

(2015) 03 CAL CK 0085

In the Calcutta High Court

Case No : CO 345 of 2015 and CAN 2170 of 2015

Sk. Sajhan Ali and Others

APPELLANT

Vs

Sk. Saber Ali and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Registration Act, 1908 — Section 5, 5(5), 61

West Bengal Land Reforms Act, 1955 — Section 14, 14M, 2(10), 2(6), 3

Citation : (2015) 3 CHN 689

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Aniruddha Chatterjee, Basab Shaw and Ranjit Das, for the Appellant; Ashok Kumar Janah and Pampa Dey (Dhabal), Advocates for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—This revisional application is directed against the judgement and order dated January 6, 2015 passed by the learned Additional District Judge, re-designated Court, Paschim Medinipur in Miscellaneous Appeal No. 635 of 2011, reversing the judgement and order dated May 17, 2011 passed by the learned Civil Judge (Junior Division), Ghatal in Judicial Misc. Case No. 25 of 2009.

2. The preemptee has filed the instant revisional application challenging the order of the Court of appeal below by which an application under Section 8 of the West Bengal Land Reforms Act, 1955 is allowed by reversing the judgment and order of the Trial Court.

3. The facts discernible from the respective pleadings of the parties are adumbrated hereinbelow:-

The property described in schedule "Kha" to the plaint originally belonged to one Aglima Khatoon @ Agli Khatoon and one Nasiman Biwi in equal shares. Nasiman Biwi executed registered deed of gift on September 27, 1965 by which her undivided share in respect of the said property was gifted to the plaintiff/

opposite party and the proforma opposite party in equal share. By a subsequent deed of settlement dated November 19, 1993 the plaintiff/opposite party settled his undivided share in favour of Nasiman Biwi for her life. After the death of the said Nasiman Biwi and Agli Khatoon the said property devolved upon the plaintiff/opposite party and the proforma opposite party in equal share i.e. undivided 50% share in respect thereof. Subsequently the plaintiff/opposite party sold, transferred and conveyed half of his share in favour of the proforma opposite party; by virtue whereof the said proforma opposite party became the owner of undivided 75% share in the property. By a registered deed of conveyance dated August 22, 2006 the proforma opposite party sold, transferred and conveyed his total share in favour of the defendants/petitioners for valuable consideration mentioned therein.

4. The plaintiff opposite party thereafter filed the instant miscellaneous proceeding originated on the basis of an application under Section 8 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said Act) seeking a transfer on payment of the consideration money and the compensation. The defence as it appears from the written-statement was founded on the allegations that the application under Section 8 of the said Act is barred by limitation having filed after the lapse of more than three years from the date of the knowledge of the registration of the sale deed. It is further alleged that prior to the institution of the aforesaid proceeding, a partition suit was filed being Title Suit No. 27 of 2007 which was dismissed for default on June 5, 2009 and, therefore, the plaintiff/opposite party had the knowledge of such transfer much prior to the filing of the preemption proceeding. It is further alleged that the proforma opposite party transferred his entire share in respect of the suit premises and, therefore, the preemption is not permissible under the said Act.

5. The trial Court dismissed the Miscellaneous Case as Section 8 of the said Act can only be attracted if a portion of share in plot of land is transferred and not when the entire share is transferred.

6. The appellate Court reversed the said finding with categorical observation that even if the entire share is transferred, the application under Section 8 of the said Act is maintainable.

7. At the time of moving the revisional application it was pointed out by Mr. Chatterjee, learned Advocate for the petitioner that a coordinate Bench of this Court in Case of Kinkar Mahato and Ors. Vs. Sahan Mahato and Ors. reported in 2005 (3) ICC 05, has 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.

8. I had an occasion to consider the point whether the preemption under Section 8 of the said Act would lie only in the event a portion of the share of a raiyat in a plot of land is transferred or is maintainable when the entire share or the portion in a plot of land is transferred by a raiyat to a stranger other than the co-sharer.

This Court did not notice the other coordinate Bench decision rendered in case of Kinkar Mahato (supra) to hold that the word "or" between the words "portion" and "share" sufficiently indicates 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.

9. Since two views have been placed before me, I appointed Mr. P.B. Sahoo, the learned Advocate as Amicus Curiae to assist the Court.

10. Learned Amicus Curiae placed the definition of "co-sharer of a raiyat in a plot of land" defined under Section 2(6) of the said Act to submit that it means a person other than the raiyat having undemarcated interest in the plot of land along with the raiyat, which should be read along with the definition of a raiyat given under Section 2(10) of the said Act to mean a person or an institution holding land for any purposes whatsoever. He thus submits that the raiyat is a person holding a land for any other purposes whereas the co-sharer is a person other than the raiyat having undemarcated interested in the plot of land along with the raiyat. He, therefore, submits that all the co-sharers having undivided interest in a plot of land are a raiyat and if any sale is made other than the person holding an undemarcated interest in the plot of land along with him, is entitled to claim preemption under Section 8 of the said Act.

11. Mr. Sahoo further submits Section 5 of the said Act cast a duty on the raiyat transferring a share or portion of a plot of land other than the co-sharer to file notices giving particulars of the transfer in the prescribed manner for service thereof to all the co-sharers to the plot of land, who are not the parties to the transfer. He further submits that the right to pre-empt under Section 8 of the said Act is borrowed from Section 25F of Bengal Tenancy Act with certain modifications.

12. According to Mr. Sahoo the word "or" is a significant word and may not always be construed as disjunctive but an inclusive one.

13. In support of the aforesaid contentions, he placed reliance upon a judgment of the J. Jayalalitha Vs. U.O.I. and Another, AIR 1999 SC 1912 : (1999) CriLJ 2859 : (1999) 3 JT 573 : (1999) 3 SCALE 502 : (1999) 5 SCC 138 : (1999) 3 SCR 653 : (1999) 2 UJ 1334 : (1999) AIRSCW 1579 : (1999) 5 Supreme 463 . He, therefore, concludes that if the statute used the word "or" in between the words "portion" and "share", the judgment rendered in case of Kinkar Mahato (supra) is per incuriam being against the statute as in the said judgment the coordinate Bench proceeded to decide the matter as if the word "of" in between the words "portion" and "share" is incorporated.

14. Mr. Chatterjee, learned Advocate for the petitioner submits that the Court of appeal below did not consider that the parties amicably demarcated the suit plot by oral partition which severed the jointness and, therefore, the application for preemption as a co-sharer of a plot of land is not maintainable. He further submits that the application under Section 8 of the said Act was filed after the

period of limitation provided in the said Section and ought to have been dismissed on the ground of limitation.

15. He placed reliance upon a judgment of a coordinate Bench rendered in case of *Ajit Mondal and Others Vs. Tapan Kumar Ghana and Others*, (2013) 2 CALLT 572 : (2013) 2 CHN 671 : (2013) 3 WBLR 194 to contend that the limitation would begin from the date of the knowledge of the transfer in case of non-notified co-sharer. Taking inspiration from the said judgement, Mr. Chatterjee would submit that since the plaintiff/opposite party had the knowledge of the transfer, the application under Section 8 of the said Act is palpably barred. He further relied upon a judgment of the coordinate Bench rendered in case of *Kinkar Mahato (supra)* to say that admittedly the entire share was transferred by the proforma opposite party to his clients and the preemption application is, therefore, not maintainable.

16. On the other hand, Mr. Janah, learned Advocate for the opposite party relied upon a judgment delivered by me in case of *Biswanath Sarkar and Another Vs. Sunit Kumar Saha*, (2013) 3 WBLR 271 , wherein it is held that even if the entire share or the portion of the plot of land is transferred by a raiyat, the application under Section 8 of the said Act is maintainable. He further relied upon a judgment of this Court in case of *Bhadreswar Bera Vs. Mathura Mohan Shaw and Others*, (2004) 4 CHN 349 , in support of his contention that if the co-sharers are enjoying the definite portions of a plot of land under mutual oral arrangement, the status of the plot of land remains unpartitioned. He further submits that the partition of a plot of land can only be presumed if the ingredients of Section 14 of the said Act is satisfied and, therefore, the oral partition is not recognized as a valid partition.

17. He thus submits that the limitation enshrined under Section 8 of the said Act would begin when the registration of a deed is complete under Section 61 of the Registration Act, 1908 and not the date of the knowledge of such transfer and placed reliance upon a judgment of this Court in case of *Sribas Chandra Biswas and Others Vs. Jiban Krishna Biswas*, (2012) 4 CHN 148 . He, therefore, submits that the deed was recorded in the register by the Registrar on April 20, 2009 and the application under Section 8 of the said Act was filed within two months therefrom, which is well within the period of limitation provided under the said Act.

18. Having considered the respective submissions, the following points evolved which requires an answer in the instant revisional application.

19. Firstly, the limitation would reckon from the date of the knowledge and not from the date when the registration is complete under Section 61 of the Registration Act, 1908. Secondly, whether the application under Section 8 of the Land Reforms Act, 1955 is maintainable when the entire undivided share in a plot of land is transferred by a co-sharer to a stranger. Thirdly, the oral partition is recognized under the West Bengal Land Reforms Act, 1955.

20. Taking the first point, it would be apposite to reproduce Section 8 of the said Act which runs thus:-

Section 8. Right of purchase by co-sharer or contiguous tenant:-

If a portion or share of a plot of land or a raiyat is transferred to any person other than a co-sharer of a raiyat in the plot of land, the bargadar in the plot of land may, within three months of the date of such transfer, or any co-sharer of a raiyat in the plot of land may, within three months of the service of the notice given under sub-section (5) of section 5, or any raiyat possessing land adjoining such plot of land may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction, for transfer of the said portion or share of the plot of land to him, subject to the limit mentioned in Section 14M, on deposit of the consideration money together with a further sum of ten per cent of that amount.

21. It is, therefore, clear that if a portion or share of a plot of land of a raiyat is transferred to any person than the co-sharer of a raiyat in a plot of land, any co-sharer of a raiyat in a plot of land may within three months from the date of service of notice given under sub-section 5 of Section 5 apply to the Munsiff having territorial jurisdiction for transfer of the said portion or share of a plot of land to him on deposit of the consideration money and the compensation. The second proviso to the said Section contains an order of preference over the adjoining raiyat in case the Bargadar does not apply for such transfer. The raiyat is defined in Section 2(10) of the said Act to mean a person or the institution holding the land for any purposes. The co-sharer is a person having undemarcated interest in the plot of land along with the raiyat in terms of Section 2(6) of the said Act.

22. Section 5 of the said Act puts an embargo in accepting the instrument for registration if the transfer is effected of a plot of land by a raiyat or a share or portion thereof, unless the notices giving particulars of the transfer in the proceeding in the prescribed form together with the process fees prescribed for service is tendered. Sub-section 5 of Section 5 contains the mechanism for effecting the service of the notices. Once the transfer is complete having recorded in the register by Registering Officer under Section 61 of the Registration Act, 1908, it would be presumed that such transfer is effected on the said date for the purpose of Section 8.

23. The expression "within four months from the date of such transfer" would be rendered illusory if the limitation is treated to begin from the date of the notice under Section 5(5) of the Registration Act, 1908. The notice under Section 5 of the Act is a requirement for acceptance of an instrument for registration which may be relevant for the extended period of limitation but becomes obliterated when an application under Section 8 of the said Act is filed within four months from the date of the transfer.

24. It admits no ambiguity that the transfer shall be treated not from the date of

presentation of the deed or the service of notice under Section 5 of the said Act but from the date when the Registrar inserted the instrument into the register under Section 61 of the Registration Act, 1908.

25. In the instant case, the registration was complete on April 20, 2009 and admittedly the application under Section 8 of the said Act was taken out within two months therefrom which cannot be held to be beyond the prescribed period of limitation.

26. Taking the second plea, the legislators consciously incorporated the word "or" between the words "share" and "portion", which necessarily implies that if a raiyat transfers his entire portion or share in a plot of land to a person other than the co-sharer of raiyat, the preemption is permissible.

27. In case of Kinkar Mahato (supra) though the Court in paragraph 14 thereof recorded that the right of preemption can be exercised when a portion or share of a plot of land of a raiyat is transferred to a person other than the co-sharer raiyat, but held that it is only when a co-sharer raiyat transfers a portion of a share of the plot of land, the right of preemption can be exercised.

28. The words used in the statute are not surplusages. The Court should not add or subtract any word used in the Section as each word carries a definite object behind its incorporation. If the word "of" is used in stead of the word "or" it is opposed to an intendment of the legislature and shall restricts its applicability to a special class of cases which, the legislature never intended.

29. The Apex Court in case of Sri Jeyaram Educational Trust and Others Vs. A.G. Syed Mohideen and Others, AIR 2010 SC 671 : (2010) 109 CLT 452 : (2010) 1 JT 391 : (2010) 1 SCALE 561 : (2010) 2 SCC 513 : (2010) 2 SCR 1127 : (2010) 2 UJ 639 : (2010) AIRSCW 871 : (2010) 1 Supreme 378 held the word "or" has a special significance and may not necessarily be used as disjunctive but inclusive as both the eventualities are well conceived.

30. The word "or" in its generic term is a particle used to connect words, phrases or classes representing alternatives. The word "or" is at times used to join terms when either one or the other or both are indicated.

31. It is well settled that a provision of a statute should be read, as it is in a natural manner, plain and straight without adding, substituting or omitting any words. It is only when such plain and straight reading or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty or absurdity which would be opposed to the legislative intendment, recourse can be make to a settled rules of construction and interpretation to ascertain the true meaning of the provision.

32. The judgement which is contrary to the statute is not a good law and is treated as per incuriam. The coordinate Bench in case of Kinkar Mahato (supra) has substituted the word "of" in place of word "or" without indicating the legislative omission and, therefore, cannot be held to be a judgment binding

upon the coordinate Bench.

33. This Court, therefore, hold that the preemption application is maintainable even when the entire share or entire portion of a plot of land is transferred by a raiyat to any person other than the co-sharer raiyat.

34. The third point does not need an elaborate discussion in view of the pronouncement by the coordinate Bench in case of Bhadreswar Bera (supra) in these words:-

Para 13. According to section 2(6), the "co-sharer of a raiyat in a plot of land" means a person other than the raiyat, who has an un-demarcated interest in the plot of land along with raiyat. In the case before us, it has been established that there is no registered deed of partition between the pre-emptor and his brother. The pre-emptor has also given evidence stating that by mutual oral arrangement, he is in possession of a particular portion. There is no two-opinion on the position of law that if statute prohibits partition of a particular class of property except by way of registered document, then unless partition is effected by a registered deed there can be no partition in accordance with law even if, the parties actually made oral partition. In such a case, if the co-sharers 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. Therefore, so long there is no partition in accordance with the provisions contained in Section 14 of the Act, the pre-emptor, in spite of his possession in a demarcated portion of plot Nos. 1033 and 85, remains a co-sharer of those plot of land and has un-demarcated interest in the entire plots in question. I, thus, find no substance in the aforesaid contention raised by Mr. Bagchi.

35. To add a few words, it would be relevant to take note of Section 14 of the said Act, which recognized the partition of a plot of land amongst the co-sharer of raiyat to be made either by a registered instrument or a decree or the order of the Court. There is no concept of oral partition recognized under the West Bengal Land Reforms Act, 1955, which may otherwise be permissible by way of any custom or usage or contract. Section 3 of the said Act which runs thus:-

Section 3. Act to override other laws.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any custom or usage or contract, express or implied, or agreement or decree or order or decision or award of a Court, tribunal or other authority.

36. Thus it makes all the Acts inconsistent with the said Act and gives primacy to the provision of the West Bengal Land Reforms Act over the same.

37. This Court, therefore, does not find any substance in the submission of Mr.

Chowdhury in this regard. To conclude this Court finds that the judgment and order of the appellate Court do not requires any interference in whatever angle the matter is looked at.

38. The revisional application therefore, fails. No order as to costs.

39. With the disposal of the revisional application the connected application being CAN 2170 of 2015 is also disposed of.