

In The Court of Commissioner, Saran Division, Chapra

Land Ceiling (Pre-emption) Revision No. 186/2011

Mohan Choudhary
Vrs.

Gyani Sah & ors.

ORDER

09.03.2016 - The instant revision application is directed against the impugned order passed Addl. Collector, Gopalganj in Land Ceiling 16(3) Appeal case No. 27/2005-06 on 13.10.2011.

The brief facts of the case are that the disputed piece of land situated in Mauza Harihara, P.S. Mirganj, Dist-Gopalganj and appertaining to khata No. 42, plot No. 159 was transferred in two blocks of 1 katha and 3 katha to one Deo Choudhary by Budhan Sah through two independent sale deed executed on 06.03.1987 and registered on 17.08.1987 at the consideration money of Rs. 13000/-. Thereafter, the first purchaser Deo Choudhary further transferred the said land through three sale deeds to one Mohan Choudhary on 28.09.1987 before filing of pre-emption petition at consideration amount of Rs. 25000 which was registered on 13.06.1988. Thereafter, one Kedar Nath Mishra, claiming himself to be the adjoining raiyat of the vended lands filed on 17.11.1987 an application of pre-emption before DCLR, Gopalganj against the first purchaser vide pre-emption case No. 27/1987-88 alongwith the consideration money involved in the first transaction in which the second transferee Mohan Choudhary was also impleaded as party. However, on rejection of the said pre-emption petition by DCLR, Gopalganj vide order dt. 04.04.1988, the pre-emptor preferred an appeal vide L.C. Appeal No. 12/1988 before Collector, Gopalganj which was subsequently remanded back to the DCLR for fresh consideration vide order dt. 24.08.1999 and then the said pre-emption claim was allowed by the learned DCLR, Hathua vide order dt. 05.05.2012. Feeling aggrieved by the said order, an appeal vide L.C. 16(3) Appeal case No. 27/2005-06 was preferred by the second purchaser which was rejected by Addl. Collector, Gopalganj vide order dt. 13.10.2011.

On being aggrieved by and dissatisfied with the aforesaid order, the present petitioner has preferred this revision case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the petitioner at the very outset of his argument, stated that the facts of this case is somewhat different from other pre-emption cases as the issue involves in this case is not to decide as to whether the person claiming pre-emption is competent to do so or not under the relevant provision of section 16(3) of the Act rather the only important issue to be decided as to whether the pre-emptor can claim his pre-emption right against the first purchaser by depositing the consideration amount equal to that mentioned in the sale executed in favour of first purchaser with terms and conditions of first sale deed. He has further thrown detailed light, right

from the genesis of this case to the coming up of this case before this Court. He submitted that though the Kedar Nath Mishra had made the present petitioner Mohan Choudhary as a party before DCLR but had not deposited the consideration money of the sale deeds mentioned in the sale deed document registered in favour of the present petitioner, Mohan Choudhary and he challenged the sale deeds of the present petitioner on the ground of fraud. He also argued that the case was wrongly allowed in favour of the pre-emptor on the ground that he was the boundary man of the disputed land as given in the first sale deed but did not consider the fact that the said description of boundary was itself under challenge. He also submitted that the learned lower Courts erred in considering that before the pre-emption case was filed the sale deeds of Deo Choudhary had lost legal value because the land covered by those sale deeds was transferred to the present petitioner. The learned counsel, further submitted that the learned lower Courts erred in not considering that on the day when the pre-emption case was filed how can Deo Choudhary execute sale deed in favour of pre-emptor, in case the pre-emption is allowed as he being a purchaser lost his title after execution of sale deeds in favour of Mohan Choudhary. He also argued that the revenue Court has no jurisdiction to decide the validity of sale deed rather it is the Civil Court which is competent to decide such question regarding the validity of a sale deed document. The learned counsel also referred to some of reported judgments of Hon'ble High Court like: 1986, BLJ page 89-92; BLJ 1994(1)432; 2011(2) PLJR-711 and 2009(3) PLJR-210) in support of his contentions and argued that the fact situation of the instant case fully covers by the findings arrived at by the Hon'ble High Court in the judgments referred above. He lastly submitted that as the concurrent findings of learned Courts below are improper and arbitrary as such the same is fit to be set aside and in turn this revision petition be allowed.

The learned counsel appearing on behalf of the respondent while vehemently opposing the arguments made by the learned counsel for the petitioner on the other hand argued that it is a fact that the father of the present respondent No. 5 & 6 had claimed pre-emption on the sale deed executed on 06.03.1987 by Budhan Sah to Deo Choudhary and accordingly the consideration money of Rs. 13000 was deposited including 10% extra. He further submitted that the second transfer, in favour of Mohan Choudhary before filing of pre-emption petition was done with an intention to defeat the pre-emption right. He further submitted that the learned Court below has rightly held the claim of the respondent that they are the adjacent raiyat of the vended land. He also submitted that the petitioner belongs to a different village which is 8-10 Km away from the disputed land and in that situation it is highly unthinkable that the said land would be used for agricultural purpose by the purchaser. The learned counsel further argued that the second transfer in favour of the present petitioner is fully sham and farzi and the same has been made with intention to defeat the very purpose of the section 16(3) of the land Ceiling Act. He lastly submitted that the impugned order is reasoned and proper hence the same be upheld.

Considering the facts and circumstances of the case, material available on records claims and counter-claims made by the learned counsel for the parties and on perusal of the impugned order, it appears that this case is deferent in many aspects from the other pre-emption cases so far as the issue

involved in this case is concerned. It is seen that the disputed piece of land was purchased by the first purchaser in two blocks by two single sale deed executed on 06.03.1987 and registered on 17.08.1987 on a consideration of Rs. 13000 as mentioned in the said sale deed. But before filing of pre-emption claim before the original authority, the DCLR, the said land was again transferred to another person on 28.09.1987 on a consideration of Rs. 25000. However, the pre-emptor filed pre-emption claim against the first sale deed executed on 06.03.1987 and also preferred to deposite the consideration money as mentioned in that sale deed through two challans although, he impleaded the second transferee as party in the case but he did not seek pre-emption on the second round of sale deeds made in favour of the present petitioner. Moreover, the disputed land transferred in first round through two sale deeds was the subject matter of the case by the single pre-emption case and pre-emption was sought for the land also transferred through second round of sale deeds. It is seen that the pre-emption claim of the present respondents has been allowed on the ground that the name of his ancestor were shown in the boundary of the dispute land of the first sale deed and also treating the second round of sale deeds to be sham and farzi. The learned counsel for the petitioner raises a preliminary question regarding the validity of the concurrent findings of the Courts below on the ground that what would be the situation if the pre-emptor win the case and in case the second purchaser is directed to transfer the said land to the pre-emptor on the same terms and condition as mentioned in the first sale deeds and obviously the difficulty arising out of this situation has not been contemplated by the learned Court below. I find some substances in the said plea of the petitioner in view of the various ruling cited by him, wherein the situation arising out of the similar nature of cases have been dealt with and some of them are as follows:

- 1. Application for pre-emption can be filed against the original transferee, only before he has transferred the land to another person-Application filed after second transferred-can not be allowed.
No order of pre-emption can be made against the original transferee if he has transferred the land to another person before filing of the application for pre-emption. [1986 BLJ-89]**
- 2. Payment of higher amount of consideration or transfer in favour of near relation by themselves may not be sufficient to arrive at the conclusion that the transaction was a sham or farzi one such a conclusion has to be arrived at keeping in view of the ingredients of a sham or collusive transaction which includes non-passing of the consideration, non delivery of possession of the property, conduct of the parties and other relevant facts. [1994(1)BLJ-432]**

Thus it is quite obvious that the learned Court below did not bother to go into technical aspect of the dispute rather it was held that as the person claiming pre-emption is in the boundary of the vended land and further holding that second transfer without making any inquiry was a farzi transaction allowed

the pre-emption right which itself is a weak right as observed by Hon'ble High Court in several judgments. Moreover, there is absolutely no evidence on record indicating the subsequent transfer being farzi and sham. Thus, it appears that the appellate authority committed a serious error in declaring the subsequent sale deeds as sham and farzi transaction without proper consideration of issue and also without any reliable evidence being on record indicating the same. I am not constrained to uphold the findings of the learned Courts below in view of the aforementioned findings of the Hon'ble High Court. Accordingly, the same are set aside and the case is remitted back to the Court of original authority, the DCLR Hathua to look into all aspects of the case thoroughly basically on the question of filing single pre-emption petition against two sale deeds executed on 06.03.1987 and registered on 17.08.1987 and also record the reasons for his finding declaring the second round of sale deeds as sham and farzi.

With the aforementioned observations and directions, this revision application is disposed of.

Dictated and Corrected by me.

4-3-16
Commissioner,

Saran Division, Chapra

4-3-16
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