

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 2577 of 2025
Sri Soumitra Mondal & Anr.
VS.
Smt. Mallika Rani Mondal**

For the Petitioners : Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
Mr. Abul Mullick
..... advocates

For the Opposite Party : Mr. Partha Pratim Ray
Ms. Jenia Rudra advocates

Reserved on : 08.05.2026

Judgment on : 09.07.2026

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the pre-emptees and is directed against the Judgment and Order dated April 9, 2025 passed by the Learned Additional District Judge, 2nd Court at Contai, District Purba Medinipur in Misc. Appeal No. 24 of 2023 reversing the Judgment and Order dated April 29, 2023 passed by the learned Civil Judge (Junior Division) 2nd Court at Contai, District Purba Medinipur in Judicial Misc. (Pre-emption) Case No. 01 of 2019.
2. The learned Trial Judge dismissed the Misc. Case under Section 8 of the West Bengal Land Reforms Act, 1955 by the Judgment and order dated 29.04.2023. The preemptor/opposite party preferred the Misc. Appeal challenging the aforesaid order and the learned Judge of the Appellate Court allowed the appeal and remanded the Misc. Case to the learned Trial Judge by the Judgment and order dated April 9, 2025.

3. Facts giving rise to this application, in a nutshell are as follows.
4. Bimal and Bikash transferred “Ka” schedule property to Subrata Kumar Mondal by a registered sale deed dated 01.10.2009. Petitioner purchased the “Ka” Schedule property from Subrata Kumar Mondal by virtue of the impugned registered sale deed being no. 5650 of 2018 which was executed on 12.10.2018. Opposite party claims to be a co-sharer as well as the adjoining landowner of “Ka” Schedule property.
5. Opposite party filed the Misc. Case under Section 8 of the West Bengal Land Reforms Act, 1955 on the ground of co-sharership and vicinage.
6. The Misc. Case was filed on 07.01.2019. Petitioners appeared in the said Misc Case on 07.02.2019 but filed their Written Objection on 13.08.2019.
7. Subrata Kumar Mondal, the vendor of the petitioners filed a Title Suit no. 54 of 2019 before the Learned Civil Judge (Junior Division) 1st Additional Court at Contai against the petitioners. The said suit was filed on 02.02.2019 and the same was decreed on compromise on 10.07.2019.
8. Petitioners contested the Misc. Case by filing a Written Objection denying the material allegations contained therein. In the said Written Objection, the petitioners contended that they had no right, title and interest in the “Ka” schedule property and the impugned sale deed made in favour of the petitioners by the said Subrata Kumar Mondal was not a sale deed but was the security for the loan transaction. It was further contended that the Title Suit no. 54 of 2019 instituted by Subrata Kumar Mondal was decreed on compromise and it was declared that the deed was a security for a loan transaction and not an out and out sale. The petitioners prayed for dismissal of the Misc. Case as the opposite party was not entitled to pre-empt the sale.
9. The impugned sale deed was marked as Exhibit 2 and the certified copy of the compromise petition filed in Title Suit No. 54 of 2019 and the compromise decree was marked as Exhibit A.

10. The learned trial Judge held that the right, title and interest did not pass to the vendees of the impugned deed (Exhibit 2). The learned trial Judge further held that the cause of action of the preemption application perished by dint of Exhibit A. In the light of the aforesaid findings, the Misc. Case was dismissed.
11. The learned Judge of the Appellate Court, however, observed that the learned Court passing the decree in T.S. No. 54 of 2019 was not a competent civil court from which the compromise decree was obtained by the vendor and vendees of the impugned sale deed. It was further held that a compromise decree obtained from a Court having no jurisdiction to try the suit is not binding upon the pre-emptor. The learned Judge of the Appellate Court after holding that the preemption proceeding was clearly maintainable in the facts and circumstances of the case remanded the Misc. Case to the learned Trial Judge with a direction to decide the rest of the issues that have already been framed except the Issue no. 1.
12. Challenging the order of remand passed by the learned Judge of the Appellate Court, the pre-emptees have approached this Court.
13. Mr. Mukherjee, learned advocate for the petitioner contended that in view of the decree passed in the Title Suit between the vendor and vendees of the impugned sale deed, the cause of action of the pre-emption application perished. He further contended that since the right of pre-emption is a very weak right, it can be defeated by all legitimate methods. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Bishan Singh & ors. vs. Khazan Singh & Anr.** reported at **AIR 1958 (SC) 838**. He further contended that the pre-emptee can defeat the right of pre-emption by allowing a person having a superior or equal right to be substituted in his place. Mr. Mukherjee placed reliance upon the decisions rendered by the Hon'ble Supreme Court **in Radhakishan Laxminarayan Toshniwal v. Shridhar Ramchandra Alshi**, reported at **AIR 1960 (SC) 1368**; **Abdul Matin Mallick v. Subrata Bhattacharjee**, reported at **(2022) 7 SCC 147** and **Kumar Gonsusab and**

others vs. Mohammed Miyan reported at **(2008) 10 SCC 153** in support of his contention that the right of pre-emption is a very weak right.

14. Mr. Mukherjee further contended that the compromise decree passed in the Title Suit between the vendor and vendees of the impugned sale deed already attained finality. He submitted that neither the Munsif dealing with an application under Section 8 of the West Bengal Land Reforms Act, 1953 nor the Appellate Court can declare the compromise decree passed by the Civil Court to be illegal, void, conclusive and manufactured.
15. Mr. Mukherjee contended that since the deed which forms the basis of the pre-emption application was subsequently declared to be void, the cause of action for such application perished and in support of such contention he placed reliance upon an order of a co-ordinate bench passed on 11.07.2016 in **C.O. 2370 of 2016** in the case of **Sri Pulin Das Adhikari & Anr. vs. Sri Ashis Kumar Maity & Ors.**
16. Mr. Mukherjee contended that acquisition of right, title and interest by Subrata Kumar Mondal by virtue of compromise decree may be subject to a fresh right of pre-emption in view of the provisions laid down in Section 9(2) of the 1955 Act and by virtue of the subsequent transfer the right of pre-emption that accrued upon transfer made by impugned deed got defeated.
17. Mr. Roy learned advocate for the opposite party seriously disputed the contention of Mr. Mukherjee. He contended that by the impugned deed of transfer the entire right, title and interest in the property passed to the transferee and the moment such transfer of interest took place, the right of pre-emption accrued and all subsequent transfers by the transferee would be subject to right of pre-emption under Section 8(1).
18. In support of such contention Mr. Roy placed reliance upon the decisions of the co-ordinate benches in the case of **Basanti Bala Sarkar vs. Ram Krishna Mondal and ors.** reported at **1985 (2) CHN 232; Brajendra Nath Patra vs. Ashis Kumar Patra & Ors.** reported at **(1991) 1 CHN 11** and

Chand Mahammad vs. Abdus Sattar & Anr. reported at **(2016) 4 CHN 275.**

19. In reply Mr. Mukherjee contended that the argument on Section 9(2) which he had advanced was neither argued by the learned Counsels and the decisions in the case of **Basanti Bala Sarkar (supra)**, **Barajendra Nath Patra (supra)** and **Chand Mohammad (supra)** were delivered without reference to the crucial words used in Section 9(2). He, therefore, contended that such decisions are not binding as the same are precedents *sub silentio*. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in **Municipal Corporation of Delhi vs. Gurnam Kaur** reported at **(1989) 1 SCC 101**.
20. Heard the learned advocates for the parties and perused the materials placed.
21. Petitioners have purchased the "ka" schedule property from Subrata Kumar Mondal by virtue of the impugned registered sale deed being no. 5650 of 2018 which was executed on 12.10.2018. Opposite party claims to be the co-sharer as well as adjoining land owner of "ka" schedule property.
22. Opposite party filed the Misc. Case claiming that by virtue of such transfer by way of registered sale deed dated 12.10.2018, the right of purchase under Section 8(1) of the West Bengal Land Reforms Act, 1955 (for short "WBLR Act") accrued.
23. However, during the pendency of the said Misc. Case Subrata Kumar Mondal i.e., the transferor of the petitioner filed a Title Suit No. 54 of 2019 under the Bengal Money Lenders Act, 1940 claiming that the deed dated 12.10.2018 was not an out and out sale deed but a security for loan transaction. The said suit was decreed in terms of compromise on 10.07.2019.

24. Mr. Mukherjee would contend that the right of pre-emption being a weak right, it can be defeated by all legitimate methods even by allowing the transferor of the pre-emptee being substituted in place of the pre-emptee.
25. Mr. Roy vehemently contended that the Title Suit No. 54 of 2019 and the compromise decree is a product of fraud in order to deprive the pre-emptor from the exercise of his right of pre-emption.
26. At this stage, this Court has to consider the proposition of law laid down in ***Bishan Singh (supra)*** and its applicability to the facts of the case in hand.
27. In ***Bishan Singh (supra)***, the Hon'ble Supreme Court noted that under general law of pre-emption, the plaintiff is bound to show not only that his right is as good as that of the vendee but that it is superior to that of the vendee and also that such superior right must subsist at the time the pre-emptor exercises his right and that right is lost if by that time another person with equal or superior right has been substituted in place of the original vendee. It was further observed that the vendor and the vendee are, therefore, permitted to avoid accrual of the right of pre-emption by all lawful means. (***see para 11***)
28. The Hon'ble Supreme Court after making the aforesaid observations on the general law of pre-emption, proceeded further to consider whether such right is modified or otherwise enlarged by the provisions of the Punjab Pre-emption Act.
29. After noticing the provisions laid down under Sections 4, 13, 17, 19, 20 and 28 of the Punjab Pre-emption Act, the Hon'ble Supreme Court held that the said provisions do not in any way enable the pre-emptor to exercise his right without establishing his superior right over the vendee or a person substituted in his place or to prevent the vendor or the vendee, by legitimate means, to defeat his right by getting substituted in place of the vendee, a pre-emptor with a superior right to or an equal right with that of the plaintiff. (***see para 14***)

30. A question arose as to whether such act of substitution is hit by the doctrine of *lis pendens* and can be in derogation of the right of pre-emption.
31. It was held that the doctrine of *lis pendens* applies only to a transfer *pendente lite*, but it cannot affect a pre-existing right. If the sale is a transfer in recognition of a pre-existing and subsisting right, it would not be affected by the doctrine, as the said transfer did not create new right *pendente lite*. But if the pre-existing right became unenforceable by reason of the fact of limitation or otherwise, the transfer, though ostensible made in recognition of such a right, in fact created only a new right *pendente lite*.
32. On the facts of the reported case, the Hon'ble Supreme Court held that the right of pre-emption of the appellants therein was subsisting at the time when the amount was deposited and possession of the land was taken. It was further held that the coercive process was in operation at the time when the terms of the decree was complied with.
33. At this stage it would be profitable to recapitulate some of the provisions of the WBLR Act dealing with the right of pre-emption for the purpose of deciding whether the vendor and the vendee are permitted to avoid accrual of the right of pre-emption under the 1955 Act, by all lawful means.
34. Section 8 of the WBLR Act deals with the accrual of the right of purchase. Section 9 empowers the Munsif to decide an application filed under Section 8. Section 10 deals with the consequences of an order for transfer.
35. For effective adjudication of this application it would be beneficial to recapitulate the provisions of Sections 8, 9 and 10 of the 1955 Act which are extracted hereinafter.

“8. Right of purchase by co-share 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 co-sharer 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 a raiyat in 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 a 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 heba-bil-ewaz, or,
- (c) a mortgage mentioned in section 7, or,
- (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 provisions of this Act, as amended by the West Bengal Land Reforms (Amendment) Act, 1972.

9. [Munsif] to allow the application and apportion lands in certain cases.

(1) On the deposit mentioned in sub-section (1) of section 8 being made, the [Munsif] shall give notice of the application to the transferee, and shall also cause a notice to be affixed on the land for the information of persons interested. On such notice being served, the transferee or any person interested may appear within the time specified in the notice and prove the consideration money paid for the transfer and other sums, if any, properly paid by him in respect of the lands including any sum paid for annulling encumbrances created prior to the date of transfer, and rent or revenue, cesses or taxes for any period. The Munsif may after such enquiry as he considers necessary direct the applicant to deposit such further sum, if any, within the time specified by him and on such sum being deposited, he shall make an order that the amount of the consideration money together with such other sums as are proved to have been paid by the transferee or the person interested plus ten per cent of the consideration money be paid to the transferee or the person interested out of the money in deposit, the remainder, if any, being refunded to the applicant. The Munsif shall then make a further order that the portion or share of the plot of land be transferred to the applicant and on such order being made, the portion or share of the plot of land shall vest in the applicant.

(2) When any person acquires the right, title and interest of the transferee in such plot of land by succession or otherwise, the right, title and interest acquired by him shall be subject to the right conferred by sub-section (1) of section 8 on a co-sharer of a raiyat in a plot of land or a raiyat possessing land adjoining the plot of land or bargadar.

(3) In making an order under sub-section (1) in favour of more than one co-sharer of a raiyat in a plot of land or raiyat holding adjoining land or bargadar, the Munsif may apportion the portion or share of the plot of land in such manner and on such terms as he deems equitable.

(4) Where any portion or share of a plot of land is transferred to the applicant under sub-section (1), such applicant shall be liable to pay all arrears of revenue in respect of such portion or share of the plot of land that may be outstanding on the date of the order.

(5) The Munsif shall send a copy of his order as modified on appeal, if any, under sub-section (6) to the prescribed authority for correction of the record-of rights.

(6) Any person aggrieved by an order of the Munsif under this section may appeal to the District Judge having jurisdiction over the area in which the land is situated, within thirty days, from the date of such order and the District Judge shall send a copy of his order to the

Munsif. The fees to be paid by the parties and the procedure to be followed by the District Judge shall be such as may be prescribed.

(7) Every appeal pending before an Additional District Magistrate at the commencement of section 8 of the West Bengal Land Reforms (Amendment) Act, 1972, shall, on such commencement, stand transferred to, and be disposed of by, the District Judge having jurisdiction in relation to the area in which the land is situated and on such transfer, every such appeal shall be dealt with from the stage at which it was so transferred and shall be disposed of in accordance with the provisions of this Act, as amended by the West Bengal Land Reforms (Amendment) Act, 1972.

10. Consequences of an order for transfer. *On an order under section 9 being made –*

(1) the right, title and interest of the raiyat and of the transferee or of the person mentioned in sub-section (2) of section 9 who acquires any right, title and interest in the plot of land shall vest in the raiyat whose application for transfer has been allowed by the Revenue Officer or by the Munsif or, after the commencement of section 8 of the West Bengal Land Reforms (Amendment) Act, 1971, (Act 3 of 1971) by the Additional District Magistrate, or, after the commencement of the West Bengal Land Reforms (Amendment) Act, 1972, by the District Judge, on appeal:

Provided that the transferee or the person mentioned in sub-section (2) of section 9 shall have the right to take away the crops which he might have grown on the land before the date of the order ;

(b) the raiyat whose application has been so allowed shall be liable for any revenue accruing from the date of the order.”

36. Section 8 of the WBLR Act confers a right of pre-emption if a portion or share of a plot of land of a raiyat is transferred to a person other than a co-sharer of a plot of land. Upon such transfer being made, the right of pre-emption accrues in favour of a bargadar, a co-sharer of a plot of land and a raiyat possessing land adjoining such plot of land. As to who amongst the aforesaid three categories of persons shall have a prior right has been specifically stated in the proviso.

37. Section 9 prescribes the procedure for dealing with an application for pre-emption.

38. Section 9(2) provides that any person who acquires the right, title and interest of the transferee by succession or otherwise shall be subject to the right of pre-emption.
39. Section 10(a) states that on an order being passed under Section 9, the right, title and interest of the raiyat and of the transferee or of any person mentioned in Section 9(2) who acquires any right, title and interest in the plot of land shall vest in the raiyat whose application for transfer has been allowed.
40. The issue whether the right of pre-emption can be defeated by subsequent transfer to the transferor co-sharer and a subsequent sale to a pre-existing co-sharer fell for consideration before a co-ordinate bench in ***Basanti Bala Sarkar (supra)***.
41. The co-ordinate bench noticed the decision of the Hon'ble Supreme Court in ***Audh Behari Singh vs. Gajadhar Jaipur and others*** reported at ***AIR 1954 (SC) 417*** wherein it was held that the right of pre-emption attaches with the property. The co-ordinate bench noticed several decisions of this Court including a division bench decision wherein it was held that by the initial transfer, the entire right, title and interest in the property passed to the transferee and the moment such transfer of interest took place, the right of the co-sharers to apply for pre-emption arose and all subsequent transfers by the transferee of occupancy holding were subject to the right of pre-emption under Section 26F of the Bengal Tenancy Act. The co-ordinate bench proceeded further and held that Section 9(2) of the West Bengal Land Reforms Act, 1955 Act has given statutory recognition to the view expressed in the aforesaid decisions. The co-ordinate bench further held that the term "otherwise" used in Section 9(2) will include a co-sharer who acquires the title of the transferee by repurchase. It was held thus-

"13. This provision applies to any person who acquires the interest of the transferee, irrespective of the fact whether they do so by succession or 'otherwise'. In the absence of any limiting factor, the term 'otherwise' will include a co-sharer who acquires the title of the transferee by repurchase. His subsequent transferee will be in no better position. The

petitioner is clearly within the purview of S. 9(2) of the Act. His application for pre-emption was validity allowed. The revision fails. The Rule is accordingly discharged.”

(emphasis supplied)

42. In **Brajendra Nath Patra** (supra), another co-ordinate bench held that Section 9(2) of the WBLR Act makes it explicit that when any person acquires the right, title and interest of the transferee by succession or otherwise the right, title and interest acquired by him shall be subject to the right conferred under Section 8(1). After reiterating the well settled proposition of law that the right of pre-emption is a weak right and the right of pre-emption must subsist till the end for the pre-emptor to succeed, the co-ordinate bench observed that the right of pre-emption must be held to subsist even after subsequent transfers, in view of Section 9(2) of the WBLR Act.
43. On the issue of interpretation of the provisions of the WBLR Act dealing with the right of pre-emption more particularly Sections 8 and 9 thereof, the Hon'ble Supreme Court in **Abdul Matin Mallick** (supra) after reiterating the proposition of law laid down in **Bishan Singh** (supra) that the right of pre-emption is “a very weak right” held that any provision to enforce a right of pre-emption must, thus, be strictly construed (**see para 6.1**)
44. In the light of the aforesaid discussion, this Court holds that the provisions of Section 9(2) should be strictly construed in order to decide whether the right of the pre-emptor under Section 8(1) would perish if any person acquires the right, title and interest of the transferee.
45. This Court shall now decide whether the sale deed dated 12.10.2018 can be said to be a “transfer” within the meaning of Section 8(1) of the 1955 Act and the effect of the compromise decree on the right of the pre-emptor/opposite party.
46. A registered sale deed was executed by Subrata Kumar Mondal in favour of the petitioners in respect of the property which is the subject matter of the Misc Case for pre-emption. By execution of the said registered deed, the suit

property stood transferred to the petitioner. By virtue of such transfer, the right of pre-emption accrued in favour of the opposite party who claims to be a co-sharer as well as a contiguous land owners. Opposite party filed the Misc case for pre-emption.

47. It is not in dispute that after the said Misc Case was filed, Subrata Kumar Mondal, the executant of the deed dated 12.10.2018 executed in favour of the petitioner filed a suit under the Bengal Money Lenders Act. The plaint of the said suit has been marked as Exhibit 12. The execution of the deed dated 12.10.2018 by Subrata Kumar Mondal in favour of the petitioner has been admitted in the plaint. The case made out by Subrata Kumar Mondal in the plaint of the said suit is that he requested the petitioner to execute the deed of reconveyance but on 15.01.2019, the petitioner refused to execute the deed of reconveyance and also denied the title of Subrata Kumar Mondal in the suit property.
48. Refusal to execute the deed of reconveyance and the denial of the title of Subrata Kumar Mondal forms the cause of action for filing Title Suit No. 54 of 2019.
49. In T.S.No. 54 of 2019, the parties to the Suit i.e. Subrata Kumar Mondal and the petitioners filed a compromise petition dated 02.04.2019. In the compromise petition the defendants i.e., the petitioners herein admitted that they do not have any title in respect of the suit property. The said suit was decreed on compromise by a decree dated 10.07.2019 and the compromise petition was treated as part and parcel of the compromise decree.
50. It is well settled that a decree passed on the basis of a compromise by and between the parties is essentially a contract between the parties which derives sanctity by the Court superadding its seal to the contract [**see Prithvichand Ramchand Sablok vs. S. Y Shinde reported at (1993) 3 SCC 271 at Para 4**]
51. The Hon'ble Supreme Court in **Ruby Sales and Services (P) Ltd. vs. State of Maharashtra** reported at **(1994) 1 SCC 531** held that the compromise

decree does not stand on a higher footing than the agreement which preceeded it. It was further held that merely because an agreement is put in the shape of a consent decree, it does not change the contents of the document. It remains an agreement and it is subject to the rights and liabilities which any agreement may suffer.

52. It is not the case of the petitioners that the deed dated 12.10.2018 contains an agreement for reconveyance. The Misc. Case was filed on 07.01.2019. T.S. No. 54 of 2019 was filed on 02.02.2019 i.e., during the pendency of the Misc Case. In the plaint of T.S.54 of 2019, Subrata Kumar Mondal admitted that on 15.01.2019 the petitioners refused to execute the deed of reconveyance and denied the title of Subrata Kumar Mondal. Thereafter the compromise petition was filed.
53. After going through the statements made in plaint of T.S. 54 of 2019 more particularly the admission made in the plaint about refusal to execute the deed of reconveyance and the compromise petition, this Court is of the considered view that by virtue of the deed dated 12.10.2018, the right, title and interest of Subrata Kumar Mondal in the suit property stood transferred in favour of the petitioners. To the mind of this Court, the effect of the compromise petition which formed part and parcel of the compromise decree is that the right, title and interest in the property which is the subject matter of the Misc Case stood reconveyed to Subrata Kumar Mondal i.e. the vendor of the petitioner during the pendency of the Misc. Case.
54. The expression “any person” used in Section 9(2) is of very wide connotation and shall also include the transferor of the pre-emptee. Any adjustment of rights in respect of a property between the pre-emptee and his/her transferor after accrual of the right of pre-emption by way of an agreement which forms the foundation of a compromise decree would squarely fall within the expression “otherwise” and shall be subject to the right of pre-emption in view of Section 9(2) of the WBLR Act.

55. To the mind of this Court, the proposition laid down in **Bishan Singh** (supra) that the vendor and vendee are permitted to avoid accrual of the right of pre-emption by lawful means shall have no manner of application in view of Section 9(2) of the WBLR Act. It would not be out of place to point out that there is no provision in the Punjab Pre-emption Act which is in *pari materia* with Section 9(2) of the WBLR Act.
56. This Court, therefore, holds that the vendor and vendee cannot avoid accrual of the right of pre-emption under the WBLR Act unlike the general law of pre-emption.
57. In view of the well settled proposition of law that the compromise decree does not stand on a higher footing than the agreement which preceded it, this Court holds that the compromise decree dated 10.07.2019 could not affect the subsisting right of pre-emption of the opposite party in view of the provisions of Section 9(2) of the WBLR Act.
58. The aforesaid view of this Court is supported by the decision of the co-ordinate bench in **Chand Mahammad** (supra).
59. In **Pulin Das Adhikari** (supra), in a regular Civil Suit, the Civil Court of competent jurisdiction declared the sale deed to be void and on such factual matrix, the co-ordinate bench held that the right, title and interest did not pass to the vendee of the deed. This Court has already observed that by virtue of the deed dated 12.10.2018, the right, title and interest in the suit property stood transferred to the petitioners and the said property stood reconveyed in favour of the transferor during the pendency of Misc. Case. The said decision being distinguishable on facts cannot come to the aid of the petitioners.
60. In **Radha Kisan Laxminarayan Tashnilwal** (supra), the question that fell for consideration before the Hon'ble Supreme Court was whether right of pre-emption accrued on execution of an agreement of sale. The Hon'ble Supreme Court after noticing the provisions of Section 54 of the Transfer of Property Act held that a contract for sale does not of itself create any

interest in or charge on immovable property and consequently the contract, on the facts of the said reported case, created no interest in favour of the vendee and the proprietary title did not validly pass from the vendors to the vendee and until that was completed no right to enforce pre-emption arose. It was alleged that the deed of sale was not executed by practising fraud in order to defeat the right of the pre-emptors. On such factual matrix it was held that anything done previous to the execution of the sale deed could not ordinarily be said to be a fraud to deprive a pre-emptor from the exercise of his right of pre-emption. The said decision is distinguishable on facts and, therefore, the said decision cannot have any manner of application to the case on hand.

61. In **Kumar Gonsusab** (supra), a suit for pre-emption on the ground of vicinage was filed under the Mohammedan Law in respect of an agreement for sale. The Hon'ble Supreme Court after noting the provisions of Section 226 and 232 of the Mohammedan Law and Section 54 of the Transfer of Property Act, held that a suit for pre-emption brought on the basis of an agreement for sale must be held to be without cause of action as no right of pre-emption accrued which could be enforced under the law. The said decision being distinguishable on facts cannot come to the aid of the petitioner.
62. Mr. Mukherjee would contend that Section 9(2) implies that a transfer made by the transferee gives rise to a fresh right of pre-emption under Section 8(1) of the 1955 Act and the right of pre-emption which accrued upon transfer made by the original transferor in favour of the original transferee perished. He contended that such argument was not canvassed by the learned advocates and the judgments in the case of **Basanti Bala Sarkar** (supra), **Brajendro Nath Patra** (supra) and **Chand Mohammad** (supra) were delivered by the Court without perceiving that such point of law is involved. He, thus, contended that the aforesaid decisions are not authorities on the point of law raised by him and are, therefore, not binding upon this Court as those were passed sub silentio.

63. In **Gurnam Kaur** (supra), the Hon'ble Supreme Court held that a decision is said to pass sub silentio when a particular point of law involved in the decision is not perceived by the Court or present in its mind.
64. If the argument of Mr. Mukherjee on the interpretation of Section 9(2) is to be accepted, then the provisions of Section 9(2) should be held to be a surplusage as Section 8(1) speaks of accrual of the right of pre-emption upon transfer of a portion or share of a plot of land. Thus, there would not be any necessity to incorporate Section 9(2) in addition to Section 8(1). Such an interpretation would be against the canons of interpretation of statute.
65. The word "transferee" used in Section 9(2) makes it explicit that the expression " subject to the right conferred by sub-section (1) of Section 8" appearing in Section 9(2) implies that the acquisition of the right, title and interest of the transferee by any person by succession or otherwise shall be subject to the right of pre-emption that accrued upon the transfer made by the original transferor in favour of the original transferee. The object behind such provision is to prevent multiplicity of proceeding and not to give rise to multiple litigations as urged by Mr. Mukherjee. This view gets further support from the provisions laid down under Section 10(a) of WBLR Act which states that on an order under Section 9 being made, the right, title and interest of the raiyat and of the transferee or of the person mentioned in Section 9(2) who acquires any right, title and interest in the plot of land shall vest in the raiyat whose application for transfer has been allowed.
66. Upon a conjoint reading of Sections 8, 9 and 10 of the WBLR Act, this Court is of the considered view that the right of pre-emption under WBLR Act imposes a limitation or obligation upon the right of ownership of a property thereby restricting his unfettered right of sale to any person excepting a cosharer in plot of land. The bargadar, the contiguous owner and the co-sharer gets a benefit corresponding to such obligation to purchase such land. To the mind of this Court, the right of pre-emption runs with the land. The right of pre-emption that accrued upon transfer of a portion of a plot of land to any person other than a co-sharer of a raiyat in the plot of land shall

prevail over acquisition of right, title and interest of the transferee by any person in such plot of land by succession or otherwise and on an order being made under Section 9, the right, title and interest of the raiyat and of the transferee or of the person mentioned in Section 9(2) who acquires any right, title and interest in the plot of land shall vest in the raiyat whose application for transfer has been allowed. In other words, all subsequent acquisition of right from transferee and thereafter shall be subject to the right of pre-emption that accrued upon the initial transfer.

67. The argument of Mr. Mukherjee on interpretation of Section 9(2), if accepted, would be contrary to the mandate of Sections 8, 9 and 10 of the 1955 Act.
68. In view of the aforesaid discussion, this Court is not inclined to accept the submission of Mr. Mukherjee that upon acquisition of the right of the transferee by “any person”, the right of the pre-emptor shall perish.
69. Though the reasons assigned by the learned Judge of the Appellate Court are not fully acceptable but this Court finds that the ultimate conclusion arrived at by the learned Judge on the issue of maintainability of the Misc Case is correct and does not call for any interference. This Court under Article 227 of the Constitution can supply reasons if the ultimate conclusion is correct. The Judgement and order passed by the Learned Additional District Judge, 2nd Court at Contai dated 09.04.2025 remanding the Misc. Case to the learned Trial Judge with a direction to decide the rest of the issues that have already been framed (except Issue No. 1) with a direction to pass a reasoned judgment is not interfered with by this Court.
70. Accordingly C.O. 2577 of 2025 stands dismissed. There shall be, however, no order as to costs.
71. The Misc. Case was filed in the month of January 2019. Issues were framed. Parties have adduced their evidences and documents have been marked as Exhibits. In view thereof, the learned Civil Judge (Junior Division) 1st Additional Court (Contai) is requested to dispose of the J. Misc (pre-emption)

Case No. 01 of 2019 in terms of the directions passed by the Appellate Court and in the light of the observation made hereinbefore as expeditiously as possible but preferably within a period of 3 months from the receipt of a server copy of this order without granting any unnecessary adjournments to either of the parties.

72. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)