

(2011) 04 CAL CK 0068

In the Calcutta High Court

Case No : C.O. No. 2986 of 2007 and C.A.N. No. 9472 of 2009

Narendra Nath Roy

APPELLANT

Vs

Phani Roy and Another

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 8

Citation : (2011) 2 CALLT 209 : (2011) 5 CHN 371

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Sukdeb Chatterjee, Dipankar Pal and Leena Sangupta, for the Appellant; Partha Sarathi Bhattacharyya, Bijoy Bikram Das and Prabir Maji, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of a pre-emptee and is directed against the order dated May 30, 2007 passed by the learned Additional District Judge, First Track Court, Alipurduar in Misc. Appeal No. 10 of 2006 thereby reversing the order dated November 27, 2006 passed by the learned Civil Judge (Junior Division), Alipurduar in Misc. Case No. 1 of 2004.

2. The opposite party No. 1 herein instituted an application u/s 8 of the West Bengal Land Reforms Act, 1955 in the Court of the learned Civil Judge (Junior Division), Alipurduar and the said application was registered as Misc. Case No. 1 of 2004. The opposite No. 1 stated, inter alia, that he has adjacent for land. The Petitioner is a stranger purchaser in respect of the land under pre-emption. No notice was issued upon him. He is also a co-sharer in respect of the land transferred to the stranger purchaser i.e. the Petitioner. For that reason, he has claimed pre-emption of the land in case. The Petitioner resisted the claim of the opposite party No. 1 by filing a written objection denying all the material allegations raised in the application. Both the parties adduced evidence. Thereafter, the learned Trial Judge dismissed the said application.

3. A misc. appeal bearing the Misc. Appeal No. 10 of 2006 was filed by the opposite party No. 1 and upon consideration of the submission of the learned Advocates of both the sides, the learned Additional District Judge, First Track Court, Alipurduar set aside the order of the learned Civil Judge (Junior Division). He shall allowed the misc. appeal. She also directed that the opposite party No. 1 did pre-empt the land money in Schedule "B" of the application for pre-emption. The right, title and interest of Narendra Nath Ray in the land in case do vest in the opposite party No. 1. The Petitioner had been directed to deliver possession of the land in case in favour of the opposite party No. 1 within 60 days from the date of delivery of judgment i.e. from May 30, 2007.

4. Being aggrieved, by that judgment, this application has been preferred by the pre-emptee.

5. Now, the question is whether the impugned order should be sustained.

6. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the opposite party No. 1 has clearly stated his land by describing the same in Schedule "A" of the case. It is a specific case that the land under pre-emption has been described in Schedule "B" to the application. He has clearly stated that he came to know about such transfer of the land on January 19, 2004 after obtaining the certified copy of the sale of the land in case. He has also stated that he has land much below the ceiling limit. He has claimed pre-emption on the plea that he is co-sharer and that he has adjoining lands.

7. The opposite party No. 1 has proved the ownership by production of the deed in respect of Schedule "A" property. He has clearly stated that the opposite party No. 2 of the misc. case had transferred the land as described in Schedule "B" to the application to the O.P. No. 1 of the misc. case by executing a deed of sale at a consideration money of Rs. 25,000/-without informing the Petitioner. He has claimed pre-emption on two grounds, one as co-sharer and another as adjoining land owner. It is the finding of both the courses below that the Petitioner of the misc. case is not at all a co-sharer in respect of the land in case. But he has not challenged against such findings. The order of pre-emption was granted on the pre-text of the opposite party No. 1 herein that he is an adjoining land owner. Such contention is resisted by the opposite party of the misc. case. Both the parties have adduced evidence in support of their contention.

8. Now, therefore, I am to consider whether the opposite party No. 1 is successful in proving that he has land contiguous to the land in case. The land in case was transferred by the opposite party No. 2 to the opposite party No. 1 of the misc. case by a registered deed of sale dated October 29, 2003. The said deed marked exhibit 3 lays down the boundary of the land under pre-emption and from such boundary it reveals that the pre-emptor has land towards west of the land under pre-emption. Therefore, from the deed of sale in favour of the Petitioner herein it is clear that the opposite party No. 1 herein has adjacent land

to the west of the land under case. So, it has been proved when that the opposite party No. 1 herein has adjoining land to the land in case.

9. The Petitioner has contended that the lands between the Petitioner and the pre-emptor are intervened by a kachha road. But there is no indication in the deed under pre-emption. On the other hand, the deed in favour of the Petitioner and the deed under pre-emption lay down that the Petitioner as well as the opposite party No. 1 have lands towards the South of the village kachha road. Alternatively, it could be stated that there is a village kachha road towards the North of the land under pre-emption and the land of the opposite party No. 1. So, the contention of the Petitioner that the opposite party No. 1 is not an adjoining land owner cannot be accepted. The Lower Appellate Court has rightly come to a right conclusion in this respect.

10. The adjoining land owner has filed the application for pre-emption within four months from the date of registration of the land in favour of the Petitioner. It is not the case of the Petitioner that he is either a co-sharer or an adjoining land. So, it could well be presumed, as observed by the Lower Appellate Court, that he is a stranger purchaser. The consideration of money along with 10 per cent of the same has been deposited by the opposite party No. 1 before the learned Trial Judge. Therefore, all the conditions for pre-emption had been fulfilled by the opposite party No. 1 in order to claim the right of pre-emption.

11. So far as the title suit being T.S. No. 41 of 2004 is concerned, the suit has been filed by the opposite party No. 1 for confirmation of his title and the Court has rightly observed that mere filing of such a suit does not create a doubt as to the right, title and interest of the opposite party No. 1 in respect of his property described in exhibit 1.

12. In view of the above findings, I am of the view that the learned Lower Appellate Court has rightly concluded that the pre-emptor has fulfilled all the conditions to exercise a right of pre-emption in respect of the land in case. She has rightly allowed the misc. appeal and directing an order of pre-emption in favour of the opposite party No. 1. The findings of Lower Appellate Court are based on evidence and there is no perversity in the order impugned. Therefore, I am of the view that there is nothing to interfere with the impugned order.

13. Accordingly, the revisional application is dismissed.

14. Considering the circumstances, there will be no order as to costs.

15. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

C.A.N. No. 9472 of 2009

16. In view of the disposal of the application, the aforesaid C.A.N. application praying for variation and modification of the interim order has become infructuous. So, the said C.A.N. application is dismissed without any order.

17. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.