



one family member for the purpose of convenience even though the ensuing welfare is meant to be enjoyed by the all the family members equally. However unfortunately, in the instant case greed got better of the de facto head of the family who has been claiming herself as the absolute owner of the property. The matter is a prime example where the plaintiff attempted to defeat the rightful claims of family members with the intention of usurping the entire property. We cannot emphasize enough that this Court highly deprecates such malpractices where the welfare legislations are misused/abused by beneficiaries for personal advantage, thereby defeating the very objective of such policies.

2. This appeal assails the correctness of the judgment and order dated 18.12.2013 passed by the Calcutta High Court dismissing the Second Appeal No.518 of 2008 filed by the appellants herein confirming the judgment and decree of the First Appellate Court dated 11.04.2003 whereby it had reversed the judgment and decree of the Trial Court dated

16.09.1999 dismissing the suit of the present respondents and allowing the counter claim filed by the present appellants in Original Civil Suit No.16 of 1983.

3. Brief facts giving rise to the present appeal are summarized hereunder:

3.1. Late Krishna Behari Basak had three sons namely Benode Behari Basak, Bimal Kanti Basak and Benoy Krishna Basak. Late Krishna Behari Basak was a resident of East Pakistan and his family had migrated to India in 1950 soon after the partition. The eldest son Benode Behari Basak was employed in the Collectorate, Darjeeling since 01.03.1945 and at the relevant time he was working in the office of Deputy Commissioner, Darjeeling. Benode Behari Basak applied (supported by affidavit) for allotment of land in his name for the benefit of the refugee family which comprised of the following seven members namely:

S.No.	Name	Relation	Age
1.	Sri Bimal Kanti Basak	Brother	24 years
2.	Sri Benoy Krishna Basak	Brother	13 years
3.	Srimati Hem Prova Basak	Wife	20 years
4.	Sri Bipul Kanti Basak	Son	6 years
5.	Sjta. Drabanmayee Basak	Grand mother	85 years
6.	Sriman Ajit Kumar Basak	Nephew	9 years
7.	Srimati Kamala Basak	Sister	27 years

3.2. In the said affidavit dated 30.12.1952, it is clearly stated that the deponent was residing at Darjeeling and was in occupation as a government servant; that he had a permanent house in **village Sailabari, Post Office Khosabari, District Pabna** which has since become a part of eastern Pakistan; the family members were compelled to leave the native place in July 1950 due to partition

of India; all family members have decided to settle in the Indian Union; he was working in the office of the Deputy Commissioner since 1945 and had opted to serve under the West Bengal Government.

3.3. Another affidavit was filed by Smt. Hem Prova Basak wife of Benode Behari Basak dated 13.11.1953. In the said affidavit it was stated that they had to leave their house and properties in Pakistan worth about Rs.50,000/-, on account of communal disturbance; she along with the whole family consisting of five family members had come to West Bengal in July 1950 with the object of permanently residing in the Union of India; that she was a bona fide refugee and now a domicile and a national of the Indian Dominion; that she had not taken any loan or advance from the Central or Provincial Governments.

3.4. Based on the said applications supported by affidavits as stated above, the Deputy

Commissioner, Darjeeling on 04.12.1953 forwarded the same to the Sub-Divisional Officer, Siliguri enclosing also along with it an order passed by the Deputy Commissioner, Darjeeling on 03.12.1953 for taking appropriate action. The order passed by the Deputy Commissioner on 03.12.1953 recorded that the family had lost their house in Pakistan as such allotment of plot in question be made in favour of Smt. Hem Prova Basak in place of her husband Benode Behari Basak.

3.5. Even before the final allotment could be made and lease could be executed, the family started constructing the house over the plot in question. However, before the construction could be completed on 07.02.1975, the said Benode Behari Basak recorded his statement before the authorities in which he admitted that he along with his family members, had migrated from East Pakistan to India; gave details of the property held in East Pakistan; that how he collected funds for

construction of the house. The construction was made out of the joint income of three brothers and also from the produce of the crops of the land that they held. It was also mentioned that they all lived jointly and all members contributed proportionately.

3.6. A letter was issued by the Government of West Bengal on 28.09.1975 calling upon Smt. Hem Prova Basak to appear in the office of the Sub-Divisional Officer on 24.09.1975 in connection with the conferment of right, title and interest of the plot in question and also to produce documents relating to allotment of plot No.41.

3.7. Another letter was issued by the office of Sub-Divisional Officer, Siliguri on 25.09.1975 to Shri Benode Behari Basak stating that his two brothers had also applied for inclusion of their names along with name of his wife in the lease deed so that he could clarify in respect thereof. It appears that the lease deed was executed

on 03.11.1975 in the name of Smt. Hem Prova Basak only.

3.8. The two brothers Bimal Kanti Basak and Benoy Kumar Basak represented for inclusion of their names which was appropriately dealt with by the concerned department and in the order sheet it was recorded on 03.08.1979 that the names of Bimal Kanti Basak and Benoy Kumar Basak be also included and there was no legal bar in inclusion of their names. The Sub-Divisional Officer passed an order on 07.11.1979 that the request made for inclusion of their names is allowed and their names will be included at the time of execution of the deed along with Smt. Hem Prova Basak in respect to the plot in question being Plot No.41, Dabgram Colony No.II, College Para, Siliguri.

3.9. Further, another order was passed on 23.08.1983 that in the lease deed of 03.11.1975, the rectification be allowed to the extent of adding the names of Bimal Kanti Basak and Benoy Kumar Basak

being family members of Smt. Hem Prova Basak as apparent from the original affidavit filed that they were family members taking into consideration the Government Orders dated 02.07.1981 and 23.04.1981. Accordingly, a fresh lease deed be executed.

3.10. In the meantime, Smt. Hem Prova Basak filed a suit for permanent injunction to restrain the families of Bimal Kanti Basak and Benoy Kumar Basak from changing the character of the suit property and from entering the same. By the time the suit was filed, Bimal Kanti Basak had died as such his legal heirs being his widow, two sons and a daughter were impleaded as defendants 1-A, 1-B, 1-C and 1-D and Benoy Kumar Basak as defendant No.2. In the said suit Smt. Hem Prova claimed that she was the sole lessee of the plot in question and that the said land had been allotted to her exclusively and that she had constructed the house which is recorded in her name as absolute owner. The

defendants being brothers of her husband and not having any independent house of their own to live, nor were they employed as such were permitted to live in a portion of the said house. Later on, they have been employed, have their independent separate families and as such they being licensees only, they must vacate the portion of the premises in their possession. The families of the three brothers had grown as such there was shortage of space. Also there were regular disputes between the usage of the property and common amenities and as such it became necessary to file a suit for their eviction.

3.11. The defendants to the suit filed written statement along with counterclaim praying for a decree that the lease deed dated 03.11.1975 be declared as invalid and inoperative in law and for appropriate injunction against the plaintiff. The written statement and the counterclaim were based on the fact that the three brothers constituted the joint family; the

policy of the Government was to provide rehabilitation to the entire family and not to the individual; the request of the defendants to include their names in the lease deed had been positively considered by the Government; the house was constructed from the joint fund from the income of all the three brothers.

3.12. During the pendency of the suit, the Government had come up with policy of freehold and had accordingly issued freehold title deeds separately with respect to the family of the three brothers. It had further canceled the lease deed dated 03.11.1975 and the same was duly communicated to Smt. Hem Prova Basak vide communication dated 25.05.1995. In the said letter, it was clearly stated that as the freehold title deeds are going to be issued to the eligible beneficiaries, the lease deed No.7658 of 03.11.1975 has been cancelled and as such she was required to submit the original lease deed.

3.13. Smt. Hem Prova Basak instituted an Original Civil Suit No.68 of 1995 impleading the State of West Bengal and its officers as defendants challenging the cancellation of the lease deed No.7685. The relief claimed in the said suit was that a declaration be made that the notice dated 25.05.1995 issued by the office of Sub-Divisional Officer, Siliguri, as illegal, invalid and without jurisdiction with the further relief of permanent injunction against the defendants restraining them to act upon the said notice.

3.14. After a detailed inquiry, it was held that fresh freehold title deeds be issued as per calculation in paragraph 'C' of the said report in favour of the family members of all the brothers. The defendants to the suit of 1983 filed an amendment application under Order VI Rule 17, Code of Civil Procedure, 1908, seeking amendment in the written statement in order to incorporate the subsequent development regarding the cancellation of lease deed as

also to issue freehold title deeds. Additionally, the plaintiff also sought amendment in the relief clause to the extent that the declaration be made that the freehold title deeds in favour of the defendants is not valid. They were void and not binding on the plaintiff. Both the amendments were allowed.

4. The Trial Court, after considering the material on record, dismissed the Original Civil Suit No.16 of 1983 and partially allowed the counterclaim declaring that the lease deed dated 03.11.1975 in favour of the plaintiff was illegal, inoperative, and invalid. The plaintiff preferred first appeal registered as Original Civil Appeal No. 19(s) of 1999. The said first appeal came to be allowed vide judgment dated 11.04.2003. Aggrieved by the same, the present appellants preferred a second appeal before the High Court. During the pendency of the second appeal the plaintiff Smt. Hem Prova Basak withdraw the Original Civil Suit No.68 of 1995 on 08.12.2003. These facts and material

were placed before the High Court, however, the High Court despite noticing such facts vide impugned order dated 18.12.2013 dismissed the second appeal filed by the present appellants.

5. While issuing notice in the present appeal on 29.10.2014, both parties were directed to maintain status quo with regard to possession prevailing as on date. Later on, by order dated 01.07.2016, leave was granted. The fact remains that the possession of the family members of three brothers in the house has continued.
6. Shri Pallav Sisodia, learned senior counsel appearing for the appellant, apart from drawing our attention to the various affidavits, applications and orders passed on the file of the Sub-Divisional Officer and the Deputy Commissioner to show that the allotment had been made for the benefit of the family and not for one brother or his wife exclusively and that freehold title deeds have been subsequently executed in favour of the family members of all the three brothers, made a legal submission

that once the lease itself had been cancelled in 1995 and the suit filed by Smt. Hem Prova Basak to declare the said cancellation as illegal, null and void having been withdrawn, the suit of the plaintiff for eviction and injunction was liable to be dismissed as the very basis for filing the suit stood eliminated.

7. On the other hand, learned senior counsel for the respondent Shri Uday Gupta vehemently urged that the First Appellate Court and the High Court have examined and considered the material on record while decreeing the suit and dismissing the counterclaim, as such this Court may not interfere with the same under Article 136 of the Constitution of India and accordingly, dismiss this appeal.
8. Having given serious consideration to the material on record and the submissions advanced, we are convinced that the suit was filed maliciously in order to grab the entire allotment and also the house constructed with the joint income of the three brothers. Some noticeable facts in this regard are summarized hereunder-

- i) Binode Behari Basak, the eldest brother was working as Upper Division Assistant in the office of Deputy Commissioner, Siliguri and therefore had all the access in the local administration to favour himself and his wife. Initially, he had applied for allotment to be made in his name but apparently for the reason that he was already a government servant in the state of West Bengal since 1945 prior to the partition and migration no allotment would be made in his favour, he therefore setup his wife to become the applicant for the allotment.
- ii) The affidavits and the communications between the office of the Sub-Divisional Officer, the Deputy Commissioner and Binode Behari Basak and his wife Smt. Hem Prova Basak, are neither disputed nor denied. If that is so then it was more than clear that under the policy of the Government the allotment was being

made for the family and not for the individual.

9. Binode Behari Basak and Hem Prova Basak both having admitted the said fact could not turn around to claim that it was their exclusive property. The High Court has gone completely wrong in ignoring these affidavits and communications giving the reason that they were given in a different proceeding and therefore would not be of relevance and any help to the defendants.
10. The lease deed in the exclusive name of Smt. Hem Prova Basak dated 03.11.1975 having been cancelled and the challenge to the said cancellation by way of a Civil Suit No.68 of 1995 having been withdrawn, the suit itself ought to have been dismissed, as the very basis of filing the suit was no longer in existence. The High Court failed to take into consideration this aspect of the matter thereby committing an error.
11. From a perusal of the plaint, it appears that there has been bickering amongst the family members of the brothers and there were cases

registered for maintaining tranquillity and peace, appears to be the reason for filing of the suit to deprive the two younger brothers from the benefit of the allotment made treating the family as a unit for rehabilitation.

12. For all the reasons recorded above, the impugned orders passed by the High Court and the First Appellate Court are set aside and that of the Trial Court is restored. The appeal is allowed accordingly.

.....**J**  
**(VIKRAM NATH)**

.....**J**  
**(SATISH CHANDRA SHARMA)**

**NEW DELHI**

**MARCH 21, 2024**