

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1728 of 2010

IN

Civil Writ Jurisdiction Case No. 12121 of 2002

- =====
1. Smt. Devanti Devi W/O Sri Suresh Sharma R/O Vill Karap, P.S. Rafiganj, Distt-Aurangabad (Bihar)
 2. Meena Devi W/O Shivendra Sharma R/O Vill Karap, P.S. Rafiganj, Distt-Aurangabad (Bihar)
 3. Geeta Devi W/O Satyendra Sharma R/O Vill Karap, P.S. Rafiganj, Distt-Aurangabad (Bihar)
 - 4.

Preemptors/petitioner... Respondents... Respondents...
Respondents.....Appellants

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue Bihar, Patna
3. The Additional Collector, Aurangabad
4. The LRDC, Aurangabad

..... Respondent 1st Set

5. Ram Chandra Mistry S/O Late Ramdhair Mistry R/O Village Karap, P.S. Rafiganj, Distt-Aurangabad
6. Sri Bachchu Mistry S/O Late Ramadhir Mistry R/O Vill Karap, P.S. Rafiganj, Distt-Aurangabad (Bihar)

Opposite parties ... Appellants ... Petitioners ... Petitioners ... Respondents

7. Md. Mofiz S/O Late Zafar Ali R/O Vill Karap, P.S. Rafiganj, Distt-Aurangabad
8. Md. Mustakin @Nakim S/O Late Zafar Ali R/O Vill Karap, P.S. Rafiganj, Distt-Aurangabad(Bihar)
9. Md.Khalil S/O Md. Zafar Ali R/O Vill Karap, P.S. Rafiganj, Distt-Aurangabad(Bihar)

Owner of land .. Performa O.P. ... respondents ... respondents.. Respondents

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Appearance :

For the Appellant/s	: Mr. Anshuman, Advocate
For the Respondent	
Nos. 5 and 6	: Mr. Nilesh Kumar Nirala, Advocate
	: Mr. Ashok Kumar No.1, Advocate
For the State	:Mr. Rajiv Kumar Singh, G.P.-2

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 08-05-2015

Heard learned counsel for the appellants-pre-emptor,

counsel the State and counsel for the private Respondent nos. 5 and 6, the purchaser of the lands in question.

2. Purchaser-Respondent nos. 5 and 6 purchased the lands in question vide sale deed dated 22.11.2000 executed by Md. Sakur, who died during the pendency of the proceeding and is represented in these proceedings by Respondent nos. 7, 8 and 9.

3. Appellants-pre-emptor by filing this Letters Patent Appeal is assailing the order dated 26.07.2010 passed in C.W.J.C. No. 12121 of 2002 whereunder the writ petition filed by purchaser-Respondent nos. 5 and 6 was allowed setting aside the orders dated 31.08.2001, 11.02.2002 and 28.08.2002 passed by the Collector under the Act, the Appellate Authority- District Collector and the Revisional Authority- Additional Member, Board of Revenue respectively whereunder the claim of the pre-emptor was allowed and upheld, in effect the writ Court set aside the orders passed by the Revenue Authorities allowing pre-emption and maintained the transfer of the lands in question through sale deed dated 22.11.2000.

4. It appears, the writ Court, with reference to the sketch map of the lands in question as also the adjoining lands drawn on page-3 of the impugned judgment held that this Court finds in the facts of this case that the respondents cannot claim the right of pre-emption on the ground that the vendor, for valid reason, retained a

part of the land in vended plot in order to have ingress and egress from all sides in her residential house, “her” is perhaps a mistake as the vendor of the lands in question being Md. Sakur, “his” was required to have been used in the impugned judgment.

5. Learned counsel for the appellants submitted that the aforesaid mistake has been made by the learned Single Judge as while defeating the claim of the pre-emptor, learned Single Judge only took notice of the subsequent purchase of 2 decimals of land by the pre-emptor from Md. Sakur on 04.12.2000, which intervened the disputed land with a lane, but while recording such finding, learned Single Judge failed to take notice of the earlier purchase made by the pre-emptor of 4 ½ decimals of lands by the side of the disputed land under sale deed dated 23.03.1992.

6. Learned counsel for the appellants may be right in his submission, still the claim of the pre-emptor for pre-emption is required to be defeated because from the sketch map itself, which is not disputed, it appears that the parties not only the vendor, vendee and the pre-emptor have houses in the vicinity of the lands in question, but these houses are being separated by a lane and bi-lane, as such, there cannot be any dispute that the lands in question may have been recorded in the Revenue Records as agricultural land but the fact remains that in course of time nature/ user of land by the

parties themselves have been changed. Parties have transferred the lands for the purpose of raising residence and if that is the purpose behind the transfer of the lands in question then the claim for pre-emption cannot be allowed as the object behind pre-emption is consolidation of lands for agricultural purpose and not for house building activity. The vendee-Respondent nos. 5 and 6, the writ petitioners purchased the lands in question for raising the house, the claim of pre-emption against such transfer was required to have been defeated and, in our opinion, learned Single Judge very rightly set aside the orders of the Revenue Authorities maintaining the impugned transfer.

7. In the result, the appeal is dismissed.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

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