

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1507 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 4326 of 1992**

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1. Rajeev Ranjan Prasad son of Deceased (Srimati Savitri Devi), r/o village- Dalbajja, Anchal- Kasba, District- Purnea
 2. Sanjeev Prasad, son of Deceased (Srimati Savitri Devi), r/o village- Dalbajja, Anchal- Kasba, District- Purnea
 3. Nutan Ambashtha, W/o- Bhagwan Prasad, D/o- Deceased (Srimati Savitri Devi), r/o- Shivajee Colony, P.S.- K. Hat, District- Purnea

.... Appellants / Petitioners in the writ petition.
Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna
3. The Additional Collector, Purnea
4. The Deputy Collector, Land Reforms, Sadar, Purnea
5. Om Prakash Sah S/o- Mahabir Prasad, R/o- Village- Sabdalpur, P.S.- Kasba, District- Purnea
6. Jai Prakash Sah, S/o- Mahabir Prasad, R/o- Village- Sabdalpur, P.S.- Kasba, District- Purnea
7. Smt Suchitra Devi @ Suchitra Sinha W/o- Sri Rajeshwar Prasad, R/o- Village- Sabdalpur, P.S.- Kasba, District- Purnea at present residing at Madhubani, Mohalla- Naya Sipahi Tola, P.S.- Khajanchi Hat, District- Purnea

.... Respondents / Respondents

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Appearance:

For the Appellant/s : Mr. Diwakar Upadhyaya and
Mr. Nihar Nandan Ambasta, Advocates.
For the Respondent/s : Mr. Anjani Kumar, AAG 6.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 24-08-2017

Since the learned Single Judge refused to interfere with the order of Additional Member, Board of Revenue, who in turn had rejected the claim or right of pre-emption by the present appellants after setting aside the order of the Additional Collector on the basis of



the factual position which had been taken note of by the Additional Member, Board of Revenue as well as the learned Single Judge in following terms:-

“11. I have perused the impugned orders under challenge and the documents brought on the record by the parties alongwith their pleadings and I have considered the rival submissions made on behalf of the parties. Learned Additional Member, Board of Revenue, in his impugned order has held that the observations made by the learned Additional Collector in his appellate order regarding Plot No. 2076 has no material basis. Upon perusal of the order of the learned Additional Collector, I find that he has not assigned any cogent reason to have a different view than the findings of the learned Deputy Collector Land Reforms, in his report, based on the spot physical verification of the disputed lands. The learned Deputy Collector Land Reforms apparently came to a finding that Plot No. 2073 was rightly mentioned as the vended land in sale-deed dated 24.11.1987. I do not find any discussion, worth acceptable, in the order of the learned Additional Collector for coming to a conclusion that it was land of Plot No. 2076, in fact, transferred in favour of respondent nos. 5 and 6 through sale-deed dated 24.11.1987. By way of supplementary affidavit, respondent nos. 5 and 6 have brought on record the sale-deeds with respect to lands purchased by the vendor, Srimati Suchitra Devi (respondent no. 7). This supports the position that said vendor had transferred the land apertaining to Plot No. 2073 and not the land apertaining to Plot No. 2076 of the concerned Khata. I do not find any pleading nor any evidence/material available on record to demonstrate that the vendor, respondent no. 7, had any right title interest over the lands of Plot No. 2076 and was competent to transfer the said lands to respondent nos. 5 and 6.”

2. The finding is that the appellants were not the co-sharers of the vendor and only a mischief was played by the Additional



Collector in holding so on the basis of a wishy-washy kind of material or evidence.

3. The factual finding given by the Additional Member, Board of Revenue on the available materials has again been reiterated by the learned Single Judge in following terms:-

14. From the pleadings on record, it appears that there is no material to show that the vendor, respondent no. 7, had right title and possession with respect to lands of Plot No. 2076 and the lands which she had purchased from her vendor were of Plot No. 2073 and other plots, which she had transferred to respondent nos. 5 and 6 through sale-deed dated 24.11.1987. I do not find any merit in such plea, on behalf of the petitioners that Plot No. 2073 was wrongly mentioned in the sale-deed in place of Plot No. 2076. Learned Additional Member, Board of Revenue has assigned correct reason for rejecting the pre-emptor's claim under Section 16 (3) of the Act that it is the pre-emptor, who has to satisfy that requirements of Section 16 (3) of the Act were fulfilled for invoking the said provision. Learned Additional Member, Board of Revenue, in my opinion, by the impugned order has rightly interfered with the order of the learned Additional Collector and has rightly set aside the order of the learned Deputy Collector Land Reforms dated 02.01.1990, on the reasoning that a pre-emption claim can either succeed in full or it would fail and pre-emption claim could not be allowed partly. This view finds support from Division Bench decision of this Court in case of Smt. Sudama Devi V. Rajendra Singh (*Supra*), Paragraph – 8 of which is relevant and is being quoted hereinbelow:-

“8. If the land transferred is comprised in several plots, which is not in one block, then the pre-emptor has to establish that either he is a co-sharer of the plots transferred or an adjacent raiyat of them. The claim can be founded and succeed only if he establishes this fact in respect of all the plots if the various plots are different pieces and different blocks of lands. In other words, the pre-emptor has to establish his claim in respect of all the pieces or blocks of lands transferred and cannot succeed by establishing that he is a co-sharer or is an



adjacent raiyat of only a few pieces or blocks of lands out of several transferred by one common sale deed. No apportionment is permissible. No partial claim of pre-emption can be allowed with respect to some of the pieces or parcels of lands on the pre-emptor's establishing that he is a co-sharer or an adjacent raiyat of those pieces [vide (2) Ram Chabila Singh V. Ram Sagar Singh (1968 P.L.J.R. 279)].”

4. This being the position, the refusal by the learned Single Judge of the right of pre-emption as well as not interfering with the order of the Additional Member, Board of Revenue cannot be said to be an erroneous decision.

5. The right of pre-emption has not been created to manipulate things to grab other people's property. The object behind the provision and the Act was to stop fragmentation and not alienation by legal means.

6. Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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