

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.6106/2019
[@ SLP [C] NO.26500/2014]**

KABITA DASGUPTA

Appellant (s)

VERSUS

NIBEDITA SAHA @ NIVEDITA SAHA

Respondent(s)

O R D E R

Leave granted.

The only aspect debated in the impugned order is as to whether the right of pre-emption sought to be exercised by the appellant has to be within a time prescribed under Article 97 or Article 137 of the Limitation Act, 1963.

The relevant two Articles read as under:

	Description of suit	Period of limitation	Time from which period begins to run
97.	97. To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract.	One year	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or where the subject-matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered.
137.	137. Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues.

In respect of the aforesaid proposition, there is a discussion in the judgment of this Court in *Gopal Sardar v. Karuna Sardar* reported in (2004) 4 SCC 252 which has been reproduced in the impugned order. In terms of this judgment, the view expressed by the Division Bench of the Calcutta High Court in *Serish Maji. Nishit Kumar Dolui* reported in (2000) 2 CAL LT 125(HC), has been approved to the effect that the discussion of the provisions of Section 8 of the said Act would lead to a conclusion that the specific Article i.e. Article 97 would apply and not residuary Article 137.

We notice that the claim of the appellant is of pre-emption under the West Bengal Land Reforms Act, 1955, a State enactment and consistent view has been taken by the High Court dealing with such an enactment.

We are of the view that it does not call for any reversal specially when this view has found approval by this Court itself as referred to aforesaid.

The impugned judgment also referred to some judgments where also similar view has been expressed.

The transaction in question related to a time period of 17 years ago. The right of preemption was sought to be exercised by the appellant more than a year after the registration of the document which was sought to be nullified and which was a sale to a third party.

We are, thus, of the view that the appeal must fail and is accordingly dismissed leaving the parties to bear their own costs.

Naturally, the ten percent of the amount deposited in the Court below by the appellant in terms of Section 8 of the State Act would be refunded back to the appellant.

..... J.

[SANJAY KISHAN KAUL]

..... J.

[K.M. JOSEPH]

NEW DELHI;

AUGUST 06, 2019.

ITEM NO.12

COURT NO.11

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 26500/2014

(Arising out of impugned final judgment and order dated 15-01-2014 in CO No. 232/2012 passed by the High Court At Calcutta)

KABITA DASGUPTA

Petitioner(s)

VERSUS

NIBEDITA SAHA @ NIVEDITA SAHA

Respondent(s)

(As per R.p. dated 15.7.19 list the matter on 06.8.2019 for final disposal.)

Date : 06-08-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Subhasish Bhowmick, AOR
Ms. Ashmita B., Adv.

For Respondent(s) Mr. S. Wasim A. Qadri, SR. Adv.
Mr. Dinkar Adeeb, Adv.
Mr. Jubair Ahmad Khan, Adv.
Mr. Zaid Ali Subzposh, Adv.
Mr. Tamim Qadri, Adv.
Mr. Saeed Qadri, Adv.
Mr. Lakshmi Raman Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is dismissed in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER

[Signed order is placed on the file]