
(2019) 01 CAL CK 0113

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (Co) No. 4066 Of 2016

Shefali Ghosh (Sarkar)

APPELLANT

Vs

Mrinal Chandra Saha & Ors

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 8
Constitution Of India, 1950 — Article 227

Citation : (2019) 01 CAL CK 0113

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Dilip Kumar Maity

Judgement

Despite service none appears for the opposite parties. Affidavit-of-service filed in Court today shall be retained with the records.

Judgment and order dated 25th July, 2016 passed by the learned Additional District Judge, Aliporeduar in Title Appeal No. 3 of 2012 affirming Order No. 46 dated 13th January, 2012 passed by the learned Civil Judge (Junior Division), Alipurduar in Misc. (Pre) Case No. 10 of 2007 is under challenge in the instant revision at the instance of the preempttee/petitioner.

Mr. Maity, learned advocate for the petitioner submits that legality, validity and propriety of the impugned judgment and order is being questioned on two grounds, viz. (i) on the ground of limitation and (ii) failure on the part of the preemptor/opposite party to prove in the Trial Court that he is a raiyat in respect of the adjoining land.

On the question of limitation, learned advocate draws my attention to the copy of the application for preemption under Section 8 of the West Bengal Land Reforms Act, 1955 wherefrom it is ascertained that the said case was filed on 26th February, 2007 for preemption of the property mentioned in Schedule B of the said application which was transferred in favour of the preemptor on 18th

September, 2006. According to the learned advocate, the opposite party being an adjoining land owner ought to have filed the application for preemption within four months from the date of transfer. In the instant case, the application is barred by limitation in view of the fact that the opposite party had approached the Court beyond the period of imitation. In support of his contention, he refers to a decision of this Court in the case of Ramgati Khan Vs. Gobinda Chandra Khan reported in 2006 (4) CHN 328. In this reported decision, it is held by a co-ordinate Bench of this Court that limitation for preemption application on the ground of vicinage runs from the date of registration of sale deed and not from the date of execution of the deed.

In the instant case, it is ascertained on perusal of the deed of sale executed in favour of the preemptee that it was registered on 3rd January, 2007. The opposite party filed an application for preemption well within the period of limitation, i.e., on 26th February, 2007. Therefore, the decision of this Court in Ramgati Khan (supra) does not help the petitioner.

With regard to the second contention of the learned advocate for the petitioner, I am of the view that this Court sitting in revision under Article 227 of the Constitution cannot look into the factual question as to whether the opposite party was able to prove that he is a raiyat in respect of the adjoining plot. However, on perusal of the impugned judgments, I find that the learned Courts below came to a specific finding that the opposite party is the adjoining land owner. In support of his contention, the opposite party no. led evidence in the Trial Court which was duly considered by the learned Trial Judge as well as the learned Judge, First Appellate Court. I do not find any reason to spill ink over the said finding of the learned Courts below. The second branch of argument advanced by Mr. Maity, learned advocate for the petitioner has, therefore, no leg to stand.

In view of the above discussion, I find that the instant revision is devoid of any merit. Accordingly, the revisional application is dismissed, however, without costs.

It appears from the record that the learned First Appellate Court registered the appeal filed against an order passed in Misc. Preemption Case as a Title Appeal. According to Civil Rules and Orders, the appeal arising out of an order passed in Misc. Preemption Case should be registered as Misc. Appeal.

All the subordinate courts of appeal are requested to follow the above direction henceforth while registering an appeal against an order passed in a preemption case. A copy of this order be sent to the learned District Judges for circulation and compliance while registering an appeal against an order passed in a misc case under Section 8 of the West Bengal Land Reforms Act, 1955 through the learned Registrar General of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.