

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 196/2011

Satya Prakash Singh & ors.

Vrs.

Ram Jeewan Sharma & Ors.

ORDER

21.07.2016 - The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling Appeal No. 05/2011 on 19.10.2011.

The brief facts of the case are that the disputed piece of land measuring 03 katha 18 dhur, appertained to Khata No. 244, survey Plot No. 2323, situated in Mauza Rampur, P.S.-Garkha, Dist- Saran. The disputed land on partition amongst the son of Gajadhar Singh, came in the share of Banarshi Singh who firstly mortgaged the said land to one Bhrigunath Sharma on 13.02.2006 and again transferred the said land in favour of petitioners Nos. 1-3 through registered sale deed dated 15.10.2009 without redemption of the same from mortgagee. Later on the present petitioners partitioned the disputed land and each having equal share of 1 katha 9 dhur and came in possession over the same. Subsequently the present petitioner No. 1 transferred his share to his son through a gift deed dated 05.01.2010. After this one Prabhunath Sharma S/o Yadunandan Sharam R/o the same village, claiming himself to be the co-sharer and adjoining raiyat of the disputed land filed a pre-emption case u/s 16 (3) of Bihar Land Reforms (Fixation of ceiling Areas and Acquisition of Surplus Land) Act- 1961 for the reconveyance of the said land vide L.C. case No. 15/2009-10 before DCLR, Chapra Sadar. But the learned DCLR, rejected the pre-emption case vide order dt. 10.01.2011 holding that the disputed land's nature has changed into homestead and the said land was transferred through gift deed before filing of pre-emption so on such land no pre-emption claim is maintainable. Feeling aggrieved by the said order the pre-emptor Prabhunath Sharma preferred an appeal case bearing L.C. Appeal No. 05/2011 before Addl. Collector, Saran and the learned Addl. Collector vide order dt. 19.10.2011 allowed the appeal wherein he held that as the nature of land mentioned in the sale deed document is agricultural and gift deed has been executed to defeat the pre-emption right of the pre-emptor, the findings of learned DCLR can not be upheld and accordingly he allowed the appeal.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran, the present petitioners have preferred this revision petition before this Court. In the present revision petition the original pre-emptor Prabhunath Sharma was made as respondent No.1 but due to his death during the pendency of this revision case later on his sons and daughters have been substituted in his place as per the order of this Court on 21.04.2014.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner submitted in details about the whole course of events in connection with the disputed land like mortgage deed, registered sale deed, partition amongst the purchaser and subsequently

execution of gift deed in favour of his son by one of the purchaser. Apart from that the learned counsel also raised three important points involved in this case and also stated that these points needs consideration in view of the fact that these points have not been considered appropriately by the appellate Court. The three points raised by the learned counsel are 1. whether the pre-emptor had right to file the pre-emption case? 2. Whether the nature of the land has changed from agricultural to residential one, 3. Whether the sale deed over which the pre-emption was filed is valid and operative?. The learned counsel further submitted in details on each and every points raised by him and tried to prove that all these points can be answered negatively and in support of that he also cited some of the reported judgments of Hon'ble High Court and emphasized on its close applicability to the fact situation of the present case with the said judgments. [PLJR 2015 (1) page 948; PLJR 2010(1) page 846; PLJR 2007(4) 147; PLJR 2015(2) 229; PLJR 2011 vol-3 page 196]. The learned counsel also argued that the learned Addl. Collector ought to have held that the nature of the disputed land has been changed from agricultural to residential and this was also evident from the report of advocate Commissioner because he had found large number of residential houses in the vicinity of disputed land. He also submitted that it should have been held by the learned Addl. Collector that part of the disputed land has already been transferred by one purchaser to his son through gift deed and this is well settled that deed of gift is beyond the purview of the pre-emption. He also argued that the pre-emption appeal was fit to be dismissed by the Addl. Collector because of the fact that sale deed was not complete for non-payment of entire consideration money. The learned counsel lastly prayed that as the impugned order suffers from the vice of arbitrariness as so many legal points have not been considered eloquently and in its right perspective, the said order is fit to be set aside and accordingly this revision petition be also dismissed.

The learned counsel appearing on behalf of the respondents while strongly opposing the arguments forwarded by the learned counsel for the petitioner, supported the impugned order by saying that the said order is just and proper in view of the fact that the said order has been passed after careful consideration of the whole material facts of the case. He further submitted that all the issues raised by the petitioner are totally unfounded and far from truth. Regarding the claim of the petitioner that no pre-emption claim is maintainable on the gift deed, he submitted that the petitioner, although, got only 1 katha 6 dhur after partition in the disputed plot of 3 katha 18 dhur as his equal share but he gifted 1 katha 9 dhur to his son and secondly the valuation of the land shown in the sale deed and gift deed are not matching and the said gift deed is inoperative as no possession was delivered to the donee so the said gift deed is forged, fabricated and showy. He further argued that the claim of the petitioner that the disputed land has changed its nature and became homestead is totally baseless as the nature of land shown in the sale deed document is agricultural and that is a conclusive evidence about the nature of land and if for the moment it is supposed that the said land is homestead then upon which pre-emption is also maintainable and in support of that he referred to a judgments (PLJR-204(2) page339; PLJR (2011)(2) page 94). He further refuted the claim of the petitioner that since the initial sale deed regarding the disputed land is inoperative so no pre-emption claim is maintainable and he argued that the sale deed was operative and valid as no title can pass unless the consideration money is paid. He also argued that the point raised by the petitioner that pre-emptor does not come under the definition of

raiyat for the first time in the revisional Court so this point can not be considered now and he has got no legal right to bring this point before revisional Court. The learned counsel lastly said that as the findings of the appellate Court is correct and in accordance with law the same needs to 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 available on records, claims and counter-claims made by the learned counsel for the parties during their oral arguments respective submissions made in their written statements and on perusal of the impugned order as well as the various judgments referred by the parties, it is seen that in the instant case some contentions issue needs, consideration in its right perspective in view of the conflicting findings of facts by the Courts below. The learned counsel for the petitioner is of the view that as the disputed land was partitioned between three brothers, the pre-emptor seized to be the adjoining raiyat because his claim of adjacency is based on the ground that he is in the boundary of the vended land, but this claim of the respondent is not acceptable. The other important points that pre-emption is not maintainable on gifted and homestead land are very strong points in favour of the petitioners as the gift deed was executed before the filing of pre-emption and the nature of land has been found to be changed into homestead from agricultural as reported by the Advocate Commissioner after field visit. The rulings cited by the petitioner in support of his contention on these points is in full conformity with the fact situation of the present case. Although, the learned counsel for the respondent is of the view that the learned Addl. Collector has rightly reversed the findings of the learned DCLR by holding that the gift deed was brought for defeating the pre-emption right and the nature of land is still agricultural as the same was shown in the recital of the sale deed. However, I find that the said findings of the Addl. Collector is not appropriate as the same is not based on the proper appreciation of the facts of the case and seems to be contrary to the settled position in law that pre-emption right is a weak right and it can be defeated by any legitimate means. Thus, I find that the learned Addl. Collector has not considered the entire facts of the case in its right perspective while passing the impugned order as such I am not constrained to uphold the same. Even the learned counsel for the respondent failed to prove otherwise that the impugned order is not arbitrary and improper.

For the aforementioned reasons, the impugned order of Addl. Collector, Saran is not sustainable and accordingly the same is set aside.

In the result this revision application is allowed.

Dictated and Corrected by me.

Commissioner,
Saran Division, Chapra

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