

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 10498 of 1995

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1 Chandrika Yadav
2 Mundrika Yadav, sons of Sheo Shankar Choudhary
3 Maya Devi, wife of Shambhu Yadav
4 Phulpati Devi, wife of Ambika Yadav
5 Sheo Badan Yadav
6 Lalan Yadav
7 Nandjee Yadav
8 Mintu Yadav, sons of late Ambika Yadav
9 Kalawati Devi
10 Bidyawati Kumari, grand daughters of original writ petitioner Bigni Devi
11 Sheo Shankar Yadav, husband of original writ petitioner Bigni Devi

.... Petitioner/s

Versus

1 State of Bihar
2 Additional Member, Board of Revenue, Bihar, Old Secretariat, PS –
Sachivalaya, District – Patna
3 The Collector, Siwan
4 Subdivisional Magistrate, Siwan
5 Bachni Devi, wife of Rampat Choudhary, resident of Village – Bishunpura, PS
– Maharajganj, District – Siwan
6 Daroga Choudhary, son of Sheo Parsan Choudhary, resident of Village –
Bartawalia, PS – Siwan, at present PS – Pachrukhi, District - Siwan

.... Respondent/s

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For the Petitioner/s : Mr Bishwa Nath Choudhary, Advocate

For the S t a t e : Mr Ajay, GA XII with
Mr Rakesh Kumar Ranjan, AC to GA XII

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 23-07-2015

Heard learned counsel for the petitioners and learned counsel
for the State. No one appears for respondent No 5 though
vakalatnama is on record.

2 The writ petition has been filed against the order of the
learned Additional Member, Board of Revenue by which he has
dismissed the revision application affirming the order passed in appeal

which order affirms the original order of Subdivisional Officer. The original writ petitioner was the purchaser of land whose purchase has been pre-empted by the private contesting respondent.

3 Two issues were raised on behalf of the petitioners to defeat the right of pre-emption as contemplated under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (For brevity, *the Act*). The first contention was that the pre-emptor was not the co-sharer of boundary raiyat in respect of the entire 19 plots that had been purchased by the sale deed in question. The second issue raised is that the purchaser is the wife of the boundary raiyat in respect of the purchased plots. On these two issues, it is submitted that the authorities have given a wrong finding and decided wrongly allowing pre-emption.

4 Having heard the parties, in my view, the writ petition is to be allowed leaving aside the controversy whether the pre-emptor was boundary raiyat or not. The second issue raised by the learned counsel for the petitioners was that she being the wife of boundary raiyat, which fact is not in dispute, her purchase cannot be pre-empted. Wife, in a Mitakshara coparcenary family, has a share in the properties of the joint family, husband being one of the members of the joint family. Thus, to say that the wife has no common interest with the husband would be travesty of justice.

5 In that view of the matter, the finding of the Additional Member, Board of Revenue affirming the finding of the Collector is quashed. The private respondent has no right to pre-empt. The sale of the original writ petitioner cannot be pre-empted.

6 The writ petition is allowed.

(Navaniti Prasad Singh, J)

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