

Sib Nath Chatterjee Vs. Tulsidas Chatterjee & Ors.

Civil Appeal No(s). 4317/2026 @ SLP(C) No. 23429/2019 · Supreme Court of India · 2026-04-09 · Manoj Misra · Vipul M. Pancholi · F2J-C-1092

Full judgment text

Sib Nath Chatterjee Vs. Tulsidas Chatterjee & Ors.

[Civil Appeal No(s). 4317/2026 @ SLP(C) No. 23429/2019]

1. Leave granted.

Facts

2. The appellant had set-up a claim of pre-emption under sub-section (1) of Section 8 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as 'the 1955 Act') being owner/ raiyat possessing land contiguous to the land under transfer.

3. Admittedly, the application under subsection (1) of Section 8 of the 1955 Act was submitted after 17 months from the date of transfer. Therefore, the second and third respondents (i.e., transferees) filed an application to reject appellant's application on the ground that the owner/ raiyat possessing contiguous land could exercise the right within four months of the date of transfer and not later.

4. The Court of first instance accepted respondents' plea and rejected the application holding the same to be ex facie barred by limitation prescribed by the 1955 Act.

5. Aggrieved therewith, an appeal was preferred.

6. The Appellate Court observed that, though Section 5 of the Limitation Act, 1963 is not applicable to original proceedings, the application cannot be rejected at the threshold on the ground of limitation. More so, when the case of the applicant is that he was not served notice of the transfer. The Appellate Court therefore set aside the order passed by the Court of first instance.

7. Aggrieved by the Appellate Court's order, the second and third respondents filed a revision before the High Court¹ under Article 227 of the Constitution of India.

8. The High Court held that the right of pre-emption as conferred upon the raiyat possessing land contiguous to the land under transfer could be exercised within four months from the date of transfer and since the application under sub-section (1) of Section 8 of the 1955 Act was submitted much beyond four months, the same being ex facie barred by limitation was rightly rejected by the Court of first instance. Accordingly, the High Court, vide impugned order dated 08.04.2019, set aside the order of the Appellate Court and restored the order of the Court of first instance.

9. Aggrieved by the order of the High Court, this appeal has been filed.

10. We have heard learned counsel for the parties and have perused the materials placed on record.

Submissions

11. The submission on behalf of the appellant is that unless the transfer is brought to the notice of the pre-emptor, the pre-emptor would not be able to avail his right, therefore the requirement of notice of the proposed transfer to the pre-emptor would have to be read into the provision and if no notice is given, then the pre-emptor must be deemed to have right of pre-emption within four months from the date of knowledge of such transfer. It was submitted that since no notice was provided to the appellant, the limitation for filing the application would have to be counted from the date of knowledge.

To support his submissions, learned counsel relied on a decision of this Court in Chhana Rani Saha vs Mani Pal @ Kaltu Pal². Therein this Court had observed that the Trial Court had rightly allowed the ownership of the land in question, since it was found that the vendor did not give notice of sale to the appellant therein. In that light, it was argued that the Appellate Court was justified in holding that since the appellant was not served notice of the transfer, the pre-emption application could not have been rejected at the threshold.

12. Per contra, learned counsel for the respondents submitted that sub-section (1) of Section 8 confers right of pre-emption on different categories of persons. Each category has a different limitation period within which it could exercise its right. Insofar as a person/ raiyat holding/ possessing adjoining/ contiguous land is concerned, he could exercise right within four months of the date of transfer. As the appellant falls in this category and, admittedly, the appellant had failed to exercise his right of pre-emption within four months of the date of transfer, the application at his instance was not maintainable. Therefore, it was rightly rejected by the Trial Court, and the High Court justifiably restored the same.

13. We have accorded due consideration to the rival submissions.

Discussion

14. Before we proceed to address the rival submissions, we must understand the true nature of the right of pre-emption.

15. In *Audh Behari Singh v. Gajadhar Jaipuria and others*³, a five-Judge Bench of this Court held that the law of pre-emption imposes a limitation or disability upon the ownership of a property to the extent that it restricts the owner's unfettered right of sale and compels him to sell the property to his co-sharer or neighbor, as the case may be.

It was observed that the person who is the co- sharer in the land or owns the land in the vicinity consequently only gets an advantage or benefit corresponding to the burden with which the owner of the property is saddled; even though it does not amount to an actual interest in the property sold. It was observed that the crux of the whole thing is that the benefit as well as the burden of the right of pre-emption runs with the land and can be enforced by or against the owner of the land for the time being although the right of the pre-emptor does not amount to an interest in the land itself.

It was also observed that if the right of pre-emption had been only a personal right enforceable against the vendee and there was no infirmity in the title of the owner restricting his right of sale in a certain manner, a bona fide purchaser without notice would certainly obtain an absolute title to the property, unhampered by any right of the pre-emptor and in such circumstances there could be no justification for enforcing the right of pre-emption against the purchaser on grounds of justice, equity and good conscience on which grounds alone the right could be enforced on the present day. Thus, it was held that the law of pre-emption creates a right which attaches to the property and on that footing only it can be enforced against the purchaser.

16. In *Bishan Singh & Ors. v. Khazan Singh & Anr.*⁴, a four-Judge Bench of this Court approved the decision of Allahabad High Court rendered by Mahmood, J. in *Gobind Dayal v. Inayatullah*⁵ wherein the right of pre-emption was described as under:

"It (right of pre-emption) is simply a right of substitution, entitling the pre-emptor, by means of a legal incident to which sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale, under which he derived his title. It is, in effect, as if in a sale deed the vendee's name were rubbed out and pre-emptor's name inserted in its place."

And thereafter, this Court summarized the law relating to the right of pre-emption as under:

"To summarize:

(1) The right of preemption is not a right to the thing sold but a right to the offer of the thing about to be sold. This right is called the primary or inherent right.

(2) The pre-emptor has a secondary right or a remedial right to follow the thing sold.

(3) It is a right of substitution but not of re-purchase i.e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee.

(4) It is a right to acquire the whole of the property sold and not a share of the property sold.

(5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place.

(6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."

17. Following the above decision, in *Radhakishan Laxminarayan Toshniwal v. Shridhar Alshi & Ors.*⁶, a five-Judge Bench of this Court held that there are no equities in favor of a pre-emptor, whose sole object is to disturb a valid transaction by virtue of the rights created in him by statute. Therefore, to defeat the right of pre-emption by any legitimate means is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law of preemption by all lawful means.

18. In *Mohd. Noor and others v. Mohd. Ibrahim and others*⁷, following the decision in *Radhakishan* (supra), it was observed that right of pre-emption has not been looked upon favorably as it operates as a clog on the right of the owner to alienate his property. Therefore, a person claiming right of pre-emption under a statute must strictly fall within the four corners of the provisions contained therein.

19. Upon consideration of various decisions of this Court, in our view, what is settled is that the right of pre-emption is a weak right. There are no equities in favor of the pre-emptor. As a result, such right can be defeated by any lawful means. Besides, it is considered a clog on the right of the owner to alienate his property, therefore, the right, if conferred by a statute, must be exercised strictly in terms of the statute. As a sequitur, the statute conferring the right of pre-emption is to be construed strictly and not liberally.

20. Now, we shall have a look at the relevant provisions of the 1955 Act regarding conferment and exercise of the right of pre-emption. Section 8 of the 1955 Act not only confers the right but also lays down the procedure for its exercise. It reads thus:

"8. Right of purchase by co-sharer or contiguous tenant-

(1) If a portion or share of a plot of land of a raiyat is transferred to any person other than a cosharer of a raiyat in the plot of land, the bargadar in the plot of land may, within three months of the date of such transfer, or any co-sharer of a raiyat in the plot of land may, within three months of the service of the notice given under sub-section (5) of section 5, or any raiyat possessing land adjoining such plot of land may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction, for transfer of the said portion or share of the plot of land to him, subject to the limit mentioned in section 14-M on deposit of the consideration money together with a further sum of ten per cent of that amount:

Provided that if the bargadar in the plot of land, a co-sharer of raiyat in a plot of land and a raiyat possessing land adjoining such plot of land apply for such transfer, the bargadar shall have the prior right to have such portion or share of the plot of land transferred to him, and in such a case, the deposit made by others shall be refunded to them:

Provided further that where the bargadar does not apply for such transfer and a co-sharer of a raiyat in the plot of land and a raiyat possessing land adjoining such plot of land both apply for such transfer, the former shall have the prior right to have such portion or share of the plot of land transferred to him, and in such a case, the deposit made by the latter shall be refunded to him:

Provided also that as amongst raiyats possessing lands adjoining such plot of land preference shall be given to the raiyat having the longest common boundary with the land transferred.

(2) Nothing in this section shall apply to-

(a) a transfer by exchange or by partition, or

(b) a transfer by bequest or gift, or *hiba-bil-ewaz*, or

(c) a mortgage mentioned in section 7,

(d) a transfer for charitable or religious purposes or both without reservation of any pecuniary benefit [for any individual, or]

(e) a transfer of land in favour of a bargadar in respect of such land if after such transfer, the transferee holds as a raiyat land not exceeding one acre (or 0.4047 hectare) in area in the aggregate.

Explanation - All orders passed and the consequences thereof under sections 8, 9 and 10 shall be subject to the provisions of Chapter IIB.

(3) Every application pending before a Revenue Officer at the commencement of section 7 of the West Bengal Land Reforms (Amendment) Act, 1972 shall, on such commencement, stand transferred to,

and disposed of by, the Munsif having jurisdiction in relation to the area in which the land is situated and on such transfer every such application shall be dealt with from the stage at which it was so transferred and shall be disposed of in accordance with the provision of this Act, as amended by the West Bengal Land Reforms (Amendment) Act, 1972."

21. A plain reading of sub-section (1) of Section 8 of the 1955 Act would disclose that the right of pre-emption arises on transfer of a portion or share of a plot of land of raiyat to any person other than a co-sharer of a raiyat in the plot of land. When such transfer takes place, the bargadar in the plot of land may, within three months of the date of such transfer, exercise his right of pre-emption.

Whereas a co-sharer of a raiyat in the plot of land may exercise the said right within three months of the service of the notice given under sub-section (5) of Section 5 of the 1955 Act. Besides those two, the raiyat possessing land adjoining such plot of land has a right of pre-emption. For convenience we refer to it as the third category of persons who have been conferred right of pre-emption. A person belonging to the third category can exercise the right of pre-emption within four months of the date of such transfer.

22. Importantly, sub-section (1) of Section 8 does not use the phrase 'within four months of the date of knowledge, or notice, of such transfer'. Rather, it uses the phrase 'within four months of the date of such transfer'. Therefore, the question that arises for our consideration is whether 'knowledge or notice' can be read into the provision.

23. The submission on behalf of the appellant is that in absence of notice or knowledge of transfer, the person who has a right of preemption would not be able to exercise the right and, therefore, if the requirement of notice of the transfer, or the date of knowledge of the transfer, is not read into the provision, the right would be rendered nugatory.

24. Before we address the issue as to whether 'the date of knowledge of transfer', or 'the date of notice of transfer' must be read into Section 8 qua the starting point of limitation for exercise of right by the third category of persons, Section 5 of the 1955 Act needs to be noticed. Section 5 reads thus:

"5. Transferability of [plot of land] of a raiyat-

(1) A transfer of the [plot of land] of a raiyat or a share or portion thereof shall be made by an instrument which must be registered and the registering officer shall not accept for registration any such instrument unless-

(a) the sale price, or where there is no sale price, the value of the plot of land or portion or share thereof transferred, is stated therein;

(b) there is tendered along with it,

(i) a notice giving the particulars of the transfer in the prescribed form for transmission of the prescribed authority;

(ii) such notices and process fees as may be required by sub-section (4);

(c) the purpose for which the land shall be used by the transferee is stated therein; and

(d) such purpose for use of the land by the transferee is consistent with the purpose for which the land was settled or was being used and is not contrary to the provisions of section 4B, section 4C, section 4E or section 49.

(2) In case of bequest of such plot of land or portion or share thereof, no Court shall grant Probate or Letters of Administration until the applicant files in the prescribed form a notice giving particulars of the bequest together with the prescribed process fees for transmission to the prescribed authority.

(3) No Court or Revenue Officer shall confirm the sale of such a plot of land or portion or share thereof put to sale in execution of a decree or certificate and no Court shall make a decree or order absolute for foreclosure of a mortgage of such a plot of land or portion or share thereof, until the purchaser of the mortgagee, as the case may be, files a notice or notices similar to, and deposits process fees of the same amount as that referred to in subsection (1).

(4) If the transfer of a portion or share of such a plot of land be one to which the provisions of section 8 apply, there shall be filed by the transferor or transferee notices giving particulars of the transfer in the prescribed form together with the process fees prescribed for the service thereof on all the

co-sharers of the said plot of land who are not parties to the transfer and for affixing a copy thereof in the office of the registering officer of the Court house or the office of the Revenue Officer, as the case may be, as well as for affixing a copy on the plot of land.

(5) The Court, the Revenue Officer or the registering officer, as the case may be, shall transmit the notice to the authority referred to in subclause (i) of clause (b) of subsection (1) who shall serve the notices on the co-sharers referred to in sub-section (4) by registered post and shall cause copies of the notice to be affixed on the plot of land and in the Court house or in the office of the Revenue Officer, or of the registering officer, as the case may be.

Explanation - in this section- (a) "transferor", "transferee", "purchaser" and "mortgage" include their successors-in-interest, and (b) "transfer" does not include simple or usufructuary mortgage or mortgage by deposit of title deeds."

25. A careful reading of Section 5 (supra) would indicate that it deals with three kinds of situations: (1) transfer; (2) bequest; and (3) court sale or foreclosure of mortgage, pursuant to a decree. In the present case, we are concerned with transfer by sale. Subsection (1) of Section 5 provides that an instrument of transfer of a plot of land of a raiyat or a share or portion thereof, shall not be accepted for registration by the registering authority unless the following conditions are fulfilled:

(a) sale price, where there is no sale price, value of the plot of land or share or portion thereof transferred, is disclosed in the instrument;

(b) a notice giving particulars of the transfer in the prescribed form for transmission of⁸ the prescribed officer is tendered with the instrument of transfer together with such notice and process fee as may be required by sub-section (4) of Section 5;

(c) the purpose for which the transferee shall use the land is stated in the instrument; and

(d) such purpose is consistent with the purpose for which the land was settled or was being used and is not contrary to the provisions of Section 4B, Section 4C, Section 4E or Section 49.

26. Sub-section (4) of Section 5 provides that if the transfer of a portion or share of such a plot of land be one to which the provisions of Section 8 apply, there shall be filed by the transferor or transferee notices giving particulars of the transfer in the prescribed form together with the process fees prescribed for the service thereof on all the co-sharers of the said plot of land who are not parties to the transfer and for affixing a copy thereof in the office of the registering officer of the Court house or the office of the Revenue Officer, as the case may be, as well as for affixing a copy on the plot of land.

27. Sub-section (5) of Section 5 provides that the Court, the Revenue Officer or the registering officer, as the case may be, shall transmit the notice to the authority referred to in sub-clause (i) of clause (b) of subsection (1) who shall serve the notices on the co-sharers referred to in sub-section (4) by registered post and shall cause copies of the notice to be affixed on the plot of land and in the Court house or in the office of the Revenue Officer, or of the registering officer, as the case may be.

28. A conjoint reading of sub-sections (1) (b), (4) and (5) of Section 5 of the 1955 Act, inter alia, makes it clear that for registration of an instrument of transfer of a plot of land of a raiyat or a share or portion thereof, the instrument of transfer must be tendered along with (a) a notice giving the particulars of the transfer in the prescribed form for transmission of⁹ the prescribed authority and (b) such notices and process fees as may be required by sub-section (4). Sub-section (4) applies if the subject of transfer is such to which provisions of Section 8 applies. Notably, Section 8 applies whenever the transfer is of the plot of land of a raiyat or portion or share thereof to any person other than a co-sharer of a raiyat in the plot of land.

Therefore, if the subject of transfer is such to which provisions of Section 8 applies, the transferor or transferee shall supply notices giving particulars of the transfer in the prescribed form together with the process fees prescribed for the service thereof on all the co-sharers of the said plot of land who are not parties to the transfer and for affixing a copy thereof in the office of the registering officer of the Court house or the office of the Revenue Officer, as the case may be, as well as for affixing a copy on the plot of land. Sub-section (5) of Section 5 specifies the procedure regarding service of notice on a co-sharer as well as for affixation of notice.

Thus, sub-section (4) of Section 5 provides for supplying of notice in the prescribed form along with process fee for: (1) effecting service of notice on a co-sharer(s) if he, or they, is /are not party to the

instrument of transfer; (2) affixation of a copy thereof in the office of the registering officer of the Court house or the office of the Revenue Officer, as the case may be; and (3) affixing a copy on the plot of land. Sub-section (5) of Section 5 specifies the procedure regarding service of notice on a co-sharer as well as for affixation of notice.

29. It is, therefore, clear that though Section 5 provides for a notice of the transfer to a co-sharer, there is no provision to serve notice on other categories of preemptors. However, it is not that the transfer would go unnoticed since there is a requirement to affix notice in the office of the registering officer of the Court house, or the Revenue Officer, as the case may be, and of affixing a copy of the notice on the plot of land.

30. From the discussion above, the legislative intent is clear. The three categories of preemptors are distinct, and they have distinct timeline within which they are to exercise their respective right of pre-emption under the 1955 Act. A Bagardar can exercise his right within three months from the date of transfer whereas any raiyat possessing land adjoining such plot of land can exercise within four months from the date of transfer. Insofar as co-sharer is concerned, the limitation runs from the date of service of notice under sub-section (5) of Section 5.

31. Now, we shall consider the argument on behalf of the appellant that the requirement of a notice as is there for a co-sharer must be read into sub-section (1) of Section 8 of the 1955 Act for the other two categories of pre-emptors as well.

32. The law in this regard is settled. The doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible - one rendering it constitutional and the other making it unconstitutional, the former should be preferred.

The second situation is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reasons and conscience.

In such circumstances, it is not permissible for the court to remake the statute. In short, the object of reading down is to keep the operation of the statute within the purpose of the Act and constitutionally valid¹⁰. Harshness of a provision is no reason to read down the same, if its plain meaning is unambiguous and valid¹¹.

33. By applying the afore-stated principles as to when a statutory provision can be read down, we shall now consider whether subsection (1) of Section 8 of the 1955 Act needs to be read down to save it from being unconstitutional.

34. In our view, Section 8 is clear and categorical. The Section not only confers the right of pre-emption on three different categories of persons but also provides for separate periods of limitation within which each category could exercise its right. Importantly, the right of pre-emption gets triggered only when transfer is not to a co-sharer.

Understandably, a co-sharer stands on a different footing as he has a direct interest in the subject matter of transfer. Therefore, the legislature specifically provided for service of notice on him. The other two categories of pre-emptors cannot equate themselves with a co-sharer. In such view of the matter, if the legislature, in its wisdom, did not require service of notice on them as in the case of a co-sharer, there is no discrimination.

Moreover, the right of preemption is neither a fundamental right nor a constitutional right, rather it is a weak right which, in the case on hand, has been conferred by a statute and, therefore, must strictly be exercised in terms thereof. Thus, in our view, reading down sub-section (1) of section 8 is not required either to save it from being declared unconstitutional or to make it clear. More so, when it is neither vague nor ambiguous.

35. Having regard to the discussion above, we are of the considered view that there is no substance in the argument that since no notice of transfer was served on the appellant, the period of limitation to file the application under Section 8 of the 1955 Act would commence from the date of knowledge of the transfer.

36. The decision in Chhana Rani Saha (supra) relied by the appellant is of no help to the appellant as it deals with a case where the claim of pre-emption was rejected without considering that the pre-emptor fell in the category of a raiyat possessing land adjoining the plot under transfer and therefore, even though the pre-emptor was not a co-sharer, he was entitled to assert his right of preemption.

37. As the case of the appellant falls in the third category where the limitation period would be four months from the date of transfer, we are of the view that the High Court was correct in holding that the application, which was filed much beyond the prescribed period, was barred by limitation.

38. At last, a feeble attempt was made to canvass that the subject matter of transfer had come from common ancestors and, therefore, the appellant could be bracketed in the category of a co-sharer. This argument, in our view, is completely misconceived as admittedly at the time of transfer the estate stood partitioned and the appellant was not a cosharer. Therefore, advisedly, this plea was not pressed before the High Court.

39. Accordingly, we find no merit in the appeal, the appeal stands dismissed.

40. Pending application(s), if any, stand disposed of.

.....J. [Manoj Misra]

.....J. [Vipul M. Pancholi]

New Delhi;

April 09, 2026

1 The High Court at Calcutta

2 Civil Appeal No.5905 of 2009 decided on 15.11.2017

3 (1954) 1 SCC 836: 1954 SCC OnLine SC 186

4 AIR 1958 SC 838: 1959 SCR 878: 1958 SCC OnLine SC 88

5 (1885) ILR 7 All 775, 809

6 AIR 1960 SC 1368: (1961) 1 SCR 248: 1960 SCC OnLine SC 308

7 (1994) 5 SCC 562

8 Note: There appears some error, probably, it should be 'to'

9 See: Footnote 8

10 Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others, 1991 Supp (1) SCC 600, paragraphs 255 and 326

11 Central Bank of India v. Shanmugavelu, (2024) 6 SCC 641, paragraph 102.

Item No.25

Sib Nath Chatterjee Vs. Tulsidas Chatterjee & Ors.

[Civil Appeal No(s). 4317/2026 @ SLP(C) No. 23429/2019]

Date: 09-04-2026

This appeal was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE MANOJ MISRA HON'BLE MR. JUSTICE VIPUL M. PANCHOLI

For Appellant(s):

Mr Rahul Kushwaha, Adv. Mr Suraj Kumar, Adv. Mr Ashutosh Singh, Adv. Mr Sohit Bhardwaj, Adv. Mr. Subhasish Bhowmick, AOR

For Respondent(s):

Ms. Manju Jetley, AOR Mr Rajesh Sen, Adv. Ms Shibani Bhattacharjee, Adv. Mr Shashikant Yadav, Adv. Mr. Manohar Pratap, Adv. Mr. Ajit Kumar Ekka, AOR

UPON hearing the counsel the Court made the following

ORDER

1. Leave granted.
2. The appeal stands dismissed in terms of the signed Reportable order placed on the file.
3. Pending application(s), if any, stand disposed of.

(CHETAN ARORA) ASTT. REGISTRAR-cum-PS

(SAPNA BANSAL) COURT MASTER (NSH)

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

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