

**In The Court of Commissioner, Saran Division, Chapra  
Land Ceiling Revision No. 264/2008  
Nizamuddin Khan.**

**Vrs.  
Sandeep Singh & ors.**

**ORDER**

21.09.2015- The instant revision petition is directed against the impugned order passed by the Addl. Collector, Gopalganj in L.C. appeal case No. 58/2005-06 (Jitendra Singh Vrs Nizamuddin Khan & ors) on 05.09.2008.

The brief facts of the case are that one Jitendra Singh S/o Late Ram Ekabal Singh R/o Vill-Ratanchak, P.S.-Mirganj, Dist-Gopalganj executed two registered sale deeds dt. 24.04.2003 with respect to disputed piece of land appertaining to khata No. 28, plot No. 1055 each having area of 3 katha 13 dhur one Bibi Samima Khatoon W/o Shekh Naushad Ahmad R/o Vill-Hathua Tola Domahatta, Dist-Gopalganj. Thereafter, one Nizamuddin Khan S/o Anul Khan claiming himself to be the adjoining raiyat filed pre-emption case bearing No. 5/03-04 and 6/03-04 before DCLR Hathua. The learned DCLR vide his order dated 02.08.2003 allowed the said pre-emption cases. Feeling aggrieved by the said order the vendor, Jitendra Singh filed an appeal case before Addl. Collector, Gopalganj wherein his prayer was that as he could not get the consideration money as agreed for by the vendee, he had already cancelled the said sale deeds as per the terms mentioned in the said sale deeds. However, the learned Addl. Collector allowed the appeal on the ground that as the sale deeds have been cancelled there was no question of deciding pre-emption vide order dt. 05.09.2008.

On being aggrieved by and dissatisfied with the aforesaid order the present petitioner (o.p. before Addl. Collector) has preferred this revision case before this Court. Meanwhile, during the pendency of this revision petition before this Court, the vendor Jitendra Singh (o.p. No.1) died and this led to the substitution of his legal representative as respondents in the case.

Heard the parties.

The learned counsel appearing on behalf of the petitioner submitted that the petitioner is co-sharer as well as adjoining raiyat of the vended land and it was on this ground his pre-emption claim was allowed by the learned DCLR, Hathua. He further submitted that the respondents instead of complying with the order of learned DCLR filed appeal case before Addl. Collector and the said appeal was illegally allowed by him by setting aside the order passed by DCLR. He further submitted that the appellate court ought to have appreciated the definition of sale, as defined under section-54 of the Transfer of Property Act and he should have held that execution of the sale deed does not transfer the title in favour of the purchaser. He also argued that the vendor has no right to cancel a sale deed because the title passes to the purchaser along with the execution of sale deed and for cancellation of that sale deed only civil court is competent. The learned counsel also submitted that the appellate court passed the order without considering the relevant facts of the case as such the said order is fit to be set aside and in support of his said contention he also filed a copy of the reported judgement with his written arguments. He lastly prayed that this revision is fit to be allowed.

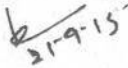
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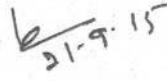
The learner counsel appearing on behalf of the respondents submitted that in this case the vendee did not pay the consideration money to the vendor as per terms and condition mentioned in the sale deed document so title and possession did not pass to the vendee and both the sale deed remained invalid and inoperative and no case of pre-emption will lie on the basis of such invalid and inoperative sale deed. The learned counsel also referred to a reported judgment of Hon'ble High Court passed in CWJC No. 6824/1989, *Bibi Rabia Khatoon Vrs The State of Bihar and ors.* wherein in it has been held that "no claim of pre-emption is maintainable in a case where sale deed in question is ineffective and inoperative between the vendor and the vendee due to non-payment of consideration money to the vendor by the vendee". He further submitted that there is no legal flaw in the impugned order of Addl. Collector, as such the same be upheld and this revision petition being devoid of any merit is fit to be dismissed.

Considering the facts and circumstances of the case, material on records and on going through the claims and counter-claims raised by the learned counsel for the contesting parties as well as on perusal of the impugned order, it is seen that the only question worth consideration before this Court as to whether the impugned order passed by the Addl. Collector, Gopalganj is legally valid or not. From bare perusal of the contents of the sale deed, it is seen that certain terms and conditions were incorporated in the said sale deed documents with respect to the payment of consideration money to the vendor and when the vendee failed to comply with the said terms and condition as enumerated in the sale deed, the action on the part of vendor to cancel the said sale deeds seems to be correct. The Hon'ble High Court also held the view that pre-emption application is not maintainable where entire consideration money is not paid to the vendee as per the term of the sale deed agreed upon between them. The petitioner's claim, on the other hand, is based on the fact that cancellation of a sale deed after registration is not possible under the law by the vendor. But from the findings arrived at by the Hon'ble Court, it is seen that as the sale deeds were ineffective and inoperative, no pre-emption is maintainable. I do not have any reason to take a contrary view in the matter in absence of any reasonable and reliable evidence.

Thus, for the aforesaid reasons, I do not find any apparent error in the impugned order of Addl. Collector, Gopalganj hence the same is upheld. Accordingly this revision petition being devoid of any merit is dismissed.

Dictated and corrected by me.

  
31-9-15  
Commissioner  
Saran Division, Chapra.

  
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Commissioner  
Saran Division, Chapra.