

(2018) 02 PAT CK 0019

In the Patna High Court

Case No : 450 of 2014

Dhanpato Devi Kuer & Ors

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

Registration Act, 1908, Section 60, Section 61 -
Bihar (Land Fixation of Ceiling Area and Acquisition of Surplus) Act, 1961, Section 16(3)

Citation : (2018) 02 PAT CK 0019

Hon'ble Judges : Ajay Kumar Tripathi, Nilu Agrawal

Bench : Division Bench

Advocate : Shashi Shekhar, Ranjan Kumar Dubey, Parth, Pratik Kumar Sinha

Final Decision : Allowed

Judgement

1. The appellants, in the present Letters Patent Appeal, are vendees or purchasers of certain piece and parcel of land against which pre-emption was sought by the private respondent Nos. 5 to 11.

2. The case arose when an application under Section 16(3) of the Bihar (Land Fixation of Ceiling Area and Acquisition of Surplus) Act, 1961 (in short "the Ceiling Act") was filed by the private respondents before the Sub-Divisional Officer, Siwan. The Sub-Divisional Officer allowed the pre-emption. When appeal was preferred by the purchasers, i.e., the appellants before the Collector, the Collector allowed the appeal and rejected the pre-emption application. Matter travelled in revision before the Board of Revenue and this time, the pre-emptors succeeded as their application was allowed in their favour. The order of the Member of Board of Revenue became the subject matter of challenge before the writ Court.

3. Since the learned Single Judge upheld the decision of the Board of Revenue, which, in effect, allowed the pre-emption, this intra-Court appeal has been

preferred against the order dated 13.01.2014.

4. Learned Single Judge representing the appellants had many a submissions to make, but the primary line of argument urged before this Court is that the learned Single Judge has committed patent error of law by not understanding the distinction between execution of a document for registration and the actual registration of the deed. To press home his point, the Court was taken through the various substantive sections of the Indian Registration Act, 1908 (in short "the Act"), especially Sections 60 and 61, illustrate the difference between the two and as to when a document is treated to have been registered. Attention of the Court was also drawn to a Supreme Court decision in case of Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others (AIR 1961 SC 1747). Emphasis was on paragraph 6 and 8, which reads as under:- "6. Section 54 of the Transfer of Property Act provides that sale of tangible immovable property of the value of Rs. 100/- and upwards, which the house with which we are concerned is, can be made only by a registered instrument. Section 3 of this Act defines "registered" as registered under the law for the time being in force regulating the registration of documents. This, in the present case means the Registration Act of 1908. It is not in dispute that the registration under the Registration Act is not complete till the document to be registered has been copied out in the records of the Registration Office as provided in S. 61 of that Act. It was therefore contended in the High Court that when a sale had to be made by a registered instrument it became complete only on the instrument of sale being copied in the books of the Registration Office. The High Court accepted this view and held that the sale in the present case, therefore, became complete on the completion of the registration of the instrument of sale which was done on February 9, 1946, when the instrument was copied out in the books of the Registration Office. In this view of the matter, the High Court came to the conclusion that the appellants were not entitled to enforce their right of pre-emption because they had not made the preliminary demand after the completion of the sale as the law required them to do, but before, that is, on February 2, 1946.

8. We do not think that the learned Attorney-General's contention is well founded. We will assume that the learned Attorney-General's construction of the instrument of sale that the property was intended to pass under it on the date of the instrument is correct. Section 47 of the Registration Act does not however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of S. 47 the instrument by which it is effected, after it has been registered,

commences to operate from an earlier date. Therefore we do not think that the sale in this case can be said, in view of S. 47, to have been completed on January 31, 1946. The view that we have taken of S. 47 of the Registration Act seems to have been completed on January 31, 1946. The view that we have taken of S. 47, to have been taken in Tilakdhari Singh v. Gour Narain, AIR 1921 Pat 150. We believe that the same view was expressed in Nareshchandra Dutta v. Girishchandra Das, ILR Cal 979 : (AIR 1936 Cal 17) and Gobardhan Bar v. Gana Dhar Bar, ILR (1940) 2 Cal 270 : (AIR 1941 Cal 78)."

5. Another decision on similar line, on which reliance was placed, is AIR 1969 SC 244 (Hiralal Agrawal Vs. Rampadarath Singh & Others). The Court attention was drawn to paragraph 9 and 11. This decision reiterates the legal position, which emerges from the previous decision in case of Ram Saran Lall (supra).

6. Not only this, learned Senior Counsel also placed yet another decision, which has been rendered by a Division Bench, in which the author of the order of the writ Court was presiding a Division Bench. The order in the writ, out of which the present appeal arises, was passed on 13.01.2014 and the Division Bench decision was rendered on 11.04.2016. The case in question is Kamla Devi & Ors. Vs. Punyadeo Sharma & Ors., reported in 2016(3) PLJR 370.

7. Submission taking clue from the Division Bench decision, especially paragraph 7 and 8, is that while sitting in Division Bench, the learned Presiding Judge had this to say:- "7. No doubt, pre-emption is a weak right but it is a right nevertheless. It is a statutory right and if the conditions are fulfilled then this statutory right cannot be denied by any Court. In terms of Section 16(3) of the Ceiling Act, the right of pre-emption accrues the moment a sale deed is finally registered. The pre-emption application has to be filed within three months of the date of registration of the sale deed. Here, it is not in dispute that though the first deed was executed on 9.2.1990 and presented for registration on the same date, it was finally registered on 7.1.1992. The pre-emption application was filed on 31.3.1992, thus, was within three months of the registration. The appellants undisputedly were boundary raiyats whereas the vendees were not there from before. Thus, the conditions for pre-emption were fully satisfied. The learned Single Judge has taken a view that once a sale deed is registered, it relates back to its execution and, therefore, deemed that the purchasers were owners of the land with effect from 9.2.1990 and if that be so then on the day when pre-emption application was filed on 31.3.1992, it could not be allowed as the purchasers were already having title to the land.

8. We fail to understand the logic or the reason or the legal reasoning for such an argument. If what the learned Single Judge says is correct, then it would inevitably be that much prior to three months of filing of pre-emption application, a person would have become a purchaser by the provision of relating back to the date of execution. No pre-emption application would, thus, ever be maintainable or would ever succeed. To us, that is not the law. That has never been the position."

8. What emerges from above is that the Division Bench, in which the learned Single Judge was the author, did realize the legal position as to what constitutes registration of the document and when such registration is complete. However, attention of the Court has been drawn to the impugned order dated 13.01.2014, where the learned Single Judge took a view that rest of the formalities, especially under Section 60 or 61 of the Act, are clerical acts and the registration will be deemed to be the date of execution as it has to relate back to the date of execution.

9. Since the Division Bench decision in case of Kamla Devi (supra) is in conformity with the settled position in law and the view which has been taken by Hon"ble the Supreme Court in one of its earlier decisions in case of Ram Saran Lall (supra), therefore, in our opinion, the date 09.12.1964, which was the date for admission for registration of the document in question, will have no meaning. The registration was completed only on 14.02.1968. If this is so then the pre-emption application, under Section 16(3) of the Ceiling Act, which was moved on 02.03.1965, was premature and liable for rejection.

10. In view of the position noticed above, we are of the opinion that the decision of the learned Single Judge seems to be not only in conflict on this point with the decision of the Hon"ble Apex Court, rendered in case of Ram Saran Lall (supra), as well as the recent decision of the Division Bench, which is the case of Kamla Devi (supra).

11. We are of the opinion that this point is good enough to allow the appeal and set-aside the order of the learned Single Judge, dated 13.01.2014. Rest of the submissions with regard to the correctness or otherwise of the decision will lose its meaning because if it is held that the pre-emption application was premature then the whole deliberations and arguments will be redundant.

12. The submissions of the learned Counsel for the private respondents, supporting the decision of the learned Single Judge, with regard to the finding whether several members of a family can maintain pre-emption application or not is meaningless, if the pre-emption application itself could not be maintained. Similarly, the other argument that even if the sale-deed contains two chunks of land, the second piece of the land was insignificant portion and the main object of the sale-deed was the sale of the larger piece of the land, measuring about 16 Bighas, is also of no consequence because if the pre-emption application was not maintainable being premature, these aspects does not strengthen the case of the private respondents.

13. In view of the above, the order of the learned Single Judge, dated 13.01.2014, stands set-side.

14. The appeal is, accordingly, allowed.

15. There will be no order, however, as to cost.