

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8574 of 2018

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1. Geeta Devi W/o Late Suryadeo Thakur,
2. Ramchandra Thakur, S/o Late Suryadeo Thakur,
3. Ram Kripal Thakur, S/o Late Suryadeo Thakur,
4. Ram Swaroop Thakur, S/o Late Suryadeo Thakur,
5. Ganesh Kumar Thakur, S/o Late Suryadeo Thakur, All Resident of
Village-Kasama Mararh, P.S.-Khajauli, District-Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar, through the District Magistrate, Madhubani.
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The Additional Collector, Madhubani.
4. The Deputy Collector Land Reforms, Sadar Madhubani.
5. Vishnu Deo Prasad Singh @ Vishnu Deo Singh, S/o Late Ramdeo Singh
All Resident of Village-Kasama Mararh, P.S.-Khajauli, District-Madhubani.
6. Nandi Lal Choudhary, S/o Late Brij Lal Choudhary.
7. Bhishm Lal Choudhary, S/o Nandi Lal Choudhary. Sl. No. 6 & 7
Resident of Village-Kasama Mararh, P.S.-Khajauli, District-Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rabindra Nath Kanth
For the State : Mrs. Sulekha Kumari, AC to GP18
For the respondent no. 5 : Mr. Anant Kumar Bhaskar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 26-07-2018 The petitioners have filed this writ petition for

setting aside the order dated 12.03.2018 passed by the learned

Member (Administrative), Bihar Land Tribunal, Patna, in B.L.T.

Case No. 581 of 2016 by which order dated 16.02.2010 passed by

the Commissioner, Darbhanga Division, in Land Ceiling Revision

case no. 36 of 2007-08 has been set aside.

The petitioners are pre-emptor. Suryadeo Thakur,
the husband of the petitioner no. 1 and father of the petitioner no.



2 to 5, filed pre-emption case under section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Land Reforms Act for a direction to the purchaser, respondent no. 5, to convey the land to him being the adjoining raiyat of the aforesaid land.

Admittedly, respondent no. 5 purchased 2 katha lands from respondent no. 6 and 7 through registered sale deed dated 27.04.2005. The purchaser/ respondent no. 5, Vishundeo Prasad Singh, was not a co-sharer. The case of respondent no. 5 is that he has also purchased remaining part of land of plot no. 425, khata no. 558 from the owner of the land and he became an adjoining raiyat of the land and, therefore, the pre-emption application of the petitioners is fit to be dismissed. The DCLR and the Additional Collector dismissed the petition of the petitioners holding that respondent no. 5 became adjoining raiyat of land after purchasing the remaining part of the land before filing of the pre-emption case. Of course, the second sale deed was registered after filing of the pre-emption case but the execution of the sale deed was before filing of the pre-emption case. The Commissioner in revision set aside the order of the Additional Collector and DCLR and allowed the pre-emption of the petitioners. The learned Member (Administrative), Bihar Land Tribunal, Patna by the



impugned order dated 12.03.2018 set aside the order of the Commissioner holding that since the purchaser/respondent no. 5 himself became the adjoining raiyat of the land because execution of the sale deed was prior to filing of the pre-emption case though the same was registered after filing of the pre-emption case but in view of the provision as contained in Section 47 of the Registration Act title shall be deemed to be transferred from the date of execution of the sale deed and in view of the fact the purchaser himself became the adjoining raiyat, petition of the petitioners for pre-emption was rightly dismissed.

Heard Mr. Rabindra Nath Kanth, learned counsel for the petitioners, Mrs Sulekha Kumari, AC to GP 18 and Mr. Anant Kumar Bhaskar, learned counsel for the respondent no. 5.

The sole question arises for consideration whether the purchaser who firstly purchased a piece of land, later on he also purchased the remaining part of that piece of land from the vendor who executed the sale deed before presentation of pre-emption petition by the pre-emptor after the registration of the first sale deed in favour of purchaser who registered but before the registration of the second sale deed and the purchaser since became adjoining raiyat the land purchased by one by execution of second sale deed in his favour and thus the pre-emptor has got no



pre-emptive right against such purchaser?

The learned counsel for the petitioners submits that admittedly, respondent no. 6 and 7 executed first sale deed with regard to two katha of land of plot no. 425, khata no. 558 on 27.04.2005 and the second sale deed was executed on 25.05.2005 but the same was registered on 02.09.2005. The pre-emption case can be filed only after the date of registration of the sale deed. Only on execution of the sale deed the pre-emptor under Section 16(3) of the Land Reforms Act can not file pre-emption case. The first sale deed was registered on 27.04.2005 and the pre-emption case was filed on 26.07.2005. The second sale deed was registered on 02.09.2005 and, therefore, the pre-emption application of the respondent No.5 can not be dismissed merely by execution of second sale deed on 25.05.2005 with regard to remaining land of plot no. 425 in favour of the same purchaser and the same purchaser cannot be adjoining raiyat by merely execution of sale till the sale deed is registered which was registered on 02.09.2005 although the same was not registered before filing of the pre-emption case.

The learned counsel for the petitioners in support of his submission placed reliance upon the judgment of Apex Court in the case of **Chandrika Singh (Dead) through legal**



representatives Vs. Arvind Kumar Singh (Dead) by legal representative and others reported in 2006 (3) PLJR 195 in which it has been held that the registration of sale deed executed in favour of second purchaser was not complete and effective, for want of registration when the application for pre-emption was filed against the first purchaser, a sale deed was executed by first purchaser in favour of second purchaser prior to the registration of the second sale deed. The mere execution of sale deed by first purchaser in favour of second purchaser can not negate the right of the pre-emption to proceed against first purchaser under Section 16(3) of the Act.

Contending the submission of the petitioners, learned counsel for the respondent no. 5 submitted that this question came up for consideration in several judgments of this Court including the judgment of Full Bench of this Court in the case of ***Ram Chandra Srivastava Vs. Prasidh Narayan Singh reported in 1970 PLJR 579***, in the case of ***Punyadeo Sharma Vs. Additional Member Board of Revenue reported in 2004 (3) PLJR 838***, and in the case of ***Pawan Kumar Rai Vs. State of Bihar reported in 1998 (3) PLJR 373*** and many other cases.

Facts are not in dispute that the purchaser purchased a piece of land and subsequently, before filing of the pre-emption



case, i.e. 26.07.2005, the vendor executed another sale deed in favour of the purchaser with regard to remaining part of the same land in favour of first purchaser, the purchaser become an adjoining raiyat and in that event the pre-emption case filed by another adjoining raiyat immediately after registration of the first sale deed but after the execution of the second sale deed the pre-emption case filed against the purchaser, who later on became purchaser of the adjoining land shall fail. The registration of the second sale deed shall take effect from the date of execution of the second sale deed. The facts of the case on which the learned counsel for the petitioners placed reliance are different in as much as first purchaser himself executed the sale deed in favour of the second purchaser but the same sale deed was not registered before filing of the pre-emption case and in that event the Apex Court held that right of pre-emption against first purchaser can not be defeated. On the facts of the present case, the question fell for consideration has been decided by the full Bench as well as many other Division Benches and single Benches of this court (supra) (*Ramchandra Srivastava Vs. Prasidha Narayan Singh*) that if a purchaser himself purchased the remaining part of the land and the deed of sale was executed prior to the filing of the pre-emption case, the pre-emption application against first purchaser shall fail



simply because purchaser himself became adjoining raiyat.

Having considered the facts aforesaid, I do not find any merit in this writ petition and the same is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

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