

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13191 of 1992

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Malti Devi W/o Bigan Singh

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna
3. The Additional Collector, Saran, Chapra
4. The D.C.L.R., Saran, Chapra
5. Most. Laljhari Devi
6. Shambhu Nath Singh
7. Moti Lal Rai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Mishra

For the Respondent No. 6 : Mr. Awadhesh Kumar

For the State : Mr. Shahid Siddiqui AC- AAG V

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 22-02-2018

Heard both sides.

2. The petitioner, in this writ petition, seeks quashing of the order dated 03.02.1992 passed by Additional Member, Board of Revenue, Bihar, Patna in Land Ceiling Revision case No. 48 of 1991 (Annexure-3).

3. The relevant and requisite facts relevant for disposal of this writ petition are that petitioner executed a sale deed in favour of Moti Lal Rai with regard to Khata No. 689, plot No. 3429, 3430, 3431 measuring 10 katha on consideration amount of Rs. 20,000/- . The vendee paid only Rs. 12,500/- to the petitioner promising to pay rest of the amount at the time of transfer of receipt of receiving the sale deed but the vendee never paid the remaining consideration amount of Rs. 7,500/-. Consequently, the petitioner/vendor gave notice to the vendee to cancel the sale deed.

4. Yogendra Singh, husband of respondent No.5 and father of Shambhu Nath Singh, respondent No.6, the preemptor, filed L.C. case No. 18 of 1989 before the Deputy Collector, Land Reforms (DCLR). The DCLR allowed the preemption case of Yogendra Singh,



now substituted by his wife and son. The petitioner filed appeal being L.C. Appeal No. 28 of 1990 before the Additional Collector, Saran and the Additional Collector set aside the order of DCLR as contained in Annexure-2 dated 10.01.1991 holding that execution of sale deed is not complete and the title did not pass over to the vendee due to non payment of consideration amount. On such the preemptor filed L. C. revision case No. 48 of 1991 before the Additional Member, Board of Revenue and the Additional Member, Board of Revenue held that Motilal Rai, vendee, is neither a co-sharer nor an adjoining raiyat of the vendor, Malti Devi, the petitioner, and the disputed deed of *cancelnama* is absolutely illegal and accordingly set aside the order of the Additional Collector (Annexure-2) and confirmed the order of DCLR (Annexure-1). The petitioner/ vendor being aggrieved by the order of Additional Member, Board of Revenue (Annexure-3) filed this writ petition.

5. Having heard the submission of both sides, the sole question arises for consideration in this case as to whether if a transferee executed a conditional sale deed awaiting the transfer of title to the vendee on condition of payment of part consideration amount and if the sale deed is cancelled due to non fulfillment of conditions the petition under Section 16 (3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Lands) Act, 1961 is maintainable or the same shall survive even after judgement of the competent civil court cancelling the sale deed on account of non payment of consideration amount?

6. The learned counsel for the petitioner submits that admittedly the petitioner/ vendor executed the sale deed on 11.01.1988 and the same was registered on 22.06.1988 but it was agreed between the vendor and vendee for transfer of receipt of receiving the sale deed after payment of remaining consideration



amount but immediately thereafter the preemptor filed preemption case. The learned DCLR held that cancellation of sale deed is illegal and the vendor has got no authority to cancel the sale deed. The Additional Collector, on appeal, held that on account of non payment of consideration amount the title would not pass even after execution of the sale deed but this finding was illegally reversed by the Additional Member, Board of Revenue.

7. The learned counsel for the petitioner placed reliance on a single bench judgement of this court reported in **1989 PLJR 103 (Ram Chandra Singh v. Sub-divisional Officer, Hajipur & Ors)**.

8. From a bare perusal of the judgement in the case of *Ram Chandra Singh v. Sub-divisional Officer, Hajipur* (supra), it appears that the question as to whether the title from the vendor to the vendee passed on execution of registration of documents for non payment of consideration money entirely depends upon the intention of the parties. Such intention of the parties has to be gathered from the various factors. Paragraphs 10 and 11 of the aforesaid judgement reads thus:-

“10. It is now well settled that that the question as to whether the title from the vendor to the vendee passed on execution of registration of documents for non payment of consideration money entirely depends upon the intention of the parties. Such intention of the parties has to be gathered from the various factors. Only because in the sale deed dated 27.11.1965 executed by Mst. Mania to Mst. Samia it was mentioned that the consideration money has passed to the vendor from the vendee, the same is not decisive. It was open to the court concerned to take into consideration the various factors and circumstances existing at the time for the purpose of determining the intention of the parties.

11. In the instant case although admittedly Mst. Samia executed a registered deed of cancellation on 10.03.1966 and as contained in Annexure-1 to the writ application and subsequently Mst. Samia also executed registered deed of sale dated 11.07.1976 in favour of Raghubir Saran Mishra, those transactions although are



relevant, but are not conclusive. However, in the instant case even Mst. Mania at the first opportunity pointed out that she does not have any right title or interest in respect of the deeds of sale dated 22.1.1965. This conduct on the part of the parties to the transaction are relevant for the purpose of determination of the question as to whether the intention of the parties to the said transactions was that no title will pass to the vendee unless the amount of consideration is paid or not. Although in a slightly different situation, a Division Bench of this court in the case of Kamaldhari Rai v. State of Bihar 1979 BBCJ 179 (supra) held as follows:-

'Learned counsel for the vendor namely, respondent No.5 contends before us that no consideration was passed to him by respondents 3 and 4. The counsel for respondents 3 and 4 also states that no consideration was paid to the respondent 5 in respect of impugned sale deed. Hence we hold that it was not a valid transfer as no consideration money was passed between the vendor and vendee. In view of the statement of the counsel of both the parties, it is clear that the sale deed was actually not effected between the parties and according to them the title also did not pass from respondent 5 to respondents 3 and 4.'

In this view of the matter, I am of the opinion that no title passed to Mst. Samia under the registered deed of sale''.

9. It is evident from perusal of the aforesaid judgement that passing of title even after execution of sale deed on non payment of consideration amount depends upon intention of the parties and the intention has to be gathered on the basis of evidence and attending circumstances.

10. In the present case it appears that the petitioner immediately after filing of the preemption case disclosed that she had already gave notice to the vendee for cancellation of sale deed on account of non payment of part consideration money. The petitioner



by registered deed cancelled the sale deed and also filed Title Suit No. 226 of 1992. The learned Munsif vide judgement and decreed dated 19.01.1996 and 02.02.1996 cancelled the sale deed on account of non payment of consideration amount.

11. On the facts, I find that if the vendor executed the sale deed and kept receipt with her on the condition to be handed over to the vendee after payment of remaining consideration amount, the vendor is at liberty to cancel the sale deed and on such conditional sale deed the title shall not pass to the vendee. The civil court also cancelled the sale deed. The preemption is a very weak right and the preemptor has got no right to get the land from the vendee. The Additional Member, Board of Revenue without any evidence on record and on mere presumption held that sale deed executed by the vendor on 22.06.1988 does not carry any legal force and set aside the order of Additional Collector (Annexure-2). Accordingly, I find that the order of Additional Member, Board of Revenue dated 03.02.1992 passed in L. C. Revision case No. 48 of 1991 (Annexure-3) is illegal and not sustainable and the same is set aside. This writ petition is, thus, allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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