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Manti Devi and ors. Vs. the State of Bihar and ors.

Manti Devi and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : May-11-2006

Judge : Sudhir Kumar Katriar, J.

Acts : Fixation of Celling Area and Acquisition of Surplus Land Act, 1961 - Sections 3, 5, 8, 16(3) and 365; Benami Transactions Act

Appeal No. : CWJC Nos. 13268, 13262, 13263, 13265, 13266, 13267, 13592 and 13595 of 2000

Appellant : Manti Devi and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : Learned Standing Counsel (Ceiling) for Respondent Nos. 1 to 4 and Manojeshwar Pd. Sinha, Adv. for Respondent Nos. 5 to 9

Advocate for Pet/Ap. : S.K. Mazumdar, Sr. Adv.

Disposition : Petition allowed

Judgement :

Sudhir Kumar Katriar, J.

1. This batch of eight writ petitions at the instance of the purchasers arise out of eight applications under Section 16(3) of the Bihar Land Reforms (Fixation of

Celling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Act'). The eight applications and the subsequent proceedings have at all stages been disposed of by common orders. It is rather difficult to dispose of the writ petitions by separate orders and I have, therefore, equally chosen to dispose them of by a common judgment.

2. These writ petitions are directed against the order dated 23.10.2000 (Annexure 1), passed by the learned Additional Member, Board of Revenue, Bihar, Patna, whereby he allowed the eight revision applications of the pre-emptors, set aside the appellate order dated 26.4.1990 (Annexure 4), passed by the learned Additional Collector, Saran. The learned appellate authority had allowed the eight appeals on behalf of the purchasers, set aside the order dated 9.11.1989 (Annexure 3), passed by the learned Deputy Collector Land Reforms, Sadar Chapra, whereby he had allowed the eight pre-emption applications preferred by the pre-emptors under Section 16(3) of the Act.

3. The following chart indicates the position of the eight writ petitions in relation to the earner proceedings:

Sl. No.

C1

D.C.L.R

Addl.

Collector, Appellate Court

Board

of Revenue

Hon'ble

Patna High Court

L.P.A.

Board

of Revenue

Hon'ble

Patna High Court

1.

L.C.Case

No. 34 of 86-87

Appeal

No. 60 of 1989

Revision

Case No. 360 of 90

C.WJ.C.

No. 222 of 1992

L.P.A.

No. 764 of 97

Same

Board Case

C.WJ.C.

No. 13262 of 2000

2.

L.C.Case

No. 35 of 86-87

Appeal

No. 61 of 1989

Revision

Case No. 361 of 90

C.W.J.C.

No. 355 of 1992

L.P.A.

No. 765 of 97

Same

Board Case

C.W.J.C.

No. 13263 of 2000

3.

L.C.Case

No. 36 of 86-87

Appeal

No. 62 of 1989

Revision

Case No. 362 of 90

C.W.J.C.

No. 356 of 1992

L.P.A.

No. 766 of 97

Same

Board Case

C.W.J.C.

No. 13265 of 2000

4.

L.C.Case

No. 37 of 86-87

Appeal

No. 63 of 1989

Revision

Case No. 363 of 90

C.W.J.C.

No. 357 of 1992

L.P.A.

No. 768 of 97

Same

Board Case

C.W.J.C.

No. 13266 of 2000

5.

L.C.Case

No. 38 of 86-87

Appeal

No. 64 of 1989

Revision

Case No. 364 of 90

C.W.J.C.

No. 358 of 1992

L.P.A.

No. 769 of 97

Same

Board Case

C.W.J.C.

No. 13267 of 2000

6.

L.C.Case

No. 39 of 86-87

Appeal

No. 65 of 1989

Revision

Case No. 365 of 90

C.W.J.C.

No. 359 of 1992

L.P.A.

No. 770 of 97

Same

Board Case

C.W.J.C.

No. 13268 of 2000

7.

L.C.Case

No. 43 of 86-87

Appeal

No. 66 of 1989

Revision

Case No. 366 of 90

C.W.J.C.

No. 360 of 1992

L.P.A.

No. 772 of 97

Same

Board Case

C.W.J.C.

No. 13592 of 2000

8.

L.C.Case

No. 44 of 86-87

Appeal

No. 67 of 1989

Revision

Case No. 367 of 90

C.WJ.C.

No. 361 of 1992

L.P.A.

No. 775 of 97

Same

Board Case

C.W.J.C.

No. 13595 of 2000

4. The facts are not at all in dispute. It is, therefore, not necessary to set out separately the set of facts pleaded by each side. We shall draw the basic facts from CWJC No. 13268 of 2000, except specifically indicated at the relevant place. Respondent Nos. 5 to 9 herein are the pre-emptors, and respondent No. 10 (Balram Prasad) is the son and the heir of the vendor (Satva Narain Prasad). Respondent Nos. 5 to 9 claim pre-emption with respect to portions of plot Nos. 47, 161, 175, 287, 370, 389, 515, 519, 562, 564, 503 and 564, covering an area of 10 bighas (approx.) appertaining to Khata No. 56, situate at Mouza Paharpur, PS Garha, district Saran. One Nurul Hoda and Bibi Khatoon were full brother and sister and jointly owned and possessed 15 bighas (approx.) of land. The former had two-third of share in the same i.e. 10 bighas (approx.), and the latter one-third share, namely, 5 bighas, (approx.). The aforesaid Satya Narain Prasad had certain claims against Nurul Hoda who filed civil suit against him and got the entire 15 bighas (approx.) auction-sold. Bibi Khatoon filed objection with respect to her share of 5 bighas (approx.), had the auction-sale set aside to the extent of her share, and sold the same in favour of respondent Nos. 5 to 9 by four registered deeds of absolute sale in 1966. Satya Narain Prasad thereafter instituted Title Suit No. 53 of 1967 before learned Sub Judge I, Civil Court, Chapra, against respondent Nos. 5 to 9 herein which was ultimately compromised. Respondent Nos. 5 to 9 retained title to the extent of the share of Bibi Khatoon, namely five bighas, one katha, and 31 dhurs, on certain payment to Satya Narain Prasad. Schedule-I to the compromise deed sets out the lands so compromised. A copy of the compromise decree including the compromise application is compendiously

marked Annexure A series to CWJC No. 13262 of 2000. The relevant portion of Schedule-I to the compromise decree is set out hereinbelow for the facility of quick reference:

vr% eqnky; eqnbZ dks oksofyx 2100@& :i;k uxn orkSj dher ns ns vkSj eqnbZ eqnkyge dks gfd;r dcwy dj ys] vkSj eqnkyge ftl dnj ,jkth rdjkjh dks csukek fy[kk;s gSa gjsd Iyk SV ,jkth rdjkjh esa 1@3 fgLlsnkjh ds eqrkfod tSlk flfMmy uEcj 1 esa fy[kk gS fn;k tkrk gS A..

flfMmy uEcj&1

vUnj ekStk igkM+iqj Fkkuk uEcj 331 Fkkuk xj[kk ftyk Nijk esa eqnkyge dks fuEufyf[kr Iyk SV esa ftl rjQ fgLlk jgsxk og uhps ntZ gSa A

1 eh0 tq0 562 rks 564 esa eqnkyg dks mRrj

503 esa 1@3 eqnkyg if'pe

47 esa ** eqnkyg dks mRrj

175 esa ** eqnkyge dks nf[ku

287 esa ** eqnkyge dks if'pe

370 esa ** eqnkyge dks mRrj

389 eSa ** eqnkyge dks nf[ku

515 esa ** eqnkyge dks nf[ku

519 esa ** eqnkyge dks mRrj

161 esa ** eqnkyge dks mRrj

5. Petitioner Nos. 7 to 9 are the original purchasers of the share of Nurul Hoda by eight registered deeds of absolute sale. They (petitioner Nos. 7 to 9) executed a registered deed of disclaimer (Ladabi deed) on 15.4.1986, in favour of petitioner Nos. 1 to 6, and was registered on 19.5.1986. Respondent Nos. 5 to 9 thereafter

filed eight applications under Section 16(3) which were on contest allowed by the learned LRDC. He, inter alia, held that petitioner Nos. 1 to 6 are neither co-sharers nor adjoining raiyats in relation to the vended plots. He further found that respondent Nos. 5 to 9 are adjoining raiyats with respect to all the eleven vended plots, allowed the pre-emption applications and directed for reconveyance of the same (Annexure 3) in favour of the pre-emptors. Aggrieved by this order, the petitioners filed eight separate appeals which were allowed by the learned Additional Collector by his order dated 26.4.1990 (Annexure 4), and rejected the pre-emption applications. He, inter alia, found that respondent Nos. 5 to 9 are not adjoining raiyats with respect to each and every vended plot. Aggrieved by this order, the pre-emptors filed eight revision applications before the Board of Revenue which were allowed by a common order dated 30.11.91, set aside the order of the learned appellate authority, and affirmed that of the learned first authority.

6. Aggrieved by the order of the Board of Revenue, the present petitioners preferred eight writ petitions before this Court which were allowed by a common judgment dated 22.5.97 (Annexure 7), whereby the order of the Board of Revenue was set aside, and the matter was remitted back to him to disprove the matter after taking into account the law with respect to Benami transaction explained by the Supreme Court in its judgment in the case R. Rajgopal Reddy v. Padmini Chandrashekhar reported in : [1995]213ITR340(SC) . On remand, the learned Additional Member has allowed the revision applications, set aside the order of the learned appellate authority, and has affirmed that of the learned first authority. He has, inter alia, found that petitioner Nos. 1 to 6 are neither co-sharers nor adjoining raiyats with respect to the vended plots, and has further found that respondent Nos. 5 to 9 herein are adjoining raiyats with respect to all the vended plots. He has also found that the deed of disclaimer was a sham document and, therefore, no title has passed to petitioner Nos. 1 to 6. Hence this writ petition at the instance of the purchasers.

7. While assailing the validity of the impugned order, learned Counsel for the petitioners submits that pre-emption is a weak right, and the purchaser can defeat the claim for pre-emption by any lawful means. He relies on the following reported

judgments:

(a) 2004(3) PLJR 838 Punvadeo Sharma v. The Addl. Member, Board of Revenue and Ors.

(b) 2004(4) PLJR 480 Abdul Jalil v. The State of Bihar and Ors.

7.1 He next submits that in case of multiplicity of parties like the present one, the pre-emptors must establish to the satisfaction of the Court that each one of them is interested, either being a co-sharer or an adjoining raiyat with respect to each and every vended plot. He relies on the judgment reported in : AIR1974 Pat24 Sukhram Singh v. The State of Bihar. He next submits that the learned Board of Revenue has recorded an erroneous as well as redundant finding of fact that the deed of disclaimer is a sham transaction. He submits in the same vein that until enforcement of the Act, benami transaction was a valid and lawful mode and manner of acquisition of property. He relies on the judgment reported in 1985 PLJR 555 Yugal Kishore Singh v. State of Bihar. He submits that admission is the best evidence which an opposite party can rely. He relies on the judgment of the Supreme Court reported in : [1960]1SCR773 Narayan v. Gopal. He lastly submitted that substitution done even in an interlocutory proceeding suffices in the main matter and at all stages. He relies on the judgment reported in 44 Indian Appeals 218 Brij Indar Singh v. Kanshi Ram and Ors.

8. Learned Counsel for respondent Nos. 5 to 9 has supported the impugned order. He submits that this Court on the previous occasion, while remitting the matter back to the Board of Revenue, had not disturbed the findings of facts recorded by him and had sent it back to apply the law laid down by the Supreme Court in R. Rajagopal Ready (supra). He further submits that he has accordingly found that the deed of disclaimer is a sham transaction and, therefore, has conveyed no right, title and interest to petitioners No. 1 to 6. He relies on the judgment reported in AIR 1924 Patna 185 M. Gobind Prasad v. Lala Jagdeep Sahai. He submits that respondent Nos. 5 to 9 are adjoining raiyats with respect to each vended plot, a finding of fact recorded by the learned Board of Revenue, being the last court of facts. It is, therefore, not open to this Court to reconsider the same. He relies on the Full Bench judgment reported in : AIR1985 Pat129 Mohanth Dhansukh Giri v.

State of Bihar. He has also found fault with respect to non-substitution of the heirs of Suraj Thakur in the previous writ proceedings.

9. I have perused the materials on record and considered the submissions of learned Counsel for the parties. Law is well settled that in a proceeding like the present one involving multiplicity of pre-emption applications, or multiplicity of vended plots, the pre-emptor must establish to the satisfaction of the Court that each and every pre-emptor is either a co-sharer or an adjoining raiyat with respect to each and every vended plot. A Division Bench of this Court in Sukhram Singh v. State of Bihar (supra) has held as follows in paragraph 3 of the judgment:

3. On the other two point, the learned Additional Member, Board of Revenue, has committed obvious errors of law. The person who can claim pre-emption under Section 16(3) of the Act must be a person who is either a co-sharer or an adjoining raiyat of all the pieces of land transferred. If he is not so, he cannot claim pre-emption. No apportionment is possible to give him pre-emption in respect of some of the vended plots. He must claim pre-emotion and get it in respect of the entire transaction when he proves that he is a co-sharer or an adjoining raiyat of all the plots transferred. It will be going against the spirit and principle of the law engrafted under Section 16(3) of the Act to say that two persons can jointly claim pre-emption on the ground that one is a co-sharer or an adjoining raiyat of some of the plots transferred and the other is a co-sharer or an adjoining raiyat of the remaining plots transferred. If separately neither can claim pre-emption, it is wholly unreasonable to take the view that by joining hands both can claim pre-emption. If two or more persons want to join hands in the filing of an application under Section 16(3), it is necessary for all the applicants to establish that all of them are either co-sharers or adjoining raiyats of all the vended plots. Apart from the question of withdrawal by Jugeshwar of his application under Section 16(3) therefore the application as filed was not maintainable, as neither Rambaran and perhaps nor Jugeshwar was a co-sharer or adjoining raiyat of all the 13 plots transferred by Mosammat Pachia to the petitioner.

10. In so far as the present case is concerned, the undisputed position is that respondent Nos. 5 to 9 had purchased one-third share of Bibi Khatoon by three

different sale deeds of 12.7.1966. These are the lands on the basis of which respondent Nos. 5 to 9 claim to be adjoining raiyats of the vended plots. These plots were the subject matter of Title Suit No. 53/67 in which Satya Narain Prasad (father of respondent No. 10 herein), Bibi Khatoon, and respondent Nos. 5 to 9 herein were parties, and had ended in a compromise decree (Annexure-A to the counter affidavit of respondent Nos. 5 to 9 of CWJC No. 13262 of 2000). As per the established procedure, the joint compromise application had formed part of the decree of the court dissolving the dispute between the parties in the suit. It is manifest from a plain reading of the same that the compromise had been achieved on payment of certain amount by respondent Nos. 5 to 9 herein to Satya Narain Prasad, and the former (respondent Nos. 5 to 9) were to retain their right, title and interest strictly in accordance with their registered deeds of absolute sale. It appears to me on a perusal of the connected materials on record that Bibi Khatoon had executed one registered deed of absolute sale in favour of Suraj Thakur (whose heirs are on record as respondent Nos. 5 and 6) conveying right, title and interest over 1 bighas 8 dhur and 6 dhurkies with respect to plot Nos. 47, 175, 287, 317, 389, 515, 519 and 518. She had executed the second deed of absolute sale in favour of one Jagdish Prasad Yadav conveying absolute right, title and interest with respect to 1 bigha 13 dhurs out of plot Nos. 564, 161 and 503. She had executed the third deed of absolute sale conveying the right, title and interest in favour of Shyama Prasad, conveying right, title and interest with respect to 1 bigha 7 kaths out of plot Nos. 562 and 564. It further appears to me that after the three sale deeds were executed in favour of respondent Nos. 5 to 9, they started creating trouble with the right, title and interest of Satya Narain Prasad with respect to his interest in the two-third share he had acquired from Nurul Hoda leading to the aforesaid Title Suit No. 53/77, resulting in the aforesaid compromise decree.

11. On a consideration of the entire materials on record, I am convinced that respondent Nos. 5 to 9 are not the adjoining raiyats with respect to each and every vended plot. The position which manifestly comes to the fore on a conjoint reading of the three sale deeds read with the compromise decree is that respondent Nos. 5 to 9 are not adjoining raiyats with respect to each and every plot of land and, therefore, the pre-emption applications must fail, notwithstanding the fact that

neither petitioner Nos. 7 to 9, nor petitioner Nos. 1 to 6, are co-sharers or adjoining raiyats with respect to the vended plots. Law is well settled that, in order to defeat a claim of pre-emption, the vendee should establish that they are co-sharers or adjoining raiyats with respect to the vended plots, in which case the claim for pre-emption shall fail even if the pre-emptors are able to establish that they are co-sharers and/or adjoining raiyats with respect to each and every plot. If the purchasers are not, then in order to succeed, the pre-emptors must establish that they are co-sharers and/ or adjoining raiyats with respect to each and every vended plot which is not the case here.

12. Learned Counsel for the petitioners relies on the judgments of this Court in Punyadeo Sharma (supra) and Abdul Jabir (supra) wherein it has been held that pre-emption is a weak right and the purchaser is entitled to defeat the claim of pre-emption by any legitimate means, inter alia, for the reason that it is a clog on the owner's right to alienate. In view of the foregoing discussion, in my view, the proposition of law enunciated in these two judgments are not attracted in the present case.

13. I must deal with the contention advanced on behalf of the petitioners that the Board of Revenue, being the last court of facts, has found as an issue of fact that respondent Nos. 5 to 9 are adjoining raiyats and it is, therefore, not open to this Court in exercise of its discretionary writ jurisdiction to reconsider the same. I regret my inability to accede to the submission in the facts and circumstances of the present case. The Board of Revenue has recorded a perverse finding of fact which militates against the documentary evidence on record apparent on the face of it, namely, the three pre-emptors do not have right, title, and interest in each and every plot of land purchased from Bibi Khatoon. He has misread the compromise decree as well as the three registered sale deeds in favour of the pre-emptors, an error apparent on the face of the record. The learned Additional Member appears to be oblivious of the law that the pre-emptor must be co-sharer and/or adjoining raiyat with respect to each and every vended plot, which they are not in the present case.

14. I must also deal with the question relating to the law of benami transactions. Law is well settled that prior to the enforcement of the Benami Transactions Act, benami transaction was a lawful and valid method for acquisition of right, title and interest in immoveable property. Reference may be made to the Full Bench judgment of this Court in the case of Yugal Kishore Singh v. State of Bihar (Page 558). All the Sections of the Act (except Sections 3, 5 and 8) were enforced with effect from 19.5.88, and Sections 3, 5 and 8 were enforced with effect from 5.9.88. The Supreme Court in its judgment in R. Rajgopal Reddy (supra) held that the Act is prospective in its operation, and does affect the validity enforcement of the Act. The provisions of the Act have, therefore, no bearing whatsoever on the registered deed of disclaimer executed by petitioner Nos. 7 to 9, in favour of petitioner Nos. 1 to 6, executed and registered prior to enforcement of the Act. The Board of Revenue has, therefore, made a needless exercise in examining the validity of the deed of disclaimer which is a registered document. He has also misread the document and recorded an erroneous finding that it is an invalid document. In that view of the matter, for the purpose of disposal of the present batch of writ petitions. I hereby hold that the registered deed of disclaimer was a valid document executed by petitioner Nos. 7 to 9, in favour of petitioner Nos. 1 to 6. It is relevant to state that all the petitioners have throughout been in one group and resisted the claim of pre-emption together. Therefore, the question of title between petitioner Nos. 7 to 9, and petitioner Nos. 1 to 6, if at all, can at best be an inter-se dispute, and the former (respondent Nos. 7 to 9) have never raised any dispute as to the validity of the deed of disclaimer.

15. Learned Counsel for respondent Nos. 5 to 9 has submitted that Suraj Thakur, one of the pre-emptors, was dead at the stage of the previous batch of writ petitions, but the petitioner had not taken steps for substitution of his heirs. I am unable to accede to the submission for the reason that the heirs of Suraj Thakur were brought on record before the Board of Revenue after the matter has gone on remand, and are on record in the present batch of writ petitions also. This, in my view, is adequate representation of the heirs of Suraj Thakur deceased. This issue does not seem to have been raised before the Board of Revenue. Law is well settled that substitution of a dead person even in an interlocutory stage suffices though the substitution was not done in the main matter and shall not result in

abatement of the lis. The Privy Council has in its judgment in Brij Indar Singh v. Kanshi Ram and Ors. (supra) has held as follows:

Their Lordships think it better to say, further, that if the defendant had been present it is clear that no order of abatement ought to have been pronounced. The plaintiff as representative of the original plaintiff, and the defendant's representatives of Joti Lal, had been introduced in the Chief Court. No doubt that was only done in the course of an interlocutory application as to the production of books. But the introduction of a plaintiff or a defendant for one stage of a suit is an introduction for all stages, and the prayer which seems to have been made ob majorem cautelam, by the plaintiff, in his application to the District Judge Prenter under Section 365, was superfluous and of no effect, Coates, the judgment debtor, was only formally called, and the non-presence of his representatives would afford no ground for the abatement of the suit.

(Emphasis added)

The judgments of this Court reported in 1965 BLJR 526 Bateri Gope v. R. Missir, and 1984 PLJR 817 Suraj Mandar v. Dev Mishra are to the same effect.

16. In the result, the writ petitions succeed, the impugned order dated 23.10.2000 (Annexure 1), passed by the learned Additional Member, Board of Revenue, Bihar, Patna, in Revision Case Nos. 360 to 367 of 1990, is hereby set aside, and the order of the learned appellate authority is restored. All the pre-emption applications fail. In the circumstances of the case, however, there shall be no order as to costs.

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