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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 871 of 2004

IN

Civil Writ Jurisdiction Case No 5018 of 2000

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1 Kamla Devi, wife of late Chandrika Prasad
2 Majister Pd, son of late Chandrika Prasad, residents of Village – Khanpur, PS – Barhariya, District – Siwan
3 Urmila Devi, wife of Bipin Singh, Village – Tethali, PS – Barhariya, District – Siwan
4 Endu Devi, wife of Yogendra Singh, Village – Bharatpur, PS – G B Nagar (Tarbara), District – Siwan
5 Manju Devi, wife of Birendra Singh, Village – Beesakhi, PS – Pachrukhi, District – Siwan
6 Chandrama Prasad
7 Bikrama Prasad, both sons of late Baldeo Prasad
8 Kaushalaya Devi, wife of late Amirika Prasad, all residents of Village – Khanpur, PS – Barharia, District - Siwan

.... Appellant/s

Versus

1 Punyadeo Sharma
2 Master Sharma
3 Prithivilal Sharma, sons of Asharfi Sharma, residents of Village – Khanpur, PS – Barharia, District – Siwan
4 Additional Member, Board of Revenue, Patna
5 Collector, Siwan
6 Deputy Collector, Land Reforms, Siwan
7 Raju Sah, son of late Sitaram Sah
8 Milas Devi
9 Gudwa Devi
10 Nibha Devi
11 Shobha Devi, all daughters of late Sitaram Sah, residents of Village – Barharia, PS – Barharia, District - Siwan

.... Respondent/s

WITH

Letters Patent Appeal No 902 of 2004

IN

Civil Writ Jurisdiction Case No 10225 of 2000

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1 Kamla Devi, wife of late Chandrika Prasad
2 Majister Pd, son of late Chandrika Prasad, residents of Village – Khanpur, PS – Barhariya, District – Siwan
3 Urmila Devi, wife of Bipin Singh, Village – Tethali, PS – Barhariya, District – Siwan
4 Endu Devi, wife of Yogendra Singh, Village – Bharatpur, PS – G B Nagar (Tarbara), District – Siwan
5 Manju Devi, wife of Birendra Singh, Village – Beesakhi, PS – Pachrukhi, District – Siwan
6 Chandrama Prasad
7 Bikrama Prasad, both sons of late Baldeo Prasad
8 Kaushalaya Devi, wife of late Amirika Prasad, residents of Village – Khanpur, PS – Barharia, District - Siwan

.... Appellant/s

Versus

1 Master Sharma, son of Ashrafi Sharma, resident of Village – Khanpur, PS – Barharia, District - Siwan
2 Additional Member, Board of Revenue, Patna
3 Collector, Siwan
4 Deputy Collector, Land Reforms, Siwan
5 Raju Sah, son of late Sitaram Sah
6 Milas Devi
7 Gudwa Devi
8 Nibha Devi
9 Shobha Devi, all daughters of late Sitaram Sah, residents of Village – Barharia, PS – Barharia, District - Siwan

.... Respondent/s

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WITH

Letters Patent Appeal No 912 of 2004

IN

Civil Writ Jurisdiction Case No 10328 of 2000

==========

1 Kamla Devi, wife of late Chandrika Prasad
2 Majister Pd, son of late Chandrika Prasad, residents of Village – Khanpur, PS – Barhariya, District – Siwan
3 Urmila Devi, wife of Bipin Singh, Village – Tethali, PS – Barhariya, District – Siwan
4 Endu Devi, wife of Yogendra Singh, Village – Bharatpur, PS – G B Nagar (Tarbara), District – Siwan
5 Manju Devi, wife of Birendra Singh, Village – Beesakhi, PS – Pachrukhi, District – Siwan
6 Chandrama Prasad
7 Bikrama Prasad, both sons of late Baldeo Prasad
8 Kaushalaya Devi, wife of late Amirika Prasad, residents of Village – Khanpur, PS – Barharia, District - Siwan

.... Appellant/s

Versus

1 Prithivi Lal Sharma, son of Asharfi Sharma, resident of Village – Khanpur, PS – Barharia, District – Siwan
2 Additional Member, Board of Revenue, Patna
3 Collector, Siwan
4 Deputy Collector, Land Reforms, Siwan
5 Raju Sah, son of late Sitaram Sah
6 Milas Devi
7 Gudwa Devi
8 Nibha Devi
9 Shobha Devi, all daughters of late Sitaram Sah, residents of Village – Barharia, PS – Barharia, District - Siwan

.... Respondent/s

WITH

Letters Patent Appeal No 913 of 2004

IN

Civil Writ Jurisdiction Case No 10314 of 2000

==========

1 Kamla Devi, wife of late Chandrika Prasad

2 Majister Pd, son of late Chandrika Prasad, residents of Village – Khanpur, PS – Barhariya, District – Siwan
3 Urmila Devi, wife of Bipin Singh, Village – Tethali, PS – Barhariya, District – Siwan
4 Endu Devi, wife of Yogendra Singh, Village – Bharatpur, PS – G B Nagar (Tarbara), District – Siwan
5 Manju Devi, wife of Birendra Singh, Village – Beesakhi, PS – Pachrukhi, District – Siwan
6 Chandrama Prasad
7 Bikrama Prasad, both sons of late Baldeo Prasad
8 Kaushalaya Devi, wife of late Amirika Prasad, residents of Village – Khanpur, PS – Barharia, District - Siwan

.... Appellant/s

Versus

1 Punyadeo Sharma, son of Aharfi Sharma, resident of Village – Khanpur, PS – Barharia, District - Siwan
2 Additional Member, Board of Revenue, Patna
3 Collector, Siwan
4 Deputy Collector, Land Reforms, Siwan
5 Raju Sah, son of late Sitaram Sah
6 Milas Devi
7 Gudwa Devi
8 Nibha Devi
9 Shobha Devi, all daughters of late Sitaram Sah, residents of Village – Barharia, PS – Barharia, District - Siwan

.... Respondent/s

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For the Appellant/s : Mr Mukesh Kant, Advocate

For the Respondent/s : M/s Dhanendra Choubey & Rakesh Kr Tiwary, Advs

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
&
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 11-04-2016

The pre-emptors are in appeal in these four Letters Patent Appeals arising out of four writ petitions, which had been filed by the three respective vendees (purchasers). Those four writ petitions being CWJCs No 5018, 10225, 10314 and 10328, all of

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2000, were heard and allowed by a common judgment and order dated 27.07.2004 by a learned Single Judge of this Court.

2 Pursuant to notices issued, parties have appeared. These Letters Patent Appeals were admitted and are now for final hearing. The facts are not in dispute.

3 It appears that one late Sitaram Sah had agricultural lands in Village – Khanpur, PS – Barharia, District – Siwan. One of the boundary raiyats was late Baldeo Prasad. Sitaram Sah intended to sell certain agricultural lands. First, he executed a sale deed on 09.02.1990 in respect of about 5 kathas of land in Plot No 721 on the northern side thereof. The sale was in favour of writ petitioners-respondents No 1, 2 and 3, namely, Punyadeo Sharma, Master Sharma and Prithivilal Sharma, who are all sons of Asharfi Sharma. The said sale deed was presented for registration on the same very day though the registration was completed on 07.01.1992. Baldeo Prasad, having come to know of the sale deed upon its registration, filed an application in terms of Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for brevity, the Ceiling Act), for pre-emption on 31.03.1992. There is no dispute that the application for pre-emption was within three months of the registration, as required by Section 16 (3) of the Ceiling Act. Similarly, a second piece of land, adjacent to this first piece, was

sold by Sitaram Sah to Prithivilal Sharma by deed executed on 13.12.1990 and presented for registration on the same day, which registration was completed on 08.09.1993 and, soon thereafter, within limitation, Baldeo Prasad filed pre-emption application. A third contiguous land was then sold by Sitaram Sah in favour of Master Sharma again on 13.12.1990 whose registration was completed on 08.09.1993 and was sought to be preempted by Baldeo Prasad within limitation. A fourth portion of contiguous land was sold by Sitaram Sah in favour of Punyadeo Sharma by sale deed again dated 13.12.1990 which was finally registered on 18.09.1993 having been presented for registration on 13.12.1990 itself, which was, within limitation, sought to be preempted by Baldeo Prasad. Accordingly, four separate pre-emption applications were registered.

4 The first Court decided in favour of the preemptors. It clearly held that the preemption application was within time. It further held that Baldeo Prasad was a boundary raiyat of Sitaram Sah and was also boundary raiyat in respect of the lands being sold as Baldeo Prasad was also boundary raiyat in respect of each of the plots of land being sold. On that finding, the pre-emption applications were allowed. The appellate Court, that is the District Collector, reversed these four decisions arising from the four pre-emption applications in four appeals against which the pre-emptors went to Board of Revenue

in revision. Learned Member, Board of Revenue clearly held that the order of the first Court was correct. On the day when the first sale deed was registered, the pre-emptors were boundary raiyats and, as such, they had a right to preempt the sale. The learned Member, Board of Revenue, thus, reversed the orders passed in the appeals in all the four revision applications and restored the order of the first Court allowing preemption. Being aggrieved by that, the vendees (purchasers) filed four writ petitions which, as noted above, were allowed by learned Single Judge. Hence, these intra-Court appeals.

5 Learned counsel for the appellants submits that the learned Single Judge erred in law in holding that no sooner the first sale was registered, registration takes effect retrospectively from the date of application and, thus, the purchaser became boundary raiyat on 09.02.1990 and that being so, the pre-emption application having been filed on 31.03.1992 would have no effect. The learned counsel for the respondents, in these appeals, supported the order of the learned Single Judge.

6 We have heard the parties, perused the records and considered the matter and, in our view, the order of the learned Single Judge cannot be sustained.

7 No doubt, pre-emption is a weak right but it is a right nevertheless. It is a statutory right and if the conditions are

fulfilled then this statutory right cannot be denied by any Court. In terms of Section 16 (3) of the Ceiling Act, the right of pre-emption accrues the moment a sale deed is finally registered. The pre-emption application has to be filed within three months of the date of registration of the sale deed. Here, it is not in dispute that though the first deed was executed on 09.02.1990 and presented for registration on the same date, it was finally registered on 07.01.1992. The pre-emption application was filed on 31.03.1992, thus, was within three months of the registration. The appellants undisputedly were boundary raiyats whereas the vendees were not there from before. Thus, the conditions for pre-emption were fully satisfied. The learned Single Judge has taken a view that once a sale deed is registered, it relates back to its execution and, therefore, deemed that the purchasers were owners of the land with effect from 09.02.1990 and if that be so then on the day when pre-emption application was filed on 31.03.1992, it could not be allowed as the purchasers were already having title to the land.

8 We fail to understand the logic or the reason or the legal reasoning for such an argument. If what the learned Single Judge says is correct, then it would inevitably be that much prior to three months of filing of pre-emption application, a person would have become a purchaser by the provision of relating back to the date

of execution. No preemption application would, thus, ever be maintainable or would ever succeed. To us, that is not the law. That has never been the position.

9 Thus, we find that the pre-emption application having been filed in time, the pre-emptor being boundary raiyat, the purchaser had no land prior to the said purchase in the vicinity, the pre-emption application had to be allowed and there could be no exception.

10 Thus, we have no option but to set aside the judgment and order of the learned Single Judge in each of the writ petitions and restore the order of the first Court as also that of the Board of Revenue.

11 These appeals are, accordingly, allowed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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