



देश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
25.01.2017	<div><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.- 213, 214 and 215/2002 Dist.- Siwan</p><p><b>PRESENT            :-        K.K. Pathak, I.A.S., Additional Member</b></p><div><div>=====</div><div><div>Lal Mohan Yadav and Others</div><div>Versus</div><div>Pashupati Choudhary &amp; Others</div></div><div><div>- Petitioner/ Appellant</div><div>- Opposite party</div></div><div>=====</div></div><p><b><u>Appearance:</u></b> For the Appellant/Revisionist        :Shri Ramadhar Shekhar For the OP                                 :Shri Dineshwar Mishra</p><p style="text-align: center;"><b><u>ORDER</u></b></p><p>This a Pre-emption matter in which a Revision application was filed on 29.08.2002 against the order passed by the Learned Collector, Siwan on 23.07.2002 in Ceiling Appeal No. 256/2001. The case was admitted for hearing on 24.06.2003. Since then, the matter remained part heard on many dates. The Lower Court Records took time to reach.</p><p>In the meantime, the Petitioner died and was duly substituted. The case was dismissed for default on 01.08.2012 due to continued absence of the Petitioner. Subsequently, a Restoration Petition was filed and the case was restored.</p><p>The matter finally came up for hearing on 23.01.2017 in which both the parties were present. The</p></div>	


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	<p>Learned Advocate of the Petitioner, who is the purchaser, as well as the Learned Advocate of the OP, who is the Pre-emptor, was heard in great detail. Thus concluding the hearing, this order is being passed today.</p> <p>The Learned Advocate of the Revisionist has also filed a written note of arguments on 24.01.2017. In his written note of arguments, he has tried to develop his case as to why the vendor left 3½ dhur of land on the three sides of the disputed plot. Claiming that Pre-emption is a weak right, he holds that the purchaser is entitled to defeat the claim of the Pre-emptor by any legitimate means. He has filed a Court judgement in his support. He also has filed certain photographs and claims that the Pre-emptor is not in actual physical possession but he is in actual physical possession.</p> <p>As per the Learned Advocate of the Petitioner, he purchased the land from three different sale deeds on same date i.e. 15.12.2000 and each sale deed was having an area of 1 katha 9 dhur and 13 dhurki. The total land involved in all the three sale deed is 4 katha 8 dhur 19 dhurki.</p> <p>The Learned Advocate further mentioned that the vendees are common and they are not related to the vendor. Even the Pre-emptor and the vendor are not related. So there is no question of any Co-sharer and only issue is regarding adjacency.</p> <p>The Learned Advocate avers that he is a landless person and has only 19 kathas of land including the land in dispute. He had purchased it for homestead purposes. The nature of the land is decidedly homestead which is admitted by the OP himself in his rejoinder.</p>	



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	<p>He further says that the original plot was a big area with 1 bigha 7 kathas (Plot No. 6 khata No. 85). The said big plot was divided in four smaller plots. The north east portion (the disputed portion) of the plot is owned by Harihar Singh and Jogindar Singh. It may be noted that Harihar Singh had three sons namely Jogindar Singh, Triveni Datt, and Shankar Dayal. While Jogindar Singh sold the land to the Pre-emptor's brother Sri Ramayan Yadav, his other two brothers Triveni Datt and Shankar Dayal sold the land to the Revisionist by three sale deeds. On the other three corners of the disputed plot lie Munni Singh, Ramdhani Singh and Kamla Devi.</p> <p>Presenting his version, the Learned Advocate of the OP, who is the Pre-emptor, firstly dealt with the technical aspects of the case. He mentioned that Petitioner No. 1, 2, 5 and 8 have died whereas the Substitution Petition is filed only with respect to Petitioner No. 1. Therefore, under Order 22, Rule 4 of CPC, if substitution is not filed on 90 days, the case abates. Therefore, the case is not maintainable.</p> <p>Coming to the merits of the case, the Learned Advocate of the Pre-emptor mentioned that the Revisionist has lost his case in both the Lower Courts. Concurrent findings are against them and all these aspects were considered by the Learned Lower Courts.</p> <p>He further argues that the land in question is not a homestead land but agricultural land for which rent receipts are issued. Denying the averments made by the Learned Advocate of the Revisionist that OP has conceded</p>	

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	<p>in his rejoinder that the land is being used for homestead purposes, he clarified that he has only constructed a <i>pilani</i> (hut) to look after his amalgamated agricultural holding.</p> <p>He further says that as regards the larger plot, the other khatiani raiyats namely Ramdhani Singh and Kamla Singh (who sold to Inder Mahto) sold the land to me in May 1983 and December 1980, hence, he is an adjoining raiyat since that period of time.</p> <p>Having heard the Learned Advocates of the both the sides and having perused the material available on record as well as Lower Court Records, my own findings in the matter are as under:-</p> <p>(a) As regards the issue of substitution not being filed properly in case of three dead Petitioners, I find that the main Petitioner i.e. Petitioner No. 1 has been duly substituted. However, the other dead Petitioners, namely Petitioner No. 2, 5 and 8 have not been substituted. Though apparently, they are all related, hence it would not be prudent and advisable to reject the Revision application just because few of the deceased petitioners have not been substituted. Moreover, in a land dispute matter, regardless of the fact whether the landholder is alive or not, his title does not get extinguished by virtue of his death. Therefore, this Court finds no reason to allow the abatement of the proceedings because of minor technical issue.</p> <p>(b) I find that the land use is not residential and the so called <i>palani</i> of the OP to which the Learned</p>	



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	<p>Advocate of the Revisionist was drawing attention of the Court is only for the purpose of looking after amalgamated agricultural holdings.</p> <p>(c) The above also proves that the said land is in the possession of Pre-emptor OP, which fact has not be denied by the Revisionist during the oral arguments. In the written note of arguments, however, the Revisionist claims that the land is in his possession. I find it strange that it took the Revisionist more than 14 years to deny that the land is not in the possession of the OP. Moreover, from the perusal of the record of the Learned Collector Siwan, it appears that the Revisionist has not made the claim of possession before the Learned Collector Siwan. In the appeal Petition and the written note of arguments submitted by the Revisionist before the Learned Collector Siwan, he has not claimed that the land is in his possession. In fact, Para 13 of the written notes of argument submitted by the Revisionist before the Learned Collector Siwan, on 04.02.2002, clearly mentions that the land of the Respondent No. 1 (OP in this Revision Case) is being used for the residential purposes. Therefore, he concedes that the land is in possession of the OP. Now after 14 years, he files a written note of argument that the land is in his possession and not in the possession of the OP. This is not acceptable and is more an afterthought, than the reality. Moreover, during his arguments</p>	

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made before this Courts he had conceded that the land in the possession of the OP and the Learned Advocate was more keen on drawing the attention of this Court that the land use is residential in nature and that the OP is using the land for residential purposes. Therefore, this attempt by the Revisionist to argue something else and file a written note contrary to the points argued is abhorable. Therefore, the Revisionist fails to convince this court that the land is in his possession and he is using it for residential purpose.

(d) I also find that the declared purpose of the purchase by the Revisionist is for house construction and the same has been mentioned in the sale deed also. This fact must be known to the Learned Court of the DCLR as well as the Learned Collector. It does not affect the right of the Pre-emptor in any way as the sale deed is a document where the Pre-emptor is not a party.

(e) It also appears that the Pre-emptor has got the land from the south west side of the disputed plot which he purchased from Ramdhani Singh in 1983. The Pre-emptor also has got land to the south of the disputed plot which he purchased from Inder Mahto in December 1980 who had purchased it from Kamla Devi. Thus from two sides to the disputed plot, the Pre-emptor is an adjacent raiyat.



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(f) Moreover, a portion of the disputed plot itself is sold to the Pre-emptor's brother. Thus virtually from three sides, the Pre-emptor or his brother is an adjacent raiyat to the disputed plot.

(g) Perhaps the vendor and the vendee were aware of this fact and therefore the sale deeds that were executed by the vendor in favour of vendee were of only 4 katha 8 dhur and 19 dhurki whereas the share of the vendor was 4 katha 12 dhur. Therefore, the vendor sold only 95 percent of the plot and did not sell 3dhur and 1 dhurki. This is not comprehensible to this Court as to why the vendor chose to retain the small strip of land with him. Moreover, this small strip was left alongside three directions namely north, south and west. It appears that the said land was left with the vendor in a small strip surrounding three sides of the vended land in order to blunt the case of the Pre-emptor. Else why would the vendor suffer the loss of about 3 dhur of land in which he would not be able to undertake any meaningful activity in the small strip of land so left from three directions.

(h) I find that this has been a deliberate attempt by the vendor and the vendee to circumvent the Pre-emption laws. In the process they have hopelessly fragmented the land. That perhaps is the biggest reason why the Learned Collector and the Learned DCLR have upheld the case of the Pre-emptor.

**Conclusion:-**

From the foregoing findings it is clear that there has been attempt to fragment the land by the vendor and the vendee in order to beat the Pre-emption laws as defined under Section 16 (3) of Bihar Land Ceiling Act, 1961.

The disputed land is also in the possession of the Pre-emptor which aspect has not been denied by the Revisionist during the oral arguments. However, in the written notes, the Revisionist has claimed that the land is in his possession. This claim of the Revisionist has already been rejected by this Court by the above findings.

If I were to agree to the contention of the Revisionist that he purchased the land for the purpose of making a residential house, then I feel surprised as to why the vendor would leave a small strip of the vended land from three sides because that will leave all the three strip unfit for any use. Therefore, I see that the stated purpose of constructing a house is just an eye wash to claim that Pre-emption proceeding are not maintainable.

The total area of the original plot is about 1 bigha 7 katha, which is approximate about an acre, which land is sufficiently big enough for any agricultural purpose by Indian standards. One-fourth of this plot would still be sizable 4-5 kathas of land which is too big an area for construction of a house, that too, in a rural area.

Having said that, I am of the view that the Revisionist is claiming that this land is to be used for residential purpose is an eye wash.



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I also deplore the way in which the vendor and the vendee have made an unholy caucus to avoid the Pre-emption laws and to deny the right of the Pre-emptor. That be the case, I find it difficult to support the case of the Revisionist.

I accordingly uphold the order of the Learned Collector passed on 23.07.2002 as well as the order of the Learned DCLR passed on 20.06.2001 in favour the Pre-emptor OP.

Revision Dismissed.

Dictated & Corrected

K.K.Pathak

Additional Member  
Board of Revenue, Bihar.

(K.K.Pathak)

Additional Member  
Board of Revenue, Bihar.

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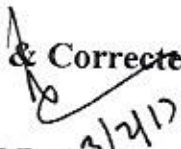
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03.02.2017

**FURTHER**

On perusal of the order dated 25.01.2017 passed in Land Ceiling Pre-emption Case No. 213, 214 and 215/2002. I find that in page no. 2, 4 and 6 because of bonafide typing mistake had occurred which I hereby rectify.

Dictated & Corrected

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

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