

(1983) 07 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 428 of 1983

Ram Roop Yadav

APPELLANT

Vs

The Additional Member, Board of Revenue and Others

RESPONDENT

Date of Decision : 11-07-1983

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34

Citation : (1984) PLJR 128

Hon'ble Judges : Ashwini Kumar Sinha, J

Bench : Single Bench

Advocate : N.K. Agrawal, for the Appellant; S. Hoda, S.C. III for the respondents 1 to 3, for the Respondent

Judgement

Ashwini Kumar Sinha, J.—By this writ application the petitioner (pre-emptor) has prayed for quashing the order dated 3.10.1980 passed by the Deputy Collector Land Reforms, Sadar, Gaya, (Annexure 1), by which the Deputy Collector Land Reforms rejected the petitioner's application filed u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, (hereinafter to be referred to as "the Act"). The pre-emptor preferred an appeal and the learned Collector, Gaya (respondent No. 2) passed an order on 17.11.1980 (Annexure 2) by which he has upheld the order of the Deputy Collector Land Reforms. Thereafter the pre-emptor filed a revisional application before the Board of Revenue and the learned Additional Member, Board of Revenue, Bihar, by a resolution dated 27.11.1982 (Annexure 3) affirmed the orders passed by the Deputy Collector Land Reforms and also the appellate order passed by the Collector, Gaya. Hence, the application on behalf of the pre-emptor for quashing the aforesaid three orders (Annexures 1, 2 and 3). The facts of this case are that respondent Nos. 5 and 6, by a registered sale deed dated 9.11.1979, transferred 20 dec. of land in plot No. 51 (total area being 39 dec.) appertaining to Khata No. 69 in village Delha Kalyanpur alias Barki Delha in

favour of respondent No. 4, (Kalawati Devi) for Rs. 4500/- and put her in possession. On 10.12.1979 the petitioner deposited a sum of Rs. 495(sic)0/- to the credit of the Deputy Collector Land Reforms, Sadar, Gaya, (Collector under the Act) and on 11.12.1979 the petitioner (pre-emptor) filed an application u/s 16(3) of the Act for re-conveyance of the land transferred by the sale deed dated 9.11.1979 on the ground that he was a raiyat holding the land adjoining to the land transferred and the pre-emptor's case was that the purchaser (respondent No. 4) was neither co-sharer nor a raiyat of the adjoining land. In the usual course notices were served upon respondents 4 to 6. Respondent (Kalawati Devi) (transferee) appeared and took a stand that she had already transferred the land, purchased by her, in favour of respondent No. 7 (Kanhai Yadav). The petitioner (preemptor) in reply to the stand taken by respondent No. 4 asserted that the subsequent transfer in favour of respondent No. 7 (Kanhai Yadav) by respondent No. 4 (Kalawati Devi) was nothing but a sham and farzi transaction and that the document was antedated one. The further assertion on behalf of the petitioner (pre-emptor) was that respondent No. 4 (the first transferee) had executed the deed in favour of respondent No. 7 (Kanhai Yadav), who was none else than her own brother and the document in question was manufactured after purchasing ante dated stamps, which was presented for registration on 11.12.1979 at 2 P.M. after filing of the pre-emption application by the petitioner the same day at 10.30 A.M. Admittedly, respondent No. 4 (Kalawati Devi) (the first transferee) executed the sale deed in favour of respondent No. 7 (Kanhai Yadav) on 6.12.1979, before the filing of the application u/s 16(3) of the Act by the petitioner (pre-emptor) which was filed on 11.12.1979. The petitioner accepts this position, i.e., execution of the subsequent transfer deed in favour of respondent No. 7 by respondent No. 4, prior to the filing of his application u/s 16(3) of the Act. The petitioner, in paragraph 10 of his writ petition, has asserted that the aforesaid subsequent transfer in favour of respondent No. 7, though made before the filing of the application u/s 16(3) of the Act, was really presented for registration after filing of his application u/s 16(3) of the Act, though on the same date (the words have been underlined by me for emphasis). The petitioner asserts in this paragraph 10 of the writ application that his application was filed at 10.30 A.M. on 11.12.1979 and the sale deed dated 6.12.1979 in favour of respondent No. 7 was presented for registration at 2 P.M., though the petitioner had already filed his application on the same day at 10.30 A.M.; in other words, the main stand of the petitioner (pre-emptor) is that though the first transferee (respondent No. 4) had executed the sale deed in favour of respondent No. 7 prior to the filing of the application u/s 16(3) of the Act, still he (the petitioner) had a superior title than the subsequent transferee as the sale deed was registered subsequent to the filing of the application u/s 16(3) of the Act.

2. The petitioner in paragraph 11 of his writ case has asserted that in support of his case that the subsequent transaction by respondent No. 4 (first transferee) was nothing but a farzi one, filed affidavits of two persons, that is, of Bhagwan

Singh Yadav and Ram Singh Yadav. The petitioner has further asserted in that paragraph that respondent No. 4 (the first transferee) did not produce any evidence to rebut the same.

3. The learned Deputy Collector Land Reforms, by his order dated 3.10.1980 (Annexure 1) rejected the pre-emption application and held that the said and was subsequently transferred by respondent No. 4 (Kalawati Devi) (who was opposite party No. 1 before the courts below) in favour of respondent No. 7 (Kanhai Yadav) and this subsequent transfer was made prior to the date of filing of the pre-emption application. He further held that for want of the subsequent transferee (Kanhai Yadav) (respondent No. 7) being impleaded as a party to the case, the farzi, collusive and sham nature of the transaction could not be investigated and thus the application was dismissed. As already stated above, the petitioner (pre emptor) had filed a rejoinder petition to the objection filed by respondent No. 4 (the first transferee) and in this rejoinder the petitioner (pre-emptor) had definitely stated that the subsequent transfer by respondent No. 4 in favour of Kanhai Yadav (respondent No. 7) was a sham and farzi transaction and hence the right of the pre-emptor could not be defeated on that ground.

4. The learned Collector, Gaya, by his order dated 17.11.1980 (Annexure 2), in law, took up the same stand, that is, in the absence of the subsequent transferee on the record or in view of the fact that the subsequent transferee has not been impleaded as a party, the question-whether the transaction was a farzi, collusive and sham could not be gone into.

5. The petitioner, after filing the revisional application before the Board of Revenue, on 28.8.1981 filed an application for adding the subsequent transferee (respondent No. 7) (Kanhai Yadav) as a party in the case and prayed for issuance of notice to him so that the case of the petitioner about the farzi, sham and inoperative of the subsequent sale deed could be considered in his presence.

The Board of Revenue by its order dated 5.3.1982 ordered for adding respondent No. 7 (subsequent transferee) as a party to the case and a notice was issued to him. From the order of the Board it is clear that no body appeared on behalf of Kanhai Yadav, the subsequent transferee, who was impleaded as opposite party No. 2 before the Board by order dated 5.3.1982, as stated above. Thus, on the facts it is clear that the subsequent transferee (respondent No. 7) in whose favour the first transferee had admittedly executed the document prior to the filing of the application u/s 16(3) of the Act, was a party before the Board of Revenue and even then no body appeared on his behalf.

6. The learned Additional Member, Board of Revenue, also took the same legal stand to the effect that the subsequent transferee (Kanhai Yadav) having not been made a party originally before the learned Deputy Collector Land Reforms in the application u/s 16(3) of the Act, no investigation into the allegation of sham, farzi and collusive nature of the transaction in favour of Kanhai Yadav could be made behind his back, as the investigation could have adversely

affected the interest of the subsequent transferee (Kanhai Yadav) (respondent No. 7). The learned Additional Member, board of Revenue, took up this legal stand even though, according to his own order, the subsequent transferee (Kanhai Yadav) was already added as a party before him by his order dated 5.3.1982 and was very much a party in the proceeding before him.

7. That section 16(3) of the Act reads as follows:--

(i) When any transfer of 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 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:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (i) is pending for decision:

Provided that where the application is rejected, the co-sharer or the raiyat, as the case may be, shall be evicted from the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten per cent of the purchase money out of the deposit made under clause (i).

(iii) If the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order, and, if he neglects or refuses to comply with the direction the procedure prescribed in Order 21, Rule 34 of the Code of Civil Procedure, 1908 (v of 1908) shall be, so far as may be, followed.

It is well settled that the transfer is complete on the registration of the document and the pre-emptor becomes entitled to make an application for pre-emption after completion of the registration. Looking at section 16(3) of the Act it is abundantly clear that in section 16(3) of the Act there is absolutely no provision for making an order of pre-emption against a subsequent transferee on an application filed for preemption against the first transferee. It is also settled that if the subsequent transferee is, in fact and in law, a transferee of the property in respect of which claim for pre-emption has been made then a question of his being a transferee with notice of the pre-emption application is not relevant.

8. A few legal situations are also well established. If the transferee of the property transfers it to a second purchaser by a document executed and

registered before the filing of the application, the second transferee gets a good title to the property and there is no question of his right being defeated by the subsequent application filed by a pre emptor, as he could not be presumed to have any knowledge of the application which may be filed in future. The other legal situation is also well settled that in the case where the second sale deed is executed and registered after filing of the application for pre-emptor, the second transfer would be hit by the doctrine of lis pendens u/s 52 of the Transfer of Property Act.

9. The difficulty arises only in a case where the document of sale is executed before filing of the application u/s 16(3) of the Act but is registered after its filing. No order of pre-emption can be made against the original transferee if he has transferred the land to another person before filing of the application for pre-emption, that is, the execution and registration are completed before filing of the application u/s 16(3) of the Act. The first transferee is a good and valid owner of the property transferred to him. The second transfer is hit by the doctrine of lis pendens, if it is made after the filing of the application u/s 16(3) of the Act, that is, execution and registration both after filing of the application Except the second transfer being hit by the doctrine of lis pendens it is good one; the second transferee acquires a good title from the first transferee. There are no words in section 16(3) to debar the first transferee from transferring the property before expiry of the period of limitation.

10. On the established principles of law, as observed above, if the subsequent transfer made in favour of respondent No. 7 (Kanhai Yadav) is valid, legal and good one; in that case the present petitioner (pre-emptor) can not have a superior title than the subsequent transferee, nor can he have any claim against the first transferee (respondent No. 4) as she had all right to transfer the property, being a good and valid owner of the property, but, if this subsequent transfer in favour of Kanhai Yadav (respondent No. 7) was a mere farzi and sham transaction; in that case it created no title in favour of respondent No. 7 (the subsequent transferee) and the pre-emptor's claim can, in law, be well examined vis-a-vis the first transferee (respondent No. 4).

11. As already stated above, the petitioner (pre-emptor) took the stand at the earliest; that is, before the learned Deputy Collector Land Reforms, that the nature of the transaction in favour of the subsequent transferee was farzi and sham; though, in fact, he made no application for adding the subsequent transferee as a party to the proceeding. Again, as already stated above, regular application for adding the subsequent transferee was made before the learned Additional Member, Board of Revenue, by the present petitioner (pre-emptor) and, in fact, the subsequent transferee was impleaded as a party respondent before the learned Additional Member, Board of Revenue, and also noticed. The subsequent transferee, though having been made a party before the Board of Revenue, did not appear and the learned Additional Member, Board of Revenue, took the same legal stand as the learned Collector and the learned Deputy

Collector Land Reforms had taken. All the three courts have refused to go into the question whether Kanhai Yadav (respondent No. 7) (subsequent transferee) was a real purchaser or whether the sale deed executed in his favour (admittedly executed prior to the filing of the application u/s 16(3) of the Act) was merely farzi and sham.

12. On the facts and circumstances of the case I am satisfied that the question-- whether Kanhai Yadav (respondent No. 7) was a real put chaser or whether the sale deed admittedly executed in his favour prior to the filing of the application u/ s 16(3) of the Act was merely farzi and sham has to be investigated by any of the courts below. The case, therefore, has to go back to the first Court (that is, before the learned Deputy Collector Land Reforms) for allowing opportunities to the parties to adduce evidence on the point and for a decision. It will be necessary to add Kanhai Yadav as a party to the case as if the question, need to be decided, as stated above, is decided in the absence of Kanhai Yadav, it will not bind him.

13. In the result, the writ application is allowed, the orders contained in Annexures 1, 2 and 3 are set aside and the case is remitted back to the first authority, namely, the learned Deputy Collector Land Reforms, Sadar, Gaya, for fresh disposal in accordance with law and in the light of this judgment and also by observing all the directions given hereinbefore. In the circumstances however, there will be no order as to costs. It is worthwhile mentioning that the learned counsel for the Mate of Bihar stated that in a case of pre emption the State was not concerned. Though the petitioner (pre-emptor) has impleaded Kanhai Yadav as a party to the writ case (as respondent No. 7) and even though notice has been served upon him, no body has represented him (as before the learned Additional Member, Board of Revenue).