, title and interest of the opposite parties, by virtue of the registered sale deed No. 4039 for the year 2010, do vest in the petitioner subject to the payment of the said remaining consideration amount and the possession of the suit land be delivered by the opposite parties to the petitioner. Feeling aggrieved by the said order of the learned trial Judge, the present opposite parties carried the same in appeal, being Misc. Appeal No. 15/14 before the learned District Judge, Uttar Dinajpur, at Raiganj. From a copy of the Memorandum of Appeal filed by the opposite parties in the said appeal it is clear that they did not assail the order dated February 17, 2014 passed by the learned trial Judge on the ground that the suit land was not correctly described by the petitioner in his application under Section 8 of the said Act.

4. By judgment and order dated May 18, 2015 the learned appellate Court below, however, held that pre-emption case filed by the petitioner under Section 8 of the said Act was not maintainable for incorrect description of the suit land and dismissed the pre-emption case of the petitioner. The learned appellate Court below, however, held that in the result the appeal fails and ordered that the Misc. Appeal No. 15/14 is dismissed on contest but without cost. The learned appellate Court below, further ordered that the impugned judgment and decreed dated February 17, 2014 passed by the learned trial Judge in Misc. Case No. 90/2010(P) stands set aside. It is the said judgment and order passed by the learned appellate Court below, which has been challenged in this revisional application.

5. From the affidavit of service filed on behalf of the petitioner it appears that the copies of this application were forwarded to the opposite party nos. 1 and 2 by speed post with acknowledgment due, but the postal department returned the envelope forwarded to the opposite party no. 2 with an endorsement "refused". It further appears that as directed by a learned Single Judge of this Court on January 06, 2016 the petitioner forwarded a copy of the revisional application to the learned advocate representing the opposite parties before the learned Court below, but the said learned advocate refused to receive the same on the ground that the opposite parties are not keeping any contact with him. The opposite party no. 1 is the mother of the opposite party no. 2 and both are of them are residing at the same house. In these facts, particularly in view of the refusal on the part of the opposite party no. 2 to receive the copy of the revisional application, the service of the revisional application on the opposite parties is deemed to be complete and the present application was taken up for hearing by this Court in the absence of the opposite parties.

6. Assailing the impugned order passed by the learned appellate Court below, Mr. Partha Sarathi Bhattacharyya, learned Senior Advocate appearing for the petitioner submitted that neither in the written statement, nor in the Memorandum of Appeal filed in the above appeal, the opposite parties set up any

defence to the claim of the petitioner in the pre-emption case alleging the suit land has not been correctly described by the petitioner in his pre-emption application. He further submitted that from the impugned order passed by the learned appellate Court below it is clear that even no oral argument was advanced on behalf of the opposite parties that the suit land was not correctly described by the petitioner in his application under Section 8 of the said Act. Relying upon the decision of the Supreme Court in the case of Sheodhari Rai & Ors. Vs. Suraj Prasad Singh, reported in AIR 1954 SC 758 and a Division Bench decision of this Court in the case of Jugal Kishore Kundu & Ors. Vs. Narayan Chandra Kundu, reported in AIR 1982 Cal 342, Mr. Bhattacharyya contended that it is settled law that a Court cannot make a new case, not made out by the parties in their pleadings and, as such, in the absence of any pleading or defence set up by the opposite parties that the petitioner in his application did not describe the suit land correctly, the learned appellate Court below committed a patent error of law in dismissing the petitioner's preemption case under Section 8 of the said Act. He further argued that by the impugned order, the learned appellate Court below directed that the Misc. Appeal No. 15/14 is dismissed on contest but, at the same time, the learned appellate Court below also directed that the judgment and decree dated February 17 of 2014 passed by the learned trial Judge in Misc. Case no. 90/10(P) is set aside. According to him, the impugned order passed by the learned appellate Court below is also liable to be set aside on the ground of being ambiguous and for containing contradictory directions. On these grounds, it was urged on behalf of the petitioner that this Court in exercise of jurisdiction under Article 227 of the Constitution of India should set aside the impugned order passed by the learned appellate Court below.

7. I have carefully considered the materials on record and the arguments advanced on behalf of the petitioner in this application. In the present case, undisputedly neither in the written statement filed before the learned trial Judge, nor in the Memorandum of Appeal filed before the learned appellate Court below, the opposite parties set up any defence to the claim of the petitioner in the application under Section 8 of the said Act that the suit land has not been correctly described. Even from the order passed by the learned trial Judge it is clear that neither any issue was framed, nor any argument was advanced on behalf of the opposite parties with regard to the maintainability of the pre-emption application on the ground of incorrect description of the suit land. Further, from the impugned order passed by the learned appellate Court below, it is clear that none of the parties to the appeal advanced any argument before the learned appellate Court below disputing the correctness of the description of the suit land. Therefore, in view of the settled principle of law, as held by the Supreme Court in the case of Sheodhari Rai (supra) and the Division Bench decision in the case of Jugal Kishore Kundu (supra) I find that the petitioner is justified in his contention that the learned appellate Court below went wrong in law to dismiss the pre-emption case filed by the petitioner under Section 8 of the

said Act by making out a new case of wrong description of the suit land, which was not the case urged by the opposite parties as their defence, either before the learned trial Judge or in the above appeal. Further, from a perusal of the operative portion of the impugned order it is clear that the learned appellate Court below first dismissed the appeal filed by the opposite parties and at the same time set aside the judgment and order dated February 17 of 2014 passed by the learned trial Judge in Misc. Case No. 90/10(P). In any event, the impugned order containing contradictory directions cannot be sustained.

8. For the foregoing reasons, the impugned order dated May 18, 2015 is set aside. Since, the learned Court below otherwise did not interfere with the findings of the learned trial Judge in the said order dated February 17, 2014, there is no scope for remitting the appeal back to the learned appellate Court below.

9. If the petitioner has not already deposited the balance consideration amount of Rs. 88,000/- as directed by the order dated February 17, 2014 he shall deposit the said amount in the trial Court within a period of six weeks from date.

10. With the above directions the revisional application, being C.O. 3730 stands allowed.

11. There shall, however, be no order as to costs.

12. Urgent certified copy of this judgment, if applied for, be made available to the petitioner upon compliance of all requisite formalities.