

In The High Court At Calcutta  
Civil Revisionl Jurisdiction  
Appellate Side

**CO 1275 of 2013**

**Smt. Nirmala Pandey**  
**-Vs.-**  
**Smt. Gouri Raha & Ors.**

Coram : The Hon'ble Justice Arijit Banerjee

For the Petitioner : Mr. Buddhadev Ghosal, Adv.  
Mr. Aninda Lahiri, Adv.  
Mr. Pradyut Kumar Roy, Adv.

For the Opposite Parties : Mr. Bhaskar Ghosh, Adv.  
Mr. Amitesh Chakraborty, Adv.  
Mr. Subrata Kumar Sarkar, Adv.

Heard on : 17/02/2015 & 19/02/2015

Judgment On : 18/03/2015

**Arijit Banerjee, J.:**

(1) This revisional application has been filed challenging the judgment and order dated 24<sup>th</sup> January, 2013 passed by the Ld. First Court of Additional District Judge, Barasat in Misc. Appeal No. 87 of 2009 setting aside the judgment and order dated 15<sup>th</sup> June, 2009 passed by the Ld. Civil Judge (Junior Division) First Court, Barasat in Misc. Case No. 91 of 1988 filed Under Section 8 of the West Bengal Land Reforms Act, 1955.

(2) Md. Fajal Haque and others and Abdul Latif Shahgi and others were in joint possession of 1.04 acres and 78 decimal of land respectively. One Smt. Latika Bose acquired the said lands from them.

(3) In 1971 Lakita transferred a portion of the said property as described in schedule 'C' to the application being Misc. Case No. 91 of 1988 to one Ashis Mitra. In 1977 Lakita transferred another portion of the said property described in schedule 'B' to the said application to Birendra Chakraborty. In 1979 Latika sold and transferred a portion of the said property described in schedule 'A' to the said application to Smt. Nirmala Pandey who is the petitioner in this revisional application.

(4) In 1984 Birendra sold the property that he had acquired from Latika, to the present petitioner. As such, the present petitioner became the owner of the properties described in schedule 'A' and schedule 'B' to the said application.

(5) By a registered sale deed dated 16<sup>th</sup> December, 1985 the legal heirs of Ashis Mitra transferred the schedule 'C' property to the predecessor-in-interest of the of the present opposite parties. This is the subject matter of pre-emption.

(6) Alleging that only on 1<sup>st</sup> March, 1988 she came to know about the transfer of the schedule 'C' property by the legal heirs of Ashis Mitra, the

petitioner herein filed an application under Section 8 of the West Bengal Land Reforms Act, 1955 in the First Court of Civil Judge (Junior Division), Barasat, being Misc. Case No. 91 of 1988, asserting her right of pre-emption in respect of the said property (hereinafter referred to as 'the suit property').

(7) This court by its order dated 12 April, 1999 passed in CO No. 1746 of 1994 (preferred against order dated 02.07.1994 passed by the Ld. District Judge, Barasat in Civil Revision Case No. 86 of 1993 which affirmed the order dated 19<sup>th</sup> June, 1993 passed by the Trial Court in the said Misc. Case in respect of a petition under Section 5 of the Limitation Act), held that a proceeding for pre-emption under Section 8 of the West Bengal Land Reforms Act should be treated as a suit and as such Section 5 of the Limitation Act would not have any application to such proceeding. This Court held that the Section 5 petition filed in connection with the Misc. Case could not be entertained and the claim of pre-emption of the petitioner on the ground of vicinage was time barred. This Court directed the Trial Court to dispose of the Misc. Case on the ground of co-sharership.

(8) The Ld. Trial Court after considering the entire evidence on record came to a finding that the petitioner was a co-sharer in respect of the suit property and that no notice under Section 5(5) of the West Bengal Land Reforms Act had been served on the petitioner. Accordingly, the Trial Court

held that the limitation period that was applicable was three years and the pre-emption application was filed within the period of limitation. The Ld. Trial Judge allowed the petitioner's application for pre-emption by a judgment and order dated 24<sup>th</sup> January, 2013.

(9) Being aggrieved the opposite parties (i.e. the pre-emptees) filed Misc. Appeal No. 87 of 2009 in the First Court of Additional District Judge, Barasat. The Ld. Appellate Court held that the petitioner herein is not a co-sharer with respect to the suit property and accordingly allowed the appeal reversing the order of the Ld. Trial Judge. Being aggrieved, the petitioner is before this court by way of the instant revisional application.

(10) Ld. Counsel appearing for the petitioner submitted that the Ld. Appellate Court erred in holding that the petitioner is not a co-sharer in respect of the suit land. The Court came to such a finding on the basis that the suit land is a demarcated plot of land which was purchased by the predecessor-in-interest of the opposite parties from the heirs of Ashis Mitra and the schedule 'A', schedule 'B' properties which the petitioner purchased from Latika and Birendra Chakraborty respectively are also demarcated properties. Ld. Counsel submitted that the basis of arriving at the conclusion that the petitioner is not a co-sharer in respect of the suit plot is erroneous. Originally schedule 'A', schedule 'B' and schedule 'C' properties all were

part of one big plot of land belonging to Lakita. There has never been any physical partition of the said land. Under Section 14 (1) of the West Bengal Land Reforms Act partition of a plot of land among co-charers of a raiyat owning the land can be made only by a registered instrument or under a decree or order of Court. It is nobody's case that there is a registered instrument of partition or any decree or order of Court for partition of the plot of land. Hence, the appellate court has wrongly held that the petitioner is not a co-sharer in respect of the suit plot. Ld. Counsel relied on two decisions of this court reported in 2005 (1) CHN 140 and (2014) 4 CLT 571 respectively. The said two decisions are on the aspect of period of limitation for filing pre-emption application under Section 8 of the 1955 Act and, as such, are not very relevant since both the Courts below have decided the point of limitation in favour of the petitioner.

(11) Appearing on behalf of the opposite parties Ld. Counsel submitted that although there may not have been a partition of the concerned land in accordance with the provisions of Section 14 of the 1955 Act, schedule 'A', schedule 'B' and schedule 'C' properties are all demarcated plots of land. The deed of sale executed by Birendra Chakraborty in favour of the petitioner in respect of the schedule 'B' property refers to Pucca Boundary Wall. The deed of sale dated 16<sup>th</sup> December, 1985 executed by the legal

heirs of Ashis Mitra in favour of the predecessor-in-interest of the opposite parties in respect of the suit plot depicts that the suit plot is demarcated by boundary walls on all sides. Ld. Counsel referred to Section 2 (6) of the West Bengal Land Reforms Act and submitted that co-sharer of a raiyat in a plot of land means a person, other than the raiyat who has **undemarcated** interest in the plot of land along with the raiyat. He submitted that since schedule 'A', schedule 'B' and schedule 'C' properties are all demarcated plots of land, it cannot be said that the petitioner has any undemarcated interest in respect of the suit plot. As such, the petitioner does not qualify as a co-sharer in respect of the suit plot. In this connection, Ld. Counsel relied on a decision of this Court reported in (2014) 1 WBLR 907 wherein it was held that since the suit land could not be described as undemarcated land, the pre-emption application on the basis of co-sharership could not succeed. Ld. Counsel also relied on a decision of this Court reported in 2002 (4) CHN 285 in support of his contention that in view of amendment of the West Bengal Land Reforms Act, 1955 in 2000 what has to be transferred is a portion or share of a plot of land and not of a holding in order to give rise to a possible claim for pre-emption under Section 8 of the 1955 Act. Ld. Counsel also relied on a decision of this court reported in 1987 (1) CLJ 137 in support of his submission that a pre-emptor in order to succeed on his

application for pre-emption, must have the right to pre-empt not only at the time of the disputed sale but also at the time of institution of the pre-emption proceeding and also at the time of passing of the decree or order in such proceeding.

(12) In reply, Id. Counsel for the petitioner submitted that the judgments relied upon by Id. Counsel for the opposite parties have lost relevance because of the 2000 Amendment to the West Bengal Land Reforms Act with effect from August, 1969. The question of 'holding of a raiyat' is no more relevant. That concept has been done away with by the West Bengal Land Holding and Revenue Act. As regards the issue of demarcation of the plots, the sale deeds produced and relied on by the opposite parties are private documents not having requisite authenticity. Such documents cannot detract from the rigours of law. The appellate court has accepted the case of the opposite parties that there was amicable partition of the concerned property. However, under the West Bengal Land Reforms Act there is no such concept and all partitions must be made either by registered instrument or under a decree or order of court.

(13) I have considered the rival contentions of the parties. The Ld. Trial Court allowed the petitioner's application for pre-emption on the basis of co-sharership. The Appellate Court reversed the Trial Court's judgment

holding that the petitioner is not a co-sharer in respect of the suit plot. Hence, the only question that falls for determination by this Court is whether or not the petitioner can be said to be a co-sharer in respect of the suit plot.

(14) Section 2 (6) of the West Bengal Land Reforms Act, 1955 defines co-sharer of a raiyat in a plot of land as “a person, other than the raiyat, who has an undemarcated interest in the plot of land along with the raiyat.” The opposite parties have produced the deed of sale executed by Birendra Chakraborty in favour of the petitioner in respect of schedule ‘B’ property which refers to a Pucca Boundary Wall. The deed of sale executed by the legal heirs of Ashis Mitra in favour of the predecessors-in-interest of the opposite parties in respect of the suit plot also depicts that the suit plot is demarcated by boundary walls on all sides. The deeds of sale referred to above are registered documents and there is no reason for this court to doubt the authenticity thereof. Thus, it appears that by acquiring the schedule ‘A’ and schedule ‘B’ properties, the petitioner acquired demarcated plots of land. It does not appear that the petitioner acquired any undemarcated interest in respect of the suit plot.

(15) It is true that there may not have been partition of the larger plot in accordance with Section 14 of the 1955 Act, but partition and demarcation are not the same thing. There may well be physical demarcation of a plot of

land carving out smaller demarcated plots with separate identities without there being partition in accordance with Section 14 of the 1955 Act. Section 2(6) talks of ‘undemarcated interest’ and not of ‘unpartitioned interest’. In my view, the petitioner cannot be said to have an undemarcated interest in the suit plot or for that matter, any interest in the suit plot. The petitioner’s interest is limited to the schedule ‘A’ and schedule ‘B’ properties. Hence, in my opinion, the petitioner cannot be said to be a co-sharer in respect of the suit plot.

(16) For the reasons aforestated I am inclined to agree with the judgment and order of the appellate court which is hereby affirmed. Accordingly, this application fails and is dismissed without any order as to costs.

(17) Urgent xerox certified photocopies of this judgment, if applied be given to the parties upon compliance of all requisite formalities.

(Arijit Banerjee, J.)