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C.O. 1339 of 2010
with
C.A.N. 9535 of 2014

Sk. Abdul Khelak
Vs.
Rahul Amen Mallick & Ors.

Mr. Sanat Kumar Roy
..for the Petitioner

Md. Mahammad
Mr. Padmalochan Sahoo
..for the Opposite Parties

Sufficient grounds have been made out as to why the petitioner was not represented on March 28, 2014 when C.O. 1339 of 2010 was dismissed for default.

The order dated March 28, 2014 is recalled and C.O. 1339 of 2010 is restored to the file.

The restoration application, C.A.N. 9535 of 2014, is allowed as above.

C.O. 1339 of 2010 is taken up for immediate hearing in the presence of the opposite parties.

The petitioner complains of the errors committed by both the trial court and the appellate court in failing to appreciate the effect of the non-service of the notice contemplated under Section 5(5) of the West Bengal Land Reforms Act, 1955 on a co-sharer in regard to the time for applying under Section 8 of the Act for asserting a right of pre-emption. The petitioner was not notified of the transfer and applied for pre-emption within a period of three years from the date of registration of the impugned deed of transfer.

Section 8 of the Act permits a co-sharer of a raiyat in the plot of land to assert a right of purchase of the relevant land "within three months of the service of the notice given under sub-section (5) of Section 5" of the Act.

Section 5(5) obliges the revenue officer or the registering authority to transmit a notice to the authority referred to in Section 5(1)(b)(i) of the Act

for such authority to serve notices on the co-sharers referred to in Section 5(4) of the Act by registered post and cause copies of the notice to be affixed on the plot of land and in the court-house or in the office of the revenue officer or the office of the registering officer. Section 5(4) of the Act requires the transferor or transferee filing notices to give particulars of the transfer in the prescribed form for the service thereof on all co-sharers of the plot of land proposed to be transferred, such that the co-sharers, who are not parties to the transfer, are made aware of the transfer.

Thus, it is evident that the weak right of pre-emption recognised under Section 8 of the Act is available for assertion to a co-sharer within three months of the receipt of the notice under Section 5(5) of the Act. However, Section 8 of the Act does not specify the time for applying under such provision in the event a co-sharer is not issued a notice under Section 5(5) of the Act.

Section 29(2) of the Limitation Act, 1963 mandates that where any special or local law prescribes any period of limitation, inter alia, for any suit, different from the period prescribed by the Schedule to the Limitation Act, "the provisions contained in Sections 4 to 24 (inclusive) shall apply only so far as, and to the extent to which, they are not expressly excluded by such special or local law." It is doubtless, notwithstanding such provision, that Section 5 of the Limitation Act would not apply to Section 8 of the Act of 1955 since proceedings under Section 8 of the Act of 1955 are original proceedings.

By virtue of Section 29(2) of the Limitation Act, the time available for a co-sharer to assert a right under Section 8 of the Act of 1955 is the period of three months from the date of receipt of the notice. As Section 5 of the Limitation Act would not apply to original proceedings under Section 8 of the Act of 1955, the right can no longer be asserted after the expiry of the period of limitation unless the period of limitation is excluded. There is a distinction between the

exclusion of the period of limitation and the condonation of delay for the filing of any proceedings. When a period is excluded, for instance under Section 14 of the Limitation Act, 1963, the computation of the period of limitation is made by disregarding the period which is excluded. Condonation of delay, on the other hand, is excusing a part of time spent by the litigant without approaching the forum for the appropriate remedy.

Section 29(2) of the Limitation Act implies that while a delay cannot be condoned in the matter of institution of original proceedings, if a right is conferred under any special or local law and the operation of the provisions as to exclusion of time recognised in the Limitation Act are not prohibited by such special or local law, a party applying under the special or local law would be entitled to the benefit of exclusion of time under the Limitation Act.

In any event, Section 29(2) of the Limitation Act recognises that a different period of limitation prescribed other than the period indicated in the Schedule to the Limitation Act would apply to a special or local law. In the case of a co-sharer who has been issued notice under Section 5(5) of the Act of 1955, the period of limitation prescribed in Section 8 of the Act of 1955 itself is three months. Section 8 of the Act does not imply that a co-sharer of a raiyat in the plot of land, who has not been served a notice under Section 5(5) of the Act of 1955, has no right of pre-emption. The wording of Section 8 of the Act of 1955 is such that it is evident that a period of limitation has been prescribed by such special law in respect of a co-sharer of the raiyat in the plot of land who has been served a notice under Section 5(5) of the Act of 1955; but the period of limitation for a co-sharer of the raiyat in the plot of land who has not been issued a notice under Section 5(5) of the Act of 1955 has not been prescribed.

By virtue of Section 29(2) of the Limitation Act, the right of a non-notified co-sharer would be

governed by the appropriate provision in the Schedule to the Limitation Act.

Article 97 of the Schedule to the Limitation Act deals with a right of pre-emption under any general law. When a right of pre-emption is exercised under any special or local law in conditions which are separated from the general law which allows pre-emption, Article 97 of the Limitation Act would not apply; but the residuary Article pertaining to original actions – Article 113 thereof – would apply.

Article 113 of the Limitation Act provides a period of three years reckoned from the date of accrual of the cause of action to be the period of limitation for any suit (or original proceedings) for which no period of limitation is provided elsewhere in the Schedule.

The date of registration of the document of transfer is the date when the document comes to the public domain and a person is deemed to have knowledge of the document from such date. Thus, a non-notified co-sharer is entitled to bring a petition for pre-emption under Section 8 of the Act of 1955 within a period of three years from the date of registration of the impugned document of sale.

The opposite parties rely on a judgment reported at (2004) 4 SCC 252 (*Gopal Sardar v. Karuna Sardar*). Paragraph 19 of the report is placed for the proposition therein that in proceedings of original nature, Section 5 of the Limitation Act would not apply. The proposition is elementary and requires no repetition. However, the matter in issue in *Karuna Sardar* was whether the owner of a contiguous plot could seek the benefit of Section 5 of the Limitation Act beyond the period of four months prescribed in Section 8 of the Act of 1955 to assert a right under such provision. The obvious answer to the question was rendered by the Supreme Court that since the right canvassed under Section 8 of the Act of 1955 would make the proceedings therefor to be original in nature, the period prescribed by the special or

local law would be the period of limitation as no benefit under Section 5 of the Limitation Act could be conferred in respect of original proceedings. The judgment has no bearing on the facts or the legal issue in this case.

The legal view expressed in the present judgment is not original, in the sense that a similar view has been taken by this court in previous matters. However, since the aspect pertaining to Section 29(2) of the Limitation Act may not have been considered in great detail in some of the previous judgments rendered on this aspect, an amplification is made to the existing view of this court.

C.O. 1339 of 2010 is allowed by setting aside the order impugned dated March 3, 2010 passed in Misc. Appeal No.41 of 2008 and Order No.89 dated February 27 of 2008 passed in Misc. Case No.16 of 1999. As a consequence, the matter is remanded for fresh consideration before the original court. The Civil Judge (Junior Division) 1st Court at Chandernagore is requested to take up the pre-emption petition and consider the same on merits upon regarding the petition to have been filed within the period of limitation.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Sanjib Banerjee, J.)

