

BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Pre-emption) Case No.- 113/2005
Dist.- Siwan

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

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Jagdish Rai

Versus

- Petitioner/ Appellant

Rampujan Singh & Others-

- Opposite party

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Appearance:

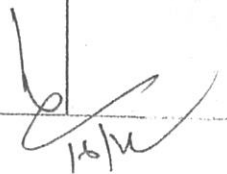
For the Appellant/Revisionist : Sri Raghav Prasad
For the OP : Sri Rakesh Ranjan

ORDER

16.12.2016

This Revision Case has been filed against the order of the Learned Collector, Siwan dated 24.06.2005. The Revision was dismissed for default on 10.01.2006 where upon a Restoration Petition was filed. The Case was restored on 29.07.2009. Since then, the matter was partly heard on various dates.

Finally, the Case was heard on 08.12.2016 where the Learned Advocate of the Revisionist and Pre-emptor was present. The Learned Advocate of the Pre-emptor desired to file a written reply or written notes of argument. He was directed to file the written arguments before 16.12.2016.


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The Case, as per the Learned Advocate of the Revisionist, is that the Revisionist Shri Jagdish Rai, who is the purchaser Petitioner, purchased 4 plots from Khata no. 58 namely, Plot no. 158, 584, 587 and 286 measuring an area of 12 kathas and 13 dhurs. Out of the 4 Plots, the Pre-emptor (Sri Rampujan Singh) is adjoining raiyat of only two plots namely, 584 and 587. So far as Plot No. 158 and 286 are concerned, the Pre-emptor is not even an adjoining raiyat. Whereas, as per the Learned Advocate of the Revisionist, he is a Co-Sharer of all the 4 Plots though he admits that he is not an adjacent raiyat in any of the 4 Plots.

This was an admitted fact by the Learned Advocate of the Revisionist that he is a Co-Sharer but not an adjacent raiyat. This Court posed a question to the Learned Advocate that if he is a Co-Sharer in the land under dispute, then why he did he purchase the land in which he already has a rightful share. The Learned Advocate mentioned that this was done to ensure a peaceful transfer of land and right now he is in the peaceful possession of the land.

I perused the material available on the record as well as the order passed by the Learned SDM who vide order dated 12.10.1999 allowed the Pre-emption Application of Shri Shivpujan Rai. Aggrieved by the Learned SDO, Shri Jagdish Rai approached the Learned Collector who by an order dated 28.4.2005 upheld the order of the Learned SDO and also imposed a cost of Rs 1 Lakh on the Appellant. Further aggrieved, Shri Jagdish Rai has preferred this Revision against the order of the Learned Collector.

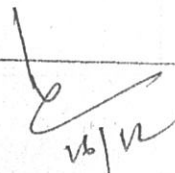
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From the perusal of records, it also appears that the matter had earlier been decided by the SDM, Siwan wherein it had gone all the way up to the Board of Revenue where upon the matter was remanded back to the Learned SDM, Siwan. The Learned SDM, initiated the Proceeding No-14/1981 and passed an order on 12.10.1999.

From the perusal of the order of the Learned SDM, it appears that the Revisionist did not appear before the Learned SDM in spite of numerous notices and hence the Learned SDM passed an ex-parte order. Learned SDM, also held that the Pre-emptor Shri Rampujan Singh is both a Co-Sharer as well as adjacent raiyat. Whereas as per the Revisionist, Shri Shiv Pujan Singh is not a Co-Sharer but only an adjoining raiyat in only two of the 4 Plots.

I also perused the judgement, (filed by the Learned Advocate of the Revisionist) pronounced in CWJC No. 14016/2001, where the Hon'ble High Court had held that the right of Pre-emption being a weak right, it can be rejected for any legitimate reason.

I also perused the earlier order of the Learned Collector in case no. 162/82-83 and 59/83-84, where the Learned Collector vide his order dated 13.02.84 had upheld the case of the Revisionist and also held that Pre-emption should not have been allowed in the first place if the vendee is himself a Co-Sharer or adjacent raiyat. The Learned Collector also held that as per the settled rule, if the vendee is a Co-Sharer or an adjacent raiyat, then the Pre-emption fails.


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I have perused the written notes of argument filed by the Pre-emptor Shri Shivpujan Singh on 15.12.2016. From the Perusal of the written notes of argument, it appears that the pre-emptors (Shri Shivpujan singh) got the land from one Shree Brijnandan Rai who was son (Bhagna of Gyani Singh) who sold his half of the land under these four plots too shree Ram Briksh Singh and Chandrawati Devi. It was a joint family possession of which Ram Briksh singh was Karta. The other half of the four plots was sold by Ramadhar Singh to Shree Jagdish Rai. Having come to know that Rambriksh Singh is going to challenge this sale to shri Jagdish Rai, Shri Jagdish Rai executed a ferzi sale deed in favour of Shri Ambika Rai.

It is a matter of record that Jagdish Rai and Rambriksh Rai have already fought this dispute in 1982 - 1983. In that case, the then Learned Collector held the case in favour of the appellant Shri Jagdish Rai. Where upon the matter was again referred of the Board of Revenue who reminded the case back to the learned SDM to pass the orders afresh.

The learned SDM then passed an order on 12.10.1999 allowing the pre-emption application. As per the Respondent, the Learned SDM has got drafted the sale deed from Government Pleader Siwan and executed a registered sale deed on 9 Dec 2000 in the favour of Respondent Pre-emptor. After the Execution of the sale deed, the pre-emptor was given the delivery of possession on 15th june 2001 and since then they are under peaceful possession of the land.

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After having heard both the parties and the records available including the lower court records, it is clear that the Revisionist may be a co-sharer but he is not an adjacent raiyat in any of the four plots. More over it is certain that the respondent is adjoining raiyat of atleast two plots , if not all the four plots.

The learned advocate of the Revisionist has not been able to convince this court that he is co-sharer and if so why did he purchase the land from the persons related to him related if he already has a share in the land. Which only means that perhaps, even though the parties in dispute may be relatives and co-sharer, either formal or informal partition has already been affected. In that view of matter, the adjacent raiyat rights on pre-emption gain precedence and the same should be respected.

In view of the foregoing, I find the order of the Learned SDO passed on 12.10.1999 perfectly in order and find no reason to interfere with. Accordingly, the order of the Collector dated 24th April 2005 is also upheld, however the order regarding cost of Rs. 1 Lakhs is quashed.

Revision Dismissed.

Dictated & Corrected
K.K.Pathak
Additional Member
Board of Revenue, Bihar.

(K.K.Pathak)
Additional Member
Board of Revenue, Bihar.