

Ramawati Devi and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Apr-05-2005

Judge : Mridula Mishra, J.

Acts : Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 - Sections 16(3); Indian Registration Act, 1908 - Sections 47

Appeal No. : CWJC Nos. 9644 and 10162 of 2002 and 10193 of 2003

Appellant : Ramawati Devi and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Md. Aslam Ansari, J.C. to S.C. IV (C) for the respondents 1 to 4 and S.S. Dwivedi, Sr. Adv. and R.S. Dwivedi, Adv. for the respondents 5 and 6

Advocate for Pet/Ap. : M.N. Prabat, Adv.

Disposition : Writ allowed

Prior history : Mridula Mishra, J. 1. All these three writ applications arise out of common orders passed by the original Court, appellate Court and the revisional Court, as such, they are being heard and disposed of together by a common order.; 2. Ramawati Devi is petitioner in C.W.J.Cs. No. 9644 of 2002 and 10193 of 2003 and Sundarwati Devi is petitioner in CWJC No. 10162 of 2002. Petitioner in all three cases are purchasers. Pre-emptor in all these three cases is Dharamnath Upadhayay, respondent No. 5 a

Judgement :

Mridula Mishra, J.

1. All these three writ applications arise out of common orders passed by the original Court, appellate Court and the revisional Court, as such, they are being heard and disposed of together by a common order.;

2. Ramawati Devi is petitioner in C.W.J.Cs. No. 9644 of 2002 and 10193 of 2003 and Sundarwati Devi is petitioner in CWJC No. 10162 of 2002. Petitioner in all three cases are purchasers. Pre-emptor in all these three cases is Dharamnath Upadhyay, respondent No. 5 and the vendor, Mohan Upadhyay respondent No. 6, is also common in all these three writ petitions.

3. In these writ applications petitioners have challenged resolution, dated 28.05.2002, passed by the Additional Member, Board of Revenue, Bihar Patna, in Board Revision Cases No. 193, 194 and 195 of 2000, whereby order, dated 05.08.2000, passed by the Additional Collector, Saran at Chapra, in Land Ceiling Appeals No. 4, 5 and 23 of 1997 as well as order, dated 13.12.1996, passed by the Deputy Collector, Land Reforms, Saran at Chapra, in Ceiling cases No. 20,21 and 22 of 1993-1994 have been affirmed. These orders have been passed by the respondents arising out of an application filed by respondent No. 5 under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, (hereinafter referred to as 'the Act').

4. Petitioner in CWJC No. 9644 of 2002 purchased 11 dhur and 1 dhurki land situated in village Bareja under Khata No. 342, plot No. 1193 through sale deed, dated 23.09.1992, executed by Mohan Upadhyay, respondent No. 6. The Sale deed was registered on 17.06.1993. The petitioner on the same day purchased another piece of 11 dhur and 1 dhurki of same plot under same Khata by separate sale deed from the same vendor which was also registered on the same day. Sundarwati Devi, petitioner in CWJC No. 10162 of 2002, purchased 4 Khata 9 dhur 15 dhurki land of village Bareja through registered sale deed, dated 23.09.1992, executed by same vendor, Mohan Upadhyay. Purchased lands were of plots No. 1395, 1405 and 1406 of Khata No. 441 plot No. 2651, 2652 under

Khata No. 16, plot No. 2642 under khata No. 148, plot No. 1192 under Khata No. 344, plots No. 930 and 169 under Khata No. 361. Sale deed was registered on 1.6.1993. Ramawati Devi who is petitioner in CWJC No. 10193 of 2002. She purchased land covered under khata No. 342 plot No. 1193 situated in village Bareja from Mohan Upadhyay, respondent No. 6, on the same day through another sale deed. She purchased an area of 11 dhur and 1 dhurki of same plot under same khata by the same vendor. Both the sale deeds were executed on 23.07.1992 and registered on 17.06.1993.

5. Respondent No. 5, Dharamnath Upadhyay, filed pre-emption applications, i.e., Cases No. 20, 21 and 22 of 1993-1994 on 14.09.1993 claiming to be adjacent raiyat of the vended lands on the basis of a deed of gift, executed in his favour by Nanku Upadhyay. This gift deed was executed on 17.10.1992, subsequent to execution and registration of the sale deeds and its registration was completed on 29.09.1995, i.e., much after the execution and registration of all the sale deeds executed in favour of the petitioner by Mohan Upadhyay. The pre-emptor, respondent No. 5, claimed to be adjacent raiyat as well as co-sharer of the vendor being his cousin, admittedly, in the boundary of the sale deeds name of respondent No. 5 is not there but the name of the petitioners is there as she purchased different area of same plot on the same day through two registered sale deeds executed by the same vendor. All these Ceiling (pre-emption) cases Nos. 20, 21 and 22 of 1993-1994 were allowed by the Deputy Collector, Land Reforms, Saran at Chapra, holding that respondent No. 5 is the adjacent raiyat of the vended plots, without considering the claims of adjacency of the petitioners with respect to the vended lands. It was also held by the Deputy Collector, Land Reforms, in his order, dated 13.12.1996, that the vended land is agricultural land. This finding, according to the petitioners, is against the report of the Circle Officer produced vide letter No. 352, dated 11.08.1995. Against the order passed by the Deputy Collector, Land Reforms, Ceiling Appeals Nos. 4, 5 and 23 of 1997 were preferred by the petitioners which were dismissed by a common order dated 05.08.2000, with a finding which is based on the error of record. The finding recorded by the appellate Court is that no document was produced by the purchase/petitioner in support of the fact that there was a partition in the family is against the material on record, Against the appellate Court's order, Ceiling

Revisions No. 193, 194 and 195 of 2003 were preferred by the petitioner which have also been dismissed by resolution, dated 28.05.2002.

6. In all three cases common point involved is whether the claim of respondent No. 5 being adjacent raiyat as well as co-sharer of the vendor (respondent No. 6) should have been allowed by all three Courts when, admittedly, he was not an adjacent raiyat of the vended plots on the date of filing of the pre-emption application. Sale deeds in all three cases were executed on 23.07.1992 and registered on 17.06.1993. The gift deed was executed in favour of respondent No. 5 by Nanku Upadhyay on 17.10.1992 and it was registered on 29.09.1995. Respondent No. 5 had filed all pre-emption cases on 14.09.1993, i.e., much before the execution of gift deed in his favour on 17.10.1992.

7. Considering the fact that on the date of the filing of the pre-emption cases; the gift deed was not in existence and the lands which were transferred in favour of respondent no, 5 through the deed of gift was still existing in the name of Nanku Upadhyay, respondent No. 5, was not an adjacent raiyat claim of respondent No. 5 as adjacent raiyat should have been allowed by the Deputy Collector, Land Reforms, the Additional Collector and the Additional Member, Board of Revenue. On the date of the filing of the application Dharamnath Upadhyay was not the boundary raiyat of the disputed land rather he got his title with respect to part of piece of land of plot No. 1193 on 17.10.1992, much after purchase of the petitioner. The sale deed of the petitioners were also registered on 17.10.1993, i.e., much before the registration of the said deed of gift in accordance with law on 29.09.1995. Thus, it is apparent that on the date of the filing of the pre-emption application, the pre-emptor was not a boundary raiyat of the disputed vended lands. His subsequent status of boundary tenant can not change the law. It has been decided by this Hon'ble Court in the catena of decision that the crucial date for filing of application and to be boundary raiyat of a land is the date of application and the pre-emptor has to show that he was boundary tenant on the date of application of pre-emption itself. It is also settled position of law that the title passes to vendee on the date of execution of sale deed itself and its registration is mere formality. Even after registration of sale deeds in accordance with law, the sale also relates back to the date of execution in terms of Section 47 of the Indian

Registration Act; In this case the execution and registration of the gift deed both have taken place after the execution and registration of sale deeds of the petitioner and in that view of the matter right of pre-emption cannot be claimed on the basis of such gift deed for claiming as boundary man of the disputed land. Further as on date of filing of pre-emption application deed of gift was not registered and claim of preemption based on it was premature. In support of this contention the petitioner has relied on a decision reported in 2003 (3) BLJR 2007, Ashok Kumar Singh v. The State of Bihar and Ors., wherein it has been held that it is well settled that once the registration of the sale deed is completed, the sale dates back to the date of execution of the deed.

8. I find that the submission made by the petitioner with respect to the claim of the adjacent raiyat of respondent No. 5, has much force. Admittedly, the sale deeds were executed in all three writ applications on 23.07.1992. The sale deeds were registered on 17.06.1993. The pre-emption application was filed by the respondent No. 5 on 14.09.1993. He claimed to be an adjacent raiyat on the basis of gift deed executed on 17.10.1992 and registered on 29.09.1995 on the date when pre-emption application was filed there was no gift deed validly registered and the respondent had no title over the land, which he claimed to be his land on the basis of the gift deed. He was not an adjacent raiyat of the vended land on the date of the filing of the pre-emption application, under Section 16(3) of the Act the most crucial date is the date on which the pre-emption application is filed by the pre-emptor. He must have a valid title on that date with respect to such land, he claims for proving his claims of adjacent raiyat. If title with respect to such land did not pass to pre emptors on the date of filing of pre-emption application, then his subsequent acquisition of title, will not improve his claims of pre-emption. In such cases the claims of pre-emption of the, pre-emptor must fail.

9. Section 16(3)(1) of the Ceiling Act prohibits transfer of land to any one other than the co-sharer or the adjacent raiyat, subsequent to coming into force of the Bihar Land Ceiling Act, 1961, which reads as follows:

'16(3)(i): When any transfer of land is made after the commencement of the Act to any person other than co-sharer or a raiyat of adjoining land, any co-sharer of the

transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document, of the transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed.'

10. In the present case, admittedly, the vendees and not the co-sharer of the vendor, but the vendees have claimed to be an adjacent raiyat of the vended plots on the basis of their purchase of adjacent area of same plot under same khata through different sale deeds on the same day from the same vendor. On the basis of such purchase the petitioners/purchasers have claimed that they have become boundary raiyat of vended plots and the claim of the purchaser acquires a better title over other adjoining raiyat of the vended plots. The argument has been advanced that in several decisions it has been held by the High Court that the purchaser of two adjacent plots when becomes adjacent raiyat of the vended plot, in such cases right of pre-emption of any other adjoining raiyat can not be allowed. The petitioner have challenged the orders passed by the Deputy Collector, Land Reforms, Additional Collector and the Additional Member, Board of Revenue on this count that all these authorities failed to consider the claim of adjacency of the petitioners of vended land. It is the case of the petitioners that though they are not co-sharer of the vendor but they have become the boundary tenant of the vended plot and the Courts below should have rejected the pre-emption application filed by respondent No. 5, considering the fact that the pre-emption application was not maintainable. In the impugned orders there is no consideration of petitioners' claim of being the adjacent raiyat of the vended plots. On the authorities had considered the claim of respondent No. 5. This is a serious error in the orders passed by the Courts below and there is much force in the claim of the petitioners that they themselves are the boundary tenant of the vended plot.

11. So far the claim of respondent No. 5 being the co-sharer of the vendor is concerned this is in contradiction to the claim of respondent No. 5 being an adjacent raiyat of the vended plot. Admitted fact in all these three cases his that the land which are subject matter of dispute originally belonged to one Rampukar Upadhyay. Rampukar Upadhyay died leaving behind six sons, namely, Shiv

Kumar Upadhyay, Brahmdeo Upadhyay, Saryu Upadhyay, Nanku Upadhyay, Jamuna Upadhyay and Chattu Upadhyay. Out of these six sons of Rampukar Upadhyay, Brahmdeo Upadhyay, Chattu Upadhyay and Nanku Upadhyay died issue less. Shiv Kumar Upadhyay died leaving behind a son, Rambahadur Upadhyay who had a son Dharamnath Upadhyay, respondent No. 5, pre-emptor in all these cases, Jamuna Upadhyay died leaving behind a son, Mohan Upadhyay, who is the vendor of the disputed lands. After the death of Rampukar Upadhyay, his entire property was partitioned among his five sons, as Chattu Upadhyay had pre-deceased him. The remaining sons lived separately, partitioned property and they dealt with the property which were allotted in their share. This fact find support from the recital in the deed of gift, dated 17.10.1992, executed by Nanku Upadhyay in favour of Dharamnath Upadhyay, respondent No. 5. In the recital part of the gift deed it has been mentioned that all five sons of Rampukar Upadhyay separated after his death and came in exclusive possession of their property. Considering the fact that there was a partition in the family of Rampukar Upadhyay among his five living sons. The claim of the respondent No. 5 that he is co-sharer of Mohan Upadhyay, he vendor, has no leg to stand. Once the joint family property has been partitioned the members of different branches lost their status of co-sharer. In this circumstance, the respondent No. 5 could have only claimed to be an adjoining raiyat of the vended plot, but on this point also he could not succeed as the name of respondent No. 5 is not there in the boundary of the sale deed and in the sale deed there is name of Nanku Upadhyay who executed gift deed in favour of respondent No. 5 subsequent to registration of the sale deeds in favour of petitioners. This sufficiently prove that on the date of the filing of the pre-emption application, respondent No. 5 was neither the co-sharer of the vendor nor he was an adjacent raiyat of the vended plot. The Deputy Collector, Land Reforms, the Additional Collector and the Additional Member, Board of Revenue totally over looked this aspect of the matter that the claim of the respondent No. 5 as an adjacent raiyat as well as the co-sharer was not proved, from the evidence brought on record.

12. On a consideration of these facts the order, dated 13.12.1996, passed by the Deputy Collector, Land Reforms, Saran at Chapra, in Ceiling cases No. 20, 21 and 22 of 1993-1994 as well as the orders, dated 05.08.2002, passed by the Additional

Collector, Saran at Chapra, in Ceiling Appeals No. 4, 5 and 23 of 1997, and the orders, dated 28.05.2002, passed by the Additional Member, Board of Revenue, Bihar, Patna, passed in Ceiling Revision Cases No. 193, 194 and 195 of 2000 are hereby quashed. All these three writ applications are allowed.

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