

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14479 of 2015

Anil Kumar Singh @ Anil Kumar son of Late Uday Narayan Singh Resident of Mohalla and P.S. Budha Colony District- Patna- 800001

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Co-opertive Department, Government of Bihar.
2. Rajesh Kumar, son of Sri Yamuna Prasad, resident of Mandar Sah Cold Storage, Khajpura District- Patna 800014
3. Sri Ram Nagari Sahkari Grih Nirman Samiti Ltd., Ramnagari, Patna through it's Secretary.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Janardan Prasad Singh, Sr. Adv. Mr. Dipak Kumar, Adv.
For the Respondent/s	:	Mr.Sanjay Kumar, AC to GA 13.
For the Respondent No.2:	:	Mr. Mahesh Narayan Parbat, Sr. Adv. Mr. Pravin Prabhakar, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 25-04-2019

Heard learned Senior Counsel representing the petitioner as well as the private respondents.

Petitioner in this case is aggrieved by the order dated 12.10.2012 passed by the Additional Registrar, Co-operative Societies, Bihar, Patna in Appeal No.17 of 2007 by which he has refused to interfere with the order dated 25.03.2006/25.04.2006 passed by the Joint Registrar (Marketing), Co-operative Societies, Bihar, Patna in Case No.125 of 2002.

It appears from the narration of facts in the writ application that the petitioner claims himself a member of the



respondent Society and by virtue of a sale deed as contained in Annexure '3' to the writ application he claims his right, title and possession over a piece of land being Society Plot No.48 in Block No.B (2) which is a part of Survey Plot No.216, Khata No.228, Tauzi No.5588 in Mauza-Khajpura. According to the petitioner, he had by virtue of being member of the Society got allotment of the land and after getting the sale deed vide Annexure '3' came in possession over the land in question. It is also his case that his name was mutated in the revenue records by allowing Mutation Case No.31/5/02-03 by the Anchal Adhikari, Sadar Patna. Annexure '4' is the order of mutation.

The grievance of the petitioner is that while he has already got the possession over the land for about 12 years and was claiming his possession on the land, the respondent no.2 who is not a member of the Society and has any rightful claim on the plot in question has by playing fraud and deceit in collusion with the Secretary of the Society namely, Bharat Tripathy and got executed a sale deed based on which he is claiming right, title and possession over the land.

It appears that the petitioner filed a Dispute Case No.125 of 2002 before the Registrar, Co-operative Societies, Patna for declaration and confirmation of right, title and possession over the



land of the given description. The matter was transferred to the Joint Registrar, Co-operative Societies, Bihar, Patna for a decision on the application of the petitioner. The Joint Registrar considered and disposed of the dispute case vide order dated 25.03.2006/25.04.2006 by rejecting the claim of the petitioner as against the private respondent no.2 but leaving it open to stake his claims against the Co-operative Society. The petitioner preferred an appeal being Appeal No.13 of 2007 which was considered by the Additional Registrar, Co-operative Societies who took a view that in fact the dispute case itself is not maintainable. A copy of the order passed by the Additional Registrar, Co-operative Societies on 12.10.2012 is Annexure '11' to the writ application which is impugned herein. A perusal of the impugned order shows that the Additional Registrar, Co-operative Societies has rejected the appeal on the ground that it was filed beyond the period of limitation and that there was no plea that the decision of the Joint Registrar was communicated to the petitioner at a later date.

Learned counsel for the petitioner submits that the impugned order passed by the Additional Registrar, Co-operative Societies as well as the Joint Registrar are fit to be set-aside on the ground inter-alia that the Additional Registrar could not appreciate that no period of limitation is provided under Section '48' of the



Co-operative Societies Act and further that the Additional Registrar as well as the Joint Registrar were unable to appreciate that in the present case the private respondent no.2 had obtained a sale deed as contained in Annexure '6' to the writ application from the attorney holder of the Ex-Secretary, who had not been authorised by a registered power of attorney as was required under Section 17 of the Indian Registration Act. Learned counsel for the petitioner has in support of his submission relied upon a Judgment of the Hon'ble Supreme Court in the case of **Bihar State Co-operative Marketing Union Ltd. vs. Uma Shankar Sharan and another** reported in **1992 (2) PLJR 42 SC (Paragraph 8)**. Further reliance has been placed on a Judgment of this Court in the case of **Raja Ram Gupta and Anr vs. Ramchandra Prasad and Ors.** reported in **2004 (2) PLJR 172 (Paragraph 5)** to contend that the sale deed obtained by the private respondent no.2 having no registered power of attorney would not be a legally binding sale deed on the petitioner.

On the other hand, learned Senior Counsel representing the private respondent has drawn the attention of this court towards the pleadings available in the counter affidavit. It is submitted that the petitioner has not disclosed about the place where he got the sale deed registered. It is also submitted by



pointing out to the sale deed of the petitioner that in the body of the sale deed there is no mention of any Schedule- II plot but in order to confer jurisdiction upon a particular Registry Office, a Schedule-II plot has been added by hand at the foot of the sale deed at the last page showing a piece of land which is not at all the subject matter of the sale deed. Referring to the order as contained in Annexure 'F' to the counter affidavit passed by the Deputy Collector Land Reforms, Patna in Miscellaneous Case No.12 of 2002-03, learned Senior Counsel submits that the order of mutation passed by the Anchal Adhikari in favour of the petitioner was the subject matter of challenge in the Miscellaneous Case and in the said case after hearing the parties the mutation in favour of the petitioner was cancelled. It is submitted that in the rejoinder filed by the private respondent there is no averment that the order as contained in Annexure 'F' is under challenge.

Learned Senior Counsel has further submitted that there is a serious dispute of right, title and possession between the parties over the piece of land and in such circumstance, the application filed by the petitioner under Section 48 of the Co-operative Societies Act would not be maintainable as the Registrar under the Act has got no power to declare right, Title and possession of the parties in the nature of the dispute which exists



in this case. In order to buttress his point, learned Senior Counsel ha relied upon a Judgment of this Court in the case of **Sita Ram Sah versus The State of Bihar and Ors.** reported in **1995 (1) PLJR 396 (Paragraph 8)** to submit that the Registrar, Co-operative Societies is not a Court, therefore, Section 5 of the Limitation Act would not apply to a proceeding before the Registrar, Co-operative Societies. He has also relied upon another Judgment of this Court in the case of **Sri. Lakhon Yadav and Ors vs. Most. Rajkala Devi and Ors.** reported in **1997 (1) PLJR 361 (Paragraph 18)** to submit that the sale deed obtained by private respondent no.2 which got registered at Kolkata cannot be said to be invalid or is suffering from any act of fraud on the law of registration. In this connection, it is pointed out that in the said case in Paragraph '18' this Court had held that unless it is definitely found on the pleading and evidence that solely for the purpose of conferring jurisdiction to a Sub-Registry Officer any small area had been fictitiously mentioned in the document and the parties definitely had no intention to deal with that small area mentioned in the document, it cannot be said that there was fraud on the Law of Registration and the document can be held to be legally defective for want of proper registration. Learned Senior Counsel submits that in fact in the sale deed of the petitioner there



is no recital of sale of Schedule-II land and if that is so it would be a case of playing fraud on the law of registration. Learned Senior Counsel has relied upon another Judgment of this Court in the case of **Smt. Swati Pande and Ors. vs. The Registrar, Co-operative Societies, Bihar, Patna and Ors.** reported in **2007 (2) PLJR 525 (Paragraph Nos.11 and 17)** to submit that once a property is transferred by a registered document, a vested civil right devolves upon the transferee and to nullify such vested right only a Civil Court of competent jurisdiction has the authority and the Registrar has no such power or authority of a Civil Court to decide right and title of a party.

Learned Senior Counsel for the private respondents submits that no interference with the impugned order is required.

Having heard learned Senior Counsel for the parties and on perusal of the records, this Court finds that the Joint Registrar, Co-operative Societies while passing the order on 25.04.2006 has gone into the submissions of the parties. It was found that the sale deed in favour of private respondent was executed in the year 1985 whereas, the petitioner has obtained the sale deed in the year 1988. It is also found that the power of attorney holder, namely, Sri. Bindesh Kumar Singh had executed the sale deed in favour of private respondent and he had also stood as a witness on the sale



deed of the petitioner. It was also found that the mutation of land done in favour of the petitioner by the Anchal Adhikari had been cancelled by the Deputy Collector Land Reforms. After considering all the materials available on the record, the Dispute Case filed by the petitioner was dismissed. This order was sought to be challenged before the Registrar, Co-operative Societies and the same has been dismissed as stated above.

On a careful consideration of the submissions made on behalf of the parties, this Court would come to a conclusion that this case involves serious dispute of right, title and possession over the land in question. Both the parties are claiming that their respective sale deeds are legal and valid document. Both of them are claiming their title by virtue of the said sale deed and both of them are contesting the issue of possession. While, it is the case of the petitioner, that he had raised construction on the piece of land, the private respondent no.2 has also claimed that he had come in possession over the land prior to the execution and registration of sale deed in favour of the petitioner and had made construction. In these circumstances, going through the Judgment of the Hon'ble High Court in the case of **Smt. Swati Pande (supra)** this Court takes a view that such question of right, title and possession could not have been considered and decided by the Registrar in exercise



of his power under Section 48 of the Bihar Co-operative Societies Act. The Joint Registrar has rejected the claim of the petitioner as against respondent no.2 on the basis of the first sale-deed and other documents in favour of the R-2 but at the same time has left it open for the petitioner to stake his claim against the society. The appeal being barred by limitation, the same was not entertained, there is no illegality or infirmity with the same.

In the opinion of this Court, the writ application has no merit, it is dismissed, accordingly.

At this Stage, learned Senior Counsel for the petitioner submits that the petitioner may be given an opportunity to seek his remedy in accordance with law. This Court is not required to grant opportunity to the petitioner as it is open to a party to seek his remedy in accordance with law. The Court would only observe that dismissal of the writ application would not come in the way of the petitioner in seeking his remedy in accordance with law.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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CAV DATE	
Uploading Date	
Transmission Date	

