

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.2026 of 1993**

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1. Nathu Raut  
2. Chandrama Raut  
Both sons of Indradeo Raut, resident of village-Karnpura, P.S. Manjhagarh,  
District-Gopalganj

.... .... Petitioner/s

Versus

1. The State of Bihar  
2(a) Kanta Prasad  
2(b) Ram Babu Prasad  
2(c) Nain Kumari  
2(d) Sunaina Devi  
2(e) Kavita  
2(f) Suresh  
2(g) Shail  
2(h) Janki Devi  
3. Shivani Raut, W/o Sarju Raut  
4. Laichi Kuar, W/o Bageshwar Raut  
Both resident of village Karnpura, P.S. Manjhagarh, District Gopalganj  
5. Additional Collector, Land Reforms, Gopalganj  
6. Dy. Collector, Land Reforms, Gopalganj  
7. Addl. Member, Board of Revenue Old Secretariat, Patna

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Kumar Veerendra Narayan  
For the Respondent/s : Mr. Md.J.Rahman  
Mr. Barmeshwar Tiwary  
Mr. Mahesh Nr.Parbat  
Mr. Amitesh Kumar  
Mr. Manager Sah  
Mr. Manish Kumar  
Mr. Indrajeet Bhushan

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**

**ORAL JUDGMENT**

**Date: 22-02-2018**

1. The petitioners in this writ petition seeks quashing of the order dated 31.08.1992 passed in B.R.C. Case No.557 of 1990(Annexure 1) whereby and whereunder Addl. Member, Board of Revenue allowed the claim of pre-emptor after setting aside the order



of the Additional Collector in Land Ceiling Appeal No.46 of 1990 dated 03.09.1990 and confirmed the order passed by the D.C.L.R., Gopalganj in Ceiling Case No.16 of 1988-89 on 14.02.1990(Annexure-1/A).

2. The requisite facts are that Kapildeo Raut(now dead) and in his place his legal heirs substituted as respondent Nos.2(a) to 2(h) filed Pre-emption Case No.16 of 1988-89 stating the facts that vendees are not co-sharer nor adjoining raiyats of different plots purchased by them. The petitioners contested the case on the ground that the petitioners are also co-sharer and adjoining raiyats of the purchased lands. Tapsi, Parmeshwar and Shivnandan were brothers. Tapsi got one son namely Bhatkua Kurmi. Bhatkua Kurmi got two sons namely Indradeo and Paspal. The petitioners are sons of Indradeo Raut. Respondent, Kapildeo Raut is the son of Fagu Raut and grandson of Dukhi who got four sons and one daughter. Raghuni is another son of Parmeshwar and respondent Nos.3 and 4 are the descendants and legal heirs of Raghuni. Shivnandan died issueless. Raghuni got two sons and two daughters namely Saryu, Mukhdeo, Lalchi @ Lachia and Shiwni. The petitioners purchased the land from Shiwni, wife of Saryu and Lalchi daughter of Raghuni. They are also co-sharer and adjoining raiyats of the land but the D.C.L.R. held that the pre-emptor has got more share in the plots from which the



petitioners purchased the land from descendants of Raghuni and the pre-emptor is also adjoining raiyat. On appeal, the Additional Collector held that on perusal of the khatian, purchasers of plot nos.823, 885, 886, it appears that aforesaid lands stand in the name of ancestor of the purchasers and the purchasers are co-sharers. The pre-emption right does not give any preferential right over a co-sharer or adjoining raiyat to another co-sharer or adjoining raiyat.

3. The learned counsel for the petitioner submits that from perusal of the order of Additional Member, Board of Revenue and order of the Additional Collector as well as the D.C.L.R., it would appear that according to the genealogy table discussed in the order of the D.C.L.R., it is admitted that Tapsi, Parmeshwar and Shivnandan were three brothers. The petitioners are the grandson of Bhatkua Kurmi and they purchased the lands from descendants of Raghuni Kurmi. The pre-emptor is the grandson of Dukhi, own brother of Raghuni. It is admitted fact that the petitioners and pre-emptor are the descendants of common ancestor and their lands are situated by the side of the purchased land besides the fact that on one of the plots there is a house standing thereon but Additional Member, Board of Revenue did not look into the matter in true perspective and allowed the pre-emption application of respondent No.2.

5. On the contrary, learned counsel for the respondents-



pre-emptor and the learned counsel for the State submits that the order of Additional Member, Board of Revenue does not suffer from any illegality. Parmeshwar got two sons namely Dukhi and Raghuni. Dukhi got four sons namely, Fagu, Inner, Langar and Mangal and one daughter. Kapildeo, son of Fagu is the pre-emptor and descendants of Raghuni, own brother of Dukhi, the grandfather of Kapildeo sold the land to the petitioners. The Additional Member, Board of Revenue has categorically held that vendee is not in the boundary of at least three Plot Nos.884, 883 and 969. From perusal of khatian of the sold lands and plots, it would appear that name of Bhatkua is not indicated. The petitioner who is grandson of Bhatkua, therefore, cannot be claimed to be co-sharer or adjoining raiyat of lands of Dukhi and Raghuni, the pre-emptor and the vendors and, therefore, the order does not suffer from any illegality.

6. It is admitted fact that Tapsi, Parmeshwar and Shivrindan are the descendants of common ancestor. Shivrindan died issueless. The petitioners purchased the land from the descendants of Raghuni, one of the sons of Parmeshwar and pre-emptor is grandson of Dukhi, own brother of Raghuni. The petitioners are also grandson of Tapsi, the brother of Parmeshwar. Petitioners purchased the land from Plot Nos.823, 885, 886, 884, 883, 969. The purchasers are shown in the boundary of purchased plot Nos.823, 885



and 886 but they have not shown in the khatiyani in the boundary of all the plots purchased by him. The Additional Member appears to have come to the conclusion that the vendee is not in the boundary of at least Plot Nos.884, 883 and 969 but at the same time, found that the pre-emptor are the adjoining raiyat of all the six plots purchased by the vendee, the petitioners. I find that Additional Member, Board of Revenue has committed illegality holding that the vendee is not adjoining raiyat of three plots out of six plots purchased by him and on that ground allowed the pre-emption case in favour of the pre-emptor.

7. A Single Bench of this Court in the case of **Ram Pravesh Singh v. The Additional Member, Board of Revenue and others reported in 1995(1) PLJR 764** held in para 3 and 4 which are as follows:

**“3. It is well settled that a pre-emptor in order to succeed in his claim must prove that he is either co-sharer of the transferor or the adjoining raiyat of all the plots transferred. Where the transferee himself holds land adjacent to the plots no such claim is maintainable. The point for consideration is whether the transferee holding land adjacent to only one of the several plots and not all can resist the claim? The point is not res integra.**

**4. In Ramachabilla Singh vs. Ramsagar Singh(1969 BLJR 203: 1968 PLJR 279) as many as 148 plots had been transferred. The transferees held land adjacent to a large number of them but not all. The question for consideration as framed in paragraph 8 of the judgment was whether when several plots are transferred by one sale deed the co-sharers in respect of all the plots can claim a**



right of pre-emption under Section 16(3) when the transferee is himself an adjacent raiyat in respect of some of the plots. The learned Chief Justice after quoting the provisions of Section 16 (3)(1) observed:-

“...the clause refers to "land transferred" and "purchase-money". The expression "land" may include several plots; but the clause contemplates only one transaction of transfer. The "purchase-money" also is intended to be one unit, A further subdivision of the land transferred, with a view to make an apportionment between a co-sharer on the one hand and an adjacent raiyat on the other, is not contemplated in that clause, nor does the clause give any indication as to the priority of right between these two persons or the method of apportioning between them. On the other hand, by saying that the application before the Collector should be "for the transfer of the land to him on the terms and conditions contained in the said deed", the Legislature has clearly indicated that, when the right of pre-emption is granted to the applicant, the transferee will be directed to transfer the land to him on the same terms and conditions as were contained in the deed of transfer. It is now well settled that the amount of consideration money in a sale deed is a term of the document...Thus, the Legislature did not authorise the Collector to split up the total consideration money and allow a right of pre-emption to the applicant on payment of a portion of the same, in respect of some portions of the land transferred. The rules also do not contemplate any such division and apportionment.

An exception to the above rule, however, was pointed out in the following words:-

It is true that the mere fact that there is only one sale deed may not be decisive of the question as to whether there was one transaction of sale or two or more distinct transactions of sale, though all of them were embodied in the document. If, for instance, in the sale deed, two separate transactions of sale are mentioned, the consideration money for each of the transactions is also separately indicated, and there are other



**materials to hold that the sale was of a composite nature, there may be some justification for the view that the Collector may, on a fair construction of the document, allow pre-emption in respect of one transaction of sale, where other conditions are satisfied, and reject the right of pre-emption in respect of the other. Such an order will not amount to either splitting up of the land or apportionment of the purchase-money.”**

**After making the above observation the question was answered in the following words:-**

**“If the transferee happens to be the adjacent raiyat in respect of some of the plots, the co-sharer cannot claim any right of pre-emption under this section.”**

8. Having considered the submissions made by both sides,

I find that the learned Additional Member, Board of Revenue has committed illegality in providing preferential right to the pre-emptor without considering the fact that pre-emptor and the vendees-petitioners belonged to the same family and in some of the plots, the petitioners are also co-sharers and adjoining raiyats. The pre-emption cannot be allowed on the basis of preferential right given to one co-sharer over other. Accordingly, I find that the order passed on 31.08.1992 in B.R.C. Case No.557 of 1990(Annexure-1) is illegal and fit to be set aside.

9. In the result, this writ petition is allowed. The order dated 31.08.1992 is set aside.

**(Prabhat Kumar Jha, J)**

Saurabh/-

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