

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7111 of 1992

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Jitendra Singh, son of Ram Naresh Singh, resident of Village Panjawar, Police Station Raghunathpur, District Siwan.

.... Petitioner/s

Versus

1. Additional Member,Board of Revenue, Patna
2. Collector, Siwan, District Siwan
3. Subdivisional Officer, Siwan
- 4 (a) Kamla Singh
- 4 (b) Dudh Nath Singh
- 4(c) Rabindra Singh, all son of Late Ramadhar Singh
- 4 (d) Deventi Devi, wife of Uttam Singh, daughter of late Ramdhar Singh
- 4(e) Hewanti Devi, wife of Dhananjay Singh, daughter of late Ramadhar Singh
- 4(f) Munni Devi, wife of Manoj Singh, daughter of late Ramadhar Singh
- 5.Ramautar Singh, son of Sitaram Singh
6. Ram Naresh Singh son of Durga Roy
- 7.Rama Shankar Singh, son of late Jagdish Singh and cousin of late Sheo Pujan Singh, resident of village Panjwar, Police Station Raghunathpur, District Siwan.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 12726 of 1992

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Jitendra Singh, son of Ram Naresh Singh, resident of Village Panjawar, Police Station Raghunathpur, District Siwan.

.... Petitioner/s

Versus

1. Additional Member,Board of Revenue, Patna
2. Collector, Siwan, District Siwan
3. Subdivisional Officer, Siwan
- 4 (a) Kamla Singh
- 4 (b) Dudh Nath Singh
- 4(c) Rabindra Singh, all son of Late Ramadhar Singh
- 4 (d) Deventi Devi, wife of Uttam Singh, daughter of late Ramdhar Singh
- 4(e) Hewanti Devi, wife of Dhananjay Singh, daughter of late Ramadhar Singh
- 4(f) Munni Devi, wife of Manoj Singh, daughter of late Ramadhar Singh
5. Ramautar Singh, son of Sitaram Singh
6. Ram Naresh Singh son of Durga Roy
- 7.Rama Shankar Singh, son of late Jagdish Singh and cousin of late Sheo Pujan Singh, resident of village Panjwar, Police Station Raghunathpur, District Siwan.

.... Respondent/s

with

.... Respondent/s

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Appearance :

(In CWJC No. 7111 of 1992)

For the Petitioner/s : Mr. Sashi Shekhar Dwivedi, Sr. Advocate
Mr. Pandit Jee Pandey

Mr. Vijay Kumar Sinha -1
 Mr. Kashi Nath Chaubey
 For the Respondent/s : Mr. Atul Kumar Pandey
(In CWJC No. 12726 of 1992)
 For the Petitioner/s : Mr. Sashi Shekhar Dwivedi, Sr. Advocate
 Mr. Prem Kumar Tripathi
 Mr. Pandit Jee Pandey
 Mr. Vijay Kumar Sinha
 For the Respondent/s : Mr. Atul Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date: 21-04-2015

1. An interesting question has emerged in the present proceedings under Article 226 of the Constitution of India which arise out of orders passed by the revenue authorities, on the right of the private respondents 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 (hereinafter referred to as the 'Act'). The question which has emerged to be answered, can, for the purpose of convenience to deal with it, be divided into two parts:-

(i) If an issueless female Hindu, who had successfully claimed her right of pre-emption during her life time on the basis of her claim of being adjoining landholder of a land, which she had inherited from her father, dies during the pendency of the revision proceedings under the Act, whether such right would devolve on her husband or will vanish by virtue of Section 15(2) of the Hindu Succession Act, 1956.

(ii) Whether the said preferential right to acquire land sold by an adjacent landholder and/or co-sharer is determinable with reference to the date of filing of pre-emption application or such right must subsist till culmination of final proceeding of appeals and revisions, prescribed under the Act.

2. For better appreciation of the legal issues involved, Section 15 of the Hindu Succession Act, 1956 and Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 are being extracted hereinbelow:

“15. General rules of succession in the case of female Hindus

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16 :

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1)-

- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
- (b) any property inherited by a female Hindu from her

husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband”.

* * * * *

“16(3) (i) When any transfer of land is made after the commencement of the 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 transferred, 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 21, rule 34 of the Code of Civil Procedure, 1908 (V of 1908), shall be, so far as may be, followed.”

3. Before I enter into the discussion on the rival submissions made on behalf of the parties on the questions above, I consider it apt to take into account the facts which are not much in dispute and are as under:-

(i) In the village Panjwar in the District of Siwan, one Ramdhar Singh (Respondent No.4, since deceased) & Ramawatar Singh (Respondent No.5, since deceased substituted by their legal heirs) (hereinafter referred to as the vendors) transferred 9 katha 16 ½ dhurs of Plot No. 1312, Katha No. 123 through two sale deeds, each measuring 4 katha 18 dhurs and 5 dhurki, in favour of Jitendra Singh, the sole petitioner in both the cases (hereinafter referred to as the purchasers), both executed on 27.06.1973, which were registered on 16.07.1973/17.07.1973. One Gangajali Kuer, claiming herself to be the boundary landholder of the vended land as well as co-sharer of the vendor filed two separate pre-emption cases under Section 16(3) of the Act with respect to the two transactions, as noted above, before the Court of Sub-Divisional Officer, Siwan. In order to support and establish her claim, she pleaded that she had got 9 katha and odd dhurs towards east in the said R.S. Plot No. 1312 whereas rest 9 katha and odd dhurs had gone to the share of said Ramadhar Singh and others, on the basis of a compromise arising out of a



plot which he had purchased through the sale deeds in question. He claimed that the lands of plot No. 1295, which were on the north of the vended land were his ancestral land, recorded in the khatiyān, in the name of his forefathers. The trial Court, i.e., the Court of Sub-Divisional Officer, Siwan, sustained the plea against the pre-emption and held that the petitioner (purchaser) himself being a boundary landholder, the pre-emptor (Gangajali Kuer) could not have a better right. He, accordingly, dismissed the pre-emption application, vide order, dated 05.08.1985.

(iv) The statutory appeals came to be preferred thereafter, giving rise to LC Appeals No. 220 and 221 of 1985-86 by Gangajali Kuer against the order of the trial Court before the Collector, Siwan, challenging the order of the Deputy Collector, mainly on the ground that the vendee was not the boundary landholder and finding of facts to this extent, recorded by the Sub-Divisional Officer, Siwan was incorrect. She took stand in her appeals that as on the north of Plot No. 1312, there were two plots, namely, Plot Nos. 1295 and 1318. According to her, Plot No. 1295 was not adjacent to the vended land. According to her, the purchaser had taken eastern half of the vendors' share on the north of Plot No. 1312 and Plot No. 1318 was thus, on the northern side of the vended plot and not Plot No. 1295. The



appellate Court, by an order, dated 07.11.1989, allowed the appeal holding that the purchaser could not be said to be boundary landholder on the ground that had plot No. 1295 been on the northern boundary on the vended land, name of the purchaser would have been mentioned in the sale deeds. He also, upon perusal of the sale deeds, recorded that name of one Bahadur Singh as Khatiyani raiyat of Plot No. 1318 on the northern side of the vended plot was mentioned in the said sale deeds. The Collector, Siwan also examined the papers relating to partition to come to a finding that the said plot No. 1295 was not adjacent to the vended land.

While allowing the appeal, the Collector also recorded that even if it is presumed that purchaser was the boundary raiyat of the vended land, pre-emptor had the better claim as she was a boundary raiyat and a co-sharer too. At this stage itself, I may mention that serious objection has been taken by the learned senior Counsel appearing on behalf of the petitioner to the reasoning assigned by the Collector in his appellate order and has argued that the partition in the family having already taken place, the pre-emptor Gangajali Kuer could not still claim herself to be a co-sharer. I will be dealing with this submission at appropriate stage.

4. Aggrieved by the order passed by the appellate Court, the purchaser filed revision applications before the Member Board of Revenue, Bihar, giving rise to Board Case Nos. 584-585 of 1989.

5. An important development took place during the pendency of the said Revision Applications before the Member Board of Revenue. Gangajali Kuer, the pre-emptor died issueless on 04.02.1990, leaving behind her husband, Sheopujan singh (Respondent No.7, since deceased, substituted by his legal heirs in the present proceeding).

6. It is the case of the petitioner/purchaser that immediately after the death of Gangajali Kuar, he filed an application in the Court of Member Board of Revenue on 21.03.1990, a photo copy of certified copy of which has been brought on record by way of Annexure-4 to the writ application, seeking expunction of the name of Gangajali Kuer as Opposite party No.1 of the said proceeding taking a plea that her right of pre-emption, being a personal right, stood lost by her death. He also claimed that the vendors of the land in question were the legal heirs of the deceased Gangajali kuer after she died issueless, who could not exercise the right of pre-emption.

7. It appears that the husband of Gangajali Kuer,



Sheopujan Singh filed an application for substitution of his name in place of Gangajali Kuer in revision proceedings before the Additional Member, Board of Revenue. Learned Additional Member, Board of Revenue did not find any infirmity in the order of Collector, Siwan. He accordingly, dismissed the revision applications by an order, dated 30.05.1992 passed in Revision Case Nos. 584-585 of 1989, after allowing Sheopujan Singh, the husband of Gangajali Kuer to be substituted in her place.

8. In the facts and circumstances as noted above, the present application under Article 226 & 227 of the Constitution of India have been filed, seeking quashing of the orders passed by the Collector, Siwan, dated 07.11.1989 in Appeal Case Nos. 221/1985-86/190/1989-90 (Annexure-2) and order, dated 30.05.1992 passed by the learned Additional Member, Board of Revenue, Bihar, Patna in case Nos. 584-585 of 1989.

9. The main thrust of argument advanced by Mr. Sashi Shekhar Dwivedi, learned senior counsel appearing on behalf of the petitioner is that by virtue of Section 15(2) of the Hindu Succession Act, inheritance of the property of an issueless female Hindu dying intestate would depend upon the source from which such female Hindu acquired the property and the manner of inheritance would decide the manner of devolution. According to

him, in the present case, the property which Gangajali Kuer had inherited from her father and on the basis of which she claimed herself to be an adjoining raiyat, devolved upon the heirs of her father and not in accordance with Rule 15(1) of the Act on her husband. He has submitted that by virtue of Section 15(2) of the Act, the property inherited by Gangajali Kuer, which was the basis for her claim of pre-emption devolved upon vendors themselves. He has, accordingly, submitted that as on the date when the revision applications were pending, no right of pre-emption as contemplated under Section 16(3) of the Act survived and the Additional Member, Board of Revenue, according to him committed an error by affirming the orders passed by the appellate Court, in view of subsequent development. He has also submitted that the said Gangajali Kuer lost her status of a co sharer according to her own standard the admitted fact, that partition had taken place in the family and Gangajali Kuer was given her separate share. He has, accordingly, submitted that the appellate as well as revisional Courts committed errors of record while holding that Gangajali Kuer was entitled for right of pre-emption, on the ground of she being a co-sharer of the vendor in terms of Section 16(3) of the Act. He has also contended that a mistake committed by the scribe of not mentioning the name of

the petitioner on the boundary of vended land has wrongly been used by the appellate as well as revisional Courts to defeat the claim of the petitioner of him being the adjoining landholder.

10. Mr. Dwivedi, learned Senior Counsel has placed strong reliance on Supreme Court decision in case of ***Bishan Singh Vs. Khazan Singh*** (*AIR 1958 SC 838*), in support of his submission.

11. He has contended relying on a decision of this Court reported in *1985 PLJR 323* (*Ishak Hajam and ors. Vs. the Additional Member Board of Revenue*) that a pre-emptor must have his right of pre-emption subsisting till final determination of pre-emption under the Scheme of the Act. He would contend that such right of pre-emption should not only exist on the date of filing of pre-emption application but till adjudication of the statutory appeals and revisions. He has relied upon another decision of this Court in case of ***Ramroop Yadav Vs. the State of Bihar and others*** (*1987 PLJR 455*). He has also submitted that admittedly, the purchaser had purchased the land in question through two separate sale deeds and he thus, became adjacent landholder of the other land in question subject matter of sale deed executed after execution of first sale deed. He has submitted that when execution of the second sale deed was done, it would be

deemed that the petitioner was already title holder of the property contained in the first sale deed and he was in the boundary of the land contained in the second sale deed from before, and thus, he could not be pre-empted by anybody, so far as the second sale deed is concerned.

12. He has relied upon various decisions of Supreme Court and this Court in order to contend that a vendee can take all permissible legal steps for defeating the right of pre-emption before the date of filing of pre-emption application, either by alienating the land to another person who also holds land in the boundary or himself acquire the some land in the vicinity of the land purchased. He has lastly submitted that it was wrong to contend on behalf of the contesting private Respondent that the moment Gangajali Kuer succeeded before the appellate Court, rightly or wrongly, she became absolute owner of the vended land, as she herself acquired. He has submitted that such submission, being advanced on behalf of the private contesting respondent is fallacious for the simple reason that the vended land, in fact, was never transferred to Gangajali Kuer nor she had ever filed an application before the authorities to transfer it. He has also placed reliance upon a Supreme Court decision in case of *Dharmdatt Vs. Union of India reported in (2004) 1 SCC 712*

and has contended that filing of statutory revision applications against the orders of the appellate Court destroyed the finality of the decision of the appellate Court. He has, accordingly, contended that preferential right to purchase the property in dispute by the said Gangajali Kuer had not crystallized till the date of her death, on 14.02.1990.

13. Mr. Atul Kumar Pandey, learned counsel appearing on behalf of contesting private respondent No.7 has, on the other hand, placed reliance on Supreme Court decision in case of *Shyam Sundar Vs. Ram Kumar* (AIR 2001 SC 2472) and has submitted that for the purpose of determination of right of pre-emption, date of sale, date of institution of the application for pre-emption and the date of adjudication by the first revenue Court only are relevant. He has thus, submitted that if the right of pre-emption on these three dates exists, his/her right of pre-emption under Section 16(3) of the Act cannot be taken away by a subsequent development. He has submitted that right of Gangajali Kuer to get the property conveyed under Section 16(3) of the Act in her favour crystallized with the passing of the order by the appellate authority which dated back when she had filed the pre-emption application. According to him, Gangajali Kuer, as a matter of fact came to be substituted in place of vendee, for the



purpose of reconveyance of the property in question in her favour by virtue of the order of the appellate authority and operation of Section 16(3) of the Act. He has also placed reliance on a Division Bench decision of this Court in case of *Udai Narain Singh Vs. State of Bihar (2008(2) PLJR 409)* and Supreme Court decision in case of *Suresh Prasad Singh Vs. Dulhin Phulkumari Devi (2010) 6 SCC 441*, resisting the plea taken on behalf of the petitioner that by purchasing two pieces of land by separate sale deeds, the petitioner became an adjoining raiyat of the other.

14. I shall proceed to deal with the controversy arising out of the facts as noted above, with the following two premise:-

(i) Mr. Sashi Shekhar Dwivedi, learned senior Counsel is right in his submission that Section 15(2)(a) of the Hindu Succession Act, 1956 clearly lays down that in case the property has been inherited by a Hindu female from her father or mother, in the absence of any children, and dies issueless, her property shall devolve upon the legal heirs of her father. A close reading of Section 15 of the Act shows that the rule of inheritance of property of an issueless female Hindu, who dies intestate depends upon the source from such female Hindu acquired the property. Evidently, the manner of acquisition of a property by inheritance by a female Hindu, would decide the manner of devolution of the



property so inherited after her death. The language of Section 15 of the Hindu Succession Act, 1956 is unambiguous and it has been applied by Supreme Court in case of *Bhagat Ram Vs. Teja Singh* (AIR 2002 SC 1) and *Sri S. R. Srinivasa Vs. S. Padmavathamma*. (2010) 5 SCC 274). There is therefore, no scope of doubt that the property which Gangajali Kuer had acquired by way of inheritance from her father, upon partition would go back to the heirs of her father, after she died issueless. It is true that the property which she had inherited from her father was the basis for her to claim pre-emption right under Section 16(3) of the Act. This is also a fact that as from the date of filing of her pre-emption application till adjudication by the Court of Sub-Divisional Officer, Siwan her right of conveyance of the vended land in her favour, under Section 16(3) of the Act, continued at every stage, till her death.

(ii) There is a finding of fact arrived at by the appellate Revenue Court, i.e. the Collector, Siwan based on the analysis and appraisal of evidence available on record before him to the effect that the purchaser was not the adjacent landholder of the vended land. Ipon reappraisal of evidence on record in the appeal proceedings, he unsettled the contrary finding arrived at by the trial Court, i.e., the Court of Sub-Divisional Officer, Siwan. This

finding of fact arrived at by the appellate Court has not been disturbed and rather affirmed by the revisional Court.

15. With the aforesaid premise in the background, the issue which has finally emerged for determination now is as to whether the preferential right of conveyance of the vended land in her favour which had accrued and crystallized under Section 16(3) of the Act, as on the date of filing of pre-emption application and which continued till her death, with respect to a property apparently not covered by Section 15(2) of the Hindu Succession Act, 1956, would have devolved upon her husband Sheopujan Singh. While deciding this question, this has to be kept in mind that said Gangajali Kuer, for the purpose of claiming her preferential right had deposited the purchase money together with a sum equal to 10% thereof, as envisaged under Section 16(3) of the Act. Section 16(3) (iii) of the Act provides that in case a pre-emption application is allowed, the Collector within the meaning of the Act shall by an order direct the purchaser 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. Section 16(3) of the Act has been quoted in the very opening paragraph of the present judgment.

16. Before dealing with the issue, for better appreciation

of the concept of right of pre-emption, I consider it beneficial to refer to few classical statements on law of pre-emption, which have been quoted with approval by the Supreme Court in case of ***Bishan Singh vs. Khazan Singh*** (supra).

17. Right of pre-emption has been succinctly & concisely defined by Plowden J. in *Dhani Nath V/s. Budhu* (136 Pun. Re 1894) in the following manner:-

“A preferential right to acquire land, belonging to another person upon the occasion of a transfer by the latter, does not appear to me to be either a right to or a right in that land. It is *jus ad rem alienum acquirendum* and not a *jus in re aliena*... A right to the offer of a thing about to be sold is not identical with a right to the thing itself, and that is the primary right of the pre-emptor. The secondary right is to follow the thing sold, when sold without the proper offer to the pre-emptor, and to acquire if he thinks fit, in spite of the sale, made in disregard of his preferential right.”

18. Mahmood J. in case of *Gobind Dayal V/s. Inayatullah* (7 ILR (All) 775 explained the term lucidly in following terms:-

“ It (right of pre-emption) is simply a right of substitution, entitling the pre-emptor, by means of a legal incident to which sale itself was subject, stand in the shoes of the vendee in respect of all the right and obligations arising from the sale, under which he derived his title. It is, in effect, as if in a sale deed the vendee's name were rubbed out and preemptor's name inserted in its place”. (emphasis supplied)

19. Noticing and explaining the statements of law by Plowden J. and Mahmood J. as above, the Supreme Court in case of ***Bishan Singh V. Khazan Singh*** (supra), held that a pre-emptor has two rights: (i) inherent or primary right, i.e., a right to the offer of a thing about to be sold and (ii) secondary or remedial right to follow the thing sold.

20. Referring to the secondary or remedial right, the Supreme Court in case of ***Bishan Singh Vs. Khazan Singh*** (supra) held that secondary right of pre-emption is simply a right of substitution, in place of the original vendee. The Court held that right of pre-emption is right to acquire the whole of the property sold in preference to other persons. Elaborately laying down what right of pre-emption means, the Supreme Court held in paragraph 11 of its decision in case of ***Bishan Singh Vs. Khazan Singh*** (supra) as follows:-

“11. The plaintiff is bound to show not only that his right is as good as that of the vendee but that it is superior to that of the vendee. Decided cases have recognized that this superior right must subsist at the time the pre-emptor exercises his right and that that right is lost if by that time another person with equal or superior right has been substituted in place of the original vendee. Courts have not looked upon this right with great favour, presumably, for the reasons that it operates as a clog on the right of the owner to alienate his property. The vendor and the vendee are, therefore, permitted to avoid accrual of the right of pre-emption by all lawful means. The vendee may defeat the right by selling the property to

a rival pre-emptor with preferential or equal right. To summarize:

- (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right.
- (2) The preemptor has a secondary right or a remedial right to follow the thing sold.
- (3) It is a right of substitution but not of repurchase i.e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (emphasis mine)
- (4) It is a right to acquire the whole of the property sold and not a share of the property sold.
- (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place.
- (6) This right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place”.

21. Evidently, thus, the right which the Gangajali Kuer exercised, by operation of the provisions as embodied in Section 16(3) of the Act, once she filed her application, after depositing the requisite amount as envisaged therein, was her right to be substituted in place of the original vendee. She had a statutory right to be substituted in the place of the vendee, on the date of her application under Section 16(3) of the Act, if she could establish before the Revenue Courts that she was the adjacent landholder of the vended land or was the co-sharer of the vendor. This being an admitted fact that before filing of her application for pre-emption,



there had already been a partition in the family and Gangajali Kuer had already received her share, there is substance in the submission advanced on behalf of the petitioner that she was no more a co-sharer of the landholder (the vendor) on the date of the execution of the sale deeds in question. At the same time, as has been noticed above, there is a finding of fact arrived at by the appellate Court that Gangajali Kuer was adjoining landholder of the vended land and that the land held by the original purchaser, i.e., Plot No. 1595 was not adjacent to the vended land as claimed by him.

22. Exercising power of judicial review under Article 226 of the Constitution of India, I do not find any basis to interfere with this finding of fact recorded by the appellate Court which remained undisturbed by the revisional Court. The findings to this effect recorded in a quasi judicial proceeding cannot be said to be perverse. The order of the appellate authority, i.e., the Collector, Siwan is descriptive and he has referred to the contents of the sale deeds in question while rejecting the plea taken by the purchaser to the effect that his land was situated on the northern boundary of the vended land. The appellate authority has discussed and recorded that in the description of the boundary of the lands in question as given in the sale deeds, name of the purchaser was not

there, rather, the name of the landholder of Plot No. 1318 was there, which was consistent with the plea of the pre-emptor.

22. The limitation on the scope of judicial review over finding of fact recorded by a quasi judicial authority is well recognized and has been reiterated in a Supreme Court decision in case of *Bharat Sanchar Nigam Limited vs. Bhurumal* (2014) 7 SCC 177), paragraph 20 of which reads thus:-

“20. It is apparent that the aforesaid findings are finding of fact. Such findings are not to be interfered with by the High Court under Article 226 of the Constitution or by this Court under Article 136 of the Constitution. Interference is permissible only in case these findings are totally perverse or based on no evidence. Insufficiency of evidence cannot be a ground to interdict these findings as it is not the function of this Court to re-appreciate the evidence. It was because of this reason that the learned counsel for the appellant made frontal attack on the findings of the courts below and endeavoured to demonstrate that there was perversity in the fact-finding by CGIT which was glossed over by the High Court as well”.

23. Mr. Sashi Shekhar Dwivedi, learned Senior Counsel has vehemently argued that even if it is presumed that the purchaser was not the adjoining landholder of the vended land, no pre-emption right could be said to be subsisting after the death of pre-emptor Gangajali Kuer as her right of pre-emption was based solely on the adjacency of the land which she had inherited from her father and which stood reverted back to the heirs of his father,



upon her death, as she died issueless. He has contended that her husband Sheopujan Singh could not have been allowed to be substituted in place of Gangajali Kuer after his death, in the revision proceeding as said Sheopujan Singh did not have any right, since the property inherited by Gangajali Kuer from her father could not devolve upon her husband Sheopujan Singh after her death. He has contended that right of pre-emption must subsist not only on the date of filing of the pre-emption application but must continue till the date when entire proceeding, attains finality up to the stage of revision as prescribed under the Act. This submission is not acceptable to me in view of the law laid down in a Constitution Bench decision of the Supreme Court in case of *Shyam Sunder V. Ram Kumar* (supra). In the said case, the Supreme Court referring to various previous decisions, stated the legal principles in paragraph 11 as follows:-

“11. An analysis of the aforesaid decisions referred to in first category of decisions, the legal principles that emerge are these:

- (1) The pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the Court of the first instance only.
- (2) The pre-emptor who claims the right to pre-empt the sale on the date of the sale must prove that such right continued to subsist till the passing of the decree of the first Court. If the claimant loses that right or a vendee improves his right equal or above the right of

the claimant before the adjudication of suit the suit for pre-emption must fail.

- (3) A pre-emptor who has a right to preempt a sale on the date of institution of the suit and on the date of passing of decree, the loss of such right subsequent to the decree of the first Court would not affect his right or maintainability of the suit for pre-emption. (emphasis mine)

- (4) A pre-emptor who after proving his right on the date of sale, on the date of filing the suit and on the date of passing of the decree by the first Court, has obtained a decree for pre-emption by the Court of first instance, such right cannot be taken away by subsequent legislation during pendency of the appeal filed against the decree unless such legislation has retrospective operation.”

24. The Constitution Bench, in case of *Shyam Sunder Versus Ram Kumar* (supra) noticed a previous decision of Supreme Court in case of *Karan Singh & ors. Vs. Bhagwan Singh (1996) 7 SCC 539*), wherein it was held that an appeal being in continuation of the suit, right of pre-emption must be available on the date when the decree is finally to be affirmed and needs to be modified at the time of disposal of the appeal. The said decision of the Supreme court was followed in case of *Ramjilal Vs. Ghisa Ram* reported in *1996(2) J.T.649*. The Supreme Court, however, overruled the law laid down in *Karan Singh & Ors.* (supra) and *Ramji Lal Vs. Ghisa Ram* (supra). Paragraphs 15 to 17 of the said decision in case of *Shyam Sunder Vs. Ram Kumar*

(supra) needs to be reproduced for convenience:-

“15. We shall now proceed to notice the third category of decisions cited at the Bar. The first decision in this category of cases is decision in *Karan Singh V/s. Bhagwan Singh (dead)* by L. Rs. (1996)7 SCC 559: wherein it was held that an appeal being continuation of the suit, the right to claim pre-emption must be available on the date when the decree is finally to be affirmed and needs to be modified at the time of disposal of the appeal and since substituted S.15 of the Act came into force during pendency of the appeal, the right and remedy of the preemptor stood extinguished. This decision was followed in *Ramjilal V/S. Ghisa Ram* (supra) wherein it was held that since substituted S.15 introduced by amending Act of 1995 having come into force during pendency of appeal which is continuation of the suit, the right and remedy of the plaintiff stood extinguished and as a result of which the suit for pre-emption was not maintainable.

16. The legal principle that emerges out of the aforesaid decisions is that an appeal being continuation of suit, the right to preempt must be available on the date when the decree is made and is finally to be affirmed or needs to be modified at the time of disposal of the appeal and where right and remedy of plaintiff has been taken away statutorily during pendency of appeal, the suit must fail.

17. After having heard counsel for the parties and carefully gone into the decisions cited at the Bar we are in respectful agreement with the statement of law expressed in the first and second categories of decisions. However, we regret to express of our disagreement with the decisions in third category of decisions for the reasons hereinafter stated.” (emphasis supplied)

25. The Constitution Bench in case of *Shyam Sunder vs.*

Ram Kumar (supra) further laid down, referring to Order 21, sub-

rule(1) of Rule 14 of the Code of Civil Procedure that where a Court decrees a claim to pre-empt in respect of a particular sale of property and a decree holder had deposited the purchase money along with the cost of the suit in the Court, the vendee is required to deliver possession of the property to the decree holder and title to the property stands transferred in favour of the claimant. The Supreme Court held that on deposit of purchase money in the Court, right and title to the property vests in the pre-emptor and it becomes a vested right of the pre-emptor. It further held that loss of qualification of pre-emptor or vendee acquiring status above to the pre-emptor during the pendency of the appeal cannot be allowed to influence the Court. Relevant portion of Paragraph 20 is being extracted hereinbelow from the said decision in case of ***Shyam Sunder Vs Ram Kumar*** (supra):-

“20..... Order 20, sub-rule (1) of Rule 14, CPC provides that where a Court decrees a claim to pre-empt in respect of a particular sale of property and a decree holder has deposited the purchase money along with the cost of the suit in the Court, the vendee is required to deliver possession of the property to the decree holder and title to the property stands transferred in favour of the claimant. In view of the said provisions, on deposit of purchase money in the Court by the claimant the right and title to the property vest in pre-emptor and it becomes vested right of the pre-emptor. The right of preemption prior to decree may be weak but after it becomes vested right, it can only be taken away by known method of law. The loss of qualification of pre-emptor or vendee acquiring status above to pre-



emptor during pendency of appeal cannot be allowed to influence the Court as a Court of Appeal is mainly concerned with the correctness of the Judgment rendered by the Court of first instance. As earlier noticed that an appellate Court is entitled to take into consideration subsequent event taking place during pendency of appeal and a Court in an appropriate case permits amendment of plaint or written statement as the case may be but such amendment is permitted in order to avoid multiplicity of proceeding and not where such amendment causes prejudice to the plaintiffs vested right rendering him without remedy. It is thus only those events which have taken place or rights of the parties prior to adjudication of pre-emption suit and which the trial Court was entitled to dispose of, can only be taken into consideration by the appellate Court. We find support of our view from decision in Sakina Bibi V/s. Amiran (supra) wherein the High Court of Allahabad held that a Court of Appeal was only required to see whether the trial Court had wrongly dismissed the claim of pre-emptor and it is irrelevant that during the pendency of appeal land was sold in an execution proceeding in another suit. In a pre-emption case where an appeal is filed against the decree of Court of first instance, the scope of appeal is confined to the question whether the decision of the trial Court is correct or not. This being the legal position which held the field for over a century any subsequent event taking place during pendency of appeal cannot be allowed to be taken into consideration by the appellate Court otherwise it may displace the case of a preemptor.”

26. In the present case, this is not in dispute that Gangajali Kuer had deposited the purchase money together with a sum equal to 10% thereof in the manner prescribed under the Act, to claim her right of pre-emption. There is a finding of fact by the appellate Court that she was the adjacent raiyat while the



purchaser was not. This finding of fact that the purchaser was not the adjoining raiyat has not been disturbed by the revisional Court. Gangajali Kuer/the pre-emptor, thus acquired vested right of pre-emption by way of re-conveyance of the vended land by the purchaser to her as on the date of filing of pre-emption application and on the date of adjudication by the first Court, in terms of the decision of the appellate Court. Upon her death, her husband Sheopujan Singh (since deceased), stepped into her shoes, with respect to the property other than the properties which she had inherited from her father. The right of conveyance of the vended land, which had vested in her by virtue of her filing pre-emption application after depositing the purchase money together with sum equal to 10% thereof, devolved upon Sheopujan Singh, her husband, after her death. It is true that the pre-emption claim of Gangajali Kuer was based on her claim of being landholder of the property which she had inherited from her father but apart from the said property which she had inherited from her father, she had claimed successfully, right of conveyance of the vended property in her favour. In my opinion, if the contention of Mr. Sashi Shekhar Dwivedi, learned Senior Counsel is to be accepted, this will amount to defeating the indefeasible right of Gangajali Kuer, which had accrued prior to the date of her death.

27. By way of illustration, had Gangajali Kuer alienated the property inherited by her, during the pendency of revision applications, could her pre-emption right be defeated on the ground that she was no more the adjoining raiyat because of subsequent development? Answer, in my opinion, would be in negative in view of the Supreme Court decision in case of *Shyam Sunder Vs. Ram Kumar* (supra) wherein the Court held that loss of qualification of the pre-emptor during the pendency of the appeal could not be allowed to influence the Court. Statutory right of re-conveyance of the land vested in Gangajali Kuer by virtue of Section 16(3) of the Act, in my opinion, stood devolved upon her husband Sheopjan Singh, after her death.

28. I therefore, do not find any infirmity in the decision of the revisional Court permitting Sheopujan Singh (since deceased) to be impleaded in the revision proceedings.

29. Mr. Dwivedi, learned Senior Counsel has submitted with reference to certain decisions of this Court that right of pre-emption is a weak right and can be defeated through legitimate means. This submission finds direct-answer in Constitution Bench decision of Supreme court in case of *Shyam Sunder Vs. Ram Kumar* (supra), relying on which in case of *Suresh Prasad Singh Vs. Dulhin Phool Kumari* (supra) the Apex Court has held that

right of pre-emption is recognized by Statute and it has to be treated as mandatory and not discretionary.

30. Mr. Dwivedi, learned Senior Counsel has further contended that after lapse of more than four decades, the petitioner should not be commanded to transfer the land, which he had purchased way back in the year 1973.

31. In my opinion, that cannot be a ground for interference by this Court with the orders, passed by the revenue authorities, under challenge.

32. He has lastly submitted that the petitioner had purchased the land through two separate sale deeds and thus he became an adjoining landholder with respect to the land purchased by him subsequently. He has placed reliance on a decision of this Court in case of *Ramroop Yadav vs. the State of Bihar (1987 PLJR 455)* in support of his submission. Mr. Dwivedi, learned senior Counsel has fairly referred to the observation made by the Division Bench in case of *Ramroop Yadav* (supra) where it held that the matter would have been different had same person or same set of persons filed the two applications for preemption claiming to be adjoining raiyat of both the plots purchased by the vendee. Taking note of the said observation of Division Bench decision in case of *Ramroop Yadav* (supra), in a subsequent decision reported

in *Uday Narain Singh Vs. State of Bihar* (2008(2) PLJR 409), a Division Bench of this Court held that purchase of two pieces of land of the same plot by two sale deeds by the purchaser on the same date cannot be held to be a legitimate means to defeat the provisions of law.

33. Mr. Dwivedi, learned Senior Counsel has attempted to persuade me that subsequent Division Bench decision of this Court in case of *Uday Narain Singh* (supra) requires reconsideration, which has been delivered placing reliance on the *obiter* of the earlier decision in case of *Ramroop Yadav* (supra). In my opinion, a subsequent Division Bench decision wherein earlier Division Bench decision has been considered, is binding on me.

34. In view of the discussion as above, my conclusions are as follows:-

(a) A right of pre-emption is recognized by Statute and it has, therefore, to be treated as mandatory and not discretionary, in view of Constitution Bench decision of the Supreme Court in case of *Shyam Sunder Vs Ram Kumar* (supra) and subsequent Supreme Court decision in case of *Suresh Prasad Singh vs. Dulhin Phool Kumari*(supra).

(b) A pre-emptor must have the right to pre-empt on the



date of sale, on the date of filing of the application under Section 16(3) of the Act and on the date of passing of the order by the Court of first instance only. He/She is required to prove that such right continued to subsist till passing of the order of the first court. Any loss of right subsequent to the order of the first Court (in the present case order of the first Court rejecting the claim of pre-emption merged in the order of the appellate Court whereby pre-emption claim was allowed) would not affect his right of pre-emption.

(c) Any right of pre-emption once established cannot be taken away by subsequent development.

(d) The right vested in the pre-emptor (Gangajali Kuer) to get herself substituted in place of transferee by virtue of the order of the appellate Court stood devolved on her husband Sheopujan Singh. Such right to inherit the ownership of Gangajali Kuer in the vended land could not be taken away by applying Section 15(2) (a) of the Hindu Succession Act, 1956. This is because the right of Gangajali Kuer to get substituted in place of the purchaser had already crystallized after she had deposited the purchase money together with a sum equal to 10% and thereafter and her claim came to be accepted by the appellate revenue Court.

35. I do not find any infirmity with the orders under

challenge passed by the Collector, Siwan and the Member Board of Revenue, Bihar, Patna.

36. In the facts and circumstances of the case, I direct the Collector, Siwan to pass an order in terms of Section 16(3) (iii) of the Act directing the transferee to convey the land in favour of the heirs of Sheopujan Singh, by executing a registered a document of transfer within a specified period, if not already done. Such orders must be passed within a period of one month from the date of receipt/production of a copy of this order.

37. These applications, are accordingly, dismissed, with the direction as above.

(Chakradhari Sharan Singh, J)

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