(2009) 01 PAT CK 0062

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7279 of 1990

Smt. Devanti Devi APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Citation : (2009) 57 BLJR 858

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Subhash Chandra Bose, for the Appellant; Pramod Kumar, for the Respondent

Final Decision : Allowed

Judgement

A.K. Tripathi, J.—Order dated 19.9.1990, Annexure-3 to the writ application, passed by the Additional Member, Board of Revenue, in revision application filed by respondents No. 7 and 8 is now being challenged by the petitioner in the present writ application. The revisional order has set aside the two orders earlier passed in favour of the petitioner by respondents No. 3 and 4 namely, Additional Collector and Deputy Collector, Land Reforms, respectively.

2. A sale deed was executed on 10.11.1984 by respondent No. 5 namely, Mostt. Savitri Devi. She sold 0.04 decimal of land in Plot No. 1454 and 0.04 decimal of land in Plot No. 2229 from Khata No. 67 in Village Ajaypur, Police Station - Noorsarai, District - Nalanda in favour of respondent No. 6. The sale deed was registered on 16.12.1985.

3. On 18.1.1986 respondent No. 6 namely, Dewan Mahto executed a deed of gift in favour of his daughter-in-law, the present petitioner. The gift was to the extent of 0.1 decimal of land including 0.8 decimal of land purchased from Mostt. Savitri Devi. It is stated by the petitioner that out of love and affection the father-in-law, respondent No. 6, bonafidely executed the deed of gift on 18.1.986 to settle the issue for future. On 18.1.1986, the day the gift was executed, respondent Nos. 7

and 8 namely, Bhola Pandey and Ganga Pandey filed an application before the Deputy Collector, Land Reforms, Biharsharif u/s 16(3) of the Ceiling Act claiming pre-emption of land against respondent No. 6, the father-in-law of the petitioner and respondent No. 5 the vendor on the ground that they were co-sharers and adjoining raiyats. In the application for preemption the petitioner was not made a party initially for the reasons best known to the private respondents No. 7 and 8 but subsequently on 26.5.1986 petitioner too was added as a party in the pre-emption application.

4. Stand of the private respondents No. 7 and 8 before the Deputy Collector, Land Reforms was that the deed of gift executed in favour of the petitioner by her father in law was a collusive document and it was done to defeat the claim of the private respondents u/s 16(3) of the Act. The Deputy Collector, Land Reforms passed an order dated 30.9.1986 holding the gift made in favour of the petitioner to be bonafide and did not find any merit in the claim of the private respondents. The order therefore came to be passed in favour of the petitioner which is annexure-1 to the writ application.

5. An appeal against the order contained in annexure-1 was filed. The Additional Collector, Nalanda after hearing the parties and perusing the documents and evidence furnished by both the sides, dismissed the appeal upholding the order passed by the DCLR. The order of the Additional Collector dated 26.9.1989 is annexure-2 to the writ application.

6. Private respondents No. 7 and 8 filed a revision application before the Member, Board of Revenue which was finally heard by Additional Member, Board of Revenue who by order dated 19.9.1990 allowed the revision application and set aside both the orders passed by the courts below namely, annexures-1 and 2. Opinion of the Additional Member, Board of Revenue was that the gift deed was executed on the same date when the application u/s 16(3) of the Ceiling Act was filed, to defeat its object. The petitioner therefore now challenges the revisional order which is annexure-3 to the writ application.

7. Submission of the learned Counsel appearing on behalf of the petitioner is that the pre-emption being a weak right it was the duty of the private respondents to prove that the gift deed in question was a sham document and the same could be ignored. But in absence of any evidence having been tendered at any of the forum, the Additional Member, Board of Revenue has been carried away merely by the fact that the gift deed in question coincided with the date of filing of the application u/s 16(3) of the Ceiling Act. Merely because the deed of gift coincided with the application for pre-emption it does not mean that it becomes a sham transaction. Not only this, it is well established in law that parties do have liberty to take such steps to defeat a claim of pre-emption by any valid legal means and even if for the sake of argument it is accepted that the gift deed was executed for the above reason it has the sanction and backing of law.

8. In support of the above submission learned Counsel for the petitioner relies on

a decision rendered in the case of Mir Rafique v. Additional Member, Board of Revenue, Bihar and Ors. 1980 PLJR 432. Reliance has been placed on para 9 of the decision.

9. From perusal of the judgment in question and on reading of the impugned revisional order the Court seems to be in agreement with the submission made on behalf of the petitioner. The law on this issue being what it is and in absence of categorical evidence or finding that the gift deed executed on the date of the pre-emption application i.e. 18.1.1986, the same cannot be held to be a farji or sham document. If the private respondents have failed to establish the above facts no presumption can go into the said transaction merely because they coincided.

10. In view of the above and also keeping in mind that pre-emption being a weak right and the two courts below have held in favour of the petitioner considering the evidence and material on record, the petitioner has made out a case for interference.

11. The impugned order dated 19.9.1990 contained in annexure-3 is quashed and the writ application is allowed.