

(2009) 05 JH CK 0030
Jharkhand High Court
Case No: None

Laichu Chamar

APPELLANT

Vs

Baijnath Ram and Others

RESPONDENT

Date of Decision: May 4, 2009

Acts Referred:

- Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 - Section 16(3)

Hon'ble Judges: Gyan Sudha Misra, C.J; D.K. Sinha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal has been preferred against the judgment and order dated 24.07.2007 passed by the learned Single Judge in CWJC No. 8198/95P by which the learned Single Judge had been pleased to allow the writ petition; consequently the order passed by the Additional Member, Board of Revenue as also the order passed by the Additional Collector, Garhwa who had been pleased to hold that the appellant herein had a preferential right of purchase of the land adjoining to the land of the petitioners/respondents herein was quashed and set aside.

2. The learned Single Judge has given a detailed account of the facts of the case and to recapitulate the same briefly, it may be stated that the appellant claimed preferential right to purchase the land belonging to the respondent herein and it was alleged that the sale deed which the respondent No. 1 executed in favour of his wife was a sham transaction merely to defeat the right of the appellant to assert his right of pre-emption in view of Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area & Acquisition of Surplus Land) Act, 1961. The appellant's case is that his land although is adjoining to the land in question in regard to which a suit for pre-emption had been filed by the appellant in the Revenue Court the respondent-land holder executed a sale deed for the plot in favour of his wife which exists in between his plot of land and the land belonging to the appellant herein.

3. The appellant, therefore, came up with a case by filing a suit for pre-emption on 19.7.1991 claiming his preferential right to purchase the plot of land from the respondent herein as respondent executed a sale deed in regard to the same plot of land in favour of his wife by executing two sale deeds which, according to the respondent, was executed on 08.02.1992.

4. This gave a cause to the appellant to file a suit for pre-emption on the premise that as he had already filed a suit claiming right, of pre-emption in regard to the adjoining plot of land which admittedly belonged to respondent No. 1, he with oblique motive executed a sale deed in favour of his wife in regard to the same plot of land which was registered after the filing of his suit. The revenue courts being the courts of Additional Collector and the Additional Member, Board of Revenue were pleased to hold in favour of the appellant herein holding therein that the appellant had a preferential right to purchase the plot of land and the sale deed which was registered in the year 1992 was registered subsequent to the filing of the suit from which it was inferred that the sale deed executed by the respondent in favour of his wife was merely to defeat the right of pre-emption raised by the appellant. The Vendor of the land i.e. respondent No. 1 herein filed the writ petition before the learned Single Judge and assailed the orders passed by the Revenue Courts below.

5. The learned Single Judge was pleased to take into consideration a decision delivered in the case of [Smt. Sudama Devi and Others Vs. Rajendra Singh and Others](#), wherein the Patna High Court held that when a sale deed is executed prior to the filing of an application for pre-emption u/s 16(3) of Bihar Act 12 of 1962, then merely because it was registered subsequent to the filing of the suit it cannot be held to be hit by doctrine of lis pendens. The learned Single Judge also noted that the sale deed executed in favour of his wife by the petitioner/respondent herein was dated 08.02.1992 whereas the correct date was 08.02.1991. Thus, the learned Single Judge was pleased to hold that the sale deed having been executed by the respondent No. 1 in favour of his wife could not be treated as a sham transaction and it could be transferred and no dispute u/s 16(3) of the Act can be allowed to be raised against the purchaser.

6. Counsel for the appellant endeavored hard to impress upon this Court that the right of pre-emption claimed by the appellant herein was legally justified as the sale deed executed in favour of his wife by the respondent was merely to defeat his right and the proof of the same was the registration of the sale deed subsequent to the filing of his application claiming the right of pre-emption. Thus, the counsel has only repeated the argument which had been advanced before the learned Single Judge in which we find no substance. Even assuming that all arguments raised by the appellant/respondent before the learned Single Judge that he had a right to claim pre-emption were correct, the same cannot be allowed to be raised against the purchaser who was related to the respondent by virtue of his relationship as wife. At this juncture, the counsel contended that if the transfer is allowed to be made in

favour of the wife or any other relative, the right of pre-emption would get defeated.

7. But we propose to brush aside this contention since the counsel is missing that the claim of pre-emption has been legally acknowledged as a weak right and more so if it is claimed against the nearest relative of the transferor who has claimed preferential right to purchase the land by virtue of his nearest relationship with the transferor who in this case is the wife of the transferor. To make the position explicitly clear, we wish to record at this juncture that if the land of the transferor exists adjoining to the land of any one who has claimed the right of pre-emption and is sought to be purchased by virtue of a right of pre-emption, then a much stronger and weighty right of pre-emption will accrue in favour of a person who is related to the transferor against whom the right of pre-emption is asserted. Thus, besides the reasons which had been assigned by the learned Single Judge while allowing the writ petition, reasons assigned here-in-above also have persuaded us not to interfere with the impugned judgment and order.

8. Hence the appeal is dismissed at the admission stage itself.