

Ram Kumar Kajaria Vs. Chandra Engineering (India) Ltd.

Ram Kumar Kajaria Vs. Chandra Engineering (India) Ltd.

SooperKanoon Citation : sooperkanoon.com/860391

Court : Kolkata

Decided On : Sep-07-1971

Reported in : AIR1972Cal381,76CWN426

Judge : Murari Mohan Dutt, J.

Acts : [Limitation Act, 1963](#) - Section 137 - Schedule - Articles 137 and 181; ;West Bengal Land Reforms Act, 1956 - Sections 2(10), 5(5) and 8(1); ;Code of Civil Procedure (CPC); ;Limitation Act, 1908 - Section 181

Appeal No. : Civil Rules Nos. 618 and 619 of 1969

Appellant : Ram Kumar Kajaria

Respondent : Chandra Engineering (India) Ltd.

Advocate for Def. : Nalini Ranjan Bhattacharji, ;Bireswar Bhattacharji, ;Bhupati Bhusan Dalal and ;L.K. Chatterjee, Advs.

Advocate for Pet/Ap. : Manindra Nath Ghose and ;Janendra Coomar Dutt, Advs.

Judgement :

ORDER

Murari Mohan Dutt, J.

1. These two Rules arise out of two pre-emption proceedings under Section 8(1) of the West Bengal Land Reforms Act, 1955.
2. It appears that some of the co-sharers of the disputed holding sold portions of the same to the opposite party M/s. Chandra Engineering (India) Ltd. by two registered sale deeds dated April 2, 1966 and April 4, 1966. It is not disputed that the opposite party is a stranger in respect of the disputed holding. The petitioner alleged that he was a co-sharer raiyat of the holding and that the transfers were made without service of any notice upon the petitioner under Section 5(5) of the West Bengal Land Reforms Act. After the petitioner came to know of the said two transfers, the petitioner made the said two applications before the Senior Land Reforms Officer on August 17, 1966, praying for pre-emption under Section 8(1) of the Act.
3. The opposite party opposed the said two applications of the petitioner. It was alleged by the opposite party that the petitioner was not a co-sharer raiyat of the disputed holding and that the applications not having been filed within the period of limitation prescribed by Section 8(1) of the Act, the applications were barred.
4. The Senior Land Reforms Officer by two orders both dated March 27, 1967, passed in the two pre-emption cases arising out of the said two applications of the petitioner, came to the findings that the petitioner was a co-sharer raiyat of the holding and that no notice of the transfer was served upon the petitioner Relying on the decision of the Special Bench of this Court in *Asmatali v. Mujaharali*, 52 Cal WN 64 = (AIR 1948 Cal 48) (SB), the Senior Land Reforms Officer held that the applications having been filed within three years of the respective dates of the transfers, the applications were not barred by limitation. Upon these findings, the Senior Land Reforms Officer allowed the applications of the petitioner for pre-emption under Section 8(1) of the Act. The opposite party preferred two appeals to the Second Court of the Munsif at Arambagh. Both these appeals were heard analogously by the learned Munsif.
5. The learned Munsif took the view that Article 181 of the Indian Limitation Act, 1908, was not applicable to an application under Section 8(1) of the Act. According to him, Article 181 would apply only to an application under the Code of Civil

Procedure and that the applications under Section 8(1) of the Act not being applications under the Code of Civil Procedure, the petitioner was not entitled to avail of the three years' rule of limitation as prescribed by Article 181. The learned Munsif held that the applications of the petitioner were barred by limitation. On the question whether the petitioner was a raiyat or not, the learned Munsif was of the view that as the petitioner who is the successor-in-interest of the raiyat in respect of the disputed holding, not being himself a cultivator was not a raiyat and as such the petitioner's applications under Section 8(1) was not maintainable as the petitioner could not be said to be co-sharer raiyat. On the aforesaid findings, the learned Munsif by his order dated January 7, 1969, allowed the appeals and dismissed the applications of the petitioner under Section 8(1). Hence, these two Rules by the petitioner.

6. It may be stated at the outset, that the learned Munsif was right in holding that Article 181 applied only to applications under the Code of Civil Procedure and that the applications of the petitioner under Section 8(1) not being applications under the Code of Civil Procedure, the provision of Article 181 was not available to the petitioner. Whatever doubts there might have been previously as to the applicability of Article 181 to applications under other enactments, it has now been settled by the successive decisions of the Supreme Court that Article 181 will apply only to applications under the Code of Civil Procedure (*Sha Mulchand & Co. v. Jawahar Mills Ltd.*, : [1953]4SCR351 *Bombay Gas Ltd. v. Gopal Biva*, : (1963)11LLJ608SC *Protiva Bose v. Rupendra Deb Raikat*, : [1964]4SCR69 .

7. It has been already stated that the two transfers were made on April 2, 1966 and April 4, 1966, that is, after the Limitation Act of 1903 had come into force. The learned Munsif did not, however, consider the applicability of Article 137 of the [Limitation Act, 1963](#), which corresponds to Article 181.

8. Article 181 was held to be applicable only to applications under the Code of Civil Procedure in a long series of decisions, for the reason that since all other applications mentioned in the third division of the Schedule were applications under the Code of Civil Procedure, the applications referred to in Article 181 should be construed ejusdem generis, that is, it would apply to applications under

the Code of Civil Procedure. The same view was maintained even after the amendment of Articles 158 and 178 of the Limitation Act, 1908, by the Indian Arbitration Act, 1940.

9. Under the [Limitation Act, 1963](#), the scope of Article 137 has been widened. In Clause (b) of Section 2 a new definition of the word 'application' has been inserted. Clause (b) provides that 'application' includes a petition. In view of the said new definition of the word 'application' the scope of the Limitation Act has been enlarged by making it applicable to applications as also petitions under special enactments.

10. The statement of objects and reasons of the [Limitation Act, 1963](#), declares as follows:

'A new definition of application is being inserted so as to include a petition, original or otherwise. The object is to provide a period of limitation for original applications and petitions under special laws as there is no such provision now.'

It is, therefore, clear that the intention of the legislature was that the [Limitation Act, 1963](#), would apply also to applications and petitions under the special laws. Unlike Article 181, Article 137 is not restricted only to applications under the Code of Civil Procedure, but it also applies to applications and petitions under other enactments. In my view, therefore, Article 137 applied to applications for pre-emption by the petitioner under Section 8(1) of the West Bengal Land Reforms Act. The petitioner not having been served with a notice under Section 5(5) of the Act, or in other words, the petitioner being a non-notified co-sharer, the period of limitation prescribed by Section 8(1) was not applicable, but the period of limitation as prescribed by Article 137 was applicable. The petitioner having made the applications within three years of the transfers, the applications were not barred by limitation.

11. As to the other question, namely, whether the petitioner was a co-sharer raiyat or not, it has been already stated that the learned Munsif has taken the view that the petitioner who is the successor-in-interest of the raiyat in respect of the disputed holding, not being himself a cultivator cannot be held to be a co-sharer

raiyat. In support of the said view the learned Munsif has relied upon the decision of the Privy Council in *Turner Morrison & Co. Ltd. v. Monmohan Chowdhury*, 36 Cal WN 29 = (AIR 1931 PC 314). In my opinion, the learned Munsif has misread and misunderstood the said decision of the Privy Council. In that decision the Privy Council has held that the proviso to Section 37 of the Revenue Sales Act (XI of 1859), the term 'raiyat' is limited to cultivator and does not include the successor-in-interest of a raiyat who is not a cultivator himself. That decision of the Privy Council does not apply to the case of a raiyat under the West Bengal Land Reforms Act.

12. Section 2(10) of the West Bengal Land Reforms Act defines the term 'Raiyat' as 'Raiyat' means a person who holds land for purposes of agriculture. It is clear from the definition of the term 'Raiyat' that the only test whether a person is a raiyat or not is the purpose for which the land was settled. If the purpose for which the settlement was made is agricultural purpose, the person in whose favour such settlement was made, is a raiyat. On the other hand, if the purpose is other than agricultural purpose for which the land was settled, in that case, the settlement cannot be said to be a raiyati settlement and the person in whose favour the settlement was made cannot be regarded as a raiyat within the meaning of Section 2(10), even though the land is actually used for agricultural purpose.

13. There is no dispute that the predecessor-in-interest of the petitioner was a raiyat in respect of the disputed holding. It may be that the land has not been used by the petitioner for agricultural purpose, but it cannot be said that he does not hold the land for purposes of agriculture. So long as the tenancy subsists, the raiyat is entitled to avail of the right of pre-emption under Section 8(1), even though he does not cultivate the land of his holding. Cultivation of the land or actual user of the same for agricultural purpose by a co-sharer raiyat is not a condition precedent to enforcing the right of pre-emption under Section 8(1).

14. In the instant case, there being no dispute that the purpose of the tenancy is agriculture, the petitioner must be held to be a raiyat of the holding. The finding of the learned Munsif that the petitioner not being himself a cultivator, is not a raiyat within the meaning of Section 2(10), is erroneous.

15. In the result, the order of the learned Munsif dismissing the applications of the petitioner under Section 8(1) is set aside and the orders of the Senior Land Reforms Officer allowing the applications of the petitioner are restored. The Rules are made absolute. There will, however, be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com