IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1376 of 2015
In
Civil Writ Jurisdiction Case No.7093 of 1995

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Urmila Devi wife of Sri Budhi Nath Prasad Yadav resident of Village Dandari, Police Station- Singheshwar District- Madhepura.

... ... Appellant/s

Versus

1. The State of Bihar.
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Collector, Madhepura.
4. The Land Reforms Deputy Collector, Madhepura.
5. Sri Onkar Nath Pransukha, son of Late Sagarmal Pransukha a resident of Village and P.S. Singheshwar, District- Madhepura.
6. Murli Poddar son of Late Jageshwar Poddar.
7. Smt. Acharman Devi wife of Murli Poddar.
8. Smt. Arhul Devi wife of Late Sita Ram Poddar. Respondent no. 6 to 8 are resident of Village- Dandari, P.S. Singheshwar, District- Madhepura.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr R.C.Thakur
Mr. Kamal Kishore Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

8 24-01-2018 Heard counsel for the appellant.

Writ application of the appellant has been dismissed by the learned Single Judge. The reason for such dismissal has been assigned by him in following words :

"I have considered the rival submissions of the parties. The petitioners have questioned the legality of the deed of gift executed by respondent no. 6 in favour of respondent no. 8 on two counts. It has been submitted

that the said deed of gift was brought into existence only to defeat the right of preemption. The correct address of the donee has not been stated in the said document. The donor (respondent no. 6) even after execution of the deed of gift continued in possession of the said land. He has, however, not disputed the legal position in law that right of preemption would not survive in respect of deed of gift. This is presumably because the statutory provisions clearly spelt out the same. Further, in Dhanik Lal Mahto (supra), a Division Bench of this Court, while dealing with this question in paragraph 7 held as under:

> ***7. The contention aforesaid takes one to the very root of the nature of the right of pre-emption generally and in particular under S.16(3) of the Act It is common ground before us that S.16(3) is only a very limited statutory recognition of the otherwise well-known customary right of pre-emption. It has been held in a long line of precedent having the stamp of approval of the Final Court that the right of pre-emption is indeed a piratical right which may well be defeated by all legitimate means. Now, the explanation to sub-sec.(1) of S.16 in terms excludes inheritance, bequest or gift from the ambit of transfer under the said section. Therefore, if a valid and genuine deed of gift is made, the same is obviously not pre-emptable under the statute. Consequently, a bona fide transaction of gift can legitimately affect and defeat a tenuous claim to pre-emption. It has been authoritatively so held in Bishan Singh v. Khazan Singh, AIR 1958 SC 838 in the terms following……"***

The question is whether on these two contentions the deed of gift can be held to be forged and fabricated.

It is gainsaying that if the deed of gift is valid then the claim of preemption is bound to fail as has been found and held by the Revisional Court in impugned resolution. There is no dispute that the deed of gift was subsequently presented and registered on 15.12.1989. The title of the land covered by the deed of gift passed in favour of the donee with effect from the date of execution thereof. Both these dates fall prior to the lodgment of the petition before the LRDC claiming right of preemption. If the address of the donee has incorrectly been stated in the deed of gift, the same can very well be corrected by executing another document seeking correction in the document. It further appears that respondent no. 8 is own sister of respondent no. 6. In such circumstances, respondent no. 6 may be looking after the land which was gifted in favour of his sister. It is difficult for this Court, based on the pleadings on record, to accept that the donor remained in possession of the gifted land. On these facts, I am afraid, the Revenue Court cannot declare a document to be inoperative or forged. Such matter can be agitated before the Court of competent civil jurisdiction. This is the case here. Admittedly, no suit prior to the lodging of the case or even thereafter has been filed by the preemptor. If part of the land which formed block has been gifted and against which no such claim would be maintainable then the preemptor loses his/her right of being adjoining raiyat of the entire lands vended under the two sale deeds. This being the legal position, I am unable to find any patent illegality in the impugned resolution of the Board of Revenue (Annexure-3) wherein these aspects of the matter have been

considered to allow the revision application and set aside the two orders passed by the respondent LRDC as well as the Collector."

We are of the opinion that the learned Single Judge has rightly dismissed the writ application. The reason assigned by him is supported by law as well as the factual position.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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