

Upendra Thakur and ors. Vs. the State of Bihar and ors.

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SooperKanoon Citation : sooperkanoon.com/127638

Court : Patna

Decided On : Feb-25-2008

Judge : Sudhir Kumar Katriar and Kishore K. Mandal, JJ.

Appellant : Upendra Thakur and ors.

Respondent : The State of Bihar and ors.

Disposition : Appeal dismissed

Judgement :

Sudhir Kumar Katriar and Kishore K. Mandal, JJ.

1. This appeal has been preferred in terms of Clause 10 of the Letters Patent of the Patna High Court. The appellants are the pre-emptors and are aggrieved by judgment dated 28.7.1998, passed in CWJC. No. 4311 of 1997 Pawan Kumar Rai and Ors. v. The State of Bihar and Ors. whereby the orders of the authorities under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act) have been set aside, and his application for pre-emption in terms of Section 16(3) of the Act has been rejected, inter alia, on the ground that the purchasers became adjoining raiyats with respect to the vended plot before the application under Section 16(3) was filed. We shall go by the description of the parties occurring in the writ petition.

2. A brief statement of facts is essential for disposal of the appeal. The writ petitioners (respondent Nos. 6 to 9 herein) had purchased the land in question by a deed of absolute sale executed on 13.2.1989, and registered on 27.1.1990, by one Ram Sudhir Thakur (respondent No. 7). In other words, 5 kathas land of C.S. plot Nos. 33, 34 & 35 corresponding to R.S. plot No. 199 New Khata No. 429, situate in village Sadukha, P.S. Khanpur, within the district of Samastipur, was conveyed by the said registered deed of absolute sale in favour of the writ petitioners. Respondent Nos. 5 & 6 (the appellants herein) had filed the application under Section 16(3) of the Act on 16.4.1990, claiming re-conveyance of the land in question on account of being adjoining raiyats of the vended plot. The same was registered as Case No. 4 of 1990-91/3 of 1991-92 Upendra Thakur v. Pawan Kumar Rai. The pre-emption application was allowed on contest by order dated 2.12.1991 (Annexure -1), wherein it was held that the pre-emptors (appellants herein) were adjoining raiyats with respect to the vended plot. Aggrieved by this order the purchasers (the writ petitioners) preferred appeal No. 153 of 1991-92/169 of 1995-96 Pawan Kumar Rai and Ors. v. Upendra Thakur and Ors. which was dismissed by order dated 14.8.1995 (Annexure-2). The purchasers challenged the same by preferring revision Case No. 44 of 1996 Pawan Kumar Rai and Ors. v. Upendra Thakur and Ors. which was also rejected by order dated 14.8.1995 (Annexure -3), passed by the learned Additional Member, Board of Revenue. Aggrieved by the same, the purchasers preferred the writ petition which has been allowed and the three orders of the learned authorities under the Act have been set aside, and it has been held that the purchasers had become adjoining raiyats on the date the preemption application was filed, on the strength of subsequent deed of absolute sale executed on 26.1.1990, and registered on 25.5.1990. Hence this appeal at the instance of the pre-emptors.

3. While assailing the validity of the order of the learned writ court, the learned Counsel for respondent Nos. 5 & 6 (the pre-emptors) submits that the subsequent sale deed was indeed registered on 25.5.1990, but its execution has been ante-dated to 26.1.1990 to defeat the claim of pre-emption as has been found by the three authorities under the Act. He next submits that this being a finding of fact, should not have been interfered with by the learned writ court.

4. Learned Counsel for the purchasers (the writ petitioners submits that the learned writ court has rightly held that the pre-emptors have, for the first time, raised the question of antedating the date of execution of the document before the writ court. He next submits that except the oral submission that the date of execution of the subsequent transfer was antedated, no evidence at all has been brought to the notice of the learned Single Judge as well as before the courts below to establish the plea. He has also produced the original documents on both the occasions and has submitted that there is no circumstance at all appearing in the two sets of documents to even remotely suggest that the date of execution of the subsequent document was ante-dated. He relies on the judgment reported in 1985 PLJR 662 Smt. Prambada Devi v. Additional Member. He next submits that law is well settled that once a document of sale deed has been registered, its validity dates back to the date of its execution. He relies on the judgment reported in 2004 (3) PLJR 838 (para-7) Punyadeo Sharma v. Additional Member Board of Revenue. He lastly submits that the purchasers, in order to defeat the claim of pre-emption, can become an adjoining raiyat within a period of 3 months from the date of registration of the earlier document. He relies on the full Bench judgment of this Court reported in 1970 BLJR 579 (para-10) Ram Chandra Srivastava v. Prasad Narayan Singh.

5. We have perused the materials on record and considered the submissions of learned Counsel for the parties. The vended plot was conveyed by deed of absolute sale executed on 13.2.1989, and was registered on 27.1.1990, in favour of the writ petitioners. The pre-emption application was filed on 16.4.1990. The writ petitioners acquired a plot of land adjoining the vended plot by a deed of absolute sale registered on 25.5.1990, which was executed on 26.1.1990. Law is well settled that once a document is registered, its validity dates back to the date of execution. The learned Counsel for the writ petitioners has rightly relied upon the latest judgment of this Court rendered in Punyadeo Sharma (supra) which has held to the same effect after noticing a number of judgments of the Supreme Court and Full Bench as well as Division Bench of this Court. In other words, the writ petitioners became adjoining raiyats in relation to the vended plot on 26.1.1990, well before the date on which the pre-emption application was filed. It has further been held by a Full Bench of this Court in Ram Chandra Srivastava (supra) that

the right of reconveyance, which occurs to a co-sharer or a raiyat of the adjoining land, has to be judged with reference to the date on which the application under Section 16(3) is filed, and not with reference to the date of transfer or the date of execution and registration of the document of transfer. We are, therefore, of the view that the purchasers (the writ petitioners) became adjoining raiayats with respect to the vended plot well before the date on which the preemption application was presented and defeats the claim of pre-emption.

6. We must deal with the contention advanced on behalf of respondent Nos. 5 & 6 (the appellants herein) that the writ petitioners had ante-dated the date of execution of the subsequent transfer which, if ignored, does not enable the purchaser to defeat the claim of pre-emption. We are unable to accede to the submission that this question does not seem to have been canvassed before anyone of the authorities under the Act. This is basically a question of fact which should have been raised before the learned first authority where entire evidence, oral and/or documentary, was brought on record. This question also does not seem to have been raised and canvassed before the learned appellate authority and the learned revisional authority. Mere statement of a point or objection in the pleadings is inadequate. The point must be stated in the pleadings, pressed and canvassed before the authority. The issue seems to have been raised for the first time before the learned writ court. Furthermore, there is no evidence even remotely suggesting that the date of execution of the subsequent document was antedated. By order dated 17.1.2008, the purchasers were directed to produce the original sale deed which has been produced today. The learned Counsel for the pre-emptors has not been able to point out any circumstance in the sale deed, or any other surrounding circumstance supporting this contention. We have also perused the same and are unable to find any support in favour of the pre-emptors. The contention is rejected.

In the result, the appeal is dismissed. In the circumstances of the case, however, there shall be no order as to costs.