(2007) 09 PAT CK 0044

In the Patna High Court

Case No : LPA No. 958 of 1998

Tiwari Rai APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 5
Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16, 16(3)
Specific Relief Act, 1963 — Section 31
Transfer of Property Act, 1882 — Section 54, 55, 55(4)

Citation : (2008) 1 PLJR 702

Hon'ble Judges : Barin Ghosh, J;Anwar Ahmad, J

Bench : Division Bench

Advocate : Rajendra Narayan and Gyan Prakash, for the Appellant; Ranjan Kumar for the State and Mr. Awadhesh Kr. Singh for Private Respondent, for the Respondent

Judgement

Barin Ghosh and Anwar Ahmad, JJ.—Pundeo Rai, Shiv Shanker Rai and Indrajit Rai were the co-sharers of two plots of land which they sold under two sale deeds dated 8th June, 1993 and registered on 21st September, 1993 to Raghunath Rai, Baijnath Rai, Gorakh Rai, Mohan Rai and Ragho Rai. The sale deeds in question gave the boundary of the lands sold thereunder and thereby acknowledged that the appellant is an adjacent raiyat of the lands sold. The sale deeds provided that the transfer of lands in question is being effected forthwith, but the entire consideration money the purchasers would pay to the vendors at the time of exchange of the registration slip. On the ground that no consideration was paid the vendors executed a deed of cancellation dated 5th October, 1993 and got the same registered on 6th October, 1993. Thereby the vendors purported to cancel the said two sale deeds.

2. Sub-section (3) of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 is as follows:-

"16(3). (i) When any transfer of land is made after the commencement of this Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document of the transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the sale deed:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten per cent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (i) is pending for decision:

Provided that where the application is rejected, the co-sharer or the raiyat as the case may be, shall be evicted from the land and possession thereof shall be restored to the transferor and the transferee shall be entitled to be paid a sum equal to ten per cent of the purchase money out of the deposit made under clause (i).

(iii) If the application is allowed, the Collector shall be an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21, Rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be followed."

3. Admittedly, none of the purchasers was either a co-sharer or a raiyat of any land adjoining the lands transferred by the said sale deeds and, accordingly, in terms of sub-section (3) of Section 16 of the Act the appellant, as entitle to, filed two applications seeking transfer of the lands in question to him on the terms and conditions contained in the said sale deeds. There is no dispute that those applications complied with the requirements of law as were required to be complied with.

4. The said applications were allowed on 11th March, 1994 by the Deputy Collector, Land Reforms. Admittedly, before Deputy Collector, Land Reforms, the vendors did not appear, while purchasers appeared and held out that they having not paid the agreed consideration, they have not acquired title to the lands in question. The purchasers thereupon filed two appeals against the orders of the Deputy Collector, Land Reforms, which appeals were dismissed by the appellate authority on 30th September, 1994. Before the appellate authority vendors did not appear. Vendors thereupon preferred a revision application before the revisional authority which was dismissed on 17th August, 1996. Before the revisional authority the purchasers did not appear.

5. Two of the vendors, namely, Shiv Shanker Rai and Indrajit Rai thereupon filed a writ petition challenging the orders of Deputy Collector, Land Reforms, the appellate orders as well as the revisional order. The writ petition was allowed on the basis of a judgment of a learned single Judge of this Court rendered in the case of Ram Chandra Singh and Others etc. Vs. Sub-divisional Officer, Hajipur and Others, . This judgment is again based on a judgment of a Division Bench of this Court rendered in Kamaldhari Rai vs. State of Bihar & Ors.; 1979 BBCJ 179. In that case the Division Bench was, in fact, concerned with the question as to whether a pre-emption application is maintainable in respect of a void sale, i.e., a sale effected without permission u/s 5 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. In that case, it was contended by the vendor before the Division Bench that no consideration was paid to him by the purchaser. The purchaser also stated that no consideration was paid to the vendor. The Division Bench, in such circumstances, held that it was not a valid transfer as no consideration money passed between the vendor and the vendee. While, however, stating so, the Division Bench did not look at Section 54 of the Transfer of Property Act. The learned Single Judge in Ram Chandra Singh (supra) though held that the question whether the title from the vendor to the vendee passed on execution and registration of the sale deed, despite non-payment of consideration money, entirety depends upon the intention of the parties by looking at Section 54 of the Transfer of Property Act, but as his Lordship was bound by the aforementioned observation of the Division Bench in Kamaldhari Rai (supra), it was held nonpayment of consideration would make the transfer void.

6. Section 54 of the Transfer of Property Act, 1882 defices sale as follows:-

"54. ''Sale'' defined.-''Sale'' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.-Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of trangible immoveable property takes places when the seller places the buyer, or such person as he directs, in possession of the property.

Contract of sale.-A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself; create any interest in or charge on such property."

7. Therefore, transfer of ownership by sale in terms of the provisions contained in Section 54 of the Transfer of Property Act may be completed when the price therefore has not been paid but has been promised to be paid in future. In such

view of the matter, one is required to look into the sale deed to ascertain as to whether the transfer of ownership was completed at the time of execution and registration of the sale deed on the promise to pay the consideration in future or the transfer was postponed till payment of the consideration.

8. The subject sale deeds are before us.. A look at the sale deeds would amply demonstrate that on execution thereof the entire ownership right of the vendors in the subject lands stood transferred to and vested in the purchasers on the promise made by the purchasers to pay the price therefore at a future date i.e. on the date of exchange of the registration slip.

9. Proceeding on the basis that the price was not paid, we have to gather whether the transfer of ownership by sale could be put to an end by the unpaid seller. Clause (b) of sub-section (4) of Section 55 of the Transfer of Property Act, 1982 is as follows:-

"55. (4). The seller is entitled-

(b). Where the ownership of the property has passed to the buyer before payment of the whole of the purchase money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part, from the date on which possession has been delivered."

10. Clause (b) of sub-section (4) of Section 55 of the Transfer of Property Act makes it clear that the unpaid purchase money forms a charge upon the property in the hands of the buyer as well as a transferee without consideration or any transferee with notice of non-payment for the amount of the unpaid purchase money and, accordingly, the right of the vendor is recognized by the Transfer of Property Act in case of non-payment of the purchase consideration is to sue for the same and to recover the sum by enforcing the charge upon the property sold.

11. In law there is no concept of a deed of cancellation. Cancellation of an instrument can be effected only by a Civil Court under the provisions of Section 31 of the Specific Relief Act, 1963. However, it is doubtful whether even u/s 31 of the Specific Relief Act, 1963 an unpaid vendor can seek to have a sale deed cancelled on the ground of non payment of the consideration money, inasmuch as remedy in such case has been specifically provided in the Transfer of Property Act.

12. In a recent judgment of the Hon''ble Supreme Court in the case of Vidhyadhar Vs. Manikrao and Another, , the Hon''ble Supreme Court has made it absolutely clear that a sale effected on promise to pay consideration in future cannot be put to an end for non-payment of consideration money. The thing that is required to be seen is whether the transfer has taken effect or it stands postponed till the payment of the consideration money. If the sale has taken effect in consideration of promise to pay the consideration money in future, the

sale cannot be avoided for non-payment of the consideration money as was agreed. In such situation, the remedy of the unpaid seller would be to take recourse to law for enforcement of the charge created in the property sold by the Transfer of Property Act itself and that is, by initiating a suit in a Civil Court.

13. In those circumstances, the conclusion would be that the transfers took place on execution and registration of the subject sale deeds, but the vendors are unpaid sellers and the consideration money due to them is charged to the lands sold thereunder.

14. Sub-section (3) of Section 16 of the Bihar Land Ceiling Act requires the pre-emptor to obtain transfer of the land in question on the terms and conditions contained in the sale deed. The Transfer of Property Act and in particular Section 57 thereof authorises a purchaser to remove encumbrances of the property purchased. The charge on the lands in question to the extent of the consideration money payable to the vendors is an encumbrance to the lands in question and, accordingly, the vendors are entitle to receive the consideration money and the pre-emptor is also entitled to pay the same to the vendors in order to remove encumbrances over the lands in questions. At the same time it is the purchasers who are required to convey the lands in question to the appellant, pre-emptor, u/s 16(3) of the Bihar Land Ceiling Act. The question is who, in the circumstances, should be entitle to additional 10% of the sale consideration money deposited by the appellant. Although sub-section (3) of Section 16 of the Bihar Land Ceiling Act does not direct payment of the said additional 10% of the consideration money, when the application for pre-emption is allowed, but sub-rule (6) of Rule 19 of the Rules framed under the Bihar Land Ceiling Act authorises the transferee to withdraw the money so deposited by the pre-emptor. In other words, in terms of the said Rule the additional 10% of the consideration money, the transferee is entitled to withdraw. This entitlement, being not an endowment of a legal right, having regard to the facts and circumstances of the case that the purchasers, as admitted by them, did not pay the consideration money to the vendors, justice would subserve in the event the vendors are allowed to withdraw that additional 10% of the consideration money. In the circumstances, we allow the appeal, set aside the judgment and order under appeal and at the same time dismiss the writ petition. Inasmuch as the transfer deeds have been executed by the Deputy Collector, Land Reforms, in favour of the appellant pertaining to the said lands, there is no need to issue any direction for execution of such sale deeds but we direct the Deputy Collector, Land Reforms, to pay to the vendors the consideration money plus the additional 10% of the consideration money as was deposited by the appellant while making the applications for pre-emption together with all interest accrued thereon, if any, within a period of one month from the date of service of a copy of this order upon the Deputy Collector, Land Reforms.

