

(1997) 11 PAT CK 0030

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 3772 and 3777 of 1987

Kameshwar Choudhary and etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-11-1997

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 16(3)
Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 47
Transfer of Property Act, 1882 — Section 54

Citation : AIR 1998 Patna 141

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

Bench : Division Bench

Advocate : Krishna Prakash Sinha and Rekha Prasad, for the Appellant;
Yogendra Mishra, Mahesh Prasad, B.P. Yadav and M.N. Singh, for the Respondent

Judgement

1. These two writ petitions have been heard together and are, therefore, disposed of by this common judgment. Kameshwar Choudhary, petitioner in C.W.J.C. No. 3777 of 1987 is husband of Bimla Devi, who is petitioner "in C.W.J.C. No. 3772 of 1987. They have challenged the orders passed by the appellate as well as the revisional authorities in a proceeding u/s 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short "the Act").

2. Since the facts of the case are somewhat different, we shall deal with these two writ petitions separately.

3. In C.W.J.C. No. 3777/87, in which Kameshwar Choudhary is petitioner, the facts are that he purchased 28 Decimals of land out of R.S. Plot No. 134, Chak No. 88 by a registered sale deed dated 5-7-1982. It is not in dispute that the registration was completed on 11-10-1983. By another sale deed dated 23-2-1983 the petitioner purchased 3 Decimals of land out of R.S. Plot Nos. 130 and 135 of Chak No. 87. The land measuring 3 decimals purchased under the

sale deed dated 23-2-1983 is adjacent to the land purchased by the petitioner under the sale deed dated 5-7-1982. It is also not disputed that the registration of the second sale deed was completed on 22-1-1985.

4. In the meantime on 7-1-1984 respondent No. 5, exercising his right of pre-emption u/s 16(3) of the Act, filed an application before the D.C.L.R., Sasaram (respondent No. 4), which was numbered as Ceiling Case No. 14 of 1983-84. The aforesaid applicant also claimed to be an adjoining raiyat.

5. Before the D.C.L.R. (respondent No. 4) it was contended on behalf of the petitioner that since he had become an adjoining raiyat by reason of purchase of 3 Decimals of land by the sale deed dated 23-2-1983, which was adjacent to the land earlier purchased by him on 5-7-1982, he also acquired the statutes of an adjoining raiyat and, therefore, respondent No. 5-pre-emptor, could not exercise his right of pre-emption in respect of the sale deed dated 5-7-1982. It would thus be noticed that the first sale deed was executed on 5-7-1982, but its registration was completed on 11-10-1983. The second sale deed was executed on 23-2-1983 and its registration was completed on 22-1-85. After execution of the second sale deed, but before its registration was complete, the respondent No. 5 had filed an application on 7-1-84 for pre-emption u/s 16(3) of the Act.

6. The learned D.C.L.R. by his order (Annexure 1) held that though the petitioner had purchased a plot of land by the second sale deed which was adjacent to the plot of the land purchased under the first sale deed, he did not acquire title to the land covered by the second sale deed till the registration was complete. Relying upon the decision of this Court, reported in 1983 P LJR 639 : AIR 1984 NOC 46 (Pat)) (Sheo Kumar Yadav v. Additional Member, Board of Revenue, Bihar) he held that even though the second sale deed was executed on 23-2-1983, on the date of which an application for pre-emption had been filed, the title had not passed to this petitioner and, therefore, he cannot claim to be an adjoining raiyat on the basis of the purchase of land by the second sale deed.

7. We have carefully perused the aforesaid judgment of the learned single Judge of this Court in which reliance was placed upon the judgment of the Supreme Court in the case of Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., for the proposition that till the time the sale deed was not registered, no title passed to the purchaser, and Section 47 of the Indian Registration Act did not in any manner change the position.

8. When this writ application was placed for hearing before the learned single Judge of this Court along with C.W.J.C. No. 3772/87, the learned Judge doubted the correctness of the decision of the learned single Judge in the case of Sheo Kumar Yadav v. Addl. Member, Board of Revenue, Bihar AIR 1984 NOC 46 (Patna)) (supra) and referred this case along with the aforesaid case for hearing before a Division Bench.

9. Before us reliance was placed on the decision of the Supreme Court in the

case of Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., and it was submitted that the decision of the learned single Judge is in consonance with the principle laid down by the Supreme Court in the aforesaid decision. In Hiralal Agrawal's case the question as to whether title passes on the date of execution of the sale deed, or on the date on which registration is completed, did not arise for consideration. The question which arose for consideration before the Supreme Court was whether a pre-emptor can file an application for pre-emption u/s 16 (3) of the Act even before the sale deed transferring the land in question, is registered under the provisions of the Act. We may notice that Section 16(3) of the Act in terms provides that when any transfer of the land is made after the commencement of this Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document of the transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed. It cannot be disputed that Section 16 (3) of the Act creates a right in favour of the co-sharer of the transferor, or adjoining raiyat, to pre-empt the sale of any land of which he is an adjoining raiyat or is a co-sharer. If a right is created by a statute and the statute itself prescribes (he method of enforcement of the said right, the right can be enforced only in the manner prescribed by law. Since Section 16 (3) of the Act clearly provides that an application can be filed within three months of the date of registration of the document of transfer, obviously, the application of pre-emption cannot be filed even before the document of transfer was registered. It is in this context that the Supreme Court held that the right of reconveyance accrues to the applicant only on the date of completion of the registration of transfer, and an application u/s 16 of (he Act presented to the Collector before such date would be premature. We may, however, notice that the Supreme Court in that case found as a malter of fact that the application was not premature because the preemption application though filed on 26-11 -1964, was put up before the Collector on 30-11-1964, on which date the registration of the sale deed dated 9-10-1964 was completed.

10. The observations of the Supreme Court must, therefore, be understood in the context in which they were made. The judgment of the Supreme Court in Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc., is an authority for the proposition that an application for pre-emption u/s 16 (3) of the Act must be presented before the competent authority within a period of three months from the date of completion of the registration, and such an application is not entertainable before completion of registration of transfer. In fact having regard to the context in which the observation was made, the Court itself observed that it could not be argued on the basis of Section 47 of the Indian Registration Act that once registration is effected, the title under the sale deed relates back to the date of execution of the sale deed, so as not to render the application presented prior to completion of registration as premature. In view of the clear words of the

statute, the Court held that the application for pre-emption must be filed within three months from the date of completion of the registration of the sale deed. The question as to when title passes to a purchaser, did not come up for consideration before the Supreme Court in that case. The said judgment, therefore, does not help the case of the pre-emptor.

11. It was not disputed before us that it is well settled that the right of reconveyance which accrues to a co-sharer or a raiyat of the adjoining land has to be judged with reference to the date on which a completed application under Sub-section (3) of Section 16 of the Act is filed, and not with reference to the date of the transfer or the date of the execution and registration of the document of transfer. (See *Ram Chandra Srivastava and Others Vs. Parsidh Narain Singh and Others*,).

12. It was contended on behalf of the petitioner that a sale is complete when a sale deed is executed by the vendor and the vendor has no right in law to rescind or revoke the sale deed, registration or no registration. After a sale is completed by execution of a deed, the registration comes as a matter of course and is not dependent upon violation of the vendor. It can be brought about compulsorily in the event of refusal by the vendor to assent to the registration. Section 47 of the Registration Act does not purport to create a new title, but only affirms the title which was created by the sale deed. The title is complete and the effect of registration is only to make it absolute and unquestionable. Reliance was placed upon the decision of learned single Judge of this Court in *Chander Singh and Others Vs. Jamuna Prasad Singh and Others*, . The aforesaid judgment does support the contention of the petitioner.

13. Reliance was also placed on a Division Bench judgment of this Court, reported in *Basant Lal Vs. Bala Misra and Others*, . In that case the defendant 2nd party had purchased the disputed property in an auction sale. On 18-3-1944 the plaintiff purchased the disputed property from the defendant 2nd party. On 22-3-1944 defendant No. 2 made an application under Order 21, Rule 90 of the CPC for setting aside the sale. The application was allowed ex parte on 16-6-1944 and the sale was set aside. Since the plaintiff was not made a party in the said proceeding, he instituted a suit on the allegation that the order of setting aside the auction sale was not binding upon him and that he had title to the disputed properties and was, therefore, entitled to recover the possession of the same. Defendant No. 2 was the main contestant in the suit. The lower appellate Court found that the plaintiff was bound by the order of the executing Court dated 16-6-1944 on the ground that the plaintiff was not a necessary party to the Miscellaneous Judicial Case, and also upon the ground that the sale in favour of the plaintiff dated 18-3-1944 became effective against the third parties only on 24-3-1944, when the registration proceedings were complete. Thereafter the plaintiff preferred an appeal before the High Court contending that he was a necessary party in Misc. Judicial Case No. 164 of 1944 and notice should have been served upon him. Upholding the contention of the appellant and relying

upon the decision of the Calcutta High Court, as also the decision of the Privy Council, this Court held that the deed in favour of the plaintiff-appellant was executed on 18-3-1944 and was clear that as soon as the registration was complete on 24-3-1944, the registration would take effect from the date of execution, namely, 18-3-1944. Accordingly, the plaintiff's appeal was allowed.

14. Having regard to the authorities, it must be held that the title under a sale deed passed on the date of the execution of the sale deed, and even if the registration of the sale deed is completed on a later date, it must relate back to the date of sale. The judgment of the learned single Judge of this Court in 1983 PLJR 639 : (AIR 1984 NOC 46 (Patna)) (supra) does not correctly lay down the law and is, accordingly, overruled.

15. It was then contended on behalf of the pre-emptor (respondent No. 5) that in terms of the sale deed, the title was to pass in favour of the purchaser only on payment of consideration and handing over of the Chirkut. This is seriously disputed by the learned counsel for the petitioner. We find that this point was not urged before any of the authorities under the Act. Moreover, it is rightly submitted by the counsel for the petitioner that this would involve a question of fact as to when the consideration money was paid, and whether the same was done before filing of the : pre-emption application or thereafter. Under these circumstances, we are not inclined to permit the petitioner to raise a new question before us which would involve investigation of a disputed Question of fact, particularly in a proceeding of this nature where a writ of ceritorari is prayed for.

16. In this circumstance we hold that by purchase of three decimals of land by the second sale deed on 23-2-1983 the petitioner became an adjoining raiyat of the land sold under the first sale deed dated 5-7-1982, even if the registration of the second sale deed was completed only on 22-1-1985, by operation of Section 47 of the Indian Registration Act, which operated from a time from which it would have commenced to operate, if no registration thereof had been required or made, and not from the time of its registration. In the proceeding before the authorities under the Act, the authorities proceeded on the basis that the sale deed, if it was not required to be registered, would have taken effect from the date of its execution. We have not permitted the pre-emptor (respondent No. 5) to urge a fresh plea before us that the transfer of title under the document took effect from any subsequent date.

17. The learned counsel for the pre-emptor (respondent No. 5) has submitted that the matter should be remanded to the Court below to investigate the question as to when the title passed under the second sale deed, and whether payment of the consideration amount was made before filing of the application for pre-emption. We are not persuaded to remand the matter because such a plea was never taken before the authorities under the Act, and for the first time such plea is sought to be raised before this Court. If such a plea were taken before the authorities under the Act, and they failed to record their findings, the

remand could be justified, but that is not the case. Under these circumstances we hold that the petitioner became adjoining raiyat by reason of purchase of 3 decimals of land under the sale deed executed on 23-2-1983, which was admittedly adjacent to the land purchased by him under the sale deed dated 5-7-1982. Since the petitioner himself was an adjoining raiyat on the date on which the application for pre-emption was filed by respondent No. 5, the pre-emption application was not maintainable as against the petitioner, since the petitioner had himself acquired status of an adjoining raiyat. In these circumstances, this writ petition is allowed, the impugned orders contained in Annexures 1 to 3 are set aside and the pre-emption application filed by respondent No. 5 is rejected.

18. In C.W.J.C. No. 3772/87 the facts are different. No doubt, by a sale deed executed on 5-7-1982 this petitioner purchased 35 decimals of land of Khata No. 12/12 of Plot No. 131/88. She did not subsequently purchase any land which made her an adjoining raiyat of the land purchased. The claim of respondent No. 5 to be an adjoining raiyat of the land sold under (he sale deed dated 5-7-1982 could not be disputed, and has not been disputed. Thus the application for pre-emption filed by respondent No. 5 was rightly allowed by the authorities under the Act.

19. It was sought to be urged before us that though the sale deed dated 5-7-1982 was executed in favour of the petitioner, she was really a Benamidar of her husband, Kameshwar Choudhary. Though such a plea was raised before the D.C.L.R., no such plea appears to have been raised before appellate or revisional authority and, therefore, we shall not be justified in permitting such a plea to be raised before us in this writ application. Admittedly respondent No. 5 is an adjoining raiyat of the land purchased under the said sale deed dated 5-7-1982. He filed an application within the period prescribed by law and fulfilled all the necessary conditions. His application was, therefore, rightly allowed. In this circumstance, there is no merit in the writ application, and the same is, accordingly, dismissed. There shall be no order as to costs.