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2016
(SKB)

C.O. 3919 of 2012

Nasiruddin Sk. @ Nasiruddin Hafij & Ors.
Versus
Mahasin Ali Khan

Mr. Usof Ali Dewan,
Mr. Arup Sarkar
... for the petitioners.

Mr. Arindam Chattopadhyay,
Mr. Niranjan Kr. Sinha
... for the opposite party.

Order impugned dated 27th July, 2012 passed by the District Judge, Jangipur, Murshidabad, in Misc. Appeal No.14 of 2009 allowing the appeal there by reversing the order of the learned Trial Court which has allowed the pre-emption application in favour of the both petitioners is under challenge in this revisional application.

Petitioners filed a Misc. Case No. 52 of 1990 against the opposite parties in the Court of Civil Judge, Junior Division, 2nd Court Jangipur under Section 8 of the West Bengal land Reforms Act praying for pre-emption. Petitioners purchased .18 acre of land of plot no. 136 of Mouza-Ratanpur on 10th May, 1979. The opposite parties purchased .0625 acre of land of plot no. 133 of Mouza-Ratanpur by a registered deed dated 6th January, 1986 which was registered on 3rd April, 1990. Petitioners are the adjoining land holders of plot no. 133. Petitioners are being two brothers claimed pre-emption on the ground of vicinity by depositing the consideration amount along with 10% of the amount as per the requirement under the relevant section.

Opposite parties contested the Misc. Case No. 52 of 1990 by filing a written objection contending that the opposite parties got no interest in plot no. 136 as the vendors of the deed dated 10th May, 1979 and had no title in the said plot. Learned Civil Judge, Junior Division, 2nd Court allowed the misc. case under section 8 of the West Bengal Land Reforms Act after consideration of all evidence on record.

Being aggrieved and dissatisfied with the order passed by the learned Civil Judge, Junior Division, 2nd Court, Jangipur, dated 7th May, 2003, misc. appeal was preferred by the opposite parties on the ground that the learned Judge had held that the petitioners were not the owners of plot no. 136 and not the

adjoining land holders of plot no.133. It was also contended by the opposite party that the learned Judge should not have placed reliance on the documents which were not legally proved nor admissible in evidence.

The appeal which was numbered as Misc. Appeal No. 4 of 2005 was heard by the Second Fast Track Court of the Additional District Judge, Jangipur, Murshidabad, and disposed of on 30th January, 2006. The learned Judge set aside the order passed by the Civil Judge, Junior Division, 2nd Court, Jangipur, and sent it for rehearing on remand.

The learned Judge, Second Fast Track Court of the Additional District Judge, Jangipur, Murshidabad, was of the view that the learned Trial Court passed an order without any whisper about the deed of 6th January, 1986. Learned Judge was also of the view that the deed of transfer dated 6th January, 1986 in favour of the opposite parties in respect of plot no. 133 of Mouza-Ratanpur is the most important document for proper adjudication of the case. In absence of the aforementioned document, it could not be held that the appellant/opposite party purchased 0.625 acre of land in plot no. 133 of Mouza-Ratanpur on 6th January, 1986 and the registration was completed on 3rd April, 1990. However, the learned Trial Court once again heard the matter and allowed pre-emption in favour of the petitioners/respondents.

Against that opposite party preferred an appeal before the learned Additional District Judge, Jangipur, Murshidabad and as it appears, the learned Additional District Judge did not consider the arguments but he himself interpreted Section 8 of the W.B.L.R. Act holding that since the petitioners being the two brothers jointly purchased plot no. 136, according to the provisions under Section 8 of the said Act, both of them cannot maintain the application for pre-emption under Section 8 of the W.B.L.R. Act. That was the learned Judge's own point which was neither argued by the petitioners nor by the opposite party.

Learned Judge was pleased to hold that the legislative intention is clear from the definition of the word "raiyat" in Section 2(10) of the West Bengal Land Reforms Act and, according to him, provision of Section 13(2) of the General Clauses Act, 1897 has no application. Learned Court below was of the view that in view of the definition of the word "raiyat", the provision under Section 13(2) which lays down that in the absence of anything repugnant in the subject or context words in the singular shall include the plural and vice versa was not applicable in the present context. That is how the learned Judge came to a conclusion that since the purchasers were two brothers and this provision under

Section 2(10) defining "raiyat" means a person or an institution two brothers are not eligible to maintain the pre-emption application. As a result, it would come out only in case of a single purchaser or a single co-sharer or purchased by a single co-sharer pre-emption is applicable, otherwise not.

Now the question arises whether the learned Judge's point and his interpretation is a valid interpretation to reject the claim of two brothers who are jointly owners and raiyat and have filed the application for pre-emption.

It is now well settled that the provision under Section 8 of the W.B.L.R. Act is quite clear and the object of Section 8 is to secure consolidation of a plot of land by giving right of pre-emption to a bargadar or to a co-sharer or raiyat in the plot of land or to any raiyat possessing land adjoining such plot of land to prevent the fragmentation of plot of land. Therefore, the main object and purpose of the Section 8 is to stop fragmentation. If that is the object and purpose of the Act, then the interpretation so given by the Appeal Court would frustrate the object and purpose for which the legislation was brought. Moreover, the logic of the learned Judge based on the definition of raiyat is also not acceptable.

It would be evident from the provision itself that any raiyat possessing land adjoining to such plot of land would definitely envisage that any of the co-sharers or any of the raiyats having adjoining land and in cases, more than one person being co-owners or co-raiyats being adjoining owners can apply under Section of the W.B.L.R. Act. Keeping in mind, the purpose and object of those two sections being Section 8 and Section 9 of the W.B.L.R. Act, it is obvious that the provision under Section 13(2) of the General Clauses Act, 1897 would also have application in the present context.

However, this is not the point raised either by any of the parties.

In this regard it would be relevant to note that the learned Single Judge of this Hon'ble High Court while considering the provisions under Section 8, 9(3) of the West Bengal Land Reforms Act, 1955 held, if none of the applicants have common boundary with the land transferred, although they are "raiyat possessing lands adjoining such holding" the Court may apportion the portion or share of the holding transferred in such manner or on such terms as it deems equitable as authorised by section 9(3) of the Act. It was further held that the opposite parties being raiyats possessing land adjoining the holding of the vendor of the petitioner were entitled to maintain the application for pre-emption notwithstanding the fact that their other co-sharers of holding had not joined

with them or that they could not be described as raiyats having common boundary with the land transferred.

The relevant paragraph 17 of the judgment reported in ***2000(I) CHN 505 [Smt. Bula Kundu Vs. Sri Nirmal Kumar Kundu & Anr.]*** is quoted hereunder:

> "In my opinion, in order to maintain an application for pre-emption on the ground of adjoining ownership it is not necessary that the applicant must be the full owner of the adjoining holding. Even a co-sharer of the adjoining holding may apply for pre-emption. Similarly, I do not find any substance in the contention of Mr. Banerjee that pre-emptor must have land adjoining the portion of the land which has been transferred by the disputed transaction. The language of section 8 of the Act makes it clear that the applicant for pre-emption must be adjoining owner of the holding part of which has been transferred by the disputed transaction. Therefore, even if a holding consists of three plots e.g. (a), (b) and (c) and the pre-emptor is a co-sharer of the adjoining holding consisting of three different plots e.g. (d), (e) and (f) and if by the disputed transaction a part of plot (a) has been transferred, a co-sharer of holding consisting of plot Nos. (d), (e) and (f) can maintain such application although there is no common boundary line between the plot (a) of the holding consisting of plot Nos. (a), (b), (c) and the holding consisting of plot Nos. (d), (e) and (f). As pointed out by this court in the case of Ishan Chandra Ghatak vs. Sasadhar Maity, reported in 82 CWN 195, relied upon by Mr. Roychowdhury appearing on behalf of the opposite parties, in section 8 there is no qualifying word to 'holding' and thus it is not necessary that the pre-emptor must be holding land adjoining the actual land sold by the disputed transaction."

If the interpretation given by the learned Appeal Court is accepted that if one person comes and makes application then the application for pre-emption is maintainable and if more than one person being the joint owners come, then it is not maintainable. This interpretation would definitely be hit by Article 14 of the Constitution of India. However, this is not the intent of the legislature. Otherwise also it would be an unacceptable proposition and/or interpretation to give such a narrow meaning of the provision under Sections 8 & 9 of the W.B.L.R. Act. While considering and/or interpreting this type of provision under an Act, one has to keep in mind the intend, object and purpose for which the legislation was made. If it is found that an interpretation, if accepted, goes against the intent, object and purpose of the legislation, in that event, that interpretation is not at all acceptable. The interpretation which subserves the purpose and object of the Act is to be accepted. On that score also learned Appeal Court have gone wrong and, as such, the order impugned is not sustainable.

In my view, the interpretation given by the Appeal Court is an erroneous one, which definitely frustrates the object of the legislation. Therefore, that interpretation is not at all acceptable. Accordingly, the order impugned passed by the learned Appellate Court allowing the Misc. Appeal No. 14 of 2009 is set aside. The order of the learned Civil Judge, (Jr. Division) 2nd Court, Jangipur, Murshidabad in Misc. Case No. 52 of 1990 would subsist.

The revisional application is thus allowed.

(Ashoke Kumar Dasadhikari, J.)