

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling(Pre-Emption) Rev. No. 75/2013
Dhruv nath Singh & Ors.

Vrs.

Jag Mohan Singh.

04.3.2014

ORDER

The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling (Pre-emption) Appeal Case No. 16/2011 on 29.01.2013

The brief facts of the case are that the respondent No. 1 Jag Mohan Singh S/o late Gopal Singh. R/o Village- Rajmal pirari P.S. – Revilganj Dist- Saran purchased a piece of land measuring 13 Katha 2 Dhur, appertaining to Khata No. 123, spread over in plot No. 832, 857, 858, 859, 1095 and 1100 through registered sale deed dated 07.12.2010 from one Sheo Mangal Singh. Thereafter, the present petitioner and his two brothers, claiming themselves to be the co-sharer of the transferred land filed a pre-emption case bearing No. 17/2010-11 before DCLR, Chapra . Sadar. The said case was allowed in favour of the present petitioner. Feeling aggrieved by the order of DCLR, Chapra sadar, the present respondent filed L.C. (Pre-emptor) appeal No. 16/2011 before Addl. Collector, Saran on the plea that the pre-emptor being not the co-sharer of the vended land and inspite of that the claim of pre-emption was allowed by DCLR, Chapra. The learned Addl. Collector, Saran vide order dated 29.01.2013 allowed the appeal in favour of the present Respondent No. 1.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran the present petitioner preferred this revision case before this court.

Heard the parties.

The learned counsel appearing on behalf of the petitioners submitted that the impugned order of Addl. Collector is against the law as well as against the facts because the learned Addl. Collector failed to understand the argument and meaning of the word "onus and memorandum of partition. He further argued that there is no partition in the family of the petitioner till date and the petitions are the co-sharer and boundary raiyat of the vended land. He also pleaded that as per the provisions of HUF, the Hindu family presumed to be joint unless proved otherwise. The learned counsel while assailing the impugned order of Addl. Collector submitted that he failed to appreciate the moto, aim and recital of law of pre-emption because the law is meant for preventing fragmentation of culturable land for integrated farming. He strongly submitted that the learned Addl. Collector, has failed to consider the fact

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that the purchaser of lands are stranger to family, having no land in the boundary of the vended land whereas the petitioner's and other family members are not only are boundary men but they are co-sharer of the vendor, the respondent No. 2. The learned counsel lastly prayed that the impugned order is fit to be set aside and this revision be allowed.

The learned counsel for the respondent No. 1, on the other hand, vehemently opposed the averments made by the learned counsel for the petitioner's and submitted that the impugned order is based on correct appreciation of facts and law. The learned counsel further argued concentrating himself on the basis of the genealogical table as drawn by petitioner's in the memo of revision petition, in order to prove that the petitioners are no longer enjoyed the status of the co-sharer and boundary raiyat in respect of the vended plots in as much as all the lands of the family of Ambika Singh (one branch of petitioner's) and Satyanarayan Singh (another branch of respondent No. 2). both sons of Ran Deni Singh were partitioned by meets and bounds and there was further partition amongst their sons and now they have no concern with each other in respect of land. He further submitted that the petitioner's were not in the boundary of vended plot No. 1100 and 1095. Because the partitions of these two plots have been done in such a way that the petitioner's have got no share exactly adjacent to the vendor's share. He also drew the attention to the rejoinder, filed on 6.08.2013 wherein the sketch map of plot No. 1095 and 100 shown to be partitioned amongst the two branches and its further partitioned amongst the legal heirs just to prove that the petitioner's are not adjacent to the vended plot. The learned counsel further submitted that the sons of Satya Narayan Singh have also partitioned their share of land in plot No. 1100 and of which Siyaram Singh was allotted 1 Katha 2 Dhur towards north which he has sold to Matukinath Singh and just south to the lands of Siyaram Singh, prem singh was allotted 1 Katha 2 Dhur and Prem Singh has sold his share to Suresh Singh and Suresh Singh has constructed his double story house in the purchased land. Just south to the land of Prem Singh, Sheo Mangal Singh had 1 Katha 2 Dhur which was sold to the respondent. The learned counsel lastly submitted that the revisionist are not the boundary men of all the vended plot and hence they are not entitle to claim pre-emption.

Considering the facts and circumstance of the case material available on records and claims and counter claims raised by the contesting parties, it appears that the claim of the petitioner's at the revisional stage is mainly centred on the issue of they being the co-sharer and boundary men of the vended plot but this fact, although, considered by the learned DCLR but the same was not considered by the appellate court. On the other hand the respondent No. 1 the

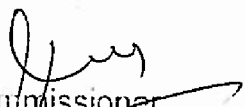



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purchaser's refuting the claim of the petitiones submits that the petitioner's are no way co-sharer of the land as all the members have already portioned the land by means of private partition the petitioner's have lost the status of co-sharer long before. It appears that as per the genealogical table the disputed piece of land which are part of the different plots Nos. 832, 857, 858, 859, 1095 and 1100 undoubtedly belongs to one Ram Deni Singh. The generolical certificate issued by C.O. Chapra, Sadar shows that Ram Deni Singh had two sons, namely Ambika Singh and Satya Narayan Singh, the present petitioner's are the grand sons of Ambika Singh and the vendor. Respondent No. 2 is the son of Satyanarayan Singh. It can not be disputed that the ancestral land has not been petitioned amongst the legal heirs of the two branches till date. Had it been not partitioned then how could the other family members would have sold their share to outsiders and against which no pre-emption was claimed. Thus, it appears that the claim of the petitioner's that still all members are joint is not tenable and furthermore , there is no reason to presume that the family is joint and having no partition. So far as the claim of the petitioner that they are in boundary of the vended land is also not acceptable in the light of the facts that they do not have any share either in their name or their father's name so far as the boundary of plot No. 1095 and 100 is concerned . So this claim of the petitioner's also having no merit for consideration. The learned Addl. Collector, dealt the matter at length fully in accordance with law to arrive at final conclusion that the petitioner's are not the boundary men of all the plots and even in the said deed it was mentioned the different names in different boundary of the vended lands which further proved the partition amongst the different branches of the petitioner's. The learned counsel for the petitioner failed to brought any substantial documentary evidence to prove that still the family is joint so as to prove his claim absolutely beyond all reasonable doubts. It is also worth to mention here that the settle principle of law that the burden of proof lies heavily on the petitioner to prove his case absolutely. The petitioner's also miserably failed to prove his case on this count also.

From perusal of the impugned order it appears that the learned Addl. Collector has given a categorical findings on the issue raised by the parties in appeal. Thus I do not find any irregularities and illegality in the said order and accordingly the same is upheld.

In the result , this revision is dismissed.


Commissioner,
Saran Division, Chapra
4/31/2014


Commissioner, 4/31/2014
Saran Division, Chapra