


आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3										
07.02.2017	<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. – 280-281-282/2005 Dist. - Bhojpur</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table><tr><td>Shri Govind Singh</td><td style="text-align: center;">Versus</td><td>- Petitioner/ Appellant</td></tr><tr><td>Alakh Nandan Singh & Others</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 Ravindra Kumar</td></tr><tr><td>For the OP</td><td>: Shri Rakesh Kumar Ojha</td></tr></table> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Pre-emption matter in which a Revision application was filed on 30.11.2005 against an order passed by the Learned Additional Collector, Bhojpur on 25.10.2005. The case was dismissed for default on 10.01.2006 for non appearance of the Petitioner who is also the Pre-emptor. Subsequently, a Restoration Petition was filed and the case was restored on 09.08.2006.</p> <p>There are three analogous cases in the identical matter namely 280/2005, 281/2005 and 282/2005. These have been amalgamated and a common order is being passed.</p> <p>Again, the case was dismissed for default on 23.10.2007 for the second time. Once again, a Restoration Petition was filed and the case was restored on 28.08.2008</p>	Shri Govind Singh	Versus	- Petitioner/ Appellant	Alakh Nandan Singh & Others		- Opposite party	For the Appellant/Revisionist	: Shri Ravindra Kumar	For the OP	: Shri Rakesh Kumar Ojha	
Shri Govind Singh	Versus	- Petitioner/ Appellant										
Alakh Nandan Singh & Others		- Opposite party										
For the Appellant/Revisionist	: Shri Ravindra Kumar											
For the OP	: Shri Rakesh Kumar Ojha											


आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>and the case was taken up for hearing. The case remained part heard on many dates. Initially the OPs have filed the appearances. However, on subsequent dates, the OP was continuously absent.</p> <p>The case again came up for hearing on 10.01.2017 where the Learned Advocate of the Petitioner appeared and mentioned that since the Petitioner has died therefore his son has to be substituted. The substitution was allowed and case was posted for 27.01.2017 for final hearing. In the mean time, on two dates, two notices were sent to the OPs again but they did not appear.</p> <p>The matter cannot await adjudication any longer as this is pending for the last 12 years. Therefore, hearing was conducted on 27.01.2017 and thus concluding the hearing, this order is being passed today.</p> <p>I heard the Learned Advocate of the Petitioner who is the Pre-emptor. As per the Learned Advocate, the area of the land is .31 acres which the vendor sold to the vendee. He has lost the case in both the lower courts of the Learned DCLR and the Learned Additional Collector. As per him, the Learned DCLR vide his order dated 05.01.2001 has held that the Pre-emptor is not an adjacent raiyat, which is wrong. The Pre-emptor is claiming to be both an adjacent raiyat as well as the Co-sharer of the vendor.</p> <p>Aggrieved at the order of the Learned DCLR, the Pre-emptor went to the appeal before the Learned Additional Collector who also rejected the appeal on the</p>	

7/2

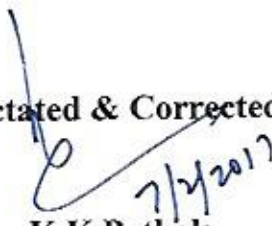

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>ground that there was an oral partition from the vendor side. This fact is also wrong as there is no partition presently. The Partition Suit is still pending and therefore he is still the Co-sharer.</p> <p>Concluding his arguments, the Learned Advocate of the Pre-emptor- Revisionist claims that the vendee is neither a Co-sharer nor an adjacent raiyat and land is being used for agricultural purpose.</p> <p>OPs could not be heard as they have been absenting themselves since last many dates. Though initially, they have filed appearance which shows that they are aware of the proceeding. However, this Court had the benefit of being aware of their stand filed in the lower courts through the show causes in the Court of the Learned DCLR and the Learned Additional Collector.</p> <p>Having heard the Learned Advocate of the Petitioner and having perused the material available on record as well as the Lower Court Records, my own findings on the matter are as under:-</p> <p>(a) The vendor Sri Sukhnandan Singh is the direct brother of the Pre-emptor. However, the claim is the Pre-emptor is that the vendee Sri Alakhnanadan Singh and Tarkeshwar Singh are complete strangers. This is not correct. As per the genealogy which can be seen from the documents of the original court of DCLR, the vendees are also related to the vendor. Thus, it can be concluded</p>	



आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>that the vendor, vendee and the Pre-emptor are all members of a large family and have common ancestor namely Sri Marzad Singh.</p> <p>(b) Moreover, the vendor is a direct brother of the Pre-emptor but who chose not to sell the land to his direct brother but to a more distant cousin.</p> <p>(c) Now the question that remains to be argued is whether this entire family saw a formal partition or not. As per the OPs, the oral portion has already taken place whereas the claim of the Pre-emptor is that the Partition Suit is still pending and they are the Co-sharers.</p> <p>(d) It is not clear during the arguments, as the Learned Advocate of the Petitioner could not throw light on whether the Partition Suit has been decreed or not and if yes, in whose favour.</p> <p>(e) Fact of the matter is, whether the Partition has happened or not, the vendee is a Co-sharer as long as there is no formal partition of the properties belonging to the extended family.</p> <p>(f) This Court would not like to place any value on an oral partition as claimed by the OP. Unless the partition is legally formalised and duly stamped by a Civil Court, this court would not be a position to adjudicate whether the partition happened or not. And therefore, it would not be possible to decide</p>	

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 5 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>whether the Pre-emptor is an adjacent raiyat or not or the vendee is the adjacent raiyat or not. Therefore, the issue of adjacency would only depend on the outcome of Partition Suit and the subsequent decree.</p> <p>(g) However, what need not wait any further is the fact that both the Pre-emptor and the vendee are the Co-sharers so long as the property is not formally partitioned. Moreover, they are related to the vendor and are all part of a large family. This therefore, essentially is a family dispute, which in the long run, would be settled only with the formal partition taking place.</p> <p>Conclusion:-</p> <p>Thus from the foregoing findings, it is clear that, whichever argument this court believes regarding whether or not a partition has taken place, the dispute between all the three parties is essentially of partition, which suit, as told by the Pre-emptor himself, is pending in the Civil Court.</p> <p>Having said that, it is clear that all the three parties namely the vendor, vendee and the Pre-emptor are part of a large family with a common ancestor. This also means that the vendee himself is a Co-sharer, if not an adjacent raiyat. As per the settled law of Pre-emption, if the vendee is either a Co-sharer or an adjacent raiyat, then the Pre-emption fails.</p>	

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>The vendor in this case has chosen not to sell the land to his brother but to his rather distant cousin. Therefore, the Pre-emptor in the instant matter has really a weak case. This Court, even if discounting the findings of the learned lower court that the partition had happened, would still hold that the Pre-emption case would be weak as the plot under dispute is being sold within the larger extended family.</p> <p>Therefore, even taking the argument of the Petitioner Pre-emptor that a Partition has not yet taken place, his case of Pre-emption still remains very weak and difficult to support.</p> <p>In that view of the matter it will be difficult for this Court to interfere in the findings of both the learned lower courts as this is a land transaction between the members of a large extended family. In such matters, invoking pre-emption law is inadvisable.</p> <p>The Pre-emption law as defined under Section 16 (3) of BLC Act, 1961 is basically to protect fragmentation of agricultural holdings and to ensure that a raiyat has all his plots at one place in order to have better management and supervision.</p> <p>This law is not to be taken recourse to settle family disputes. Nor can this law be invoked where a land transaction has taken place between members having common ancestors. In such cases, this law can only be invoked when a formal partition has happened as this will</p>	

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>become more clear as to who is an adjacent raiyat. In an unpartitioned property, which is jointly held, it is difficult to decide who is an adjacent raiyat.</p> <p>The State or the Revenue Authorities must not needlessly interfere on such land transactions which are within the family. Whether or not the vendee of the Pre-emptor are adjacent raiyats, will be depending on the outcome of the Title Suit. Suffice it to say, that presently all the three parties are Co-sharers to a common ancestor's properties till a formal partition is affected.</p> <p>That be the case, Pre-emption, as of now, would be too premature and very weak to sustain. Hence, this Court finds no reason to interfere in the order passed by the Learned Additional Collector.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  Dictated & Corrected K.K.Pathak Additional Member Board of Revenue, Bihar. </div> <div style="text-align: center;">  (K.K.Pathak) Additional Member Board of Revenue, Bihar. </div> </div>	