

Renu Devi and Etc. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Apr-24-2003

Judge : Aftab Alam, J.

Acts : [Limitation Act, 1963](#) - Sections 14(2); Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus and Land) Act, 1962 - Sections 16(3)

Appeal No. : C.W.J.C. Nos. 11439 and 11459 of 2002

Appellant : Renu Devi and Etc.

Respondent : State of Bihar and ors.

Advocate for Def. : S.S. Asghar Hussain, Sr. Adv. and Gajendra Kumar Jha, Prasant Kumar Jha for No. 5 and Anil Jha, Adv. for No. 6 and Ashish Anshu, Adv.

Advocate for Pet/Ap. : H.K. Thakur, Adv.

Disposition : Petition allowed

Judgement :

Aftab Alam, J.

1. These two writ petitions arise from pre-emption proceedings with regard to different pieces of land from the same plot. These two cases were, therefore, heard together and are being disposed of by this common order.

2. Renu Devi the petitioner in C.W.J.C. No. 11439 of 2002 and Kshema Devi the petitioner in C.W.J.C. No. 11459 of 2002 are the respective vendees. Deonath Jha who is the common respondent No. 5 in both the writ petitions is the pre-emptor and the deceased mother of respondent No. 6, again common in both the cases, was the vendor. The petitioners in the two cases lost before the D.C.L.R. who by his order, dated 24-4-2000 passed in Pre-emption Case No. 1/96-97 (giving rise to C.W.J.C. No. 11439 of 2002) and Pre-emption Case No. 2/96-97 (giving rise to C.W.J.C. No. 11459 of 2002) allowed the claim of pre-emption raised by respondent No. 5. The orders passed by the D.C.L.R. were set aside in appeal and the Additional Collector, Sheohar by his orders dated 21-12-2000 allowed the appeals preferred by the two petitioners. The pre-emptor then came in revision before the Board of Revenue and the Board of Revenue by orders dated 31-7-2002 passed in Case No. 31 of 2001 (C.W.J.C.No. 11439 of 2002) and Case No. 30/2001 (C.W.J.C. No. 11459 of 2002) allowed the revisions, set aside the orders passed by the Additional Collector and upheld the Claim of pre-emption raised by respondent No. 5.

3. The material facts are brief and without controversy. The sale deeds by which the disputed lands were transferred in favour of the respective petitioners were executed on 15-5-1985, the registration of those sale deeds was completed on 31-10-1985. But the pre-emption application was filed after about 11 years on 2-7-1996.

4. Section 16(3) of the Land Ceiling Act provides for making an application for preemption in the prescribed manner, within three months of the date of registration of the document of transfer but there are certain decisions holding that in an appropriate case it is open to the Dy. Collector. Land Reforms and the Collector under the Act to consider whether the delay in filing of the petition was fit to be condoned (See Krishna Kumar Choudhary v. Alliance Agro industries (1991) 1 Pat LJR (SC) 3. Therefore, without advertent to the question whether or not the Ceiling Authorities had the power to condone the delay of more than 10 years in filing the application, what is required to be examined here is whether in the facts and circumstances of the case it was at all a proper exercise of discretion to condone the extraordinary delay in filing the claim of preemption and whether the

provision of law relied upon for condoning the delay has any application in the facts and circumstances of the case.

5. In support of his prayer for condonation of delay the pre-emptor pleaded that he was conducting a suit with regard to the disputed land before the Civil Court. The relevant facts in that regard are as follows. It is noted above, that the sale deeds by which the disputed lands were transferred in favour of the respective petitioners were executed on 15-5-1985. Two days later Binod Kumar Jha son of the present pre-emptor filed Title Suit No. 35/85 in the Court of Sub-Judge. Sitamarhi seeking a decree of specific performance of contract for the sale of the disputed land against the petitioner's vendor. In this suit the petitioners were also made defendants. In support of the claim of specific performance of contract the plaintiff relied upon on oral agreement between him and the petitioners' vendor. The trial Court disbelieved the petitioner's case of oral agreement and consequently dismissed the suit by judgment and decree dated 11-3-1991. An appeal preferred against this judgment was dismissed by the 1st Appellate Court by judgment and decree, dated 13-9-1994 passed in T.A. No. 43/91. The plaintiff then came to this Court in S.A. No. 516/94 which too was dismissed by order, dated 11-12-1995. He took the matter finally to the Supreme Court where the Special Leave to Appeal too was dismissed.

6. It was then only that respondent No. 5 filed his claim of pre-emption on 2-7-1996 and made a prayer for condonation of delay in filing the pre-emption petition invoking the provisions of Section 14(2) of the Limitation Act. The D.C.L.R. allowed the prayer and proceeded with the case on merits. In appeal the Additional Collector held that Section 14 of the Limitation Act had no application to the facts of this case and rejected the pre-emptor's claim as barred by limitation. The Board of Revenue, however, agreed with the D.C.L.R, and upheld the condonation of delay on the basis of Section 14 of the Limitation Act.

7. Section 14(2) of the Limitation Act is as follows :

'In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party

for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.'

8. From a bare reading of the provision it is apparent that there are at least three pre-conditions for its application :

(i) parties in the civil suit and in the subsequent proceeding (in which condonation is prayed for) must be the same;

(ii) the suit and the later proceeding must seek the same relief; and

(iii) the Court where the earlier suit was

filed was unable to entertain it from defect

of jurisdiction or other cause of a like nature.

9. In the case in hand neither of the three conditions appear to be satisfied. As noted above, the suit was filed not by the present pre-emptor but by his son and hence, the parties in the earlier suit and in the present pre-emption proceedings cannot be held to be the same. Next a suit for specific performance of an alleged agreement for sale is quite different from a claim of pre-emption. The final result may be the same inasmuch as the plaintiff in the suit or the pre-emptor in the pre-emption proceeding may ultimately gain ownership and control of the disputed land but the ultimate result may be arrived at by pursuing two entirely different reliefs. The suit for specific performance is based on an agreement between the parties from which the seller wishes to resile and the purchaser secures the sale by the intervention of the Court. In a pre-emption proceeding there is no question of any earlier agreement between the parties and the claim of pre-emption is based on the claimants' status as a co-sharer or as an adjoining raiyat. A suit for specific performance, therefore, is vastly different in nature from a pre-emption proceeding under Section 16(3) of the Act. Finally, the third condition for the application of Section 14 is that the Court where the earlier suit was filed was unable to entertain it from defect of jurisdiction or other case of a like nature. In the present case the position is quite different. The plaintiff, the son of the pre-emptor

lost the suit not for any want of jurisdiction in the Court, but on merits. The trial Court disbelieved and rejected his plea of oral agreement for sale between him and the petitioners' vendor and the finding was affirmed and remained undisturbed in appeals right up to the Supreme Court and, therefore, there is no question of the suit not being entertained from defect, of jurisdiction.

10. It is thus to be seen that none of the three conditions for application of Section 14 of the Limitation Act, were available in this case and hence, both the D.C.L.R. and the Board of Revenue committed material error of jurisdiction in condoning the delay in filing the pre-emption applications on the basis, of Section 14 of the Limitation Act.

11. The Board of 'Revenue has relied upon a Supreme Court decision in Ram Nath Sao alias Ram Nath Sahu v. Gobardhan Sao, AIR 2002 SC 1201, in which it was held that condonation of delay is to be considered liberally so as to advance substantial justice. He also relied upon a decision of this Court in Central Coal Fields Limited v. Smt. Lilawati Devi (2000) 2 Pat LJR 691.

12. I have no hesitation in holding that neither of these two decisions have any application to the facts of this case and these decisions do not support the application of Section 14 of the Limitation Act to the facts and circumstances of this case as noted above.

13. For the reasons discussed above, I am satisfied that in this case the extraordinary delay of over 10 years in filing the preemption applications could not be condoned by any means. The claim of pre-emption made by respondent No. 5 was thus barred by limitation and was, therefore, liable to be rejected at the threshold. The impugned orders passed by the Board of Revenue are accordingly set aside and the orders by the Additional Collector are restored.

14. In the result, these two writ petitions are allowed but with no order as to costs.

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