

(2007) 04 PAT CK 0182

Patna High Court

Case No: CWJC No. 1609 of 1989

Suresh Mandal

APPELLANT

Vs

Addl. Member Board of Revenue,
Bihar and Others

RESPONDENT

Date of Decision: April 16, 2007

Acts Referred:

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

Citation: (2007) PLJR 186

Hon'ble Judges: Aftab Alam, J

Bench: Single Bench

Advocate: U.K. Choudhary, for the Appellant; Harshwardhan Prasad, for the Respondent

Final Decision: Dismissed

Judgement

Aftab Alam, J.

Heard counsel for the petitioner. The State counsel is present though no one appears for private respondents 4 to 6. This writ petition arises from a pre-emption proceeding u/s 16(3) of the Bihar Land Ceiling Act in regard to a transaction that took place about twenty five years ago in 1983.

2. The petitioner is the pre-emptor.

3. The brief facts of the case may be stated as follows. On 16.1.1983 Lakho Deve respondent No. 6 executed a sale deed in favour of Chhedi Pd. Mandal (respondent No. 4) for a consideration of Rs. 5000/-. The sale deed was registered on 4.6.1984. The petitioner then filed an application u/s 16(3) of the Act depositing Rs. 5500/- (being the consideration money plus 10%) and impleading Chhedi Pd. Mandal and Lakho Devi as opp. party. The claim of pre-emption was based on the ground that the petitioner was both an adjoining raiyat and a co-sharer in regard to the disputed land. Though the date on which the claim of pre-emption was filed before the

D.C.L.R. is not stated, it is admitted that it was filed as required by law after the registration of the sale deed.

4. According to respondent No. 4 soon after purchasing the disputed land from Lakhi Devi, he sold it under a registered deed, dated 16.2.1983 to Bhagwat Mandal (respondent No. 5) for a consideration of Rs. 14,500/-. It is undeniable that the deed executed by respondent No. 4 in favour of respondent No. 5 was duly registered though the date of its registration is nowhere stated in the writ petition. Strangely enough the petitioner did not file any application for impleadment of Bhagwat Mandal to the proceeding and the D.C.L.R. finally rejected his claim as not maintainable in the absence of the second transferee. It was only then that the petitioner filed an application before the D.C.L.R. for recall of the final order passed in the proceeding with a further prayer to allow the petitioner to implead Bhagwat Mandal as a party to the proceeding. The D.C.L.R. naturally rejected the petition.

5. The petitioner then took the matter in appeal. The Addl. Collector found that the non-impleadment of Bhagwat Mandal was no lacuna because the sale deed executed by respondent No. 4 in his favour was sham and Farzi. The only ground for taking such a serious view was the difference in the consideration money in the two sale deeds executed at a difference of one month only.

6. The respondent No. 4 challenged the appellate order in revision before the Board of Revenue. His revision was allowed by order, dated 31.1.1987 passed by the Addl. Member, Board of Revenue. The Addl. Member held, and rightly so, that in the absence of any cogent material it was not open to the Addl. Collector to hold that the second sale deed in favour of respondent No. 5 was sham and Farzi, simply on the basis of the difference in consideration money.

7. On hearing counsel for the petitioner and on going through the materials on record, I am satisfied that the Board of Revenue took a very proper view of the matter. Simply a difference in the consideration amounts cannot lead to the inference that the second sale deed was sham and Farzi and consequently the non-impleadment of Bhagwat Mandal was fatal to the proceeding. The D.C.L.R. and the Addl. Member, Board of Revenue took the correct view while the view taken by the Addl. Collector was quite erroneous. I, thus, find no merit in this writ petition. It is accordingly dismissed.