
(2018) 04 CAL CK 0118
In the Calcutta High Court
Case No : C.O. No. 1788 of 2015

Rabindra Nath Kundu & Anr.

APPELLANT

Vs

Sudhir Hira & Anr.

RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 2(6), 5, 8, 9, 14

Citation : (2018) 04 CAL CK 0118

Hon'ble Judges : SHIVAKANT PRASAD, J

Bench : Single Bench

Advocate : Partha Pratim Roy, Biswarup Biswas

Final Decision : Dismissed

Judgement

SHIVAKANT PRASAD, J.

Petitioners have challenged the order dated 13.11.2014 passed by Additional District Judge, Tehatta at Nadia in Miscellaneous Appeal No. 36 of 2013,

affirming the order dated 30.9.2013 passed by Civil Judge (Junior Division), Tehatta, Nadia in Miscellaneous Preemption Case No. 14 of 2011. Brief

facts leading to this case is that the suit plot being RS and LR Plot No. 2608 appertaining to LR Khatian No. 2501 previously belonged to Bijoy Krishna

Hira who transferred 11 decimals of land to Santosh Kumar Hira by a registered deed of gift No. 1651 dated 27.4.2004 and delivered possession

thereof. Said Santosh Kumar Hira sold 9 decimals out of 11 decimals of land in the suit plot to the petitioner Sudhir Hira vide sale deed No. 6801/09

and delivered possession thereof. Accordingly, the petitioner/preemptor claimed to be a co-sharer in the suit plot.

Said Santosh Kumar Hira sold land in various plots including land measuring 1.65 decimals to the opposite parties/preemptee Nos. 1 & 2 stranger

purchaser on 09.08.2010 by a registered sale deed No. 6163 of 2010 without knowledge of the preemptor as no notice under Section 5 of the WBLR

Act was served upon him. The preemptor came to know about the transfer on 05.12.2010. It is contended that in order to avoid preemption, the

preemptees purchased the suit property mentioned in the schedule of the preemption petition along with other non-suit plots for a

consideration of Rs. 2,56,500/-.

The preemptees contested the preemption case denying all materials particulars and prayed for dismissal of the case. The specific case of the present

petitioners is that the present opposite party no. 1/preemptor Sudhir Hira has no relationship of co-sharership with Santosh Kumar Hira opposite party

no. 2 as the demarcated portion of land has been purchased. That apart the preemption is barred by the law of limitation.

Defense taken by the preemptees in the Trial Court is that by a registered deed of sale Exbt. 4, several other non-suit plots were transferred and as

such partial pre-emption cannot be allowed but the learned Courts below have failed to consider that the present petitioners/preemptees have

purchased a demarcated portion in the suit plot and as such the preemptor is not a co-sharer and thereby committed error in law and in fact by

allowing the preemption application under Section 8 of West Bengal Land Reforms Act vide order dated 30.09.2013.

The present petitioners have contended that the learned Appeal Court below while dismissing the appeal held that there is no partition within the

meaning of Section 14 of West Bengal Land Reforms Act, as such the preemptor was held entitled to get an order of preemption on the ground of co-

sharer irrespective of the fact of purchase of demarcated portion of the suit property. Learned Advocate for the present petitioners has relied on a

decision in case of Arindam Joardar vs. Tarun Raha and others reported in (2016) 3 Cal. CHN 61 where the case was that a common owner had

transferred the specific portions out of the entire plot with defined areas and boundaries to different purchasers on different dates mentioning his

proportionate share with reference to the entire jama. It was in the context of a fact that original owner had gifted to his three sons exclusive

demarcated property and held that none of them can claim to be a cosharer of the other; otherwise the deed of gift fails. It was so held by taking into

consideration a decision in case of Smt. Labanya Bala Debi Vs. Smt. Parul Bala Debi & Ors. (77 CWN 272). Accordingly, the revisional application

was dismissed finding no reason to interfere with the concurrent findings of fact arrived at by the Courts of law.

Learned Advocate for the present petitioners also relied in the case of Narendra Kumar Singh & Anr. vs. Smt. Gursharan Kaur & Ors. reported in

(2016) 2 CHN 613 in which case, one Mira Debi had owned and possessed 28 cents in the plot described in the schedule of the property in an

application for preemption. Out of the schedule property, the said Mira Debi sold six cents of lands (A 1 Schedule) to Subhadra Debi and

Chhedi Shaw by a deed of sale of 1990. In turn, they sold five cents (B Schedule) to Narendra Kr. Singh and Debendra Kr. Singh (the petitioners of

the preemption case) by a deed of sale of 1992. Preemption under Section 8 of the WBLR Act was sought for on the ground of vicinage and by an

amendment also as a co-sharer of a raiyat in a plot of land. The learned Appellate Court in his decision held that the application for preemption was

not maintainable because petitioners were not the co-sharers as the entire share or the entire portion of a plot of land was transferred to the opposite

parties.

Being aggrieved, the order so passed by the learned Appeal Court below was challenged before a Coordinate Bench of this Hon'ble Court and in

the said cited decision it was held that an application for preemption is maintainable even when a co-sharer has divested his entire share or portion of

plot of land to a third person other than the raiyat. But in the facts of the case it was further observed that the deed of gift contained a description of

the land with its demarcation as the entire six cents of land purchased by Subhadra Debi and said Chhedi Show which was sold, transferred and

conveyed by the admitted owner Mira Debi to the petitioners and their family members. Subhadra Debi alone purchased further five cents of land

from Mira Debi in the year 1992 and the deed of sale being exhibit 7 does not show that the said land was well demarcated from the remaining portion

of the land retained by Mira Debi, subsequently sold to the opposite parties nos. 1 & 2 by Subhadra Debi. Decisions in case of Sk. Samser Ali v.

Serina Bibi reported in 2012(2) CHN 694 and Sri Subal Mondal v. Gopal Chandra Mondal reported in 2014(1) CHN (Cal) 706 were relied upon. In

case of Narendra Kumar Singh & Another (supra) it was observed in paragraph 19 thus :

19. It is, therefore, clear that the petitioners having purchased the well demarcated portion from Subhadra Debi and Chhedi Show who purchased the said plot of land from the admitted owner cannot be a co-sharer of a raiyat. Though Section 14 of the Act recognizes the incident of partition of a land with full demarcation. If the petitioners cannot be a co-sharer with admitted sole owner he cannot assume such character if the remaining portion of the plot of land apart from well demarcated portion is transferred to a third party.

Thus, the question as to whether preemption available to a purchaser to the well demarcated land from an admitted owner who subsequently sold the remaining portion to a third party on the ground of co-sharership was answered in the negative in view of the observation so made in paragraph 19 of the cited decision, held that the petitioners cannot claim to be a co-sharers with the admitted owner. In the present case, Bijoy Krishna Hira being the owner in the suit plot, gifted to Santosh Kumar Hira demarcated 11 decimals of land vide deed of gift dated 27.4.2004 and the latter sold 9 decimals out of 11 decimals of land to Sudhir Hira the preemptor/opposite party no. 1 and well demarcated 1.65 decimals of land in the said plot along with several other plots were sold, transferred and conveyed to the preemptees/petitioners herein by a registered deed of sale dated 10.8.2010, the subject matter of preemption.

It is argued on behalf of the preemptees that averment made in paragraph 9 of written objection, it has been categorically stated, since demarcated portion of land have been sold, there is no co-sharership, not only that, by virtue of the said deed other plots have also been sold to the present petitioners/preemptees. Therefore, the partial preemption cannot be granted in favour of the present opposite party no. 1/preemptor.

In rebuttal, Learned Advocate for the opposite party no. 1 has relied on a decision in case of Sk Sarafat Ali & Ors. Vs. Hossain Ali Molla & Ors. reported in 2002 (4) CHN 285 which is special Bench decision as the reference to the Special Bench was to this effect, whether a substantive right conferred under a co-sharer in a portion or share of a holding of a raiyat to exercise the right of pre-emption had been taken away by deletion of the

words "and treated as a unit for assessment of revenue" from the definition of "holding" in Section 2 of sub-section (6) of the West Bengal

Land Reforms Act after the words "means the land held by a raiyat." It was held that the legislature by introducing the amendment Act of 2000

has now virtually done away with the concept of "holding" of a raiyat. The definition clause in Section 2(6) corresponding amendment in section 8

of the Act has been brought about in the Act with retrospective effect from 7th August, 1969. By this amendment the right of pre-emption under

Section 8 of the Act would occur only when a portion or share of a plot of land of a raiyat is transferred to a person other than a co-sharer of a raiyat

in the plot of land. Therefore, while deciding with an application under Section 8 of the Act, there would be no necessity for the Court to apply the

principle relating to a definition of "holding" as in section 2(6) of the Act before its amendment.

Learned Advocate for the opposite party no. 1 also referred to a judgment dated June 8, 2015 authored by me in C.O. No. 618 of 2009 Dhiren

Mahata Vs. Shrimati Uttara Mahata wherein I have observed in the context of the settled position of law that partition has to be by way of registered

document or can be effected by decree of partition by metes and bounds and if there is no such partition in respect of the suit plot in which a

preemptor has a share in each and every inch of the land in plot.

In case of Sribas Chandra Biswas Vs. Jiban Krishna Biswas reported in 2012 4 CHN 148 it was held that after Amendment Act of 2000 any co-

sharer of a raiyat in the plot of land is entitled to exercise the right of preemption under Section 8 of the Act. A co-sharer of a raiyat in a plot of land

has been defined according to Section 2(6) of the Amendment Act of 2000 which enjoins that a co-sharer of a raiyat in a plot of land means a person

other than a raiyat who has an undemarcated interest in the plot of land along with the raiyat and so a cosharer in an un-demarcated plot of land, if a

portion or share has been sold to a stranger purchaser, is entitled to an order of preemption under Section 8 as per the Amendment Act of 2000.

In Asita Mishra & Another Vs. Ganesh Chandra Mukhopadhyay reported in 2015 4 CHN 530 it has been observed that since there has been no

partition of suit plots in the eye of law, the petitioners remained a co-sharer in respect of the case plot. Accordingly the claim of preemption was

considered and allowed. In case of *Abdur Rahman Vs. Sk. Abu Bakar & Anr.* reported in 2016 1 CHN 319 it was held that an application for

preemption under Section 8 of the said Act is maintainable and entertainable at the instance of the co-sharer/raiyat even after the sale of the entire

portion or share by the other co-sharer/raiyat, by taking cue from a decision in case of *Biswanath Sarkar Vs. Sunit Kumar Saha* reported in (2013) 3

WBLR (Cal) 271 wherein it has been held that even if the entire share is transferred, the preemption as under Section 8 of the said Act is

maintainable at the instance of the co-sharer/raiyat. In *Saibar Rahaman Vs. Munsir Md. Hedayatulla & Anr.* reported in 2015 2 CHN 228 it has been

observed that the object behind incorporation of Section 8 of the said Act is to avoid the fragmentation of the plot of land and to give right to the co-

sharer to claim a preemption, in the event a fraction of the share or the share in its entirety is transferred to a stranger.

In *Sk. Sajhan Ali & Ors. Vs. Sk. Saber Ali & Anr.* reported in 2015 3 CHN 689 the trial Court had dismissed the Misc. Case under Section 8 of the

West Bengal Land Reforms Act, 1955 holding that if a portion of share in plot of land is transferred, and not when the entire share is transferred the

preemption was not attracted. The finding so made by the trial Court was reversed by the Appellate Court below with the observation that even if

entire share is transferred, the application under Section 8 of the said Act is maintainable, when a co-sharer/raiyat transferred a portion of the share of

his interest in the plot of land, the right of preemption can be exercised under Section 8 of the West Bengal Land Reforms Act, 1955. The order of the

Appeal Court was revised against before a coordinate Bench of this Honâ??ble Court. Noticing an observation in case of *Kinkar Mahato & Ors. v.*

Sahan Mahato & Ors. reported in 2005 (3) ICC 05 held that when a co-sharer raiyat transfers a portion of the share of his interest in the plot of land,

then only the right of preemption can be exercised under Section 8 of the West Bengal Land Reforms Act, bearing in mind the word 'or' between the

words 'portion' and 'share', that even in case a transfer of entire share or entire portion in a plot of land by a raiyat to a third party, the preemption

application is maintainable under the said Act.

Adverting to the principles laid in the aforesaid decisions it is contended on behalf of the preemptor that if the co-sharer remain in occupation of a

particular demarcated portion by such mutual arrangement, for such arrangement their un-demarcated interest in the plot is not extinguished. In the eye of law, they remain co-sharer so long there is no registered deed of partition notwithstanding the fact that each of the co-sharers are in occupation of a particular demarcated portion and that so long there is no partition in accordance with the provisions contained in Section 14 of the West Bengal Land Reforms Act, 1955 the preemptor, inspite of his possession in a demarcated portion of plot remains a co-sharer of those plot of land and has un-demarcated interest in the entire plot in question.

I do agree with the proposition in the cited decisions, but the facts in the present case is differently situated. It appears from the deed of sale dated 29.10.2009 that 9 decimals of land butted and bounded with clear demarcation was sold to the preemptor. Similarly, well demarcated 1.65 decimals of land in the suit plot was sold to the petitioners/ preemptees along with several other plots by the impugned deed of sale dated 10.8.2010 which has been sought to be preempted. Now a question arise as to whether a partial preemption is maintainable as prayed for by the preemptor. It would appear from the application under Sections 8 & 9 of the West Bengal Land Reforms Act that the petitioner has not described in clear term the total quantum of land contained in the suit plot out of which only 11 decimals of land was gifted by Bijoy Krishna Hira to Santosh Kumar Hira by a well demarcated butted and bounded with its boundary and possession was taken thereof and said Santosh Kumar Hira had sold well demarcated 9 decimals of land out of that to the preemptor Sudhir Hira and 2 decimals remained with Santosh Kumar Hira. It cannot be ascertained that said Sudhir Hira by virtue of purchased became co-sharer with Bijoy Krishna Hira in the said plot of land. I do find that rest fraction of land in the plot is with the donee namely Santosh Kumar Hira.

As regards partial preemption it would appear from the findings of the trial Court that three different plots were transferred by a single impugned deed. It would appear from the judgment of the trial Court that a reference was made to a case reported in 1980(1) CLJ 135 and observed that a preemptor cannot be allowed to preempt only the suit property where other plots are also conveyed by the impugned deed and on her own the trial Judge was inclined to cite unreported decision in case of Smt. Ira Mistri Vs. Smt.

Rupali Mondal & Anr. passed in Civil Revision being C.O. No. 152

of 2012, wherein the Honâ??ble Court positively held that partial preemption is not permissible in law but such preemption is permissible in case of a

sale of several properties appertaining to different holdings in one deed of transfer and in case of a sale to a stranger as well as to a co-sharer in one

deed of transfer. Therefore, the partial preemption is dependent on the facts and circumstances of a case in accordance with the evidence adduced by

the parties to the suit. Yet, the learned trial Judge considered a decision of a Division Bench of this Honâ??ble Court reported in 1997(2) CLJ 480

wherein it is held that in allowing a partial preemption, the Court should determine the valuation of land in respect of which the order of preemption is

to be made.

It is settled principle of law that partial preemption is not permissible and this was what the view adopted by this Honâ??ble High Court is Surendra

Vs. Abhimannu reported in (1980) 1 Cal LJ 135 wherein it has held that when by a sale deed two or more plots of the lands in a holding are

transferred to a stranger purchaser, then the cosharer of the holding cannot seek preemption only in respect of one plot or portion of such land

transferred. In Satish Chandra Kuila Vs. Kali Pada Maity reported in (1977) 2 Cal LJ 480 this Honâ??ble Court approved the preemption of the

portion of the land of such kobala which was contiguous to the holding of the contiguous raiyat. Fact situation of the cited decision is not well nigh

within the facts and circumstances of the instant case.

I am of the considered opinion bearing in mind the settled principle of law that right of preemption is a weak right and in case of preemption it is the

impugned deed of kobala which is preempted and not the land so, in case of a sale of lands in different plots, preemptor cannot be allowed to preempt

a particular land covered by impugned deed of sale. The right of preemption cannot be lightly exercised with respect to one or some of them. It is a

right of substitution taking in the entire bargain. It must take the whole or nothing. That apart, the circumstances of sale of several properties to

different holdings in one deed of transfer and sale to a stranger as well as to a co-sharer in one deed of transfer has not been substantiated in the

given facts of the case before the learned Courts below. Therefore, the partial preemption ought not have been allowed, ergo, the application for

preemption is liable to be dismissed.

In the result, the revisional application being C.O. No. 1788 of 2015 is allowed. Consequently, the concurrent judgments of the learned Courts below

are hereby set aside and the application for preemption under Section 8 of WBLR Act stands dismissed, however, without any order as to costs. The

preemptor shall be at liberty to withdraw the consideration together with the compensation amount deposited under a challan before the trial Court.

Certified website copies of this judgment, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.