

District : *Bankura*

In the Court of the Civil Judge (Junior Division),

2nd Court, Khatra, Bankura.

Present :*Sri Arko Dev Mukherjee,*

Civil Judge (Junior Division),

2nd Court, Khatra, Bankura.

Case filed on 1st day of February, 1995

Judgment delivered on 30th day of March, 2015

Judicial Miscellaneous Case No. 03/1995

Ramkinkar Khara.

Petitioners

--Versus--

Ashutosh Mondal.

Opposite parties

This is a case filed by the petitioner under section 8 and 9 of the West Bengal Land Reforms Act, 1955.

The petitioner case is that they are adjoining land owners in respect of the disputed suit property along with the present opposite parties. The land as described in Dag No. 232, originally belonged to one Rajani Kanta Khara. After his demise the said property devolved upon his two sons namely, Satya Kinkar Khara and Ramkinkar Khara. The R.S . Khatian had been recorded to that effect.

Land described in R.S Khatian No 280, Dag No. 229 amounting to 3 decimals originally belong to Goti Gobinda Sahoo.

The Said Goti Gobinda Sahoo gifted the afore-mentioned property along with other property to one Jashomoti Khan. The petitioner have claimed that their property Viz. Dag No 232 is adjoining to the schedule mention property of Dag No 229 and therefore, they are adjoining land owners in respect of that property. They have further claimed that on 23.10.1992 the said Jashomoti Khan sold the schedule mentioned property to the principal opposite party vide registered deed of sale. Therefore, the petitioner have approached this Court for exercising their right of pre-emption as adjoining land owners.

The opposite party duly contested the suit. Their claim is that the petitioner could not prove that they are adjoining land owners to the said property. No settlement map was exhibited. Moreover, the said Jashomoti Khan had transferred 14 decimals of land by means of 4 sale deeds but in this case property comprising of 3 decimals have been sought to be pre-empted. According to the opposite party the present case is also barred by limitation.

The opposite party further submitted that out of 27 decimals of land comprised in dag No. 229, 50%(8 annas share) of the said property was bought by the present opposite party from Jashomoti Khan and the remaining 50 % was vested by the State Government. On 23.10.1992, Jashomoti Khan sold 3 decimals of land from her share to the present opposite party. The opposite party further claimed that Jashomoti Khan had sold her share of 14 decimals entirely on 23.10.1992 by virtue of 4 sale deeds. Therefore, the instant pre emption case is not maintainable and hence, the opposite party has prayed for rejection of the same.

Now, let me consider the evidence on record.

The plaintiff has examined two witnesses namely,

P.W.1 Ramkinkar Khara.

P.W. 2 Jamini Mahato

The following documents are marked as exhibit

Exbt.1 Challan showing depositions of consideration money.

Exbt. 2 certified copy of impugned sale deed.

Opposite party has examined 1 witness namely,

O.P.W.1 Ashutosh Mondal

The following documents are marked as exhibit.

Exbt.A Certified copy of the R.S Khatian No. 1080 of Mouza- Rudra.

Exbt.B Original deed No. 4114 dated, 23.10.1992.

POINTS FOR CONSIDERATION

1. Is the case maintainable in its present form and Law?
2. Is there any cause of action to file this case?
3. Is the case barred by the law of limitation?
4. Is the petitioner entitled to get the relief as prayed for?
5. To what other relief or reliefs if any is the petitioner entitled?

DECISION WITH REASONS

Point Number 1 And 2

Both the aforesaid points are interlinked and they are taken up together for discussion in order to avoid unnecessary repetition.

The petitioner has claimed to be the adjoining land owner in respect of the schedule mentioned property and has sought to exercise his right of pre-emption over the same. The petitioner has deposited Rs. 3000/- as consideration money with a further sum of 10% of that amount total amounting to Rs.3300/- by appropriate challan. I also do not find anything from the evidence adduced by the parties that the petitioner has no cause of action for filing this suit.

Hence I answer point no. 1 and 2 in favour of the petitioners.

Point number 3

According to the petitioners no notice was served upon them before execution of deed of sale dated 23/10/92 registered at ADSR, Khatra in favour of the opposite parties and they came to know about the execution of the said deed of sale from the others and thereafter obtained a certified copy of same and filed the instant case on 1/2/95. The opposite party has not adduced any evidence to show that notice of the said transfer was served upon the petitioner under section 5 (5) of the West Bengal Land Reforms Act. In the case of a co-sharer, Raiyat is to serve a notice under section 5 (5) of the West Bengal Land Reforms Act. The limitation prescribed for filing an application for pre-emption is three months from the date of service of such notice. But in case of the co- sharer on whom no notice has been served under section 5 (5) of the West Bengal Land Reforms Act, no limitation has been prescribed by

section 8 (1) of the said Act. So Article 137 of the Limitation Act, 1963 is attracted and the period of limitation to an application of pre-emption by a co-sharer Raiyat who has not been served with a notice of transfer under section 5 (5) of the West Bengal Land Reforms Act is three years from the date of transfer. But in the case of an adjoining land owner the period of limitation is fixed in section 8 of the West Bengal Land Reforms Act, 1955 which is 4 months.

The property in question was transferred on 23/10/92 and the petitioner has filed the instant case on 1/2/1995 which is barred by limitation. The limitation period for exercising the right of pre-emption as adjoining land owner has been prescribed to be four months but in this case there is an unexplained delay of over two years. At this point it would be proper to reproduce the observations made by the Hon'ble Supreme Court in **Gopal Sardar v. Karuna Sardar, AIR 2004 SUPREME COURT 3068:**

"8. There is yet another good reason for insisting that right of pre-emption must be exercised within the period specified under Section 8 of the Act so that the rights of purchasers of a land cannot be eclipsed for a long time. Right of pre-emption was sought to be exercised after six years and four years from the dates of transfer respectively as against the period of four months prescribed under Section 8 of the Act without any scope for extension of that period. Sub-section (3) was added to Section 8 of the Act by the West Bengal Land Reforms (Amendment) Act, 1972 w.e.f. 15-2-1971. Prior to 15-2-1971, an application under Section 8 was required to be made to the "Revenue Officer specifically empowered by the State Government in this behalf". This phrase was substituted by the phrase "Munsif having territorial jurisdiction" by the aforementioned amendment. Even after this amendment when an application is required to be made before the Munsif Court, no amendment was made to Section 8 of the Act

either to apply Section 5 of the Limitation Act or its principles so as to enable a party to make an application after the expiry of the period of limitation prescribed on showing sufficient cause for not making an application within time. The Act is of 1955 and for all these years, no provision is made under Section 8 of the Act providing for condonation of delay. Thus, when Section 5 of the Limitation Act is not made applicable to the proceedings under Section 8 of the Act unlike to the other proceedings under the Act, as already stated above, it is appropriate to construe that the period of limitation prescribed under Section 8 of the Act specifically and expressly governs an application to be made under the said section and not the period prescribed under Article 137 of the Limitation Act.”

Further the point regarding limitation was further dealt with by the Hon’ble High Court at Calcutta in the case of **Tapan Krishna Das v. Hazi Sajad Ali Khan AIR 2005 CALCUTTA 60** wherein it was observed as follows:

*“5. It is to be remembered that the law of pre-emption is applicable universally to a stranger. Section 8 of the West Bengal Land Reforms Act says who will get the priority over such stranger. Firstly, the co-sharer of the plot of land (holding). Secondly, the bargadar of the plot of the land (holding). Thirdly, the adjacent raiyat of the plot of the land (holding). First two cases are not subject matter herein. Therefore, the last case i.e. the claim of the raiyat of the adjoining plot of land (holding) is the question herein. The period of four months from the transfer, while considering I have given specific thought on this point why legislature intended to incorporate the period of four months in such Act. My interpretation is that beyond the period of four months one cannot be said to be stranger. In other words, right to dislodge one treating him stranger diminishes. One cannot hold his right of action against stranger indefinitely. Thus, I cannot hold it good to say that the period prescribed under the Section is either a handmaid of justice or directory as in nature but mandatory. If the right of the adjacent plot holder as a matter of priority continues forever right of the lawful purchaser will be interfered with. That is not the intention of the legislature. **Four months period is a scope to adjoining plot holder having priority to purchase. If the time is exhausted or not availed of, a new right cannot accrue after such period.”***

It was further observed by the Hon'ble High Court at Calcutta in the case of **Minor Subir Ranjan Mondal v. Sita Nath Mukherjee** **AIR 1994 CALCUTTA 166** in the following words:

*“In view of the aforesaid observations of the Division Bench, with which I am in full agreement, **it is now clear that in case of an adjoining owner, an application for pre-emption under Section 8 of the Act cannot be filed beyond four months from the date of transfer by invoking Article 137 of the Limitation Act.** Such being the settled law now, it can now be safely said that Article 137 of the Limitation Act can be applied to an "application" under Section 8 of the Act only in cases of non-notified co-sharers who were not served with notice under Section 5(5) of the Act. When a pre-emptor has been served with a notice under Section 5(5) of the Act or has filed an application for pre-emption as an adjoining owner, the application for pre-emption cannot be said to have been filed in time by invoking Article 137 of the Limitation Act after the period of Limitation prescribed in Section 8 itself expires.”*

On a conjoint reading of the aforementioned judgments it is abundantly clear that an adjoining land owner has to exercise his right of pre-emption within 4 months as prescribed in Section 8 of the West Bengal Land Reforms Act, 1955. Thus this suit is barred by limitation.

Considering the above facts and circumstances I do not have any hesitation to hold that the instant case is barred by the law of limitation.

So I decide point number 3 against the petitioner.

Point No. 4 & 5

This case being hopelessly barred by limitation requires no more discussion as regards the petitioners claim as adjoining land owner. Still this court found no cogent document on record to

conclusively hold that the petitioners were adjoining land owners. The Mouza Map was not brought before this court. In addition to this PW 1 had during cross examination stated that plot no 230 is located in between plot no. 229 and 232. There is ambiguity in the statement of PW1 and the claim of the petitioner as adjoining land owner. Therefore this court holds that the petitioners are not entitled to claim their right of pre-emption as adjoining land owners.

As a result the instant case fails.

Hence it is,

Ordered

that the instant Miscellaneous case filed under section 8 and 9 of the West Bengal Land Reforms Act is considered and rejected on contest but without any cost.

Petitioner is hereby permitted to withdraw the sum of Rs.3300/- which has been deposited by way of Challan dated 01/02/1995.

Typed by me:

Civil Judge (J.D.), 2nd Court,
Khatra