

(1985) 01 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 3547 of 1979

Smt. Priyambada Devi and Another	APPELLANT
Vs	
The Additional Member, Board of Revenue and Others	RESPONDENT

Date of Decision : 22-01-1985

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)
Constitution of India, 1950 — Article 226, 227

Citation : (1985) PLJR 662

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.K. Choudhary, J

Bench : Division Bench

Advocate : Gyan Sudha Mishra and Mrs. Mridula Mishra, for the Appellant;

Judgement

S.K. Choudhary, J.—This writ application has been filed under Articles 226 and 227 of the Constitution of India challenging the orders contained in Annexures, 1, 2 and 3.

Annexure-1 is the order of the Land Reforms Deputy Collector, Bhagalpur (respondent No. 3) dated 19th June, 1976 allowing the application for pre-emption filed u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1956 (hereinafter called "the Act"); Annexure-2 is the appellate order dated 18.4.1978 passed by the Additional Collector, Bhagalpur (respondent No. 2) dismissing the appeal filed by the petitioners and Annexure-3 is the order of the Additional Member Board of Revenue dated 11.4.1979 dismissing the revision application. Hence, the present writ application has been filed. For proper appreciation of the points raised in this writ application, it is necessary to state here the relevant facts.

Petitioner No. 1 purchased 00-13 decimals of land appertaining to old khata No. 232, khesra No. 509 (new khata No. 1013, plot No. 844) of village Gobrain, police-station Shahkund district Bhagalpur under a sale-deed executed on 19th June, 1974 and registered on 16th July 1974. Respondent No. 4 Jagdish Prasad

Sukla filed an application for pre-emption u/s 16(3) of the Act on 7th August, 1974 claiming himself to be an adjacent raiyat. Petitioner No. 1 filed objection disclosing that she had ceased to have any interest in the property in question as she has gifted the property to her daughter (petitioner No. 2). She also alleged that the pre-emptor was not an adjacent raiyat. It is not disputed that petitioner No. 1 has gifted the property to petitioner No. 2 as disclosed in the objection petition filed by petitioner No. 1. This deed of gift was executed on 26.7.1974 and registered on 12.10.1974.

2. The Land Reforms Deputy Collector dismissed the pre-emption application by his order dated 19th May, 1975 on the ground that the donee had not been made a party and, therefore, the pre-emption application was not maintainable. He, however, observed that the pre-emptor may file a fresh application after impleading the donee as a party. There was an appeal against the said order by respondent No. 4 and the Additional Collector remanded the case to the Land Reforms Deputy Collector and directed him to add the donee as a party in the case and thereafter proceed in accordance with law. This order is dated 5.6.1975 as contained in Annexure-5. Thereafter the Land Reforms Deputy Collector passed a fresh order after hearing the parties on 19.6.1976 (Annexure-1). By the fresh order he allowed the pre-emption application about which I have already stated above and the appellate authority and the revisional authority dismissed the appeal and revision under Annexures 2 and 3, respectively.

3. Mrs. Gyan Sudha Mishra, learned Counsel in support of this application contended that the order contained in Annexure-1 passed by the Land Reforms Deputy Collector and the appellate and the revisional orders passed by respondents Nos. 2 and 1, respectively affirming the same are illegal as Section 16(3) of the Act has no application to a deed of gift executed before the application for pre-emption was filed and though registered during the pendency of the proceeding under the Act. She further contended that there was no allegation that the gift in question executed by petitioner No. 1 in favour of petitioner No. 2 was a sham and farzi transaction and, therefore, also Section 16(3) has no application. Her further contention was that petitioner No. 2 was added in the proceeding after the appeal from the original order was allowed under Annexure-5 dated 5.6.1975 with a direction to respondent No. 3 to add petitioner No. 2 as a party to the proceeding and decide the case afresh in accordance with law. Thus the audition, according to the learned Counsel, being much beyond the period of limitation, the application for pre-emption should not have been allowed by the authorities under the Act.

4. In support of her contention learned Counsel cited two Bench decisions of this Court in Smt. Sudama Devi and Others Vs. Rajendra Singh and Others, & Abdullah Mian Vs. Jodha Raut and Others, : Abdullah Mian Vs. Jodha Raut and Others,

In Abdullah Mian's case (supra) the facts were quite distinguishable. It is a case where the second transfer was complete in all respects before an application u/s

16(3) of the Act was filed. Therefore, it is a case which comes within the first category of cases as stated in *Ramchandra Yadav vs. Anutha Yadav & others* (1971 B.L.J.R. 994), which is again a Bench decision of this Court. This later Bench decision has pointed out three categories of cases while dealing with the applicability of section 16(3) of the Act. The first category of cases are the cases where the second transfer deed has become complete in all respects before filing the application u/s 16(3) of the Act. In such a case the pre-emptor could not be permitted to ignore the second transfer deed and file an application for pre-emption against the first transfer deed. The second category of cases are the cases where the second transfer deed has been executed and registered after the filing of the application u/s 16(3) of the Act. In that case the second transferee would be hit by the doctrine of lis pendence and the third category of cases are the cases "where the execution of the second transfer deed has been made before the filing of an application u/s 16(3) of the Act, but registered thereafter. This decision of *Ramchandra Yadav's* case (supra) was a case of third category, namely, that the second transfer deed was executed before the application was filed u/s 16(3) of the Act, but registered during the pendency of the pre-emption proceeding, and the allegation of the pre-emptor was that the second transfer deed was sham and farzi. It is under these circumstances and, in my opinion, rightly the second transferee was allowed to be made a party as the allegation of sham and farzi nature of the second transfer deed can only be decided in presence of the second transferee whom the High Court while deciding the writ application directed him to be added as a party to the pre-emption proceeding and remanded the case to the lowest authority to decide the same afresh, in accordance with law.

I may state here that *Ramchandra Yadav's* case was noticed in a latter Bench decision of this Court in *Smt. Sudama Devi and Others Vs. Rajendra Singh and Others*, in which there is elaborate discussion of that case. The two writ applications considered in *Smt. Sudama Devi's* case (supra) were again the cases of the third category as laid down in *Ramchandra Yadav's* case (supra) inasmuch as the second transfer deeds though executed before, but registered after the applications u/s 16(3) of the Act were filed. There also the second sale-deeds were alleged to be farzi and sham. It, however, goes without saying that if the authority concerned under the Act decides the allegations of sham and farzi nature of the second sale-deeds as incorrect, then the pre-emption application would fail, as the title under the second transfer-deeds on registration of the documents would relate back to the date of the execution of these documents.

A question may still arise as to what would happen in a case where the second transfer is found to be not a sham and farzi transaction and the second transferee, who has been added as a party beyond the period of limitation counted from the date of registration of the second transfer deed, is found to be not an adjacent raiyat or co-sharer, but the pre-emptor establishes that he is an adjacent raiyat and entitled to be pre-empted. It is in such a case that the question of limitation may be relevant to decide as to whether a decision can be

given in favour of the pre-emptor or that the application for pre-emption would not succeed because of the bar of limitation. The pre-emptor in such a case would, in my opinion, be entitled to succeed only when the second transferee has been added in the proceeding within the prescribed period of limitation counted from the date of registration of the second transfer deed, and the application for preemption having fulfilled all the conditions laid down in that Act and the Rules made thereunder in relation to the second transfer-deed.

5. In view of the discussions made above, it is manifest that the present case under consideration in this writ application is a case of the third category as aforesaid.

6. As already stated above the second transfer deed in the present case is not a sale-deed, but a deed of gift and on its registration it would be an operative document from the date of execution, which is a date prior to the filing of the pre-emption application. That being so, the Explanation to Section 16(1) of the Act is attracted. Under it a deed of gift has been excluded and would not amount to "transfer" for the purpose of Section 16 of the Act. The Explanation to Section 16(1) of the Act reads thus:--

For the purposes of this section "transfer" does not include inheritance, bequest or gift.

In view of this exclusion under the Explanation aforesaid, a deed of gift is excluded from the preview of Section 16(3) of the Act. If, however, such a deed of gift would have been challenged as a sham and farzi transaction and the authority under the Act would have found the allegation to be correct, then for all practical purposes the said deed of gift would be a document non est in the eye of law and the pre-emption application would in such a case proceed against the original purchaser. But here unfortunately for the pre-emptor he has not alleged the sham and farzi nature of the deed of gift. It has, therefore, to be taken as a fact that the said document if executed and registered in conformity with law would be a valid document and for such a document the legislature has mandated exclusion of the applicability of Section 16(3) of the Act. This conclusion does not require support of any decision as the section itself is clear and explicit. In view of this exclusion it has to be held that the order of the Land Reforms Deputy Collector and the appellate as also the revisional orders are all illegal and liable to be set aside. Those authorities should have held that the deed of gift not having been challenged as a sham and farzi document, the pre-emption application u/s 16(3) of the Act was not maintainable.

So far as the point of limitation raised by learned Counsel for the petitioners is concerned, it would not arise in the present case in view of the conclusion arrived at above, namely, that Section 16(3) of the Act has no application to the deed of gift under consideration.

In the result, the application is allowed and the orders contained in Annexures 1, 2 and 3 are hereby quashed. In the circumstances of the case, there will be no

order as to costs.