IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5578 of 1996

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Deo Kali Devi & Anr

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat
Mr. Ved Prakash Srivastava
Mr. Rajani Kumari
Mr. Vijay Kumar
Mr. Abhay Kumar Singh

For the Respondent/s : Mr. J.Rahman (SC)
Mr. Pratik Kumar Sinha, A.C. to G.A.V
Mr. Kapil Deo Singh No.1
Mr. Vijay Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

17 27-03-2018 Heard Mr. Mahesh Narayan Parbat, learned senior counsel appearing on behalf of the petitioners, learned A.C. to G.A.5 and Mr. Kapildeo Singh, learned counsel appearing on behalf of respondent No.5.

The petitioner has filed this writ petition to quash the order dated 30.10.1993 passed by Additional Collector, Saran in Land Ceiling Appeal No.4 of 1993(Annexure-2) by which the Additional Collector set aside the order of D.C.L.R. who rejected the petition of pre-emption on 27.03.1993 filed by respondent No.5 and the Additional Member, Board of Revenue also dismissed the revision upholding the order of the Additional Collector passed in Appeal(Annexure-3).

Mr. Mahesh Narayan Parbat, learned senior counsel for the petitioner submits that petitioner purchased the land of Khata No.84, Khesra No.527 area 3 katha 8 dhurs out of 16 kathas 13 dhurs situated in village Durgauli, District Saran from one Chirkut Sah on payment of consideration of Rs.21,000. The sale deed was executed on 08.03.1991. The sale deed was registered on 23.09.1991. According to the provisions as contained in Section 16(3) of the Land Ceiling Act, the pre-emption application should be filed within three months from the date of registration of the sale deed. Admittedly, the sale deed was registered on 23.09.1991 but the pre-emption petition was filed by respondent No.5 on 18.08.1992. The pre-emption petition itself is barred by limitation. Mr. Parbat, learned senior counsel further submits that Deokali Devi, petitioner No.1 purchased the land by registered sale deed dated 23.09.1991 for construction of the house as the nature of the land is homestead. Many houses were standing in and around the land. She gifted the same land to his brother Shambhu Pandit by a registered deed of gift dated 03.08.1992. Transfer by gift does not come within the purview of transfer in the meaning of Section 16(1) and the explanation appended to it. The D.C.L.R. taking into consideration the law laid down by this High Court in different cases dismissed the pre-emption case but the Additional Collector without looking into the legal aspects that the transfer by gift does not include the transfer within the meaning of Section 16 of the Act and the pre-emption petition itself is hopelessly barred by limitation, illegally set aside the order of D.C.L.R. and allowed the petition filed by respondent No.5. The Additional Member, Board of Revenue committed the same illegality.

Contending the submissions of the learned counsel for the petitioners, learned counsel for the respondent No.5 contended and submitted that the deed of gift is sham transaction. There was no occasion for the petitioner No.1 to gift the same property to her brother purchased by her for construction of her house. The learned counsel for the State also submits that pre-emption petition is barred by limitation but this question has not been considered by any court.

On query, Mr. Kapildeo Singh, learned counsel for the respondent No.5 showed the photocopy of the registered sale deed executed by Chirkut Sah in favour of Deokali Devi, petitioner No.1 which shows that the sale deed was registered on 23.09.1991.

I have heard both sides and I find that admittedly petitioner No.1, Deokali Devi purchased the land of Khata No.84, Khesra No.527 from Chirkut Sah. The said Chirkut Sah executed the sale deed on 08.03.1991 and the sale deed was presented for registration. The sale deed was registered on 23.09.1991. According to the provisions as contained in Section 16(3) that "**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**".

In view of this provision, the pre-emptor is required to file the pre-emption case in the prescribed form within three months from the date of registration of the sale deed. Admittedly, the sale deed was registered on 23.09.1991 but the pre-emptor-respondent No.5 filed the pre-emption case on 18.08.1992 i.e. only after lapse of about 11 months and beyond the period of limitation as prescribed under Section 16(3) of the Land Ceiling Act. Thus, from this fact alone, the pre-emption case is not maintainable as the same is hopelessly barred by limitation but neither Additional Collector nor the Additional Member, Board of Revenue have taken into consideration this fact about the non-maintainability of the pre-emption case and set aside the order of the D.C.L.R. It is also admitted that when the adjoining raiyat did not file the pre-emption case within the period of limitation, the purchaser gifted the property to her brother and the word “gift” does not come within the meaning of transfer as defined in Section 16 of the Act and pre-emption petition is not maintainable against the deed of gift.

Having considered the facts aforesaid, I find that the Additional Collector as well as Additional Member, Board of Revenue have committed illegality by allowing the petition of pre-emption and thus, both the orders are not sustainable.

In the result, this writ petition is allowed. The order dated 30.10.1993 passed by Additional Collector, Saran in Land Ceiling Appeal No.4 of 1993(Annexure-2) and order dated 23.02.1996 passed by Additional Member, Board of Revenue in B.R.C. No.558 of 1993(Annexure-3) are set aside.

(Prabhat Kumar Jha, J)

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