

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Rev. No. 53/2009

Kanhaiya Pathak & Ors.

Vrs.

Dwarka Sah & Ors.

ORDER

18.03.2016 -

The instant revision petition is directed against the impugned order passed by Addl. Collector, Gopalganj in L.C. 16 (3) Appeal Case No. 41/2005-06.

The brief facts of the case are that the disputed piece of land measuring 4 Katha 18 ½ dhur appertaining to Khata No. 57 R.S. Plot No. 286 situated in Mouza Patkhali was transferred through registered sale deed dated 27.05.2002 in favour of Praduman Pathak and Suman Pathak, both sons of Kanhaiya Pathak by one Suresh Sah S/o Late Sadhu Sah of the same village. Thereafter, one Dwarka Sah, claiming himself to be the co-sharer and adjoining raiyat of the vended land filed a pre-emption case before DCLR, Hathua vide Case No. 20/2002-03. The learned DCLR after hearing the parties finally vide order dated 08.11.2002 rejected the pre-emption claim of the present respondent which led to filing of an appeal case before Addl. Collector, Gopalganj vide L.C. Appeal Case No. 04/2005-06 and the said appeal was allowed in favour of the present respondent vide order dated 30.04.2009. Feeling aggrieved by the said order, passed in appeal, the present petitioners have preferred the instant revision case before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner at the very outset of his argument, assailed the impugned order by saying that the said order is illegal and against the weight of evidence on record. He further submitted that the learned lower court ought to have held that the present respondent No. 2 is neither co-sharer nor the adjoining raiyat of the land rather he is a complete stranger to the disputed land. He also submitted that the learned lower court ought to have held that since the respondent No. 2 has failed to produce any documentary evidence to show that the heirs of Ram Bhagat Sah and Laxami Sah had possession over any portion of R.s. Plot No. 286 so the claim of the respondents that he is co-sharer and raiyat of the adjoining land is false and baseless and the learned lower court should have also held that the onus lies on the respondent to prove his case absolutely regarding the claim of co-sharer and raiyat of the adjoining land. He also submitted that the name of respondent is not mentioned in the boundary of the disputed land and he also failed to prove his claim. He lastly submitted that the impugned order is vague, misconceived of facts and misconstrued of law as such the same is fit to be set aside and this revision petition be allowed.

The learned counsel appearing on behalf of the respondent who opposing the arguments advanced by the learned counsel for the petitioner, submitted that the disputed plot is the ancestral property of the respondent and in support of that he also referred to the genealogical table drawn in his rejoinder. He further argued that the boundary mentioned in the sale deed document itself speaks that the said land is still undivided as such the respondent is co-sharer and adjoining raiyat of the vended land. The learned counsel further submitted in details as to how the different co-sharer of the big plot having their share in that and the petitioner in order to defeat his pre-emption right got wrongly entered the name of other co-sharer in the boundary. The learned counsel lastly submitted that the impugned order of the

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Addl. Collector is just, proper and legal as the same has been passed after the careful consideration of the entire facts of the case properly as such the said order is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the parties and perusal of the impugned order, it appears that the impugned order has been passed after proper appreciation of the material facts of the case. In other words it can be safely assumed that the respondent has able to prove his claim of co-sharer and adjoining raiyat of the vended land. But the petitioner, on the other hand, failed to make out his case beyond all reasonable doubts. It is almost settled position that once the pre-emptor proves his case regarding claim of co-sharer and adjoining raiyat of the disputed land his claim of pre-emption can not be ignored. I find that the learned Addl. Collector, in his detailed order, has discussed elaborately about the each and every aspects of the case appropriately whereas the learned counsel for the petitioner has failed to prove his case beyond all reasonable doubts so as to attract any interference in the said impugned order of Addl. Collector.

For the aforementioned reasons, the impugned order is upheld and this revision petition is dismissed accordingly.

Dictated and Corrected by me.

18.3.16
Commissioner,
Saran Division, Chapra

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