

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
06.02.2017	<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. – 120/2004 Dist. - Saran</p> <p>PRESENT : - K.K. Pathak, I.A.S., Additional Member</p> <p>=====</p> <p>Jai Kant Rai - Petitioner/ Appellant Versus Ram Kishore Rai & Others - Opposite party =====</p> <p><u>Appearance:</u> For the Appellant/Revisionist :Shri Durgesh Nandan For the OP :Shri Mahesh Narayan Parwat</p> <p style="text-align: center;"><u>ORDER</u></p> <p>This is Pre-emption matter in which a Revision application was filed on 27.04.2004 against the order of the Learned Additional Collector dated 30.12.2003 in Ceiling Appeal No. 33/1991. However, the case was dismissed for default on 07.06.2004. Subsequently, a Restoration Petition was filed very late on 19.03.2005 and the case was restored on 20.04.2005. The delay was also condoned and the case was also admitted.</p> <p>However, again due to continued of non appearance of Petitioner, the case was again dismissed for default on 28.01.2006. Again, a Restoration was filed very late on 25.02.2009 but the same was rejected by a speaking order, by the then Learned Additional Member on 16.04.2009.</p>	

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	<p>This prompted the Revisionist to file a civil writ in the Hon'ble High Court CWJC No. 14857/2011 wherein the Hon'ble High Court, vide order dated 27.01.2016, imposed a fine on the Revisionist of Rs. 2000 to be paid to the Pre-emptor and Rs. 1000 to be paid to the Board of Revenue and then allowed him to file a Revision application before the Board of Revenue who shall pass an order on merits.</p> <p>Since then, the matter remained part heard on many dates. On 27.12.2016, again the Revisionist was found absent. The case was adjourned on 13.01.2017 for final hearing. On that day, the Revisionist appeared and wanted to file a substitution Petition. Subsequently, the matter was posted for final hearing on 25.01.2017 on which date both the parties were present.</p> <p>I heard the Learned Advocate of the Petitioner-Revisionist who is the purchaser of the land. I also heard the Learned Advocate of the Pre-emptor. Thus having concluding the hearing, this order is being passed today.</p> <p>As per the Learned Advocate of the Revisionist, he purchased the land in 1990. The land belonging to Khata No. 339 Plot No. 1671 is having an area of 2 katha 17 dhur. The Learned Advocate mentioned that the total area of the plot is actually 2 katha 19 dhur, out of which only 2 katha 17 dhurs were sold to him and 2 dhur land was left for Rasta (Passage way).</p>	



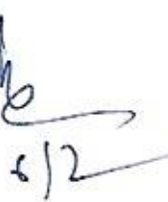
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	<p>Continuing with his argument, the Learned Advocate further mentioned that against this purchase, the Pre-emptor filed a Pre-emption application before the Learned DCLR who rejected the application on the ground that Pre-emptor is neither a Co-sharer nor an adjacent raiyat. Aggrieved at this order, the Pre-emptor went in appeal before the Learned Additional Collector who allowed the appeal.</p> <p>Thus further aggrieved, the Revisionist had filed a Revision before the Board of Revenue. The Board of Revenue vide order dated 30.12.1996 remanded the matter back to the appellate court. The Learned Additional Collector however decided the matter ex parte in favour of Pre-emptor vide order dated 30.12.2003.</p> <p>Thus aggrieved again, the Revisionist came back to the Board of Revenue and hence this present proceeding. Concluding his argument, he admits that the Revisionist is neither a Co-sharer nor an adjacent raiyat and he has purchased the land for residential purpose. He further mentioned that the Revisionist is a driver who works in Ludhiana and the land is in his possession. The Learned Advocate also mentioned that there was a proceeding under Section 144 CrPC which was decided in the favour of the Revisionist.</p> <p>On behalf of the Pre-emptor, the Learned Advocate was heard in great detail. He mentioned that the land originally belonged to Sri Dwarika Rai (now deceased).</p>	

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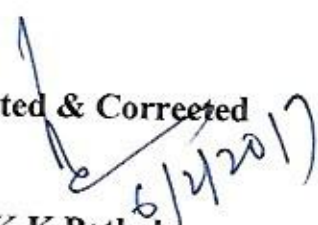
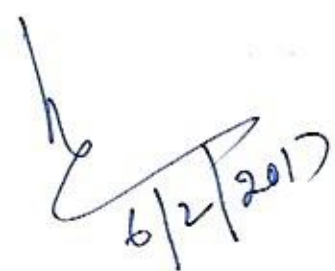
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	<p>Dwarika Rai left behind three sons namely Nihora Rai, Harinandan Rai and Mahendra Rai. The vendor Rameshwar Rai is the son of Nihora Rai and the Pre-emptor Sri Ram Kishore Rai is the son of Harinandan Rai. Therefore, the vendor and the Pre-emptor are cousins.</p> <p>Thus, the Learned Advocate makes a point that the Pre-emptor is a Co-sharer of the vendor. This being a joint family and no partition has happened and hence he is still the Co-sharer. He is also a boundary raiyat and the land is in his possession.</p> <p>The Learned Advocate further argues that when the case was dismissed for default by the Board of Revenue, the sale deed had already been executed in his favour as a result of the order of the Learned Additional Collector dated 30.12.2003. This was done as no proceeding was pending in any Court on the date of execution of the sale deed i.e. 13.07.2009.</p> <p>Concluding his argument, the Learned Advocate of the Pre-emptor further mentioned that the 2 dhur land was deliberately left from the sale deed in order to defeat the Pre-emption. Moreover, this land is not being used for residential purpose but is for agricultural purpose.</p> <p>Having heard the both the parties and having pursued the material available on records as well as Lower Court Records, my own findings on the matter are as under:-</p>	

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	<p>(a) This matter has been going on since 1990. Since then, this case was remanded by Board of Revenue once and has been dismissed for default by the Board of Revenue twice. Each time, the Petitioner has been traditionally slow in responding to the directions of the Board of Revenue.</p> <p>(b) This case was restored on intervention of the Hon'ble High Court which imposed a penalty on the Revisionist.</p> <p>(c) I also note that the Revisionist was also absent on numerous dates before the Court of the Learned Additional Collector forcing the Court to pass the ex parte order on 30.12.2003.</p> <p>(d) Coming to the merits of the case, it is an admitted position that the Revisionist is neither an adjacent raiyat nor a Co-sharer.</p> <p>(e) It is also an established fact that the Pre-emptor is a Co-sharer. The claim of the Revisionist, that the properties of the Pre-emptor has been partitioned, before the Learned Additional Collector who through a speaking order rejected the contention due to the fact that no documents were produced by the Revisionist to suggest that the Pre-emptor side has undergone a partition. Moreover, I tend to agree with the observation of the Learned Additional Collector that if the Revisionist claims that the Pre-emptor side had undergone partitioned</p>	

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	<p>then he should also indicate that what was the share which the Pre-emptor got. Thus, in the absence of any details and any documents, the Learned Additional Collector rightly held that the Pre-emptor side is still a joint family and the Pre-emptor is a Co-sharer. Now, only issue that requires further adjudication by this court is whether the Pre-emptor is an adjacent raiyat or not.</p> <p>(f) Coming to the issue of adjacency, I find that the vendor has deliberately kept 2 dhurs to himself and did not sell that small piece of land to the vendee for the purposes of Rasta (passage way). This is strange as generally the cost for the passage has to be borne by the vendee and not the vendor. Therefore, the sale deed should have been executed for the entire 2 katha 19 dhurs instead of 2 katha 17 dhurs. This lends suspicion in the mind of this Court as to whether the Revisionist had deliberately entered this deal to defeat the adjacency of the Pre-emptor. Thus, it can be safely held that the attempt by the vendor to keep 2 dhur to himself is only to defeat the Pre-emption.</p> <p>(g) I also note that presently the Pre-emptor had already got the sale deed registered in his name as result of the order of the Learned Additional Collector dated 30.12.2003 when no proceedings were pending in the Board of Revenue.</p>	

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	<p>Conclusion:-</p> <p>From the foregoing findings, it is clear that the Revisionist is neither an adjacent raiyat nor a Co-sharer. Whereas, the Pre-emptor is certainly a Co-sharer. His adjacency can also not be questioned except due to the fact that 2 dhur of land was deliberately left by the vendor and the vendee to defeat the Pre-emption.</p> <p>The cost of 2 dhur should ideally been borne by the vendee but in this case, it seems that the cost have been borne by the vendor. The ostensible reason to exclude this 2 dhur land from the transaction is only to defeat the Pre-emptor's right. In the process, the vendor and the vendee have also tried to defeat the basic objective of Section 16 (3) of Bihar Land Ceiling Act, 1961. This practice is deplorable as this leaves the land hopelessly fragmented, atleast on paper.</p> <p>It is also established that the Revisionist has dragged the case far too long and has not produced a single piece of paper in support of his case as to whether the Pre-emptor is a Co-sharer or not. The Revision application does not contained one document which can support the case of the Revisionist.</p> <p>Furthermore, the case was dismissed for default twice by this Court due to the continued non appearance of the Revisionist. The Revisionist also was continuously absent in the Court of the Learned Additional Collector. He</p>	



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	<p>remained absent atleast on six dates before the Court of the Learned Additional Collector.</p> <p>In the appellate court also, he did not adduce any evidence to weaken the right of the Pre-emptor. That be the case, I find no reason to interfere with the order of the Learned Additional Collector passed on 30.12.2003.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <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>	