IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7093 of 1995

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Urmila Devi, wife of Sri Budhi Nath Prasad Yadav, a resident of village Dandari, P.S.- Singheshwar, District- Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Collector, Madhepura.
4. The Land Reforms Deputy Collector, Madhepura
5. Sri Onkar Nath Pransukhka, son of Late Sagarmal Pransukhka, resident of village + P.S.- Singheshwar, District- Madhepura.
6. Murli Poddar, son of Late Jageshwar Poddar.
7. Smt. Acharman Devi, wife of Murli Poddar.
8. Smt. Arhul Devi, wife of Late Sita Ram Poddar.

Respondent nos. 6 to 8 are residents of village Dandari, P.S.- Singheshwar, District- Madhepura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. R.C.THAKUR

For the Respondent/s : Mr. Pratik Sinha, A.C. to G.A.-2

Mr. Ram Bilas Thakur

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 16-04-2015

The writ application seeks to challenge the Resolution of Board of Revenue dated 14.7.1995 passed by respondent Additional Member, Board of Revenue in Revision Case No. 242 of 1993 copy whereof has been enclosed as Annexure-3.

Background facts giving rise to the writ application may be summarized as under:-

Respondent no. 5 executed a sale deed on 21.10.1989 in respect of 9 kathas of the subject land in favour of respondent no. 6. On the same day, respondent no. 5 executed another sale deed in respect of 6 kathas of land in favour of respondent no. 7 who is wife of respondent no. 6. Both the lands formed a compact block. There is no controversy that the writ petitioner is shown as boundary raiyat on the north of the vended plots/lands. The registration of both the sale deeds was made on 28.11.1989. In the meanwhile, respondent no. 6 executed a deed of gift in respect of 5 kathas and odd land forming part of the first sale deed in favour of his own sister (respondent no. 8) on 1.11.1989. The said deed of gift was subsequently registered on 15.12.1989. On 20.2.1990, the writ petitioner filed two applications under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short "the Act") claiming her right of preemption in respect of the lands covered by both the sale deeds dated 21.10.1989. This gave rise to L.C. Case No. 14/1989-90 and 15/1989-90 on the file of the respondent Land Reforms Deputy Collector. On notice, the purchaser appeared and contested the claim of preemption. The respondent Land Reforms Deputy Collector by a composite order dated 11.4.1990 (Annexure-1) allowed both the claims of preemption filed by the writ petitioner. The said order was assailed by the purchaser(s) before the Collector in Appeal No. 4/1991-92. The said appeal was considered and rejected by order dated 23.4.1993 (Annexure-2). The purchaser(s), dissatisfied with the said order, filed a revision application before the Board of

Revenue which gave rise to Case No. 242 of 1993. The Additional Member, Board of Revenue, after hearing the parties, allowed the revision application by resolution dated 14.7.1995 (Annexure-3). The petitioner has, therefore, filed the present writ petition.

Heard Mr. R.C. Thakur in support of the application, Mr. Ram Bilas Thakur for the private respondents and Mr. Pratik Sinha, A.C. to G.A. 12 for the State.

It has been submitted by the Counsel for the petitioner that the petitioner, being the adjoining raiyat of the vended lands/plots, has a legal right of preemption which has been defeated by the Board of Revenue on non-existent ground(s). Admittedly, the purchasers are not the adjoining raiyats and/or co-sharers of the subject/vended land. The deed of gift executed by respondent no. 6 in favour of respondent no. 8 was forged and fabricated one inasmuch as the correct address of respondent no. 8 was not inserted therein. Even after execution of deed of gift, the respondent no. 6 continued in physical possession thereof. The same was, therefore, executed to defeat the lawful claims of the petitioner.

Counsel for the purchasers-respondent(s) conversely submitted that in both the sale deeds, recitals were made that the lands were being purchased for the purpose of construction of residential house. The area covered by the two sale deeds is not very big. If the land has changed its physical feature(s), the right of preemption would fail. Both the Courts below have not considered this aspect in so much so no enquiry in this regard was made and finding recorded. It has next been submitted that before presentation of the applications under Section 16(3) of the Act by the preemptor/writ petitioner, part of the subject land was already alienated by way of deed of gift in favour of respondent no. 8 which was also registered on 15.12.1989. The claim of preemption being weak right is bound to fail as no claim of preemption would be maintainable in respect of deed of gift. He relies in this regard on the explanation appended to the provisions contained in Section 16(3) of the Act as well as on the case of ***Dhanik Lal Mahto vs. Additional Member, Board of Revenue A.I.R. 1986 Pat 95***.

I have considered the rival submissions of the parties. The petitioners have questioned the legality of the deed of gift executed by respondent no. 6 in favour of respondent no. 8 on two counts. It has been submitted that the said deed of gift was brought into existence only to defeat the right of preemption. The correct address of the donee has not been stated in the said document. The donor (respondent no. 6) even after execution of the deed of gift continued in possession of the said land. He has, however, not disputed the legal position in law that right of preemption would not survive in respect of deed of gift. This is presumably because the statutory provisions clearly spelt out the same. Further, in ***Dhanik Lal Mahto (supra)***, a Division Bench of this Court, while dealing with this question in paragraph 7 held as under:

> 7. The contention aforesaid takes one to the very root of the nature of the right of pre-emption generally and in particular under S.16(3) of the Act It is common ground before us that S.16(3) is only a very limited statutory recognition of the otherwise well-known customary right of pre-emption. It has been held in a long line of precedent having the stamp of approval of the Final Court that the right of pre-emption is indeed a piratical right which may well be defeated by all legitimate means. Now, the explanation to sub-sec.(1) of S.16 in terms excludes inheritance, bequest or gift from the ambit of transfer under the said section. Therefore, if a valid and genuine deed of gift is made, the same is obviously not pre-emptable under the statute. Consequently, a bona fide transaction of gift can legitimately affect and defeat a tenuous claim to pre-emption. It has been authoritatively so held in Bishan Singh v. Khazan Singh, AIR 1958 SC 838 in the terms following……"

The question is whether on these two contentions the deed of gift can be held to be forged and fabricated. It is gainsaying that if the deed of gift is valid then the claim of preemption is bound to fail as has been found and held by the Revisional Court in impugned resolution. There is no dispute that the deed of gift was subsequently presented and registered on 15.12.1989. The title of the land covered by the deed of gift passed in favour of the donee with effect from the date of execution thereof. Both these dates fall prior to the lodgment of the petition before the LRDC claiming right of preemption. If the address of the donee has incorrectly been stated in the deed of gift, the same can very well be corrected by executing another document seeking correction in the document. It further appears that respondent no. 8 is own sister of respondent no. 6. In such circumstances, respondent no. 6 may be looking after the land which was gifted in favour of his sister. It is difficult for this Court, based on the pleadings on record, to accept that the donor remained in possession of the gifted land. On these facts, I am afraid, the Revenue Court cannot declare a document to be inoperative or forged. Such matter can be agitated before the Court of competent civil jurisdiction. This is the case here. Admittedly, no suit prior to the lodging of the case or even thereafter has been filed by the preemptor. If part of the land which formed block has been gifted and against which no such claim would be maintainable then the preemptor loses his/her right of being adjoining raiyat of the entire lands vended under the two sale deeds. This being the legal position, I am unable to find any patent illegality in the impugned resolution of the Board of Revenue (Annexure-3) wherein these aspects of the matter have been considered to allow the revision application and set aside the two orders passed by the respondent LRDC as well as the Collector.

The writ application fails. It is, accordingly, dismissed.

There shall be no order as to costs.

(Kishore Kumar Mandal, J)

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