

आदेश की क्रम सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर 1 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3										
16/01.2017	<p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No.:- 174, 175, 176/1996 Dist.:- Rohtas</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table><tr><td>Kedar Mishra</td><td>Versus</td><td>- Petitioner/ Appellant</td></tr><tr><td>Smt. Janak Dulari Devi</td><td></td><td>- Opposite party</td></tr></table> <p>=====</p> <p><u>Appearance:</u></p> <table><tr><td>For the Appellant/Revisionist</td><td>:Shri Rajiv Ranjan Kumar Pandey</td></tr><tr><td>For the OP</td><td>:Shri Anil Kumar</td></tr></table> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Pre-emption Revision case filed 05.07.2016 as a result of the matter having been remanded by the Hon'ble Supreme Court vide its order dated 12.04.2016.</p> <p>There are three analogous cases namely Revision Case No. 174/1996, 175/1996 and 176/1996. The hearing on the matter concluded on 12.01.2017 and the Learned Advocate of the Petitioner as well as Learned Advocate of the OP were heard in great detail. Having concluded the hearing, the matter was placed for order today. Opportunity was given to OP to file any reply to the supplementary filed by the Petitioner in the case but he has</p>	Kedar Mishra	Versus	- Petitioner/ Appellant	Smt. Janak Dulari Devi		- Opposite party	For the Appellant/Revisionist	:Shri Rajiv Ranjan Kumar Pandey	For the OP	:Shri Anil Kumar	
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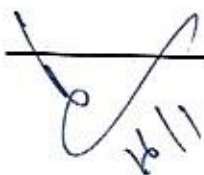
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/	<p>chosen not to file any reply till today. Hence, the order is being passed now.</p> <p>As a background to the matter, it may be mentioned that three pieces of land in two plots namely Plot No, 105 having an area of 40 decimals, Plot No. 128 having an area 47 decimals and same Plot No. 128 having an area 47 decimals were sold by the vendor to the vendee (who is the OP in the case) in the year 1988.</p> <p>The Pre-emptor, who is Petitioner Revisionist, filed a Pre-emption Application before the Court of the Learned DCLR who allowed the Pre-emption. Aggrieved at this order, the OP (the vendee) went in appeal before the Court of the Learned Additional Collector who allowed the appeal. Thus aggrieved, the Pre-emptor filed a Revision Application before the Board of Revenue. The Board of Revenue vide order dated 19.03.1997 allowed the Pre-emption application. Thus aggrieved, the OP went to the Hon'ble High Court in CWJC No. 8217/1997 wherein the Hon'ble High Court vide its order dated 24.09.1998 remanded the matter back to the Board of Revenue for considering the issue afresh.</p> <p>In the second Revision application, the Board of Revenue, after hearing the both the parties passed an order on 31.08.1999 and dismissed the Pre-emption application. Aggrieved at this order, the Pre-emptor again went to Hon'ble High Court the second time where he did not get relief and his Petition was rejected vide order of the Hon'ble</p>	



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	<p>High Court on dated 15.12.2010. Further aggrieved, the Pre-emptor approached the Hon'ble Supreme Court who, in Civil Appeal No. 3778-3780/2016, remanded the matter back to the Board of Revenue, vide order dated 12.04.2016.</p> <p>The primary reason why the Board of Revenue rejected the Pre-emptor application second time was that the Pre-emptor did not deposit the money required under the rule in the correct Revenue Head. Instead of depositing the 10 percent amount in Head No. 2029, the Pre-emptor had deposited the money in 0029. This was found to be a non compliance by the then Hon'ble Additional Member Board of Revenue and hence Pre-emption application was rejected as it was found that the Pre-emptor has not followed the correct procedures while challenging the sale deed.</p> <p>The Hon'ble High Court rejected the Pre-emptor's Petition on the same grounds that the correct procedure was not followed. The Hon'ble Supreme Court has, however, held that this procedural deficiency should not be allowed to come in the way of justice and Pre-emptor should be given a right to be heard on the merits of the case. Hence, the Hon'ble Supreme Court remanded the matter back to the Board of Revenue for the Board to hear the matter and dispose of the same on merits.</p> <p>Accordingly, notices were issued to both the parties and hearing was conducted.</p> <p>As per the Learned Advocate of the Pre-emptor who is the Revisionist, the sale deeds were executed in the</p>	

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	<p>favour of the vendee on 06.02.1988. The vendor is the Pre-emptor's full brother. In the northern boundary of all the three plots, the sale deeds mentioned the name of the Pre-emptor. Hence, he is both the adjacent raiyat as well as the Co-sharer.</p> <p>The Learned Advocate of the Pre-emptor further mentioned that the disputed land is recorded in the name of his father Sri Ram Kailash Mishra who had three sons namely Sri Ram Aadhar Mishra (vendor), Sri Kedar Mishra (Pre-emptor) and Sri Ayodhya Mishra (now deceased). There has been no partition in the family and hence the property is jointly held.</p> <p>In the three sale deeds, there are two plots involved namely 105 and 128. The total area of Plot No. 128 is 2.82 acres of which 94 decimals were sold by the vendor as per his 1/3rd share. Similarly, the total area of plot 105 is 1.2 acres and vendor sold 40 decimals as per his 1/3rd share. Therefore, it is an admitted fact that the vendor sold the land from the disputed plots as per his share in the jointly held property. However, the argument of the Petitioner Pre-emptor is that he is the Co-sharer as well as the adjoining raiyat. And hence the disputed land must belong to him.</p> <p>One of the main contention, as per the Learned Advocate of the Pre-emptor is that he lost the case before the Learned Additional Collector because he held that the vendee is also an adjacent raiyat like the Pre-emptor. This is not correct. The vendee still owns the property in joint</p>	



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/	<p>ownership and the partition has not taken place in the vendee side. Of the three plots in dispute, while the Pre-emptor is in northern side, on the eastern and western side, the vendees do not appear to be the adjacent raiyat. The plot involved in Case No. 174/1996, in the adjacent side lies a Rasta and after that Sri Dilip Singh on the western side and Sita Devi and Dhanwanti Devi on the eastern side whereas the vendee are Sita Devi and Dhanwanti Devi. With regard to plot involved in Case No. 175/1996, on the western side lies Ramadhar Singh and on the eastern side, lies Veer Bahadur Singh whereas the vendee is Rang Bahadur Singh who is son of Ganga Singh who in turn is the brother of Ramadhar Singh.</p> <p>With regard to plot involved in Case No. 176/1996, in the western boundary lies Ramadhar Singh whereas the vendee is Veer Bahadur Singh who is the nephew of Ramadhar Singh.</p> <p>What the Learned Advocate is trying to mention here is that in all the three plots, the vendee himself or herself is not an adjacent raiyat. Rather his/her relatives are adjacent raiyats. For example, in plot involving Case No. 174/1996, Smt. Sita Devi and Dhanwanti Devi are the vendees whereas the Dilip Singh, the husband of Smt. Dhanwanti Devi is an adjacent raiyat.</p> <p>The Learned Advocate further makes the point that the vendee side has already been partitioned much before the Revisional Survey and hence if a relative of the vendee is the adjacent raiyat, then vendee cannot be called</p>	



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/	<p>an adjacent raiyat because a formal partition has occurred in his family. The Learned Advocate further submits certain documents in support of the claim. He submits all the Chaukidari receipts wherein the vendee brothers namely Ramadhar Singh, Ganga Singh, Ramcharitra Singh and Dilip Singh appear to be paying separate rent receipts on the same date meaning thereby that the brothers are living separately.</p> <p>He further submits certain sale deeds of plots sold by the vendee brothers in 1988 where one brother has sold one plot to a person and another brother has stood witness. He further draws the attention of this Court to the khatians where he mentioned that even khatian also notes all these four brothers separately. Khata No. 8, Khata No. 12, Khata No. 10 and Khata No. 7 belong to Ganga Singh, Dilip Singh, Ramadhar Singh and Ramcharitra Singh respectively.</p> <p>Therefore, the main point that the Learned Advocate wants to drive home is that the vendee side has seen a total partition and there is no joint ownership. Since, there is no joint ownership, then, in the disputed plots, it will not be sufficient to mention that vendee's relatives are adjacent raiyats. As per him, the vendee himself or herself should be an adjacent raiyat. If the husband or brother or nephew is an adjacent raiyat then that should not suffice the condition of adjacent raiyat because the vendee is a different legal entity after partition. In plot relating to dispute of No. 174/1996 vendee's husband is an adjacent raiyat and not the vendee herself.</p>	



आदेश की क्रम सं० और तारीख	<p style="text-align: center;">7 आदेश और पदाधिकारी का हस्ताक्षर</p> <p style="text-align: center;">2</p>	<p style="text-align: center;">आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित</p> <p style="text-align: center;">3</p>
/	<p>After having heard the Pre-emptor, the Learned Advocate of the OP, who is the vendee, was heard in detail. As per the Learned Advocate of the vendee, he is the adjacent raiyat. He further argues that the vendee side has never been partitioned whereas the Pre-emptor side (the vendor side as well) has been partitioned. He draws his attention of this Court to the plot involved in dispute 174/1996 where he says that at one side, husband's wife is an adjacent raiyat and on the other side, the husband himself in an adjacent raiyat.</p> <p>He further mentions that the vendor has executed a total of 9 sale deeds whereas only 3 have been challenged by the Pre-emptor. In many sale deeds the name of vendor's father appears which shows that the vendor side has been partitioned and therefore Pre-emptor cannot claim to be a Co-sharer. He further mentioned that they both are adjacent raiyats and hence if the vendee is either a Co-sharer or an adjacent raiyat, the right to sell the land to the adjacent raiyat is validly exercised by the vendor.</p> <p>Thus having concluded the hearing and having gone through the materials available on record, my own findings on the matter are as under:-</p> <p>(a) Both the sides are claiming that they have not under gone a formal partition whereas the other party has under gone partition. While the Pre-emptor has been able to submit documents to prove that the OP</p>	



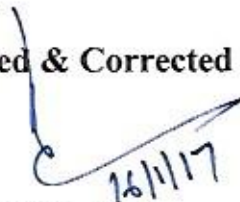

आदेश की क्रम सं० और तारीख	<p style="text-align: center;">8 आदेश और पदाधिकारी का हस्ताक्षर</p> <p style="text-align: center;">2</p>	<p style="text-align: center;">आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित</p> <p style="text-align: center;">3</p>
<p>/</p>	<p>(vendee) has been formally partitioned, the OP has not given any convincing documents to show that the Pre-emptor (the vendor side) has undergone partition. That be the case, from the existing boundary of the three lands under dispute, it appears that in land involving Case No.174/1996, the vendee along with another lady is an adjacent raiyat. To that extent, the case of the Pre-emptor appears to be weak.</p> <p>(b) With regard to the land involved in Dispute No. 175/1996, the vendee is Sri Rang Bahadur Singh who is not the adjacent raiyat. The adjacent raiyats are his brother and his uncle.</p> <p>(c) With regard to land involved in Dispute No. 176/1996, the vendee is Veer Bahadur Singh who is not the adjacent raiyat. The adjacent raiyats are his uncle and another unrelated person.</p> <p>(d) The above reading of boundaries would hold true if we assumed that the vendee side has been legally partitioned. The document submitted by the Pre-emptor only suggest that the four vendee brothers are paying separate rent receipts and the khatian indicates separate khata an each brother's</p>	

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<div>/</div> <div>10/11</div>	<p>name. This would not suffice to indicate that the vendee side has been legally partitioned. A partition is only legally acceptable if it is duly endorsed by the competent Civil Court and a partition deed is effectively drawn and placed on record. In the instant dispute, none of the parties have filed any partition deed to support their claim that it is the other party which has undergone partition.</p> <p>(e) To my mind, it appears that none of the parties can claim to have been partitioned and both the parties, as of now, are having joint ownership over their respective properties.</p> <p>(f) Moreover, this court is not the competent authority to decide which party has been partitioned or not. It lies in the domain in the Civil Court and not the Revenue Court.</p> <p>(g) Additionally, I note that one sale deed has the wives of two brothers namely Ram Charitra Singh and Dilip Singh as a common vendee with regard to land involved in Dispute No. 174/1996. This also hints that the OP (vendee side) too has not been partitioned. Had the partition been legally done between all the four brothers, then the</p>	

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	<p>wives of two brothers would not have purchased the property jointly.</p> <p>(h) I also note that the vendor has executed nine sale deeds with the vendees and only three have been challenged by Pre-emptor. This also indicates that both, the vendor and the vendee, are selling and purchasing property jointly as a part of a larger property deal. Therefore, the two families, on the whole, are adjacent to each other.</p> <p>Conclusion:-</p> <p>From the above findings, it is clear that the vendor choose to sell his share not to his brother but to another adjacent raiyat. Both the parties to the dispute are adjacent raiyats. Only difference is that the Pre-emptor is also a Co-sharer apart from being an adjacent raiyat. A question comes to mind that whether the Pre-emption may be ruled in favour of an adjacent raiyat who is also a Co-sharer or it should be ruled in favour of a person who is just an adjacent raiyat.</p> <p>The right to sell the property lies with the vendor. As per the traditional understanding of the Pre-emption law as defined under Section 16 (3) Bihar Land Ceiling Act, 1961, if the vendee is either a Co-sharer or an adjacent raiyat, then the Pre-emption fails. The said law does not give any special preference to a Co-sharer over an</p>	



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	<p>adjacent raiyat. The law has kept the Co-sharer at par with the adjacent raiyat.</p> <p>The spirit of the law is to avoid the fragmentation of agriculture holding and to give the raiyat a facility to see that all his plots are adjoining each other or nearby so that he can supervise his properties effectively. So if a brother or uncle wants to keep their properties close to each other or husband and wife want to buy property close to each other, then the State, under the garb of Pre-emption, need not interfere.</p> <p>In that view of the matter, I find that the Learned DCLR has erred in allowing the Pre-emption and ignoring the fact that both the parties are adjacent raiyats. The Learned Additional Collector, therefore, was right in holding that the OP (the vendee) too is an adjacent raiyat and hence refused Pre-emption. That be the case, I find no reason to interfere with the order of the Learned Additional Collector dated 16.04.1996.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div data-bbox="391 1624 790 1960"> <p>Dictated & Corrected</p>  <p>16/1/17</p> <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div data-bbox="845 1545 1244 1881">  <p>16/1/17</p> <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	