

**In The Court of Commissioner, Saran Division, Chapra
Land Ceiling(Pre-Emption) Rev. No. 126/12
Dhananjay Singh & Ors.
Vrs.**

Dhananjay Kumar Singh & Ors.

ORDER

18-02-2014
The instant revision petition is directed against the impugned order passed by Addl. Collector, Saran on 29.02.2012 in Land Ceiling Appeal No. 12/2001.

The brief facts of the case are that the present respondent No. 1, Dhananjay Kumar Singh S/o Ajay Kumar Singh R/o Village-Malkhachak, P.S. – Dighwara, Dist- Saran purchased the disputed piece of land measuring 11 Katha appertaining to khata No. 93 and spread over plot No. 402, 405, and 406, through registered sale deed dated 09.08.2000 from present Respondent No. 2, Mosmat Lilawati Kuer W/o Late Upendra Prasad Singh R/o of same village. Thereafter one Kameshwar Singh R/o of same village, claiming himself to be the co- sharer and adjoining raiyat of the vended land, filed a pre-emption case, Land Ceiling case No. 7/2001 before DCLR, Sonpur, The said pre-emption case was dismissed vide order dated 17.01.2001. This led to filing of an appeal by the petitioner vide L.C. Appeal No. 12/2001 before Addl. Collector, Saran who in turn vide order dated 11.07.2002 upheld the order dated 17.01.2001 of DCLR, Sonpur. Feeling aggrieved by the order dated 17.01.2001 of Addl. Collector, Saran the pre-emptor, kameshar Singh filed a case before Board of Revenue, Bihar Patna vide pre-emption case No. 203/2002. The learned Addl. Member, Board of Revenue, patna, on hearing the matter remanded back to Addl. Collector, Saran vide order dated 31.12.2005 with same observations. This led to initiation of the case again by the Addl. Collector, Saran and a final order passed on 29.02.2012 wherein it has been held that the claim of the appellant for pre-emption is not acceptable and accordingly confirmed the earlier order of Lower Court.

On being aggrieved by and dissatisfied with the order dated 29.02.2012, passed by Addl. Collector, Saran in exercising the appellate jurisdiction, the legal heirs of the earlier petitioner Kameshwar Singh who died during pendency of the case, preferred this revision petition before this Court.

Heard the parties .

The learned counsel appearing on behalf of the present petitioners submitted that the impugned order passed by the lower Courts are illegal, arbitrary and contrary to the provisions of law so far as the learned courts below have failed to appreciate that the pre-emptor petitioner is the co-sharer and adjoining raiyat and thus satisfies the requirements for allowing the pre-emption application as decided by Hon'ble High Courts and Apex court in several judgements. He further argued that the learned courts below while passing the impugned orders



have acted in a most mechanical manner for making a wrong consideration that the father of the present respondent No. 1 is in the North boundary of the scheduled -1 land. The learned Counsel further aired the views that the learned appellate court has erroneously come to the conclusion that there was partition between the petitioners and vendor and thus the petitioner can not come within the purview of co-sharer . He further opined that the appellate court ought to have appreciated that in Hindu Laws there is always a presumption of jointness unless the severance is proved otherwise. The learned counsel while auguring his case relied heavily on the genealogical table of the family in order to prove that the vended learned is actually his ancestral property thereby the petitioner qualifies as co-sharer and adjoining raiyat of the vended land. He even also submitted that the vended land is situated close north of the petitioner's land and it was deliberately shown in the sale deed that on four sides of the vended land some land of vendee exist as mentioned in the boundary as niz-niz, niz, niz which appears to be highly imaginary as to why and how one can keep 10.5 dhurs on each side of the vended land in her own name and for what purpose . The learned counsel lastly prays that the impugned order of Addl. Collector , Saran be set aside and the instant revision be allowed.

The learned counsel appearing on behalf of the respondent No. 1 vehemently opposed the submission made by the learned counsel for the petitioner and submitted that petitioner by no means qualifies as the pre-emptor because he is neither adjoining raiyat of the vended land nor he is co-sharer as there is partition in the family long ago. He further submitted that the grand father of the present petitioners purchased a piece of land measuring 24 Katha 03 dhur through sale-deed in plot No. 405, 406, and 402 and after his death the three sons divided the property amongst themselves , each one getting 1/3 share (8 Katha 01 dhur). The vendee Lalmati Kuer also got 8 katha 01 dhur share and she also purchased 5 katha 01 dhur from the other brother Satyendra Singh, who happens to be the full brother of original pre-emptor . Thus the vendee Lalmati Kuer has got altogether (8 katha 01 dhur +5 katha 01 dhur) a total of 13 katha 02 dhur from which 11 katha has been sold to the present respondent No.1 and mentioned her own name in the four sides of the sold land as she retained some part of land for herself. Thus the vendor's own land exists in all four sides of the vended land. The learned counsel also filed a sketch map in support of his claim. The learned counsel further submitted that the petitioner is no where in the boundary of the vended land and on careful consideration of this fact both the Courts below dismissed the case. He lastly prayed that the instant appeal be dismissed.

Considering the facts and circumstances of the case, material available on records and arguments advanced by the learned counsels for the contesting parties, It seems that the controversy rests mainly on the point as to whether the pre-emptor is the boundary man or not of the disputed land. It is also seen that both parties admit that the vendor





belongs to the family of pre-emptor and the same has not been disputed at any stage in the Lower Courts. But the fact that the purchaser controverted this fact that there is already a division/partition in the family and the pre-emptor although had share in the plot but his share does not touch the boundary of the vended land thereby making him unsuitable for claiming pre-emption right. On the other hand the pre-emptor also failed to prove otherwise that there is no partition in the family. The second important point is that the petitioner claims himself to be the adjacent raiyat of the vended land but the sale deed on record shows that the vendor herself retained some part of the land on all four sides of the vended land also and it is mentioned as "Niz" in the sale deed dated 9.08.2000 executed in favour of the respondent No.1. This obviously shows that through, the petitioner's 1/3 share exists in that chunk of land but it does not touch the boundary of the disputed land from any side. The two important points which gives right to a person for claiming pre-emption under section 16(3) in Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of surplus Land) Act. 1961 are that, firstly the pre-emptor should be co-sharer and secondly he should have status of adjoining raiyat of the vended land. The petitioner failed miserably on either counts to substantiate this before any lower courts that he qualifies so to claim pre-emption. Even in the local enquiry report of C.O., Dighwara, nothing is there to suggest that the petitioner is the adjoining raiyat of the disputed land.

For the reasons aforesaid and the discussion made therein, I do not find any illegality in the order Addl. Collector, Saran dated 29.02.2012 and as such the same is upheld .

Thus , this revision petition is dismissed

Dictated & Corrected by me.


Commissioner,
Saran Division, Chapra 14


Commissioner,
Saran Division, Chapra 14