

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.818 of 2011

In

Civil Writ Jurisdiction Case No.7509 of 2004

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Basistha Narain Singh @ Bhagat Lal Singh S/o Late Biyash Singh
R/o Village- Sahdullahpur Satan, P.S.- Ganga Bridge, Hajipur,
District- Vaishali. Appellant/s

Versus

1. The State of Bihar
 2. The Additional Member Board of Revenue, Old Secretariat, Bihar,
Patna
 3. The Collector, Vaishali
 4. The Deputy Collector, Land Reforms, Vaishali At Hajipur
 5. Mosmat Sunita Devi @ Chinta Devi W/o Late Umashanker Prasad
Singh R/o Village- Sahdullahpur Satan, P.S.- Ganga Bridge,
Hajipur, District- Vaishali
 6. Ramesh Kumar Minor S/o Late Umashankar Prasad Singh, Under
The Mother And Natural Guardian Mosmat Sunita Devi @ Chinta
Devi R/o Village- Sahdullahpur Satan, P.S.- Ganga Bridge,
Hajipur, District- Vaishali
 7. Hirday Prasad Singh S/o Late Ramdhiyan Singh R/o Village-
Shadullahpur Satan, P.S.- Ganga Bridge, Hajipur, District –
Vaishali. Respondent/s
- =====

with

Letters Patent Appeal No. 829 of 2011

In

Civil Writ Jurisdiction Case No.7417 of 2004

- =====
1. Mosmat Sundar Devi, W/o Late Basistha Narain Singh @
Bhagat Lal Singh.
 2. Uday Kumar Singh, S/o Late Basistha Narain Singh @ Bhagat
Lal Singh.
 3. Jai Kumar Singh, S/o Late Basistha Narain Singh @ Bhagal Lal
Singh.
 4. Binay Kumar singh, S/o Late Basisth Narain Singh @ Bhagat
Lal Singh.
- All are resident of Village-Shdullahpur Satan, P.S. Ganga Bridge,
Hajipur, District-Vaishali.
5. Smt. Indu Devi, D/o Late Basistha Narain Singh @ Bhagat Lal
Singh and W/o Sri Ajay Rai. Resident of Village-Shaidpur Ganesh,
P.S.-Bidupr, District-Vaishali.
- =====



6. Lalmuni Devi, D/o Late Basistha Narain Singh @ Bhagat Lal Singh and W/o Sri Raju Rai, Resident of Village-Bajitpur Chak Kasturi, P.S.-Deshri, District-Vaishali.

7. Bindu Devi, D/o Late Basistha Narain Singh @ Bhagat Lal Singh and W/o Sri Raj Kumar Rai, Resident of Village-Raudi Pokhar, P.S.-Lalganj, District-Vaishali. Appellant/s

Versus

1. The State of Bihar

2. The Additional Member Board of Revenue, Old Secretariat, Bihar, Patna

3. The Collector, Vaishali

4. The Deputy Collector, Land Reforms, Vaishali At Hajipur

5. Mosmat Sunita Devi @ Chinta Devi W/o Late Umashanker Prasad Singh R/o Village- Sahdullahpur Satan, P.S.- Ganga Bridge, Hajipur, District- Vaishali

6. Ramesh Kumar Minor S/o Late Umashankar Prasad Singh, Under The Mother And Natural Guardian Mosmat Sunita Devi @ Chinta Devi R/o Village- Sahdullahpur Satan, P.S.- Ganga Bridge, Hajipur, District- Vaishali

7. Mukesh Kumar, Son of Godhan Prasad Singh, Resident of village Sahdullahpur Satan, P.S.-Ganga Bridge, Hajipur, District-Vaishali Respondent/s

Appearance :

(In Letters Patent Appeal No. 818 of 2011)

For the Appellant/s :Mr. Chandra Mauli Chaurasia, Advocate

For the Private Respondent/s: Mr. Naresh Chandra Verma, Adv.

: Mr. N. Verma, Advocate

: Mr. Lakshmi Kant Tiwary, Advocate

For the State : Mr. Mithilesh Kumar Upadhyaya, AC to GP-3

(In Letters Patent Appeal No. 829 of 2011)

For the Appellant/s :Mr. Chandra Mauli Chaurasia, Advocate

For the Private Respondent/s: Mr. Naresh Chandra Verma, Adv.

: Mr. N. Verma, Advocate

: Mr. Lakshmi Kant Tiwary, Advocate

For the State : Mr. Mithilesh Kumar Upadyaya, AC to GP-3

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE MADHURESH

PRASAD

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)



Date : 07-09-2018

I.A. Nos. 3636 of 2011 & 3675 of 2011

Heard parties.

These interlocutory applications have been filed for condoning the delay of about 162 days in preferring the present appeals.

For the reasons mentioned in these interlocutory applications, we are satisfied that the appellants were prevented from sufficient cause from preferring these appeals within time.

As a result, these interlocutory applications are allowed and the delay in filing these appeals is hereby condoned.

LPA Nos. 818 of 2011 & 829 of 2011

Heard parties

Admit.

No notice is required to be issued to the State respondents as Mr. Mithilesh Kumar Upadhyaya, learned counsel appears and accepts the notice on their behalf, whereas, Mr. Naresh Chandra Verma, learned counsel appears and accepts notice on behalf of the private respondents.

These appeals are being heard for its final disposal today itself on the consent given by the parties.

Two sale deeds were executed and registered on 18.07.2000 by respondent nos. 5 and 6 in favour of respondent no.



7 with respect to 22 decimals each of the Plot No. 24 appertaining to Khata No. 27 of Village-Sahdullahpur Satan, P.S. Ganga Bridge, Hajipur, District-Vaishali. The writ petitioners-appellants filed a petition under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1861 (hereinafter referred to as “the Act”) claiming a right of pre-emption upon the said transfer being co-sharers and the adjoining raiyat before the Deputy Collector Land Reforms. However, the same was dismissed vide order dated 20.12.2000 as contained in Annexure-7 & 7/A in the connected writ petitions.

The order was subjected to challenge by preferring appeal before the Collector which was also dismissed vide order dated 14.12.2002 as contained in Annexure- 8 & 8/A in the connected writ petitions.

Both the orders were challenged in Revisions before the Additional Member Board of Revenue. The Additional Member, Board of Revenue, after considering the cases of the respective parties, dismissed the revision petitions also vide order dated 24.01.2004 as contained in Annexure- 9 & 9/A in the connected writ petitions.

All the orders were challenged in CWJC No. 7509 of 2004 and CWJC No. 7417 of 2004. Both the writ petitions were

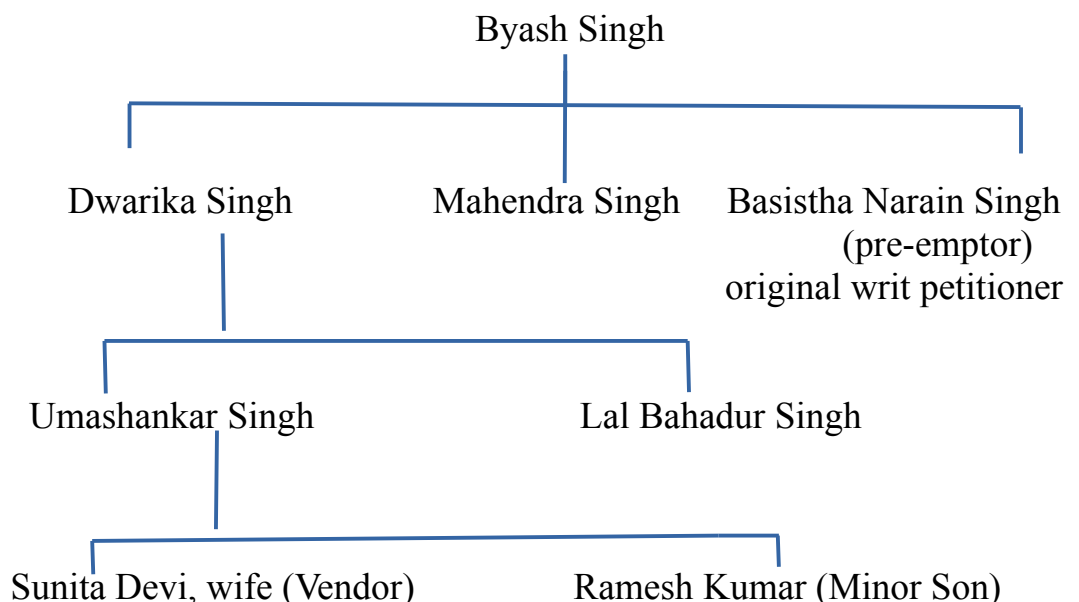


dismissed by a common judgment dated 22.11.2010 pronounced by the learned Single Judge which is under challenge before us.

It is urged on behalf of the writ petitioners-appellants that by showing incorrect boundary in the western side, the sale deeds have been executed by the vendor, Sunita Devi with the sole purpose to circumvent the right of pre-emption which would have accrued upon the writ petitioners.

For better appreciation, certain facts are required to be considered which stand enumerated as follows:-

The total area of the Plot No. 24 is admittedly 5.80 decimals which was entered in the name of one Basistha Narain Singh in the revenue record of rights. The genealogical table shown as under would also be required to be considered:-



It is apparent from the aforesaid genealogical table that Byash Singh was having three sons namely Dwarika Singh,



Mahendra Singh and Basistha Narain Singh (since deceased and heirs having been substituted during the pendency of the appeal). The claim of pre-emptor is that there was a partition in the family and under that partition Dwarika Singh was given one third of Plot No. 24 from the eastern side and Mahendra Singh was given one-third from the western side whereas Basistha Narain Singh, i.e., the original writ-petitioner/pre-emptor was given one-third in the middle. Dwarika Singh died living behind two sons namely Umashankar Singh and Lal Bahadur Singh. Uma Shankar Singh died living behind his widow Sunita Devi (vendor) and Ramesh Kumar (minor son). Both the sale deeds had been executed by Sunita Devi claiming further partition between the two sons of Dwarika Singh in which Uma Shankar Singh was given half of his share from the northern side whereas Lal Bahadur Singh was given another half from the southern side.

It is the claim of the pre-emptor that, in the sale deeds, in the western boundary of Mahendra Singh has wrongly been shown as the name of Basistha Narain Singh should have been shown.

In support of his submission, it is stated that the appellant filed series of documents which was executed in the year 1992 by Dwarika Singh with respect to the same land showing in



western boundary the pre-emptor Basistha Narain Singh whereas in the present sale deed either by mistake or deliberately it is shown as Mahendra Singh. It is urged that boundary description contained in documents of the year 1992 should be taken as correct boundary and right of pre-emptor should be confirmed and a direction should be made to transfer the land in favour of the writ-petitioners on payment of the consideration amount which was paid by the vendee to the vendor.

Per contra, learned counsel appearing for the private respondents/purchasers has submitted that the right of pre-emption flows from the sale deed which was executed and registered. That right cannot flow from any earlier document wherein different boundary was shown and in which the vendor was neither a party nor had she been mentioned anywhere. It is submitted that the right of pre-emption can arise only if the pre-emptor is either co-sharer or adjoining Raiyat at the time of execution of the sale deed. The sale deed in question dated 18.07.2000 however describes a different boundary at the time of its execution. If the pre-emptor/petitioner is disputing the boundary itself then the sale deed itself would become defective as actual transfer under it would only be the area of the plot which is bound by the boundary shown in the sale deed.



Learned Single Judge while considering the writ petitions has come to the opinion that in view of the provisions contained under Section 16(3) of the Act the precedence has to be given to the sale deed under pre-emption and recitals therein. If the recitals are alleged to be wrong then the concerned person has a right to challenge the sale deed or get it modified by filing the suit before a Civil Court of competent jurisdiction.

We agree with the same.

We also like to appreciate the matter with a different angle. If the sale deed is defective and if the pre-emptor claims that sale deed is defective then in pith and substance it is being claimed that there is no actual transfer because land bound by incorrect boundary has been shown in the sale deed. Now, if the sale deed is defective then no right would be available to the pre-emptor also.

By way of last resort, it is urged before us that even the vendor has filed a petition before the authority, who was considering the issue of pre-emption, stating that by the mistake of the deed writer wrong boundary has been shown in the deed.

However, in our view, correct view has been taken by the authority stating that the same appears to be an afterthought and that may be under pressure also because neither the purchaser



nor the vendor had filed any case for rectification or cancellation of the sale deed. That being the situation, the aforesaid submission is also found not tenable.

Since, we do not find any reason warranting interference in the judgment of the learned Single Judge based on concurrent findings by all the authorities including the original, appellate, revisional, this appeal, being devoid of any merit, is dismissed. However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

(Madhuresh Prasad, J)

Vikash/-

AFR/NAFR	AFR
CAV DATE	NA
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Transmission Date	NA

