

(2011) 07 CAL CK 0054
In the Calcutta High Court
Case No : C.O. No. 992 of 2006

Nirendra Nath Roy and Others

APPELLANT

Vs

Md. Malek Mia and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 8

Citation : (2012) 4 CHN 429

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Bhudeb Bhattacharyya, for the Appellant; None Appeared, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This revisional application is directed against the judgment and order dated December 22, 2005 passed by the learned Additional District Judge, Cooch Behar in Misc. Appeal No. 7 of 2003 thereby setting aside the judgment and order dated July 15, 2003 passed by the learned Civil Judge (Junior Division), Additional Court Sadar, Cooch Behar in Misc. Case No. 1 of 2002.

2. This application is at the instance of the pre-emptors and their case is that they have lands adjoining to the land-in question and at such they want to pre-empt the land in question. Accordingly, they filed the pre-emption case before the concerned learned Civil Judge (Junior Division) and the said pre-emption Case No. 1 of 2002 was allowed on contest. The opposite party Nos. 1 and 2 preferred an appeal being Misc. appeal No. 7 of 2003 and that misc. appeal was allowed thereby reversing the order of pre-emption passed by the learned Trial Judge. Being aggrieved, the pre-emptors have preferred this revisional application.

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

4. Upon hearing the learned Advocate for the Petitioner and on going through the materials on record, I find that the pre-emptors have proved that they are the owners of a portion of the lands comprising Plot Nos. 3414, 3415, 3420, and 3389 purchased by the sale deeds marked Ext.1 and 1/A. There is No. dispute about it. The land in question comprises the Plot No. 3390 and from the evidence on record, it has been proved that the said plot comprises 28 decimals of land in total and out of them, the pre-emptee, that is, the opposite party No. 1 has purchased 231/2 decimals of land and this portion of the land has been properly described in Schedule "C" to the application. Therefore, it has been proved that a portion of the land in case has been transferred by way of sale by the opposite parties 3, 4 and 5 in favour of the opposite party No. 1. The opposite party No. 2, son of the opposite party No. 1 is the subsequent transferee from the opposite party No. 1. In order to pre-empt the land in case, the pre-emptors have deposited the consideration money along with ten per cent of the same and there is No. dispute about these facts. Upon analysis of the evidence, the learned Trial Judge has allowed the application for preemption holding that the pre-emptors are the contiguous land owners having the longest boundary and that the opposite party No. 1 has No. land nearby the land in case. The pre-emptors have complied with the requirements of Section 8 of the West Bengal Land Reforms Act, 1955 and as such the learned Trial Judge has allowed the application for pre-emption. The learned Lower Appellate Court has allowed the appeal on two grounds, that is, the pre-emptors did not file the application within the time and that they are not the contiguous land owners.

5. Mr. Bhudev Bhattacharya, learned Advocate appearing for the Petitioners has submitted on these two points only, that is, the application for pre-emption was filed within the time limit as per Section 8 of the W.B.L.R. Act and that they have adjacent lands of the land in question. Thus, he has contended that the findings of the learned Lower Appellate Court cannot be sustained. I am, therefore, to consider these two points in the light of the above submissions made by Mr. Bhattacharya.

6. So far as, the ground of limitation is concerned, the adjoining land-owners have filed an application for pre-emption within four months from the date of registration. It is now settled law that an adjoining land-owner can file an application within four months from the date of completion of the registration. The registration is treated as complete when the deed is entered into the volume. In the instant case, as per evidence on record, though the registration of the deed in question was held on May 30, 2001, the said deed was entered into Vol. on September 19, 2001. The present application for preemption having been filed on January 17, 2002, is within the time limit of four months in the case of the adjoining land-owners. Therefore, the pre-emptors have filed an application within the time limit and the findings of the Lower Appellate Court contrary to this cannot be supported.

7. As regards the other point, that is, whether the pre-emptors are an adjoining

land-owners, I find that one of the pre-emptors has deposed to the effect that they have lands to the West of the land in question. The opposite parties have adduced evidence and the D.W.3 and 4, while deposing in favour of the opposite party, have admitted that the lands of the pre-emptors are to the adjacent West of the land in question. Thus, I find that the statement of the P.W.1 as to the claim of adjacent owners has been corroborated by the evidence of the D.W. Nos. 3 & 4. Beside that the pre-emptors have also proved the R.S. Map, Ext.3, which indicates that the pre-emptors have land to the West of the land in question. As per observations of the learned Trial Judge, the deeds produced by the pre-emptors have indicated that the pre-emptors have lands to the West of the land in case i.e Plot No. 3390.

8. The defence stand that the lands of the Petitioners have not been partitioned and as such, the pre-emptors cannot be said to be the exclusive owners of the Plot Nos. under their possession and as such, they are not to be considered as adjacent land-owners, cannot, therefore, be accepted. In this regard, from the evidence on record, there is No. doubt that the pre-emptors have lands adjacent to the land in question and as such there cannot be any controversy on this point at all. So, I am of the view that the findings of the learned Lower Appellate Court cannot be sustained at all.

9. In that view of the matter, I am of the opinion that the impugned order cannot be sustained. The revisional application is, therefore, allowed. The impugned order is hereby set aside. The order of the learned trial judge dated July 15, 2003 is hereby affirmed.

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