

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1876 of 2015

IN

Civil Writ Jurisdiction Case No. 4475 of 2009

=====

1. Arjun Singh

2. Shrikant Kumar Singh

Both sons of late Raghunath Singh

3. Chandrika Singh Son of Darbari Singh

4. Prabhawati Devi Wife of Late Birbal Singh

5. Nishi Kant Kumar Son of Late Birbal Singh

6. Sarika Kumari Daughter of Late Birbal Singh

All residents of village - Majhauria, P.S. - Baniapur, District - Saran.

.... Appellant/s

Versus

1. Ambika Pandit

2. Ramanand Pandit

3. Shri Bhagwan Pandit

All sons of Late Bhola Pandit

4. Krishna Pandit Son of Late Nemi Pandit

All residents of village - Hariharpur, P.S. - Baniapur, District - Saran.

5. Pasupati Pathak Son of Rameshwar Pathak Resident of village - Bhusaw, P.S. - Baniapur, District - Saran.

..... Respondents 1st Set.

6. The Additional Member, Board of Revenue, Bihar, Patna.

7. The Additional Collector, Saran at Chapra, District - Saran.

8. The Deputy Collector In-charge, Land Reforms, Chapra, District - Saran.

9. The State of Bihar.

.... Respondents 2nd Set.

=====

Appearance :

For the Appellant/s : Mr. Ranjan Kumar Jha, Adv.

For the Respondent no.1 : Mr. Bashistha Narayan Mishra, Adv.

For the State : Mr. Pratik Kumar Sinha, AC to GA-V

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 06-09-2017

Heard learned counsel for the parties.

The appellants before us having lost before the revisional authority filed the writ application being CWJC No.4475 of 2009 which was dismissed by the learned Single Judge of this Court



vide order dated 12.08.2015. The appellants, being aggrieved by the revisional order as well as the order passed by the learned Single Judge, once again moved before us.

Learned counsel representing the appellants submits that despite their being a finding that there were some houses in the surrounding of the disputed land, the revisional authority as well as the learned Single Judge could not appreciate that it was a homestead land and, therefore, the contention of the appellants have been wrongly rejected. Learned counsel for the appellants draws our attention towards the order passed by the revisional authority which contained a detailed discussion on the statements made by the several witnesses. The witnesses are consistent on the point that the land is having number of trees and it is an orchard all around. The learned revisional authority has therefore recorded in his order that the witnesses tally on the point that there is an orchard on the disputed land and some trees are there on the disputed land.

Learned counsel appearing on behalf of the private respondent no.1 submits that pre-emption application in the present case was filed as back as in the year 1989 and thereafter witnesses were examined sometime in the year 2000, therefore over a period of about 11 years some houses had come up on the surrounding areas. The land in question is cultivable and described as agricultural land in



the sale deeds. Merely because some construction have come in surrounding areas, that cannot be a ground to defeat their case of pre-emption as he has been found adjoining raiyat from two sides of the disputed land.

We have considered the rival submissions at the Bar. On perusal of the order passed by the revisional authority as well as learned Single Judge of this Court we find force in the submissions on behalf of the private respondent no.1. We are satisfied that there is no illegality or infirmity in the order passed either by the revisional authority or the learned Single Judge of this Court. The learned Single Judge has taken into consideration the submissions of the parties recorded as under:-

“After having heard the parties and on consideration of the materials available on record, this Court finds that the petitioners have been changing their stand from time to time with respect to vended plot. In the sale deed executed in favour of the petitioners or their ancestors, the nature of land was shown as agricultural land. However, after filing of pre-emption case by the pre-emptors, the stand was changed by the petitioners and a plea was taken that the land in question is an orchard. Therefore, according to them, it is not a land under the meaning of Section 2(f) of the Land Ceiling Act. When the orders passed by the statutory authorities were not approved by a Bench of this Court by the order dated 22.08.1995 passed in CWJC No.7982 of 1994, as referred to above, the petitioners again changed their stand and took a plea that it was a homestead land and was having structure over the same, which was subsequently demolished by the pre-emptors. Even this plea has not been accepted by the respondent



Additional Member, Board of Revenue in the impugned order, as contained in Annexrue1. From the facts noticed above, it is apparent that the petitioners are not resisting the claim of pre-emption raised on behalf of the pre-emptors with clean hands, rather they have been changing their stand from time to time as per their convenience and for non-suiting the pre-emptors with respect to vended plot.

The dispute for a small plot of land is going on since the year 1989 and more than 26 years have already elapsed since then, but the petitioners are not prepared to accept the finality of the order passed by the statutory authority, may be they are very resourceful persons.

For the reasons recorded above, this Court does not feel persuaded to interfere with the impugned order dated 24.10.2008 (Annexure-1) passed by the respondent Additional Member, Board of Revenue, Bihar, Patna.”

The submission advanced on behalf of the appellants that the land in question is a homestead land cannot be accepted.

We find no reason to differ with the view taken by the learned Single Judge in view of the facts stated above.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.09.2017
Transmission Date	

