

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.808 of 2014
IN
Civil Writ Jurisdiction Case No. 4539 of 1991**

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1. Tarkeshwar Singh
2. Kameshwar Singh Both Sons of late Muni Lal Singh@Suraj Prasad Singh
3. Sita Devi D/o Muni Lal Singh @Suraj Prasad Singh, W/o Dinesh Singh
4. Pratima Devi D/o Muni Lal Singh@Suraj Prasad Singh, W/o Om Prakash Singh
All Residents of Village- Phulwaria, P.O. Tajpur, P.S. Manjhi, District- Siwan
.... Appellant/s

Versus

1. The State of Bihar
2. The Additional Members, Board of Revenue, Bihar, Patna
3. The Additional Collector, Saran at Chapra
4. The Deputy Collector Land Reforms, Saran at Chapra
5. Krishna Singh son of Jagdish Singh
6. Arjun Singh Son of Late Jagdish Singh
7. Birbal Singh son of Late Jagdish Singh
8. Kishore Singh
9. Anil Singh
10. Neeraj Singh All No. 8 to 10 sons of Late Bir Singh S/o Late Jagdish Singh
11. Rubi Devi D/o Late Bir Singh
12. Pravabati Kuer (wrongly typed as Pravawch Kuer in the impugned order) W/o Late Bir Singh
13. Taramuni Kuer (wrongly typed as Taranum Kuer in the impugned order) wife of Late Mahanth Singh
14. Priti Kumari minor daughter of Late Mahanth Singh
15. Sonu
16. Golu Both respondents 15 and 16 are minor sons of Late Mahanth Singh under the guardianship of their mother and natural guardian Taramuni Kuer
17. Smt. Dewarati Devi W/o Late Radha Mohan Singh and daughter of Ram Sagar Singh All are resident of Village - Phulwaria, P.O. Phulwaria Tajpur, P.S. Manjhi, District - Saran
.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Suraj Narain Yadav
Mr Pancha Nand Pandit
For the Pvt. Respondents : Mr. Vinay Kirti Singh, Sr. Advocate
Mr Akhileshwar Singh

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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: 25-07-2017



The appellants in the present case are aggrieved by the order dated 26.09.2012 passed by the learned Single Judge of this Court in CWJC No.4539 of 1991, by which the learned Single Judge has been pleased to dismiss the writ application without interfering with the order passed by the Deputy Collector Land Reforms in an application under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, (hereinafter referred to as 'the Act') filed by the appellant. The subsequent appeal and the revision before the authorities under the Act challenging the order passed by the Deputy Collector Land Reforms had gone against the writ petitioner- appellant and there was a concurrent finding of facts by all the courts below that the appellant had failed to establish his right as a pre-emptor.

2. In fact, when the appellant filed his application under Section 16 (3) of the Ceiling Act, at the very first instance the purchaser filed her show cause to the effect that she was also a boundary raiyat of the disputed land as on the same day i.e. on 21.8.1987, she had purchased another plot bearing no.77 in the name of her husband through another sale deed and this plot no.77 was also in the eastern boundary of the disputed plot no.76. This fact has not been challenged by the pre-emptor. However, at a belated stage before the writ court an issue was raised that the purchase being in the



nature of a Benami transaction, the pre-emptor was supposed to establish that Benami transaction in order to get the benefit of the sale deed in the name of her husband. The learned Single Judge has noticed the plea taken by the appellant, who was the writ petitioner before the court, and found that this plea has been taken at this stage and the fact shown by the respondent that she had purchased the land in the name of her husband was never under challenge.

3. The learned Single Judge has further discussed the judgment of the Division Bench of this Court reported in 1986 PLJR 763 (Upendra Mishra vs. Smt. Inchan Mishra) and having taken note of paragraph 7 of the Full Bench judgment, which was relied upon by the Division Bench, the learned Single Judge found that on facts, the present case is clearly distinguishable.

4. Before us, once again learned counsel for the appellants raised a similar issue as to the Benami transaction not established by the purchaser -respondent. In view of the fact that the respondent had established her case at the first instance while filing a reply before the Deputy Collector Land Reforms saying that she had purchased the land in the name of her husband and the same was not contested by pre-emptor, we do not find any illegality either with the findings recorded by the Deputy Collector Land Reforms and other authorities under the Act or by the learned Single Judge. Even otherwise, the



right of pre-emption is a very weak right and after 30 years of this litigation, we are not persuaded to interfere with the order passed by the learned Single Judge.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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