

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7807 of 1992

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1. Md. Tauhid
 2. Abul Kalam
 3. Jahangeer Hussain

All sons of Md. Belel, resident of village- Paharia, P.S.- Bainisi, District-
Purnea

.... Vendee..... Petitioners

Versus

1. Md. Kadir, S/o Late Md. Ishaque, reisent of village- Paharia, P.O. & P.S.- Baisi,
District- PurneaPre-emptor.....Respondents
2. Md. Yasin, S/o Late Haji Inamul Haque, resident of village- Keawenager,
Panisadre, P.O. & P.S.- Baisi, District- Purnea
3. The State of Bihar
4. The Member Board of Revenue, Bihar, Patna
5. The Additional Collector, Purnea
6. The D.C.L.R., Purnea

.... Vendor.... Respondents

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Appearance :

For the Petitioners : Mr. Kameshwar Prasad Gupta, Advocate

For the Respondents : Mr. Atif Imam, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date: 22.06.2015

In the present writ application under Article 226 of the Constitution of India, the petitioner has sought for quashing of an order dated 30.05.1992, passed by the learned Additional Member Board of Revenue in Board Revision Case No. 33 of 1991 (Annexure-7) (Md. Abid Hussain & Ors. Vrs.



Md. Kadir & Ors.), whereby he has upheld the judgment and order dated 22.01.1991 (Annexure-6), passed in Appeal No. 242/85-86/03-89 (Abdul Kadir Vrs. Abid Hussain) by the Additional Collector, Purnea. The Appellate Court of the Additional Collector, Purnea by his order dated 22.01.1991 had set aside an order dated 20.08.1985, passed by the Deputy Collector Land Reforms, Sadar, Purnea, whereby the learned Deputy Collector had rejected an application, filed under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act).

2. The petitioners in the present writ application are joint purchasers of the land in question, appertaining to khata no. 11, khesra no. 484, measuring an area of 0.48 decimal from respondent no. 2, through registered a sale deed which according to the petitioners was registered on 01.05.1982. It is also their case that through another registered sale deed dated 05.07.1983, the petitioners had purchased land admeasuring 30 decimal of same khata no. 11 and khesra no. 484, from Sk. Jainuddin, a co-sharer of the vendor of the land in question.

3. The respondent no. 1, who is the pre-emptor, filed an application on 05.07.1983 seeking pre-emption before the Deputy Collector Land Reforms, Sadar, Purnea claiming his right of pre-emption against the land which was



purchased by the petitioners though registered sale deed no. 11976 dated 01.05.1982. It is the case of the writ petitioners that respondent no. 1, the pre-emptor wrongly mentioned in his application under Section 16(3) of the Act that the sale deed in question (registration no. 11976) was complete on 09.04.1983, though it was completed on 01.05.1982 itself in order to overcome the statutory limitation period, prescribed for filing such application. The petitioners appeared before the Deputy Collector Land Reforms in the pre-emption proceeding and apart from taking a plea that the pre-emption was barred by limitation, they also took a plea that after having purchased another land of area 30 decimal of same khata and khesra through sale deed dated 05.07.1983, they themselves became adjoining raiyats of the said land purchased by them on 01.05.1982. They also took a plea that after having purchased the land in question on 01.05.1982, they had constructed residential house over it and had been living there along with their family. The Deputy Collector Land Reforms by an order dated 20.08.1985, rejected the pre-emption claim of respondent no. 1 on the ground that respondent no. 1 did not have better preferential right under 16(3) of the Act to purchase the land, in the facts and circumstances of the case.

4. Respondent no. 1 preferred appeal against the order of the Deputy Collector Land Reforms, Purnea being Appeal No. 243/85-86, before the Additional Collector,



Purnea. The Additional Collector, Purnea who allowed the appeal by an order dated 22.01.1991, holding that the petitioner could not be said to be adjoining raiyats on the basis of subsequent sale deed dated 05.07.1983, with respect to .30 decimal of land. He accordingly allowed the plea of pre-emption taken by respondent no. 1 by the said order dated 22.01.1991 and set aside the order of the Deputy Collector Land Reforms, Purnea. The petitioners preferred Revision Petition against the said order dated 22.01.1991, passed by the Additional Collector, Purnea before the Board of Revenue giving rise to Case No. 33 of 1991. The Additional Member, Board of Revenue, Bihar, Patna however dismissed the said Revision Case No. 33 of 1991 by his order dated 30.05.1992 and confirmed the order of the Appellate Court. This is the circumstance in which the petitioners have preferred the present writ application, seeking quashing of the order dated 22.01.1991 passed by the Additional Collector, Purnea in Appeal No. 243/85-86 and the order dated 30.05.1992 passed by the learned Additional Member, Board of Revenue in Revision Case No. 33 of 1991.

5. Contesting respondent no. 1 has entered appearance and has filed counter affidavit.

6. It is the case of the petitioners that the registration with respect to the land admeasuring .48 decimal was complete on 01.05.1982 itself vide registration no. 11929



and, therefore, the pre-emption application with respect to the said land was hopelessly barred by limitation as the said Pre-emption Application was filed on 05.07.1983. It is the further case of the petitioners that subsequent to purchase of said land admeasuring .48 decimal, they purchased another land, adjacent to the said land through registered sale deed on 05.07.1983 and thus they themselves became adjoining raiyats of the land in question, on the date of filing of application by the petitioners under Section 16(3) of the Act. It is, therefore, the case of the petitioners that the respondent no. 1 did not have any preferential right to purchase the land in question by virtue of Section 16(3) of the Act.

7. Respondent no. 1, on the other hand, in his counter affidavit has stated that the petitioners did not derive any right over the plot of land said to have been subsequently purchased by them, as the vendor of subsequent sale deed, with respect to land measuring .30 decimal did not have any right, title or interest over the said plot. It has been asserted that Md. Yasin (respondent no. 2, the vendor of the first transaction), Jainuddin and Moinuddin were full brothers and upon partition in the family, respondent no. 2 was given exclusive share over plot no. 484. Jainuddin had no right, title or interest over the said plot no. 484. Respondent no. 1 has further asserted in the counter affidavit that as required under the provision of the Act and Rules framed thereunder, he had



sent registered notice with acknowledgment due to the petitioner and only to defeat the pre-emption right, the petitioners got created sale deed dated 05.07.1983. Further, Respondent No. 1 did not acquire any title as the vendor of sale deed dated 05.07.1983 did not have any right, title or interest over the said land. It has further been stated that the registration of sale deed dated 01.05.1982 was complete on 09.04.1983 and not on 01.05.1982 when the sale deed was presented for registration. In support of the plea that the registration of sale deed dated 01.05.1982 was complete on 09.04.1983, it has been stated that such fact would be evident from the entry made over the back of last page of sale deed and accordingly pre-emption application filed on 05.07.1983 was well within the period of limitation of three months, as prescribed under Section 16(3) of the Act. The statement made in the writ application that the petitioners have constructed house for plot no. 484, has been denied in the counter affidavit and it has been asserted that subsequent sale deed dated 05.07.1983 executed in favour of petitioners by Jainuddin does not confer any right, title or interest over the land referred to in the sale deed dated 05.07.1983, upon the petitioners.

8. I have heard Mr. Kameshwar Prasad Gupta, learned counsel for the petitioners as well as Mr. Raghib Ahsan, learned senior counsel appearing on behalf of

respondent no. 1.



9. Learned counsel for the petitioners has submitted that the application dated 05.07.1983 under Section 16(3) of the Act with respect to purchase of land being hopelessly barred by limitation ought not to have been entertained as the registration of the sale deed was complete on 01.05.1982 itself. However, I find substance in the submission made on behalf of respondent no. 1 that the registration of the said sale deed dated 01.05.1982 was complete on 09.04.1983, as is evident from the entry made on the back page of Annexure-1. Therefore, it cannot be said that the pre-emption application filed on 05.07.1983 was barred by limitation. I find, from the order of the Deputy Collector Land Reforms, Sadar, Purnea in Ceiling Case No. 15 of 1983, whereby pre-emption application was rejected, that he did not find the application to be barred by limitation. As a matter of fact, as would appear from the order of the Deputy Collector Land Reforms, that the petitioners did not raise any such plea of limitation before him. The plea, therefore, that the application filed by the respondent no. 1 under Section 16(3) of the Act seeking preferential right of pre-emption was barred by limitation, is not tenable and is accordingly rejected.

10. Learned counsel for the petitioners has vehemently argued that in view of subsequent purchase of land admeasuring 30 decimal of same plot and same khata



and khesra from Md. Jainuddin, petitioners themselves became adjoining raiyats, as was held by the Deputy Collector, Land Reforms. There is specific denial of this claim by respondent no. 1 in his counter affidavit with an averment that vendor of the subsequent sale deed Md. Jainuddin did not have any right, title or interest over the land appertaining to khata no. 11, khesra no. 484 and, therefore, they could not be treated to be adjoining raiyats by virtue of the said sale deed. No rejoinder to this statement has been filed by the petitioners in the present proceeding.

11. Leaned counsel for the petitioners has relied upon Full Bench decision of this Court in the case of Ramchandra Shrivastava and Others Vrs. Prasad Narain Singh & Ors reported in 1970 P.L.J.R. 579, in support of his submission that right of pre-emption shall stand defeated if before the date of application under Section 16(3), the transferee himself acquires status of adjoining raiyat. The said Full Bench decision of this Court has no application in the facts and circumstances of the present case, in as much as the petitioners have failed to establish that they acquired right, title or interest over a land adjacent to the transferred land, by virtue of the subsequent sale deed dated 05.07.1983.

12. The Additional Collector (Appellate Authority) as well as the Revisional Court have rejected the claim of the petitioners, on basis of appreciation and

assessment of material before them that they acquired the status of adjoining raiyat, by virtue of the alleged subsequent sale deed dated 05.07.1983. I do not find any perversity in such finding. This is not in dispute that respondent no. 1 is the adjoining raiyat of the vended land and his claim under Section 16(3) of the Act of pre-emption was rejected by the Deputy Collector Land Reforms only on account of the claim of the petitioners that they acquired status of adjoining raiyats by virtue of subsequent sale deed dated 05.07.1983, which plea has subsequently been turned down, in my opinion rightly, both by the Appellate Authority as well as the Revisional Authority.

13. In the facts and circumstances as noted above, I do not find any infirmity in the orders under challenge.

14. This writ application has no merit and is accordingly dismissed.

15. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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