

In The Court of Commissioner, Saran Division, Chapra
Land Ceiling Revision No. 312/2007

Buni Devi

Vrs.

Kauleshia Devi & ors.

ORDER

01.01.2016 - The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran in L.C. Appeal No. 39/2004 on 09.05.2007.

The brief facts of the are that the present petitioner Buni Devi W/o Deo Nath Sah, R/o Vill-Rampur Khoram, P.S.-Marhaurah, Dist-Saran purchased the disputed piece of land measuring 1 katha 16 dhur through registered sale deed on 14.09.2001 from one Kamla Kunwar of the same village. The disputed land is appertaining to khata No. 988, plot No. 1948 situated in the same village. Thereafter, one Kauleshiya Devi, W/o Jagdish Mahto, claiming herself to be the adjoining raiyat of the vended land, filed a pre-emption case bearing No. 10/2001 u/s 16(3) of Bihar Land Reforms (Fixation of Ceiling Areas and Acquisition of Surplus Land) Act-1961 before DCLR, Marhaurah. The learned DCLR after hearing the parties, allowed the said case vide order dt. 11.03.2002. This led to filing of a L.C. Appeal No. 16/2002 before Addl. Collector, Saran by the present petitioner and the said appeal was remanded back to the learned DCLR by setting aside his earlier order dt. 11.03.2002. Thereafter, the learned DCLR after re-hearing the matter finally vide order dt. 02.08.2004 rejected the claim of pre-emption wherein he held that no pre-emption would be allowed against deed of gift and donees were not made party and also one dhur of land has been given by vendee to the pre-emptor as per the terms of compromise between them. Feeling aggrieved by the said order of DCLR, the present respondent (pre-emptor) preferred L.C. Appeal No. 39/04 before Addl. Collector, Saran and who by his order dt. 09.05.2007 allowed the case in favour of the present respondent.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran the present petitioner (purchaser) has preferred this revision case.

Heard the learned counsel for the petitioner on 21.12.2015.

The learned counsel for the respondent was absent despite being given last chance. As such, this Court has no alternative left rather than to dispose of this case and the petitioner counsel also insisted for disposing this case on merit. However, respondent has submitted written statement on 01.01.2016.

The learned counsel appearing on behalf of the petitioner at the very outset of his arguments submitted that the impugned order is against law and facts of the case. He further submitted that from perusal of the sale-deed document itself show that the respondent's name does not find any place in any boundary of the disputed land. He further submitted in detail as to how the total area 2 katha 8 dhur of disputed plot No. 1948 was partitioned amongst the different co-sharer and in support of that he also shown the geneology of the family. He further argued that the respondent No. 1 is claiming that she has purchased the share of Radhika Kuwar by a sale deed dt. 16.08.2000 and on that basis she is claiming pre-emption but the sketch map of the plot No. 1948 and recital of sale deed clearly shows that the vendor,

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respondent No. 2 has kept 4 dhur of land in her possession which is between the land of Radhika Kuwar and the present disputed land. He further strongly argued that the respondent No.1 is neither adjoining raiyat nor co-sharer of the disputed plot. He also submitted that in the present case the donees whose deed of gift has been executed and registered before the filing of the pre-emption case as such no pre-emption can be allowed and in this connection he also referred to some reported judgments (1997 PLJR, Vol-1 page-857; 1985 PLJR page-397). He lastly submitted that no pre-emption can be allowed against deed of gift and the donees have been made as o.ps in appellate Court but not in the Court of DCLR as such the claim is not maintainable and prayed for setting aside the impugned order.

The learned counsel for the respondent No.1 in his written statement mentioned that the petitioner is the purchaser and respondent No.1 is the pre-emptor and it is an admitted fact that the petitioner on admitting the pre-emptor as a boundary raiyat of the disputed land had transferred one dhur of land as per compromise. He further submitted that the description of boundary in the sale deed clearly shows that the petitioner's name has not been mentioned in any of the boundary of the disputed land. He also argued that pre-emption is also maintainable on such land which is transferred through gift before filing of pre-emption. He lastly submitted that the impugned order of Addl. Collector is fit to be upheld.

Considering the facts and circumstances of the case, material available on records and on perusal of the impugned order, it is seen that the learned Addl. Collector has decided the case by appreciating the facts and law involved in the case. It is seen that the petitioner first purchased the land and subsequently transferred the same to her minor sons in order to defeat the pre-emption claim of the respondent. However, the area of the disputed plot is too small for agricultural purpose rather such small piece of land can be meant for other purpose. The learned A.C. is justified in holding the present respondent No.1 as the adjoining raiyat of the vended land as her name is mentioned in the boundary of the disputed land in the sale deed. This is certainly a strong evidence and ground for claiming pre-emption.

For the aforementioned reasons, the impugned order is upheld.

In the result, this revision petition is dismissed.

Dictated and Corrected by me.

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Commissioner,
Saran Division, Chapra

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