

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 132/2011

Kaushalya Devi

Vrs.

Ramayan Rai & ors.

ORDER

18.03.2016- The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in Land Ceiling Appeal No. 2/2006 on 25.08.2011.

The brief facts of the case are that the present petitioner Kaushalya Devi W/o Dwarika Prasad R/o Vill-Kanhar Hariharpur, P.S.-Khairah, Dist-Saran purchased the disputed piece of land measuring one katha 8 ½ dhur, appertaining to khata No. 253 survey No. 321 from one Shambhu Nath Sahay of the same village through registered sale deed on 09.07.2005. Thereafter, one Ramayan Rai S/o Late Pritam Rai and resident of the same village, claiming himself to be the adjoining raiyat of the transferred land, filed a pre-emption case vide L.C. No. 17/2005-06 before DCLR, Chapra Sadar under section 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and Acquired of Surplus Land) Act-1961 and sought reconveyance of the transferred land in his favour. The learned DCLR after hearing the case vide order dt. 12.12.2005 allowed the said pre-emption claim. Then the present petitioner preferred an appeal against the said order of DCLR, before Addl. Collector Saran vide L.C. Appeal No. 02/2006 and the learned Addl. Collector vide order dt. 25.08.2011 confirmed the earlier order of DCLR and accordingly he rejected the appeal of the present petitioner. Feeling aggrieved and dissatisfied with the said order, the present petitioner has preferred the instant revision petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner while assailing the impugned order submitted that the impugned order is arbitrary and based on conjectures and surmises hence it is fit to be set aside. He further submitted that it was due to mistake of scribe the name of the respondent was mentioned as northern boundary man and when this error was detected then a rectification (Titimanama) deed was executed by the vendor in favour of the petitioner on 26.10.2005. He further argued that the total area of the plot is 1 bigha 19 katha and R.S. entries itself shows that the land in question is orchard land and its nature has not changed to agricultural land but this fact was not considered by the appellate Court. He further submitted that the petitioner being a landless person her interest needs to be projected. He also submitted that the respondent No.2 is not a boundary man and co-sharer but he wants to take advantage of the error of scribe and even in absence of any documentary evidence the said claim of the respondent was considered by the learned Court below which is legally not correct. The learned counsel lastly submitted that in view of the facts of the case which has not been considered properly, the impugned order is not sustainable and liable to be set aside.

The learned counsel appearing on behalf of the respondent strongly opposed the submission forwarded by the learned counsel for the

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parties and submitted that the instant revision petition is not legally maintainable. He further submitted that although the respondent's name was shown in the boundary of the sale deed document executed on 09.07.2005 but later on in order to defeat his pre-emption claim they got rectification deed registered on 26.10.2005 much after the filing of pre-emption case in the Court of DCLR on 02.09.2005. He further submitted that the land in question is an agricultural land and the respondent is in the northern boundary of the said land and it was on that ground the learned Court below have allowed his pre-emption claim so the said order are legal and valid as such the same be upheld. He also submitted that the petitioner has wrongly raised the claim of landless before the appellate Court although said claim was not even mentioned in the appeal petition so the said claim can not be relevant now legally before this Court and even the landless certificate issued by C.O. Nagra is not valid. He lastly submitted that as the learned lower Courts have passed the order and allowed the claim of pre-emption in favour of respondent after considering all the relevant facts of the case, the same does not need any reconsideration as such the impugned order is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, respective contentions advanced by the learned counsel for the parties and on perusal of the impugned order, it is quite apparent that the petitioner has not been able to prove his claim beyond all reasonable doubts so far his claim that the pre-emptor is not the adjoining raiyat of the disputed land. But it is seen from the sale deed that the petitioner claim is solely based on the ground that the rectification deed registered on 26.10.2005 does not show the name of the pre-emptor in any boundary of the disputed land. On the other hand, the pre-emptor's claim is that the said rectification deed has been brought mainly with a view to defeat the pre-emption right of the respondent and much after filing of the pre-emption case before DCLR. I find that the concurrent findings of the learned Courts below have appropriately dealt with the matter not leaving any scope for this Court to make any interference with the said findings. Even the learned counsel for the petitioner miserably failed to point out any specific error or illegality in the said impugned order. Thus, I do not find any good grounds to make any interference in the said impugned order.

For the aforesaid 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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