
(2007) 07 JH CK 0050
In the Jharkhand High Court

Bajnath Ram and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 24-07-2007

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)

Citation : (2007) 4 JCR 555

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—This writ petition has been filed by the petitioners seeking appropriate orders for quashing of the order dated 2.12.1994 passed by the Additional Member, Board of Revenue, in Revision case No. 426 of 1993 whereby the Revision Application filed by the petitioners against the order dated 6.4.1993 passed by the Additional Collector, Garhwa in C.S. No. 3 of 1991-92 was dismissed. Petitioners have prayed for quashing the order dated 30.7.1993 of the Addl. Collector also whereby the order passed by the Dy. Collector Land Reforms, Garhwa dismissing the pre-emption application of the respondent No. 5 was set aside.

2. The facts of the case, briefly stated, is that the disputed lands originally belonged to respondent No. 6. By a registered sale deed executed on 12.12.1990 and registered on 24.5.1991, he had sold the land to petitioner No. 1. Subsequently, the petitioner No. 1 by virtue of two separate sale deeds executed on 8.2.1991, had sold the portion of the disputed land to his own wife and also to petitioner No. 4. Both the sale deeds were registered on 2.1.1992. Prior to the date of registration of the two sale deeds the respondent No. 1 filed an application for pre-emption on 19.7.1991 against the petitioner No. 1 before the Deputy Collector, Land Reforms, Garhwa, u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961. The claim for

pre-emption made by the respondent No. 5 on the ground that he was an adjoining raiyat of the landed plot, was contested by the petitioner No. 1 primarily on the ground that he had already sold the disputed lands much prior to the date of the filing of the application for pre-emption and therefore, the application for pre-emption was not tenable. Further ground advanced was that subsequent vendee/purchaser was not impleaded as a necessary party within three months period of limitation from the date of registration of the sale deed and therefore, the claim for pre-emption was not maintainable.

3. After hearing both the parties, the Land Reforms Deputy Collector dismissed the petition of the respondent No. 5 for preemption, by his order dated 6.4.1993. Against the aforesaid order of the Deputy Collector, the respondent No. 5 preferred an Appeal No. CA-1/93-94 before the Addl. Collector, Garhwa (respondent No. 3) who, by order dated 30.7.1993 set aside the order passed by the Deputy Collector, Land Reforms on the ground that the transfer of the land by the petitioner No. 1 in favour of petitioner No. 2 and another, was a sham transaction intended to frustrate the claim of the pre-emptor. Against the aforementioned order of the Addl. Collector, the petitioners preferred revision before the Board of Revenue in revision case No. 426 of 1993. The Board of Revenue disposed of the revision application vide the impugned order dated 2.12.1994, upholding the order of the Addl. Collector dated 30.7.1993 and thereby rejecting the revision application of the petitioner. The main ground on which the Board of Revenue dismissed the revision application of the petitioners was that the sale deed executed by the petitioner No. 1 in favour of his wife was on 8.2.1992 which was much later to the date of the filing of the application for pre-emption on 19.7.1991 and therefore, it was inferred that such sale deed was executed with a view to frustrating the respondent No. 5's right of pre-emption. The plea advanced by the petitioners against the maintainability of the pre-emption petition due to non-joinder of the vendees was dismissed on the ground that there is no legal principle laying down that the subsequent vendee should be impleaded within three months from the date of the registration of the sale deed.

4. Mr. Rajesh Kumar, learned Counsel appearing for the petitioners has assailed the impugned order on the ground that both the Board of Revenue as well as the Addl. Collector had failed to appreciate the facts of the case and the principle of law involved in proper perspective and have arrived at an erroneous and misleading finding that the sale deeds executed by the petitioner No. 1 in favour of his wife was a sham and benami transaction, even in absence of any evidence or any allegation made by the pre-emptor. Learned Counsel submits that the impugned orders have been passed not only by wrong application of the principle of law but also on misconstruing the actual date of the transaction and the board of Revenue has committed thereby an error of record. Learned Counsel explains that after having lawfully acquired the lands from the original owner on 12.12.1990, the petitioner No. 1 had sold the disputed lands by two sale deeds executed on 8.2.1991, both of which were registered on 2.1.1992. The transfer of land by virtue of the sale deed unto the vendees was complete on the date of

execution of the sale deed. Respondent No, 5 had filed his petition on 19:7.1991 u/s 16(3) of the Act i.e. more than five months after the execution of the sale deed by which transfer of ownership of the demised land was already completed and as such, the respondent No. 5 had no claim or right of pre-emption. Learned Counsel further submits that the respondent No. 5 has come to know about the execution of sale deed and name and identity of the subsequent vendees. Yet, the vendees were not impleaded as necessary parties in the proceedings before the Deputy Collector, Land Reforms which was initiated u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961, within the limitation period of three months from the date of registration and as such the petition u/s 16(3) of the Act was not maintainable. Learned Counsel explains further that the Board of Revenue has wrongly conceived that the sale deeds were executed on 8.2.1992 in stead of the actual date i.e. 8.2.1991 and on such misconception, had come to its findings that the execution of the sale deed was much alter the filing of the pre-emption application inferring erroneously that the sale deed was a sham transaction.

5. After admission of this writ petition, notice on behalf of respondents 1 to 4 was accepted by the SC 1. Notices to the remaining respondents No. 5 and 6(i) to 6(viii) (substituted respondents) were served. The respondent No. 5 had appeared through vakalatnama.

6. The question which arises for determination is as to whether the impugned orders passed by the respondents No. 2 and 3 respectively were without appreciating the principles of law involved in the case and without appreciation of the facts of the case in proper perspective, as to whether right of pre-emption u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961, exists if the sale deed is executed prior to the date of filing of the application of pre-emption, but registered later, and whether failure to implead the purchaser in the proceeding would defeat the claim for pre-emption.

7. On perusal of the impugned orders passed by the Board of Revenue, it appears that the findings have been based entirely on a mistaken conception of the facts. The Board of Revenue has noted the date of the execution of the sale deed by petitioner No. 1 in favour of his wife as 8.2.1992 whereas the correct date was 8.2.1991. It was on such misconception that the Board had recorded its finding that the sale deeds were executed much after the filing of the preemption application by respondent No. 5 and has inferred that such transaction of sale was a sham transaction intended to frustrate the right of pre-emption. Admittedly, the sale deeds were executed more than five months prior to the date of filing of the application by respondent No. 5 u/s 16(3) of the Act. The fact that the sale deed was registered on a date later to the filing of the application u/s 16(3) of the Act does not alter the position nor does it deprive the rights of the purchaser which has already accrued to him on the date when the sale deeds were executed. The principle of law by now well settled. In the case of Smt.

Sudama Devi and Others Vs. Rajendra Singh and Others, , the Patna High Court has observed as follows:

When a sale deed is executed prior to filing of a suit (application for preemption u/s 16(3) of Bihar Act 12 of 1962) merely because it is registered subsequent to the filing of suit, it cannot be said to have been hit by doctrine of lis pendens.

The transferee becomes owner of the property on and from the date of execution of the sale deed of the property in his favour. This is in view of the provisions of Section 47 of the Registration Act. The transferee becomes an adjoining raiyat to the land under dispute and therefore the suit for pre-emption cannot be maintainable.

8. Unless a clear and definite finding is recorded on the basis of the pleadings and the evidence that the sale deed executed by the petitioner No. 1 In favour of his wife was merely a Jarzi/sham transaction, it would be a good transfer and no order of pre-emption under clause (iii) of Section 16(3) of the Act can be made against the purchaser.

9. In the instant case, although in the impugned order of the Board of Revenue, an observation was made that the sale deed executed by the petitioner No. 1 in favour of his wife was a sham transaction, but neither has respondent No. 5 levelled any allegation of fraud or collusion in the matter of execution of the sale deed by petitioner No. 1 and neither has the Court below arrived at such a conclusion on the basis of any evidence on record. The observation as recorded by the Board was therefore erroneous and based on misconceived inference and wrong appreciation of the facts of the case.

10. For the reason aforesaid, the impugned orders do apparently suffer from infirmity and cannot be sustained.

11. Accordingly, this writ application is allowed and both the impugned orders dated 2.12.1994 passed by the Additional Member, Board of Revenue, as also the order dated 6.4.1993 passed by the Additional Collector, Garhwa in C.S. Case No. 3 of 1991-92 are hereby quashed. There will be no orders as to costs.