

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.347 of 2018

In

Civil Writ Jurisdiction Case No.2942 of 1991

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1. Rameshwar Rai @ Rameshwar Ray, son of Late Ramdeni Rai @ Ramdeni Ray, resident of Village- Boaria (Boariya), P.S.- Motipur, District- Muzaffarpur.
 2. Laljhari Devi, wife of Binda Patel, resident of Village- Dhanauti, P.S.- Thikaha (Kathaiya), District- Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Additional Member, Board of Revenue, Bihar, Patna.
3. The Additional Collector, Muzaffarpur.
4. The D.C.L.R., Muzaffarpur.
5. Hardeo Sah, son of Late Ram Lakhan Sah (Pre-emptor),
6. Hari Nandan Sah, son of Late Ram Lakhan Sah (Vendor), 5 and 6 are resident of Village- Damodarpur, Sahjanan Dumari, P.S.- Sadar Muffasil, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar Rai, Advocate

For the Respondent/s : Mr. Md. Khurshid Alam- AAG-12

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)



Date : 19-09-2019

Heard the counsel for the parties.

2. The appellants herein are the heirs of the original vendee/Tapia Devi.

3. The matter is of pre-emption.

4. Two of the brothers, who are respondent Nos. 5 and 6 in this petition inherited a property which was partitioned amongst them and one of the brothers got 10 decimals of land, whereas the other came in possession of 9 decimals. One of the brothers sold the entire property to the vendee/Tapia Devi, leading the other brother to file an application under Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling, Area and Acquisition of Surplus Land) Act, 1961 before the authorities concerned.

5. The vendee/Tapia Devi contested the aforesaid petition on the sole ground that the entire land of the brothers was not sold and there was some portion of the land which fell in between the lands in



possession of the two brothers and, therefore, the principle of pre-emption would not apply.

6. The Courts below have consistently found that the entire property of one brother was sold to Tapia Devi, the original vendee, who is now being represented by the appellants and the claim of pre-emption was allowed.

7. The appellants challenged the aforesaid orders of the Courts below before this Court *vide* C.W.J.C. No. 2942 of 1991.

8. The aforesaid writ petition was disposed off on 01.02.2018 holding that any appraisal of fact at this stage with concurrent findings of facts by the Courts below would not be appropriate in a writ proceeding.

9. Similar grounds weigh with us in rejecting the present appeal. If, at all, the appellants claim any right, they can approach the Civil Court in an appropriate proceeding.



10. The appeal has no merits and it is dismissed.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

Shageer/Praveen

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