

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.900 of 2016
IN
Civil Writ Jurisdiction Case No. 3081 of 2014**

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1. Raj Narayan Rai, Son of Gaya Rai
2. Kalawati Devi, Daughter of Jhulan Rai, Wife of Raj Narayan Rai
Both R/o of vill.- Pohiya, P.O- Bhaismara, Police Station Garkha, Distt.-Saran (Chapra)

.... Appellant/s

Versus

1. The State of Bihar through the Commissioner, Saran Division ,Chapra
2. The Additional Collector, Saran, Chapra
3. The Chairman, the Bihar Land Tribunal, Patna
4. Ram Pujan Rai, son of late Sobhnath Rai
5. Lal Babu Rai, Son of Ram Pujan Rai
4 & 5 are Resident of vill.- Pohiya, P.O.- Bhaismara, Police Station -Garkha ,Distt-Saran (Chapra)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Umesh Kumar Mishra, Adv.
For the State : Mr. Lalan Kumar, AC to GP-9
For the Private Respondents : Mr. Bashishtha Narayan Mishra, Adv.
Mr. S.N. Ravi, Adv.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and**

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 30-11-2017

Heard learned counsel for the parties.

The appellants are aggrieved by the order dated 11.09.2014 passed in CWJC No.3081 of 2014 by which the learned Single Judge has been pleased to upheld the views taken by the trial court, revisional court and the order passed by the Bihar Land Tribunal (BLT) and dismissed the writ application refusing to



interfere with the orders passed by those authorities.

Learned counsel for the appellants submits that because the elder brother of appellant no.1 is in the boundary of the vended land and it is his case that the land standing in the name of his elder brother is a joint family property in which the appellant no.1 is a co-sharer, the claim of preemption was not fit to be allowed. His further submission is that by executing the gift deed in favour of appellant no.2, the appellant no.1 has rightly taken steps permissible in law to defeat the right of pre-emption.

On the other hand, learned counsel representing the private respondents (pre-emptors) submits that the arguments advanced on behalf of the appellants are liable to be rejected. The first submission of the appellants is a totally misconceived submission inasmuch as the appellant no.1 has not made out a case that the lands shown in the name of his elder brother is ancestral land recorded earlier in the name of common ancestors in any records of rights which would have given him a plea to take that he has got share in the said land by devolution of the inheritable rights with respect to the ancestral property. If that is not the submission of the appellant no.1, the very fact that the land is standing in the name of elder brother of appellant no.1 cannot be taken as a joint family property and, therefore, no illegality has been committed by the original court of



DCLR in taking a view in favour of the pre-emptors. The said view has been affirmed by the revisional court and the BLT. The second submission of the appellant has also been assailed by the learned counsel for the respondents submitting that there is contradiction in the argument on behalf of the appellants. On the one hand the appellant no.1 submits that he had also purchased the vended plot out of the joint family property or income in order to show that his vended land and the land standing in the name of his elder brother be taken together belonging to the joint family property, but at the same time he has executed a gift deed in favour of the appellant no.2 which could not have been done by appellant no.1 in respect of a joint family property.

We have considered the rival submissions at the bar. The submissions of learned counsel representing the private respondents have got force and are acceptable. The learned Single Judge has dealt with the submissions of the parties elaborately and has relied upon the judicial pronouncements as well in the case of Dinanath Singh Vs. The State of Bihar and others, reported in 2001(2) B.L.J. 560. In that case also the purchaser had gifted the land in dispute to his sister and a same kind of plea was taken to defeat the claim of pre-emptor. The views taken by the Hon'ble Supreme Court have been duly quoted by the learned Single Judge in the impugned



order. We are not reiterating those quotations with an intention not to burden our judgment once again with those paragraphs which are already existing in the order of the learned Single Judge.

We agree with the views taken by the trial court, revisional court, Bihar Land Tribunal as well as the view taken by the learned Single Judge.

Appeal has no merit. It is, accordingly, dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Arvind/-

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CAV DATE	
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