

(1989) 03 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 4709 of 1982

Most. Savitri Devi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-03-1989

Acts Referred:

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

Citation : AIR 1989 Patna 327 : (1990) 38 BLJR 210 : (1989) PLJR 772

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Uma Shankar Singh and Dilip Kumar Sinha, for the Appellant; S.N. Jha, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This writ application is directed against the order dated 23-9-1982 passed by the Additional Member, Board of Revenue (respondent No. 2) in Ceiling Case No. 417 of 1981 and as contained in Annexure 1 to the writ application whereby and whereunder the said respondent allowed the application filed on behalf of the respondent No. 5 against the order passed by the Collector, Muzafferpur dated 26-9-1981 in Appeal Case No. 28 of 1981-82 whereby he dismissed the application by affirming the order passed by the respondent No. 4, Deputy Collector Land Reforms, Muzaffarpur (East) in Land Ceiling Case No. 41/29 of 1980/81 dismissed the application of pre-emption filed by the respondent No. 5.

2. The basic facts of the case are admitted.

The petitioner executed two registered deeds of sale bearing Nos. 12685 and 12686 for a consideration of Rs. five thousand each in favour of one Prof. Kamal Narain Singh. According to the petitioner, as the consideration money in respect of the said deed of sale was not paid, she sent a legal notice asking him to pay

the consideration amount. The said purported deeds of sale were executed on 15-9-1980.

On 18-9-1980 the petitioner executed two registered deeds of cancellation cancelling the instruments executed on 15-9-1980. The aforementioned deeds of cancellation dated 18-9-1980 are contained in Annexures 3 and 3A to the writ application.

3. According to the petitioner, in view of the fact that no considerations amount was paid to her by the respondent No. 6, no title passed on to the petitioner.

4. Admittedly, the respondent No. 5 filed an application for pre-emption on 13-12-1980 in terms of Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus land) Act, 1961 (hereinafter called the said Act) before the respondent No. 4, who in view of the said deeds of cancellation dated 18-9-1980 dismissed the aforementioned application for pre-emption by an order dated 18-8-1981. The said order dated 18-8-1981 is contained in Annexure 4 to the writ application.

5. Respondent No. 5 thereafter preferred an appeal before the respondent No. 3 being Appeal Case No. 28 of 1981-82 who by an order dated 26-9-1981 dismissed the said appeal. The aforementioned order dated 26-9-1981 is contained in Annexure 5 to the writ application.

Respondent No. 5 thereafter preferred a revision application u/s 32 of the said Act. The said revision application by an order dated 23-9-1982 in Ceiling Case No. 417 of 1981 was allowed by the respondent No. 2. The said order dated 23-9-1982 is contained in Annexure 1 to the writ application.

6. Mr. Uma Shankar Singh, the learned counsel appearing for the petitioner submitted that in view of the fact that the petitioner executed the deeds of cancellation as far back as on 18-9-1980 i.e. much prior to the filing of the application u/s 16(3) of the said Act i.e. on 13-12-1980. the said application for pre-emption was not maintainable.

According to the learned counsel it was not denied by Prof. Kamal Narain Singh that no consideration amount was passed by reason of the said deed of sale dated 15-9-1980.

Learned counsel in this connection, has relied upon Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others, . Gujan Yadav and Another Vs. Sitaram Choudhary and Others, Kamaldhari Rai v. State of Bihar 1979 BBCJ 179 and Ram Chandra Singh and Others etc. Vs. Sub-divisional Officer, Hajipur and Others, .

7. Mr. S.N. Jha, the learned counsel appearing for the contesting respondents, on the other hand, submitted that there are circumstances to show that the said purported deeds of cancellation were executed mala fide.

According to the learned counsel that as the cancellation deeds as also the deeds of sale were produced from the custody of the purchaser, it was evident that the

said cancellation deeds were collusive in nature and had been executed in order to defeat the case of the petitioner. Learned counsel, in this connection, has further drawn my attention to the fact that there is a recital in one of the two sale deeds that full consideration amount was paid by the vendee to the vendor thereof. The learned counsel contended that a presumption of correctness therefore arises and in this view of the matter as title to the respondent No. 6 passed by reason of the aforementioned deeds of sale dated 15-9-1980; such title in respect of respondent No, 6 could not have been extinguished by executing the deeds of cancellation.

Learned counsel, in this connection, has placed strong reliance on the decision of Orissa High Court in *Michhu Kuanr and Others Vs. Raghu Jena and Others*, .

The learned counsel has also submitted that it is evident that the petitioner is related to the respondent No. 6 and therefore, it was possible for them to execute such collusive documents.

8. It is now well settled by various decisions of this Court that a Court for the purpose of disposal of an application for pre-emption filed u/s 16(3) of the said Act can enter into the question as to whether consideration money as referred to in the deed of sale, which is the subject-matter of an application for pre-emption passed to the vendor from the vendee or not.

9. Respondent No. 4, in passing the order dated 18-8-1981 as contained in Annexure 4 to the writ application took into consideration various decisions of this Court and held : --

(a) One application for pre-emption in respect of two deeds of sale was not maintainable.

(b) There is nothing to show that the registered deeds of cancellation were collusive and bogus.

10. Respondent No. 3 dismissed the application filed by the respondent No. 5 summarily.

11. Respondent No. 2, however, by reason of the impugned order took into consideration various other submissions which appear to have been made for the first time on behalf of the respondent No. 5 and came to the conclusion that on the basis of the materials on record a suspicion arises that deeds of cancellation were bogus and collusive in character.

He further came to the conclusion that in view of the fact that there are recitals in the sale deeds to the effect that consideration money was paid by the vendee to the vendor, the same must be held to be correct and as such the purported deeds of cancellation will have no effect in the eye of law.

12. It is now well known that the question as to whether a title will pass on vendee irrespective of non-payment of consideration depends upon the intention of the parties. Such an intention can be gathered from evidence led by the

parties as well as their conduct.

13. In terms of Section 92 of the Evidence Act the vendor is not prevented from adducing evidences to show that recital in the said deed to the effect that consideration has been paid is incorrect and in fact no consideration was paid to him.

14. It is also now settled law that the question as to whether the parties intended that title would pass irrespective of payment of consideration or not would depend upon intention of the parties.

15. In the instant case, apparently the petitioner served a notice upon the respondent No. 6 on the very next day and executed two registered deeds of cancellation within three days from the date of execution thereof.

These aspects of the matter have been considered by the respondent No. 5 who came to the conclusion that the cancellation deeds are neither bogus nor collusive in nature.

16. The Member Board of Revenue, on the other hand, on the basis of certain materials on record particularly on the basis of certified copy of the list of documents as also an application filed by the respondent No. 5 that an enquiry be made as to how the respondent No. 6 was permitted to withdraw the said documents held that a suspicion arises that the deeds of cancellation were collusive and bogus.

17. It is well known that suspicion, however, grave may be cannot be a substitute for proof.

18. In the instant case, both the vendor and the vendee conceded that no consideration passed. In these circumstances the respondent No. 5 being not a party to the said document could not be in a position to prove that the intention of the parties of the said deeds of sale was that title would pass to the respondent No. 6 irrespective of nonpayment of consideration. It appears that in one of the deeds of sale it has been stipulated that the vendor has received the consideration amount.

19. It is now well settled that transfer means a valid transfer and in this view of the matter it is open to a party to contend that irrespective of a recital in the deeds of sale a party to a document that such a document was invalid in law as no consideration was received therefor.

20. The point raised by the learned counsel appearing for the petitioner is supported by a number of decisions of this Court and as such the same is no longer *res integra*.

Reference in this connection may be made to *Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others*, *Gujan Yadav and Another Vs. Sitaram Choudhary and Others*, *Baldeo Singh and Others Vs. Dwarika Singh and Others*, *Kamaldhari Rai v. State of Bihar*, 1979 BBCJ (HC) 179 and *Ram Chandra Singh*

and Others etc. Vs. Sub-divisional Officer, Hajipur and Others, .

21. In Kamaldhari Rai's case (supra) a Division Bench of this Court gathered the intention of the parties to the transaction only from the concession made before this Court as is evident from para 3 of the said judgment, which is as follows : --

"Learned counsel for the vendor, namely, respondent No. 5 contends before us that no consideration was passed on him by respondents Nos. 3 and 4. The counsel for respondents Nos. 3 and 4 also states that no consideration was paid to respondent No. 5 in respect of the impugned deed. Hence held that it was not a valid transfer as no consideration money was passed between the vendor and vendee. In view of the statement of the counsel of both the parties, it is clear that the sale deed was actually not effected between the parties and according to them the title also did not pass from respondent No. 5 to respondents Nos. 3 and 4."

22. In this view of the matter, in my opinion, following the aforementioned decisions, some of them having been rendered by the Division Benches, it must be held that respondent No. 6 did not derive any title by reason of the purported deeds of sale dated 15-9-1980.

In this view of the matter, the impugned order as contained in Annexure 1 to the writ application cannot be sustained.

23. In the result, the writ application is allowed and the order as contained in Annexure 1 writ application is quashed but without any order as to costs.

24. Let a writ of certiorari be issued accordingly.