(1955) 06 CAL CK 0021

In the Calcutta High Court

Case No : Civil Revision Case No. 3484 of 1955

Hari Charan Kar APPELLANT

Vs

Abhoy Chandra Det RESPONDENT

Date of Decision : 16-06-1955

Acts Referred:

Limitation Act, 1963 — Article 181
West Bengal Non-Agricultural Tenancy Act, 1949 — Section 24, 24(3)

Citation : 59 CWN 849 : (1957) 2 ILR (Cal) 245

Hon'ble Judges : P.N. Mookerjee, J

Bench : Single Bench

Advocate : Arun Kumar Janah and Sarat Chandra Janah, for the Appellant;Manindra Krishna Ghosh and Ganga Narayan Chandra, for the Respondent

Judgement

P.N. Mookerjee, J.—This Rule arises out of a proceeding for pre-emption u/s 24 of the West Bengal Non-Agricultural Tenancy Act, 1949. The application has succeeded before the two courts below. Hence this Rule at the instance of the transferee Petitioner.

2. Four objections were taken to the opposite party''s application for pre-emption. The first was on the ground of limitation, the the second was about the insufficiency of deposit and also the validity of the deposit in law, the third was as to the maintainability of one application for two tenancies which were covered by the disputed kobala and the fourth was about the status of the applicant for pre-emption, the Petitioner''s contention being that the applicant was the heir of an unrecognised transferee from a co-sharer tenant and, accordingly, he was not entitled to apply for pre-emption. All these objections were overruled by the trial court and the appeal against the learned Munsif''s decision was dismissed.

3. In my opinion, this Rule must fail as none of the points can be accepted or given effect to in this revision application.

4. On the question of limitation, the point appears to be concluded by the reasonings, underlying the decision of this Court in the Special Bench case of Asmatali Sharip v. Mujaharali Sardar (1947) 52 C.W.N. 64. That was undoubtedly a case under the corresponding provisions of the Bengal Tenancy Act. But, as the provisions in the two Acts relating to pre-emption are almost in pari materia and as the reasons, given in that Special Bench case, apply with equal force to these cases of pre-emption under the West Bengal Non-Agricultural Tenancy Act in view of the similarity of the corresponding provisions, I have no hesitation in applying the rule laid down in that decision to pre-emption cases, arising u/s 24 of the West Bengal Non-Agricultural Tenancy Act. In the present case, there was admittedly no notice served upon the applicant for pre-emption. Clearly, therefore, the statutory period of four months as mentioned in Section 24 would not apply and, on the authority of the Special Bench decision cited, on reasonings similar to those, underlying that decision, the application would be within time, if filed within three years from the date of the sale under Article 181 of the Indian Limitation Act.

5. In the present case, the application in question was filed just a few days after the expiry of four months from the date of transfer. I accordingly agree with the courts below in holding that the plea of limitation, raised by the Petitioner, cannot be given effect to.

6. On the question of deposit, two points have been urged. The first is that there was no valid deposit in law as the deposit was made not in court but in the Treasury. It is well-known, however, that moneys to be deposited in court are usually deposited in the Treasury under orders of court. That is the usual mode of depositing money in court and that was what was done in the present case. No objection, therefore, to the validity of the deposit can be taken in this case on this ground.

7. It was urged next that the learned Munsif ought to have directed deposit of some further amount on account of municipal taxes, paid by the present Petitioner in respect of the disputed property. This contention was certainly raised before the learned Munsif. But it was overruled, as the learned Munsif was of the opinion that, u/s 24(3), no deposit of municipal taxes could be ordered. There may be something to be said against the view of the learned Munsif and it may be contended that payment of municipal taxes may be held covered by the reference in the statute to the sum paid "in annulling "encumbrances on the property". In the present case, however, that would not make any difference, as it does not appear very clearly from the evidence before the court or from the respective pleadings of the parties as to whether any sum, and, if so, what sum was actually paid by the Petitioner and, further, this point does not appear to have been pressed before the lower appellate court. In these circumstances, I am not inclined to accept this submission of the Petitioner, whatever criticism may be legitimately urged against the view of the learned Munsif in rejecting this part of the Petitioner''s contention.

8. On the third question, namely, that one application was not maintainable in the present case as there were two holdings, covered by the deed of sale, it is enough to point out that there was one deed of sale with one lump price for the two holdings. Obviously, therefore, two applications could not have been filed as it was not open to the applicant to apportion the purchase money and make separate deposits in two cases. This point also must, therefore, fail.

9. The last submission in support of the Rule has been that the applicant was the heir (son) of an unrecognised transferee. I am unable to give effect to this contention in the circumstances of the present case. Prima facie, tenancies under the Transfer of Property Act, like the present, are heritable and transferable. Question, therefore, of the landlord''s recognition does not arise.

10. I, accordingly, hold that the applicant as the heir (son) of a co-sharer tenant and thus being a co-sharer tenant himself after the predecessor co-sharer tenant''s death had locus standi to file the present application for pre-emption. It further appears that the applicant''s father was actually recognised by the landlord, therefore, hold that the applicant had full locus standi maintain the present application for pre-emption.

11. In the above view of the matter, all the points, urged support of this Rule, fail and the Rule is discharged.

12. There will be no order for costs in this Court.

