
(2008) 03 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 1728 of 2000 and 3500 of 2006

Udai Narain Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Citation : (2008) 03 PAT CK 0039

Final Decision : Allowed

Judgement

Jayanandan Singh, J.—C.W.J.C.No. 1728 of 2000 was filed by the original pre-emptor against common order of learned Additional Member Board of Revenue passed in Revision Case Nos. 167 and 168 of 1996 allowing the revision applications of the purchaser, setting aside common order of the Additional Collector, Kaimur (Bhabua) passed in Land Ceiling Appeal Nos. 1 and 2 of 1994-95 in favour of the pre-emptor and restoring the common order of the D.C.L.R., Bhabua passed in Ceiling Case Nos. 4 and 5 of 1993-94 dismissing the pre-emption application of the petitioner. Subsequently, in the light of the office objection with regard to the maintainability of one writ application against common order passed by the learned Additional Member Board of Revenue in two revision cases, the pre-emptor petitioner filed C.W.J.C.No. 3500 of 2006 against the same order passed by the learned Additional Member Board of Revenue in Revision Case No. 168 of 1996. As the said C.W.J.C.No. 3500 of 2006 was in effect against the same order, both the cases have been heard together and are being disposed of by this common order.

2. The original pre-emptor petitioner having died during the pendency of the writ application, his heirs have been substituted as petitioner Nos. 1 to 5 to C.W.J.C.No. 1728 of 2000.

3. Facts of the case lie in a narrow compass. Respondent No. 4 purchased two portions of same plot No. 1023 of khata 158 of village Gorasara (Kaimur) from respondent No. 5 by virtue of two sale deeds executed and registered on 12.9.1991. Plot No. 1023 comprised of a total area of 70 decimals, out of which,

by the first sale deed the purchaser respondent No. 4 purchased 5 1/3 decimals and by the second sale deed he purchased 18 decimals of land. Thus, by two sale deeds registered on the same day he purchased total area of 23 1/3 decimals of land of plot No. 1023 from respondent No. 5. The pre-emptor petitioner claimed himself to be raiyat of plot No. 899 situated adjoining south to plot No. 1023, portions of which were vended by respondent No. 5 to respondent No. 4. He also claimed that the eastern portion of plot No. 1023 belonged to his daughter-in-law and adjoining western portion of the same plot belonged to his sister. Thus, pre-emptor petitioner, claiming himself to be adjoining raiyat of the vended portions of plot No. 1023, filed two pre-emption applications on 17.12.1991, namely, pre-emption application No. 4 of 1993-94 and pre-emption application No. 5 of 1993-94 before the D.C.L.R., Bhabua in respect of said two sale deeds. Pre-emptor petitioner also deposited the consideration money together with 10% extra in respect of two sale deeds and also sent registered notices of his application to the respondent purchaser as well as to the vendor.

4. In both the cases, report was submitted by the Anchal Adhikari, finding the claim of the pre-emptor petitioner of being adjoining raiyat as true. It was also mentioned in the report that respondent No. 4 did not have his land adjoining to plot No. 1023. The pre-emption applications were finally heard by learned D.C.L.R., Mohania as the case was transferred to his court after creation of Mohania Sub-Division. Learned D.C.L.R., Mohania, however, dismissed the pre-emption applications by common order dated 9.12.1994 (Annexure-1) on the ground that in an earlier 145 Cr.P.C. proceeding between the vendor respondent No. 5 and the pre-emptor petitioner, the pre-emptor petitioner had accepted that he had no concern with the land and the same belonged to the vendor, namely, Ramanuj Tiwary.

5. The pre-emptor petitioner filed two appeals against the said common order of the D.C.L.R., Mohania rejecting his pre-emption applications. Both the appeals, namely, Ceiling Appeal Nos. 1 and 2 of 1994-95 were heard together and disposed of by common order dated 28.2.1996, by which the Additional Collector, Kaimur at Bhabua allowed both the appeals of the pre-emptor petitioner and set aside the order of the D.C.L.R., Mohania.

6. The purchaser respondent No. 4 moved the Board of Revenue through Revision Case Nos. 167 and 168 of 1996 against the common order of the Additional Collector allowing the appeals of the pre-emptor petitioner. Both the revision applications of the purchaser respondent No. 4 were heard and disposed of by learned Additional Member Board of Revenue vide order dated 17.6.1997 allowing the revision applications and setting aside the appellate order of the Additional Collector. Learned Additional Member Board of Revenue found that the purchaser himself had become adjoining raiyat of each other plot purchased by him by the two sale deeds on the same day. Relying upon the judgment of this Court in the case of Ram Roop Yadav Vs. The State of Bihar and others, , the learned Additional Member Board of Revenue held that the purchaser having

purchased two pieces of land by two sale deeds adjoining to each other had become adjoining raiyat of each other piece of land and thus he could successfully defeat the claim of pre-emption made by another adjoining raiyat of the plot. He also found that the pre-emption application was filed after much delay after expiry of the period of limitation without any prayer for condonation of delay. With the above findings, both the revision applications of the purchaser respondent No. 4 were allowed and the appellate order of the Additional Collector in favour of the pre-emptor petitioner was set aside. As aforesaid, the pre-emptor petitioner has filed these two writ applications against the common order passed by the Additional Member Board of Revenue in the two revision cases of the purchaser respondent No. 4.

7. C.W.J.C.No. 1728 of 2000 was initially heard by a learned single Judge on 12.5.2006. Before learned single Judge, learned Counsel for the petitioner had pointed out that the learned Additional Member Board of Revenue had although noticed the ratio laid down by the Division Bench of this Court in the case of Ram Roop Yadav (Supra) but had failed to consider the exception to the ratio laid down by the Division Bench in paragraph 4 of the judgment. Learned single Judge also noticed another Division Bench judgment rendered in the case of Nathuni Mahto v. State of Bihar 2004(2) PLJR 334 which was also rendered in similar facts and circumstances of the case. The said judgment in the case of Nathuni Mahto (Supra) was rendered in the light of the ratio laid down in the case of Ram Roop Yadav (Supra). However, learned Counsel for the petitioner submitted that in the case of Nathuni Manto (Supra) the Division Bench had not taken into account the observations made in paragraph 4 of the earlier Division Bench judgment rendered in the case of Ram Roop Yadav (Supra). Learned single Judge noticed that the pointed attention of the aforesaid observation in paragraph 4 of the judgment in Ram Roop Yadav (Supra) was not brought to the notice of the learned Judges in Nathuni Mahto (Supra). Learned single Judge further noticed that such cases u/s 16(3) of the Act where there is one or more purchaser, or one or more than one pre-emptor, keep on coming up. In the circumstances, learned single Judge by order dated 12.5.2006 referred the matter to a Division Bench for laying down the law with perfect clarity. Thus, the matter was listed before the Division Bench and has come up for hearing before us. In view of the order passed in C.W.J.C.No. 1728 of 2000, by order dated 11.12.2007 C.W.J.C.No. 3500 of 2006 was also referred by a learned single Judge to a Division Bench for consideration of desirability of hearing the matter along with C.W.J.C.No. 1728 of 2000. Both the matters having been listed before this Bench, the same were taken up together and were heard finally for disposal by a common order.

8. We have heard Mr. V. Nath, learned Counsel for the petitioners in both the cases and Mr. V.K. Bhagat, learned Counsel for the State. Learned Counsel, who had appeared for respondent No. 4 before learned single Judge on 12.5.2006 and had filed counter affidavit on behalf of respondent No. 4, did not appear to assist this Court inspite of repeated callings.

9. Learned Counsel for the petitioner first pointed out that the finding of the learned Member Board of Revenue with regard to the pre-emption application being barred by limitation was an error of record. The sale deeds were executed and registered on 12.9.1991. Pre-emption application was filed on 7.12.1991 i.e. within ninety days before D.C.L.R., Bhabua. However, Mohania Sub-Division was created on 29.12.1991 and therefore pre-emption applications were transferred to the court of D.C.L.R., Mohania where it was taken up for the first time on 8.9.1993. Learned D.C.L.R. noticed that applications were filed in time and ordered the same to be registered. A supplementary affidavit has been filed on behalf of the petitioner annexing relevant documents and ordersheet which establish the above facts.

10. On the issue of claim of being adjoining raiyat set up by the purchaser, learned Counsel for the petitioners first of all referred to the judgment of the Division Bench in the case of Ram Roop Yadav (Supra). The facts of the case disclose that two sale deeds were executed in favour of the purchaser petitioner on the same day by the vendor. In respect of the two sale deeds, two pre-emption applications were filed by separate set of pre-emptors. The claim was resisted by the purchaser on the ground that by dint of purchase of adjoining two plots the purchaser himself had become adjoining raiyat of each and other plot.

11. The applications of the pre-emptors were dismissed by the D.C.L.R. The appeals of the pre-emptors were allowed and revision of the purchaser was dismissed by the Board of Revenue. Thus the purchaser had moved this Court in writ jurisdiction challenging the order of the Board of Revenue and the Additional Collector passed in appeal. The Division Bench of this Court in its judgment found that the plea of the purchaser of having become adjoining raiyat of each and other plot was a valid claim and the purchaser could validly resist the claim set up by the two pre-emptors separately on the ground of having become adjoining raiyat of each and other plot vended by two separate sale deeds. The plea of the pre-emptors that the purchaser had purchased two plots only for the purpose of defeating the claim of pre-emption was negated by this Court. The Division Bench held that the pre-emption was a weak right which could be defeated by any legitimate means by the purchaser.

12. However, in paragraph 4 of the judgment the Division Bench clearly laid down the distinction between a case of applications filed for pre-emption by two different persons for two plots purchased by separate sale deeds and a case of pre-emption application by the same person or same set of persons against two plots purchased by separate sale deeds by the purchaser on the same day claiming to be adjoining raiyat of both plots. Paragraph 4 of the judgment in this regard, may be usefully quoted here:

4. In the instant case, the two sale deeds having been executed in respect of Plot Nos. 18 and 22 in favour of the petitioner, after the registration of two deeds the petitioner becomes holder of two adjoining plots. In this background, when two applications for pre-emption were filed by two separate sets of pre-emptors in

respect of two plots transferred, the petitioner can legitimately resist the claim in both the applications that he himself is a holder of the adjoining plot. In other words, the petitioner in application for pre-emption in respect of plot No. 18 filed by respondent Nos. 5 to 7 of C.W.J.C.No. 1939 of 1980 can take a defence that he is the holder of adjoining plot No. 22, as such application for pre-emption should not be allowed. Same plea is available to him in the other application for pre-emption in respect of Plot No. 22 filed by respondent Nos. 5 and 6 of C.W.J.C.No. 1940 of 1980, that he himself is the holder of adjoining Plot No. 18. Perhaps, the matter would have been different if same person or same set of persons had filed the two applications for pre-emption claiming to be adjoining raiyats of both the plots purchased by the petitioner.

(underlining is mine)

13. Learned Counsel for the petitioner further placed before us the case of Nathuni Mahto, first decided by a learned single Judge (reported in 2003(4) PLJR 553). In the similar facts and circumstances learned single Judge dismissed the writ application of the purchaser noticing the fact that the purchaser had purchased two portions of the same plot on the same day from the same vendor by two separate sale deeds. The pre-emptor claiming to be adjoining raiyat of the whole plot (obviously including two portions of the plot sold) filed pre-emption application which was allowed by all the courts under the Act. Writ application of the purchaser was also dismissed by the learned single Judge holding that by such a purchase the purchaser cannot claim to be adjoining raiyat of each and other, vended lands. Learned single Judge held that in order to defeat the claim of pre-emption the purchaser should have been co-sharer or adjoining raiyat from before and not by simultaneous purchase. Learned single Judge further observed as follows:

...The act of the purchaser in the instant case by splitting the same plot into two is a mala fide act to defeat the claim of pre-emption and is intended to defeat the intention, aim and object of the legislature and almost verges on fraud. In so far as the judgment in the case of Ram Roop Yadav (Supra) is concerned, the same was rendered in view of the facts and circumstances of that case which stood on a different footing.

14. The claim of the purchaser of being a landless person having been negated by all the three courts under the Act was also not accepted by the writ Court.

15. However, the said judgment of learned single Judge in the case of Nathuni Mahto (supra) was appealed against by the purchaser. The Division Bench of this Court, referring to the ratio of the earlier Division Bench judgment rendered in the case of Ram Rup Yadav (supra), allowed the appeal of the purchaser and set aside the order of the learned single Judge passed in the case.

16. Learned Counsel for the petitioner has submitted that while allowing the appeal of Nathuni Mahto, the Division Bench relied upon the ratio of the judgment rendered by this Court in the case of Ram Roop Yadav (Supra) without

noticing the distinction made by the Division Bench in paragraph 4 of the judgment in Ram Roop Yadav's case (supra), as quoted and highlighted above. He further submitted that if two small pieces of the same plot are purchased by one purchaser from the same vendor on the same day, then claim of having become adjoining raiyat of each and other plot cannot be available to the purchaser against claim of pre-emption set up by an adjoining raiyat of the whole plot or of the two pieces of land vended by the two sale deeds. Learned Counsel for the petitioner further submitted that the purchase of two small pieces of land of the same plot by two sale deeds from the same vendor on the same day, obviously discloses mala fide intention of the purchaser to defeat the provisions of the Act. He submitted that if the vendor and the vendee are the same and the land transferred by two sale deeds are reasonable small in area, there can be no legitimate reason for the vendee to purchase the same by two separate sale deeds except an attempt to nip in bud any claim of pre-emption by another adjoining raiyat or co-sharer.

17. Learned Counsel for the petitioner further submitted that the matter would be definitely different if the two pieces of land purchased by two sale deeds are claimed by two different pre-emptors claiming to be adjoining raiyat where, as held by the Division Bench in Ram Roop Yadav's case (supra), the purchaser can legitimately set up a defence of having become adjoining raiyat of each and other plot separately against pre-emption claim set up by two separate pre-emptors or set of pre-emptors.

18. Learned Counsel for the petitioner further referred to the judgment of a learned single Judge of this Court in the case of Md. Shafique Ahmad v. State of Bihar 1995(1) PLJR 851 and submitted that in identical facts and circumstances the learned single Judge approved the view taken by all the three courts under the Act in the case that the purchaser by purchasing two pieces of land of the same plot by two separate sale deeds could not thwart the claim of pre-emption made by one pre-emptor against both the plots by taking care to file two separate pre-emption application. Paragraph 4 of the judgment in this context is usefully quoted here:

He raised a claim of pre-emption in respect of both the vended pieces of land by filing two separate pre-emption applications. The courts below have rightly held that the petitioner-purchaser could hardly thwart the claim of pre-emption by the device of having got two sale deeds executed on the same date. It was rightly pointed out that the pieces of land under transfer were from the same plot and the claim for pre-emption was raised by the same person who was shown on the northern boundry of the two transferred pieces of land. He also took care to file two separate applications in respect of each of the two sale deeds. The authorities under the Act are, therefore, justified in holding that the petitioner could not resist the claim for pre-emption on that score.

19. Learned Counsel for the petitioner also referred to the judgment of a Division Bench of this Court rendered in the case of Ram Prasad Singh and Others Vs.

State of Bihar and Others, . However, from a reading of the judgment it appears that the question arising in these writ applications were not a direct issue before the Division Bench. Question before the Division Bench in that case was with regard to maintainability of one application of preemption with regard to two sale deeds as also for two plots in one sale deed. The Division Bench held that the provisions of the Act did not bar one application for two sale deeds or one application for two plots vended by one sale deed. The Division Bench held that while considering the maintainability of the pre-emption application, question of divisibility of the consideration money, different dates of execution in different names etc. should be the relevant factor only.

20. Learned Counsel for the petitioner also referred to the judgment of a learned single Judge of this Court in a batch of four writ applications led by case of Punyadeo Sharma and Others Vs. The Additional Member, Board of Revenue and Others . From a bare reading of the said judgment it appears that the facts of the case were quite different. The four pieces of the same plot were purchased by different brothers and against claim of pre-emption with regard to the subsequent three plots the purchasers having become adjoining raiyat was claimed on the ground of purchase of one piece of plot earlier. In the facts of the case, the claims of the purchasers were allowed by this Court.

21. It is well known that earlier customary law of pre-emption has been incorporated in the Act to make it statutory right. However, by a catena of decisions rendered by this Court and the Supreme Court, it is now well settled that the right of pre-emption is a weak right and it can be defeated by any legitimate means by the purchaser. The question, therefore, arises as to whether in the facts of the case the purchaser can set up a legitimate defence of having become adjoining raiyat of each and other piece of land of the same plot purchased on the same day. Facts of the case disclose that plot No. 1023 had a total area of 70 decimals out of which purchaser respondent No. 4 purchased $5\frac{1}{3}$ decimals and 18 decimals of land separately by two sale deeds from respondent No. 5. The pre-emptor - original petitioner was a raiyat of plot No. 899 which is adjoining south to the whole plot No. 1023. Hence by dint of being adjoining raiyat of both pieces of land purchased by respondent No. 4 he filed two separate pre-emption applications in respect of the land sold by respondent No. 5 in favour of respondent No. 4. In the case like this, it has to be considered whether the purchase of two pieces of land of the same plot by the purchaser on the same day could be considered a normal course of conduct and for legitimate reasons. The fact that the two pieces of land comprised part of the same plot, reasonably of small area, purchased from same vendor in one name on the same day by two separate sale deeds clearly shows that the purchase by the purchaser of the two pieces of land by two sale deeds on the same day was not due to any exigency of situation or a normal course of conduct.

22. The provision of Section 16(3) incorporated in the Act is obviously with an intention to prevent fragmentation of land and to facilitate consolidation. With

this intention the legislature created a statutory right in favour of an adjoining raiyat or a co-sharer to stake a claim to pre-empt any land or piece of land sold adjoining to his land. Hence, purchase of two small pieces of land of the same plot by two separate sale deeds on the same day in effect amounts to fragmentation and obviously defeats the intention of the legislature and is clearly an attempt to defeat the right of the adjoining raiyat or co-sharer to set up his claim of pre-emption. Purchase of small pieces of land of the same plot by two sale deeds cannot be held to be a bonafide act in absence of any plausible reason and as such the same has to be held to be mala fide act on the part of the purchaser to defeat the provisions of the Act by setting up a false claim of becoming adjoining raiyat of each and other plot by two sale deeds. Of course, ratio laid down, in the case of Ram Roop Yadav's case (supra) is correct in case where pre-emptors are different but as observed in paragraph 4 of the judgment, matter would be different if the pre-emptor is the same and he claims to be adjoining raiyat of the whole plot and definitely of the two pieces of land vended by two sale deeds.

23. In the case of Nathuni Mahto (supra) the Division Bench did not notice this distinction and set aside the judgment of the learned single Judge on the broad proposition of law laid down by the Division Bench in the case of Ram Roop Yadav (supra). Learned single Judge while dismissing the claim of the purchaser in Nathuni Mahto's case although had not noticed the exception carved out by the Division Bench in paragraph 4 of the judgment in Ram Roop Yadav (supra) but had proceeded on the same analogy which was squarely applicable in the facts of the case. The Division Bench while setting aside the judgment of the learned single Judge in Nathuni Mahto's case failed to notice that the broad proposition of law laid down in case of Ram Roop Yadav (Supra) was laid down in the facts of that case which were distinctly different from the facts of Nathuni Mahto's case and its facts were squarely covered by the exception carved out by the Division Bench in paragraph 4 of Ram Roop Yadav's case as quoted above.

24. Considering various judgments of this Court relied upon by learned Counsel for the petitioners, I am of the view that in cases in which the vendor vendee and pre-emptors are the same, vendee purchases pieces of land of the same plot by different sale deeds executed and registered on the same day and the pre-emptor claims to be adjoining raiyat of the whole plot or at least portions of the land purchased by the purchaser by different sale deeds, the purchaser cannot set up a claim of having become adjoining raiyat of each and other piece of land purchased on the same day by different sale deeds. The pre-emptor being adjoining raiyat from before has a superior claim over the plots of land vended on the same day, may be by two sale deeds. The purchase of two pieces of land of the same plot by two sale deeds by the purchaser on the same day cannot be thus held to be a legitimate means to defeat the provisions of law and the statutory right, although a weak one, of a common adjoining raiyat or a co-sharer. Of course, in absence of any one or more of the five features indicated above, purchaser's claim of having become adjoining raiyat of each other plot

will become a perfectly valid and legitimate defence against any claim of pre-emption.

25. In the result, both the writ applications are allowed, common order of learned Additional Member Board of Revenue is set aside and the appellate order of the Additional Collector is affirmed.

26. In the facts and circumstances of the case, there shall be no order as to costs.

Chandramauli Kr. Prasad, A.C.J.

27. I agree.