

West Bengal Form No.3701
High Court Form No.(J)2
Heading of Judgment in Original Suit/Case

District : Purba Medinipur

In the Court of the Civil Judge (Junior Division),
Haldia, Purba Medinipur.

Present : Shri Binod Vishwakarma
Civil Judge(Junior Division);
Haldia, Purba Medinipur.

Case filed on 30th day of July, 2014
Final Order delivered on 1st day of March, 2023

J. Misc. Case No. 49 of 2014 (Pre-emption)
CIS No. 49 of 2014

Petitioner : Sk. Mahammad

--Versus--

Opposite Party: Safiul Sha

Sri Prithwis De - Ld. Advocate for the Petitioner.

&

Sk. Mansur Alam - Ld. Advocate for the Opposite Party.

This case coming on for final *ex-parte* hearing before the Court on 30.01.2023.

This is a case for Pre-emption under Section 8/9 of W.B.L.R. Act.

Today is fixed for argument.

Petitioner files hazira.

Ld. Advocate for the petitioner is present in court this day.

Argument is heard in full.

Now, the record is taken up for passing order.

The petitioner's case in brief is that the petitioner is a co-sharer and adjoining land owner of LR plot no. 893. The OP purchased the schedule property without giving any notice to the petitioner. The OP purchased the suit property by virtue of impugned deed of sale being no.2372 of 2014 registered on 22.07.2014. Therefore, the petitioner is a non-notified co-sharer. So he is entitled to pre-emption the schedule property as per provision of section 8 of WBLR Act 1955.

The summon was duly served upon the OP. O.P. appeared and contested the case by filing W/O. The O.P. partly examined P.W.1. But the O.P. failed to contest the case later on. So, the suit proceeded *ex-parte* against the O.P. on 29.03.2022.

EVIDENCE ADDUCED

P.W. 1 – Sk. Raju.

LIST OF EXHIBITS

The following documents have been exhibited by petitioner :

Sl. No.	Exhibit no.	Nature of documents
1	1	Original registered deed of sale being no. 2786 dated 11.04.2005.
2	2	Original registered deed of sale being no. 2795 dated 11.04.2005.
3	3	Original registered deed of sale being no. 4690 dated 25.08.99.
4	4	Certified copy of LR ROR being no. 2220.
5	5	Original rent receipt.
6	6	Certified copy of deed of sale being no. 2372 dated 23.04.2014.
7	7 (with objection)	Original power of attorney dated 24.10.2017.
8	8 (with objection)	Certified copy of deed of sale being no. 2781 dated 12.01.2005.

Upon consideration of the pleading of the petitioner and materials on record Court has framed the following issues for the proper adjudication of the suit:-

ISSUES

1. Whether the case is barred by Limitation Act?
2. Whether the petitioner is a co-sharer?
3. Whether the petitioner deposited the entire consideration money along with 10% interest?

DECISION WITH REASON

Issue no. 1:

The O.P. did not pressed this issue at the time of argument. No specific plea is found in the W.O. of the O.P. that the case is barred by law of limitation. The impugned registered deed of sale being no. 2372 of 2014 registered on 22.07.2014 and this case is filed on 30.07.2014 within 3 months from the date of registration of the impugned deed. Therefore, this Court holds that this case is not barred by law of limitation. This issue is decided in favour of the petitioner.

Issue no. 2:

The petitioner has pleaded that he is a co-sharer as well as adjoining land owner of the case property and he has 6 decimals of land in the case plot being no.

893. The petitioner has acquired his 6 decimals of land in the suit plot by virtue of three registered deed of sale being no. 2786 of 2005, 2795 of 2005 and 4690 of 1999 which are marked as Exhibits 1 to 3. The petitioner has filed L.R.R.O.R. being no. 2220 marked as exhibit 4 in support of his plea that he is a co-sharer of the case property. Therefore, it is also not disputed that the petitioner is a non-notified co-sharer. It is specifically pleaded by the petitioner that the O.P. is a stranger purchaser and he had no share in the case plot prior to the purchase of the case property. In his cross-examination, the O.P. himself admitted that he has no other property in the case plot except the property he acquired by virtue of the impugned sale deed. Therefore, the petitioner is successful in proving that he is a non-notified co-sharer of the case plot and the O.P. is a stranger purchaser. Hence, this issue is also decided in favour of the petitioners.

Issue no. 3:

The consideration money as mentioned in the impugned deed is of Rs.17160/-. The petitioner has deposited Rs.18,876/- i.e. the consideration money plus 10 per cent interest. Thus, the petitioner has duly deposited the consideration money. This issue is also decided in favour of the petitioner.

It is already proved that this case is within limitation period, the petitioner is a non-notified co-sharer and the O.P. is a stranger purchaser.

Therefore, it is the opinion of the Court that the petitioner is successful in proving his case and he is entitled to get an order of pre-emption in respect of the case property. Hence, this issues is also decided in favour of the petitioner.

Hence,

it is

ORDERED

that the Pre-emption Misc. case be and the same is **allowed on contest** in respect of Opposite Party but without any order as to cost.

That the right, title, interest and possession of the Opposite Party in the case property do vest to the petitioner by way of pre-emption after payment of remaining consideration money. The Opposite Party is hereby directed to deliver up the *khas* possession of the case property to the petitioner within 30 days from the payment of remaining consideration money, failing which the petitioner will be at liberty to get *khas* possession of the case property through Court. Opposite Party shall be at liberty to withdraw the amount deposited in Court by the petitioners as amount of consideration money and interest thereon.

Thus the Misc. case is disposed of accordingly.

Sd/-
Civil Judge (Junior Division)
Haldia, Purba Medinipur.

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Haldia, Purba Medinipur.