

(2014) 12 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15849 of 2010

Shubhash Yadav

APPELLANT

Vs

Priyabrat Yadav

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2014) 12 PAT CK 0019

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Advocate : Yogendra Prasad Sinha, Advocate for the Appellant; Suraj Narain Yadav and Ashok Kumar, Advocate for the Respondent

Judgement

Hemant Kumar Srivastava, J.—Heard learned counsel for the petitioners as well as learned counsel, appearing for the respondents.

2. Petitioners are aggrieved by order dated 10-12-2007 passed by learned Sub Judge-III, Saharsa in Title Suit No. 107 of 2003 by which and whereunder, he rejected the petition filed by petitioners under Section-43 of Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 as well as under Section- 9 of the CPC and accordingly, refused to dismiss the suit on the point of maintainability.

3. It is an admitted fact that one, Kunjlal Sah had four sons. Kunjlal Sah died in the year, 1968 and after his death; his four sons partitioned the ancestral property sometime in the year, 1975. The disputed plots fell in the share of Toffi Sah and Rashiklal Sah, who later on, executed a registered sale deed on 25-04-2001 in favour of the petitioners. After execution of the aforesaid registered sale deed, respondent No. 1 filed a petition under Section- 16(3) of Ceiling Act before DCLR claiming right of pre-emption on the disputed plots. The aforesaid petition of respondent No. 1 was allowed by the competent authority

and, thereafter, petitioners filed appeal against the order of the competent authority and the said appeal is still pending. However, in the meantime, Kamal Sah and Khushilal Sah filed Title Suit No. 75 of 2001 against Toffi Sah and Rashiklal Sah as well as petitioners for cancellation of sale deed dated 25-04-2001 and for partition of ancestral property. According to petitioners, the above-said Title Suit No. 75 of 2001 was compromised and subsequently, 7 1/2 Katha of land was allotted to Kamal Sah who later on, sold the aforesaid 7 1/2 Katha of land to respondent No. 18 Sikandar Yadav but according to respondent No. 1, the above-said Title Suit No. 75 of 2001 was dismissed on 16-08-2003 and Kamal Sah without having got any right, title and interest of the suit land, sold 7 1/2 Katha of land to respondent No. 18 namely, Sikandar Yadav. However, respondent No. 1 filed present Title Suit No. 107 of 2003 seeking relief for declaration of sale deed No. 528 dated 11-01-2003 said to be executed by Kamal Sah and Khushilal Sah in favour of respondent No. 18, as null and void and not binding upon him. During pendency of the aforesaid suit, on 28-11-2006, a petition under Section-43 of Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 read with Section- 9 of the CPC was filed on behalf of the petitioners, praying therein to dismiss Title Suit No. 107 of 2003 on the ground of maintainability. The said petition was rejected by the learned court below passing impugned order dated 10-12-2007 against which, this writ petition has been filed.

4. Learned counsel, appearing for petitioners submits that admittedly, respondent No. 1 claimed his preemptory right in respect of 14 Katha of land and the matter in ceiling appeal is still pending and it is also an admitted position that sale deed No. 528 dated 11-01-2003 covers 7 1/2 Katha of lands of above-said 14 Katha of lands. Therefore, issues in both the cases are almost similar and furthermore, Section 43 of Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 says in very clear terms that no civil court shall have jurisdiction to settle, decide or deal with any question, which is by or under this Act, required to be settled, decided or dealt with by the Board of Revenue. He further submitted that when the question of maintainability was raised before the learned court below, the learned court below ought to have decided the aforesaid dispute as preliminary issue but the learned court below committed error in passing the impugned order, which cannot sustain in the eye of law.

5. On the other hand, learned counsel, appearing for respondent No. 1 refuted the above-said submissions, arguing that the learned court below rightly rejected the prayer of the petitioners. He submits that in ceiling appeal, the execution of sale deed dated 25-04-2001 is involved whereas; in present case, i.e. Title Suit No. 107 of 2003, the execution of sale deed dated 11-01-2003 is involved and separate issues are pending before both the above-said courts.

6. Admittedly, in ceiling case, respondent No. 1 claimed his preemptory right whereas; in Title Suit No. 107 of 2003, he has claimed for declaration of sale

deed dated 11-01-2003 as null and void. It is not in dispute that no court, except civil court, can declare a document as null and void and therefore, ceiling authority has got no jurisdiction to declare sale deed dated 11-01-2003 as null and void. Moreover, the execution of sale deed dated 11-01-2003 is not the subject matter of ceiling case and therefore, I do agree with the submissions of learned counsel for respondent No. 1 that the issues, involved in both the lis are quite different.

7. Accordingly, this writ petition stands dismissed on admission stage itself.

8. However, petitioners may raise the aforesaid issue at the time of final argument and if, they do so, the learned court below shall decide the aforesaid issue on its own merit without being prejudiced by this order.