

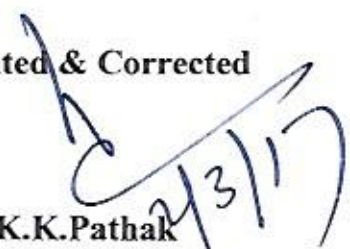

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 1 2	आदेश पर की गई कार्रवाई के बारे में लिखनी तारीख सहित 3										
02.03.2017	<p style="text-align: center;"><u>BOARD OF REVENUE, BIHAR, PATNA.</u></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No . – 60/2002 Dist. – Supaul</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <table><tr><td>Binda Devi</td><td style="text-align: center;">Versus</td><td style="text-align: right;">- Petitioner/ Appellant</td></tr><tr><td>Ganga Ram Mandal & Others</td><td></td><td style="text-align: right;">- Opposite party</td></tr></table> <p>=====</p> <p><u>Appearance:</u></p> <table><tr><td>For the Appellant/Revisionist</td><td>:Shri Kamal Kishore Singh</td></tr><tr><td>For the OP</td><td>:Shri Vinay Kumar</td></tr></table> <p style="text-align: center;"><u>ORDER</u></p> <p>This is a Pre-emption matter in which a Revision application has been field on 04.04.2002 against the order passed by the Learned Collector, Supaul on 29.12.2001 in Ceiling Appeal No. 7/1994. The case was admitted for hearing on 30.07.2002 and the proceedings of the Lower Courts were stayed.</p> <p>In the meantime, the case was dismissed for default on 25.10.2005. Subsequently, a Restoration Petition was filed and the case was restored on 20.12.2008.</p> <p>Since then, the case remained part heard on many dates. Again on 24.09.2014, the case was again dismissed for default due to continued absence of the</p>	Binda Devi	Versus	- Petitioner/ Appellant	Ganga Ram Mandal & Others		- Opposite party	For the Appellant/Revisionist	:Shri Kamal Kishore Singh	For the OP	:Shri Vinay Kumar	
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	<p>Petitioner. The case was heard on point of Restoration on 10.02.2017 and was restored. The matter then was placed for final hearing on 23.02.2017.</p> <p>On that date, the Learned Advocate of the Petitioner was present and was heard in great detail. The Learned Advocate of the Pre-emptor, however, was absent. Since the case have been going on 15 years, this Court was of the view that no more adjournments need be given and the matter be adjudicated.</p> <p>Thus concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Petitioner, he is the donee who received the land by deed of gift. The donor purchased the land on 01.11.1991 and he transferred the land to the Petitioner on 23.12.1992 by a gift deed which was registered on 30.12.1992. The area involved in the dispute is 10 katha.</p> <p>As per the Learned Advocate of Petitioner, the Pre-emptor filed an application against this gift deed on 28.12.1992. The Learned DCLR allowed the Pre-emption application by order dated 19.09.1994. He held that the gift deed is fabricated and hence it is not valid.</p> <p>Thus aggrieved, the Petitioner went in appeal before the Learned Collector who too, vide order dated 29.12.2001, dismissed the appeal. Further aggrieved, the</p>	

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	<p>Petitioner filed this Revision application and hence this proceeding.</p> <p>Concluding his arguments, the Learned Advocate mentioned that Section 16(3) is not applicable to gift deeds. He, however, concedes that he is not an adjacent raiyat and is not related to the Pre-emptor. He further mentioned that the land is being used for agricultural purpose but the same is presently in possession of the Pre-emptor OP.</p> <p>Having heard the Learned Advocate of the Revisionist and having pursued the material available on record, my own findings on the matter are as under:-</p> <p>(a) It is an admitted position that the donor and the donee are brothers. Therefore, it can be said that the donor, after purchasing the land, made a gift deed in favour of his brother. The question is that, as admitted by the Petitioner, the brother is a cousin brother and therefore, why would a cousin give away a piece of land for free to another cousin. This, therefore, lends suspicion in the mind of this Court as to the real intention of the gift deed.</p> <p>(b) The Learned DCLR held that this transfer of the land by the purchaser in favour of his cousin brother has been done to defeat the objectives of the Pre-emption law.</p>	

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	<p>(c) Moreover, it is also held by the Learned DCLR that the said gift deed was executed <i>after</i> the Pre-emptor has filed the application of Pre-emption. Thus the instant document was hit by the principle of <i>lis pendens</i>.</p> <p>(d) From the above, it is clear that the apparent gift deed is a sham transaction meant to overcome the ceiling law. It is also difficult to believe that a cousin would transfer a land to another cousin without any consideration.</p> <p>(e) It is also an admitted position that the donee is not an adjacent raiyat as conceded by the donee himself.</p> <p>(f) At the same time, from the perusal of the document, it appears that the Pre-emptor is an adjacent raiyat. He is an adjacent raiyat by virtue of another sale deed executed on 01.11.1991.</p> <p>(g) It is also an admitted position that the land is in the possession of the Pre-emptor.</p> <p>(h) Moreover, it is also an admitted position that the land is being used for agricultural purposes and not for any residential or commercial purposes. This means that Pre-emption law is applicable in the instant case.</p> <p>(i) I also find that area involved is about 10 kathas which comes to approximately 35 decimals, which</p>	

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	<p>though not a very big area, but sufficient to carry on agriculture under the prevailing rural conditions.</p> <p>Conclusion:-</p> <p>From the aforementioned findings, it is clear that the Petitioner concedes that he is not an adjacent raiyat nor a Co-sharer. However, his entire defence is built upon the fact that he is not the purchaser of the land but a donee. Meaning thereby, he got the land from his cousin brother who was the actual purchaser and who transferred this land to the Petitioner as a gift. And in matter involving gift deed, the Pre-emption law is not applicable.</p> <p>This Court has already raised this issue that this transfer of land from one cousin to another cousin is suspicious and perhaps done with an intention to defeat the Pre-emption as defined under Section 16(3) of Bihar Land Ceiling Act, 1961.</p> <p>The Learned Lower Courts have rightly held that this gift deed was a sham transaction, made with the purpose of defeating the Pre-emption law as defined under Section 16(3) of Bihar Land Ceiling Act.</p> <p>In my opinion, the findings of the Learned Lower Courts are correct that this gift deed was made only to circumvent of the Pre-emption law. Moreover, the gift deed was executed on 30.12.1992 whereas the Pre-emption application was filed on 28.12.1992. Thus, the document is</p>	

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	<p>clearly hit by lis pendens and therefore such a gift deed was bad in law.</p> <p>In light of the above, I am afraid that this defence of the Petitioner that he received the land by deed of gift, is not tenable. That being the case, I find no reason to interfere with order passed by the Learned Collector, Supaul on 29.12.2001 and the same is hereby reaffirmed.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; margin-top: 100px;"> <div style="text-align: center;"> <p>Dictated & Corrected</p>  <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;">  <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	