

(1982) 03 CAL CK 0042
In the Calcutta High Court
Case No : Civil Revn. No. 761 of 1979

Sm. Kusum Rani Biswas

APPELLANT

Vs

Sanyasi Biswas and Another

RESPONDENT

Date of Decision : 01-03-1982

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 8

Citation : AIR 1982 Cal 243 : 86 CWN 556

Hon'ble Judges : S.N. Sanyal, J

Bench : Single Bench

Advocate : Shyamacharan Mitter and Syamaprosanna Roy Chwdhury, for the Appellant; Harinarayan Mukherjee, for the Respondent

Judgement

1. The opposite party No. 1 Sanyasi Biswas filed an application u/s 8 of the West Bengal Land Reforms Act for pre-emption on the ground that he was a contiguous owner of the disputed land which was transferred by opposite party No. 2, Tukubala Biswas, to the petitioner Kusum Rani Biswas. The learned Munsif dismissed the application on the ground that Sanyasi Biswas had failed to prove that he was a contiguous owner of the disputed portion sought to be pre-empted. The appeal preferred by Sanyasi Biswas was allowed by the learned Additional District Judge who came to the finding that appellant Sanyasi Biswas a raiyat and he was in possession of land adjoining the disputed holding out of which the disputed three plots were transferred. The petitioner Kusum Rani Biswas has challenged the said decision of the learned Additional District Judge in the present revisional application.

2. Mr. S.C. Mitter, learned Advocate for the petitioner, has submitted that the learned appellate Court failed to exercise jurisdiction as the court did not consider the entries in the R.S. records and the admission of P.W. 1, Sanyasi Biswas, that the land was non-agricultural. Mr. Mitter contends that as the land was non-agricultural the provisions of Section 8 of the Land Reforms Act were not applicable. In support of his contention Mr. Mitter relies on the case of Mishri

Show v. B. N. G. Institution, (1978) 1 Cal LJ 532, Eyachhin Ali Naskar v. Gopal Gazi, (1979) 83 CWN 87, Kamaleswar Singha v. Bijoli Bhattacharya, (1979) 2 Cal LJ 526. Mr. Mitter has further contended that the document sought to be pre-empted, namely, the document (Ext. B) dated Aug. 3, 1974 is not a kobala but only a deed of release as Tukubala Biswas was benamdar of her husband Rabindranath Biswas. Mr. Mitter submits that Kusum Rani purchased from Rabindranath Biswas by the kobala, Ext. B (1), dated March 18, 1974. But as it transpired subsequently that a benami document had been executed by Rabindra in favour of his wife Tukubala (Ext. B (2)) on March 15, 1974 it was thought advisable to have a deed of release from Tukubala. Mr. Mitter argues that all these questions are material for the purpose of decision of the application for pre-emption and the learned court? below failed to exercise their jurisdiction.

3. Mr. Harinarayan Mukherjee, learned Advocate for the opposite party No. 1, has submitted that the contentions raised by Mr. Mitter cannot be urged in the present revisional application as no objection was raised by the petitioner Kusum Rani before the trial court as well as before the appellate Court regarding the land being non-agricultural. It has further been contended that Rabindra had already sold to Tukubala and, as such, Kusum Rani did not derive any interest by the kobala, Ext. B (1). Kusum Rani's interest accrued only when the disputed document was executed by Tukubala in her favour and Sanyasi Biswas being the contiguous owner of the disputed land was entitled to pre-empt.

4. After hearing the learned Advocates for the parties and considering the materials before me I am of opinion that the Rule should be made absolute. The learned trial court dismissed the application only on the ground that opposite party No. 1 Sanyasi Biswas had failed to establish that he was the owner of land adjoining the disputed holding. Another contention which was raised before the learned trial court, namely, whether the disputed document was a deed of release or not was not considered. The learned appellate Court allowed the application u/s 8 of the Land Reforms Act reversing the finding of the learned Munsif and holding that petitioner-appellant was a raiyat possessing land adjoining the disputed holding. The learned appellate Court, however, did not take into consideration the entries in the record of rights regarding the nature of the disputed plots and the admission of P.W. 1, Sanyasi Biswas, that the suit land was non-agricultural. In view of the decisions reported in (1978) 1 Cal LJ 532: (1979) 83 CWN 87 and (1979) 2 Cal LJ 526, the character of the disputed land, that is, whether it is agricultural or non-agricultural, is to be determined with reference to the user of the land. In this connection, the evidence of P.W. 1, Sanyasi Biswas, regarding the nature of the land will also be relevant. The learned courts below committed jurisdictional error in not considering these aspects of the question.

5. Another contention of Mr. Mitter is that the courts below failed to exercise jurisdiction as the petitioner Kusum Rani raised the objection that the disputed document executed by Tukubala was not a deed of transfer but only a deed of

release. Referring to the decision in Balai Chand Mondal Vs. Nibaran Chandra Dass and Others, Mr. Mitter has argued that in hearing an application u/s 8 of the Land Reforms Act the question of benami can be gone into. In Balai Chand's case, referred to above, it was held that in a pre-emption proceeding u/s 26F of the Bengal Tenancy Act the question of benami or fictitious transfer can be gone into. The question that the transfer was fictitious and the transferee held the property for the transferor himself was decided and the said decision would operate as res judicata in a subsequent suit by the transferee for the declaration that the transfer was benami. This decision is in respect of Section 26F of the Bengal Tenancy Act. But the principles would also be applicable to an application u/s 8 of the Land Reforms Act and in such a case the real nature of the purported transfer giving rise to the application u/s 8 of the Land Reforms Act may be gone into in a proceeding u/s 8 of the Land Reforms Act. There was jurisdictional error on the part of the learned courts below in not dealing with this question which was specifically raised by the petitioner Kusum Rani Biswas in her petition of objection.

6. In the result the Rule be made absolute without costs. The judgments of both the courts below be set aside and the matter be remitted to the learned trial Court for decision in accordance with law. Rule made absolute.