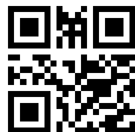


IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1014 of 2018
Smt. Santana Sengupta (Gupta)
Vs.
Bidyasagar Mondal & Ors.

For the Petitioner : Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
Ms. Poulami Chkraborty

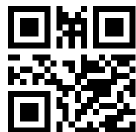
For the Opposite Parties : Mr. Saptangsu Basu
Mr. Kumar Jyoti Tewari
Mr. Manas Kumar Das
Mr. Amrit Singh
Mr. Aniruddha Tewari

Heard on : 12.09.2023

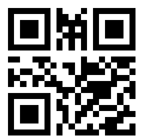
Judgment on : 19.12.2023

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order dated 15.12.2017 passed by the learned District Judge, Kandi, Murshidabad in Miscellaneous appeal No. 9 of 2017, reversing the judgment and order dated 27.01.2017 passed by the learned Civil Judge (Junior Division), 2nd court Kandi, Murshidabad in Misc. Case No(L.R) 48 of 2010, present Application has been preferred by the petitioner.



2. Opposite parties herein as preemptors filed an application under Sections 8 & 9 of the West Bengal Land Reforms Act, 1955 (Herein after called as Act of 1955) against the petitioner herein being aforesaid Misc case no 48 of 2010. In the said application the Petitioners /opposite parties herein contended that the suit property originally belonged to one Amalesh Ghosh, since deceased. Thereafter the petitioner as well as the husband and the father of the vendors of the opposite parties namely Shymal Halder purchased the property by separate registered sale deeds. The “ka” schedule property was purchased by Shyamal Halder and “kha” schedule property by petitioner no. 1 and kha 1 schedule property was purchased by petitioner no. 2 and 3. It is further contended that petitioner no. 1 and 3 are residing on the north west corner of plot no. 1257 by specific demarcation but the plot no. 1095 is ejmali property and it has not been partitioned by metes and bounds. It is further contended that Shymal Halder filed a partition suit being T.S. no. 58 of 2004. After the death of Shyamal Halder his legal heirs transferred “ka” schedule property to the petitioner and before such transfer no notice was served upon the petitioners who claimed themselves as co-sharers. It is further alleged in the said application that the actual consideration amount of the case schedule property is Rs. 1,00,000/- but only to deprive the petitioners from their pre-emption right, the consideration amount has been written on the deed as 5,00,000/-. In the above backdrop petitioners filed said application seeking preemption on the ground of co-sharer ship as well as contiguous ownership of the boundary of the case schedule property, on depositing Rs. 1,00,000/- along with 10%



levy. Thereafter petitioner deposited entire consideration money with 10% levy amount interms of order of the court.

3. The petitioner contested the said application for preemption by filing written objection and the specific case of the petitioner is that the preemptors are not the co-sharers nor the contagious owners in respect of the suit property. In fact Shyamal Halder, purchased the suit property with specific sketch map, and practically the property of original owner Amlesh, was purchased by different persons through different deeds along with different sketch maps. The learned Trial Court by its order no. 43 dated 27th January, 2017 was pleased to dismiss the preemption application with the observation that there is a strip of land between the property of the petitioner and the property of the opposite parties and it is not evident from the record that said strip of land is part and parcel of either petitioner's land or opposite parties' land but it is a separate land and as such it cannot be said that the opposite parties are the contiguous owner of the suit schedule property. The Trial court further held that the property also separately mutated in the name of the petitioners as well as in the name of the opposite parties and both the parties are direct tenant under the state government and as such they cannot be called as co-sharer in respect of the case property.

4. Being aggrieved by that order the opposite party/preemptors preferred a Misc. Appeal being no.9 of 2017, contending that the Trial Court did not consider the Mouza Map filed by the petitioners to appreciate that

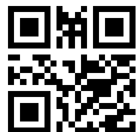
the plots of the petitioners and the opposite party are situated just beside each other which is evident from the commissioners report also.

5. Learned Appellate Court while dealing with the said issues observed that it appeared from facts and circumstances on record that the appellant petitioners are not entitled to get preemption on the ground of co-sharership however learned court below found on the facts and evidence on record that appellants/petitioners are contiguous/adjoining owners of the impugned plot of land which was transferred in favour of respondent/opposite party and accordingly court below allowed the petitioners application for preemption after setting aside the order of dismissal passed by the court below.

6. Mr. Roy learned counsel appearing on behalf of the petitioner made three fold arguments before this Court.

(a) That as the entire consideration money as mentioned in the Deed was not deposited within the period of limitation as mentioned in the statute, therefore, the subsequent deposit cannot enlarge the period of limitation irrespective of facts that such deposit has been made in terms of the order of the court.

(b) 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, therefore, each purchaser became owner of the demarcated portion purchased by them and none of them became the co-sharer of the same.



(c) In absence of any co-sharer in a demarcated portion of the property and since the entire portion has been transferred, then the application for preemption on the ground of vicinage is also not maintainable.

7. Mr. Roy elaborated his argument contending that admittedly parties to the proceeding purchased the property of the original owner through different deeds along with sketch maps and as such each of the parties will be considered to be the exclusive owners in respect of their respective demarcated portion and that being the position, in terms of section 2(6) of the Act of 1955, neither parties can be treated as a co-sharer of a riyat of the plot of land, as all of them has demarcated interest over the plot in question. In this context he relied upon

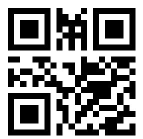
a) **77 CWN 272 *(Labanno Bala Devi Vs. Parul Bala Devi).***

b) **2006 4 CHN page 302 *(Rabi Kumar Das and others Vs. Chittaranjan Das and others).***

c) **2016 (3) CHN page 61 *(Arindam Joardar Vs. Tarun Raha & another).***

d) **2019(5) CHN page 464 *(Apurba Sarkar Vs. Arabinda Adhikary).***

8. In the context of short deposit Mr. Roy relied upon ***Barasat Eye Hospital and others Vs. Kaustav Mondal*** reported in **2019 (9) SCC 767** and ***Abdul matin Mallick Vs. Subrata Bhattachayrya*** reported in (**2022) 7 SCC 147** and contended that it is now well settled that the pre requisite to even endeavor to exercise the weak right of preemption is the deposit of the amount of sale consideration and the 10% levy on that consideration as

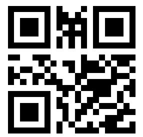


otherwise, section 8(1) of the Act of 1955 will not be triggered off, apart from making even the beginning of section 9(1) of the said Act otiose.

9. In support of his argument that the petitioners are not entitled to get preemption on the ground of adjacent ownership of land, Mr. Roy contended that to attract preemption on the ground of vicinage, a portion or share of land held by a raiyat is required to be transferred and after purchase by way of demarcation each of them became raiyat in respect of their respective demarcated portion and when they transferred the portion in its entirety, then the right of preemption does not arise. In this context he relied upon paragraph 36 of the judgment in ***Apurba Sarkar Vs. Arabinda Adhikary*** reported in **2019 (5) CHN 464.**

10. Mr. Basu learned counsel appearing on behalf of the opposite parties herein contended that from the schedule of three deeds it is apparent that total lands transferred from lot A is 7.57 decimal, comprising of RS plot No. 1095, and 1258, whereas area of said plot is 7 decimal which makes it clear that more than actual area has been transferred and as such there cannot be well demarcated or partitioned property described by specific boundary, when the total transferred land does not tally with the actual measurement of land.

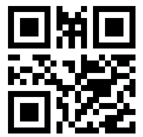
11. Mr. Basu further contended that actually the entire plot of land is un demarcated and un partitioned and "co-sharer of a raiyat in a plot of land" means a person other than the raiyat who has an undemarcated interest in a plot of land along with raiyat and the opposite parties being co-sharer and contiguous owners applied for exercising the right of preemption rightly. Mr.



Basu further contended that the existence of a strip of land cannot stand in the way of applying for preemption on the ground of vicinage and as such Court below rightly allowed the preemption application. He further contended there is hardly any dispute that preemptor/raiyat possessing adjoining plot of land and as such he is entitled to assert his right of preemption. In this context he relied upon ***Chana Rani Saha Vs. Mani pal @ Kaltu pal Civil Appeal No. 5905 of 2009.***

12. Mr. Basu further contended that in the present case entire land is undemarcated and/or unpartitioned and portion and share of land has been transferred, accordingly the opposite parties are the Co-sharer of the plot of land in question and both the courts below erroneously observed that the opposite parties are not the co-sharer. In fact the argument advanced by the petitioner that once specified demarcated portion is sold by common vendor to different purchasers, it tantamount to partition, does not find any leg to stand in view of section 14 of the Act of 1955 and mere possession in a portion of the property does not lead to a presumption that the parties have amicably partitioned the suit property.

13. Regarding short deposit, Mr. Basu argued that initially opposite parties filed the application for preemption with short deposit with a prayer for enquiry as envisaged under section 9 of the Act of 1955, however in terms of the order passed by learned Judge in Misc. Appeal No. 22 of 2012 on 30.04.2015, the opposite parties herein deposited the entire amount and said order dated 30.04.2015 was affirmed by this High Court on 20.07.2015 in C.O. No. 2081 of 2015. Accordingly Mr. Basu argued that the issue



regarding short deposit has been settled herein prior to the judgment of **Barasat Eye Hospital (Supra).** He further argued that the principles of *res judicata* applies also as between two stages in the same litigation to the extent that a court whether a trial court or higher court having at an earlier stage decided a matter in one way, will not allow the parties to re agitate the matter again at a subsequent stage of the same proceeding. In this context he relied upon judgment passed in ***Satyadhan Ghosal and others Vs. Deorajin Devi,*** **AIR 1960 SC 941**. Mr. Basu further added that the settled positon of law states that merely because the Apex court in some other judgments at a subsequent date took a different view and settled the positon in law, is not valid ground to the petitioner to raise the point of short deposit at this stage. In this connection he relied upon a judgment in ***Union of India and others Vs. Saraswati Marble and Granite Industries Pvt. Ltd.*** reported in ***2020 (20) SCC 810.*** Accordingly Mr. Basu contended that court below rightly allowed prayer for pre-emption made by the opposite parties herein and such order does not call for interference by this court, invoking jurisdiction under article 227 of the Constitution of India.

14. I have considered submissions made by both the parties.

15. It is not in dispute in the present context that the consideration amount has been written in that deed by which the case property was transferred is Rs. 500,000/-. It is also not in dispute that the said transaction took place by which the pre-emptee purchased the case property is dated 08.04.2010. Claiming themselves as co sharer as well as contiguous owner petitioners filed the present application for preemption depositing

Rs.1,00,000/-. Learned trial court by an order dated 08.09.2010 directed the pre-emptor to deposit the rest amount with further sum of 10% as mentioned in the deed by 15.12.2010.

16. In **Barasat Eye Hospital and others Vs. Kaustabh Mondal (supra)** the Apex Court observed that once the time period to exercise a right is sacroscent then the deposit of the full amount within the time is also sacroscent. It has been clearly observed that it cannot be said that a discretion can be left to the preemptor to deposit whatever amount, in his opinion, is the appropriate consideration, in order to exercise a right of preemption. But the full amount has to be deposited by the preemptor and Their Lordship was firmly of the view that the prerequisite to even endeavor to exercise this weak right is the deposit of the amount of sale consideration and the 10% levy on that consideration as otherwise section 8(1) of the said act will not be triggered off, apart from making even the beginning of section 9(1) of the said act otiose. Their Lordship further held that even in the event that a preemptor raises doubts regarding the consideration amount, enquiry into the said aspect can be done only upon payment of the full amount along with the application. In this aspect the phrase "the reminder, if any, being refunded to the applicant" would include to mean the repayment of the initial deposit made along with the application if considered to be excess and to give any other connotation to these sections would make both the later part of the section 8 of the said act and inception part of the section 9 of the said Act otiose. In this context Supreme Court specifically opined in para 32 as follows**:-**

> "**32.** *We also believe that to give such a discretion to the pre-emptor, without deposit of the full consideration, would give rise to speculative litigation, where the pre-emptor, by depositing smaller amounts, can drag on the issue of the vendee exercising rights in pursuance of the valid sale deed executed. In the present case, there is a sale deed executed and registered, setting out the consideration."* *(emphasis added)*

17. In para 24 of the said judgment Their Lordship had given the reasons for such conclusion with the observation that the amount to be deposited is not any amount as that would give a wide discretion to a preemptor and any preemptor not able to pay the full amount would always be able to say that in his belief the consideration was much lesser than what had been set out.

18. Now if I read the aforesaid observation of the Apex Court in the present context, the ground reality of such observation has been clearly manifested here. In the present context as I have already stated when petitioner filed the application of preemption, he deposited only Rs. 100,000/- though the consideration price appeared in the deed is Rs. 500,000/-. Petitioner did not assign any reason in support of his belief that the consideration price passed in respect of the case property is not more than Rs. 100,000/- In fact no evidence has also been laid to substantiate the claim that actual consideration price passed in connection with the impugned deed is only Rs. 100000/- and not Rs. 500,000/-. In the above context Trial Court specifically directed him to deposit entire consideration price along with further sum of 10% as mentioned in the deed by 15.12.2010. Now if I take a note of subsequent approach of the petitioner I find that challenging said order for deposit of entire consideration price

passed by Trial Court pre-emptor preferred Revisional Application before learned Additional District Judge Kandi, being Civil Revisional Case No. 12 of 2010. However learned Revisional Court by its order dated 27.01.2011 allowed the application directing the petitioner to deposit entire amount of actual consideration money which has been shown in the concerned sale deed. Even after the said order petitioner did not care to deposit the consideration amount and instead preemptor preferred another Application under Article 227 of the Constitution of India before this High Court being C.O. 2817 of 2011. While disposing said revisional application this High Court again asked the petitioner to comply the trial courts order regarding deposit of entire consideration price along with levy dated 08.09.2010.Even after said order passed by this Court petitioner did not deposit the entire consideration amount and as such the trial court was pleased to dismiss the preemption application on 28.08.2012.

19. Being aggrieved by the dismissal order pre-emptor again preferred Miscellaneous Appeal before learned Additional District Judge, Kandi. Learned appellate court while disposing the Misc. Appeal directed the court below that the application would be restored on condition of payment of entire consideration price within 10 days. Pre-emptor/opposite parties again preferred Revisional Application before this court, being C.O. 2081 of 2015.

20. Thereafter petitioner made the deposit. Aforesaid conduct as reflected in the above mentioned incidents, makes it clear that here also preemptor having not depositing the full amount took a plea not supported by reason that the consideration price appearing in the deed is excessive and thereby

tried to convert a weak right into a speculative litigation depositing 1/5th of the consideration amount and thereby dragging on the issue of the vendee exercising rights in pursuance of a sale deed lawfully executed.

21. The question raised by Mr. Basu as to whether the law laid down by the apex Court that the pre requisite to even endevour to exercise this weak right is the deposit of the amount of sale consideration and the 10% levy on that consideration, is not applicable in the present context as the issue involved herein regarding short deposit, adjudicated long before the judgment pronounced in **Barasat Eye Hospital Case (supra).**

22. In this context law laid down by the Apex Court in ***P.V. George and others Vs. State of Kerala & others,*** reported in **(2007) 3 SCC 557** is very specific which states that normally the decision of the Supreme Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme court is in fact the law from inception. In paragraph 21 the Supreme Court further pleased to observe:-

> *"……The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in Golak Nath v. State of Punjab [AIR 1967 SC 1643] . In Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and Baburam v. C.C. Jacob [(1999) 3 SCC 362 : 1999 SCC (L&S) 682 : 1999 SCC (Cri) 433] .) It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in*

judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs......"

Ultimately in the said judgment Their lordship came to conclusion that the law declared by a court will have a retrospective effect if not otherwise stated to be so specifically (para 29).

23. A coordinate Bench of this court while dealing with the self-same issue in C.O. No. 1994 of 2022 held as follows:-

"This court, in CO 451 of 2023, held that the decision in Barasat Eye Hospital (Supra) had retrospective effect as it was a law declared. The relevant portions are quoted below:- "Upon a meaningful reading of the decision, it is evident that the object of the said decision was to put to rest the controversy in respect of exercise of such a weak right, especially in the matter of short deposits. The Apex court took note of the fact that the decision would have a far larger ramification, as many cases were pending before this High Court on this point. Secondly, the law was in existence since 1955, but the interpretation of the same in respect of the requirement to deposit the consideration amount was finally put to rest in the decision of Barasat Eye Hospital (supra). It is a law declared on the point and will have a retrospective effect. The Hon'ble Apex Court was of the view that if short deposits were allowed, a weak right would give rise to speculative suits. In the decision of Abdul Matin (supra), a similar view was taken by the Hon'ble Apex Court upon relying on the decision in Barasat Eye Hospital (supra). The Hon'ble Apex Court was dealing with Misc. Preemption Case No.8 of 2012 which had been filed before the trial court. The Misc. preemption case was dismissed by the trial court. Misc. Appeal No.7 of 2014 was preferred. The Misc. Appeal was allowed and the order of the learned trial court was set aside. The application for pre-emption was allowed on the ground of cosharership. The first appellate court allowed deposit of the balance consideration money. Aggrieved, the pre-emptee approached the High Court. The High Court dismissed the revisional application by upholding the order of the first appellate court and also upholding the decision of the first appellate to allow a belated deposit of the balance consideration money. Such order was challenged in Civil Appeal No.3500 of 2022. In 7 such a pending proceeding, the decision of Barasat Eye Hospital (supra) was referred to and it was held that the learned lower appellate court was not justified in permitting the preemptor to deposit the balance consideration money with additional 10% and the High Court was also not justified in upholding such decision. Thus the Supreme Court applied the decision of Barasat Eye Hospital (supra) even in a pending pre-emption case of 2012, and set aside the order of the High Court passed in C.O.4266 of 2016. The decision of Barasat Eye Hospital (supra) was rendered in 2019. In the decision of Assistant Commissioner, Income Tax Rajkot v. Saurashtra Kutch Stock Exchange Ltd., reported (2008) 14 SCC 171, the Hon'ble Apex Court held as follows:- "35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be

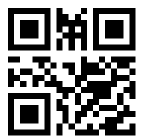
applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood." In the decision of P.V. George and Others v. State of Kerala and others, reported in (2007) 3 SCC 557, the Hon'ble Apex Court held that the law declared by a court will have retrospective effect if not otherwise stated to be so specifically. The decision of the Hon'ble Apex Court is a law declared on the point that deposit of the full amount stated as the sale consideration together with further deposit of 10% was a precondition to filing an application under Section 8(1) of the West Bengal Land and Land Reforms Act, 1995. The conflicting legal position was clarified, interpreted, rectified and altered. The decision has a retrospective effect and will apply to pending proceedings."

24. In view of the aforesaid decision and in the context of retrospectivity of the law laid down by the Apex court while interpreting section 8 and 9 of the Act of 1995, I find that the petitioners' application for preemption is not maintainable as he has not complied the prerequisites for enforcing his weak right by depositing the sale consideration price appearing in the impugned deed and the 10% levy on that consideration, which is clear violation of mandatory provision laid down under section 8(1) read with section 9(1) of the Act of 1955. Even allowing the pre-emptor to deposit the consideration amount after the period of limitation by the court cannot make the said deposit valid as the right to initiate the right of pre-emption starts from the date when the entire deposit is made by pre-emptor.

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 he 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.



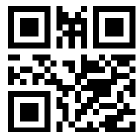
27. Aforesaid concurrent finding of both the courts below that the preemptors/opposite parties herein are not entitled to get pre-emption on the ground of co-sharership does not suffer from perversity and this court while exercising jurisdiction under article 227 of the constitution of India is not supposed 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.

28. So far as the impugned order of granting right of pre-emption on the ground of vicinage is concerned the court below overruled the finding of the Trial Court who held that there is a strip of land in between the plots of the parties which has been admitted by PW-1 during evidence. It appears from Appellate Court's judgment that during argument, preemptor did not press for preemption on the ground of co-sharership but pre-emptor is seeking preemption on the ground of adjacent land owner. But while contradicting the judgment of the Trial Court, the Appellate Court heavily relied upon maps annexed with the exhibited deeds. Relevant portion of the judgment in this context may be quoted below:-

> *" In the present case in hand, Nilotpal Mondal and Hemanta Kumar Mondal are the owners and possessors of the demarcated portion of the land measuring 5 dec out of 17 dec from the R.S. Dag No. 1094 corresponding to L.R. Dag No. 1257 and the said portion of land is situated contiguous/adjacent to the impugned plot of land in the suit R.S. Dag No. 1095 corresponding to L.R. Dag no. 1258. The said fact as to adjacent land is well depicted from the maps annexed with the deeds in favour of the pre-emptee and her vendor. There is no strip of land in between the possessed land of Nilotpal Mondal and Hemanta Kumar Mondal in plot 1094 and the impugned plot of land in the suit R.S. Dag No. 1095.*
>
> *Thus, it can safely be opined that Nilotpal Modal and hemnata Kumar Mondal being the owners and possessors of a portion in plot 1094 are contiguous/adjoining owners of the impugned plot of land in the suit R.S. Dag No.1095."*

29. Appellate Court in this context further observed that the observation of Trial Court with regard to the fact that the strip of land which is used as a pathway by Nilotpal and others intervened the land of Vidyasagar and the impugned land in the suit cannot be a ground to dismiss prayer for pre-emption and as such finding of Trial Court in this context is perverse.

30. In this context it is pertinent to mention that preemptor in one hand disputed the boundary of concerned properties by stating that actual area of land does not tally with the quantum of land shown in the deed and the map annexed but at the same he placed reliance upon map annexed with the deeds to show that preemptor is entitled to pre-empt on the grant of vicinage. Petitioners strenuously argued that under section 8(1) of the Act of 1955 for the purpose of exercising right of pre-emption, a portion or share of a plot of land is required to be transferred but in case of purchase by way of demarcation, each of them became raiyat in respect of their respective demarcated portion and when the transferor transfers the portion in it's entirety then the right of pre-emption does not arise. This High Court in various judgments in this context held that pre-emption does not lie if the entire land of a vendor is sold to the pre-emptee, but only if a portion or share of a plot of land held by raiyat is transferred and in the said judgments Chhana Rani's Case was also considered. While contradicting the trial courts observation that there is strip of land in between the two plots, court below did not make any attempt to verify other documentary and oral evidence to come to a finding that the said two plots are adjacent to each other in order to grant right of preemption in favour of the petitioner on the



ground of vicinage. Since such reversal order is not supported by evidence and sound reasoning, the ultimate finding of the trial court also calls for interference on that ground also.

31. In such view of the aforesaid discussion **C.O. 1014 of 2018** is allowed. The order impugned passed by learned Additional District Judge Kandi, Murshidabad in Misc. Appeal No.9 of 2017 dated 15.12.2017 is hereby set aside and the order dated 27.01.2017 passed by learned Civil Judge (Junior Division) 2nd Court, Kandi, Murshidabad in Misc. Case (LR) No. 48 of 2010 is hereby affirmed.

32. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)