

In The Court of Commissioner, Saran Division, Chapra

L.C. Revision No. 75/2011

Prabha Mishra

Vrs.

Raj Kishore Mishra & Ors.

ORDER

09.03.2016 - The instant revision application is directed against the impugned order passed by Addl. Collector, Saran on 11.06.2011 in Land Ceiling Appeal No. 17/2010.

The brief facts of the case are that the present petitioner Prabha Mishra W/o Bishwa Vijay Kumar Mishra R/o Village- Sandha, P.S.- Chapra Mufassil, Dist- Saran had purchased the disputed land situated in Mouza Sandha of Saran district from one Laxmi Kuar W/o Late Brij Kishore Mishra of the same village through registered sale deed on 28.03.2008. The details of land are as follows:-

Mouza	Khata No.	Survey No.	Area
Sandha	365	1355	07 Katha
"	79	1351	02 Katha 6 dhur and 07 ½ dhurki
"	471	274	01 Katha 08 dhur.

Thereafter, one Raj Kishore Mishra S/o Late Kapildeo Mishra, claiming himself to be the co-sharer and adjoining raiyat of the disputed land filed a pre-emption case vide L.C. Case No. 10/2008-09 before DCLR, Chapra, Sadar u/s 16 (3) of Bihar Land Reforms (Fixation of ceiling Area and Acquisition of Surplus Land) Act- 1961. The learned DCLR after hearing the parties finally vide order dated 21.09.2010 disallowed the pre-emption claim of the present respondents on the ground that neither all the plots involved in dispute are purely agricultural in nature nor the pre-emptor is in the boundary of all plots. Aggrieved by the said order, the present respondent preferred an Appeal Case vide Land Ceiling Appeal No. 17/2010 before Addl. Collector, Saran and the said appeal was allowed in favour of present respondent vide order dated 11.06.2011.

On being aggrieved by and dissatisfied with the aforesaid order of Addl. Collector, Saran, the present petitioner has preferred this revision application before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf the petitioner at the very outset of his arguments submitted in detail about the entire facts of the case and termed the impugned order as illegal inasmuch as the said order is without reasoning and based on surmises and conjectures. He further argued that the learned lower court highly erred in not considering and appreciating the relation of vendor, vendee and the petitioner. He also submitted that the vendor Laxmi Kuar wife of Late Brij Kishore Mishra herself is the co-sharer and boundary raiyat of plot No. 1351 and 1355 who sold the said land to another co-sharer of that land and the pre-emptor respondent has got no better claim than the purchaser but this important fact has not been considered by the learned Addl. Collector. He also submitted that the western boundary of Plot No. 1355 discloses (Neej) it means the vendor Laxmi Kuar has not sold her entire share in plot No. 1355. Likewise the southern boundary of 1351 discloses word "Mustari" (vendee) which means purchaser Prabha Mishra is the adjoining raiyat of plot No. 1351 as well as co-sharer of that plot also. Similarly she is also the co-sharer and boundary raiyat of plot No. 274 and

these facts were not considered by the learned lower court. The learned counsel, next, submitted that all the three plots covered by the single sale deed have changed its nature and converted into homestead land as several houses, shops and a prominent school named Chapra Central School is situated just towards east of plot No. 1355 and 1351 besides Bazar Semitee and cold storage are also there and the remaining portion of plot No. 1355 and 1351 are surrounded by boundary wall of P.N. Singh Physical Training College. He further submitted that the lands were purchased by the petitioner to build his house and some shops but without considering the above facts the learned Addl. Collector passed the impugned order. The learned counsel further stated that it is well settled principle of law that if so may plots have been transferred through one sale-deed the person claiming pre-emption must prove his co-sharer and boundary status of all the plots but in this case the pre-emptor has not been able to prove the same while on the other hand it is also settled law that if purchaser is co-sharer or boundary man or both even in one of the plot, out of several plots, then principle of section 16 (3) of the Act does not apply. In this case the purchaser petitioner is the co-sharer of all the three plots Nos. 1351, 1355, and 274 and boundary raiyat of plot No. 1351 also as mentioned in the sale-deed but this important fact has not been considered by the learned Addl. Collector. The learned counsel also referred to various judgements of Hon'ble High Court in support of his above contention and also pleaded that the plea taken by the respondent that Laxmi Kuer is still lives in jointness, is totally wrong and misleading and further the nature of the disputed plots have been changed into homestead land as such the respondent can not claim pre-emption.

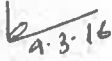
The learned counsel appearing on behalf of the respondent vehemently opposed the submission made by the learned counsel for the petitioner and submitted that from the perusal of the impugned order it is crystal clear that the learned court below has judicially and properly considered all the facts set forth in pleadings before him by the parties and also the enquiry report of C.O. Sadar Chapra and then passed a detailed and reasoned order which is fit to be upheld. He further argued that the ground set forth on behalf of the petitioner in her revision petition are all imaginary, hypothetical and devoid of any merit and as such are not maintainable at all and this revision petition is liable to be dismissed. He further submitted that Late Brij Kishore Mishra, husband of Laxmi Kuer, vendor, and the present respondent Raj Kishore Mishra are full brothers as such they are co-sharer as there is no separation between them and they have not yet partitioned their share. He further argued that the petitioner has wrongly claimed that she is the co-sharer and boundary raiyat of some plots and the land has changed its nature from agricultural to homestead. But the fact is that the disputed lands are raiyati land and still fit for cultivation. The learned counsel also referred to various judgements of Hon'ble High Court in support of his above pleadings. He further argued that as the disputed land is agricultural in nature and the respondent is co-sharer of the vended land, his claim of pre-emption is legally valid and it is on that basis the learned Addl. Collector, Saran allowed the appeal. As such the impugned order is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, rival submissions advanced by the learned counsel for the parties, perusal of the written statements and rulings relied upon as well as the impugned order of Addl. Collector, Saran, it appears that altogether three different plots having different boundaries and area have been transferred through a single registered sale deed in favour of the present petitioner. The claim of the pre-emptor respondent is mainly based on the fact that he is the co-share and boundary raiyat of all the three vended plots on one or another basis and the nature of land is agricultural. However, the purchaser petitioner resists the claims on the ground that the pre-emptor's name has not been mentioned in the boundary of all the three plots rather his name has been shown only in plot No. 1351 and 274 in the western side and the nature of land is no longer agricultural

rather it has been changed into homestead. Thus, it appears that the only important questions remain to be decided as to whether the pre-emptor can claim his pre-emption right against the disputed sale deed on the basis of he being an adjoining raiyat of two plots only whereas in the said sale deed, three plots have been transferred. The learned counsel for the petitioner is of the firm opinion that the pre-emption claim becomes nullified, in this case, as the pre-emptor has not been found as adjoining raiyat of all the three plots and in support of that he refers to a reported judgement (2009 (2) PLJR- 964) wherein it has been held that pre-emptor in order to claim pre-emption must establish that he is either co-sharer or adjoining raiyat of all the plots, where the land comprises of more than one plot. This proposition of the petitioner counsel seems to tenable. The other important points relates to nature of land. The petitioner claims that the nature of land has been very much homestead because of the fact that several buildings including of school, training college and residential houses are in the immediate vicinity of the disputed plots whereas the purchaser -respondent claims that the said lands are still agricultural in nature as the same has been described as kastkaimi in the sale deed and even the local C.O. reported that plot No. 1351 and 1355 are of agricultural nature and plot No. 274 is a fallow land. Thus, it becomes clear that the pre-emptor is not the co-sharer and adjoining raiyat of all the three plots as such his pre-emption claim can not be allowed in view of the fact that the Hon'ble High Court has also held so. The other claim regarding the nature of land is also not correct to say that the said land is still agricultural as it has been mentioned so in the sale -deed document inasmuch as large numbers of buildings have been raised in the vicinity which only reflects that the nature of land has been changed. Obviously, the appellate court has not decided these two issues in their correct perspective keeping in view the entire material facts of the case before arriving at the final findings of fact regarding the validity of claim of pre-emption as well as about the nature of land. On this ground the impugned order of Addl. Collector, Saran becomes unsustainable.

For the aforementioned reasons, the impugned order of Addl. Collector, Saran can not be upheld as such the same is set aside.

In the result, this revision petition is allowed.
Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra