

## HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT : PURBA BARDHAMAN

**IN THE COURT OF  
THE ADDITIONAL DISTRICT & SESSIONS JUDGE,  
4<sup>th</sup> COURT,  
PURBA BARDHAMAN SADAR, DIST.- PURBA BARDHAMAN**

PRESENT : SHRI PRADIP KUMAR ADHIKARY,  
J O Code (UID No.) - WB916

DATED : Saturday, 2<sup>nd</sup> day of May, 2026  
(As the PO was engaged in SIR adjudication, delay is caused to pronounce judgment)

Case Type	Miscellaneous Appeal		
Filing Number	1094 of 2017	Filing Date	01/07/2017
Registration Number	75 of 2017	Registration Date	01/07/2017
CNR Number	WBBD 0100 1469 2017		

From the decree/order of the Civil Judge (Junior Division), 3<sup>rd</sup> Court, Purba Bardhaman Sadar

and made in

Misc. Case No.- 17 of 2010

Nitai Malik . . . . . Appellant(s)/plaintiff(s).

versus.

Subhankar Bolel . . . . . Respondent(s)/defendant(s).

This appeal coming on (or having been heard on) 18/02/2026

in the presence of

Sri Kunal Bakshi . . . . . Advocate(s) for the appellant(s).

Sri Sanjoy Ghosh . . . . . Advocate(s) for the respondent(s).

And having stood for consideration to this day, the court delivered the following judgment :

## **J U D G M E N T**

1. Being unsuccessful in connection with the application under order section 08 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as WBLR Act) the appellant/petitioner/pre-emptor has come before this Court with a prayer to set aside the impugned judgment/order passed on 29/05/2017 by the Ld. Civil Judge (Junior Division), 3<sup>rd</sup> Court, Purba Bardhaman.

### **CASE OF APPLICANT/PETITIONER/PRE-EMPTOR :**

2. The fact of the case, in a nutshell, is that on 20/12/2010 the appellant/petitioner/pre-emptor, being co-sharer of 15 ½ satak of land out of 23 satak in the suit plot as well as adjoining owner, filed an application under section 08 of the WBLR Act praying for purchase of a portion of the property i.e. 5 ½ satak of land in the suit plot as mentioned in Ka – 1 schedule of the application, which has been transferred to the respondent/opposite party/pre-emptee, who is a stranger to the suit property, by virtue of the deed of sale being no.-5031 of 2010 as mentioned in Ka – 2 schedule.

### **CASE OF RESPONDENT/OPPOSITE PARTY/PRE-EMPTEE :**

3. On the other hand the respondent/opposite party/pre-emptee has claimed that he is a co-sharer of the suit property; not a stranger purchaser. Rather it is the case of the respondent/opposite party/pre-emptee that the applicant/petitioner/pre-emptor is not a co-sharer of the suit property. Both the parties have been possessing their respective share by way of amicable partition. Hence, the pre-emption application does not lia and accordingly, the respondent/opposite party/pre-emptee has prayed for dismissal of the case.

### **ORDER OF THE LD. TRIAL COURT :**

4. On 29/05/2017 the Ld. Civil Judge (Junior Division), 3<sup>rd</sup> Court, Purba Bardhaman dismissed the case on contest on the ground of transfer of entire share of the previous owner/vendor to the respondent/opposite party/pre-emptee.

### **GROUND OF APPEAL :**

5. Being aggrieved by and dissatisfied with the said order the present appeal has been presented setting forth the grounds that
  - (1) the impugned judgment is bad, illegal, misconceived and improper and therefore, liable to be cancelled and set aside;

(2) the Ld. Trial Court has failed to appreciate the materials on record in their true perspective and thereby arrived at an erroneous conclusion;

(3) the Ld. Trial Court ought to have appreciated that besides being a co-sharer the appellant/petitioner/pre-emptor is adjoining owner of land in respect of the suit property;

(4) the Ld. Trial Court ought to have appreciated that the respondent/opposite party/pre-emptee, in view of the record-of-rights, had not purchased the entire share of their vendors.

6. On the above premises appellant/petitioner/pre-emptor has prayed for allow the appeal setting aside the impugned order.

#### **ARGUMENT :**

7. On 18/02/2026 the case was heard finally in the form of argument.

8. The Ld. Advocate on behalf of the appellant/applicant/pre-emptor has submitted that the matter whether an application for pre-emption under section 08 of the WBLR Act in the event of a raiyat transfers his/her entire share in a plot of land to a person other than a co-sharer is referred to the Hon'ble Larger Bench by the Hon'ble Single Bench in ***Sajidul Khandakar v. Bhabani Biswas in CO No.- 21 of 2019*** and the said matter is yet to be decided. Hence, the Ld. Advocate has prayed for keeping the appeal in abeyance till the disposal of the reference.

9. On the other hand relying upon ***Sajidul Khandakar v. Bhabani Biswas in CO No.- 21 of 2019*** the Ld. Advocate on behalf of the respondent/opposite party/pre-emptee has submitted that the matter has already been disposed by the Ld. Division Bench and it is now settled law that since the entire share/portion of the vendor has been transferred to the pre-emptee, this application for pre-emption is not maintainable and hence, he has prayed for dismissal of the appeal.

#### **CASES REFERRED :**

10. The following citation has been referred by the appellant/petitioner/pre-emptor :

(1) ***Sajidul Khandakar v. Bhabani Biswas in CO No.- 21 of 2019.***

11. The following case-law has been referred by the respondent/opposite party/pre-emptee :

(1) *Naymul Haque @ Nainul Haque v. Allauddin Sk. : 2019 (1) CLJ (Cal) 488.*

#### **POINTS FOR DETERMINATION :**

1. Whether the Ld. Trial Court has erred in law and facts of the case ?
2. Whether there is any scope to interfere with order of the Ld. Civil Judge ?

### **DECISION WITH REASONS**

12. This is an application under section 08 of the WBLR Act for right of pre-emption by the appellant/petitioner/pre-emptor being co-sharer.

13. It is admitted position of fact that Murari Mohan Ghosh, Nimai Chandra Ghosh, Mahadeb Ghosh and Dulal Chandra Ghosh were the previous owners of the suit plot measuring about 23 decimals of land in equal  $\frac{1}{4}$ <sup>th</sup> share each.

14. From the **Exbt.- 04** it transpires that Murari Mohan Ghosh, Nimai Chandra Ghosh, Mahadeb Ghosh and Dulal Chandra Ghosh transferred 10 decimals out of 23 decimals of land in the suit plot to Nitai Malik, the applicant/petitioner/pre-emptor by executing deed of sale being no.- 493 of 1989. So, it is crystal clear that the applicant/petitioner/pre-emptor is a co-sharer of the suit plot.

15. It is admitted by the parties that on the same day Murari Mohan Ghosh, Nimai Chandra Ghosh, Mahadeb Ghosh and Dulal Chandra Ghosh also transferred 11 decimals out of 23 decimals of land in the suit plot to Nil Ratan Bolel and Shankar Bolel by executing deed of sale being no.- 492 of 1989. However, neither parties have produced the said deed of sale.

16. The **Exbt.- 05** makes it clear that subsequently, Shankar Bolel transferred 5  $\frac{1}{2}$  decimals of land out of 11 decimals of land to the applicant/petitioner/pre-emptor by dint of deed of sale being no.- 390 of 2005.

17. It is also taken into granted by the parties that subsequently, Ratan Bolel transferred his respective 5  $\frac{1}{2}$  decimals of land in the suit plot to the respondent/opposite party/pre-emptee by executing

the impugned deed of sale being no.- 5031 of 2010 (**Exbt.- 02**).

18. So, it is like a serene sky that the vendor of the respondent/opposite party/pre-emptee transferred his entire share i.e. 5 ½ decimals of land in the suit plot to the respondent/opposite party/pre-emptee through the impugned deed.
19. Except being co-sharer of the suit plot the applicant/petitioner/pre-emptor has failed to establish that he is an adjoining owner of the suit plot as claimed.
20. The Ld. Advocate on behalf of the appellant/applicant/pre-emptor has submitted that the matter whether an application for pre-emption under section 08 of the WBLR Act in the event of a raiyat transfers his/her entire share in a plot of land to a person other than a co-sharer is referred to the Hon'ble Larger Bench by the Hon'ble Singe Bench in **Sajidul Khandakar v. Bhabani Biswas in CO No.- 21 of 2019** and the said matter is yet to be decided.
21. On the other hand relying upon **Sajidul Khandakar v. Bhabani Biswas in CO No.- 21 of 2019** the Ld. Advocate on behalf of the respondent/opposite party/pre-emptee has submitted that the matter has already been disposed by the Ld. Division Bench.
22. In answering the primary question under references – as to whether the right of pre-emption specified in section 8 of the WBLR Act could be exercised in a case where the entire interest in the subject land is being transferred by a raiyat – relying upon **Chhana Rani Saha v. Mani Pal : Civil Appeal No.- 5905 of 2009** delivered on 15<sup>th</sup> November, 2017 by the Hon'ble Apex Court, in references C. O. Nos.- 1164, 283, 4380, 4040 of 2015 with C.O. Nos.- 67, 2695 of 2013 with C.O. Nos.- 2407, 4299 of 2016 with C.O. No.- 485 of 1995 with C.O. No.- 1993 of 2013 with C.O. No.- 2718 of 2015 with C.O. No.- 2479 of 2016 with C.O. No.- 1937 of 2011 (Date of decision : August 8, 2018) the Hon'ble Court has been pleased to observe that

*9. . . . In that case, the plea of pre-emption of a contiguous tenant under Section 8 of the 1955 Act was rejected on two grounds by the First Appellate Court. The first ground was that the appellant was not a co-sharer of the land. The second ground was that the vendor did not sell a portion of the land but had sold the entire land in question. The First Appellate Courts view was affirmed by the High Court.*

**10.** *The Hon'ble Supreme Court allowed the appeal against the decision of this Court, holding:-*

*“7. Section 8 confers a right of pre-emption on a bargardar that is a tenant of the land, or a co-sharer of the raiyat who owns the*

land and on any other raiyat possessing land adjoining such plot of land. One of the conditions on which a right of pre-emption may be claimed is where a portion or share of land or any other raiyat is transferred to any person other than a co-sharer of a raiyat in the plot of the land. That is to say, if a land is held by two co-sharers and one of the co-sharers seeks to transfer a portion or share belonging to him to another person, the other co-sharer may claim a right of pre-emption. But this, however, does not exhaust the entire section. A similar right of pre-emption is also conferred on a raiyat, who possesses an adjoining plot of land, This is the appellant's case. There is no dispute that the appellant is a raiyat possessing adjoining plot of land and was entitled to assert his right of pre-emption. In fact he was rightly allowed the ownership of the land in question by the trial Court, since it was found the vendor did not give due notice of sale of the land to the appellant and, in fact, did not wish to sell the land to the appellant. This aspect of the matter has been completely overlooked by the High Court, which has decided the case only on the basis that the vendor did not transfer a portion or share of the land in question and the appellant was not a co-sharer.

8. In view of the undisputed possession that the appellant is a raiyat, who held adjoining plot of land to the land in question, the judgment of the High Court is liable to be set aside and is, accordingly, set aside. The order of the trial Court is hereby restored. The right, title, interest and possession of the suit land in question acquired by Mani Pal by virtue of a Registered Sale Deed No.881 dated 28.02.2000, shall vest with the appellant. The respondent Mani Pal shall also deliver the possession of the said land to the appellant within a period of six months from today.”

11. In the case of Chhana Rani Saha (supra), the contiguous land-owners right of pre-emption was upheld in a situation where the entire land in question was sold. This is the opinion of the learned Single Judge in the cases of Biswanath Sarkar (supra) and Sk. Sajhan Ali (supra). The word or in Biswanath Sarkar (supra) and Sk. Sajhan Ali (supra) have been construed to be disjunctive. The view of the learned Single Judge in Kinkar Mahato (supra) was that right of pre-emption could be exercised only when a co-sharer raiyat transferred a portion of the share of his interest in the plot of land. In view of the decision of the Honble Supreme Court in the case of Chhana Rani Saha (supra), the word or has to be read as or only, and not of. This answers the reference.

Let the applications be placed before the learned Court having jurisdiction on the subject-dispute.

23. On 19/12/2023 in Smt. Santana Sengupta (Gupta) v. Bidasagar Mondal : C.O. No.- 1014 of 2018 the Hon'ble Court has been pleased to opine that

25. So far as the petitioners claim of preemption on the ground of co-sharer ship is concerned it has been specifically argued by the opposite parties that the legal heirs of the original owner of the property

*transferred their entire property by specific demarcation to the parties to the instant proceeding by different deeds and therefore each purchaser became owner of the demarcated portion purchased by them and none of them became the co-sharer of the same and in absence of co-sharer in a demarcated portion of the property and since the entire portion has been transferred then the application for preemption is not maintainable and thereby each of the parties will be considered to be the exclusive owners in respect of their respective demarcated portion and in terms of section 2(6) none of the parties can be termed to be the co-sharer of the plot of land. While dealing the issue of co-sharership the Trial Court relying upon judgments referred in **2005(1) ICC 5** and **2016 (2) CHN (Cal) 489** came to a finding that the original owner of the property, transferred the property to various persons having distinct C.S. Plot Numbers and the said land in case has been well recognized as a separate entity under a different khatian. The court below concluded that the petitioners is not entitled to get preemption on the ground of co-sharership. While dealing with the issue of petitioners claim of preemption on the ground of vicinage, the Trial Court held that there is a strip of land between the property of the petitioners and the property of the O.P. and it is not evident from the record that the strip of land is part and parcel of either the petitioners land or opposite parties land and it is a separate land situated between the two plots and as such the ground of vicinage also does not attract in the present context.*

26. While dealt with ground of co-sharer ship the appellate court held that R.S. Plot no. 1095 has been sold to three sets of purchasers by three separate deeds with demarcation of three separate portions and the Appellate Court held conclusively that the petitioners are not entitled to get pre-emption on the ground of co-sharer ship as distinct plot numbers have been allotted for the three separate portions of the R.S. Plot No. 1095.

27. Aforesaid concurrent finding of both the courts below that the preemptors/opposite parties herein are not entitled to get pre-emption on the ground of co-sharership does not suffer from perversity and this court while exercising jurisdiction under article 227 of the constitution of India is not supposed to convert itself as a second appellate court only on the ground that from the facts elicited, a different view can also be arrived at.

24. Relying upon the above principles of law it is safely concluded that here in this case since vendor of the pre-emptee transferred his entire share in the suit plot to the pre-emptee, the pre-emptor is not entitled to get pre-emption on the ground of co-sharership.

25. The Trial Court has rightly dismissed the pre-emption application. There is no scope for interference of impugned order passed by the Ld. Trial Court. Hence, the appeal is liable to be dismissed.

26. All the points for consideration are thus disposed of.

27. As a result the appeal fails.

## **FINAL ORDER**

28. Hence, it is

**ordered**

29. that the miscellaneous appeal be and same is dismissed on contest without any cost.

30. The impugned judgment/order passed on 29/05/2017 by the Ld. Civil Judge (Junior Division), 3<sup>rd</sup> Court, Purba Bardhaman Misc. Case No.- 17 of 2010 is hereby affirmed.

31. Let a copy of this judgment along with TCR be sent to the Court from whose order this appeal has been preferred at once for information.

32. Certified copy of the judgment be made available to the parties immediately, if applied for.

Typed by me

Shri Pradip Kumar Adhikary, WBJS,  
J O Code (UID No.) - WB916,  
Additional District & Sessions Judge,  
4<sup>th</sup> Court, Purba Bardhaman Sadar,  
Dist.- Purba Bardhaman

Shri Pradip Kumar Adhikary, WBJS,  
J O Code (UID No.) - WB916,  
Additional District & Sessions Judge,  
4<sup>th</sup> Court, Purba Bardhaman Sadar,  
Dist.- Purba Bardhaman