

**In the Court of the Additional Deputy Commissioner,
West Singhbhum, Chaibasa.**

Misc. Case No. 01/2009-10

Gardi Ho & Ors. Applicants

Verses

Satari Deogam & Ors. Opp. Party

ORDER

Petition under section 46(4-A) of CNT Act have been filed vide Misc. case No. 01/09-10 by the applicant Gardi Ho and Bodhan Ho for the cancellation of the registered deed no. 52 dated 20.01.2019 order passed in TA Misc. case No. 71/08-09 dated 28.11.2008 by virtue to be annulled. It is submitted by the applicant that a land under Khata No. 41 with the Mauza- Lupungutu, Thana No. 645, Thana- Kolhan, Dist.- Singhbhum West has been recorded in the name of the Manai Ho and Others in the recent survey settlement. The aforesaid recorded tenant happened to be the predecessors in interest of the applicant and OP no. 1 and the land aforesaid have jointly devolved upon the heirs and successors of the recorded tenant. The same is equally enjoyed by all the family members according to respective convenience.

It is submitted by the applicant that the OP no. 1 illegally and without informing the family members applied and obtained an order under section 46 of CNT Act from this court in T.A. Misc. Case No. 71/08-09 dated 28.11.2008 to transfer a portion of plot no. 2289 under khata no. 41 measuring an area of 14½ decimal in favour of the OP no. 2 i.e. Bimal Tape. After getting permission the OP no. 1 transferred or registered the aforesaid land to the OP no. 2 vide registered deed no. 52 dated 29.01.2009.

That the fact of the case is that the land bearing plot no. 2289 recorded under khata no 41 of mauza lupungutu were sold to OP no. 2 by OP no. 1 Sartari Deogam after obtaining permission under section 46 of CNT act by this competent court. The case of the petitioners is that they are co-sharers of the land recorded under khata no 41 of mauza lupungutu and without taking permissions from the applicants this land has been sold to the OP no. 2 by registered deed of sale.

That the case of the opposite parties is that Sartari Deogam the seller has taken permission from this court under section 46 of the CNT act in TA Misc. Case No. 71/08-09. In the case general notice in the village were published but nobody has filed any objection against the application for permission therefore the opposite party Sartari Deogam was permitted to execute the deed of sale in favor of the OP no. 2 in respective cases. After the execution of the deed of sale the OP Bimal Tape got his name mutated in the office of the circle officer and he is in possession of the land in question on payment of rent in his name.

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An objection has been filed by the OP's against the petition filed by the applicant and in their objection it is submitted that the application filed by the applicant is bad in law and the same is liable to be rejected and the proceeding is liable to be dropped. It is also submitted that the application filed by the applicants under the provisions of the CNT act is misconceived and misdirected and has wrongly been filed in this court. This court has no jurisdiction to entertain a petition under section 46 of CNT act for annulment of any transfer.


And the OP also stated in his objection that the applicants are not in possession of lands mentioned under khata no 41 of mauza Lupungutu bearing plot no. 2289 measuring an area of 14½ decimal and it is admitted that the disputed land are the ancestral property has been recorded in the recent survey settlement operation jointly in the name of all the tenants but the land have been partitioned amongst the tenants and after the partition the heirs of the tenants are in exclusive possession over their respective shares of the land bearing plot no 2289 recorded under khata no 41 fall in the share of the ancestors of the OP and the OP no. 1 Sartari Deogam was in exclusive possession over the same having all rights of disposition. According to para- 8 of written statement filed by the defendant in the year-1983. K.T.S. Case No. -12/1983 was filed in the Court of the Kolhan Superintendent, West Singhbhum, Chaibasa. The applicant in this case has submitted in his deposition that he has accepted the partition of the landed property in the proceeding under section -145 Cr. P. C. initiated in the year 1977. Therefore, it has been proved by the OP Sartari Deogam that the lands have been partitioned prior to the execution of the deed of sale. Therefore the OP Sartari Deogam had all rights to see the said property.

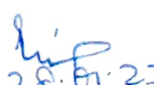
That the law relating to un partitioned land is firmly established that if any un-partitioned land has been sold and if subsequently there is a partition the purchaser of the land shall be a party to that suit and the land sold if falls in the share of the seller that shall go to the share of the purchaser.

That while granting permission under section 46 of the CNT Act this court has been pleased to accept this possession of law and granted permission making after all enquiries was granted to OP no. 1. The petitioners' if have any grievance their relief lies in different forum. After registry of the deed of sale this court has got no jurisdiction to cancel the deed of sale.

Under the aforesaid circumstances the petition filed by the applicants is not maintainable and the same is liable to be rejected. That under the aforesaid circumstances the petition filed by the applicants is liable to be dropped and hence the petition filed by the applicants is hereby rejected and the proceeding is dropped.

If parties have any objection, he can file appeal against the appellate authority.


28.01.23
Additional Deputy Commissioner,
West Singhbhum, Chaibasa


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