

(1979) 02 CAL CK 0030
In the Calcutta High Court
Case No : C.R. No. 1802 of 1974

Sundar Mondal

APPELLANT

Vs

Smt. Sailabala Mondal and Others

RESPONDENT

Date of Decision : 07-02-1979

Acts Referred:

Limitation Act, 1963 — Article 137
West Bengal Land Reforms Act, 1955 — Section 8

Citation : AIR 1979 Cal 195

Hon'ble Judges : Jyotirmoyee Nag, J

Bench : Single Bench

Advocate : Parantap Roy, for the Appellant; Manjula Sengupta (Choudhury), for the Respondent

Judgement

Jyotirmoyee Nag, J.—This Rule is directed against the judgment passed in Misc. Appeal No. 167 of 1973 by the learned District Judge, Howrah, dismissing the appeal of the petitioner.

2. The petitioner's case is that he along with Badan Chandra Mandal and Nidhiram are co-sharers of the disputed property, namely, the residential house and the doba appertaining thereto. Badan Chandra Mandal transferred by deed of sale a portion of the share in the undivided residential house and the doba appertaining thereto to Sailabala on 22-12-1966. Badan Chandra Mandal did not disclose in the deed of sale that he had co-sharers and also did not comply with the mandatory provisions laid down in Section 5(5) of the West Bengal Land Reforms Act. On 30-4-70 the petitioner came to know about the sale and on 21-5-1970 the petitioner filed an application for pre-emption u/s 8 of the West Bengal Land Reforms Act before the Revenue Officer on 22-5-1970 which was later on transferred to the learned Munsif after the amendment of the Act in 1972. The learned Munsif rejected the application u/s 8 of the West Bengal Land Reforms Act on the ground of limitation as he held that the application for pre-emption was not filed within three years of the date of transfer. The petitioner

preferred an appeal being Misc. Appeal No. 167 of 1973. The learned District Judge also dismissed the appeal on the ground of limitation in spite of his own finding that the relationship of co-sharer existed between the parties and there was in fact non-service of notice u/s 5(5) of the West Bengal Land Reforms Act.

3. It is contended before me by the learned Advocate for the petitioner that both the learned Munsif and the learned District Judge erred in relying upon Article 137 of the Limitation Act and holding that the application of the petitioner to be time barred. His contention is that prior to 1972 when the application was made before the Revenue Officer, no limitation was prescribed under the Act for making an application u/s 8 of the Land Reforms Act in case of unnotified co-sharers and the Indian Limitation Act was not attracted to his case as the application made before the Revenue Officer. Accordingly the learned District Judge erred in dismissing his appeal. In this connection the learned Advocate has relied upon a decision of a Division Bench of this Court reported in (1977) 81 CWN 580. In that case Their Lordships have held that after the passing of the West Bengal Land Reforms Act, 1972, Article 137 of the Limitation Act, 1963, would apply to an application for pre-emption u/s 8 of the West Bengal Land Reforms Act, 1955. No period of limitation, however, was fixed for an application for pre-emption by a co-sharer who had not been given notice of the transfer when such application had to be made before the Revenue Officer before the said Amendment of the Act was made. In the instant case no notice of transfer was served on the petitioner and the application for pre-emption was made prior to the amendment of 1972, before the Revenue Officer. Therefore, this decision will - apply on all fours to the facts of the present case.

4. Accordingly this application succeeds and the impugned judgment is set aside and the appeal sent back to the learned Additional District Judge for consideration on merits.

5. No order is made as to costs.