

BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Pre-emption) Case No. – 276/1994

Dist. - Madhepura

**PRESENT :- K.K. Pathak, I.A.S.,
Additional Member**

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Shyam Kishore Yadav

- Petitioner/ Appellant

Versus

Manoj Kumar Jha and Others

- Opposite party

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Appearance:

For the Appellant/Revisionist

:Shri Lala Sachindra Kumar

For the OP

:Shri Suman Kumar Jha

ORDER

08.02.2017

This is a Pre-emption matter in which a Revision application was filed on 19.05.2015 pursuant to the order passed by the Hon'ble High Court on 16.04.2015 in CWJC No. 2710/1995. Vide the said judgement, the Hon'ble High Court remanded the matter back to the Board of Revenue.

Accordingly, notices were sent to both the parties. During the pendency of the case, OP No. 2 and 3 have passed away and the substitution were filed and noted by the then Additional Member on 31.03.2016.

The hearing took place on two dates viz. 29.12.2016 on which the Learned Advocate of the Petitioner, who is also the Pre-emptor was heard. On 27.01.2017, OP No. 1, who is the vendee, was heard. OP No. 4, who is

brother of the Pre-emptor was also heard on this date. Thus concluding the hearing, this order is being passed today.

As per the Learned Advocate of the Petitioner-Pre-emptor, this land having Plot No. 499 (old)/ 409 (new) and having Khata No. 29 (old)/ 72 (new) having an area of 1.05 acres was sold by the vendor (OP No. 3) to the vendees (OP No. 1 and 2) on 02.01.1981. The sale deed was registered on 11.02.1981. The Pre-emptor filed the Pre-emption application on 08.05.1981. The Learned DCLR, vide his order dated 06.12.1982, allowed the Pre-emption. The finding of the Learned DCLR was that he is the adjacent raiyat. It was mentioned by the Learned Advocate that the land is being used for agricultural purposes.

Aggrieved at the order of the Learned DCLR, the OPs filed an appeal before the Learned Collector, Madhepura who, vide order dated 21.03.1994, set aside the order of the Learned DCLR and allowed the appeal.

Thus further aggrieved, the Pre-emptor filed a Revision before the Board of Revenue who, vide order dated 21.03.1994, up held the order of the Learned Collector and dismissed the Revision Petition.

This forced the Petitioner-Pre-emptor to approach the Hon'ble High Court in CWJC No 2710/1995 wherein the Hon'ble High Court vide order dated 16.04.2015 set aside the order of the Board of Revenue and remitted the matter back to the Additional Member, Board of Revenue to

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और तारीख

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आदेश और पदाधिकारी का हस्ताक्षर

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आदेश पर की गई
कार्रवाई के बारे में
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reconsider the matter and dispose of the same within six months.


Continuing with his argument, the Learned Advocate of the Pre-emptor mentioned that OP No. 1 and 2 are related whereas vendee and vendor are not related. In fact, the Pre-emptor is also not related to the vendor and vendee. Therefore, there is no issue of Co-sharers.

The Learned Advocate of the Pre-emptor further avers that as soon as the Pre-emption application was filed on 08.05.1981, on 12.05.1981 a Deed of Cancellation was executed by the vendor. Moreover, on 13.05.1983, another sale deed was executed by the vendor in favour of the brother-in-law (Sri Kumar Bibhuti Ranjan) of the vendee Sri Manoj Kumar Jha with the sole intention of avoiding the Pre-emption. This transfer through the sale deed was a sham transaction done with the purpose of beating the Pre-emption law.

The Learned Advocate, concluding his argument mentioned that both these documents, namely, the cancellation of the sale deed and the new registration to the brother-in-law was done during the pendency of the case and hence these are hit by the doctrine of lis pendens under Section 52 of Transfer of Property Act.

I also heard the Learned Advocate of the OP No. 1 who is the vendee. OP No. 2 and 3 have died. Initiating his argument, the Learned Advocate mentioned that the sale deed was executed on 02.01.1991 and the Pre-

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आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>emption was filed on 08.05.1981 which was beyond the period of limitation. No Petition was filed for the condonation of delay. Ignoring this point, the Learned DCLR allowed the Pre-emption.</p> <p>Making his point further, the Learned Advocate of the vendee mentioned that Pre-emptor is not the adjacent raiyat but his brother is the adjacent raiyat. Taking note of this point, the Learned Collector had rejected the Pre-emption case vide order dated 21.03.1994.</p> <p>The Learned Advocate further mentioned that since he could not arrange the money, the sale deed registered on 11.02.1981 was cancelled on 12.05.1981 and the vendor remain in possession. The Learned DCLR while allowing the Pre-emption has asked the vendee to re-convey the land which he did not own it any more and hence the order of the Learned DCLR is of no consequence. This fact was hidden by the Pre-emptor before the Learned DCLR.</p> <p>Moreover, in 1983, the vendor transferred the land to a new person called Kumar Bibhuti Ranjan who is not a party of the dispute. Kumar Bibhuti Ranjan presently is in the possession of the land, as per the Learned Advocate of the vendee.</p> <p>Regarding the issue of lis pendens, the Learned Advocate mentioned that the land was transferred in 1983 and there was no proceeding pending at that point of time in any Court and hence this matter is not hit by lis pendens.</p>	

Subsequently, when the matter came to the Board of Revenue, the Board of Revenue rejected the Pre-emption case. The Pre-emptor went to the Hon'ble High Court which remanded the matter back to the Board of Revenue vide order dated 16.04.2015 and hence this proceeding.

Concluding his arguments, the Learned Advocate of the OP (vendee) mentioned that with the passage of time, the nature of land has changed and now it is being used for homestead purposes. He further argues that in spite of second sale deed in the year 1983, the Pre-emptor had never made Sri Bibhuti Ranjan a party.

I also heard the Learned Advocate of the OP No. 3 Sri Nand Kishore Yadav. As per him, he is the brother of the Pre-emptor Sri Shyam Kishore Yadav. He mentioned that he is not the adjoining raiyat but his brother is the adjoining raiyat of the vended land hence his case should be allowed.

Thus having heard the Learned Advocates of all the parties and having perused the material available on record as well as the Lower Court Records, my own findings on the matter are as under:-

- (a) I would first like to address the issue of lis pendens with regard to the cancellation deed dated 12.05.1981. It is said by the Pre-emptor that the deed of cancellation was signed on 12.05.1981 whereas the Pre-emption application was filed on

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08.05.1981. Therefore, in my view, this document was certainly hit by the doctrine of lis pendens.

(b) I now come to the issue as to whether the second document, vide which the same disputed land was transferred to Kumar Bibhuti Ranjan, was hit by lis pendens or not. The contention of the vendee is that this document is not hit by lis pendens because there was no proceeding pending in any Court in 1983. This is factually incorrect and I am appalled at the way the vendee has tried to mislead this Court. In fact, as soon as the vendee lost the case before the Learned DCLR, he had filed an appeal before the Learned Collector vide Case No. 31/1982-83 (Manoj Kumar Jha vs. Shyam Kishore Yadav) and which was dismissed for default by the Learned Collector on 22.12.1992. Therefore, it is not correct to say that there was no proceeding pending in any Court in 1983 when the second sale deed was executed in favour of Kumar Bibhuti Ranjan. In fact, it was vendee's own appeal which was pending before the Learned Collector since the year 1982 itself. Thus, I hold that the second document dated 13.12.1983 executed in favour of Kumar Bibhuti Ranjan is also hit by the doctrine of lis pendens.

(c) It was only when the case was dismissed for default by the Learned Collector on 22.12.1992, that the vendee again approached the Court of the



Learned Collector for Restoration by means of filing a new Case No. 74/1992-93 wherein the case was restored on 26.07.1993. Finally, the Learned Collector passed an order dated 21.03.1994 which is under challenge in this Revision matter. Therefore, it may be noted that the vendee allowed the earlier case before the Learned Collector (Case No. 31/1982-83) to be dismissed for default because he knew that his limited objective of retaining the land was already served as the land, by then, was transferred to his brother-in-law Kumar Bibhuti Ranjan.

(d) The above also indicates that the transfer of the land to the vendee's brother-in-law in the year 1983 was a sham transaction.

(e) This is also reinforced from the fact that the land in dispute is still in the possession of the vendee Sri Manoj Jha. The second vendee, his brother-in-law, Bibhuti Ranjan never came in possession. This is reinforced from the fact that a Jamabandi Receipt No. 74 has already been created in the favour of the vendee Sri Manoj Jha. I note that a mutation record duly issued by the Circle Officer dated 10.02.2015 is filed in this Court by the Pre-emptor as evidence of the fact that the vendee is in possession of the dispute land and not his brother-in-law.



(f) I also note the 'status of possession' certificate issued by Up-Sarpanch which mentioned that the disputed plot is under the possession of Sri Manoj Kumar Jha, the vendee. This shows that the sale deed executed in 1983, in favour of the vendee brother-in-law, was a sham transaction done with an intention to defeat the Pre-emption law.

(g) I also find it rather strange that once the Pre-emption has been allowed by the Learned DCLR in the year 1982 itself, how can the disputed land be sold in 1983 to the brother-in-law of the vendee. This certainly was done with an intention to overcome the Pre-emption hurdle. It may be noted that in the year 1983, an appeal filed by the vendee himself was pending before the Learned Collector, therefore the vended land was very much under active arbitration when the second sale deed was executed in favour of Kumar Bibhuti Ranjan.

(h) The point raised by the OP that the land in question has been *now* converted into homestead is also not acceptable since the issue at hand is to decide the nature of the land at the time of filing Pre-emption i.e. in the year 1981. Moreover, I am not willing to believe that entire 1.05 acres of the disputed land is being used for homestead purposes. Thus, apparently the land is still in agricultural use and any indication that the entire 1 acre has become converted into residential area cannot be believed.

(i) Now coming to the issue of adjacency, I see that there are enough indications that the Pre-emptor is an adjacent raiyat. The Pre-emptor's brother has already filed an affidavit saying that the land of the Pre-emptor is in between the vended land and his own land.

(j) The Pre-emptor also mentioned that the sale deed signed in the year 1983, transferring the land in favour of the vendee brother-in-law, mentioned that the Pre-emptor is on the eastern side of the vended land. This document is a strong indication in support of the Pre-emptor because this document is executed with the relatives of the OP and therefore is a reliable piece of document wherein the OP (through the sale deed in favour of his brother-in-law) itself has conceded that the Pre-emptor is an adjacent raiyat.

(k) I have also gone through the order of the Learned Collector dated 21.03.1994 where I find that the Learned Collector has given not findings of his own in arriving at the conclusion that the Pre-emptor is not an adjacent raiyat.

Conclusion:-

From the aforementioned finding, it is clear that both the sale deeds i.e. the deed of cancellation executed on 12.05.1981 and the second sale deed (regarding the same



disputed land) executed on 13.12.1983 in favour of Kumar Bibhuti Ranjan were hit by the doctrine of lis pendens.

Moreover, the second sale deed dated 13.12.1984 in favour of Kumar Bibhuti Ranjan was a sham transaction. Kumar Bibhuti Ranjan is brother-in-law of the OP (vendee Sri Manoj Kumar Jha) and there are enough documentary evidences to suggest that the vendee is in the possession of the land and there is a jamabandi created in his name and not in the name of the brother-in-law who, on paper, is the owner of the land.

Therefore, it is very clear that Kumar Bibhuti Ranjan is not the possession of the land. The OP (vendee) Sri Manoj Jha is in the possession of the land and therefore the second sale deed dated 13.12.1984 was executed for the purpose of defeating the Pre-emption.

I also find that the Pre-emptor is the adjacent raiyat as has been admitted in the above mentioned sale deed by the vendee's side itself.

That be the case, I find it difficult to sustain the order of the Learned Collector. The Learned Collector did not give due attention to the fact that the second sale deed was executed then the case of the disputed land was pending in his own Court. Nor has the Learned Collector given any reasoned findings as to how he came to the conclusion that the Pre-emptor is not an adjacent raiyat.

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In that view of the matter, I find that the order of the Collector cannot be sustained and the same is accordingly set aside. The Learned DCLR order dated 16.12.1982 is upheld. The Revisionist-Pre-emptor is directed to file an application before the Learned DCLR for cancellation of the sale deed dated 13.12.1983 executed in favour Kumar Bibhuti Ranjan as this is sham transaction and also to request for reconveyance of the said disputed land in his favour.

Revision Allowed.

Dictated & Corrected

K.K.Pathak

Additional Member
Board of Revenue, Bihar.

(K.K.Pathak)

Additional Member
Board of Revenue, Bihar.