IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20659 of 2014

---

1. Sanjay Poddar Son of Late Bhola Poddar

2. Prasenjeet Poddar son of Late Pawan Poddar Both residents of Mohalla - Sahebganj, P.S. University, District - Bhagalpur

.... Petitioners

Versus

1. The State of Bihar through Inspector General of Registration, Bihar, Patna

2. The Assistant Inspector General of Registration, Bhagalpur Division, Bhagalpur

3. The Collector, Bhagalpur

4. District Sub Registrar, Registration Office, Bhagalpur

.... Respondents

==

Appearance :

For the Petitioners : M/s Ganpati Trivedi, Sr. Advocate
T.P.Verma, Advocate

For the State : M/s Archana Minakshee, G.P. 6
Prabhat Ranjan, AC to GP 6

==

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 20-12-2016

Heard parties.

The petitioners seek quashing of Annexure 7, which is a letter dated 27.9.2014, by which the respondent no. 4

has directed the petitioner no. 1 to take back the original sale deed presented on 6.8.2014 for registration and further for a direction to the respondent no. 4, i.e., the District Sub Registrar, Registration Officer, Bhagalpur, for registering the aforesaid sale deed executed in favour of the petitioner no. 1 by the petitioner no. 2.

It appears from Annexure 7 that the petitioner no. 1 has been directed to take back his sale deed which was presented for registration chiefly on two grounds. First ground is that difference in description of boundary was found between one stated in the sale deed and what was found at the time of verification. Secondly, the petitioner had tried to evade from depositing proper stamp duty and for that he has engaged himself in fraudulent activity.

Mr. Ganpati Trivedi, learned Senior counsel appearing for the petitioners has submitted that the whole action of the registering authority is misconceived. The Registrar has misdirected himself in recording such finding.

The petitioners have given following genealogical table which would be relevant for the present matter:

Sitaram Poddar (since deceased)

120 Sq. Ft.

I---------------------I-------------------------I----------------------------I

Ravindra Poddar | Arun Poddar | Pawan Poddar | Manoj Poddar

(dead) 30 Sq. ft. | 30 Sq. ft. | (deceased) 30 Sq. Ft. | 30 Sq. ft.

I----------------I----------------I-----------------I

Prasenjeet Poddar 7 ½ Sq.ft | Vishavjeet Poddar 7 ½ Sq.ft | Indrajeet Poddar 7 ½ Sq.ft | Rahul Poddar 7 ½ Sq.ft

Renu Poddar

I--------------------------------I

Vishal Poddar | Vemal Poddar

Prasenjeet Poddar, petitioner no. 2, is the son of Pawan Poddar. It is contended that there is no dispute that the property and house standing over 120 Sq. ft. of land of plot no. 316 appertaining to khata no. 211 of Mohalla Sujayat Hussain Lane, P.S. Kotwali, District Bhagalpur originally belonged to Sitaram Poddar, who had four sons as shown in the genealogical table. The petitioner, vide registered sale deed dated 18.8.2012 purchased the share of Arun Poddar that would be of 30 Sq. ft. out of the aforesaid vide sale deed dated 21.6.2012, as contained in Annexure 1. Subsequently, he further purchased 22 ½ Sq. ft. of the share jointly from Vishwajeet Poddar, Rahul Poddar and

Indrajeet Poddar all sons of Pawan Poddar (since deceased) vide a registered sale deed dated 17.5.2003 , as contained in Annexure 2. Thereafter, the petitioner again, through the sale deed in question contained in Annexure 3 executed on 6.8.2014 purchased the share of 7 ½ sq. feet of the petitioner no. 2 and presented the registered sale deed for registration which has not been registered by the Registering Officer as stated above.

A counter affidavit as well as a supplementary counter affidavit has been filed on behalf of the State. Learned counsel for the State pointed out from the remarks contained in the first page of the sale deed that, at the time of verification, it has been found that there is difference in the boundary but learned counsel for the petitioner submitted what is actually the difference between the boundary has not been stated there. It is also stated that there is difference in area but what is that difference is again not stated here. The report is dated 6.8.2014 and order appears to have been recorded at the margin of the sale deed itself stating that the registration of the document is not acceptable under Section 21 of the Registration Act, 1908.

The respondents have miserably failed to show from their counter affidavit and supplementary counter affidavit or the order concerned that on what ground such registration could have been refused and why it should not be declared that the order not only suffers from the vice of illegality but is also perverse.

It is apparent from the sale deed that in the description portion the boundary of 120 Sq. ft. of land has been given as it stands specifically stated that though they perhaps transferred 7 ½ sq. ft. of the house built over 120 Sq. ft. which is in the share of the petitioner no. 2. It is specially stated that the petitioner no. 2 is transferring his share only and, therefore, the boundary of the entire plot has been given. The khata number and plot number as well as holding number and the lane, namely, Sujayat Hussain Lane aborting to which the house is standing has also been described, therefore, in my view, no further description was required. The only hitch is as to whether the petitioner has deposited sufficient stamp duty or not as it stands stated in the first page of the sale deed which has been brought as annexure B and X to the supplementary counter affidavit by the State that calculation has been made not only on 7 ½ sq. ft. which is being transferred rather of the entire 120 Sq. ft. along with the entire building standing thereupon and, therefore, deficit of stamp duty of Rs. 9,93,000/- has been found, i.e., the crux of the matter.

In my view, such calculation is perverse as the petitioner no. 1 is not purchasing the entire house standing over

120 sq. ft. rather the petitioner no. 2 has transferred only his share out of the property which is house standing over 7 ½ sq. ft. only.

A question may arise as to whether a share can be transferred in such a manner? The answer has to be in affirmative as it is well known that under Hindu Law a coparcener can transfer his share but cannot deliver the possession unless a partition is effected and actual allotment is made to a particular coparcener. A reference in this regard is made to a decision of the Apex Court rendered in **Ramdas VS. Sitabai and Others [(2009) 7 Supreme Court Cases 444]** specially paragraph no.18 and 19 which are extracted as under:-

> "18. It may be mentioned herein that the aforesaid findings and the conclusions were recorded by the Supreme Court by placing reliance upon an earlier judgment of this Court in *Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh* wherein this Court held as under : (AIR P. 491 para 11)
>
> "11 ….. All that [vendee] purchased at the execution sale was the undivided interest of the coparceners in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work out his rights only by a suit for partition and his right to possession would date from the period when a specific allotment was made in his favour."
>
> (emphasis added)
>
> 19. In view of the aforesaid position there could

> be no dispute with regard to the fact that an undivided share of co-sharer may be a subject-matter of sale, but possession cannot be handed over to the vendee unless the property is portioned by metes and bounds amicably and through mutual settlement or by a decree of the court."

It is clear from documents that intention of the petitioner no.2 was only to transfer his share and not to effect actual physical possession of house standing over 7 ½ sq. ft. which falls in his share. In my view, such stamp duty could not have been charged as it has to be reciprocal to the share under transfer.

That apart, another fact is also staring at the face of the respondents. They had allowed transfer to petitioner no .1 vide Annexure 1 and 2 out of same property charging reciprocal stamp duty on 30 sq. ft. and 22.5 sq. ft. respectively. Having done so, it is intriguing as to how such question can be raised in the present matter?.

Thus, in my view, since inquiry report and the order is vague and the calculation which has been shown in the first page of the sale deed suffers from the vice of perversity, the decision and calculation cannot be allowed to be sustained and, as such, all of them are quashed and set aside.

The matter is remitted back to the registering authority to take a fresh decision in accordance with law and if any deficit stamp duty is still required to be paid then such direction should be given. Thereafter, the registering authority should proceed in accordance with law after payment of stamp duty at the rate which was prevalent on the date of presentation of the sale deed.

In the result, this writ petition stands allowed.

It is made clear that no party has raised any other issue apart from the issues which have been considered as above.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.03.2017
Transmission Date	NA