WEST BENGAL FORM NO. 3701
HIGH COURT FORM NO. (J) 2
HEADING OF JUDGMENT IN ORIGINAL SUIT/~~CASE~~

DISTRICT: NORTH 24 PARGANAS

IN THE COURT OF CIVIL JUDGE JR DIVISION, BONGAON, NORTH 24 PARGANAS

PRESENT: ABUL HASAN JAMADAR (CJJD, BONGAON) (WB01552)

IN RE: MISCELLANEOUS CASE NO. 45 OF 2022

CNR NUMBER WBNP090001402022

JUDGMENT DELIVERED ON: 22nd OF JULY 2026

Plaintiffs(s) 1. Dotidipi Mandol

Versus

Defendant(s) 1. Subrata Nag

This suit/~~case~~ coming on for final hearing on dated 05/01/2026, 13/01/2026, 19/01/2026, 17/02/2026

In the presence of:

Ld. Advocate(s) for Plaintiffs(s)
Pleader(s) ~~Petitioner(s)~~
----- Mr. Bapan Roy

Ld. Advocate(s) for Defendant(s)
Pleader(s) ~~Opposite Party(s)~~
------- Mr. Kathik Dutta

And having stood for consideration for this day the Court delivered the following

JUDGEMENT

–: CASE OF THE PETITIONER: –

1. The case of the petitioner in a nutshell is that the suit property comprises of 2 decimals of land out of 40 decimals of land in RS & LR plot No. 749, of District-North 24 Parganas, PS- Gaighata, Mouza No. 58, Mandolpara, on the north- Dotidipti Mondal (petitioner), on the south-6'6" wide common passage, on the east-35 feet wide Jessore Road, on the west- Basudeb Kirtania and Swarup Kirtana, is the subject matter of the pre-emption suit
2. It is further contention of the petitioner that Sisir, one of the co-sharers of the suit plot sold out 8.25 decimals of land by dint of registered deed of sale being No. 2507 dated 20/05/2004 in favour of the petitioner and thus, the petitioner became a co-sharer of the suit plot and has been enjoying his property jointly with other co-sharers. It is further stated that the name of the petitioner has been recorded in LR Khatian No. 1563. The suit property has not been partitioned amongst co-sharers. Another co-sharer of the suit plot namely Jayanta sold out the suit property namely 2 decimals of land in favour of the OP stranger purchaser vide impugned registered deed of sale being No. 2449 dated 2nd of February 2022. It is contended that petitioner is employed in Army and he came home on 05/05/2022 and saw that there is a wall around the suit property and later came to know from the people of his locality about the impugned transfer. It is next asserted that petitioners have deposited consideration amount mentioned in impugned deed of sale along with 10% compensation and it is filed within the period of limitation from the date of the knowledge of the petitioner on 06/05/2022. Moreover, if the pre-emption is allowed, the total land of the petitioners will not exceed the ceiling limit.
3. Thus, the petitioner sought for passing the pre-emption order in their favour.

–: CASE OF THE OPPOSITE PARTY: –

1. The opposite party filed the written objection on dated 03/12/2022 and denied the case of the petitioner.
2. It is the case of the opposite party that the total land of the suit plot is 40 decimals. The vendor of the OP namely Jayanta had purchased 2 decimals of land vide sale deed No. 5180 dated 09/10/2021 with specific boundary mentioned as **Block A** and thereafter his name was recorded in LR Khatian No. 3664. It is further contended that the OP has purchased 2 decimals of land by dint of registered deed of sale being No. 2449 from Jayanta. The name of the OP was recorded in LR Khatian No. 3742. The vendor of the OP had sold out his entire share in the suit property and thus, the instant case for pre-emption is not maintainable.
3. In view of the above, opposite party sought for dismissal of the instant case.

–: EVIDENCE ON BEHALF OF THE PETITIONER: –

PW1 in his evidence marked the following documents as exhibits: –

1. Original registered deed of sale deed No. 2507 for the year 20/05/2004. (Exhibit No. 1)
2. Certified copy of LR record of right being Khatian No. 1563 (Exhibit No. 2)
3. Certified copy of registered deed of sale being No. 2449/2022 dated 03/02/2022 (Exhibit No. 3)
4. Original challan being No. 74 (i) dated 12/05/2022 to the tune of ₹ 2,20,000/-(Exhibit No. 4)

–: EVIDENCE ON BEHALF OF THE OPPOSITE PARTY: –

OPW1 in his evidence marked the following documents as exhibits: –

1. Original registered deed of sale being No. **5180 dated 09/10/2021** (**Exhibit No. A**).

2. Original registered deed of sale being No. **2449 dated 2nd of February 2022** (**Exhibit No. B**).
3. LR plot information slip being plot No. 749 (**Exhibit No. C**)

<u>–: ARGUMENT BY LEARNED COUNSEL ON BEHALF OF THE PETITIONER:</u>

1. suit property is not partitioned
2. OP is stranger purchaser
3. vendor of the OP had 2 decimals of land which it sold out. Petitioner is a co-sharer.
4. Petitioner came to know about the suit when came from his place of service
5. petitioner is a non-notified co-sharer
6. vendor of OP did not sell out specifically demarcated land to the OP.
7. No notice was served prior to sale. Point No. 9 of cross-examination of opposite party witness referred.
8. 2017 ICC 4 cal 343, paragraph 13 referred
9. civil order No. 1793 of 2018 referred
10. Abul Motin Malik case referred
11. civil order No. 3378 of 2024, page No. 9, paragraph No. 25 referred
12. Petitioner has been able to prove their case and entitled to get order for pre-emption.

<u>–: ARGUMENT BY LEARNED COUNSEL ON BEHALF OF THE OPPOSITE PARTY: -</u>

1. petitioner has no land in the suit plot
2. vendor of the OP had sold out his entire share in the suit property
3. specifically demarcated land was sold out to the OP
4. cross-examination PW1 referred: – point No. 4, 5, 7-11, 16, 19, 20
5. civil order No. 1793 of 2018 filed on behalf of the petitioner referred to point No. 48

6. civil order No. 1059 of 2019, filed on behalf of the opposite party referred: point No. 38
7. civil order No. 378 of 2024, filed on behalf of the petitioner: point No. 25 referred along with 29, 31 and 37
8. civil appeal No. 3499 of 2022, filed on behalf of the petitioner referred: this judgement is not applicable and submitted
9. civil order No. 4032 of 2016, filed on behalf of the petitioners preferred: the judgement is not applicable in this case

–: DECISION WITH REASONS: –

The question which falls for consideration to this Court as to whether the petitioner has been able to prove its case and entitled to get the impugned deed of sale pre-empted?

1. ***Whether petitioners have deposited the total consideration amount along with 10% compensation as required under section 8 of the West Bengal Land Reforms Act, 1955?***

   1.1. **Exhibit No. 4** is the original challan being No. 74 (i) dated 12/05/2022 to the tune of ₹ 2,20,000/-. On perusal of the record, it appears that the opposite party has not denied the execution of the impugned sale deed No. 2449 of 2022 produced and placed on record by the petitioner marked as **Exhibit No. 3.** It is also marked as **Exhibit No. B** on behalf of the opposite party. Therefore, it appears from the impugned sale deed that the property was sold out to the opposite party against consideration of ₹ 2 lakhs. Therefore, the calculation would be (10% × 2 lakhs) + 2 lakhs = 2,20,000/.

   1.2. **Therefore, the petitioners have deposited property amount of consideration along with 10% compensation amount. PW1 in cross-examination point No. 25 admitted the consideration amount stating that "suit property was purchased against sale consideration of ₹ 2 lakhs".**

1.3. Learned counsel for the petitioner relied upon civil appeal No. 3499 of 2022 and learned counsel for the opposite party submits that this judgement is not applicable to this case as the opposite party has deposited the proper consideration amount. This Court has held in the foregoing paragraph that the petitioner has deposited the proper consideration amount along with 10% compensation as required under the law. Therefore, this deposition of the amount is in consonance with the judgement of Hon'ble Supreme Court of India in civil appeal No. 3499 of 2022.

2. ***<u>Whether the instant case has been filed within the period of limitation?</u>***

2.1. The impugned registered deed of sale being No. 2449 of the year 2022 was registered on dated 23/11/2020. The instant suit for pre-emption was filed on 12/05/2022. It is contended by the petitioner in the petition that he was not served with the requisite notice of the intended sale. Moreover, he came to know about the impugned deed of sale when he returned from his place of service on dated 5^{th} of May 2022 and thereafter, he filed the case within the period of limitation as he was a non-notified co-sharer.

2.2. Upon careful perusal of the section 8 of West Bengal Land Reforms Act, 1955 (hereinafter referred to as ACT of 1955), it appears that co-sharer may within 3 months of the service of notice given under section 5 (5) apply to the Munsif having territorial jurisdiction. Therefore, notified co-sharer has to apply within a period of 3 months.

2.3. Petitioner has denied in the petition that prior to execution of the impugned sale deeds in favour of the opposite party they have been served with the notice. No evidence has been brought on record regarding non-service of notice under section 5 (5) of ACT of 1955 as required under the law.

2.4. It is the requirement of section 5 (4) of ACT of 1955 that when a portion of plot of land is transferred to with section 8 of ACT of 1955 applies, it was the duty of the transferor or transferee to file notices giving particulars of the transferring the prescribed form together with the process fees prescribed for the service thereof on all the co-sharers of the said plot of land who are not parties to the transfer and affixing a copy thereof in the office of the registering officer or the courthouse of the office of the revenue officer, as the case may be, as well as for affixing a copy on the **plot of land**.

2.5. No evidence has been brought on record by the petitioner to the effect that they had not been served with notice herein prior to the sale as required under section 5 (5) of ACT of 1955.

2.6. Moreover, section 5 of the West Bengal Land Reforms Act, 1955 in subsection (1) clearly indicates that the registering officer shall not accept for registration any such instrument or unless the sale prices mentioned in the instrument and **there is tendered along with the instrument notice giving particulars of the transfer in the prescribed form for transmission to the prescribed authority** and such notices and process fees as may be required by **subsection (4) of section 5**. Therefore, the instrument of transfer shall not be accepted by the registering authority unless the notice of intended sale is provided with instrument. That apart, subsection (5) of section 5 of The Act of 1955 clearly imposes a duty upon the revenue officer or the registering officer to transmit such notice to the prescribed authority and also to cause the copies of the notice to be affixed on the plot of land. In this case, the impugned registered deed of sale has been produced and the registration and execution thereof has been admitted by both the parties. It is settled position of law that a registered instrument shall be presumed to be genuine unless evidence to the contrary has been produced. In this case, the registering authority after complying with the necessary requisites of law has registered the impugned deed. Therefore, in absence of any evidence to the contrary by the petitioner, this Court is of the considered view that **notice upon the opposite party and upon the plot of land has been served By the Revenue Officer** in Compliance of Subsection (5) of Section 5 of the Act of 1955. **Hence, it is held that petitioner is not a non-notified co-sharer.**

2.7. The opposite party witness No. 1 in point No. 9 of cross-examination made an admission that he did not serve notice upon the co-sharers that he is going to purchase. As discussed earlier, on the point of law above, the notice was required to be served before the registrar and the registrar shall cause the notice to be served upon the revenue authority who in turn shall do the needful. As the impugned deed was registered and therefore, it is presumed that all the formalities of service of notice have been complied with. No evidence to the contrary has been brought on record by the petitioner. <u>Therefore, this stray admission cannot be fatal to the case of the opposite party.</u>

2.8. **Even for the sake of argument**, it is accepted that petitioner is a non-notified co-sharer Therein the period of limitation is governed by article 97 of the Limitation Act, 1963.

2.9. *At this juncture, it would be apposite to refer the judgement of the Hon'ble High Court at Calcutta in C. O. 2716 of 2015, **<u>Nurul Islam -versus- Esratun Bibi</u>**, 26th July, 2017. To the effect that: –*

> *Having regard to the fact that divergent views have been expressed by different Benches of the same strength of this High Court as regards the period of limitation that would apply to a pre-emption application under Section 8 of the West Bengal Land Reforms Act, 1955 filed by a non-notified co-sharer, the following question was referred to this Bench by the Hon'ble the Acting Chief Justice on the request of a Learned Single Judge of this Court for its answer:-*
>
> *<u>"When does the period of limitation begin to run and when does such period end for a pre-emption application under Section 8 of the West Bengal Land Reforms Act, 1955 at the instance of a co-sharer on whom notice of transfer as contemplated by Section 5(5) of the said Act has not been served?"</u>*

The non-notified co-sharer's right to enforce pre-emption is founded on law i.e West Bengal Land Reforms Act, 1955. Since the pre-emption proceeding is regarded as a suit, in our view Article 97 is the appropriate provision which will govern the period of limitation and the starting point thereof so far as the application for pre-emption filed by the non-notified co-sharers are concerned. As such, the period of limitation for filing an application for pre-emption by the non-notified co-sharers will be one year and the starting point of limitation will be different depending upon circumstances as prescribed in the third column of the said schedule. ***As per the third column of the said schedule the time will begin to run from the date when the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold. Again when the property is of such nature where the subject matter of sale does not admit of physical possession of the whole or part of the property then from the date when the instrument of sale is registered meaning thereby when the registration is complete as per Section 61 of the Registration Act.***

We thus conclude by holding that Article 97 of the Limitation Act, 1963 is the appropriate provision which will govern the period of limitation for filing application for pre-emption by the non-notified co-sharer. We also hold that asper the provision contained in Article 97 of the Limitation Act, the period of limitation will begin to run from the date when the purchaser takes under the sale sought to be impeached physical possession of the whole or part of the property sold. We also hold that where the property sold is of such nature which does not admit of physical possession either of the whole or part thereof the period of limitation will begin to

run when the instrument of sale is registered meaning thereby when the registration is complete as per Section 61 of the Registration Act and in both cases the period of limitation is one year."

2.10. In view of the above, it is proved that the period of limitation in case of non-notified co-sharer is one year as per article 97 of the Limitation Act, 1963. Thus, as per article 97, when the property can be ***physically possessed then the period of limitation will start from the date of taking physical possession*** by the purchaser and ***when the property cannot admit physical possession then the period of limitation will start from the date of registration of the impugned deed.***

2.11. In this case, as pre-emption is a weak right and therefore, the statute has to be construed strictly more so on the ground that the suit property has been transferred by dint of registered deed of sale against consideration. The execution and the registration of the deed remain unchallenged. Therefore, this court has to strictly construe the provision. Accordingly, the **concept of knowledge has not been delineated either in section 8 of the Act of 1955 or in article 97 of the Limitation Act, 1963**. That apart, in the petition **there is a bald allegation that petitioner came to know regarding the impugned sale from various people in the locality**. **No specific name has been mentioned in the petition which is reiterated in the affidavit in chief of PW1**. **That apart, no person of the locality has been produced as a witness on behalf of the petitioner to corroborate this bold contention.** Therefore, in the instant case at hand, an immovable property has been sold out and the property can be possessed. From the impugned registered deed of sale, it appears that the petition of the property was delivered on the date of sale itself and hence, the period of limitation will be governed as per article 97 of Limitation Act, 1963 **from the date of taking physical possession of the whole or part of the property sold. Therefore, the period of limitation is one year from the date of registration and/or from the date of taking physical possession.**

2.12. Therefore, in this case, it also appears from **<u>Exhibit No. C</u>** which is the plot information slip that the name of the OP has been mentioned in the No. 3742. **Record of right is the evidence of possession**. That apart, on perusal of page No. 3 of the impugned deed of sale it appears that the possession of the property was delivered on the date of execution of the impugned deed. Therefore, the possession was taken on 2nd of February 2022 and the period of limitation even if in case of non-notified co-sharer is one year and the instant case should have been filed at best lastly on 3rd of February 2022. **But this case was filed on 12th of May 2022 which is beyond the period of limitation.**

2.13. ***<u>Whether pre-emption is a recurring right?</u>*** **<u>– Though none of the parties has dealt with this concept but this court cannot shut its eyes</u>**. The interesting fact that has caught the eye of the court i.e. the petitioner became co-sharer of the suit plot by dint of registered deed of sale being No. 2507 of the year 2004 which is marked as **exhibit No. 1**. The vendor of the OP purchased the property and became co-sharer by dint of registered deed of sale being No. 5180 of 2021 which is marked as **exhibit No. A**. It is really surprising that the present petitioner did not choose to file a case for pre-emption against the vendor of the OP when he became a co-sharer for the 1st time in the year 2021 but this case for pre-emption is filed when the vendor of the OP sold-out the property to the present OP in the year 2022. **Therefore, the present petitioner did waive his right of pre-emption on earlier occasion also.**

2.14. In this context it would be apposite to refer the judgement passed by the Hon'ble Supreme Court of India in ***<u>Raghunath (dead) by legal representatives versus Radha Mohan (dead) through legal representatives, (2021) 12 Supreme Court cases 501</u>*** **while dealing with the similar concept under Rajasthan Pre-Emption Act, 1966 inter alia held in paragraph No. 22 and 23 that *"<u>the moot point is whether such a right of pre-emption is a recurring right i.e., every time the property sold,</u>***

the right would re-arise, in a case the pre-empting plaintiff himself has chosen not to exercise such right over the subject immovable property when sold to another purchaser earlier. In our view it would not be appropriate or permissible to adopt the legal reasoning making such a weak right, some kind of right in perpetuity arising to a plaintiff every time there is a subsequent transaction of sale once the plaintiff has waived his right of pre-emption over the subject immovable property."

2.15. In this case, otherwise, the present petitioner could have filed case for pre-emption against the vendor of the OP but he did not file this case. Therefore, in other words, the pre-emptor has waived his right also. The pre-emptor petitioner has not challenged the date of the vendor of the OP in this case also.

3. ***Whether the petitioners are co-sharers of a raiyat in the plot of land within the meaning of provisions of West Bengal Land Reforms Act, 1955?***

3.1. **Section 2 (6) of the** West Bengal land reforms act defines the term "*co-sharer of a raiyat in a plot of land" means a person, other than the raiyat, who has an* ***undemarcated interest in the plot of land*** *with the raiyat.*

3.2. **Therefore, the term undemarcated has been used in this section and not the term unpartitioned.** It is settled position of law that pre-emption is a weak right and in order to claim such right the petitioner has to comply with the statutory requirements. On the other hand, the court has to **strictly construe the provisions of the law** when granting protection to a weak right.

3.3. **In this case,** upon perusal of the purchase deed of the petitioner/exhibit No. 1, it appears from the schedule of the deed that out of 44 decimals of land, leaving 10.50 decimals of land from the northern side, **the petitioner had purchased 8.25 decimals of land from the southern side** and on the southern side of the land of the present petitioner, there is land of **Bipul Kirtania and this name is crucial to be discussed a little later**. Upon pondering over the schedule of the land of the exhibit No. 1, it appears that the petitioner had purchased land with specific demarcation. Upon careful pondering over **exhibit No. A**, it appears that Jayanta (vendor of OP) purchased property from Shova and Swarup who are wife and son of **Bipul Kirtania who had land in the southern side of the land of the petitioner (stated supra).** <u>PW1 in cross-examination by No. 7 admitted the title of Jayanta in the suit plot through exhibit No. 1.</u> Therefore, when Jayanta (vendor of OP) purchased the land, the petitioner had right to file a case for pre-emption but he did not choose so and thereby waived his right. Moreover, Exhibit No. A clearly **contains that 2 decimals of land which is specifically demarcated as block A has been sold-out in favour of Jayanta** (vendor of OP). The sketch map showing block A is appended to exhibit No. A. Therefore, the **vendor of the OP had purchased a demarcated portion**. Opposite party witness No. 1 admitted in cross-examination point No. 4 state in that "**there is a sketch map appended to the deed of my erstwhile owner Jayanta".**

3.4. Furthermore, exhibit No. B (impugned sale deed) also shows that Jayanta (vendor of OP) had sold-out 2 decimals of land in favour of the OP. Upon careful perusal of schedule of the impugned deed, **it appears that the measurement of each side of the suit properties mentioned along with his schedule.** PW1 in cross-examination point No. 4 admitted this measurement. Moreover, PW1 in cross-examination point No. 5 stated that "**the suit property is specifically demarcated as mentioned in schedule of Petition".** This clearly indicates that specifically demarcated and measured property was sold out to Jayanta (vendor of OP) in favour of the OP. That apart, the name of the OP has been recorded in record of right which is corroborated by exhibit No. C (plot information). Hence, the present opposite party cannot be termed as a co-sharer of the plot of land of a raiyat as defined in the West Bengal Land Reforms Act, 1955.

3.5. **It is settled position of law that** when **specific demarcated portion of a plot of land has been purchased then the purchaser does not remain a co-sharer with the vendor**. In both the aforesaid cases namely the land purchased by the petitioner as well as the land purchased by the opposite party, **they have purchased a specific demarcated portion**. Hence, even if the partition has not been taken place in respect of the entire plot of land that will not stand in the way because each of the co-sharers has a demarcated portion allocated to them.

3.6. Learned counsel for the petitioner relied upon the Hon'ble High Court at Calcutta in civil order No. 3378 of 2024 which inter alia held that pre-emption case does not lie when will demarcated portion of sold-out to 3rd party. Therefore, in this case, this judgement goes against the case of the petitioner himself.

3.7. **Therefore, in strictu sensu in view of the definition of co-sharer of a plot of land of a raiyat,** the present petitioner cannot be termed as a co-sharer so far as the present suit property is concerned.

4. ***Whether pre-emption case is maintenable in view of the argument that the vendor of the opposite party had sold out his entire share in the suit plot?***

4.1. It is argued by learned counsel for the opposite party that the vendor of the opposite party had sold out his entire 2 decimals of land by dint of impugned registered deed of sale in favour of the opposite party and thus, the case is not maintainable. PW1 in cross-examination point No. 20 specifically stated that "**fact that Jayanta presently has no share in the suit plot and Subrata became a co-sharer in the suit plot**".

4.2. The language of section 8 of the West Bengal Land Reforms Act states that the pre-emption case lies when "***if a portion or share of a plot of land of a raiyat is transferred to any person other than a co-sharer of a raiyat in the plot of land…"*** Therefore, the term **portion or share of a plot of land** is important to be considered.

4.3. The Hon'ble Supreme Court of India in ***Chana Rani Saha Versus Mani Pal @ Kaltu Pal in civil appeal No. 5905 of 2009*** interpreted **the term "or" in between the term portion or share as disjunctive "or" and not as conjunctive "and".** Therefore, if person is the owner of the entire plot of land and the sales out some **portion of it** then pre-emption case lies but if he sales out the **entire plot of land** in the pre-emption case does not lie. For example, if plot of land comprises of total 10 decimals of land and A is the owner of the entire 10 decimals of land and he sales out only 5 decimals of land then he sales out a portion of plot of land and pre-emption case lies. But if he sales out the entire plot that is 10 decimals of land then pre-emption case does not lie.

4.4. Another important aspect to be considered is the term **<u>share</u>** of plot of land. When the term "**<u>share"</u>** comes into play then the **concept of co-sharer also follows suit**. It can be illustrated in the way that if a plot of land comprises of 10 decimals of land and A and B has 5 decimals of land **<u>share</u>** each in the plot of land then if A sales out his entire 5 decimals of land, then the pre-emption also lies because A had sold out **his share of the plot of land**. The pre-emption case would also lie if **A also sells out any portion out of such 5 decimals of land.**

4.5. In view of the illustration given above so far as the interpretation of the term **portion or share of a plot of land is concerned**, this Court is of the considered opinion that even if a person had sold out **his entire <u>share</u> in the plot of land**, the pre-emption case lies. This position is settled by the Hon'ble High Court at Calcutta in C.O. No. 1793 of 2018 in **Sri Dilip Kumar Dhara and another Vs. Ranjit Kumar Mondal**, held inter alia:

> *<u>"48. Hence, the first question formulated in paragraph no. 30 above is decided in the following manner: an application for pre-emption under Section 8 of the 1955 Act lies only if a portion or share of a plot of land of a raiyat, and not the entire plot, is transferred."</u>*

4.6. Therefore, in view of the judgement discussed above, this Court is of the considered opinion that if the **entire share of a plot of land of a raiyat is transferred except the entire plot, the pre-emption lies**. Learned counsel Mr Roy on behalf of the petitioner filed judgement of Hon'ble High Court at Calcutta in civil order No. 4032 of 2016 and learned counsel for the opposite party submitted that this case is not applicable to this case. Upon perusal of the paragraph No. 23 of this judgement, the Hon'ble High Court at Calcutta held inter alia that "*share of a plot of land means the entire share in the plot of land, whatever would be transferred to a stranger is subject to pre-emption".* Therefore, this judgement is applicable in this case as the entire share was sold out and the pre-emption cases maintainable.

4.7. Learned counsel for the petitioner also relied upon the judgement of the Hon'ble High Court at Calcutta in civil order No. 1793 of 2018 and learned counsel for the opposite party submitted that this case is not applicable to this case. This court discussed (supra) the proposition of this judgement (**Dilip Kumar Dhara and another.) Thus, the judgement is applicable in the case.**

5. In view of the adjudication of the documentary as well as oral evidences on record, it is established that the **petitioner is not "co-sharers of the plot of land of the raiyat"** as **defined** in West Bengal Land Reforms Act and **demarcated portion of the property** has been sold out to the present opposite party. **Moreover, the case is barred by limitation**. Thus, the instant miscellaneous Case for pre-emption fails.
6. Therefore, the miscellaneous Case fails.
7. Court fees paid is correct.

Hence it is,

<u>ORDERED</u>

that the Miscellaneous Case No. 45 of 2022 be and the same is dismissed on contest without any order as to cost.

Interim order, if any, stands vacated.

<u>Petitioner is entitled to withdraw ₹ 2,20,000/– deposited by way of challan being No. 74 (i) dated 12/05/2022.</u>

Account in charge is directed to draw the bill within a period of 3 working days after verifying the credentials to be filed by the petitioners.

Parties are at liberty to take back the original documents filed by them respectively replacing with **certified copies thereof**.

Urgent photostat certified copy of this order, if applied for, be supplied to either of the parties upon compliance with necessary formalities.

Thus, the instant case stands disposed of.

Note in relevant register.

Update case information system.

Abul Hasan Jamadar

Digitally signed by Abul Hasan Jamadar
Date: 2026.07.22 12:55:13 +05'30'

D/c by me

Abul Hasan Jamadar

Civil Judge (Jr. Divn) Bongaon

Abul Hasan Jamadar

Civil Judge (Jr. Divn) Bongaon