

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.656 of 1993

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Guneshwar Prasad Yadav, son of Late Kadamlal Yadav, resident of village
and post office Maranga, Police Station Khazanchi Hat, District Purnea

.... Petitioner/s

Versus

1. State of Bihar
2. Additional Member, Board of Revenue, Bihar, Patna
3. Additional Collector, Purnea
4. Deputy Collector, Incharge Land Reform Sadar Purnea
- 5(a) Manoj Kr. Yadav S/o Dilip Pd. Yadav
- 5(b) Rumi Kumari, D/o Dilip Pd. Yadav
- 5(c) Juli Kumari, D/o Dilip Pd. Yadav
6. Awdhesh Prasad Yadav
7. Dinesh Prasad Yadav
8. Ramesh Prasad Yadav
9. Nand Lal Yadav
10. Pawan Lal Yadav
11. Revti Devi
12. Basundhra Devi

Serial No.5 to 12 all sons and daughters of Khajesh Yadav

13. Khajesh Prasad Yadav, son of Mohan Lal Yadav

14. Kamla Prasad Yadav, son of Sadar Lal Yadav

Serial Nos.5 to 14 are resident of village and post office-Maranga, p.S.
Khazanchi Hatt, District Purnea

.... Respondent/s

with

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Appearance :

(In CWJC No.656 of 1993)

For the Petitioner/s : Mr. Md.Abu Haidar
Mr. Khurshid Ahmad Siddiqui

For the Respondent/s : Mr. B.P.Verma Sc
Mr. Biresh Chakravarty

(In CWJC No.660 of 1993)

For the Petitioner/s : Mr. Md.Abu Haidar
Mr. Khurshid Ahmad Siddiqui

For the Respondent/s : Mr. B.P.Verma Sc
Mr. Biresh Chakravarty

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

8 15-02-2018 Heard both sides.

The petitioner in this writ petition prayed to quash the order dated 22.10.1992 passed by the Additional Member, Board of Revenue, Bihar, Patna, the order dated 18.04.1990 and order dated 25.07.1985 passed by the Additional Collector and the Dy. Collector Land Reforms as contained in Annexure 1, 2, 2/A, 3 and 3/A in pre-emption case and appeal respectively.

The facts giving rise to filing of this case is that the petitioner owns and possesses 2.95 acres of land of Plot No.4571 of R.S. Khata No.275 situated in Mauja Maranga. The petitioner sold the land to Kamla Prasad Yadav and his son, Ashok Kumar Yadav and executed two registered sale deeds on 26.04.1984 and



25.04.1984. Malti Devi(now deceased) whose legal heirs are respondent Nos.5 to 13 filed pre-emption case before the Dy. Collector Land Reforms. The D.C.L.R. allowed the pre-emption case and directed the respondent No.14 to reconvey the sale deeds in favour of the pre-emptor, Malti Devi. The appeal and the revision filed before the Additional Collector as well as the Additional Member, Board of Revenue have also been dismissed.

Mr. Raghiv Ahsan, learned senior counsel for the petitioner submits that in fact, the petitioner executed the mortgage deed and the deed was conditional sale with condition to resale the property to the petitioner, if amount of consideration was paid within the stipulated time but the learned D.C.L.R. illegally allowed the petitioner of the pre-emption holding that the deed is out and out a sale deed and another agreement to sale executed between the petitioner and respondent No.14 is sham and fraudulent that too executed after filing of the pre-emption case. It is further submitted that during the pendency of the pre-emption case, 1 acre 47 ½ decimals of land was acquired by the Govt. of Bihar and, therefore, Malti Devi and her legal heirs ceased to be adjoining raiyat of the land but the authorities did not consider this fact.

From perusal of the records and the order impugned, it



is evident that Dy. Collector Land Reforms has held that Guneshwar Prasad Yadav executed the sale deed after receiving the entire consideration amount and when the pre-emptor filed petition for pre-emption, Guneshwar Prasad Yadav and respondent No.14 again executed a deed of agreement to resale the property to Guneshwar Prasad Yadav after return of the consideration amount. The Additional Collector held that the deed of agreement to sale executed by respondent No.14 in favour of the petitioner after execution of the absolute sale deed by the petitioner in favour of the respondent No.14 is afterthought and sham transaction only with a view to defeat the right of pre-emptor.

Section 58(c) of T.P.Act describes the mortgage by conditional sale which says as follows:

“58(c).- Mortgage by conditional sale.- Where the mortgagor ostensibly sells the mortgaged property- on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.”

Proviso to sub-section (c) of Section 58 was inserted in the year 1929 by S. 19 of the Act 20 of 1929 and it says that provided that no such transaction shall be deemed to be a



mortgage unless the condition is embodied in the document which efforts or purports to sale. From proviso of sub-section (c) of Section 58, it is evidently clear that the sale deed shall be a mortgage on conditional sale only when the condition to repay the mortgage amount to the mortgagor or on repayment of consideration amount the sale shall be void is incorporated in the sale deed itself but in the present case, on perusal of the sale deed executed by the petitioner in favour of the respondent No.14, it is apparent that no such condition is incorporated in the sale deed. Therefore, I do not find any force in the submission of Mr. Raghiv Ahsan, learned senior counsel for the petitioners.

All three revenue courts have given concurrent finding that deed executed by the petitioner is absolute sale deed. The petitioner later on entered into an agreement with respondent No.14 to get the property from the buyer on payment of consideration amount. This agreement itself on the face appears to have been made after filing of the pre-emption case.

Therefore, having considered the facts aforesaid, I do not find any reason to interfere with the concurrent finding of all the three revenue courts with regard to the facts that revenue courts holding that the respondent Nos.5 to 13 are the adjoining raiyats and directing respondent No.14 to execute the sale deed



with regard to lands in favour of them.

Accordingly, both these writ petitions are dismissed.

(Prabhat Kumar Jha, J)

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