

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

**Present : Smt. Bristi Bardhan
Civil Judge(Junior Division),
Haldia, Purba Medinipur.
JO Code : WB01490**

Suit filed on 04th day of November, 2022

**Final Order delivered on Monday, the 22nd day of January,
2024**

**1. Sk. Abdul Kasem
2. Sk. Iyakub AliPetitioners**

--Versus--

Sayma Bibi.....Opposite Party

This Suit coming on for final ex parte hearing before the
Court on 22.01.2024.

This is an Application under Section 8 & 9 of W.B.L.R
Act.

J. Misc. (Pre emption) 58 of 2022

CIS No. 58 of 2022

Order No. 09

22.01.2024

Today is fixed for argument.

Petitioner files hazira.

Argument heard in full.

Now, the record is taken up for passing order.

The fact of the Petitioner's case is that **Petitioners no. 1 and 2 owns the suit plot which is dag no. 15 having 1.673 decimals of land** as being the legal heirs of Moula Box and Sk. Ahed Ali respectively.

The suit plot has been marked as schedule 'ka' of the plaint. The Petitioners stated that the Opposite Party had purchased the suit plot vide **Sale Deed No. 4127 of 2022** from Hayder Ali and Jolehar Bibi without giving any notice to the Petitioners.

The sellers of the Deed are the legal heirs of Julfar

Rahaman.

The original suit plot which is dag no. 15 having total 35 decimals of land was owned by Moula Box having 5 annas 5 ganda and 1 kranti land, Sk. Ahamed Ali owned 5 annas 15 ganda of land and Julfar Rahaman owned 1 ana 16 ganda of land which is equal to 1.673 decimals of land which is the suit plot.

All these Deeds are **registered** Deeds. Therefore, the Petitioner prays that the Opposite Parties have acquired the suit property without giving any notice to the Petitioner. Even, the Petitioner claims that the Opposite Parties are strangers to the suit property. Finding no other alternative, the Petitioner had filed this case before this Court.

The **Impunged Sale Deed which is being no. 4127 of 2022** reflects the consideration money as **Rs.92,000/-**. The Petitioner had deposited **Rs.1,01,200/-** which is consideration money along with 10% interest before this Court. The **deposited money is correct** and therefore, this case proceeded.

The Petitioner had filed the summons upon the Opposite Party. The Opposite Party had appeared before the Court on **05.01.2023 which is reflected in the Order No. 02.**

But, the Opposite Party had failed to submit her Written Objection as the statutory period got over. Thus, the case **run ex-parte against the Opposite Party vide Order No. 04 dated 24.07.2023.**

The cause of action for filing this suit arose on **26.08.2022.**

To prove this suit, the Petitioner has examined himself as P.W-1 and to prove his suit, the Petitioner filed the following documents which are marked as exhibits.

LIST OF EXHIBITS

Sl. No.	Exhibit No.	Nature of documents
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1.	1	Certified copy of Impugned Sale Deed being no. 4127 of 2022.
2.	2 (two pages)	Certified copy of RS record of khatian no. 173 (two pages).
3.	3	Net copy of LR ROR of khatian no. 937.
4.	4	Net copy of LR ROR of khatian no. 2033.
5.	5	Net copy of Rent Receipt of khatian no. 937.
6.	6	Net copy of Rent Receipt of khatian no. 2033.

DECISION WITH REASONS

The Petitioner has adduced both oral and documentary evidence to prove his case.

The **Impugned Deed of Sale being no. 4127 of 2022** is **finally registered on 25.08.2022** and this case was filed on **04.11.2022** which is within the **statutory period**. Hence, this case is within the limitation period.

Exhibit 2 shows that Moula Box, Sk. Ahamed Ali, Julfar Rahaman, Khurshed and Usman are the owners of dag no. 15 having total 35 decimals of land.

After the death of Moula Box, his son, namely, Sk. Abul Kasem who is Petitioner no. 1 had inherited his plot of land. After this, Sk. Ahamed Ali had expire leaving behind his son, namely, Sk. Yakub Ali who is Petitioner no. 2 of this case.

Sk. Yakub Ali had inherited 1.673 decimals of land upon dag no. 15.

But, the Opposite Party had purchased the suit plot vide **Exhibit No. 02** which is **Sale Deed No. 4127 of 2022** without serving any notice upon the Petitioners of this case.

Thus, the **Petitioner has a pre emption right** over the scheduled property.

The Court finds no reason to disbelieve the unchallenged testimony and the documentary evidence of the petitioner. It can further be ascertained from **Sec.114(g)** of The Indian Evidence Act, 1872, “**that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it**”.

Here, as the Defendants did not appear and adduce evidence, the Court **may presume** that if the Defendants would have appeared, the evidence which has been adduced by the Plaintiff, would be unfavourable to him. Hence, the case succeeds.

Hence, it is

ORDERED

that the pre-emption Misc case be and the same is **ALLOWED ON EX-PARTE** without cost.

That the right, title and interest of the Opposite Party in the case property do vest to the Petitioner by way of pre-emption.

The Opposite Party is hereby directed to deliver up the possession in the case property to the Petitioner **within 30 days** from the date of passing of this order, failing which Petitioner shall be at liberty to get possession of the case property through court.

Opposite Party shall be at **liberty to withdraw** the amount deposited in court by the petitioner as amount of consideration money and interest thereon.

Thus, the Misc case is disposed of accordingly.

D/A to note accordingly.

Update the CIS.

Sd/-

Civil Judge (Jr. Divn),
Purba Medinipur, Haldia

Sd/-

Civil Judge (Jr. Divn),
Purba Medinipur, Haldia