SUPREME COURT OF INDIA

Kedar Mishra

Vs.

State of Bihar & Ors.

C.A.No.3778-3780 of 2016

(T.S.Thakur,CJI., R.Banumathi and Uday Umesh Lalit,JJ.,)

12.04.2016

JUDGMENT

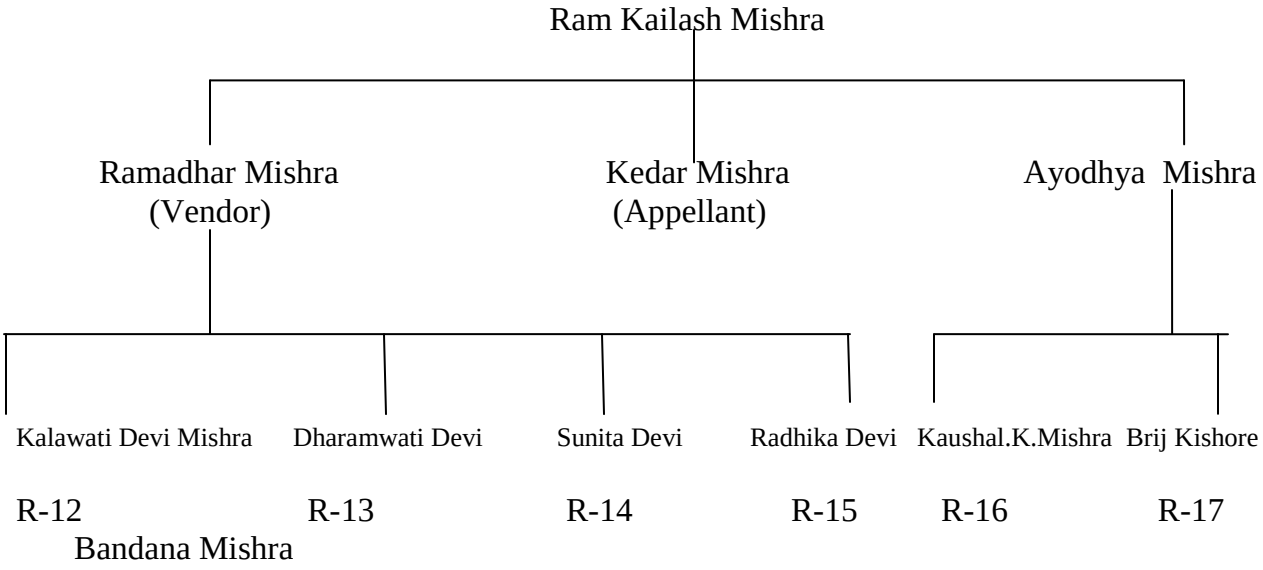
R.Banumathi, J.,

SLP(Civil)No.8038-8040 of 2011

1. Leave granted.

2. These appeals arise out of a common judgment and order dated 15.12.2010 passed by the High Court of Judicature at Patna dismissing Writ Petitions being C.W.J.C. Nos. 10339, 10355 and 10356 of 1999 on the ground that there has been no sufficient compliance of the requirement of Rule 19 of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules 1963 and Form L.C. 13 of the Rules and declining to interfere with the order passed by the Additional Member, Board of Revenue dated 31.08.1999 and thereby negativing the appellant's claim of right of pre-emption.

3. Lands involved in all the three cases belonged to one Ram Kailash Mishra, who died leaving behind his three sons, namely, Ramadhar Mishra (Vendor), Kedar Mishra (appellant) and Ayodhya. The genealogical table of Ram Kailash Mishra is as under:-



4. Ramadhar Mishra was the vendor and Kedar Mishra the appellant/pre-emptor claimed right of pre-emption both as adjoining land owner as well as co-sharer of the land sold. On 06.02.1988, three sale deeds were executed by late Ramadhar Mishra out of which sale deed with respect to 40 decimal of land out of Chak Plot No.105 having a total area of 1.20 acres was executed in favour of Kamala Devi wife of Rang Bahadur Singh and Janak Dulari Devi wife of Bir Bahadur Singh. With respect to 1/3rd share out of Chak Plot No.128, 94 decimal of land out of total area of 2.82 acres sold by late Ramadhar Mishra in favour of Bir Bahadur Singh and Rang Bahadur Singh by two different sale deeds respectively 47 decimal each. Claiming right of pre- emption and impugning the above three sale deeds, appellant filed three pre-emption cases in Pre-emption Case Nos. 14 of 1992, 12 of 1992 and 13 of 1992 respectively. The Deputy Collector Land Reforms (DCLR) by common order dated 10.07.1995 allowed all the three pre-emption cases observing that the pre-emptor/appellant is an adjoining raiyat and also a co-sharer of the disputed land. The said order of DCLR dated 10.07.1995 was challenged in pre-emption Appeal Nos. 8 of 1995, 9 of 1995 and 10 of 1995. The aforesaid three appeals were allowed by the Additional Collector, Rohtas at Sasaram by a common order dated 16.04.1996 setting aside the order of DCLR. Being aggrieved by the order dated 16.04.1996 passed by the Additional Collector, Rohtas at Sasaram, the appellant filed revision in Revision Case Nos.174, 175 and 176 of 1996 before the Board of Revenue and all the three revision cases were allowed by a common order dated 19.03.1997 setting aside the order of the appellate authority. The abovesaid common order of the Board of Revenue was challenged by the vendees before the High Court in C.W.J.C. Nos. 8217 of 1997, 8237 of 1997 and 7039 of 1997. All the three writ petitions were disposed of by a common order dated 24.09.1998 and the matter was remitted back to the Board of Revenue for deciding the matter afresh. While so remitting the matter, the High Court by its order dated 24.09.1998 directed that the revisional authority shall determine the issue as to whether appellant/pre-emptor had deposited the consideration money along with ten percent amount in favour of the Collector in accordance with law or not.

5. Pursuant to the direction of the High Court, Revenue Case Nos.174, 175 and 176 of 1996 were taken up and heard afresh by the Board of Revenue, Bihar. The Additional Member, Board of Revenue vide order dated 31.08.1999 dismissed the revision petitions filed by the appellant holding that the requisite money was not deposited in favour of the Collector in compliance with Rule 19 Form L.C.13 and consequently, pre-emption applications of the appellant stood dismissed. Being aggrieved, the appellant filed writ petitions before the High Court in C.W.J.C. Nos. 10339, 10355 and 10356 of 1999. All the three writ petitions came to be dismissed by the impugned order holding that the deposit for filing of pre-emption cases was made in favour of the District Collector under the head '0029 L.R. ' and the prescribed head is 2029 Land Revenue' and there was no sufficient compliance of Rule 19 and Form L.C. 13 of the rules. Being aggrieved, the appellant has preferred these appeals.

6. We have heard learned counsel for the parties at considerable length. Learned counsel for the appellant contended that the requisite amount of money for filing the pre¬emption cases was deposited under head '0029 L.R.' through treasury and there has been sufficient compliance of Rule 19 Form L.C. 13 and hence the findings of the High Court that there was no sufficient compliance of Rule 19 and Form L.C. 13 is not sustainable. It was submitted that the requirements of Rule 19 and Form L.C.13 of the rules are directory in nature and even assuming that if there was no compliance of the said rules, appellant's substantive right of pre-emption cannot be defeated.

7. Per contra, learned counsel for the respondents submitted that the treasury challan under head '0029 L.R.' could not be withdrawn by the Collector under the Act in the pre¬emption proceedings to make it over to the concerned person and the error in the challan goes at the root of the matter and the Board of Revenue and the High Court rightly dismissed the pre-emption cases of the appellant.

8. We have carefully considered the rival contentions, perused the impugned order as well as the order of the Board of Revenue dated 31.08.1999 and other material on record.

9. It is relevant to quote Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus land) Act,1961 (Bihar Act No.12 of 1962) which reads as under:-

> **"Section 16: Restriction on future acquisition by transfer etc:-**
>
> xxx xxx xxx
> xxx xxx xxx
>
> "(3)(i) When any transfer of land is made after the commencement of this Act to any person other than a co¬sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transfered, shall be entitled, within three months of the date of registration of the document of transfer, to make an

application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed:
Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (i) is pending for decision: Provided that where the application is rejected, the co¬sharer or the raiyat, as the case may be, shall be evicted, from the land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten percent of the purchase money out of the deposit made under clause(i).

(iii) If the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order XXI, Rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be followed. The revision against the order passed by the Collector or Additional Collector under Section 16(3) of the Act will be before the Divisional Commissioner who after hearing the parties shall pass orders in the case filed before him. (Inserted by Act 10 of 2006)"

The object of Section 16(3) of the Act is to secure consolidation by giving the right of re-conveyance to a co-sharer or a raiyat of an adjoining area so that the land in question can be used in the most advantageous manner and also to prevent fragmentation of the land. In terms of Section 16(3)(i), no pre-emption application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited by the person claiming right of pre-emption in the prescribed manner within the said period.

10. Rule 19 deals with the application by a co-sharer or a raiyat of adjoining land for transfer of land under Section 16(3).

Rule 19 reads as under:-

"19. Application by co-sharer or a raiyat of adjoining land for transfer of land under Section 16(3).-(1)

Application by a co-sharer or raiyat of adjoining land for transfer of land under Section 16(3) shall be in Form L.C.13 and the purchase money together with a sum equal to ten percent thereof shall be deposited in the Treasury/Sub¬treasury of the district within which the land transferred is situated.

(2) A copy of Challan, showing deposit of the amount under sub-rule (1) together with a copy of the registered deed, shall be filed along with the application in which also a statement to this effect shall be made.

(3) A copy of the said application shall also be sent simultaneously by the applicant to the transferor and the transferee by registered post with acknowledgment due.

(4) The Collector shall issue a notice to the transferor, the transferee and the applicant to appear before him on a date to be specified in the notice and after giving the parties concerned a reasonable opportunity of showing cause, if any, and of being heard, shall by an order in writing, either allow the application in accordance with clause (iii) of sub¬section (3) of Section 16, or reject it.

(5) If the application is allowed under item (iii) of sub¬section (3) of Section 16 and the transferee is directed by the Collector by any order to convey the land in favour of the applicant by executing and registering a document of transfer, the applicant shall be required to pay the registration fee.

(6) Where the application is allowed and the transferee conveys the land in favour of the applicant under Section 16(3)(iii), the transferee shall be allowed to withdraw the money deposited by the applicant."

11. Form L.C. 13 is a form of application by a co-sharer or a raiyat of adjoining land for transfer of land to him under Section 16(3)(i) of the Act (12 of 1962). As per Form L.C. 13 para (2), the applicant claiming right of pre-emption has to enclose copy of District/sub-treasury/treasury challan showing that he has deposited the amount equal to ten percent thereof to the credit of the Collector of the area concerned under the Act.

12. In compliance of Section 16(3)(i) and Rule 19, for all the three pre-emption cases, the appellant has deposited ten percent of purchase money as under:-

Pre-Emption Case No.	Treasury Challan	Amount deposited
12/91-92	No. 26 dated 8.7.91	Rs.10,000/-+ Rs.1,000/-
13/91-92	No. 25 dated 8.7.91	Rs.10,000/- + Rs.1,000/-
14/91-92	No. 27 dated 8.7.91	Rs.10,000/- + Rs.1,000/-

Admittedly, as noted above, the appellant has deposited ten percent of the purchase money (Annexure P2-series). Copy of the challan produced on record shows that details like name, designation, address of the person who deposited the money as well as the reason for such deposit are required to be filled in by the concerned person; while other details are to be filled in by the Treasury office. In the column to be filled in by ' Account Officer who would collect the amountit was stated as 0029 L.R.' whereas the prescribed head for the said deposits is stated to be 2029 Land Revenue'. In the challan, above the column earmarked for the 'Account Officer who would collect the amount' in the preceding row, it is stipulated that

it is ‘ to be filled up by the officer or treasury’. The High Court as well as the Board of Revenue held that money has been deposited under the head '0029 L.R.' in the name of District Collector and since the amount was not deposited under appropriate head, there was no sufficient compliance of Rule 19 Form L.C. 13. The High Court observed that since the money has been deposited in the name of the District Collector, in case, the pre-emption applications are allowed, then the transferee will have to face a lot of legal hassle in getting back the entire money deposited by the pre- emptor and that it cannot be the legislative intent. The High Court was of the view that there has been no sufficient compliance of the requirement of Rule 19 and Form L.C. 13 of the rules and in our view, the High Court erred in ignoring the details of various columns in the challan.

13. In our view, the High Court was not right in holding that there was no sufficient compliance of the requirement of Rule 19 and Form L.C. 13. There is no denying the fact that the appellant has deposited ten percent of the purchase money as required under Section 16(3)(i) of the Act. As against the column ‘Account Officer who would collect the amount’, mentioning a wrong head cannot be a ground to dismiss the pre¬emption applications of the appellant at the threshold. The appellant being a raiyat cannot be expected to know the correct head under which the amount is to be deposited and a pedantic approach should not be adopted. To non-suit the appellant on the ground of a technical objection that the amount has not been deposited under the head '2029 Land Revenue’ but deposited under the head '0029 L.R.', would defeat the benevolent object of Section 16(3) of the Act. Though the amount was deposited under a wrong head, the fact remains that the amount has been deposited to the credit of the treasury. The appellant ought to have been given an opportunity to pursue his case of right to pre-emption, having regard to the fact that being a raiyat, his legal literacy rate may be low. A party cannot be denied right of adjudication of the matter on merits merely because of some inadvertent mistake. In our view, the High Court was not justified in viewing the treasury challan with a pedantic approach and was also not right in affirming the order passed by the Board of Revenue.

14. In the result, the impugned order of the High Court is set aside and the matter is remitted back to the Board of Revenue, Bihar to reconsider the Revision Case Nos.174, 175 and 176 of 1996 afresh on merits after affording sufficient opportunity of hearing to both the parties. The appeals are accordingly allowed. We make it clear that we have not expressed any opinion on the merits of the matter. The parties to bear their respective costs.