IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1110 of 2013
IN
Civil Writ Jurisdiction Case No. 10196 of 2004

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Navendra Kumar, son of Sri Bhola Shankar Singh @ Bhola Sharma resident of village - Bithra, Police Station- Kurtha in the District of Arwal.

.... Appellant

Versus

1. Bhuneshwar Singh son of Late Gauri Singh resident of village- Bithra, Police Station- Kurtha District- Arwal.
2. The State of Bihar.
3. The Additional Member, Board of Revenue, Bihar at Old Secretariat, Patna.
4. The Collector, Arwal.
5. The Land Reforms Deputy Collector, Jehanabad.
6. Ashok Kumar son of Bhuneshwar Singh, resident of village- Bithra, Police Station- Kurtha District- Arwal.
7. Sanjay Kumar son of Bhuneshwar Singh, resident of village - Bithra, Police Station- Kurtha District- Arwal.
8. Chandrakanta Sharma, wife of Late Ram Kumar Sharma, resident of village – Bithra, P.S. – Kurtha, District – Arwal.

.... Respondents

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Appearance :

For the Appellant/s	:	Mr. Murari Prasad Sinha, Advocate
For the Respondent no. 1	:	Mr. Ashok Kumar Singh-3, Advocate
For the State	:	Mr. Kamlesh Kishore, AC to GP-2

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 22-07-2016

The present Intra-Court Appeal under Clause 10 of the Letters Patent is directed against that part of the judgment and order of learned Single Judge dated 27.06.2013 passed in C.W.J.C. No. 10196 of 2004

(Manmati Devi Vs. State of Bihar and others), by which the learned Single Judge has remanded the matter for fresh consideration to the original court of the Deputy Collector, Land Reforms (in short "DCLR"), Jehanabad, which would now be District – Arwal.

We have heard the contesting parties and examined the records in detail.

The material facts are not in dispute. It appears that respondent no. 8 to this appeal, who was also respondent no. 8 in the writ proceedings, namely Smt. Chandrakanta Sharma executed a sale deed dated 20th May, 1993 in favour of respondent nos. 6 & 7, namely Ashok Kumar and Sanjay Kumar, both sons of Bhuneshwar Singh, in respect of land of area about 1.09 acres situated in their village. The sale deed was duly registered on 10.04.2000. Subsequently, the two vendees, who are brothers, executed a deed of gift in favour of their mother in respect of the entire land, being Smt. Manmati Devi, on 08.06.2000, which was duly registered on the same day i.e. 08.06.2000. The appellant, who was respondent no. 5 in the writ proceedings, claimed to be boundary raiyat of the land in question, filed a petition on 07.07.2000 under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short "the Land Ceiling Act") claiming pre-emption. This application, though was filed on 07.07.2000, it was filed only against respondent nos. 6 & 7 who had purchased the said land by registered deed which was registered on 10.04.2000 and who had already by registered gift deed had gifted it on 08.06.2000 to their mother Smt. Manmati Devi. The case having been registered before DCLR for pre-emption when respondent nos. 6 & 7 appeared, they disclosed that they were not the land holders having already gifted the property by registered sale deed prior to the pre-emption application being filed and they disclosed that they had gifted the land to their mother. Accordingly, the appellant, who was respondent no. 5 in the writ proceedings, for the first time, filed an application on 09.11.2000 for impleading Smt. Manmati Devi as a party in the pre-emption proceedings. Smt. Manmati Devi was the writ petitioner. Her husband, upon her death, is respondent no. 1 to the appeal. It seems, the plea of the writ petitioner and respondent nos. 6 & 7 her sons, in the pre-emption proceedings before the DCLR, being the original court, was that the registered gift having been made much prior to the pre-emption application, the pre-emption application itself was not maintainable as against the doner with no right in the property. Secondly, it was urged that the donee whose acquisition upon gift was being sought to be now pre-empted could not be proceeded against, as there had been no application for pre-empting the gift within three months from the gift being registered on behalf of the pre-emptor i.e. appellant. Apparently, it was urged that though the deed of gift was by a registered document much prior to the pre-emption application, but having been filed in order to overcome the inconvenient position he was put in. He challenged the validity of the gift itself.

The matter was examined apparently by the DCLR in detail. It is alleged by the writ petitioner that the hearing having been concluded on 14.06.2001, the DCLR passed an order in the court in presence of parties dismissing the pre-emption application, clearly holding that, as the deed of gift was registered on 08.06.2000 and the first application having been made by this appellant, who is respondent no. 5 in the writ proceedings on 09.11.2000 for impleadment of the donee in whom the property had vested, it was clearly beyond the time of three months as fixed by Section 3 of the Land Ceiling Act. The writ petitioner contends that having heard the order, an application for certified copy was made. But when she came to know that the order was likely to be changed, to protect her right, she obtained a photocopy of the said order dated 14.06.2001, and when she received the certified copy, the order was totally different. Here, the DCLR had allowed the pre-emption application holding the gift deed to be fraudulent, merely because, it amounted to be taking away the right of pre-emption which would have otherwise arisen to the appellant. Holding thus, the deed of gift to be fraudulent, he allowed the pre-emption.

The writ petitioner filed an appeal before the District Collector and specifically urged by annexing two orders of the DCLR, the first order which was not a certified copy was, in fact, passed in court and signed in court in presence of the parties which was subsequently replaced by the order allowing pre-emption. The Collector on this issue merely called for the record and not finding the earlier order on record, which obviously had been removed and replaced, held that there was no order dismissing the pre-emption application. The appellant who had been noticed and appeared before the Collector and in whose favour pre-emption had been ordered also joining contended that the DCLR have never passed the first order and what was being urged by the donee was false. He never asked the DCLR to be examined in the matter nor had the Collector taken any steps. He merely referred to the records and held that there was true order on record. The matter would have been simple. If signature of DCLR was compared which is the same, it was for the DCLR then, to have explained not the Collector or for that matter, this appellant never required the DCLR to take a stand in the matter. When the Collector then in appeal held that the DCLR upon recording evidence came to a finding that the gift by the sons to their mother by registered document was fraudulent and had to be explained and, thus, the pre-emption as against respondent nos. 6 & 7 was valid, the appeal was dismissed. The same fate was in the Revision. The learned Single Judge rightly considered the matter that there were two orders.

The learned Single Judge rightly noticed that in spite of repeated opportunities given to the State to file counter affidavit in course of this dispute, the State being custodian of records chose not to file an affidavit. The appellant, who was respondent no. 5 in the writ petition, though filed a counter affidavit. There was no assertion by him controverting the fact that, first, an order was passed by DCLR in presence of parties in the court itself, signed and dismissing the pre-emption application. There is no averment also in the counter affidavit that such an order was a creation of the writ petitioner. All he says is that the order that was passed in the court and produced by the writ petitioner is not available on the records. This fact, as alleged by the writ petitioner herself that, the order, which was passed in the court and signed in presence of the parties, had been true and substituted by a different order itself. To us, this clearly shows that there was more than what would meet the eye. No one, not even the State, has denied the signature of DCLR on the order as produced by the writ petitioner at all stages. DCLR had been made a party but at no stage he challenged the said order. However, we do not think that it would be necessary to resolve this issue.

In our view, the order of the DCLR, the Collector and the Member, Board of Revenue cannot be sustained, even otherwise. The DCLR, the Collector and the Member, Board of Revenue have held that the registered deed of gift by the two sons, respondent nos. 6 & 7 in favour of their mother, the writ petitioner respondent no. 1 was fraudulent. It was fraudulent because it was done to defeat the appellant's right of pre-emption. What the authorities forgot is that this deed of gift was executed and registered on 08.06.2000, more than a month before the pre-emption application was filed, which was filed on 07.07.2000. How can a right be defeated even before the right accrues? The right to pre-empt has to be noticed only when a pre-emption application is filed. There is no automatic pre-emption. A person may choose to pre-empt, a person may not choose to pre-empt. Even before a person chooses to pre-empt and that too more than a month before that the gift deed was executed and registered, the pre-emptor had to take steps to ensure that his right is maintained. He filed pre-emption application against respondent nos. 6 & 7 at a time when respondent nos. 6 & 7 had already divested themselves of right, title and interest in the property and, therefore, an application was filed against persons who were not the holder of property. Impleadment of the mother in those proceedings was long after three months of the transaction. That itself defeat the right, title and interest. Even if it was permissible for the appellant to get the donee impleaded in a proceeding which was not maintainable, the impleadment was beyond time prescribed.

Similar plea was taken in the case of ***Dhanik Lal vs. Additional Member, Board of Revenue*** since reported in ***AIR 1986 Patna 95***; which is also a case of gift, but this time by the father to his two sons. The court held that such a transaction was permissible as when a valid and genuine gift is made the same is obviously not pre-emptible under the statute and if the donees are not impleaded or proceeded against for pre-emption within time prescribed, the right gets defeated. Here, in the present matter, two sons have gifted the property to their mother.

In view of the aforesaid facts, it has rightly been urged on behalf of respondent no. 1, 6 & 7 in this appeal, that though the learned Single Judge was correct in setting aside the orders of DCLR, Collector and the Member, Board of Revenue, the learned Single Judge ought not to have remanded the matter for fresh consideration. In our view, the respondents are correct.

In view of the facts and circumstances as noted above, the learned Single Judge ought to have allowed the appeal instead of remanding the matter for fresh consideration. We would accordingly dismiss the same and allow the writ petition. The orders of the DCLR, Collector and the Member, Board of Revenue are set aside.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/-

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