**(2009) 08 PAT CK 0012**

**In the Patna High Court**

**Case No :** CWJC No''s. 13369 and 13433 of 2006

Sanjay Kumar Singh — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

**Date of Decision :** 13-08-2009

**Acts Referred:**

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 16(3), 53A

**Citation :** (2009) 4 PLJR 674

**Hon'ble Judges :** Ravi Ranjan, J

**Bench :** Single Bench

**Advocate :** Chitragupta Prasad and Subhas Kumar No. 1, for the Appellant; Mithilesh Kumar Upadhyay for the State, for the Respondent

**Final Decision :** Dismissed

# Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the petitioner and learned counsel for the State. In both the civil writ applications common resolution dated 9.8.2006 of the Additional Member, Board of Revenue, Bihar, is sought to be quashed. Hence, both the writ petitions have been heard together and are being disposed of by this common order.

2. The petitioner purchased lands measuring 46 decimals of plot No. 207 appertaining to khata No. 20 by two sale deeds registered on 19.4.2003 from the respondent No. 9. Respondent Nos. 5 to 8 filed two applications 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 "Act") claiming themselves to be the adjoining raiyats of the plot purchased on the strength of the fact that earlier to the aforesaid transaction on 29.03.2003 itself they had purchased part of the aforesaid plot No. 207 and, thus, they came into the boundary thereof. The authority at the first instance, i.e. the Deputy Collector, Land Reforms, Sasaram, dismissed the pre-emption application on the ground that though the claim of the

pre-emptor of purchasing part of the same plot prior to the transaction in question would seem to be correct, but even prior to that an agreement for sale of 46 decimals of land was executed by respondent No. 9 in favour of this petitioner and on part payment the possession of the aforesaid land was delivered in his favour by respondent No. 9. The term of agreement was that after payment of the rest amount, the sale deed would be executed, which was eventually done on 19.4.2003. Thus, according to the authority at the first instance, the purchaser-petitioner himself came into the possession of the land in question even prior to the purchase of part of plot No. 207 by the pre-emptor. Appeals were preferred and the same were allowed by the Additional Collector, Rohtas at Sasaram. The petitioner thereafter preferred revisions against the orders passed in two appeals being Case Nos. 230 of 2005 and 231 of 2005. Both the revisions were heard together and were disposed of by common resolution dated 9.8.2006, whereby the Additional Member, Board of Revenue, had dismissed the same.

3. Learned counsel for the petitioner (in both the cases) submitted that the appellate as well as revisional orders are bad on account of the fact that on execution of the Mahadanama dated 7.1.2003 the petitioner had come in possession of the land in question even prior to execution of the sale deed in his favour, and. therefore, the claim of the pre-emptors that they had also acquired part of plot No. 207 on 29.3.2003, i.e. prior to execution and registration of the sale deed concerned but after the date of aforesaid ''Mahadanama'', is meaningless. It had further been submitted that the Additional Member, Board of Revenue, had erred in holding that due to non-registration of the aforesaid agreement for sale that becomes non est and cannot be considered for the perusal purpose.

4. I do not find any substance in the submission raised on behalf of the petitioner. The alleged agreement'' for sale (Mahadanama dated 7.1.2003), has been made after commencement of the Registration and Other-Related Laws (Amendment) Act, 2001, inserting sub-section (.1A) in Section 17 of the Registration Act, 1908. It would be apt to quote the aforesaid provision as under:-

"(1A) The documents containing contracts to transfer for consideration, any immovable, property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53A."

5. From the aforesaid provision, it is manifest that the requirement of registration of the document containing contract to transfer immovable property for consideration is mandatory, if they have been executed after commencement of the Registration and Other Related Laws (Amendment) Act, 2001. If such document is not registered on or after commencement it shall have no effect for

 

the purposes of Section 53A of the Transfer of Property Act, 1882. Admittedly, the aforesaid Mahadanama was executed in the year 2003 i.e. after amendment of Section 17 of the Registration Act, 1908 and admittedly, is not registered. Thus, so far the purpose of Section 53A of the Transfer of Property Act, 1882 is concerned, the effect of the same would be non est. That apart, according to the petitioner, it is manifest from the agreement for sale concerned that the total consideration amount was Rs. 94,000/- out of which Rs. 80,000/-was already passed on to the transferor followed by delivery of possession, whereas remaining Rs. 14,000/- was to be paid subsequently and on such payment the sale deed was to be executed. On perusal of the sale deed the Additional Member, Board of Revenue, had found that there was no averment at all in the sale deed concerned with regard to terms of agreement for sale as aforesaid. Further, it is also apparent from Section 16(3) of the Act itself that a claim of pre-emption can only be made after registration of the document concerned and the pre-emptor either will have to show that he is adjoining raiyat or co-sharer of the transferred plot. Therefore, even if the purchaser delivered the same plot on earlier occasion that does not make any difference so far the claim of the pre-emptor is concerned, because claim could have only been made after registration of the sale deed irrespective of the fact as to when the possession had been delivered. Further, merely by delivery of possession of land ownership is not created so as to entitle one to be considered as boundary or adjoining raiyat. In view of the above, I do not find any merit in both writ applications, and, accordingly, the same are dismissed.