

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
19.12.2016	<p style="text-align: center;"><b><u>BOARD OF REVENUE, BIHAR, PATNA.</u></b></p> <p style="text-align: center;">Revision (Land Ceiling Pre-emption) Case No.- 118/2005 Dist.- Siwan</p> <p>PRESENT :- K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <p>Md. Hatim and Others - Petitioner/ Appellant Versus Bibi Rojidin &amp; Others- - Opposite party =====</p> <p><b><u>Appearance:</u></b> For the Appellant/Revisionist : Shri Ved Prakash Srivasatava For the OP : Shri Sanjay Kumar Jha</p> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p>This is a Pre-emption case filed on 06.06.2005 against the order of the Learned Collector Siwan dated 04.05.2005. The case was admitted for hearing on 05.01.2006. Since then, the case could not be disposed of due to delay in receiving the Lower Court Records. Subsequently on 16.11.2010, the case was dismissed for default due to continuous absence of the parties concerned. A Restoration Petition was filed which was rejected by the then Learned Additional Member.</p> <p>This prompted the Revisionist to approach the Hon'ble High Court which on 23.08.2011 quashed the order of the Learned Additional Member and remitted the matter back to the Board of Revenue to be decided on merits. Since then various dates were given and the matter was part heard. On 29.09.2014, the parties were given final dates for hearing. It was clearly</p>	

आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का <sup>2</sup> हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>mentioned that (the OPs who, though initially present were continuously absent since last 8 years or so), if the OPs remain absent, the matter will be heard ex-parte. It was noticed that the Respondent OPs had filed their reply on 05.01.2006</p> <p>I also find that this matter had earlier gone up to the Hon'ble High Court where Bibi Rozadan has also appeared as Respondent No 5. Neither before the Hon'ble High Court, nor before this court Bibi Rozadan had raised one technical issue claiming that her claim for Pre-emption is stronger. In this court also, the Respondent No 5 has appeared before and have filed their counter affidavit also but never bothered to appear again. Even after 29.09.2014, the notice were sent to the OPs but same was returned undelivered. Therefore one can safely conclude that Bibi Rozadan is fully aware of this proceeding.</p> <p>Finally the matter was heard on 15.12.2016 where the OPs were absent. The matter was heard ex-parte and this order is being passed.</p> <p>Heard the Learned Advocate of the Revisionist in great detail. He mentioned that he is the purchaser of the land and his name is Mohammad Hatim. He further says that he purchased the land through three different sale deeds from the vendors who are four in number namely Bibi Maqbolan, Bibi Kabajan, Bibi Noorisa and Bibi Sahijidan. The Revisionist are three brothers, all sons of Mohammad Hadish.</p> <p>The Learned Advocate further mentioned that after the sale deed were affected in his favour, the Pre-emptor (OP No 1), Bibi Rozadan approached the Court of the Learned DCLR claiming that she is a Co-Sharer and adjacent raiyat and hence the transferred land should be made over to her under the pre-emption laws. The Learned DCLR wide his order dated 13.04.1992 allowed the Pre-emption case in favour of Bibi</p>	

19/12



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	<p>Rozadan. Aggrieved at this order, the Revisionist appealed before the court of the Learned Collector who by an order dated 04.05.2005 rejected his appeal and upheld the order of the Learned DCLR. Hence aggrieved, this Revision Petition has been preferred.</p> <p>The Learned Advocate further mentioned that, as his ground of Revision that against the three sale deeds, only one pre-emption application was filed which was allowed by the Learned DCLR which is not correct. The learned DCLR should have rejected the Pre-emption case as not maintainable. Secondly, he mentioned that the Learned DCLR ignored the vital fact that the disputed land was part of a larger property which was held jointly earlier. However, the said property was already partitioned under a Civil Suit in 1972 whereas the Revisionist had purchased the land in 1989. Hence, the pre-emption should not lie when the land has been formally partitioned many years ago.</p> <p>Thirdly, he mentioned that of the five plots involved in the dispute, his fore father Late Elahibaksh was an adjacent raiyat in plots No 678 and 1845. Hence it is, at best, a case of partial pre-emption which should not have been allowed. Lastly, he mentioned that his appeal before the Collector was rejected by a non speaking order and a fine of Rs. 30000 was imposed unjustifiably.</p> <p>I have the perused the material available in the records as well as the order passed by the Learned DCLR and Learned Collector. I have also perused the genealogical table submitted by the Learned Advocate of the Revisionist. I have also gone through the replies of the OP No 1 Bibi Rozadan. The final decree in the Civil Suit passed on 29.08.1980 as well as the partition report of the Advocate Commissioner dated 16.05.1980 was also perused.</p>	

19/12



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	<p>From the perusal of the final decree and the report of the Advocate Commissioner Siwan, it is clear that the disputed plots namely Plot No 2749, 2076, 288, 678 and 1845 do not lie in the share of the pre-emptor Bibi Rozadan. In fact Bibi Rozadan was not allotted any share in the boundaries of the land in question. Furthermore, as a result of this partition, Bibi Rozadan and others were paid certain monetary compensation as is evident from the report of the learned Advocate Commissioner dated 16.05.1980. Thus it is clear that the joint property was effectively partitioned. Once any property is partitioned and the parties concerned have received alternate land or monetary compensation, then they cannot be treated as co-sharers any more. Thus it is evident that Bibi Rozadan (OP No 1 in the Revision application) is not a co-sharer of the four vendors. Though one vendor is her mother and other three are her sisters.</p> <p>It appears from the genealogical table that the four vendors chose not to sell this land to the direct relative but rather chose to sell this land to a distant relative. From the table, it is clear that the dispute is all within one large family. The Vendor, the Vendee and the Pre-emptor are all related to each other.</p> <p>The Learned DCLR however held the Pre-emption application of Bibi Rozadan in the belief that since the vendors are mother and sisters of the pre-emptor, her claim is stronger than the Vendee (Revisionist) who is though a relative, but a distant one. In my view, this would not hold the ground once a formal partition has been affected which has been duly decreed. As a result of the partition, no one, either the pre-emptor or the Revisionist can claim to be Co-Sharers. Thus the Learned DCLR has erred in ignoring the Suit proceedings and went by traditional view that a sister has stronger right on the property of her other sisters. This view defies both, law and logic, once the property</p>	

19/12



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	<p>has been partitioned. Once the property has been partitioned, there can be no Co-Sharers. Thus in this dispute, no one is co-sharer.</p> <p>Now coming to the point of adjacent raiyat, it is also clear that the Revisionist is adjacent raiyat in at least two of the five plots. Bibi Rozadan on the other hand, has not been able to <sup>show</sup> that she is the adjacent raiyat in any of the five plots. Even if we assume that Bibi Rozadan is also an adjacent raiyat just like the Revisionist, it is still evident that Revisionist remain an adjacent raiyat. Once partitioned, the vendor sisters were not under any legal, social or moral obligation to sell the land to their fourth sister Bibi Rozadan, the pre-emptor. They were free to sell their partitioned property to anyone they may please. And if they have sold it to a person who is an adjacent raiyat in some plots, it is valid as per law. It is a settled principle that if the vendee or the purchaser is co-sharer or adjacent raiyat, the pre-emption fails.</p> <p>Therefore, the learned DCLR has erred on all the above counts. Hence I find it fit to quash the order of the Learned DCLR dated 13.04.1992. I accordingly also quash the order of the Learned Collector dated 04.05.2005 as I find that the order is not a speaking order since the Collector has not given his finding or views that led to his passing the said order.</p> <p>Revision Allowed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> <p><b>Dictated &amp; Corrected</b></p> <p><i>19/12/2016</i></p> <p><b>K.K.Pathak</b> Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;"> <p><i>19/12/2016</i></p> <p><b>(K.K.Pathak)</b> Additional Member Board of Revenue, Bihar.</p> </div> </div>	