

(1988) 08 CAL CK 0021
In the Calcutta High Court
Case No : C.R. No. 1894 of 1983

Radha Raman Mahapatra and Others

APPELLANT

Vs

Gangadhar Bera and Others

RESPONDENT

Date of Decision : 31-08-1988

Acts Referred:

Registration Act, 1908 — Section 47, 49, 61
Transfer of Property Act, 1882 — Section 54
West Bengal Land Reforms Act, 1955 — Section 3, 5, 5(1), 5(5), 8

Citation : 93 CWN 711

Hon'ble Judges : Bhagabati Prasad Banerjee, J

Bench : Single Bench

Advocate : S.P. Roy Chowdhury and Lalit Kr. Maity, for the Appellant; P.B. Sahoo and Sudhakar Biswas, for the Respondent

Judgement

Bhagabati Prasad Banerjee, J.—This revisional application has raised a pure question of law relating to the scope and effect of section 47 of the Indian Registration Act 1908 in relating to making an application for pre-emption u/s 8 of the West Bengal Land Reforms Act. The facts of this case are as follows :

The petitioners Radha Raman Mahapatra and others purchased 44 cents of land appertaining to R. S. Plot No. 81 of Mouza Cankpara in the District of Midnapore from one Rati Ranjan. The deed of sale was executed on 17th April, 1978 and that the same was registered on 19th May, 1978, whereas the pre-emptee/opposite party Gunadhar Bera purchased 42 cents of land appertaining to R. S. Plot Nos. 235 and 237 of the same mouza which was executed on 21/11/78 and registered on 19th of July, 1979. The petitioners filed an application for pre-emption in respect of the property, claiming to be the co-sharers on the strength of the deed which was executed on 17/4/78 and registered on 19th May, 1980 on the ground that even though the registration was made after the registration of the land purchased by the pre-emptee opposite parties, the date of transfer would refer back and relate to from the date of execution of the deed which was made on 17th April, 1978. The document, by which the pre-emptee/opposite

parties purchased, was executed later than the document executed in favour of the petitioners, but registered earlier than that of the petitioners.

2. Now the question that arises for consideration in this revisional application is whether the petitioners can have a right of pre-emption u/s 8 of the West Bengal Land Reforms Act for purchase by a co-sharer on and from 17th of April, 1978, that is the date of execution of the deed when the deed was registered on 19th May, 1980 and on the strength of which whether they can claim pre-emption in respect of the land purchased by the opposite parties whose deed was executed, on 21st November 1978 and registered on 19th July, 1979.

3. The contention of the petitioners is that the date of execution of the deed would be relevant for the purpose of enforcing the right as a co-sharer u/s 8 of the Land Reforms Act on the strength of Section 47 of the Indian Registration Act, 1908. On the contrary, the case of the defendant pre-emptee opposite parties is that as their document was registered earlier than that of the petitioners, the petitioners cannot be treated to be the co-sharers on the basis of the date of execution of the document and, according to the opposite parties, the date of registration creates such a right of pre-emption as co-sharers. This is precisely the fact and point of law involved in this application.

4. Mr. S. P. Roychowdhury, learned Advocate for the petitioners, has contended that when an instrument which purports to transfer the title to property is required to be registered, the title does not pass until registration has been effected. It is further contended that Section 47 does not create a new title, it only affirms a title which has been created by the deed. The title is complete and the effect of registration is to make it unquestionable and absolute. By virtue of Section 47 of the Indian Registration Act, it is submitted that once registration is effected the title relates back to the date of execution. On the basis of this submission, it is contended by Mr. Roychowdhury that even though the document of title was registered on 19th May, 1980, the title should relate back from the date of execution, Viz., from 17th April, 1978, and, as such, when Gunadhar Bera, the pre-emptee, who is the opposite party No. 1 herein, registered his document on 19th July on the basis of deed which was executed on 21st November 1978, the petitioners would have a right of pre-emption as co-sharers and, accordingly, by virtue of Section 8 of the West Bengal Land Reforms Act the right to purchase by a co-sharer accrued in favour of the petitioners. In support of his contention, Mr. Roychowdhury relied on a Full Bench decision of this Court in the case of Hiru Sepai v. Sulta Sepai, reported in 1975(1) CLJ 12 where this Court held that right of pre-emption of a co-sharer is an overriding right" and cannot be defeated by subsequent transfer or transfers, provided, the right of pre-emption exists and has not been otherwise extinguished. In that case, it was held by the Full Bench that the pre-emptor did not exercise the right of pre-emption in respect of first transfer but when he sought to exercise his right in respect of subsequent transfer, a point was taken that he has forfeited his right of pre-emption. In that context, it was observed that if the pre-emptor has not

sought to pre-empt the first transferor if the application of the pre-emptor for pre-emption has failed for any reason, the purchaser as a co-sharer of the holding by virtue of his first purchase would be perfect and complete. In such a contingency, the pre-emptor would not have any right of pre-emption in respect of the second purchase by the same purchaser, as the pre-emptor had, in the instant case, sought to pre-empt both the transfers and as the application for pre-emption was made within the period of limitation, the pre-emptor's right to pre-empt the second transfer cannot be defeated on the plea that the second transfer has been made when he has become a co-sharer in the holding by his first purchase. To hold otherwise would practically set at naught the right of pre-emptor conferred on a co-sharer raiyat by Section 8 of the Land Reforms Act for it may be liable to be defeated by the device and contrivance of the transferor and the transferee of the raiyat holding. Further reference was made to a Division bench judgment of this Court in the case of Nikhil Chandra Sanyal v. Khirrodabala Nag, reported in 1979(2) CLJ 177. In that case, it was held that the pre-emptor might have asked for pre-emption when the parties purchased from a third party on August 20, 1953, but that does not mean that the parties not having exercised such rights in respect of that sale would be disentitled to claim pre-emption in all subsequent transfers. Each transfer furnishes a fresh cause of action and the right to pre-empt cannot be defeated on the ground that an earlier sale was not pre-empted. Reference was also made to another judgment of this Court in the case of Jayanta Kumar Das & Ors. v. Gour Hari das, reported in 1975(2).CLJ 436 wherein it was held that the existence of right of pre-emption of a co-sharer does not depend upon the service of notice u/s 5(5) of the West Bengal Land Reforms Act. Lastly, Mr. Roychowdhury relied upon the provisions of Section 47 of the Indian Registration Act and contended that the petitioners had a right of purchase as co-sharers u/s 8 of the Land Reforms Act, as by virtue of the provision of Section 47, it must be held that once registration is effected, the title relates back to the date of execution and, as such, to the date of registration of the document of the pre-emptee, the petitioners had a subsisting right as co-sharers and, as such, both the Courts below were wrong in rejecting the application of the transfer by Rati Ranjan in favour of the pre-emptee Gunadhar Bera, when the document was registered on 19th July, 1979. It may be mentioned that the document of the petitioners was registered on 19th May 1980, that is to say, about 10 months after the registration of the document of the defendant pre-emptee.

5. Mr. Purnendu Bikash Sahu, learned Advocate appearing on behalf of the opposite parties, submitted that the scope of Section 47 is limited to the registered documents in respect of the self-same property and that where there is a competition between the two documents relating to the same property both of which are registered, the question of priority as between them is to be determined with reference to the provisions of Section 47 and not otherwise, as "such, it is submitted that where that are two registered document in respect of two different properties, the provision of Section 47 of the Act would not apply.

In support of his contention, Mr. Sahu relied upon the decision of this Court in the case of *Dhirendra Nath Sen v. Ganendra Nath Bera*, reported in AIR 1948 Cal 353 wherein G. N. Das, J. (as His Lordship then was) held that the right to pre-empt u/s 26F of the Bengal Tenancy Act accrues on the transfer. The date of accrual of the right is not the date of execution of the deed of sale, or, any earlier date, but the date when the deed of sale is registered and title effectively passes. The fact that possession was made over to the vendee prior to the registration does not affect the question. It is only the date of registration of the sale that is material date for finding out the persons who are entitled to pre-empt. In support of this contention, the learned Judge in the said case, relied on a Full Bench decision of this Court reported in AIR 1946 Cal. 339. Further reference was made to another Division Bench decision of this Court in the case of *Gosta Behari Das v. Sm. Rajabala Debi & Ors.*, reported in AIR 1956 Cal 449 where Chakrabarti, C.3., considered the effect of Section 47 Indian Registration Act in the context of right of pre-emption u/s 26F of the Bengal Tenancy Act and the said Division Bench presided over by Chakrabarti, C.3., held as follows :

" It appears, however from the decided cases that Section 47 of "the Registration Act has been construed as limited to successive transfers of the same property. Where different properties have been transferred by different instruments or where the contest is with a third party, the decision have been in accordance with the plain meaning of Section 49, Registration Act, or the relevant Section of the Transfer of Property Act."

6. It was further held at paragraph 7 of the said judgment as follows:-

" So far, however, as the present case is concerned which is a case under section- 26F, Bengal Tenancy Act, I think there is a special fact which justifies the view that a person claiming to pre-empt on the basis of himself having become a co-sharer by a recent purchase can do so only after his own document has been registered. To take the facts of the present case, Rajabala's Kobala was registered on 31.3.50. u/s 26F of the Bengal Tenancy Act, the right of the co-sharers to pre-empt arose on that day, therefore, if I may put it in another way, all persons claiming to be entitled to pre-empt would have to be co-sharers on that day and not later.. The petitioner's kobala was not registered till 10/6/50. Were we to apply the principles of Section 47 to this case, the result would be that upon its registration on 10.6.1950 the petitioner's kobala would operate from 2/1/1959 and, therefore, the petitioner would become a co-sharer with effect from that date. But that status would arise only after registration, that is to say, only after 10/6/50, though with retrospective effect. Between 31/3/50 when Rajabala's Kobala was registered and 10/6/50 when his own was, the petitioners would have no right to pre-empt."

7. It was further held as follows :-

" It thus appears to me that on the authorities and on the special facts of this case though I cannot say on principle, the respective kobalas should be held to

have taken effect from their respective dates of registration."

8. Lastly, Mr. Sahu relied upon a decision of the Supreme Court in the case of *Ram Saran Lall & Ors. v. Mst. Domini Kuer & Ors.*, reported in AIR 1961 SC 1947 wherein the Supreme Court considered the question of pre-emption under the Mohammedan Law and held as follows :-

" One of the requisites before the right of pre-emption can be exercised is the preliminary demand by the pre-emptor and such demand must be made after "completion of the sale. The provisions of the Transfer of Property Act superseded the principles of the Moharnmadan Law as to a sale and it is to the statute, that one should look to find out whether and, if so when, a sale is Complete in order to give rise to a right of pre-emption. u/s 54 of the Transfer of Property Act a sale of tangible immovable property of the value of Rs. 100/- and upwards, can be made only by a registered instrument. Registration under the Resgitation Act is not complete till the document to be registered has been copied out in the records of the Registration Officer, as provided in Section 61 of that Act. Section 47 of the Resgitation Act has nothing to do with the completion of registration and therefore nothing to do with the completion of sale. A sale which is admittedly not completed until registration of the instrument of sale is completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date."

9. It was observed by the Supreme Court that Section 47 of the Registration Act does not, however, say when a sale would be deemed to be completed. It only permits a document when registered to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of the two or more registered instruments in respect of the same property is to have effect. This section applies to a document only after it has been registered. It has nothing to do with completion of registration and, therefore, nothing to do with the completion of a sale, when the instrument is one of sale. A sale which is admittedly not completed until registration of the instrument of sale is completed cannot be said to have been completed earlier because, by virtue of Section 47 the instrument by which it has been effected after it has been registered, commences from an earlier date. Therefore, it was commences from an earlier date. Therefore, it was held in view of Section 47 to have been completed on January 31, 1946.

10. Lastly, it was contended by Mr. Sahu that the West Bengal Land Reforms Act is a special Code and Section 3 of the said Act provides that this Act over-rides all other Acts and u/s 5 of the said Act, it was laid down that a transfer of the holding of a raiyat or a share or portion thereof shall be made by instrument which must be registered. In other words, even if it is less than Rs. 100/- it must be registered for the purpose of this Act and the provisions of Section 8 of the West Bengal Land Reforms Act has to be read in the light of the provisions of Section 5 of the said Act. According to Mr. Sahu, if the provisions of Section 8 of

the said Act is read in the light of Section. 5 of the said Act, it would make the position clear that a right of purchase as a CO accrues on the date of purchase by a registered document and not otherwise and, as such, by implication this provision over-rides all other provisions and that the provision of Section 47 of the Indian Registration Act would be of no help in deciding the status-and the right of a co-sharer as Contemplated u/s 8 of the West Bengal Land Reforms Act.

11. If it is held that, the Deed of Purchase by which the petitioners purchased the property which was executed on 17/4/78 but was registered on 19/5/80 should be effective from 17/4/78, in that event, the registered Deed of Sale by which the pre-emptee/opposite party acquired right which was executed "on 21/11/78, but registered on 19/4/79 would prevail and the petitioners can claim right of pre-emption in respect of land purchased by the pre-emptee/opposite party by the Kobala executed on 21/11/78 but registered on 19/7/79. Admittedly, the properties were purchased by the petitioners from the same persons, but the properties were two different and separate properties. Section 47 of the Registration Act 1978 provides that a registered document shall operate from the time from which it would have been commenced to operate, if no registration thereof had been required or made and not from the time of its registration."

12. The Division bench of this Court in the case of Gostho Behari Das v. Smt-Rajabala Devi, reported, in 1955 Cal. 449 held that "from decided case, it appeared that Section 47 of the Registration Act has been construed as limited to successive transfer of the same property where different properties have been transferred by different instruments or where the contest is with a third party. The date of registration would be the date from which it would be effective in view of the provision of Section 49 of the Registration Act. In the case Ram Sharan Lai v. Mst. Domini Kuer, reported in AIR 1961 SC page 1747, it was held by the Supreme Court that one of the requisites before the right of preemption can be exercised is the preliminary demand by the pre-emptor and such demand must be made after the completion of the sale. The provisions of Transfer of Property Act supersede the principles of the Mohammedan law as to sell and it is to the state that one should look to find out whether, and if so, the sale is complete in order to give rise to a right of pre-emption u/s 54 of the Transfer of Property Act. Sale of tangible immoveable property of the value of Rs. 100/- and upwards, can be made only by a registered instrument. The registration under the Registration Act is not complete until the document to be registered and has been copied out in the record of the Registration Office as provided in Section 61 of the Registration Act. Section 47 of the Registration and therefore nothing to do with the completion of sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47, the instrument by which it is effected after it has been registered, commences to operate from an earlier date."

13. In the above judgment the Supreme Court further held at page 1749 that

"Section 47 of the Registration Act does not however say when a sale would be deemed to be completed. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of the section is to decide which of the two or more registered instruments in- respect of the same property is to have effect. The Section applies to be a document only after it has been registered."

14. The provisions of Section 47 of the Registration Act had been enacted to-protect a person in whose favour a document of transfer was executed earlier when it is found that the seller had also executed another document of title in favour of an other in respect of the same property. In such a case delay in registration in respect of document executed earlier would not defeat the right of the person in whose favour execution was made at an earlier point of time. From the aforesaid decision, it is clear that in a competition between two registered documents in respect of the same property, registration should refer back to the date of execution and not the date of registration. As between the parties in respect of the same property., the document takes effect from the date of execution and not from the date of registration. In the instant case, the registered document of purchase by which the property was purchased by the opposite party was registered on 19/7/79 as against the deed of the petitioner which was registered on 19/5/80 and as such it cannot be said that as because the document of the petitioners was executed on 17/4/78 earlier than the execution of the document of the opposite party, the document of the petitioners should prevail and the properties were different. This view is firmly established principle. In the instant case, the right of pre-emption has been conferred by Section 8 of the West Bengal Land Reforms Act. Section 5(1) of the West Bengal Land Reforms Act provides that a a transfer of a holding of a raiyat or a share or portion thereof shall be made by an instrument which must be registered and the registering officer shall not accept for registration of any instruments unless Section 3 of the West Bengal Land Reforms Act provides that "the provision of the said Act shall have effect notwithstanding anything in any other law or any custom or usage or in any contract expressed or implied inconsistent with the provision of the said Act. So, it is clear that Section 3 of the Land Reforms Act provides that the provision of the Land Reforms Act overrides all other. Acts and the said act provides that "all the transfer of holding of raiyat must be made by a Registration Act that the provision of Section 8 of the said Act should be read in the light of Section 5 of the said Act read with Section 3 of the said Act which makes it imperative that all tranfers of raiyatee interest in land must be made by a registered deed and that the date of transfer a contemplated by Section 8 of the said Act is nothing but the date of registration only. From the scheme of the West Bengal Land Reforms Act, it has also been made clear that the relevant date for the purpose of pre-emption u/s 8 of the said Act should be the date of completion of the registration and that the said Act has been given an overriding effect. According to the provision of Section 47 of the Registration Act as interpreted by various judicial decisions mentioned above and in view of the

special provisions contained in the Land Reforms Act, I am unable to uphold the contention of Mr. Roy Chowdhury that the deed by which the petitioners have acquired interest in the property should be effective from the date of execution and not from the date of registration. Particularly, in view of the fact that the subject matter of properties purchased by the petitioners and the respondents were different and that accordingly, the petitioners, Radha Raman Mahapatra and others did not acquire any right enforceable u/s 8 of the West Bengal Land Reforms Act for the purpose of exercising right of pre-emption on the basis of date of execution in the instant case and I further hold in the instant case that the provision of Section 47 of the Indian Registration Act cannot have any application and accordingly the date of registration in both the cases would be the date for the purpose of exercising right of pre-emption and as such I must hold both the courts below were right in holding that the petitioner had no right of pre-emption in respect of the land purchased by the defendants/ opposite parties. The judgment of both the courts are upheld. The Revisional application is dismissed. Rule is discharged without any order as to costs.