
(1984) 02 CAL CK 0029
In the Calcutta High Court
Case No : Civil Revn. No. 2013 of 1981

Keratulla Sk.

APPELLANT

Vs

Fazlur Rahaman Sardar and Others

RESPONDENT

Date of Decision : 15-02-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 2

Citation : AIR 1984 Cal 369 : 88 CWN 612

Hon'ble Judges : S.N. Sanyal, J

Bench : Single Bench

Advocate : R.N. Mitter and Ranjit Mitter, for the Appellant; Sudhis Das Gupta and Amar Nath Shaw, for the Respondent

Judgement

S.N. Sanyal, J.—In this revisional application the petitioner has challenged the order of the learned District Judge, Malda made on June 13, 1981 dismissing the petitioner's appeal being Misc. Appeal No. 21 of 1980 and thereby affirming the order passed by the learned Munsif, Second Court, Malda in Miscellaneous Case No. 133 of 1976 allowing an application made by the opposite parties u/s 8 of the Land Reforms Act. Opposite parties Nos. 1 and 2 filed an application u/s 8 of the Land Reforms Act in the Court of the learned Munsif, 2nd Court, Malda. It was alleged that the opposite parties Nos. 1 and 2 along with opposite party No. 3 were co-sharers of a raiyati holding which previously belonged to Enayat Ali Sk. After the death of Enayat Ali Sk. in 1370 B. S. his heirs obtained the property and they were in possession. Opposite parties Nos. 1 and 2 (who are petitioners in the said Miscellaneous case) purchased the property from Hafizul Sk. son of Enayat Ali by a Kobala dated 6th Aswin, 1381 B. S. and they became co-sharers. Emajuddin, another son of Enayat Ali, sold the disputed property to the petitioner of the present Rule (he was opposite party No. 1 in the Miscellaneous case) by a Kobala dated 8th Chaitra, 1381 B. S. corresponding to March 22, 1975 for Rs. 2,500/-. Opposite parties Nos. 1 and 2 coming to know of the sale obtained certified copy and thereafter filed the application for pre-emption u/s 8 of the Land Reforms Act (hereinafter referred to as the Act) after deposit of the

requisite amount. They also prayed for pre-emption on the ground that they are owners of the adjoining lands. In his written objection the petitioner, who was opposite party No. 1 in the Misc. case No. 133 of 1976, contended that the application was barred by limitation. The opposite parties had no right to claim for pre-emption as they were not the co-sharers.

2. The learned Munsif allowed the application u/s 8 of the Land Reforms Act upon the finding that the petitioners of the said case had purchased the disputed holding on 6th Aswin 1381 B. S. and the opposite party of the said Misc. case was a stranger and had purchased in the month of Chaitra, 1381 B. S.

3. The petitioner preferred an appeal before the learned District Judge. The said appeal has been dismissed. Before the learned District Judge, it was contended that the disputed property was recorded as a "Garden" in the R. S. Record of rights and also in the kobala by which the applicants had purchased and as such the application u/s 8 of the Land Reforms Act would not lie. Learned Judge repelled the contention on the ground that no such point was taken in the written objection and in the absence of specific pleading the contention that the disputed property was a "garden" and not "agricultural land" could not be permitted to be made out in the appeal.

4. Being aggrieved the petitioner has obtained the present Rule. Mr. Mitter, learned Advocate for the petitioner, argued that though no objection was taken by the petitioner before the trial Court that the disputed property was a garden but evidence was adduced on this point and it was thus incumbent upon the Courts below to consider the said question. Mr. Mitter has further argued that even apart from that the R. S. Records show that the disputed plot No. 730 appertaining to Khatian No. 703 (Exhibit-B) was recorded as "Bagan". The Kobala (Exhibit-1) by which the opposite parties Nos. 1 and 2 purchased the land describes the purchased land as "Lichu Garden". Contention of Mr. Mitter is that this documentary evidence should not have been ignored by the learned Courts below while considering the nature of the disputed property sought to be preempted. Mr. Mitter argues that orchard is not an agricultural land as the purpose for which the land is used is not agriculture. Court will have no jurisdiction to make an order u/s 8 of the Act unless the land is agricultural land. In support of his contention Mr. Mitter has referred to the case of Mishri Show v. Belur Nikunjameyee Gadar Institution reported in (1978) 1 Cal LJ 532. Mr. Mitter has also referred to 84 CWN 725 : (AIR 1980 NOC 158) Bholanath Ghosh v. Ganesh Chandra Koley in support of his contention that the basis of the right of the co-sharers tenant to pre-empt u/s 8 of the Act and the jurisdiction of the Court to entertain such an application is the user of the land in question for agricultural purposes. Referring to the Supreme Court decision in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, , Mr. Mitter has argued that agricultural purpose has not been defined in the Act and as such it has to be understood in the general sense. The contention of Mr. Mitter is that the learned Courts below failed to properly consider the real point at

dispute and the land being an orchard could not be preempted as it was not being used for agricultural purposes.

5. Mr. Dasgupta, learned Advocate for the opposite parties, has argued that in his written objection the petitioner did not raise any contention that the disputed land was an orchard and it was not being used for agricultural purpose. The petitioner sought for rejection of the application for pre-emption on the ground of limitation and also on the ground that the applicants were not co-sharers. In the circumstances, the evidence adduced by the petitioner was rightly rejected by the learned Courts below as no such issue was involved in deciding the case. It has been further contended by Mr. Dasgupta that even if it be held that the disputed property was an orchard still, in view of the decision of the Supreme Court in Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others, orchard is agricultural land. Mr. Dasgupta argues that in this decision the Supreme Court considered the different provisions of the West Bengal Land Reforms Act and laid down that the expression "agricultural land" is wide enough to include an orchard. In that view of the matter, Mr. Dasgupta argues, the application u/s 8 of the Act cannot but be allowed, as other contentions raised by the petitioner have been negated by both the courts below.

6. The contentions raised by the petitioners against the application u/s 8 of the Land Reforms Act were rejected by both the Courts below. It was found that the applicants had purchased on 6th Aswin, 1381 B. S. and thus became co-sharers by purchase. Thereafter the petitioner purchased the land on 8th Chaitra, 1381 B. S. corresponding to 22-3-75. It has further been found that no notice has been served upon the applicants and the application for pre-emption was within time.

7. The main question argued before this Court is that the learned appellate Court was wrong in rejecting the contention of the petitioner that as the disputed property was a garden and it was thus not being used for agricultural purpose the application for pre-emption should have been dismissed on that ground. Learned Advocate for the petitioner has referred to the khatian (Exh. B). In this Khatian Enayat AH Sk. was recorded as raiyat and the holding comprised of plots 2768, 2767 which were recorded as danga and plot 730 which was recorded as "Bagan". The claim for preemption is in respect of plot No. 730. In the kobala Exh. 1, by which the applicants purchased, the property has been described as containing lichi, mango and jackfruit trees. Mr. Mitter lays stress on this description and submits that having regard to the contentions raised by the petitioner before the trial Court in his written objection the Court should have considered this in view of the documents produced before him. It was further contended that oral evidence was adduced by the parties and the same should not have been discarded. Mr. Dasgupta argues that as no objection was raised by the petitioner regarding the nature of the property the evidence was wholly irrelevant. Moreover, had any such objection been raised the opposite parties could have explained the R. S. Khatian and the Kobala by evidence. The

petitioner cannot raise this question of fact at this stage when he did not raise any such objection at the earliest stage. It has been further argued by Mr. Dasgupta that even assuming that the disputed property was an orchard still in view of Supreme Court decision in Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others, "orchard" is an agricultural land and Section 8 of the Land Reforms Act would apply.

8. In Sasanka Sekhar's case reported in Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others, , it has been held that it is not right to suggest that the land comprised in an orchard cannot be treated as an agricultural land. It has further been held that the expression "agricultural land" is wide enough to include orchard. Mr. Mitter tried to argue that in this case the Supreme Court was merely considering the question with reference to Chap. IIB of the Act only for the purpose of ceiling area. Mr. Dasgupta, however, argues that the Supreme Court was considering the provisions of the Act and para 52 of the judgment would clearly show that the interpretation was not confined to Chap. IIB of the Act but it was general in nature. It appears that the contentions of Mr. Dasgupta in this respect should be accepted. As no objection was raised by the petitioner before the trial Court that the provisions of Section 8 of the Act would not be applicable because of the nature of the land and the purpose for which it was being used the learned District Judge was justified in not allowing the petitioner to raise any such objection before him. There was thus no jurisdictional error on the part of the learned Judge and there is therefore no reason for this Court to interfere with the order.

9. The Rule is thus discharged. There will be no order as to costs. Let the records be sent down as early as possible.