

MANU/BH/0220/2019

Equivalent Citation: 2019(4)PLJR390

IN THE HIGH COURT OF PATNA

Letters Patent Appeal Nos. 993, 995 and 994 of 1996

Decided On: 14.02.2019

Appellants: **Tulsi Devi**

Vs.

Respondent: **State of Bihar and Ors.**

Hon'ble Judges/Coram:

Amreshwar Pratap Sahi, C.J., Chakradhari Sharan Singh and Sudhir Singh, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Shashi Bhushan Kumar, Advocate

For Respondents/Defendant: Prabhakar Jha, GP-27, Mukund Mohan Jha, Umesh Narain Dubey, Shankar Kumar Thakur, Hari Mohan Mishra, AC to GPs-27, T.N. Mattin, Senior Advocate, A.B.B. Shrivastava and Ram Chandra Singh, Advocates

JUDGMENT

Amreshwar Pratap Sahi, C.J.

Re: I.A. No. 1024 of 2017 in L.P.A. No. 993 of 1996; I.A. No. 1023 of 2017 in L.P.A. No. 994 of 1996; I.A. No. 1025 of 2017 in L.P.A. No. 995 of 1996

1. Having heard Shri Shashi Bhushan Kumar, learned counsel for the three proposed heirs of the deceased appellant as well as Shri Prabhakar Jha, learned Government Pleader-27 for the State of Bihar and Shri T.N. Mattin, learned Senior Counsel for the private respondents, the substitution deserves to be allowed in the interest of justice without prejudice to the rights of any other heirs to claim their rights in the pending appeals.

2. The interlocutory applications are allowed.

3. Let necessary corrections be carried out accordingly.

Re: L.P.A. No. 993 of 1996; L.P.A. No. 994 of 1996; L.P.A. No. 995 of 1996.

4. The matters were referred vide an order dated 29th August, 2014 which is extracted hereinunder:-

"Learned counsel for the appellants relied upon a decision of a Division Bench of this Court in the case of Nathuni Mahto Vs. State of Bihar & Ors.: MANU/BH/0723/2004 : 2004 (2) PLJR 334 in which on similar facts as in the present matter the Division Bench had held that the claim of pre-emption is not maintainable. On the other hand, learned counsel for the private respondent no. 5, the pre-emptor, relied upon a subsequent Division Bench judgment of this Court in the case of Udai Narain Singh & ors. Vs. The State of Bihar and Others: MANU/BH/0126/2008 : 2008 (2) PLJR 409 in which

again on similar facts a contrary view has been taken disagreeing with the views taken by the earlier Division Bench in Nathuni Mahto's case (supra).

The matter is, therefore, referred to a Full Bench of this Court."

5. With the assistance of the learned counsel at the Bar, we find it necessary to re-frame the question keeping in view the legal issue involved and the judgements, the conflict whereof has been pointed out for the purpose of resolving the controversy.

6. The difference of opinion appears to have occurred on account of the exception made in the case of Ram Roop Yadav Versus The State of Bihar & Ors. reported in MANU/BH/0328/1986 : 1987 PLJR 855, paragraph 4 which is extracted hereinunder:-

"4. In the instant case, the two sale deeds having been executed in respect of Plot Nos. 18 and 22 in favour of the petitioner, after the registration of two deeds the petitioner becomes holder of two adjoining plots. In this background, when two applications for pre-emption were filed by two separate sets of pre-emptors in respect of two plots transferred, the petitioner can legitimately resist the claim in both the applications that he himself is a holder of the adjoining plot. In other words, the petitioner in application for pre-emption in respect of plot no. 18 filed by respondent nos. 5 to 7 of C.W.J.C. No. 1939 of 1980 can take a defence that he is the holder of adjoining plot No. 22, as such application for pre-emption should not be allowed. Same plea is available to him in the other application for pre-emption in respect of Plot no. 22 filed by respondent nos. 5 and 6 of C.W.J.C. No. 1940 of 1980, that he himself is the holder of adjoining Plot No. 18. Perhaps, the matter would have been different if same person or same set of persons had filed the two applications for pre-emption claiming to be adjoining raiyats of both the plots purchased by the petitioner."

7. The highlighted portion hereinabove does not appear to have been either noticed or considered by the Division Bench in the case of Nathuni Mahto Versus State of Bihar & Ors. reported in MANU/BH/0723/2004 : 2004 (2) PLJR 334, while allowing the appeal as is evident from paragraph 7 of the reported judgment that notices only paragraph 6 of the judgement in the case of Ram Roop Yadav (supra).

8. The latter Division Bench in the case of Udai Narain Singh & Ors. Versus the State of Bihar & Ors, reported in MANU/BH/0126/2008 : 2008 (2) PLJR 409 noticed the said distinction, but instead of referring the matter came to the conclusion that in view of the exception carved out in paragraph 4 of the reported judgement of Ram Roop Yadav (supra), the judgement in the case of Nathuni Mahto (supra) would not be applicable keeping in view the distinguishing nature of facts involved in that case.

9. It is for the said reason that the reference appears to have been made on 29th of August, 2014, however, without referring to the aforesaid difference of opinion that deserves to be resolved. Accordingly, we are of the opinion that the question which arises for consideration and has to be answered by us is as to whether if the same person or same set of persons file applications for pre-emption claiming to be adjoining raiyats of the plots purchased, then in that event, whether the law laid down in the case of Udai Narain Singh (supra) has correctly interpreted the provisions as against the view expressed by the Division Bench in the case of Nathuni Mahto (supra)?

10. Having re-framed the question, we have heard the learned counsel for the parties

and what we find is that the ratio of the judgement in the case of Ram Roop Yadav (supra) was not correctly appreciated by the Division Bench in the case of Nathuni Mahto (supra), the distinction whereof has been rightly noticed and answered by the Division Bench in the case of Udai Narain Singh (supra) which is extracted hereinunder:-

"18.The fact that the two pieces of land comprised part of the same plot, reasonably of small area, purchased from same vendor in one name on the same day by two separate sale deeds clearly shows that the purchase by the purchaser of the two pieces of land by two sale deeds on the same day was not due to any exigency of situation or a normal course of conduct. The provision of Section 16(3) incorporated in the Act is obviously with an intention to prevent fragmentation of land and to facilitate consolidation. With this intention the legislature created a statutory right in favour of an adjoining raiyat or a co-sharer to stake a claim to preempt any land or piece of land sold adjoining to his land. Hence, purchase of two small pieces of land of the same plot by two separate sale deeds on the same day in effect amounts to fragmentation and obviously defeats the intention of the legislature and is clearly an attempt to defeat the right of the adjoining raiyat or co-sharer to set up his claim of pre-emption. Purchase of small pieces of land of the same plot by two sale deeds cannot be held to be a bona fide act in absence of any plausible reason and as such the same has to be held to be mala fide act on the part of the purchaser to defeat the provisions of the Act by setting up a false claim of becoming adjoining raiyat of each and other plot by two sale deeds. Of course, ratio laid down in the case of Ram Roop Yadav's case (supra) is correct in case where pre-emptors are different but as observed in paragraph 4 of the judgment, matter would be different if the pre-emptor is the same and he claims to be adjoining raiyat of the whole plot and definitely of the two pieces of land vended by two sale deeds. In the case of Nathuni Mahto (supra) the Division Bench did not notice this distinction and set aside the judgment of the learned single Judge on the broad proposition of law laid down by the Division Bench in the case of Ram Roop Yadav (supra). Learned single Judge while dismissing the claim of the purchaser in Nathuni Mahto's case although had not noticed the exception carved out by the Division Bench in paragraph 4 of the judgment in Ram Roop Yadav (supra) but had proceeded on the same analogy which was squarely applicable in the facts of the case. The Division Bench while setting aside the judgment of the learned single Judge in Nathuni Mahto's case failed to notice that the broad proposition of law laid down in case of Ram Roop Yadav (supra) was laid down in the facts of that case which were distinctly different from the facts of Nathuni Mahto's case and its facts were squarely covered by the exception carved out by the Division Bench in paragraph 4 of Ram Roop Yadav's case as quoted above.

19. Considering various judgments of this Court relied upon by learned counsel for the petitioners, I am of the view that in cases in which the vendor, vendee and pre-emptors are the same, vendee purchases pieces of land of the same plot by different sale deeds executed and registered on the same day and the pre-emptor claims to be adjoining raiyat of the whole plot or at least portions of the land purchased by the purchaser by different sale deeds, the purchaser cannot set up a claim of having become adjoining raiyat of each and other piece of land purchased on the same day by different sale deeds. The pre-emptor being adjoining raiyat from before has a superior

claim over the plots of land vended on the same day, may be by two sale deeds. The purchase of two pieces of land of the same plot by two sale deeds by the purchaser on the same day cannot be thus held to be a legitimate means to defeat the provisions of law and the statutory right, although a weak one, of a common adjoining raiyat or a co-sharer. Of course, in absence of anyone or more of the five features indicated above, purchaser's claim of having become adjoining raiyat of each other plot will become a perfectly valid and legitimate defence against any claim of pre-emption."

11. We find ourselves in complete agreement with the same.

12. We, therefore, hold that the law laid down by the Division Bench in the case of Udai Narain Singh (supra) states the correct position of law and to that extent, the judgement in the case of Nathuni Mahto (supra) stands disapproved.

The reference is answered accordingly.

13. It will be open to the learned counsel for the appellants to make a request for issuance of notices to the newly added respondents or any other heirs of the deceased appellant.

14. The matter be now placed before the appropriate Bench for deciding the matters on merits.

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