आदेश की क्रम सं0 और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3

BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Pre-emption) Case No. - 293/1993
Dist.-Bhojpur

PRESENT :- K.K. Pathak, I.A.S.,
Additional Member

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Most. Mano Kuer - Petitioner/ Appellant

Versus

Amarnath Rai - Opposite party

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Appearance:

For the Appellant/Revisionist : Shri Rakesh Ranjan
For the OP : Shri Shyama Kant Singh

ORDER

18.01.2017

This is a Pre-emption case in which Revision was filed before the Board of Revenue on 05.06.1993 against the order passed by Learned Additional Collector, Bhojpur on 06.04.1993. The case was dismissed for default on 26.08.1993. Subsequently, on 04.09.1993 the case was restored.

The then Learned Additional Member, by an order dated 17.02.1995, rejected the Revision application. Aggrieved at this order, the Revisionist, who is the Pre-emptor, went to the Hon'ble High Court who, vide order dated 17.01.2000, set aside the order of the Board of Revenue and remanded the matter back to the Board for fresh consideration.

18/1

आदेश की क्रम सं० और तारीख 1	2 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	13 years after this order was passed by the Hon'ble High Court, the Revisionist filed a fresh Revision application. This delay was never explained in the Revision application filed by the Revisionist on 29.01.2013. Nevertheless, the case was taken up for hearing in light of the observation of the Hon'ble High Court. In the mean time, both the Petitioner and the OP died and were substituted. The substitution was allowed vide order by the then Learned Additional Member, Board of Revenue on 10.09.2015. Finally, the case came up for hearing on 21.12.2016 where the Petitioners sought a short date. The Learned Advocate of the OP was present and filed a Vakalatnama. The matter was adjourned to 09.01.2017. On 09.01.2017, again the Learned Advocate of the Revisionist was present but wanted a short date. The Learned Advocate of the OP was absent. The matter was again adjourned on 13.01.2017 with the observation that final hearing would be done on that date and if any party is absent, then the matter will be heard ex parte. On 13.01.2017 again, both the parties were absent. Since the matter is continuing from the year 1993, this Court felt that the issue need not be adjourned any further and hence an order on merits is being passed today. For the back ground of the matter, a Pre-emption application was filed by the Pre-emptor Smt. Mano	

18/1

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
	Kuer against the sale of land belonging to Khasra No. 316 having an area 65 decimals on 21.08.1980. T he Learned DCLR vide order dated 09.12.1980 allowed the Pre-emption. Aggrieved at this order, the purchaser Sri Amarnath Rai filed an appeal before the Learned Additional Collector. The Learned Additional Collector vide his order dated 06.04.1993 allowed the appeal. Further aggrieved, the Pre-emptor filed this Revision application. The then Hon'ble Additional Member, Board of Revenue had dismissed the Pre-emption Revision vide order dated 06.04.1993. In the said order, the Learned Additional Member had held that the Pre-emptor has failed to establish that he is the owner of the adjacent Plot No. 317. Moreover, the Pre-emptor has not substituted all the heirs of the original Pre-emptor Late Bhuvneshwar Singh. Absence of the other legal heirs from the contest indicated that they have abandoned their respective claim of Pre-emption. Aggrieved at this order, the Pre-emptor approached the Hon'ble High Court. The Hon'ble High Court vide order dated 17.01.2000 held that the claim of the Petitioner should not be rejected just because all the heirs of the original Pre-emptor Sri Bhuvneshwar Singh were not brought on record. Hence, the Learned Member Board of Revenue should decide the matter on merits. The Hon'ble High Court thus quashed the order of the Board of Revenue and remitted the matter back to us.	

18/1

आदेश की क्रम सं0 और तारीख 1	4 आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	I have perused the documents available on file, the Petition, the written notes of argument filed the Petitioner as well as the written statements filed by the OP. Based on above, my own findings on the issue are as under:- (a) The Hon'ble High Court had remanded the matter in the year 2000 itself but the Petitioner had filed a Revision Petition after 13 years and has given no reason for this inordinate delay. In fact, in his Revision application, he has tried to put the blame on the Board of Revenue. Vide Para 5 of the Revision application, the Revisionist mentioned that the order of the Hon'ble High Court was communicated to the Revisional Court but no action was taken for a long time. (b) The question then arises is, what was the Revisionist doing for all these 13 years and why he did not file the Revision Petition within first 3 months or so. Therefore, to my mind, the case should have been dismissed in the year 2013 itself for being hopelessly time barred. However, in the interest of justice, it was decided to hear the Petitioner on merits. (c) I find that the Learned DCLR has found the Pre-emptor to been adjacent raiyat to the disputed plot 316. The adjacent plot is 317 which is allegedly owned by the Pre-emptor. However, the Learned DCLR has not given any basis of this finding. Nor	

18/1

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	has he held that whether the purchaser is an adjacent raiyat or Co-sharer. Therefore, he has not addressed himself with the main issue as to whether the purchaser was rightfully also an adjacent raiyat or a Co-sharer. He has not also mentioned about his reason for arriving at a conclusion that plot 317 indeed belongs to the Pre-emptor. (d) The Learned Additional Collector, in his appeal order, found that the Pre-emptor could not establish how he came to own the Plot No. 317 which is adjacent plot to the disputed plot 316. Hence he allowed the appeal to the disadvantage of the Pre-emptor. (e) Having said that, I find that the entire dispute is regarding the ownership of Plot No. 317 which is the adjacent plot to the disputed plot. While the Pre-emptor says that it belongs to him through a mortgage from one Sri Ranjit Singh and Ramdev Singh and thereafter redeeming the mortgage. The said Ranjit Singh and Ramdev Singh were the owners of CS Plot No. 238 from which Plot No. 317 carved out. (f) Whereas, the Revisionist claimed that plot 317 never belonged to the Pre-emptor. It was in the adverse possession of Sri Jadunath Upadhaya and same was also duly entered in the khatian. The Pre-	

18/1

आदेश की क्रम सं0 और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3

emptor has not presented any evidence to suggest that the entry in the khatian have been reversed. That be the case, it is difficult for me to disprove the entry in the Revenue records. Therefore, the ownership itself of Plot No. 317 which is the adjoining plot of the disputed plot is under dispute. The correct owner of 317 shall have the right of the adjacency.

Conclusion:-

From the foregoing findings, it is clear that the dispute is essentially who owns the adjacent Plot No. 317. To my mind, this issue is essentially of deciding the title for which this Revenue Court is not competent. Whether Plot No. 317 belongs to Pre-emptor or to Jadunath Upadhya is best decided in a title suit for which Civil Courts are the competent fora.

Revenue Courts do not decide the title and this lies in the realm of this Civil Courts. That be so, it is evident that the ownership of adjacent plot 317 is itself under dispute. Accordingly, the owner of Plot No. 317 shall be the adjacent raiyat of the disputed Plot No. 316. In the present circumstances, the Pre-emptor has not been able to satisfy this court about his ownership on plot 317. As per the khatian, his name does not appear as the owner of plot 317.

That be the case, I find it difficult to allow the pre-emption application in favour of the Pre-emptor who is also the Revisionist. As such, I find no reason to interfere

आदेश की क्रम सं0 और तारीख़ 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख़ सहित 3
	with the order passed by the Learned Additional Collector dated 06.04.1993. Revision Dismissed. **Dictated & Corrected** 18/1/17 **K.K.Pathak** **Additional Member** **Board of Revenue, Bihar.** 18/1/17 **(K.K.Pathak)** **Additional Member** **Board of Revenue, Bihar.**	