(1998) 06 PAT CK 0008

In the Patna High Court

Case No : C.W.J.C. No. 5821 of 1987

Amarendra Kumar Singh APPELLANT

Vs

The Additional Member Board of Revenue and Others RESPONDENT

Date of Decision : 25-06-1998

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Evidence Act, 1872 — Section 92
Registration Act, 1908 — Section 61
Transfer of Property Act, 1882 — Section 53A, 54

Citation : (1998) 3 PLJR 192

Hon'ble Judges : I.P. Singh, J;B.P. Singh, J

Bench : Division Bench

Advocate : Mathura Nath Roy, Ajoy Kumar Chakrabarty, N.N.P. Chaudhary and R.K. Tiwary, for the Appellant; Hemendra Prasa Singh and Satyendra Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh and I.P Singh, JJ.—Heard counsel for the Petitioner. Counsel for the Respondents is not present.

2. The Petitioner has impugned the order of the Board of Revenue, Bihar in Case No. 398 of 1985 dated 18.11.1987, whereby the learned Additional Member, Board of Revenue allowed the revision petition and set aside the original as well as appellate order allowing the application for pre-empting the sale u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short ''the Act'').

3. It is not in dispute that the Petitioner executed a registered sale deed on 24.8.1982 in favour of Respondent Nos. 5 and 6 herein in respect of 57 decimals of land of Survey Plot No. 966 Khata No. 26 and 8 decimals of land of Survey Plot No. 962 Khata No. 590 I.e. total area of 65 decimals of Mauza Chahuta in

the istrict of Muzaffarpur. The registered document shows that the consideration agreed upon between the parties was Rs. 44207- out of which the Petitioner had already received a sum of Rs. 3100/- and he was to be paid the balance amount of Rs. 1320/- at the time of exchange of equivalents. It is also not in dispute that the sale deed was duly registered on 3.1.1988. A copy of the sale deed has been annexed as Annexure-1 to the writ petition. The Petitioner vendor endorsed the receipt in favour of one Ambika Prasad who was authorised to receive the sale deed after registration. On 17.1.1983 the said document was received by Ambika Prasad and handed over to the Petitioner since full consideration, money was not paid by the purchasers.

4. Respondent No. 4 filed an application for pre-emption on 9th February, 1983. The Petitioner opposed the application for preemption and urged that the entire consideration money having not been paid, and possession of land having not been given to the transferees, there was no valid transfer in the eye of law since the intention of the parties was that the title must pass on payment of the full consideration amount.

5. The parties adduced evidence before the Deputy Collector Land Reforms (E) Muzaffarpur, the original authority who disposed of the application for pre-emption by order dated 23.11.1983. He rejected the application on the ground that there was no legal and valid transfer in the eye of law since the full consideration amount had not been paid. Thus no right of pre-emption could be exercised in a case where there was no transfer of title. It appears from perusal of the order of the Deputy Collector Land Reforms that he relied upon the binding precedent of this Court reported in Gujan Yadav and Another Vs. Sitaram Choudhary and Others, and 1979 B.B.C.J. 179 (Kamaldhari Rai v. The State of Biihar and Ors.). He also noticed the fact that the Petitioner had executed a deed of cancellation of the sale deed on 29.4.1983, when the full consideration amount was not paid within reasonable time. The Petitioner had contended before the Deputy Collector Land Reforms that he had never parted with the possession of the lands sold under the registered sale deed and was still in possession thereof. The Deputy Collector Land Reforms noted that opposite party in the proceeding could not produce any evidence to show that lands sold were in possession of the transferees. On these findings the application filed by Respondent No. 4 for pre-empting the sale was dismissed. For similar reasons the Additional Collector (Ceiling) Muzaffarpur, the appellate authority dismissed the appeal. The appellate authority also noticed the judgment of this Court reported in Shiva Narayan Sah and Others Vs. Baidya Nath Prasad Tiwary and Others, .

6. Respondent No. 4 preferred a revision before the Board of Revenue. The Additional Member, Board of Revenue, by his order dated 18.11.1987 (Annexure-6) allowed the revision petition. He noticed that sale deed was executed for a consideration of Rs. 4420/-, out of which Rs. 3100/- was adjusted against the previous advance and Rs. 1320/- was to be further paid by the

purchasers. However, the sale deed stipulated that the possession would be passed on to the vendors and they would take steps for getting their names mutated and they would also pay rent and obtain receipt in their own names. He held after going through the recitals in the sale deed that the sale deed did not stipulate linking up of the transfer of possession to the payment of balance of consideration money. Relying upon a judgment of a learned Single Judge reported in Nagar Khan and Others Vs. Gopi Ram Agarwala, he held that the mere non-payment of consideration money would not prevent the passing of title in the case since it was not so intended as per the recitals in the sale deed. In this view of the matter, allowing the revision, he set aside the order of the Deputy Collector Land Reforms and the appellate order and allowed the pre-emption application.

7. The revisional order has been challenged before us and counsel for the Petitioner submitted that the revisional authority has completely ignored the binding precedents of this Court reported In Shiva Narayan Sah and Others Vs. Baidya Nath Prasad Tiwary and Others, , Gujan Yadav and Another Vs. Sitaram Choudhary and Others, and Baldeo Singh and Others Vs. Dwarika Singh and Others, . He has fur ther submitted that the judgment upon which reliance has been placed in the order of the Additional Member, Board of Fivenue was wholly inapplicable to the facts of this case. In any event the binding precedents earlier referred, being judgments of Division Benches of this Court, would prevail upon the judgment of the learned Single Judge.

8. In Shiva Narayan Sah and Others Vs. Baidya Nath Prasad Tiwary and Others, this Court took a view which supports the Petitioner. In that case on 3rd December 1956 Defendant No. 1 executed a deed for Rs. 1300/- in favour of Defendant No. 2 in respect of the disputed property. According to this deed the property was to go back to Defendant No. 1 on payment of the amount aforesaid if paid, before 9th May, 1964. If the amount was not paid by that date the property was to become absolute property of Defendant No. 2. On 18th of March, 1960 Defendant No. 1 sold the disputed property to the Plaintiff under a registered sale deed (Exhibit 5/a) for a consideration of Rs. 3500/-. Out of this Rs. 1200/- was paid in cash, Rs. 1535/- was left in deposit for payment to different creditors including Defendant No. 2 or Defendant No. 1 and the remaining amount of Rs. 765/- was to be paid at the time of exchange of equivalents. On 18th of April, 1960 Defendant No. 1 by a registered deed cancelled the aforesaid sale deed and on 23rd of April, 1960 he executed another registered sale deed in favour of Defendant No. 3. The question which arose for consideration in appeal was whether title had passed before the execution of the sale deed by Defendant No. 1 in favour of Defendant No. 3 on 23rd of April, 1960. It was submitted on behalf of the Appellants that according to terms of Exhibit 5(a) the sale deed dated 18th March, 1960, title could not pass to the vendee until full consideration money was paid. While dealing with the submission the Court noticed that the document, after stating how the consideration money was to be paid, recites "having received the entire

consideration money in full, I put the vendor to be in possession of the land and house described in column No. 5". The Appellants also submitted that the registration receipt was with the vendor and possession was not delivered to the vendee which also shows that the title was not to pass till exchange of equivalents. The Respondents replied by saying that as bulk of the consideration money was already paid and the document did not expressly say that title was not to pass till the payment of the balance of the consideration money, title did pass to the vendee with the execution and registration of the deed. Having considered the submissions and the authorities cited before their Lordships it was held as follows:

Relying on the decisions cited by Mr. Mukherji we hold that according to the terms of Exhibit 5/a title did not pass to the vendee with the execution and registration of the deed. It was to pass at the time of exchange of equivalents when the vendee was required to pay the balance of the consideration money to the vendor and the vendor was to hand over registration receipt to the vendee.

9. The next decision which deserves notice is one reported in Gujan Yadav and Another Vs. Sitaram Choudhary and Others, . In that case the facts were that Respondent Nos. 2 to 8 executed a sale deed in favour of respendent No. 1 on the 19th January, 1967 purporting to transfer 10 Kathas 17 Dhurs of land for a. sum of Rs. 1,900/-. The registration was completed u/s 61 of the Registration Act. Thereafter the Petitioners filed an application u/s 16(3) of. the Act claiming pre-emption on the ground that they were co-sharers and/or adjoining raiyats of the land transferred. The actual contest was by the transferors, namely, Respondent Nos. 2 to 8 who took the plea that the Intention to transfer the land was on payment of the consideration money, and since the consideration money was not paid the land did not stand transferred and they were still the owners of the land.

10. An argument was advanced on behalf of the Appellants before this Court that on the language of Clause (i) of Sub-section (3) of Section 16 of the Act it is plain that the transfer of land is complete as soon as the registration of the document of transfer is complete, and it is not open to the revenue courts to go behind the document and investigate the question of passing of consideration. The argument was repelled and it was observed as follows:

The cause of action for filing an application u/s 16(3) of the Act arises for a co-sharer or an adjoining raiyat when the registration of the document of transfer is complete. Without the registration of the document he cannot file an application u/s 16(3) of the Act. But that is not to say that the "transfer of land is made" within the meaning of the first part of clause(i) of Section 16(3) as soon as a document of transfer is registered. If the intention was to transfer the land on payment of the consideration money then it is a well settled principle of law that in spite of the recital to the contrary in the document of transfer, It is open to the transferor to say that consideration money was not paid and hence either factually or legally there was no transfer of land made. I am unable to subscribe to the view that the phraseology of the provision of law, as it stands u/s 16(3) of the Act, has undone the effect of the well settled principles of law just referred to above. In my opinion for an effective order of preemption u/s 16(3) of the Act it is necessary that there is in fact a valid transfer of land in the eye of law. If by a mere execution and registration of a document there Is no transfer than no order of pre-emption can be made u/s 16(3). I feel fortified in my view because of the language contained in Clause (ii) or Clause (iii) of Section 16(3). Under Clause (ii) the co-sharer or the raiyat who is an applicant u/s 16(3) is entitled to be put in possession of the land by dispossessing the transferee. But if, because of the non-passing of the consideration money and non-passing of the title, the transferor remained in possession then he cannot be dispossessed u/s 16(3) (ii). Similarly, a direction to the transferee to convey the land in favour of the applicant will be nugatory and futile if the transferee, in the eye of law and in fact, had not become the owner of the land by the alleged transfer.

11. It will thus be noticed that this Court held in the aforesaid judgment that if the intention was to transfer the land on payment of the consideration money, then it is well settled principle of law, that in spite of recital to the contrary in the document of transfer, it is open to the transferor to say that consideration money was not paid and hence either factually or legally there was no transfer of land.

12. The third decision on which reliance has been placed by the counsel for the Petitioner is reported in Baldeo Singh and Others Vs. Dwarika Singh and Others, . This was not a case which arose under the Ceiling Act but the principal laid down on the basis of the provisions of Transfer of Property Act are fully applicable. A question arose as to whether title passes on mere execution and registration of a deed or only on payment of consideration money. Their Lordships held that in order to answer the question, the intention of the parties has to be gathered from the deed. From the recital in the deed it was obvious that the parties to the sale deed had agreed that title to the property in question should pass to the vendee only after payment of the full consideration money and if the consideration money was not paid at the time of the execution and registration of the deed, the title would not pass to the vendee. Even if the sale deed recited that the consideration money has been paid, there was nothing to prevent the parties from adducing evidence to show that the recital was untrue and that in fact the consideration was not paid. This was not barred by Section 92 of the Evidence Act. Their Lordships, however, observed that even if the vendee failed to pay consideration money at the time of the execution and registration of the deed, he can tender or pay the money within reasonable time before the vendor repudiates the contract of sale. The tender of the amount by the vendee after such repudiation is of no consequence.

13. In the light of the aforesaid pronouncement of the law by three Division Bench judgments of this Court, we shall now consider the decision on which the revisional authority has placed reliance, reported in Nagar Khan and Others Vs. Gopi Ram Agarwala, . That was a case in which the court was concerned with a

contract to transfer in the context of Section 53-A of the Transfer of Property Act. It was observed that it was not necessary that the consideration mentioned for the transfer of the property must pass in presenti. All that was necessary was that the contract must be a lawful and enforceable contract. It is open to the parties to settle the terms with respect to the payment of the consideration. If the title had been intended to pass on the execution of the sale deed, the only remedy in case of non-payment of the consideration available to a vendor was to bring a suit for recovery of the consideration. It was therefore, held that it is not possible to read the expression "contracts to transfer for consideration" accruing in Section 53-A in violation of the provision contained in Section 54. It will thus appear that the observations were made in connection with a contract which was partly performed and the Defendant was in possession of the lands sought to be sold. However, in principle, the decision does not take a different view because this decision also recognises the principle that the intention of the parties as to when title was intended to be passed, has to be gathered from the facts, including recitals in the sale deed.

14. In the facts of this case, even if it is held that Respondent No. 4 was adjoining raiyat of the lands sold under the registered sale deed, the application for pre-emption can not be allowed since there was no transfer of land as the full consideration money had not been paid to the Petitioner by the vendees, and it was intended by the parties that transfer of title shall take effect on payment of the full consideration amount.

15. This writ petition is, therefore, allowed and the revisional order passed by the Additional Member, Board of Revenue (Annexure-6) is set aside. The order passed by the Deputy Collector, Land Reforms and the appellate authority are affirmed.