

(1981) 01 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 508 of 1979

Smt. Rama Devi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-01-1981

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)

Citation : (1981) 29 BLJR 448

Hon'ble Judges : H.L. Agarwal, J

Bench : Single Bench

Judgement

H.L. Agarwal, J.—This writ application arises out of a proceeding initiated by respondent No. 5 u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act with respect to transfer of certain lands situated in mouja Govindpur Govind under Khata Nos. 47 and 48 by a registered deed of sale dated 8-9-1976 in favour of the petitioner. The claim was made on the ground of respondent No 5 being an adjacent raiyat to the vended lands. In her show causa the petitioner, inter alia, took a plea that respondent No. 6, the vendor, was her benantidar and that he instead of executing a deed of relinquishment in her favour, executed a deed of sale. Therefore, in the eyes of law the transaction was not a transfer of ownership and, the claim for pre-emption was not maintainable. The Deputy Collector, Land Reforms, Naugachhia (respondent No. 4 however, overruled the plea of the petitioner by his order dated 23-9-1977 Annexure 1 allowed the application for pre-emption. On an appeal, the Additional Collector of Bhagalpur by his order dated 8-7-1978 (Annexure 2) upset the order of the Deputy Collector and rejected the claim for pre-emption. Respondent No. 5 then went to the Board of Revenue, and the learned Additional Member of the Board of Revenue by his order dated 23-12-1978 (Annexure 3) again decided the matter in his favour. The petitioner has, accordingly come to this Court.

2. Mr. Balbhadra Prasad Singh appearing in support of this application has

emphasised the same point which was agitated by the petitioner before the authority, namely, that the nature of the transaction was not really a sale.

3. Before proceeding to discuss the rival contentions advanced by the learned Counsel for the parties, I may notice some of the findings of facts recorded by the revenue authorities, namely, (i) the petitions has been found to be in possession, although adverse, over the lands in dispute right since 1965 and her possession has been recorded also in the survey records as Gasbnn. Kabja (ii) although respondent No. 6 is the recorded raiyat, rents have all through been paid by the petitioner through her husband, and (iii) all the relevant documents, namely, the documents of recent title were also produced on behalf of the petitioner.

It is not in dispute that the tenor of the document in question is of a deed of sale, but the argument is hat notwithstanding the same, if the petitioner is held to be the real owner and the vendor her benamidar, then the translation cannot be said to be in the eye of law a transaction" of sale. The argument as such cannot be disputed in as much as, according to this very definition of "Sale" is the transfer of ownership of a property. It is also equally well settled that in a case of benami transaction, title always remains with the real owner and the benamidar is only a name lender. In such a case, if the Court can safely come to the conclusion that the ostensible owne is really a benamidar then whatever may be in the nomenclature of the document, it won't amount to a transfer of title by the benamidar in favour of the real owner in as much as the title is always held by him. The revenue. authorities has been greatly obsessed by the fact that that respondent No. 6 chose to execute a document of sale without going deep into the crux of the master and recitly of the law.

4. The other aspect of the matter, although it has not been confessed before me and as it appears to be relevant, is that the scheme of Section 16(3), namely, the rule of pre-emption enshrined therein is to prevent fragmentation of holding, or, for that matter, to consolidate them. Undisputedly, the petitioner is in possession of the lands in question from a very long time, i.e. 1965 and, according to the entries in the survey records, the possession might be even adverse to the real owner. In this case, the recorded entry is almost on the verge of clothing the petitioner with the right of adverse possession, near about the period of limitation being in possession for the period of about 11 years, a question arises as to whether in such a situation, the transaction of sale, which according to the findings of the revenue authorities was executed for the purpose to regularise the situation which existed according to the vendee, should be allowed to be pre-empted by respondent No. 5. In my opinion the period of limitation which has been put in Section 16(3) for making application, namely three months of the date of registration of the - document; is not in keeping with the present situation where the vendee has already been coming into possession of the land for such a long period, and, thus debarring him from raising a proper defence which might be available to him even taking it is merely the possession

of a trespasser in a property constituted suit.

Although all the ingredients of benami have not been recorded which was greatly emphasised by the learned Counsel appearing for the pre-emptor, I find that the revenue authorities have not correctly appreciated the scope of the enquiry in such a case as they have been using very inaccurate expressions in their orders. On that account the petitioner should not suffer. In my considered opinion, the three circumstances mentioned above are quite sufficient to defeat the case of pre-emption of respondent No. 5 which in its own turn is a very weak right.

5. For the discussions made above, I would allow this application and set aside the order of the Board of Revenue and restore, that of the additional Collector. In the circumstances, however, I would leave the parties to bear their own costs.