

CASE NO.:
Appeal (civil) 3842 of 2000

PETITIONER:
Chandrika Singh

RESPONDENT:
Arvind Kumar Singh (dead) by LRs. & Ors.

DATE OF JUDGMENT: 12/05/2006

BENCH:
Arijit Pasayat & Tarun Chatterjee

JUDGMENT:
J U D G M E N T

TARUN CHATTERJEE, J.

One Shri Arvind Kumar Singh, who was the admitted owner of the lands namely, Plot No. 2628 measuring 10 dhurs, Plot No. 2679 measuring 17 dhurs in village Bhatwaliya, P.S. Gobindganj, district East Champaran and Plot No. 25 measuring 1 dhurs in village Sarotar in the State of Bihar (hereinafter referred to as the "lands in question") executed a sale deed on 10th of August, 1983, transferring the same in favour of one Shri Paras Sah for a consideration of Rs.1000/-. On 12th of October, 1983 Paras Sah executed a sale deed in respect of the lands in question in favour of one Smt. Ghurla Kuer for a consideration of Rs.4000/-. The sale deed executed by Arvind Kumar Singh in favour of Mr.Paras Sah on 10th of August, 1983 was registered on 14th of June, 1984. On 17th of July 1984, an application for pre-emption was filed before the Deputy Collector by one Chandrika Singh against Paras Sah under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short "the Act") claiming to be a raiyat of adjoining lands of the lands in question. Paras Sah had filed his written objection to the application for pre-emption on 9th of August, 1984 in which he alleged that the lands in question had already been transferred in favour of Ghurla Kuer vide Sale Deed dated 12th October 1983. However, this sale deed was registered on 31st of August, 1984. According to Paras Sah, since he had transferred the property in the name of Ghurla Kuer, the application for pre-emption could not be maintained against him.

Before the Deputy Collector, Chandrika Singh pleaded that the sale deed executed by Paras Sah in favour of Smt. Ghurla Kuer was a sham transaction and no consideration had passed. It was also pleaded that, in view of the admitted fact that Smt. Ghurla Kuer was an issueless widow and own aunt of Paras Sah and also belonged to the same joint family, it must be held that the sale deed was executed only for the purpose of avoiding pre-emption and to defeat the provisions of law. Chandrika Singh also pleaded that the abnormal jump in the sale price to the extent of 4 times, in just two months, had shown that the second transaction was sham in nature. It was also alleged that the possession of the lands in question was never transferred to Smt. Ghurla Kuer, the second purchaser, and that there was no necessity to implead Smt. Ghurla Kuer in the pre-emption application. The Deputy Collector after hearing the parties and after considering the facts on record allowed the pre-emption application of Chandrika Singh, appellant herein, holding that the sale to Smt. Ghurla Kuer was a sham transaction and it was only executed to defeat pre-emption under the Act. It was also held that the pre-emptor, Chandrika Singh, could not have maintained the pre-emption application under Section 16(3) of the Act before registration of the first sale deed as Section 16(3) of the Act clearly provides that the pre-emption application can only be filed within three months from the date of registration of the document of transfer. In his written objection, Paras Sah had also denied that the

pre-emptor, Chandrika Singh, was rayiat of adjoining lands. However, after considering the evidence on record, the Deputy Collector found Chandrika Singh to be a rayiat of adjoining lands to the lands in question. Accordingly, the Deputy Collector, accepting the submissions of Chandrika Singh, allowed the pre-emption application.

Feeling aggrieved, Paras Sah filed an appeal before the Collector. It may be noted that Paras Sah did not appear before the collector to proceed with the appeal. The Collector by a judgment and order dated 6th November, 1984 dismissed the appeal only on the ground that Paras Sah, who was appellant in that appeal, had no interest to proceed with the same. It may also be noted that in appeal, Paras Sah had made Ghurla Kuer a respondent for the first time.

Feeling aggrieved by the order of the Collector, Paras Sah filed a petition under Section 32 of the Act before the Board of Revenue which was also rejected.

Then Smt. Ghurla Kuer, the second purchaser and a relative of Paras Sah, filed a Writ application before the High Court at Patna, praying for setting aside the orders passed by the tribunals below. The Writ Court, however, allowed the Writ application and set aside the order of pre-emption by holding, in substance, as under:

A. Since the subsequent sale deed was executed on 12/10/1983, i.e. 10 months prior to the filing of the pre-emption application and since there is no other evidence, it cannot be presumed that the second sale deed which was executed on 12/10/1983 was to defeat any pre-emption when there was no pre-emption application pending on that date.

B. In the light of the above, the land must be re-conveyed to the Writ Petitioner.

It may be noted herein that Smt. Ghurla Kuer died issueless leaving Paras Sah as the only legal heir and representative.

Feeling aggrieved by the order passed by learned Single Judge, allowing the Writ application and rejecting the application for pre-emption, Chandrika Singh filed an appeal against Paras Sah and others. The Division Bench by its judgment dated 9th September, 1999, affirmed the order of the learned Single Judge holding, in substance, as under:

A. In support of the contention of the pre-emptor that the second sale deed was a sham transaction, the only material that was produced was the ration card to show that the first and the second purchasers were members of the same joint family. No other evidence was adduced by the pre-emptor to show that the second sale deed was a sham transaction and that the sale consideration was not paid and also that Smt. Ghurla Kuer, the second purchaser, had not got the possession of the lands in question.

B. That the onus was on the pre-emptor to prove that the second sale deed was executed only for the purpose of avoiding pre-emption and to defeat the provisions of the Act and that it was a sham transaction, which pre-emptor had failed to prove.

C. On the basis of the above, the order of the learned single Judge need not be interfered with and the appeal is dismissed.

At this stage, we may also point out that before the Deputy Collector, Collector and Board of Revenue, Smt. Ghurla Kuer did not challenge the order of pre-emption. As noted herein earlier, Smt. Ghurla Kuer for the first time challenged the orders of the Deputy Collector, Collector and Board of Revenue, by filing a Writ application in the High Court.

Chandrika Singh, the pre-emptor, feeling aggrieved by the orders of the High Court of Patna, filed a special leave petition before this Court, which was heard by us on grant of leave, in the presence of the learned counsel for both the parties.

Before we proceed further, it would be appropriate to produce Section 16 of the Act, which is as under :

Section 16 of the Act reads as under:

" 16. Restriction on future acquisition by transfer, etc. \026

(1) No person shall, after the commencement of this Act, either by himself or through any other person, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, already held by him exceeds in the aggregate the ceiling area.

Explanation :- For the purposes of this section 'transfer' does not include inheritance, bequest or gift.

(2) (i) After the commencement of this Act, no document incorporating any transaction for acquisition or possession of any land by way of transfer, exchange, lease, mortgage, agreement or settlement shall be registered, unless a declaration in writing duly verified is made and filed by the transferee before the registering authority under the Indian Registration Act, 1908 (XVI of 1908), as to the total area of land held by him by himself or through any other person anywhere in the State.

(ii) No such registering authority shall register any document evidencing any transaction if, from the declaration made under clause (i), it appears that the transaction has been effected in contravention of the provisions of sub-section (1).

(iii) No land shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908).

Explanation:- Nothing in this sub-section shall be deemed to have any effect on the provisions of the tenancy law of the area relating to transfer, exchange, lease, mortgage, agreement or settlement.

(3) (i) When any transfer of land is made after the commencement of this Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document of transfer, to make an application before the collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed:

Provided that no such application shall be entertained by the Collector unless the purchase-money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (i) is pending for decision :

Provided that where the application is rejected, the

co-sharer or the raiyat, as the case may be, shall be evicted from the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase-money out of the deposit made under clause (i).

(iii) If the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in order 21, rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed." [Emphasis Supplied]

Section 16 is included in Chapter V of the Act. Sub-section (1) of Section 16 says that no person shall, after the commencement of this Act, either by himself or through any other person, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, already held by him exceeds in aggregate the ceiling area. Sub-section (2)(i) of Section 16 says that no document incorporating any transaction for acquisition or possession of any land by way of transfer, exchange, lease, mortgage, agreement or settlement shall be registered, unless a declaration in writing duly verified is made and filed by the transferee before the registering authority under the Indian Registration Act, 1908, as to the total area of land held by him by himself or through any other person anywhere in the State. Sub-section (2)(i) of Section 16, therefore, prohibits registration of any land unless a declaration in the above manner is filed before the registering authority. Sub-section (2) (ii) of Section 16 puts an embargo on the registering authority from registering any document, if it appears that the transaction has been made in contravention of sub-section (1) of Sec.16. Sub-section (2) (iii) of Section 16 clearly provides that no land shall be transferred without the document registered in accordance with the provisions of the Indian Registration Act, 1908. From a plain reading of Section 16(3) of the Act, it is clear that an application for pre-emption can be allowed if any transfer of land is made, after the commencement of the Act, to any person other than a co-sharer or a raiyat of adjoining land and any such co-sharer or raiyat of adjoining land, as the case may be, shall be entitled to ask for pre-emption within three months from the date of registration of the document of transfer, by making an application. In the case before us, no dispute was raised that the pre-emption application was not filed within three months from the date of registration of the sale deed in favour of Paras Sah. Also, no contention was raised before us that the appellant was not raiyat of adjoining lands, who can maintain the application for pre-emption, with respect to the lands in question, under Section 16(3) of the Act. The only ground on which the application for pre-emption was challenged by Paras Sah, which also found favour with the High Court, was that the pre-emption application filed by the appellant could not be said to be maintainable against the first sale deed in view of the fact that the lands in question were conveyed by him in favour of Smt. Ghurla Kuer prior to the filing of the pre-emption application.

We have heard the learned counsel appearing for the parties on the question, whether the application for pre-emption was maintainable against Paras Sah after the lands in question were conveyed in favour of Smt. Ghurla Kuer.

As noted herein before, the first sale deed was executed on 10th of August, 1983 in favour of Paras Sah, which was registered on 14th of June, 1984. Therefore, it cannot be disputed that the sale

deed registered on 14th of June, 1984 could be pre-empted only within three months from 14th of June, 1984. Admittedly, in this case, the application for pre-emption was filed on 17th of July, 1984 i.e. well within the limitation period of 3 months. At the same time, it is also not in dispute that the second sale deed, which was executed by Paras Sah in favour of Ghurla Kuer for a consideration of Rs.4000/- was registered on 31st of August, 1984, that is, after the registration of the first sale deed and after the pre-emption application, under Section 16(3) of the Act, was filed by the appellant, on 17th of July, 1984. Further, under Section 16(2) of the Act, a sale is complete only when the document of transfer is registered and unless the registration is complete under section 60 of the Registration Act, the transfer of the land in question would still be inchoate. From a plain reading of section 16(3) of the Act it is clear that a pre-emptor can only be permitted to file the pre-emption application within 3 months from the date of registration of transfer deed. Therefore, the right to file the pre-emption application under section 16(3) of the Act accrues only when the registration of the document is completed. In Radhakisan L. Toshniwal vs. Shridhar [(1961) 1 SCR 248], this Court held that where a statute provides for a right of pre-emption, it will accrue only when the transfer of the land takes place and such transfer is not complete before the deed is registered. Accordingly, this Court held that an application for pre-emption filed before the sale deed was registered, would be pre-mature. This view was appreciated again by this Court in Ram Saran Lall vs. MST. Domini Kuer [(1962) 2 SCR 474]. Further, in Hiralal Agrawal vs. Rampadarath Singh & Ors. [AIR 1969 SC 244], Shelat, J. (as his Lordship then was), clearly observed that under section 16(2) and (3) of the Act, no transfer takes place unless the deed is registered. Registration is complete when the certificate under the provisions of the Registration Act is issued. That being the position, we are of the view that the right of re-conveyance accrues to the pre-emptor only on the date of the completion of the registration of the transfer deed and an application for pre-emption under section 16(3) of the Act filed before such date would be pre-mature. Therefore, we hold that the pre-emptor, Chandrika Singh, appellant herein, was entitled to file the pre-emption application against Paras Sah, only after the first sale deed was registered on 14th June 1984 and not before that date. It is clear that the registration of the sale deed executed in favour of Smt. Ghurla Kuer by Paras Sah was not complete and effective, for want of registration, when the application for pre-emption was filed by Chandrika Singh against Paras Sah. Accordingly, we do not find any reason to hold that the application for pre-emption, filed by Chandrika Singh could not be maintained against Paras Sah, the first transferee.

For the reasons aforesaid, it would not be necessary for us to go into the question whether the second sale was a sham transaction or not.

Accordingly, we have no hesitation in our mind to hold that a sale deed executed by Paras Sah in favour of Smt. Ghurla Kuer prior to the registration of the first sale deed, cannot negate the right of the pre-emptor to proceed against Paras Sah under section 16(3) of the Act as, it is an admitted position in this case that the second sale deed was not registered at the time the pre-emption application was filed by Chandrika Singh against the first transferee, Paras Sah.

Before we part with this judgment, we may also keep it in mind that the writ petition at the instance of the Smt. Ghurla Kuer ought not to have been entertained by the High Court when, admittedly, Smt. Ghurla Kuer was not party to the proceedings before the Deputy Collector and she did not file any appeal or revision either before the Collector or Board of Revenue.

For the reasons aforesaid, the impugned judgments of the High Court are set aside. The appeal is allowed. Accordingly, the application for pre-emption is allowed. There will be no order as to costs.

27746

JUDIS