

Jugeshwar Singh @ Sinha Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-09-2005

Judge : Mridula Mishra, J.

Appeal No. : CWJC No. 976 of 2000

Appellant : Jugeshwar Singh @ Sinha

Respondent : State of Bihar and ors.

Advocate for Def. : Nand Kishore Prasad-2, Adv.

Advocate for Pet/Ap. : S.K. Verma, Raj Nandan Prasad Singh and Surendra Kishore Verma, Adv.

Disposition : Petition dismissed

Judgement :

Mridula Mishra, J.

1. Heard learned counsel for the petitioner and the counsel appearing for respondent Nos. 5, 6 and 7.
2. Petitioner is the pre-emptor. He has filed this application for quashing the order dated 10.12.1999, passed by the Additional Member Board of Revenue dismissing the pre-emption revision case No. 271 of 1998 on the point of maintainability.

Prayer is also for quashing the order dated 1.12.1998, passed by the Additional Collector, Nalanda in Land Ceiling Appeal No. 23 of 1996-97 whereby the order dated 27.5.1996 passed by the D.C.L.R., Hilsa, Nalanda in case No. 5 of 1995-96 allowing the pre-emption application in favour of the petitioner has been set aside.

3. The case of the petitioner is that his father Late Karu Singh and grand father of Braj Kishore Prasad (respondent No. 7), the vendor were full brothers to the petitioner and the father of the vendor are own cousins. Braj Kishore Prasad, respondent No. 7 transferred 43-34 decimals of land through four registered sale deeds dated 30.12.1992 in favour of Surya Narain Prasad (respondent No. 5) and Vinod Kumar (Respondent No. 6). Out of the four sale deeds two sale deeds were executed in favour of respondent No. 5 consisting an area of 10 decimals and 3.34 decimals of Plot No. 2603 under khata No. 482 Tauji No. 15003. Remaining two sale deeds were executed in favour of respondent No. 6 each consisting of 10 decimal lands of same plot. In the sale deed wrong boundary was intentionally given showing name of Rameshwar Prasad in northern boundary of all four sale deeds. Rameshwar Prasad is the full brother of the petitioner. Admittedly total area of plot No. 2603 consist of 1 acre which was partitioned on the basis of compromise decree dated 14.7.1969 passed in Title Suit No. 9 of 1969. In the said compromise decree petitioner and his brother were allotted 56-1/2 decimals of land out of 1 acre of total area of plot No. 2603 under Khata No. 482 towards north Mohan Singh, the father of the vendor Braj Kishore Prasad (respondent No. 7) was allotted remaining 43-1/2 decimals towards south. Accordingly the petitioner became the co-sharer as well as adjacent raiyat of the vended land. Though in the sale deed a wrong boundary was given but in reality the petitioner was in exclusive possession of the entire 56 1/2 decimal of land adjacent north to the vended plot.

4. This land was allotted in the share of the petitioner in the subsequent partition with his full brother Rameshwar Prasad. On 30.12.1992 four sale deeds were executed by respondent No. 7 in favour of respondent No. 5. After the registration of the sale deeds were complete, petitioner being a co-sharer as well as adjoining raiyat of the vended land filed four pre-emption cases which were registered as Land Ceiling Case No. 5 of 1995, 6 of 1995, 7 of 1995 and 8 of 1995, Rameshwar Prasad the brother of the petitioner filed an affidavit in the pre-emption cases

stating that the entire 56 1/2 decimals lands of plot No. 2603 has been allotted in the share of the petitioner and he has no concern with that land. Petitioner also filed a certificate issued by the Circle Officer to this effect that Jugeshwar Singh and his brother Rameshwar Prasad are in possession of 17.1 decimals of land of plot No. 2603. Out of total 56.50 they have partitioned the land in the private partition and both are in possession of their land allotted in their share (Annexure-2). In the pre-emption cases petitioners' prayer was for reconveyance of the vended plot in his favour as he was adjacent raiyat as well as co-sharer of the vendor.

5. Transferee respondent Nos. 5 and 6 resisted the claim of the petitioner on the ground that they are also adjoining raiyat of the vended plot as they held land of plot No. 2612. The land of Plot No. 2612 is the adjacent east to plot No. 2610 which is adjacent plot of vended plot No. 2603 though in the cadestral survey plot No. 2610 has been recorded as pyne, but it has lost its character and now has, become a agricultural land. The land of plot No. 2612 has been amalgamated with plot No. 2610 and now both are contiguous plot and accordingly the transferees themselves are adjacent raiyat of the vended plot. The respondents also stated that just after the execution of the sale deeds in their favour by respondent No. 7, the respondents have executed deed of gift in favour of their mother Parmeshwari Devi on 28.6.1996 transferring 33 3/4 decimals of land in total purchased lands. Their mother Parmeshwari Devi has died on 30.10.1995. Their father died on 30.1.1996. After their death their legal heirs and members of joint family have inherited that 33 3/4 decimals of land. Since the gift deed was executed prior to the filing of the pre-emption application and subsequently it was registered, the legal heirs of Parmeshwar Devi were necessary party with respect to the land which were already transferred through gift deed. In this view also the pre-emption application was not maintainable.

6. Considering the case of the pre-emptor and the transferee the DCLR rejected the claim of the transferees being adjacent raiyat of the vended plot. The transfer through the deed of gift was considered to be sham transaction. The D.C.L.R. by a common order dated 27.5.1996 allowed the claim of the pre-emptor in Pre-emption case No. 5/96, 6/96, 7/96 and 8 of 1996. Since by a common order all

four pre-emption applications were allowed, the transferees preferred a single appeal No. 23 of 1996-97 before the Additional Collector. This appeal was allowed by order dated 1.12.1998 holding the transferees as adjacent raiyat of the vended plot. The finding recorded by the appellate Court was that since the transferees have purchased lands through four sale deeds as such on the basis of their purchase itself they had become the adjacent raiyat of the vended plot. The finding recorded by the appellate Court was affirmed by Additional Member Board of Revenue in Ceiling Revision Case No. 271 of 1998.

7. The petitioner has challenged the concurrent finding of the appellate Court as well as the revisional Court. One of the ground for challenging these orders is that against the order passed in five pre-emption applications a single appeal was preferred by the respondents which has been held by this Court that a separate appeal should be filed against the order passed in different pre-emption applications. The order of the appellate authority is bad on this ground also. To this objection the submission advanced by the respondents' counsel is that no such objection was raised by the petitioner before the appellate authority. He himself filed a single revision application before the Member Board of Revenue. Before the revisional authority also he did not raise any such objection and now in the writ application he is not free to raise this objection.

8. From the order of the appellate Court I find that the appellate authority in his order has made this clear that since by a common order all pre-emption applications were decided by the D.C.L.R. as such a single appeal has been filed by the transferees. From the appellate, order it transpires that no objection was filed by the pre-emptor before the appellate authority regarding the maintainability of single appeal against the order passed in four pre-emption applications. Before the revisional authority no such objection was raised. Rightly it has been submitted by the counsel for the respondents that the petitioner now cannot raise this point.

9. So far the question of adjancy is concerned admittedly two sets of land out of common plot were purchased by respondents 5 and 6 through two sale deeds executed and registered on the same day. The question relating to the claim of the pre-emption with respect to two sets of land adjacent to each other purchased on

the same day was placed for consideration before the Division Bench of this Court in the case of Ram Rup Yadav v. State of Bihar and Ors., reported in 1987 PLJR 455. The Division Bench in that case has held that a person purchasing two plots adjacent to each other on the same day has the better title over the other adjoining raiyats of the plots. The purchaser of the plot become himself the land holder adjoining plots in order to defeat the claim of pre-emption.

10. In the present case also through two sale deeds two sets of land out of a common plot were purchased by respondent Nos. 5 and 6 on the same day. This point was not considered by the D.C.L.R. The Additional Collector though allowed the claim of adjancy of the transferees but he also did not consider this point in clear terms. The revisional Court also failed to discuss the claim of the adjancy of the transferees, from this angle as decided in 1987 PLJR 455. The transferees of the present case, themselves have become the adjoining raiyat on the basis of their own purchase of two sets of land on the same day through two registered sale deed and their right in that case is superior to any other adjacent raiyat. The application for pre-emption preferred by the petitioner in that case was not maintainable.

11. For the reasons stated above I do not find any merit in the Writ application. It is accordingly dismissed.

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