IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.464 of 2018
In
Civil Writ Jurisdiction Case No.13191 of 1992

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Shambhu Nath Singh, S/o Yogendra Singh, R/o Naraon Tola, P.S.- Garkha (Avtar Nagar), District- Saran.

... ... Respondent- Appellant/s

Versus

1. Malti Devi, W/o Bigan Singh, R/o Village- Naraon Tola, Pargana Bali, P.S.- Garkha, Avtar Nagar, District- Saran.

… Petitioner/Respondent.

2. The State of Bihar.
3. The Additional Member, Board of Revenue, Bihar, Patna.
4. The Additional Collector, Saran.
5. The DCLR, Chapra.
6. Most. Lal Jhari Devi (now Dead), W/o Late Yogendra Singh, R/o Naraon Tola, P.S.- Garkha, (Avtar Nagar), District- Saran.
7. Moti Lal Rai, S/o Ramanand Rai, R/o Village Kansh Diara, Balua Pargana, Chirag, P.S.- Doriganj, District- Saran.

... ... Respondents- Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Awadhesh Kumar, Advocate
For the State	:	Mr. Asif Kalia, AC to AAC-12

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-01-2019

<u>Re.: Interlocutory Application No.4673 of 2018</u>

Having heard learned counsel for the appellant, we are satisfied that sufficient cause has been shown and we accordingly, condone the delay and treat the appeal within time.

The application is allowed accordingly.

<u>Re.: Letters Patent Appeal No.464 of 2018</u>

The learned Single Judge under the impugned judgment has arrived at the conclusion that the learned Additional

Member, Board of Revenue committed an error in accepting the claim of the appellant which was a right of pre-emption and was a weak right in the given circumstances of the case. Accordingly, the writ petition filed by the respondent-petitioner was allowed and the order of the Board of Revenue was set aside.

Aggrieved, the appellant is before this Court contending that it was in order to defeat the right of pre-emption of the appellant that the contesting respondent filed the suit for cancellation of the sale deed, which was even after the order passed by the Board of Revenue. Such cancellation of the sale deed would, therefore, be a decree which would not operate against the appellant inasmuch as the appellant was not made a party to the suit proceedings and the decree was obtained without impleading the appellant.

In the background of the aforesaid, it is urged that even the cancellation deed which was earlier executed would not extend any benefit to the respondent-petitioner and hence, the learned Single Judge committed an error in quashing the order of the Board of Revenue that had restored the right of pre-emption of the appellant.

We have also heard learned counsel for the State of Bihar and having perused the records, we find that the sale deed, which was executed on 11th of January, 1988 came to be registered on 22nd of June, 1988. The sale deed was executed by the petitioner, but it was agreed between the vendor and vendee that the receipt would be transferred after receiving the remaining part of the consideration amount as stipulated in the sale deed. Instead of this, that the petitioner gave notice to the vendee for cancellation of the sale deed on account of non-payment of the part of the consideration and executed a cancellation deed. Apart from this, she also filed title suit being Title Suit No.226 of 1992 that came to be decided on 19th of January, 1996 and the decree was prepared on 02nd of February, 1996 on the same ground that the consideration amount which was due had not passed on to the vendor.

The fact, therefore, remains that the sale deed was cancelled. Learned counsel for the appellant submits that the application for pre-emption had been filed by the appellant long before the said decree in the civil suit and consequently, since the appellant had not been impleaded as a party in the suit, there would be no impact of the cancellation of the sale deed.

We are unable to agree with this proposition inasmuch as the sale deed was between the vendor and the vendee and, therefore, it is only the parties to the transaction who were proper and necessary parties if the sale deed had to be cancelled. The rights of the appellant were clearly dependent upon the existence of the status of the right of the vendor and which stood restored on the cancellation of the sale deed. As mentioned by the learned Single Judge, the right of pre-emption is a weak right and in that view of the matter, the learned Single Judge does not appear to be unjustified in allowing the writ petition and setting aside the order of the Board of Revenue thereby annulling the claim of pre-emption of the appellant.

We, therefore, find no merit in the appeal which is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

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