

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2009 of 2010
IN
Civil Writ Jurisdiction Case No. 5166 of 2004**

=====

Narendradeo Choubey, S/O Late Sarju Choubey R/O Vill.-Bhadrashila, P.S.-Sheosagar (wrongly described as Sheonagar), Distt.-Rohtas.

.... Appellant/s

Versus

1. The State of Bihar
2. The Additional Collector, Rohtas, Sasaram.
3. The Deputy Collector Land Reforms, Sasaram, Rohtas.
4. The Circle Officer, Shivsagar, Rohtas.
5. Rupesh Kumar Choubey, S/O Harishanker Choubey, R/O Vill.-Bhadrashila, P.S.-Sheosagar, Distt.-Rohtas.
6. Bhikhari Choubey, S/O Late Deonandan Choubey, R/O Vill.-Bhadrashila, P.S.-Sheosagar (wrongly described as sheonagar), Distt.-Rohtas, at present Shastri Chowk, Near Uphar Cinema, Ratu Road, Madhukam, Ranchi, Distt.-Ranchi (Jharkhand).

.... Respondent/s

With

=====

**Letters Patent Appeal No. 2010 of 2010
IN
Civil Writ Jurisdiction Case No. 5236 of 2004**

=====

Narendradeo Choubey, S/O Late Sarju Choubey, R/O Vill.-Bhadrashila, P.S.-Sheosagar (wrongly described as Sheonagar), Distt.-Rohtas.

.... Appellant/s

Versus

1. The State of Bihar
2. The Additional Collector, Rohtas, Sasaram.
3. The Deputy Collector Land Reforms, Sasaram, Rohtas.
4. The Circle Officer, Shivsagar, Rohtas.
5. Prabhawati Devi, W/O Harishanker Choubey, R/O Vill. Bhadrashila, P.S.-Sheosagar, Distt.-Rohtas.
6. Bhikhari Choubey, S/O Late Deonandan Choubey, R/O Vill.-Bhadrashila, P.S.-Sheosagar (Wrongly Described As Sheonagar), Distt.-Rohtas, At Present-Shastri Chowk, Near Uphar Cinema, Ratu Road Madhukam, Ranchi, Distt.-Ranchi (Jharkhand).
7. The Additional Member Board of Revenue near R-Block Yarpur, Patna.

.... Respondent/s

With

=====

**Letters Patent Appeal No. 10 of 2011
IN
Civil Writ Jurisdiction Case No. 4838 of 2004**

=====

Narendra Deo Choubey, son of Late Sarju Choubey Resident of Village-
Bhadrashila, P.S. Sheosagar (wrongly described as Sheonagar), District- Rohtas

.... Appellant/s

Versus

1. The State of Bihar
2. The Additional Collector Rohtas, Sasaram
3. The Deputy Collector Land Reform Sasaram, Rohtas
4. The Circle Officer Shivsagar, Rohats
5. Arbind Choubey, son of Harishanker Choubey, Resident of Village-
Bhadrashila, P.S. Sheosagar, District- Rohtas
6. Bhikhari Choubey, son of Late Deonandan Choubey, Resident of Village-
Bhadrashila, P.S. Sheosagar(Wrongly described as Sheonagar), District-
Rohtas, At Present Shastri Chouk, Near Uphar Cinema, Ratu Road, Madhukam,
Ranchi, District- Ranchi(Jharkhand)

.... Respondent/s

=====

Appearance :

For the Appellant	:	Mr. Rajendra Narain, Sr. Advocate
For the Respondents	:	Mr. Rajeev Kumar Verma, Sr. Advocate Mr. Karuna Nath Sahay, Advocate Mrs. Meeta Sinha, Advocate
For the State	:	Mr. Anant Prasad Singh, SC-15 Mr. Vinod Kr. Yadav, SC-18 Mr. Vijay Kr. Singh No. 1, AC to SC-18 Mr. Sanjay Kumar, AC to SC-15 Mr. Ravish Chandra, AC to SC-6

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 18-08-2016

In all the three appeals, applications for substitution of the appellant occasioned by his death during pendency of the appeal have been filed.

Having heard the parties, application is allowed and the parties mentioned in the substitution application, who have already appeared through Vakalatnama, are allowed to be

substituted.

Heard Sri Rajendra Narain, learned Senior Counsel for the appellant and Sri Rajeev Kumar Verma, learned Senior Counsel for the contesting private respondents.

The matter relates to pre-emption in relation to agricultural land in terms of Section 16 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act).

These three intra-court appeals under Clause 10 of the Letters Patent have been filed being aggrieved and dissatisfied with the common judgment and order dated 26.10.2010, passed by the learned Single Judge of this Court in three writ petitions being C.W.J.C. Nos. 4838 of 2004, 5166 of 2004 and 5236 of 2004. The appellant herein was respondent no. 5 in all the three writ petitions. He is the pre-emptor, whereas the writ petitioners were the two brothers and their mother, who were purchasers of three pieces of land from respondent no. 6 to the writ petition, who is respondent no. 6 here as well, namely, Bhikhari Choubey. Thus, the writ petitioners were the vendees. Bhikhari Choubey, respondent no. 6 was the vendor and respondent no. 5 in the writ petitions Narendradeo Choubey was the pre-emptor. Upon claim of pre-emption, the same was allowed by the Deputy Collector Land



Reforms, Sasaram, Rohtas. Appeals were preferred unsuccessfully before the Additional Collector, Rohtas and then the matter travelled to the Board of Revenue, which affirmed the order of the Deputy Collector Land Reforms. The vendee thereafter filed the writ petition which was allowed and, hence, the pre-emptor is in the intra-court appeals.

The facts are not in dispute. The vendor Bhikhari Choubey claimed to be in possession of substantial lands on 15.10.1998. He got registered three sale deeds, one each in favour of the individual writ petitioners being two brothers and their mother in respect of about 44 decimals, 44 decimals and 45 decimals of agricultural land. All the three sale deeds were executed on 06.02.1998 and as noted about registered on 15.10.1998. On 15.01.1999 appellant filed three separate pre-emption applications. Upon notice vendee, whose purchases were being pre-empted, appeared and contested the matter. The two pleas were raised. Firstly, that the purchases being by the three family members in view of judgments of this Court pre-emption application did not lie. The second plea taken was that the vendor had earlier offered to sell the land to the pre-emptor but the pre-emptor having refused he had no option but to sell it to others. Having refused to purchase the land when offered he could not maintain pre-emption application later on.



In support of this defence by the vendee affidavit of the vendor was filed and the vendor was examined as a witness. All the three authorities held that merely because there were three sale deeds executed for three members of the family i.e. two sons and their mother and registered, simultaneously, the right of pre-emption could not be defeated. The three did not accept the plea of the vendee that the vendor had offered the property for sale to the pre-emptor, who had refused. Thus, all the three authorities allowed the pre-emption applications. The matter was then brought to this Court by the three writ petitions filed by the three vendees challenging the legality of the pre-emption application itself.

Before the learned Single Judge two aspects were raised. Firstly, reliance was placed on the Division Bench judgment of this Court in the case of Ram Roop Yadav Vs. The State of Bihar and others since reported in 1987 PLJR 455 for the proposition that a person was purchasing two plots adjacent to each other on the same day has a better title over the other adjoining raiyat of the two plots as the purchaser of the plots himself becomes the holder of adjoining plots. Learned Single Judge accepted the contention raised in the case.

The second contention that was raised was that the vendor had offered to sell the land to the pre-emptor. The pre-



emptor refused to purchase the same. The reason was also there that at that time the pre-emptor was litigating with the vendor claiming that pre-emptor was also the owner of the land and was himself in possession. Obviously, in such a situation, he would not have agreed to buy land from himself and from his own possession, therefore, having refused to purchase the land he cannot be permitted to seek pre-emption. This also was accepted by the learned Single Judge. The learned Single Judge, thus, held that the pre-emption application was incompetent and allowed the writ petitions setting aside the orders allowing pre-emption. Hence, this intra-court appeal by the pre-emptor challenging the order of the learned Single Judge passed in the three writ petitions.

We have heard both the learned Senior Counsels and perused the records. In our view, these intra-court appeals merit no consideration and are fit to be dismissed.

So far as the first contention placed on the judgment of the Division Bench of this Court in the case of Ram Roop Yadav (supra) is concerned, we think that the learned Single Judge was not correct. The Division Bench in the reported case itself noted that the position, which they had held and which would defeat the pre-emptory rights, was a singular seller and a singular purchaser but purchases by different deeds on the same day. In other words,



sale by multiple sale deeds as between the same two parties. Here that is not the case. Though the vendor is the same but there are three separate sale deeds in respect of two brothers and their mother separately. Neither of them could make the other a boundary raiyat or a co-sharer. The learned Single Judge was, thus, clearly in error in applying the ratio of the case of Ram Roop Yadav (supra).

We may now come to the second issue where we are of the opinion that the learned Single Judge was correct and the authorities under the Act were wrong. It is not disputed that as between the vendor and the pre-emptor who have common agnate a mutation proceeding was going on in respect of these very lands where pre-emptor was claiming ownership and possession since over 70 years. The vendor had shown and was pleading that the pre-emptor had no right in the aforesaid land, inasmuch as, even in the recent survey held in 1969-70 the pre-emptor was not shown as the owner or in possession of the lands in question. This matter was pending and it was only on 13.08.1998 that these mutation proceedings were decided against the pre-emptor, then in these circumstances, the affidavit of the vendor stands to reason, inasmuch as, it states that he had offered to the pre-emptor to purchase the land, which he had refused. It is, accordingly, that sale deed was executed in favour of the vendee on 06.02.1998 and registered after



the mutation case was decided against the pre-emptor. The mutation case was decided on 13.08.1998 and the deeds were registered on 15.10.1998. It is obvious that a person who is asserting his ownership and possession over a piece of land can never agree to buy the same from a person whom he does not recognize as owner. The affidavit is consistent with the facts merely because it did not give any specific date when offer of sell by the vendor to the pre-emptor was made or it lacks the particulars of the land would make no difference because the parties were fully aware of all these facts and the vendor whose affidavit was filed was also tendered as a witness and was cross-examined by the pre-emptor where the vendor stood by his stand that the pre-emptor having been offered the land had refused to purchase the same and, thus, being in need of money he executed the sale deed and after the mutation order was passed in favour of vendor it was got registered. This is one of the exceptions to the rule of pre-emption. A pre-emptor cannot first refused to purchase and then when sale is made exercised his right of pre-emption. Having refused to purchase he waves the right. The authorities under the Act failed to notice the importance and relevance of all these important facts, which in our view disentitles the pre-emptor from enforcing pre-emption. Thus, we would dismiss the appeals and confirm the order of the learned Single Judge on this

issue. Consequently, the orders of the authorities under the Act would be set aside and the pre-emption application would be dismissed. Consequently, the pre-emptor would be entitled to refund of the money which he may have deposited in accordance with law. Appeals are dismissed accordingly.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

AFR/NAFR	AFR
CAV DATE	
Uploading Date	24.08.2016
Transmission Date	