

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14857 of 2011

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1. Jai Kant Rai S/O Late Deo Nandan Rai R/O Vill. Katsa, P.O. Katsa, P.S. Bheldi,
Distt. Saran (Chhapra).

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The Additional Member, Board Of Revenue, Bihar, Patna.
3. The Collector, Saran (Chhapra).
4. The Additional Collector, Saran (Chhapra).
5. The Deputy Collector Land Reforms, Maraurdha, Distt. Saran, (Chhapra).
6.(i) Laxmi Rai
(ii) Dilip Rai
(iii) Raj kumar Rai
All sons of Late Ram Kishore Rai, resident of village Katsa, P.s.- Bheldi, District-
Saran (Chhapra).
(iv) Maina Devi, D/o Late Ram Kishore Rai wife of Gurucharan Rai Both resident
of village Adilpur, P.S. Dariyapur, District- Saran (Chhapra)
(v) Naina Devi, D/o- Late Ram Kishore Rai, wife of Gurucharan Rai,
Both residents of village Adilpur, P.S.- Dariyapur, District- Saran (Chhapra).
7. Ram Kishore Rai S/O Nihora Rai R/O Vill. Katsa, P.O. Katsa, P.S. Bheldi, Distt.
Saran (Chhapra).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durgesh Nandan

For the Respondent/s : Mr. Mahesh Narayan Parbat, Sr. Advocate

Mrs. Shail Kumari S.C. 15

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 27-01-2016

Heard the Counsel for the petitioner and Mr. M.N. Parbat
for the respondent no. 6 as also the Counsel for the State.

On 01.05.1990, respondent no. 7 (since deceased) executed
a sale deed in favour of the original petitioner conveying 2 kathas 17
dhurs of land for a sum of Rs. 20,000/-. Original respondent no. 6
(now represented by legal representatives.) filed a preemption case in
the Court of Deputy Collector Land Reforms, Marhaura, Saran. By an



order dated 30.10.1991 (Annexure-1), the said application was dismissed. Aggrieved thereagainst, the respondent preemptor filed an appeal which was allowed vide order dated 30.12.2003 (Annexure-2). The Additional Collector upon remand to it re-heard the matter and again allowed the claim of preemption by order dated 30.12.2003. Unrelenting petitioner (purchaser) again filed a revision application before the Member, Board of Revenue vide Board Revision Case No. 120 of 2004. Both parties appeared. The case was admitted and the date of hearing was fixed. L.C.R. was also called for. Later, the case was transferred to the Court of Additional Member, Board of Revenue for hearing and disposal. On 7.6.2004, the revision application was dismissed for non-prosecution. On an application filed by the petitioner on 19.03.2005, the same was restored on 20.04.2005. However, the case was not heard thereafter and adjourned on several dates. Finding the Counsel for the petitioner absent on the date fixed therein, the Court dropped the case for the second time on 28.01.2006. On 12.01.2009, a restoration petition was filed by the petitioner which was dismissed under impugned order dated 16.04.2009 (Annexure-4). The Court declined to restore the case stating there was inordinate delay in filing the application inasmuch as no separate application for condonation of the delay was separately filed.

In course of hearing of the writ petition, the respondent no. 7 (seller) died leaving behind no heirs. The respondent no. 6 also died but has been substituted by his heirs and legal representatives who are represented by Sri Parbat.

The Counsel for the petitioner has submitted that the petitioner had been diligently pursuing his remedy since 1991. The original Court on appreciation of materials found the claim of preemption not sustainable in law whereas the Appellate Court found otherwise. The matter was agitated before the Board of Revenue and the case was remanded to the Appellate Court. Again, the order was passed against him by the Appellate Court which was assailed in the revision before the Board of Revenue which ultimately stood dismissed for want of prosecution. The order indisputably was not passed on merit of the case. The petitioner all through had been diligently pursuing the remedy but due to innumerable adjournments in the case, he could not keep track of the actual date which resulted in non-appearance of the Counsel on call and resulted in dismissal in default. The interest of justice demands disposal of a lis on merit. There was no deliberate laches on the part of the petitioner.

Mr. Parbat, conversely, urged that pursuant to the dismissal of the revision application, the Court has conveyed the subject land on 13.07.2009. The equity lies in favour of the

preemptor-respondents. There was no separate application filed for condonation of delay which has been cited as one of the reasons in the impugned order.

Justice demands disposal of a lis on merit which would satisfy the party losing or winning. The petitioner is pursuing his remedy since 1991. True it is that his revision application was earlier dismissed and later restored but as the ill luck could have been, after restoration, the case was adjourned on several dates and ultimately dismissed as he was not present on call to press the same. The ultimate result is that the case has not been disposed of on merit. It has been strenuously argued that if in exercise of discretionary jurisdiction of the Court, the matter is restored and is directed to be heard on merit by the Board of Revenue, he shall not default on any occasion. On the other hand, the respondent Preemptor has been pursuing the case since last several years even before the Board of Revenue but the revision remained pending since 2005. The cause of justice is sub-served if the cause is decided as far as practicable on merit. Disposal of the case on merit may satisfy the contesting party. This would not cause any prejudice to them. In the circumstances, balancing the convenience of both parties and keeping the interest of justice in focus, the application is allowed in the following terms:-

On payment of a cost in the sum of Rs. 2,000/- to the

respondent Preemptor(s) or his/their counsel and also a cost in the sum of Rs. 1,000/- to be deposited in the Office of the Board of Revenue within six weeks from today, the revision application being Board Revision Case No. 120 of 2004 shall stand restored on the file of the learned Additional Member, Board of Revenue where the case was pending for consideration and disposal in accordance with law. The petitioner(s) shall appear in the proceeding on all dates fixed thereat. In case, there is default in doing so, it shall be open to the Court in seisin of the case to pass appropriate order in accordance with law. The petitioner undertakes to produce a copy of the order along with the receipt showing deposit of the cost(s) as directed above before the Revisional Court/authority within six (06) weeks.

Pankaj/-

(Kishore Kumar Mandal, J)

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