
(2010) 03 PAT CK 0044
In the Patna High Court

Shailjanand Verma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Registration Act, 1908 — Section 47

Citation : (2011) 59 BLJR 2061

Hon'ble Judges : Shiva Kirti Singh, J;Gopal Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh and Gopal Prasad, JJ.—This appeal is directed against the judgment and

order dated 1.3.1995 passed by learned single Judge in CWJC No. 3779 of 1994 whereby the writ petition filed by the petitioner appellant has been dismissed.

2. On behalf of the appellant Mr Sukumar Sinha, Senior Advocate has fairly submitted that the appellant in the capacity of preemptor applicant has lost at all the stages on the finding that the purchaser acquired the status of adjoining raiyat of the vended plot prior to the date of filing application u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as "the Act?"). He indicated that the appellant now cannot raise any issue of fact but this appeal was admitted because of an issue of law. According to learned Counsel, the issue is whether the crucial date for acquiring status of an adjoining raiyat for defeating a preemption application shall be the date of sale and purchase of the land sought to be reconveyed or the date of application u/s 16(3) of the Act.

3. Learned Counsel for the appellant has drawn our attention to a Full Bench judgment of this Court in the case of Ram Chandra Srivastava v. Prasidh Narain Singh reported in 1970 PLJR 579. That judgment clearly lays down the law that "until the proper application accompanied by the requisites is made, the right of

the co-sharer or the raiyat of the adjoining land to obtain a reconveyance of the transferred land is inchoate and unperfected and such a right can legitimately be defeated by reason of an event happening subsequent to the transfer, the effect of which may be that the person against whom the right of reconveyance is sought to be enforced is no more an person other than a co-sharer or a raiyat of the adjoining land."

4. An attempt was made to contend that the subsequent event must include not only the execution of a subsequent deed of transfer but also its registration because Section 47 of the Indian Registration Act has not been considered or mentioned in the aforesaid judgment of the Full Bench. On this ground, an effort was made to persuade us to interfere in the matter because in the present case, the purchaser acquired the status of an adjoining raiyat through a subsequent sale deed which was executed prior to the application u/s 16(3) of the Act but registered about 10 days later.

5. Learned Counsel for the appellant has also referred to a Division Bench judgment in the case of Upendra Thakur and Others Vs. The State of Bihar and Others, . That Division Bench judgment has taken note of the legal position that law is well settled that once a document of sale deed has been registered, its validity dates back to the date of its execution. That judgment also takes notice of the Full Bench judgment in the case of Ram Chandra Srivastava v. Prasad Narain Singh (supra) but the citation of that judgment suffers from a typographical error inasmuch as instead of 1970 PLJR 579, the report gives the citation as 1970 BLJR 579. However, the law settled by the Full Bench has been considered and followed without any reservation and it was held that since the purchasers had become adjoining raiyats with respect to the vended plot before the presentation of the preemption application hence, they could defeat the claim of preemption.

6. In our considered view, this appeal is bound to fail in view of settled proposition of law noticed above. The appeal is accordingly dismissed but without costs.