

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling Revision No. 209/2008
Kanchan Sah & others
Vrs.
Musmat Patasiya Devi

ORDER

13.03.2015 The instant revision is directed against the impugned order passed by Collector, Gopalganj on 14.07.2008 in L.C. 16(3) Appeal Case No. 39/2007.

The brief facts of the case are that the present petitioner Kanchan Sah R/o Vill-Barari Jagdish, P.S.- Uchakagaon, Dist-Gopalganj purchased a piece of land measuring 1 ½ dhur appertaining to Khata No. 121 plot No. 208 from one Laljee Bhagat through registered sale deed. Thereafter, the present respondent, claiming herself to be the Co-sharer and adjoining raiyat of the vended plot, filed pre-emption case before DCLR Hathua and the learned DCLR vide order dt. 30.08.2007 allowed the pre-emption. This led to filing of an appeal by the present petitioner before Collector, Gopalganj, who vide order dt. 14.07.2008 dismissed the appeal and being aggrieved by the said order of Collector, Gopalganj, the present petitioner preferred this revision petition before this Court.

Heard The parties:

The learned counsel for the petitioner submitted that the petitioner purchased 1 ½ dhur land which is part of R.S. plot No. 208 which is in south eastern portion of the R.S. plot No. 208 which is contiguous north of the main road and the said land was purchased for construction of shop and the nature of land has been charged into Dih-basgit. He further argued that pre-emptor are neither boundary man nor adjoining raiyat of the disputed land but they claim to be the co-sharer but pre-emption is not maintainable on Dih-basgit land and the lower Court without making any local inspection allowed the claim of pre-emption. So, the impugned order be set aside.

The learned counsel appearing on behalf of the respondent while refuting the claims of the petitioners argued that the vendor and pre-emptor are from one family as such the pre-emptor is the co-sharer of the disputed land. He further argued that the purchaser is neither co-sharer nor adjoining raiyat of the vended land and the claim of the petitioner that the nature of land has been changed into dih-basgit is not correct.


Considering the facts and circumstance of the case material on records and on going through the respective claims of the contesting parties, it is seen that the size of the disputed land is quite small. The petitioners claim to have purchased the disputed land for construction of shop. This avèrment of petitioner seems to be acceptable so far as the size of plot is concerned because of the fact that in such a tiny plot no agricultural activities can be carried out. The respondent's claim of adjoining raiyat of the vended land is undoubtedly correct but the size of the plot and its changed nature certainly shows that the same might have been purchased for building a shop but this important aspect has not been considered by the learned Addl. Collector Gopalganj. It is almost settled by Hon'ble High Court in a series of decisions that



small tract of land can better be used for homestead purpose rather than for agricultural purpose. In that view of the matter it seems to me that the area of disputed land is so small that even on such land hardly any agricultural activities can be carried out smoothly. It is seen that the learned Addl. Collector has passed the impugned order in a mechanical manner without making any inquiry by himself or through any other revenue authorities about the nature of the disputed land so as to arrive at a correct finding of facts. The pre-emptor, on the other hand, also failed to prove his case absolutely that he qualifies to claim pre-emption on such a small tract of land whose nature has very much changed in to homestead.

For the aforesaid reasons and observation made therein, the impugned order of Addl. Collector Gopalganj dated 14.07.2008 is not sustainable. Hence, the same is set aside and in the result, this revision is allowed.


Dictated and corrected by me.:


Commissioner,
Saran Division, Chapra


12/3/15
Commissioner,
Saran Division, Chapra

Memo No. Date
Order Passed on 12/3 is forwarded to The
D/O, Saran.

For information and necessary info and for
Communication to all concerned


Sec To Com
Saran Div, Chapra
19/3