(1993) 07 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5656 of 1992

Bhagirath Mandal and another — APPELLANT

Vs

The State of Bihar and others — RESPONDENT

Date of Decision : 06-07-1993

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Evidence Act, 1872 — Section 91, 92

Citation : (1993) 2 PLJR 369

Hon'ble Judges : S.B. Sinha, J;A.N. Chaturvedi, J

Bench : Division Bench

Advocate : Janardan Singh and Saryu Prasad Singh, for the Appellant; Raghib Ahsan, S.C., Mr. Khurshid Ahmad Siddiqui, J.C. to S.C. for the State and M/s Upendra Kumar Sinha, Bhupendra Nr. Sinha and Shailendra Kumar for the Respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 4.1.1992 passed by the Additional Member, Board of Revenue Bihar Patna, the order dated 26.7.1990 passed by the Additional Collector and order dated 23.11.1987 passed by the Deputy Collector Land Reforms, Lakhisarai as contained in Annexures 1, 2 and 3 respectively. The fact of the matter shortly stated is as follows :

By a registered deed of sale dated 29.9.1986, the petitioners purchased from the respondent No. 6, 20 decimals of land out of plot No. 31, 9 decimals of land out of plot No. 32, 34 decimals of land out of plot No. 33 and 10 decimals of land out of plot No. 39, thus measuring a total area of 73 decimals of land appertaining to Khata No. 18 situate in village Nirpur.

2. The respondent No. 5 filed an application for pre-emption in terms of Section 16(3)of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the said Act), on the ground that she

is a raiyat holding lands adjacent to the aforementioned transferred lands.

3. The petitioners have contended that the lands purchased by them are butted and bounded as follows :

North : Bachhi Devi wife of Suchit Singh, Bhagar Singh and Nand Kishore Singh.

South : Sarak Lhuta, Siwan Balgudar Jote Nawal Kishore Prasad.

East : Bachhi Devi wife of Suchit Singh daughter of Tito Singh.

West : Bhagar Singh and Nand Kishore Singh.

4. It has further been contended that the respondent No. 6 purchased the suit lands from Most. Alo Devi, by reason of a sale deed dated 20th October, 1978 wherein also a common boundary in respect of all the parchas of lands had been given.

5. The petitioners contend that as the name of the said respondent No. 5 did not figure in the boundaries mentioned in the aforementioned deeds of sale dated 20.10.1978 or the deed of sale dated 29.9.1986, it must be held that she was not a raiyat having adjacent holdings and in that view of the matter, she could not have maintained the application u/s 16(3)of the said Act.

6. The Learned Counsel appearing on behalf of the petitioner inter alia submitted that in view of the fact the respondent No. 5 did not file an application for pre-emption in relation to the aforementioned deed of sale dated 20th October, 1978, the application for pre-emption is also barred under the principles of Estoppel and Waiver.

7. It was further submitted that as a question of title arose for consideration in this case the courts under the said Act were not competent to decide the same.

The Learned Counsel in this connection has relied upon a decision of this Court in Moghal Singh Vs. Member Board of Revenue and ors. reported in 1981 Bihar Law Judgment page 91.

8. The Learned Counsel appearing on behalf of the respondent No. 5 on the other hand, submitted that she is an adjacent raiyat on East, West and South of the vended plots.

9. The Learned Counsel submitted that the respondent No. 5 is owner of the land being Plot No. 28 which was contiguous North to the plots in question having purchased the same by the deed of sale dated 5.8.1965; plot No. 30 which is contiguous west to plot No. 31 having purchased the same by reason of the deed of sale dated 5.8.1975; Plot No. 40 which is in the East of plot No. 39 and Plot No. 38 which is in North of plot No. 39 and Plot No. 34 being situated at the north of Plot No. 33.

10. The Learned Counsel further submitted that all the three courts have arrived at a concurrent finding of facts that the respondent No. 5 is an adjacent raiyat

and thus the said finding is binding upon this Court.

11. The Learned Counsel further drew our attention to the fact that even the appellate court held a local inspection for the purpose of determining : (a) Whether the land in question is an orchar? (b) Whether the respondent No. 5 is an adjacent raiyat and he having satisfied himself that the lands are agricultural lands and the respondent No. 5 holds land adjacent to the lands in question passed the order which is contained in Annexure-2 to the writ application.

12. It was also submitted that the respondent No. 5 purchased lands from Nawal Kishore Singh and Bhagwan Singh whose names appear in the deeds of sale executed in favour of the petitioners and/or their vendors as boundary raiyats.

13. Mr. Raghib Ahsan, the learned standing counsel appearing on behalf of the State, submitted that this Court in Moghal Singh & Ors. vs. Member Board of Revenue & others reported in 1981 B. L. J. page 81 did not take into consideration the effect of Section 43of the said Act which completely bars the jurisdiction of the civil courts and have also not considered the earlier binding division Bench decisions of this Court in Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others, and Gujan Yadav and Another Vs. Sitaram Choudhary and Others, , and thus the decision relied upon by the Learned Counsel for the petitioner does not create any binding precedent.

14. From a perusal of the orders passed by D. C. L. R. Lakhisarai as also the Additional Collector, Mungher as contained in Annexures 3, and 2 to the writ application respectively, it becomes evident that they have taken into consideration not only the boundaries mentioned in the deeds of sale dated 20th October, 1978 and 29th September, 1986, but also have taken into consideration the deed of sale dated 5.8.1965, 13.3.1972 and 5.8.1975 which were executed in favour of the respondent No. 5. The said courts further took into consideration the boundaries of the lands as appearing in the map prepared during survey settlement operation. Both the aforementioned courts have concurrently held on the basis of the materials brought on records that the respondent No. 5 is an adjacent raiyat. This finding of fact has also been upheld by the Additional Member, Board of Revenue in its order dated 4.1.1992 as contained in Annexure-1 to the writ application.

15. It is not the contention of the Learned Counsel appearing on behalf of the petitioner that the aforesaid concurrent findings of fact arrived at by the respondent Nos. 2, 3 and 4 are preverse or suffer from any error of law apparent on the face of the records.

16. As indicated hereinbefore, the only contention raised by the Learned Counsel is that the respondent Nos. 2, 3 and 4 could not have held that the respondent No. 5 is a boundary raiyat in view of the fact that her name does not appear in the deed of sale dated 20th October, 1978 or 29th September, 1986.

17. It is now well known that stipulation made in a deed bind only the parties

thereto and not others. Even in terms of Sections 91and 92of the Indian Evidence Act it is permissible for a party to adduce evidence to show that there is a conflict between boundary and the area or that the number of the plots mentioned therein are wrong.

18. By reason of a deed of sale, the vendor transfers his right, title and interest in respect of the property agreed to be sold. The identity of the vended properly, may, thus, in a given case has to be found out, if the description thereof in the deed of transfer is vague. The description of the vended property in the deed of sale may be right or may be wrong but by a mere wrong description of the properties sold, the vendee cannot be deprived of his title which passed on to him in respect of the properties intended to be transferred. Such an intention on the part of the parties to the instruments has to be gathered not only from the deed in question but also circumstances attending thereto.

19. In AIR 1956 Patna 349 this Court held as follows :

A properly fully identified in the schedule may be in some respects mis-described, and in such a case the court has to deal with misdescription and not identity.

The mistake is not one of identity of the properly, but a mistake of description. If there is an existing property, accurately described in the schedule, then it will be considered that the property in question passed by the wile, in spite of a little misdescription.

20. It has further been found that the names of the respondent No. 5''s predecessor have been mentioned as boundary raiyats. As the petitioner acquired the self same land by reason of the aforementioned deeds of sale dated 5.8.1965, 13.3.1972 and 5.8.1975, the finding of the respondent Nos. 2, 3 and 4 to the effect that respondent No. 5 is an adjacent raiyat can neither be said to be vitiated in law nor can be said to be preverse.

21. So far as the contention of the Learned Counsel of the petitioner to the effect that Ceiling authorities bad no jurisdiction to decide a complicated question is concerned, in my opinion, the same has no substance.

22. It is now well known that a proceeding under the said Act are not summary proceedings. In Gujan V. Sitaram reported in AIR 1974 Patna 124, it has been held as follows :

I am not impressed by the third point urged on behalf of the petitioners either. The proceeding before the revenue court u/s 16 (3) of the Act is not a summary proceeding as the expression is generally understood. Within its scope it is a full-fledged proceeding subject to the right of appeal to the aggrieved party u/s 30of the Act and the revisional power of the the Board of Revenue u/s 32. Section 43bars the jurisdiction of the civil court to settle, decide or deal with any question which is, by or under the Act required to be settled, decided or dealt with by the Board of Revenue, the Commissioner, the appellate authority or the

Collector. If it were to be held that the question raised by the transferor that there was no transfer of land by him whatever may be his ground for saying so was not to be dealt with or decided by the revenue court in a proceeding u/s 16 (3)of the Act, it will lead to anomalous results and multiplicity of litigation. In a civil court it would be open to the transferor to raise the same question because in that event Section 43will not be a bar. If the civil court decides the matter in favour of the transferor, the entire proceeding u/s 16 (3) and all the orders passed therein will be set at naught. It does not seem to be either obligatory or expedient to take the view as urged on behalf of the petitioners-rather the scheme of the Act and the Rules suggests that all relevant questions which can be raised either by the transferor or by the transferee should be raised before and conclusively settled or dealt with by the revenue courts so that the jurisdiction of the civil courts may be barred.

23. In Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others, it has been held that a question of benami can be raised in a proceeding u/s 16 (3) of the Act. It is, therefore, clear that even if a complicated question is raised in a proceeding u/s 16 (3) of the Act, the Collector under the Act is bound to decide the same.

24. The right of a pre-emption is in effect and substance a right of substitution.

25. If the purchaser bad derived any right, title and interest in relation to the lands in question, by reason of a statutory right created in a co-sharer of the vendor or his adjacent raiyat, in term of Section 16 (3) of the Act, it would he open to the Collector to decide all questions which may be raised by the parties, to the lis for enforcing such a right.

26. Section 43of the said Act bars the jurisdiction of a Civil court to settle, decide or deal with any question which is by or under the said Act required to be settled, decided or dealt with by the Board of Revenue, the appellate authority or the Collector.

27. Only in a case where the order is wholly without jurisdiction or the orders passed by the Revenue Authorities are void, the civil court may exercise its jurisdiction despite the bar created in terms of Section 43of the Act.

28. In my opinion, therefore, the question as to whether the Revenue Authorities will have jurisdiction to decide a complicated question of law will have to he considered in the light of the provisions of Section 43of the said Act.

29. From the scheme of the Act as also the decisions of this Court as referred to hereinbefore, there cannot be any doubt that the Revenue authorities may have to go into the question of title, only for the purpose of arriving at a finding as to where the application for pre-emption is fit to be entertained or not.

30. It is, however, not necessary for me to decide as to whether a pure question of title, can be adjudicated upon by the Civil court despite the bar created muter Section 43of the said Act or not, as the said question does not fall for

consideration in this case.

31. In this view of the matter, it must be held that the decision of this Court in Moghal Singh v. Member, Board of Revenue reported in 1981 BLJ 91 passed sub-silencio as Section 43of the said Act as also the binding division Bench decisions of this Court were not brought to the notice of the Bench deciding the said case. For the reasons aforementioned, it must be held that there is no merit in this application which is accordingly dismissed, but in the facts and circumstances of the case, there will be no order as to costs.

A.N. Chatturvedi, J.

I agree.