

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.821 of 2014
IN
Civil Writ Jurisdiction Case No. 12903 of 2006**

=====

Sribhagwan Singh, Son of Late Ram Jash Singh, Resident of Village- Haridyarpur English, P.S- Jagdishpur, District- Bhojpur.

.... Appellant/s

Versus

1. The State of Bihar
2. The Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Bhojpur at Arrah.
4. The Deputy Collector, Land Reforms, Jagdishpur, District- Bhojpur.
Respondents- Respondents 1st set
5. Raj Munna Kunwar, Widow of Late Mahabir Singh (original petitioner)
6. Rajeshwar Kumar Singh @ Rajesh Singh, Son of Late Mahabir Singh (original petitioner) Both are resident of Village- Haridyarpur English, P.O- Kaura, P.S- Jagdishpur, District- Bhojpur.
7. Lalita Devi, Wife of Ganga Prasad Singh and daughter of Late Mahabir Singh (original petitioner), Resident of Village- Chhwarhi, P.O- Chhwarhi, P.S- Piro, District- Bhojpur. ... Petitioners/ Respondents 2nd Set
8. Janardan Singh
9. Narad Singh
10. Brij Nandan Singh
11. Haridyanand Singh All sons of Late Mukhram Singh
12. Mosomat Laxminia Kuer Wife of Late Mukhram Singh Sl no. 8 to 12 all are resident of Village Haridyarpur English, P.O- Kaura, P.S- Jagdishpur, District- Bhojpur.

Respondents Respondents 3rd set
With

=====

**Letters Patent Appeal No. 1150 of 2014
IN
Civil Writ Jurisdiction Case No. 12818 of 2006**

=====

1. Laxman Singh
2. Ramayan Singh
3. Ramji Singh, All are sons of Late Ram Janam Singh Resident of village - Tulsi, P.S. Jagdishpur, District - Bhojpur.

Respondents.... Appellants

Versus

1. The State of Bihar.
2. The Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Bhojpur at Arrah.
4. The Deputy Collector, Land Reforms, Jagdishpur, District - Bhojpur.
..... Respondents 1st set
5. Raj Munna Kunwar @ Raj Munna Kunwar ,Widow of Late Mahabir Singh



- (original petitioner)
6. Rajeshwar Kumar Singh @ Rajesh Singh Son of Late Mahabir Singh (original petitioner) Both are resident of village Haridyapur English P.O. - Kaura, P.S. Jagdishpur, District - Bhojpur.
 7. Lalita Devi, wife of Ganga Prasad Singh and Daughter of Late Mahabir Singh (original petitioner) Resident of village - Chhwarhi, P.O. Chhwarhi, P.S. Piro, District - Bhojpur. Respondents 2nd set
 8. Janardan Singh
 9. Narad Singh
 10. Brij Nandan Singh
 11. Haridyanand Singh All sons of Late Mukhram Singh
 12. Mosomat Laxminia Kuer, wife of Late Mukhram Singh Nos. 8 to 12 all are residents of village - Haridyapur, English P.O. Kaura, P.S. Jagdishpur, District - Bhojpur.

.... Respondents 3rd set

=====

Appearance :

For the Appellants : Mr. Sabbir Ahmad, Advocate
Mr. Md. Ataul Haque, Advocate

For the State : Ms. Kumari Amrita, GP3
Mr. Mithilesh Kumar Upadhyay, AC to GP-3

For the Resp. 5 to 7 : Mr. Jogendra Mishra, Sr. Advocate
Mr. Ramesh Kumar Choudhary, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 22-03-2017

Two writ applications were clubbed together, heard together and decided together because they arose from identical set of facts. The only distinction being that the sale deeds which were executed were in favour of different purchasers. When the sale was effected, an application for pre-emption was filed, legal battle was fought and traveled till the Revisional Court of Additional Member, Board of Revenue. It is the order of the Additional Member, Board of Revenue which set aside the order of the Additional Collector that the



writ applications came to be filed challenging the order which has now been set aside by the learned Single Judge and allowed the two writ applications holding that the learned Additional Member, Board of Revenue has committed error of law on two counts.

It is a rather detailed kind of order which has been passed by the learned Single Judge and with due credit to him, he has considered all the judgments which have been pressed into service by either side and had tried to bring quality on the submissions and on the diverse kind of judgments and conflicts which had been spilled out. However, keeping in mind the position of law, which has emerged from the ruling given by the Hon'ble Supreme Court in the case of Suresh Prasad Singh Vs. Dulhin Phulkumari Devi, reported in 2010 (2) PLJR 167 (SC), there cannot be any further debate that a person cannot become an adjoining raiyat by sub-dividing the plot of land into small pieces and parcels and then claim himself to be adjoining raiyat of the original plot of land to defeat the right of pre-emption of a co-sharer. The other aspect on which the learned Single Judge interfered with the order of the Additional Member, Board of Revenue was with regard to the requirement laid down in Rule 19 of the Land Ceiling Act and whether the failure to comply with Rule 19 would be fatal and can lead to dismissal of an application for pre-emption. Here also the learned Single Judge relying on a decision of the Hon'ble Supreme Court in the



case of Hiralal Agrawal Vs. Rampadarath Singh, reported in AIR 1969 SC 244, held that such a procedure laid down therein is not mandatory but directory. The learned Single Judge after dealing with the facts, has come to the conclusion that there was compliance of the Rule in letter and spirit by the pre-emptor and therefore, rejection of his claim or case on that ground was uncalled for by the Additional Member, Board of Revenue. Since both these questions have been answered in favour of the private respondent, who was the petitioner before the writ court and claimed pre-emption, has been allowed and therefore, the appeal.

Learned counsel for the appellants submits that keeping in mind the law which has been settled by different Benches of the High Court on different occasions, the fact of somebody being a co-sharer has to be established. In this case there was only a pleading of a person being a co-sharer and there was no finding given with regard to him being the co-sharer at any stage of the adjudication, his appeal must succeed and the orders in favour of the pre-emption should fail.

Attention of this Court has been drawn to the pleading which is there in the writ application specially paragraphs 6,7 and 8 of the writ applications where specific pleading has been made in the writ applications itself showing the status of the writ petitioner being a co-sharer. It is a joint family property flowing from one Mukhram Singh and thereafter it has devolved upon all the five brothers and widow.



Since in law there is always presumption of jointness and any person claiming that there is partition, has to establish so, therefore, the plea of the appellant that the private respondent was not a co-sharer and the fact was not established, is a desperate plea sought to be taken at the level of this appeal to somehow succeed in the appeal and shake of the order and consequence which has flown from the decision of the learned Single Judge.

The order and decision of the learned Single Judge is not required to be interfered with because he has laid down the law by applying the facts in the correct perspective and the appellant, in fact, cannot succeed because effort was made to defeat the right of co-sharer on one pretext or the other and sale deed was effected to strangers who wanted to show themselves to be adjoining raiyats by sub-dividing the plot but executing the sale deeds on the same date and same time which is not permissible in law.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

S.Pandey/-

(Nilu Agrawal, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.03.2017
Transmission Date	

