

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1444 of 2013
IN
Civil Writ Jurisdiction Case No. 9552 of 2012**

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1. Hare Ram Thakur Son Of Late Deo Muni Thakur Resident Of Village Rajpur,
P.O.- Charchhat, P.S.- Bihia, District- Bhojpur

2. Jai Ram Thakur Son Of Late Deo Muni Thakur Resident Of Village Rajpur,
P.O.- Charchhat, P.S.- Bihia, District- Bhojpur

3. Siya Ram Thakur Son Of Late Deo Muni Thakur Resident Of Village Rajpur,
P.O.- Charchhat, P.S.- Bihia, District- Bhojpur

4. Sita Ram Thakur Son Of Late Deo Muni Thakur Resident Of Village Rajpur,
P.O.- Charchhat, P.S.- Bihia, District- Bhojpur

5. Kamla Devi Daughter Of Late Deo Muni Thakur Resident Of Village Rajpur,
P.O.- Charchhat, P.S.- Bihia, District- Bhojpur

6. Rukmini Devi Daughter Of Late Deo Muni Thakur Resident Of Village Rajpur,
P.O.- Charchhat, P.S.- Bihia, District- Bhojpur

7. Bimla Devi Daughter Of Late Deo Muni Thakur Resident Of Village Rajpur,
P.O.- Charchhat, P.S.- Bihia, District- Bhojpur

.... Appellants

Versus

1. Ram Singhasan Thakur Son Of Prabhas Thakur Resident Of Village Rajpur,
P.S.- Bihiya, District- Bhojpur (Ara)

2. The State Of Bihar through Its Commissioner, Patna Division, Patna

3. The Collector, Bhojpur (Ara)

4. The Land Reforms Deputy Collector, Jagdishpur (Ara)

.... Respondents

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Appearance :

For the Appellants : Mr. Jitendra Kishore Verma, Advocate
For the Respondents : Mr. Sushil Kumar Singh, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 23-02-2017

Heard counsel for the appellants and counsel for the
State.

2. Challenge is to the order dated 10.07.2013 passed by
the learned single Judge in C.W.J.C. No. 9552 of 2012, who has
allowed the writ application, set aside the order of the appellate



Court as well as the revisional Court and dismissed the case of preemption, which was Preemption Case No. 5 of 2008-09 and Preemption Case No. 6/2008-09.

3. The learned single Judge after hearing the parties had this to observe in his order :

“14. Coming to the present case, this Court finds that both the sale deeds were executed on 13.7.1994, and were duly registered on 6.9.1994 as per findings of respondent D.C.L.R., Jagdishpur. Therefore, the respondent nos. 4 to 10, claiming to be co-sharers of the vendor were entitled to file their pre-emption claims with respect to the vended lands within a period of three months from the date commencing from 6.9.1994 i.e. the date of registration, but in the present case both the pre-emption cases were filed on 3.11.2008 i.e. after 14 years of the date of registration of the impugned sale deeds. A certified copy of the application filed under Section 16 (3) of the Land Ceiling Act by the respondent nos. 4 to 10 before the respondent D.C.L.R. has been produced by learned counsel appearing on behalf of the petitioner, where in paragraph 5 the respondent nos. 4 to 10 have admitted that sale deeds were executed on 13.7.1994 and were registered on 6.9.1994. Relevant portion of Paragraph 5 of the petition filed by the respondent nos. 4 to 10 before the respondent D.C.L.R., Jagdishpur (Bhojpur) is reproduced herein below for better appreciation of



the maintainability of the claims of pre-emption filed on their behalf, which reads as follows:-

“That, the sale deed No. 10154 executed by Ram Daso Kuar dated 13. 07.1994, which was registered on 06.09.1994 with respect to the following lands.”

15. Learned counsel appearing on behalf of the petitioner further submitted that the petitioner, being opposite party in the pre-emption cases, has specifically taken a plea that pre-emption cases filed by respondent nos. 4 to 10 were barred by limitation. He has drawn attention of this Court to the averments made in paragraph 15 of the show cause filed on behalf of the petitioner wherein it was specifically stated that sale deeds were registered in 1994 and pre-emption applications could have been filed within 3 months, but they have been filed after 14-15 years, which are barred by limitation.

16. Despite specific averments made in Paragraph 5 of the petition filed on behalf of the respondent nos. 4 to 10 as also in Paragraph 15 of the show cause filed by the petitioner, there is nothing on record to show that limitation occurring in filing the pre-emption applications was ever condoned by the respondent D.C.L.R., rather he went on to consider the cases of the parties on merit and rejected the pre-emption claims of respondent nos. 4 to 10 by his order dated 14.7.2009.

17. This Court is of the considered



opinion that pre-emption applications filed on behalf of the respondent nos. 4 to 10 suffer from non-joinder of necessary party also. In a pre-emption case under Section 16(3) of the Land Ceiling Act, vendor is always a necessary and important party. Even if original vendor Mostt. Ram Daso Kuer had died prior to filing of the pre-emption case, then averments should have been made by the pre-emptors that who are her heirs and legal representatives and whether such heirs and legal representatives have been impleaded as parties in the pre-emption cases or not. Merely on the ground that pre-emptors are co-sharers of the original vendor, the requirement of law is not satisfied.

18. The issue regarding non-impleadment of vendor as a party goes to the root of the matter and makes the pre-emption case unsustainable, came up for consideration before a Bench of this Court in the case of **Raja Ram Singh Vs. State of Bihar (Supra)**. For better appreciation, paragraph 10 of the aforesaid judgment is reproduced herein below, which reads as follows:-

“All these indicate that the transferor is a necessary party in the application under Section 16(3) of the Ceiling Act. According to the Act and the Rules the transferor is also entitled to be heard before the application is disposed of. In fact, the provisions contained in Section 16 (3) of the Act is a



restriction on the right to sell the property by a lawful owner thereof, although a reasonable restriction. But, when such a right is sought to be restricted, the person concerned has a right to be heard before an order is passed in respect of any conveyance by him. Besides this, there may be a case in which an owner of a land has not, in fact, sold his property and the right of pre-emption is sought to be enforced on the basis of a fake sale deed. Unless the owner of the property who is supposed to have transferred a particular land is heard in the matter, he will be seriously prejudiced if he is not made a party in the proceeding. I am, therefore, of the opinion, that in every case of pre-emption not only the transferee but also the transferor is a necessary party and if any of them has not been impleaded as a party, the application must be dismissed at the initial stage being not maintainable. The fact that the transferor was not made a party and notices of the proceeding were not sent to him, has not been denied. The application of respondent No.3 for pre-emption, therefore, was not maintainable and should have been dismissed on this ground alone. It is well established that right of pre-emption is a very weak right and, therefore, the pre-emptor is required to follow each and every mandate of law.”



(Emphasis added by me)

19. The pre-emption claims raised on behalf of the respondent nos. 4 to 10 are not maintainable on yet another ground. Now, admittedly, with respect to two sale deeds, the respondent nos. 4 to 10 filed T.S. No. 208 of 1997 in the court of learned Sub-Judge I, Ara, with a prayer for declaring the aforesaid two sale deeds as null and void and that matter remained pending before its dismissal for non-prosecution by an order dated 21.7.2011. During the pendency of the aforesaid Title Suit, the respondent nos. 4 to 10 lodged the aforesaid two pre-emption cases before the respondent D.C.L.R. Unfortunately, in the pre-emption applications filed on behalf of the respondent nos. 4 to 10, there is no averment at all about pendency of the aforesaid T.S. No. 208 of 1997 and this material fact has been concealed by the pre-emptors respondent nos. 4 to 10. This also shows that the pre-emptors did not file their pre-emption cases with clean hands.

20. All the three major defects, as discussed above, are vital for decision of claim under Section 16(3) of the Land Ceiling Act. The respondent D.C.L.R. should have taken into consideration all these aspects while considering the claim of pre-emption of respondent Nos. 4 to 10, but he has also failed to take into consideration the aforesaid aspects, though he has dismissed the pre-emption cases on merits. The respondent District Collector and the



respondent Divisional Commissioner, being the appellate authority and revisional authority respectively, have not taken pains for examining these vital issues involved in the pre-emption proceedings between the parties with respect to the vendible lands by two sale deeds of the year 1994.”

4. The submission on behalf of the counsel for the appellants is that the law is that till the registered sale deed is copied out in the register, it is not sale as such and the right for a party accrues from the date such copying out is made. In this case since it was done in the year 2008, therefore, finding of the learned single Judge that the claim of the appellants was barred by limitation is misplaced.

5. In the opinion of this Court, the formality of registration etc. as well as change of title and possession was already done way back in the year 1994 itself. Merely because there was some delay in providing the certified copies to these appellants for them to make out a case for preemption, it does not mean that the registration in any manner was invalid and the right, title and interest did not pass in favour of the vendees.

6. The Court also notices that an effort was also made by these appellants to set aside the sale deeds by filing a title suit, which was allowed to be dismissed for default and thereafter an



innovation of preemption was set into motion.

7. In totality, there is no infirmity in the given facts as to the finding and the reason given by the learned single Judge to allow the writ application and set aside the impugned orders passed in appeal and revision as well as dismissing the preemption cases.

8. Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	NAFR
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