

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1505 of 2014
IN
Civil Writ Jurisdiction Case No. 14638 of 2005
With
Interlocutory Application No.8477 of 2014
And
Interlocutory Application No. 879 of 2015
In
Letters Patent Appeal No.1505 of 2014

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Yogendra Das @ Yogi Das, Son of Late Saryug Das, Resident of Village-Arsandi,
P.O-Amarpur, P.S-Bhihpur, District-Bhagalpur.

.... Pre-emptor-Petitioner-Appellant

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna
3. The Collector, Bhagalpur
4. The Deputy Collector Land Reforms, Naugachhiya, District-Bhagalpur.

Respondents- Respondents

5. Kamleshwari Roy, Son of Late Jagrup Roy, Resident of Village-Arsandi, P.O-Amarpur, P.S-Bhihpur, District-Bhagalpur.

Purchaser- Respondents.

6. Haresh Sangahi, son of Late Giro Sangahi
7. Hari Mohan Sangahi, son of Late Gorelal Sangahi
8. Sada Nand Sangahi, son of Late Bachhi Sangahi
9. Pradeep Sangahi
10. Ganesh Sangahi

Both Sons of Basudeo Sangahi

- 11.A Shri Anil Sangahi

- 11(B) Sri Sanjay Sangahi

Both Sons of Late Yogendra Sangahi

12. Sachida Nand Sangahi son of late Ambika Sangahi

All are R/o Vill.- Amarpur, P.S-Bhihpur, District-Bhagalpur

.... Vendor-Respondents.

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Appearance :

For the Appellant/s : Mr. Brajesh Kumar Singh, Advocate

For the Respondents-State : Mrs. Kumari Amrita, G. P.10

Mr. Mithilesh Kumar Upadhyaya, A.C. to G.P.10

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-02-2015

I.A. No.8477 of 2014

This application is filed with a prayer to condone the delay of three days in filing this Letters Patent Appeal. The delay is meager and properly explained and, accordingly, it is condoned.

Interlocutory Application stands allowed.

LPA No.1505 of 2014

The appellant feels aggrieved by the dismissal of CWJC No.14638 of 2005 filed by him, assailing the order dated 30.09.2005 passed by the respondent no.2, i.e. Additional Member, Board of Revenue, Bihar.

The relevant facts are as under:

The appellant purchased 5 decimals of land in Plot No.460, Khesra No.1888 of village-Jhandapur, Police Station-Bihpur, District-Bhagalpur from one Naresh Sangahi. The 5th respondent has purchased another extent

of 42 decimals of land from the same Khata number and from the same vendor, through the sale deed dated 01.09.2000.

The appellant filed an application before the Deputy Collector, Land Reforms, Naughhiya, District-Bhagalpur- respondent no.4, with a prayer to pass orders transferring of 42 decimals land in his favour. He invoked Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short, 'the Act') and claimed the pre-emptive right, to purchase. The 4th respondent passed an order dated 31.03.2001 in favour of the appellant. The 5th respondent filed an appeal before the Collector, Bhagalpur, feeling aggrieved by the said order. The Appeal was dismissed on 12.07.2002. Thereafter, the 5th respondent filed a revision before the 2nd respondent under the relevant provisions of the Act. The revision was allowed through order dated 30.09.2005. The appellant challenged the said order in the writ petition and the learned Single Judge dismissed the writ petition, through the order dated 19.06.2013.

Sri Brajesh Kumar Singh, learned counsel for the appellant, submits that the appellant answers the description of 'raiyat' as defined under Section 2(k) of the

Act and that there was no basis for the 2nd respondent for setting aside the order passed by the 4th respondent. He contends that the extent of land held by a raiyat becomes immaterial, in the context of exercise of right of pre-emptive purchase.

Mrs. Kumari Amrita, learned counsel for the respondents, on the other hand, submits that the appellant purchased a small piece of 5 decimals of land for house site, and by no stretch of imagination, he can be said to be raiyat or farmer, with respect to the said land. She further contends that the plea of the appellant was inconsistent that, on the one hand, he claimed to be landless person, and on the other hand, presses the right of pre-emptive purchase.

Apart from placing restrictions on the extents of agricultural land, the Act provides for the consolidation of the units. With a view to discourage or minimise the fragmentation of agricultural lands, mostly on account of sale, the legislature incorporated Section 16, providing for right of pre-emptive purchase in favour of a co-sharer or the adjoining raiyat. Section 16(3) of the Act reads as under:-

“16(3)(i) When any transfer of land is made after the commencement of the 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 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 said deed:

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent 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 land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase money out of the deposit made under clause (i).

(iii) If the application is allowed, the Collector shall by 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 XXI, Rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed.”



From the reading of Section 16(3) of the Act, it becomes clear that if an owner of the land intends to transfer a piece of land, the adjoining raiyat i.e. farmer or the co-sharer, as the case may be, shall be entitled to a right of pre-emptive purchase. This can be exercised, subject to certain conditions, even when the sale to third party has become final.

In the instant case, the claim of pre-emptive purchase was made by an adjoining raiyat and not by a co-sharer. The word, 'raiyat' is defined in Section 2(k) of the Act as under:

2(k) "raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants or with aid of partners and includes also the successors in-interest or persons who have acquired such a right and includes, in the district of Santhal Parganas' a village head man in respect of his private land, if any, but does not include in the areas to which the Chotanagpur Tenancy Act, 1908 (Ben. Act VI of 1908, applies a Mundari, Khuntkatidar or a Bhuinhar."

If one takes into account, the language of Section 2(k) of the Act and the purpose, underlying in Section 16(3), it is clear that it is only when a person, who owns an

adjoining land for the agricultural purpose, that he can exercise the right of pre-emptive purchase.

In the instant case, the appellant owns just an extent of 5 decimals of land. It is also necessary to take note of the fact that the said 5 decimals of land was purchased from the same vendor. It is not even asserted by the appellant that he has been undertaking agriculture in the 5 decimals of land. In fact, it is impossible for any one to carry out the agriculture in that small piece of land. The record discloses that the appellant purchased a small plot, as a house site.

The Act has prescribed Form L. C. 13 to be submitted for filling the application under Section 16(3) thereof. While Schedule I requires the applicant to furnish the particulars of the land sold by the owner, in favour of the third party, Schedule II is about the land which is held by the raiyat i.e. applicant who intends to enforce the right under Section 16(3) of the Act. This only shows the importance of the description of the land, which, the person claiming the right of pre-emptive purchase owner. Obviously, realizing that the land held by him, does not bring him, within the definition of raiyat, the appellant did not disclose the extent and nature of land in Schedule II of

the Form, submitted by him.

The law gives freedom to individuals to enter into contract of their own choice. If any restrictions are placed, they must be interpreted, strictly in terms of the relevant provisions of law. In a transaction between two individuals, a third person cannot be permitted to intervene, until he fulfills the requirement under the law, which permits of that.

Viewed from that angle, the appellant has failed to bring his case within the purview of Section 16(3) of the Act. The 2nd respondent as well as the learned Single Judge have taken correct view of the matter. We are not inclined to interfere with the same. Accordingly, the Letters Patent Appeal is dismissed.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Vikash Jain, J)

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