(1993) 03 PAT CK 0008

In the Patna High Court

Case No : C.W.J.C. No. 578 of 1983

Mostt. Sakuntala Devi and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 16-03-1993

Acts Referred:
Registration Act, 1908 — Section 47, 60, 61

Citation : (1993) 2 BLJR 987

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against a resolution dated 2-12-1982 passed by the Additional Member, Board of Revenue, as contained in Annexure-1 to the writ application whereby and whereunder the revision application filed by Respondent number 3 has been allowed.

2. The fact of the matter lies in a very narrow compass.

3. Respondent No. 3 purchased 11 Katha, 5 Dhurs of lands from Guneshwar Singh by a registered deed of sale dated 15-6-1979 which was registered on 17-7-1989.

4. Sita Devi was allegedly one of the adjoining raiyats. Subsequently, Respondent No. 3 purchased 10 Kathas of lands from Sita Devi by reason of a registered deed of sale dated 29-8-1979 which was registered on 26-9-1979.

5. An application for pre-emption was filed by the petitioner in respect of the aforesaid deed of sale dated 15-6-1979 on 3-9-1979.

6. The question, which arises for consideration in this application, is as to whether the Respondent No. 3 by reason of his subsequent purchase from the adjoining raiyat himself became an adjoining raiyat so as to defeat the claim of the petitioners.

7. Miss. Kanak Verma, learned Counsel appearing on behalf of the petitioners has submitted that in view of the fact that the deed of sale dated 29-84979 was registered on 26-9-1979, the petitioners application for preemption could not have been defeated inasmuch as the said application was filed prior to registration of the said deed of sale executed by Sita Devi in favour of Respondent No. 3.

8. In support of her contention the learned Counsel has relied upon a Supreme Court decision in Hira Lal Agrawal etc. v. Rampadarth Singh and Ors. 1969 BLJR 186

9. The contention of the learned Counsel appearing on behalf of the petitioners cannot be accepted. Although, in terms of the provisions of Sections 60 and 61 of the Indian Registration Act, the deed is registered at a later date but by reason of Section 47 thereof, the right, title and interest in relation to the lands stands transferred from the date of execution of the deed of sale and not from the date of its registration.

10. Hiralal Agarwala case (supra) is not an authority for the proposition that the right, title and interest of a transferred would pass from the date of registration. In that case, the Supreme Court was considering the question as to whether an application for pre-emption which was filed prior to the registration of the deed, although, congnizance in relation thereto was taken thereafter was valid or not.

11. It was held by the Apex Court that the provision of Rule 19 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules is directory and not mandatory and in view of the fact that in that case cognizance was taken after the deed of sale was registered, it was held that there has been substantial compliance of the provision of Section 16(3) of the said Act and the Rule 19 aforementioned.

12. In that view, the learned Member, Board of Revenue has correctly held that the Respondent No. 3 also became an adjoining raiyat by reason of the registered deed of sale dated 29-8-1979 from the date of execution thereof and on 3-9-1979 he himself became an adjoining raiyat.

13. Further, as is well-known that the right; of pre-emptor is a weak right which can be defeated by a subsequent acquisition of an interest in respect of the adjoining lands.

14. Reference in this connection may be made in Dhanik lal Mahto and Ors. v. The Additional Member, Board of Revenue and Ors. reported in 1985 BBCJ 597

15. In that view of the matter, I find no merit in this application and the same is accordingly dismissed.

16. In the facts and circumstances of the case, there would be no order as to costs.