
(2012) 09 PAT CK 0109

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4539 of 1991

Muni Lal Singh @ Suraj Prasad Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Citation : (2013) 1 BBCJ 635

Hon'ble Judges : Mr. Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Mr. Suraj Narayan Yadav and Dinesh Kumar, Advocates, for the Petitioner; Mr. Vinay Kirti Singh, Advocate, for the Respondent Nos. 5 and 6; Mr. J.S. Arora, SC-6 With Mr. Ajay Kumar, AC to SC-6, for the State

Final Decision : Dismissed

Judgement

Mr. Chakradhari Sharan Singh, J.(Oral)—This writ application under Article 226 of the Constitution of India has been filed for quashing of the order dated 30.1.1989 (Annexure-6) passed by the Deputy Collector, Land Reforms, Saran at Chapra in Land Ceiling case No. 43 of 1987-88, whereby he has rejected the petitioner's application filed under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act). The Appellate order dated 18.4.1990 (Annexure-7) passed by the Additional Collector, Saran in Land Ceiling case No. 6 of 1989 and the revisional order dated 20.3.1997 (Annexure-8) passed by the Additional Member, Board of Revenue, Bihar, Patna, whereby the petitioner's appeal and revision against the order of Deputy Collector, Land Reforms dated 30.1.1989 have been rejected are also under challenge in the present writ application.

2. The petitioner is the pre-emptor while substituted Respondent No. 5 (ii) to 5 (xiv) are heirs and successors-in-interest of the purchaser, late Parwati Devi. The parties have been accordingly described as the pre-emptor and purchasers, as the case may be, in the present judgment as and when required.

3. The dispute in the present case relates to plots of land bearing plot Nos. 76 and 459 having area of 7 katha and 7 dhurs and 4 katha 3 dhurs respectively, situate in village Phulwaria, P.S. Manjhi, District-Saran, which according to the petitioner are ancestral land of respondent no.6 Smt. Devarati Devi which she got through a deed of gift from her father. The said Respondent no.6 Smt. Devarati Devi transferred the aforesaid land through registered sale deed dated 21.8.1987 to Parwati Devi. It is stated in the petition that the said Parwati Devi (Respondent No.5) (since deceased) (hereinafter referred to as the purchaser and includes her successor-in-interest) was neither a co-sharer nor the boundary raiyat of the land in question. So far as the pre-emptor is concerned, it is stated that Plot No 69 which is kast land of the petitioner, exclusively falls in the complete western boundary of the disputed plot no.76 as also in the northern boundary of the disputed plot no. 459. Referring to the sale deed dated 21.8.1987 itself, it is contended that the name of the petitioner has been shown in the western boundary of the disputed plot no 76 and in northern boundary of Plot No. 459. It has further been pleaded that disputed plot Nos. 76 and 459 are contiguous to each other and form a piece of land at the spot.

4. In such circumstance, the application under Section 16(3) of the Act was filed before the Deputy Collector, Land Reforms claiming pre-emptory rights to purchase the land on the ground of being adjoining raiyat of the disputed land. The said application was numbered as Land Ceiling Case No. 43 of 1987. After service of notice, the purchaser and the vendor (Respondent No.6) appeared in land Ceiling case No. 43 of 1987 and the purchaser filed her show cause to the effect that she was also boundary raiyat of the disputed land as on the same day i.e. on 21.8.1987, she had purchased another plot bearing no. 77 in the name of her husband through another sale deed and this plot no.77 was in the eastern boundary of the disputed plot No. 76. She also raised objection taking the plea that the pre-emptor was not the boundary raiyat of the disputed land as plot no.69 was in the share of his (pre-emptor's) brother Satyadeo Singh; before the Deputy Collector Land Reforms. The purchaser also took a plea that the name of the petitioner (pre-emptor) was wrongly mentioned in the boundary in the sale deed in question.

5. The Deputy Collector Land Reforms vide order dated 30.1.1989 (Annexure-6) rejected the pre-emption application filed by the petitioner under Section 16(3) of the Act on the ground that purchaser having purchased another land bearing Plot No.77 in the name of her husband, she became boundary raiyat of the disputed plot. The appeal filed by the petitioner before the Additional Collector, Saran against the order dated 30.1.1989 (Annexure-6) was dismissed by order dated 18.4.1990 (Annexure-7) and thus he confirmed the order of the Deputy Collector Land Reforms. Thereafter the petitioner filed Revision Case No. 368 of 1990 before the Board of Revenue challenging both the orders passed by the Deputy Collector Land Reforms as also of the Additional Collector, Saram as mentioned above. The revision application was also dismissed by an order dated 20.3. 1991 (Annexure-8) passed by the learned Additional Member, Board of

Revenue, Bihar, Patna. It is in this background that the present writ application has been filed challenging all the three orders as noted above.

6. A counter affidavit has been filed on behalf of purchasers/successors-in-interest contending that the pre-emption claim of the petitioner was not maintainable in as much as the purchaser became a boundary raiyat by virtue of sale deed dated 21.8.1987 through which another adjoining plot no. 77 was purchased by her in the name of her husband. A reference has been made in the counter affidavit to an affidavit filed by the husband of late Parwati Devi before the Deputy Collector Land Reforms and it has been contended on that basis that she became an adjoining raiyat before filing of the pre-emption application.

7. The said counter affidavit was filed on 23.9.1991 on behalf of the purchasers after service of copy of the same on learned counsel for the petitioner. When the case was heard on 19.9.2012, till that date there was no rejoinder filed on behalf of the petitioner controverting the statements made in the counter filed on behalf of the purchaser. In view of certain queries made by the Court on certain facts including with regard to the fact that no rejoinder to the counter affidavit was filed, it seems that a rejoinder has been filed to meet such queries on 21.9.2012, nearly 20 years after filing of the counter affidavit. A reply to the said rejoinder has also been filed on behalf of heirs of respondent no.5. In such circumstance I ignore both, the rejoinder to the counter affidavit filed on behalf of the petitioner and the reply to the rejoinder filed on behalf of heirs of respondent no.5 filed in midst of argument. It is added that before filing such rejoinder no leave was sought from this Court.

8. Assailing the orders passed by the authorities, Mr. Suraj Narayan Yadav, learned counsel appearing on behalf of the petitioner has strenuously contended that purchaser cannot be presumed to be real owner of Plot No. 77 which was purchased by her husband and, therefore, the plea on behalf of the purchaser that she became adjoining raiyat of the plot in question by virtue of the second sale deed dated 21.8.1987 by which plot no.77 was transferred in the name of the husband of the purchaser, cannot be sustained. Mr. Yadav has submitted that unless a case for benami transaction in the name of the husband of the purchaser was urged and proved, the purchaser could not be treated to be adjoining raiyat of the plot in question by virtue of the second sale deed dated 21.8.1987.

9. There can be no dispute over the facts that if the respondent no.5 is held to be the owner of plot no. 77, in that circumstance she can successfully defeat the petitioner's claim for pre-emption.

10. Mr. Yadav has placed reliance on a Division Bench judgment of this Court reported in 1986 PLJR 763 (Upendra Mishra v. Smt. Inchan Mishra), wherein, relying on a Full Bench decision of this Court it has been held in paragraph 7 as follows:-

"7. In view of the aforesaid Full Bench decision, respondent no.1 cannot claim

protection against the claim of pre-emption made out by the appellants, simply because her husband was a co-sharer of some of the adjoining lands of the land in question. That being so, the question of neutralizing the claim of the pre-emptors, in the circumstances of the case, cannot arise, and the impugned order has, therefore, to be set aside."

11. Mr. Yadav assailing the revisional order passed by the Additional Member, Board Revenue has also contended that the same is cryptic and has been passed without any application of mind and without considering all the issues raised on behalf of the pre-emptor before him. He has placed reliance on a judgment of this Court reported in 1986 BBCJ 569 (Kamleshwari Prasad Yadav alias Kamleshwari Yadav v. State of Bihar and ors).

12. Mr. Vinay Kirti Singh, learned counsel appearing on behalf of the legal heirs and representatives of the deceased- Respondent no.5 contends that the judgment of this Court reported in 1986 PLJR 763 (Upendra Mishra v. Inchan Mishra) was not applicable in the facts and circumstances of the present case, in view of the fact that the husband of the purchaser had filed an affidavit before the Deputy Collector Land Reforms that the land bearing plot no. 77 was in fact purchased by his wife in his name and the payments were made by his wife, which fact was not rebutted.

13. Having regard to the facts and circumstances of the case and after having heard learned counsel appearing on behalf of the parties, I am of the view that the judgment of this Court reported in Upendra Mishra v. Inchan Mishra (Supra) cannot have application in the present case as in the present case the issue that land bearing plot no.77 was purchased by the purchaser in the name of her husband was specifically urged before the Revenue authorities. No doubt, the purchaser in the present case could not have been presumed to be the real owner of the land only because a plot of land adjacent to the disputed land was purchased by her husband on the same date. In case of Upendra Mishra v. Inchan Mishra, the Court had placed reliance on a Full Bench judgment reported in AIR 1970 Patna 253(Ram Jiwan Singh and ors v. State of Bihar and others) and observed in paragraph 6 as follows:-

"6. In the present case also the question of Benami transaction was not urged before the revenue authorities and as such it is not necessary to deal with this matter in this appeal."

14. In the Full Bench judgment in case of Ramjiwan Singh and others v. The State of Bihar and others (Supra) which was relied upon in the case of Upendra Mishra (Supra) also, the plea that in fact another plot of land was purchased by the same person was not taken.

15. In that view of the matter, I am of the view that the judgment of this Court in case of Upendra Mishra (supra) is not applicable in the facts and circumstances of the present case. I treat the averment made in the counter affidavit filed on behalf of the contesting private respondent that a plea was taken to the effect

that the land bearing plot No. 77 was in fact purchased by the purchaser herself in the name of her husband as unrebutted as no rejoinder to the same was filed. In such circumstance I hold the legal heirs of respondent no.5 to be owner of plot no.77 in view of the facts noted above.

16. The plea raised on behalf of the petitioner that the order of the Additional Member Board of Revenue suffers from the vice of non application of mind and further plea that the learned Additional Member Board of Revenue failed to consider all the points raised on behalf of the pre-emptor cannot be accepted. I have gone through the said order dated 20.3.1991 (Annexure-A). The order cannot be said to be non-speaking and unreasoned.

17. In such circumstance, I do not find any reason to interfere with the impugned orders passed by the Revenue authority.

18. This writ application is accordingly, dismissed. There will be no order as to costs.

19. Before I part with this case, I place on record my appreciation for the fairness and sincerity of learned Counsel Shri Suraj Narayan Yadav and Mr. Vinay Kirti Singh which they extended valuable assistance in deciding the case.