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IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C NO. /2013

Siyaram Sah

.....Petitioner

Versus

The State of Bihar & others

.....Respondents

Subject-Pre-emption Matter

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IN THE HIGH COURT OF JUDICATURE AT PATNA
(CIVIL WRIT JURISDICTION)

C.W.J.C NO.

/2013

Siyaram Sah

.....Petitioner

Versus

The State of Bihar & others

.....Respondents

Prayer

For quashing the order dt. 19.12.12 passed by Additional Collector, Madhepu-ra in Area Ceiling Appeal Case no. 05/96 by which set aside the order dt. 18.02.1992 passed by D.C.L.R. in Appeal Case no. 44/92-13 and remand the matter for re-consideration and further, issue direction to the respon-dent to affirm the order dt. 18.06.96 passed by Deputy Collector, Land Re-form Madhepura in Area Ceiling Case no. 44/92-93, by which allow the ap-plication of petitioner for pre-emption, on the ground that as per provision under section 16(3) of the Bihar Land Ceiling Act, petitioner is raiyat of ad-joining land and other hand respondent no.5 neither co-share or a raiyat of adjoining land and further give other legal consequential benefit to the peti-tioner.

Petitioner filed an application U/s - 16(3) of the Bihar Land Ceiling Act, against the respondent Parwati Devi and Sri Md. Ashrafuddin regarding land situated in the village Majrahat P.S. Singheshwar and the detail land

18.06.96

Ld. Deputy Collector, Madhepura and he has been pleased to pass order dt. 18.06.96 by holding that petitioner is being the raiyat of adjoining dis-puted land and have fulfilled all due formalities thus he is entitled to pre-emption and directed to respondent no.5 purchaser to convey of the land in favour of the petitioner by excuting and registering a document of transfer within a period from 30 days from the order .

19.12.12

Respodent no.5 aggrieved the order dt. 18.06.96 and filed a Area Ceiling Appeal no. 05/96 before collector against the order dt. 18.06.96 without showing that the respondent is co-sharer or boundary raiyat of the dispute land inspite of that Ld. Additional Collector, has been pleased to pass order dt. 19.12.12 by which set aside the order dt. 18.06.92 and remand the mat-ter before D.C.L.R., Madhepura for re-consideration without assigning any reason for remand the case as any dispute that petitioner is not raiyat of adjoining dispute land, whenever no case of the respondent no. 5, as he is raiyat of adjoining land.

Hence this writ application.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C.No.

of 2013

In the matter of an application under Article 226 of the Constitution of India;

A n D

In the matter of

Siyaram Sah, S/o Gowardhan Sah, village- Jajhat Sabaila, P.S. Singheshwar, District MadhepuraApplicant/Respondent 1st set/Petitioner

Versus

- 1. The State of Bihar through the Secretary land Reforms Department Govt. of Bihar**
- 2. The Collector, Madhepura, District -Madhepura.**
- 3. The Addl. Collector, Madhepura, District -Madhepura**
- 4. Land Reforms, Dy. Collector, Madhepura, District Madhepura.Respondent**
- 5. Parwati Devi, D/o Sri Rajendra Sah, R/o village - Postpar, P.S. Chorbazar, District Saharsa. Singheshwar, District MadhepuraRespondent/appellant/Respondent**
- 6. Md. Ashrafuddin, S/o Late Narul Azam, R/o Madhepura, Ward No. 4, P.S. & District Madhepura at present village - Majarhat, P.S. Singheshwar, District Madhepura.**

.....Respondent/Respondent/Respondent

To,

The Hon'ble Ms. Rekha M. Doshit, the Chief Justice of the High Court of Judicature

at Patna and his companion Justices of the said Hon'ble Court.

The humble application on behalf of
petitioner above named.

Most Respectfully Sheweth:-

1. That this writ applicaion is being filed for issuance of a writ in the nature of certiorari for quashing the order dt.19.12.12 passed by Additional Collector, Madhepura in Area Ceiling Appeal Case no. 05/96 by which set aside the order dt.18.02.1992 passed by D.C.L.R. in Appeal Case no. 45/92-13 and remand the matter for re-consideration and further, issue direction to the respondent to affirm the order dt. 18.06.96 passed by Deputy Collector, Land Reform Madhepura in Area Ceiling Case no. 44/92-93, by which allow the application of petitioner for pre-emption , on the ground that as per provision under section 16(3) of the Bihar Land Ceiling Act, petitioner is raiyat of adjoining land and other hand respondent no.5 neither co-share or a raiyat of adjoining land and further give other legal consequential benefit to the petitioner.
2. That main point involved in this writ application are as follows:-
 - i) Whether the order impuged is illegal and fit to be set aside or not ?
 - ii) Wether respondent Addl.Collector committed gross mistake while passing order impuged or not ?
 - ii) Wether action of the respondents is arbitrary, malafide , miscarriage of justice or not ?
3. That petitioner is citizen of India and is entitled for right gurantee under the Constitu-tion of India.
4. That petitioner filed an application U/s - 16(3) of the Bihar Land Ceiling Act, against respondent Parwati Devi and Sri Md. Ashrafuddin regarding land situated in the

village Majrahat P.S. Singheshwar and the detail land s follows -

Khata	Khesra	Area B.K.D.H.	Boundary
134	2635(old) 2641(New)	0-5-10	
	2692(Old) 3426(New)	0-2-16	
	Total :-	0-8-6	

5. That respondent no.6 has transferred the land in question by the register sale deed on a consideration of worth of Rs.8000/ to respondent no.5 and Registration was completed and petitioner filed case within the stipulated period.
6. That petitioner is raiyat of adjoining dispute land under boundary of the land , hence petitioner is entitled to pre-emption U/s 16(3) of Bihar Land Ceiling Act, whereas respondent no.5 is neither a Co-Sharer of the respondent nor a Raiyat of adjoining land.
7. That the petitioner have already completed due formality and have deposited the consideration money of the dispute land Rs.8000 +10% and has filed certified copy of Kewala in the question and also applied in the proper form L.C. - 13 and has sent copy of the same by registered post to the respondents.
8. That concerning respondent no.5 appeared before the Ld. D.C.L.R. and filed rejoin-der petition but he could not file any document by which showing that as he is co- sharer or raiyat of the adjoining land.
9. That after considering the case of the petitioner as well as the case of the respondent no.5 by Ld. Deputy Collector, Madhepura and he has been pleased to pass order dt. 18.06.96 by holding that petitioner is being the raiyat of adjoining disputed land and have fulfilled all due formalities thus he is entitled to pre-emption and directed to respondent

no.5 purchaser to convey of the land in favour of the petitioner by excuting and registering

A true photocopy of the order dt. 18.06.96 is annexed as Annexure -1 of this petition.

10. That responent no.5 aggrieved the order dt. 18.06.96 and filed a Area Ceiling Appeal no. 05/96 before collector against the order dt. 18.06.96 without showing that the respondent is co-sharer or boundary raiyat of the dispute land inspite of that Ld. Additional Collector, has been pleased to pass order dt. 19.12.12 by which set aside the order dt. 18.06.92 and remand the matter before D.C.L.R., Madhepura for re-consideration without assigning any reason for remand the case as any dispute that petitioner is not raiyat of adjoining dispute land, whenever no case of the respondent no. 5, as he is raiyat of adjoining land.

A true photocopy of the petition of the counter Appeal , order dt. 19.12.12 are annexed as Annexure -2 and 3 of this petition.

11. That perusal of the record lordship will find that petitioner is adjoining raiyat of the aforesaid land,hence in view of the section 16(3), petitioner is entitled for the benefit of of the pre-emption.

12. That Ld. Collector committed gross mistake while passing the order impugned, whenever metter was heard by Land Deputy collector between parties and have considered the rejoinder petition filed by respondent no.5 thus question shall be arised that wether respondent is adjoining raiyat or not ,answer is not either co-share nor adjoining raiyat.

13. That petitioner filed counter affidavit alongwith five Kawala and map of the dis-puted land and map of the beside land by which clearly shown as petitioner is raiyat of

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the adjoining of the disput land.

14. That above fact and circumstance of this case ,it is fit case allowed and set aside the order dt.19.12.12 and confirmed the order dt.18.06.1996.

15. That there is no alternative and officacious remedy save and except to move before this Hon'ble Court.

16. That petitioner has not moved before this Hon'ble Court any time earlier for the reliefs sought for in this writ application.

It is therefore prayed that your loreships may graciously be pleased to Admit this application,issue notice to show cause as to,why the relief sought for in para-1 of this writ application be not granted to petitioner and after hearing the parties and upon cause being shown,if any,pass such other order / or -ders as your Lordships may deem fit and proper..

And /or

During the pendency of this writ application may kindly stay the impuged notice dt. 19.12.12.

And for this the petitioner shall ever pray.

AFFIDAVIT

I, Siyaram Sah, aged about 62 years S/o Gowardhan Sah, village- Jajhat Sabaila, P.S. Singheshwar, District -Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am petitioner in this case and as such am well acquainted with the facts and circumstances of the case.
2. That I have gone through the contents of this application and have fully understood the same. The statements made in paragraphs no. 3,5,6,11,13 and 14 are true to my knowledge and those made in paragraph no. 4,7 to 10 are true to my information derived from the records of the case and rest are by way of submission before this Honours Court.
3. That annexures are true/photo copy of the originals.

~~SIYARAM SAH~~ 13

(6) Annexure? (7)

आदेश बौर पदाधिकारी का हुक्मनामा

आदेश पर की गई कार्यवाही के बारे में दिखानी वाली कड़ी

L.C. Case No.44/92-93.
Siya Ram Sah Versus Geeta Devi.

O R D E R.

This pre-emption case U/S 16(3) of the Land Ceiling Act has been filed by the Petitioner Siya Ram Sah on 23.2.92 against Smt Parwati Devi Opp 1st party and Mr. Ashrafuddin Opp. 2nd party claiming pre-emption in respect of the following lands situated in village Majrahat P.S. Singheshwar District Madhepura.

Details of lands.

<u>Khata.</u>	<u>Khesra.</u>	<u>Area.</u>
134	2635(Old) 2641(New)	0 - 5 - 10
	2692(Old) 3426(New)	0 - 2 - 16

Total : 0 - 8 - 6

2. The case was filed on 23.2.92 and admitted on 28.1.93 and O.P. was noticed to appear. O.P. appeared on 25.1.93. No rejoinder to the petitioners claim was filed on behalf the O.P. lawyers of both parties were heard.

3. The case of petitioner is that Opposite first party has purchased the above land in question from O.P.II party but the O.P. first party is neither a co-sharer of the vender nor is a raiyat of the adjoining land. On the other had, the petitioner is adjoining raiyt of both the plots and as such under the law is entitled to pre-emption. The fact further case of the petitioner is that he has

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to produce any
petitioner.
5. Having taken
above facts and ci-
case I am sat-
pre-empt.

आदेश की
क्रम-संख्या
और तारीख
१

आदेश और पदाधिकारी का नाम

आदेश प
में दिनांक

observed all the legal formalities Viz
(i) Deposited the consideration money
along with 10% of the same totalling of ~~Rs 88,00=00~~
Rs 88,00=00; (ii) Has filed the certified
copy of the Kewala deed in question; and
(iii) Has ~~filed~~ applied in proper form
i.e. L.C.-13 and has also sent the same by
Registered Post to the O.P. members. The
petitioner has further stated that he has
applied for pre-emption within the prescribed
time and his pre-emption is complete in
all respect.

4. In support of the fact that the
petitioner is an adjoining raiyat , the
petitioner has filed five different Kewala
and on perusal of the same it is established
that the petitioner is a boundary raiyat
in respect of both the plots of land
involved in this proceeding. The petitioner
has also filed an affidavit sworn by him
to the effect that he does not possess land
in excess of ceiling limit and even after
being successful in this pre-emption, he
would not exceed the ceiling limit.

From all these facts the petitioner
has been successful in proving his case
for pre-emption in respect of the land
involved in this proceeding. On the other
hand the O.P. members have neither filed
any rejoinder petition nor have produce
any evidence to destroy the case of the
petitioner. They could not show that the
O.P. 1st party is either a co-sharer of
his vendor or a raiyat of the adjoining
land. Thus the O.P. has miserably failed

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बिहार गवर्नमेंट प्रेस, मुम्बई । (टी-१००)

आदेश और पदाधिकारी का हस्ताक्षर

आदेश पर की गई कार्रवाई के बारे में दिव्यणी तारीख के अन्तर्गत ।

to produce any evidence against the petitioner.

5. Having taken into consideration the above facts and circumstances of the case I am satisfied that the claim of the pre-emption by the petitioner is fully established and he has proved his case. According, I ~~have~~ hold under section 16(3) of the Land ceiling Act that land involved in this case, as stated above, has been transferred to a person other than a co-sharer or adjoining raiyat and the petitioner being the adjoining raiyat, and who has observed all the formalities, is entitled to pre-emption. The opposite first party is directed to convey the land in favour of the petitioner by executing and registering a document of transfer within a period of 30(Thirty) days from the date of this order and if he neglects to comply with this direction the procedure prescribed under order & 21 Rule 34 of C.P.C. shall be adopted. Show this order to the lawyers of both parties.

Dictated & corrected by me.

[Signature]
D.C.L.A.
Madhepura.

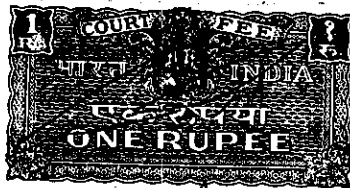
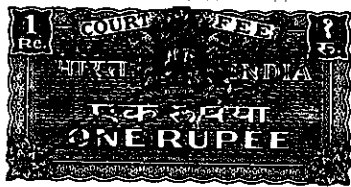
[Signature]
18/6/96
Dy. Collector I/C
Land Reforms,
Madhepura.

no.1

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Annexure 2

In the court of collector,
Madheswar.

Aras calling Appeal no. 5

*Put up on 1.10.96.
before the learned
collector
Madheswar.*

In the matter of -

Aras calling Appeal no. 18.6.96
passed by the D.C.L.R. Madheswar in L.C
Case No. 44/95-20 U.P. II (II) of the Bihar
Land Reforms (Fixation of Ceiling Area
and Acquisition of Surplus Land) Act, 1956
Siyaram Sah Vrs. Shrinati Parwati Devi
and others.

AND

In the matter of -

1. Parwati Devi daughter of Sri Rajendra Sah,
resident of village Pastpar, P.S. Southwar, Dist. Saharsa
----- Appellant.

:- Versus:-

1. Siyaram Sah s/o Gobardhan Sah,
resident of village - Sajhat - Sabala, P.S. Singheshwar,
Dist. Madheswar
..... Respondent Ist. Party

AND.

2. Md. Asraf uddin s/o late Narul Azar, resident of Madheswar
ward no. 4, P.S. & Dist. Madheswar----- Respondent II Ind. Party.

The above named appellant begs to
state as follows :-

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transferred his land measuring 8 Katha and also that of village
 Majrahat, p.s. and Anchal Singheshwar, Dist. Madhapura to
 this appellant for a sum of Rs. 2000/- by means of a regis-
 tered deed of sale dated 1.9.92 registration of which was
 completed on 24.9.92 under the Registration Act. The details
 of the land so purchased is being given here under :-

Khata	Khasra(Old)	Khasra(New)	Area B.Ka.Da.	Boundary
134	2605	3341	0-3-10	N- 2340 S- 3016 3342 E- 3342 W-
279	2692	3326	0-2-16	WN North- 3405 South- 3425 East-3425 W- 3418

2. That, in the mean time after the above execution and
 registration this appellant out of the above land so purchased
 executed a deed of gift dated 23.12.1992 for land measuring
 2 K.16dh. of khata 279 , Khasra (old) 2692 , Khasra(new) 3426
 in favour of her ~~you~~ younger sister ^{Sh} Brisati Mangla ^{Sh} Levi out
 of love and affection and also due to services rendered by her
 and put her in exclusive owner ship and possession and she

Shah

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3. That, this appellant of course had the
 in motion. That Party had filed an application for
 pre-judgment attachment this appellant in the law and obtained
 order in the court of J.L.R. Helleparre when
 this appellant filed an application for injunction for
 getting the same on 22.1.34. The order was made
 on 14.2.34.

Handwritten signature

4. That, in fact on 15.2.34
 the order was made with per
 manent.

5. That, from the above information slip it transpires
 that in an Area calling case no. 14.742 order was
 passed on 13.6.34.

6. That, having got information after this
 appellant ⁹⁴ applied for certified copy of the above order
 on 17.2.34 which was ready in date over to the appellant
 on 29.3.34 and yet it remained for a period of that
 for the first time, this appellant came to know of the case
 and the impugned ex parte order passed behind back and without
 any knowledge and information to this appellant to his
 utter surprise obtained illegally and improperly by the

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(4) (13)

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by the respondent, J.S. P. V. V.

A certified copy of the impugned order dated 18.6.96 along with the certified copy of the Form L.C. 13 is being annexed here with per annexure II and III respectively.

Handwritten signature

6. That, since this appellant has got no alternative

Sd/-
Kan

to file this appeal before this court and to pray for setting aside the impugned ex parte order dated 18.6.96 passed by the D.C.L.R. Madhepura.

Being aggrieved by and dis-satisfied with the above order dated 18.6.96 passed by the D.C.L.R. Madhepura,

this appellant begs to file this appeal, prays that the same may kindly be admitted, record of the court below

of the court below may kindly be called for and after hearing the parties and their respective lawyers

and perusing the papers this court may be graciously pleased to set a-

side the impugned order dated 18.6.96

on amongst others the follow

Sd/-

Vertical text on the right margin: n, or, rt, a, on, ts, t, 16, 16, 11, on, K, h, h, y, s

(S) (M)

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grounds, this appellant further prays that in the mean time the operation of the impugned order may kindly be stayed till final hearing of this appeal.

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:- GROUNDS :-

(1) For that, impugned orders dated 18.6.96 are bad in law as well as against the facts and circumstances of the case.

(2) For that, this case of pre-emption under section 16(3) of the Act had been filed surreptitiously in the court of D.C.L.R. Madhepura, no notice ever served upon this appellant and he could succeed in getting exparte and surreptitious order behind the back and without knowledge of this appellant which is quite prejudicial and violative of mandatory provisions of law and natural justice; and on this lone ground the impugned order is fit to be set aside by this court.

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3. For that, it was incumbent upon the learned lower court to look into the above matter as to whether notices were properly served upon the parties conc

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concerned, or not. This fact has fully been ignored and violated by the lower court before passing the impugned order.

4. For that, it is quite false to observe by the D.C.L.R. that " O.P. was noticed to appear and O.P. (this appellant) appeared on 25.1.93" ^{or} rejoinder was filed by the O.P. nor produce any evidence " All these facts becomes redundant in face of the fact when this appellant neither served any notice more he did appear before him.

5. For that, in face of none appearance of the appellant and respondent 2nd. party in spite of notices (if any which clearly denying) the ~~can~~ lower court ought to have fix the case for exparte hearing ^{and then to proceed further} which fact also has ^{also} not been done by the lower courts.

6. For that, the respondent 1st. Party ^{had} ~~was~~ not filed the case of pre-emption properly and ⁱⁿ right perspective and as such the lower court ought to have rejected itself his case on first hearing.

7. For that, like wise this appellant no step for ^{of} the respondent 1st. party Md Asraf uddin

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also *Sh*

the veror of this appellant was made by the learned lower court and as such also *Sh* same gives a death blow to the *Sh* of the respondent Ist. Party and the impugned order.

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For that the right of pre-emption is a very weak right and the respondent Ist. Party had to make out *Sh* *clear and clear* his case u/s 15(3) of the Act. He has to establish the

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fact of his being either an adjoining raiyat or co-sharer. But the impugned order does not disclose any of these points nor the impugned order does indicate of the fact as to

Sh in which of the boundary his land lies, which was incumbent *Sh* upon him to establish, other wise his entire claim and case will

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fall to the ground.

For that, the alleged claim u/s 15(3) of the respondent Ist. Party for pre-emption is clearly time barred. Mere presentation of the application to the subordinate in the office. can not mean its having been entertained by the court, the presiding officer on that date.

in

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10: For that, this appellant is the adjoining raiyat of the lands in question.

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8.

11. For that, before filing of the case u/s 16(3) by the respondent Ist. Party, this appellant had made a registered deed of gift for 2 Katha 16 dhur of the lands out of the lands of sale deed in question in favour of her younger sister as already stated earlier and as such also the respondent Ist. Party can not have any right, for reconveyance or pre-emption. The right of reconveyance can be claimed with regard to whole of the property and not for the part of the property.

12. For that, the right of pre-emption is defeated if by the date of application the contestent acquired ~~without any purchase~~ ^{status} of co-sharer or adjoining right; only, part of land conveyed, can not be claimed in pre-emption and from the above facts and circumstances same matter is with this case.

13. For that, the form L.C. 13 has not been properly filled up and same is incomplete.

14. For that, wrong description of land in katha and bhesra has also been given in the impugned order as well as in L.C. Form 13 which gives a death blow to the

case of pre-emption. NA only that this appellant is the daughter of Sri Rajendra Bab but she has wrongly been shown as W/o Sri Rajendra Bab with ill-motive and other details.

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15. For that, the order was not shown to this appellant and others and this appellant has also been greatly prejudiced in making his case before the lower court in his absence.

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16. For that, there are other grounds which will be placed at the time of hearing.

17. For that, impugned orders are liable to be set aside and this appeal is fit to be allowed.

The appellant

through
S. S. S. S.
Advocate.
11.9.96

Certified that I have perused the papers and documents supplied by the appellant and prepared the grounds of appeal which are good grounds and I undertake to support it at the time of hearing.

S. S. S. S.
Advocate.
11/9/96

Annexure 1

19

पार्वती देवी -

प्रथम पक्ष

बनाम

सियाराम साह एवं अन्य -

द्वितीय पक्ष

:- आदेश :-

यह अग्रकथ वाद पार्वती देवी पिता-श्री राजेन्द्र साह, ग्राम-पस्तापार सबैला, सौर बाजार, जिला - सहरसा ने भूमि सुधार उप समाहर्ता, मधेपुरा के न्यायालय के अग्रकथ वाद संख्या- 44/92-93 में पारित आदेश दिनांक 18.06.1996 के विरुद्ध माननीय समाहर्ता न्यायालय में दायर किया है जिसका अग्रकथ अपील वाद संख्या- 05/96 पार्वती देवी बनाम सियाराम साह एवं अन्य है। माननीय समाहर्ता, मधेपुरा के न्यायालय में इस वाद को अंगीकृत करते हुए प्रतिवादी को नोटिश निर्गत किया गया एवं निम्न न्यायालय से अभिलेख की मांग की गई। निम्न न्यायालय से अभिलेख प्राप्त हुआ एवं प्रतिवादी वकालतनामा के साथ उपस्थित हुए। इस बीच इस वाद को सुनवाई कर निष्पादनार्थ अधोहस्ताक्षरी के न्यायालय को प्राप्त हुआ।

अधोहस्ताक्षरी द्वारा इस वाद को पंजीकृत करते हुए सुनवाई की तिथि निर्धारित की गई। इस वाद में विवादित भूमि का विवरण निम्न प्रकार है :-

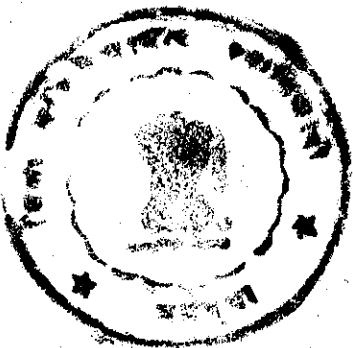
मौजा	खाता नं०	खेसरा नं०	रकबा	चौहददी
मजरहट	134 पु०	2665 पु० 3341 नया	0-5-10 कट्ठा	30- 2340
				द० -3016,3342
				पू०- 3348
				प०-
	279 पु०	2692 पु० 3326 नया	0-2-16	30-3405
				द०-3425
				पू०-3425
				प०-3418

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उभय पक्षों के विद्वान अधिवक्ताओं को सूना।

इस वाद में प्रथम पक्ष के विद्वान अधिवक्ता का कहना है कि विवादित जमीन निर्बंधित दान पत्र दिनांक 23.12.1992 के माध्यम से इनकी बड़ी बहन श्री मति मंजू देवी के नाम से प्राप्त है।

प्रथम पक्ष के विद्वान अधिवक्ता का आगे कहना है कि अफवाहन जानकारी मिली कि द्वितीय पक्ष सियाराम साह ने उक्त भूमि पर अग्रकथ वाद दायर किया है। फलतः इस वाद के अपिलार्थी ने एक इनफॉर्मेशन स्लीप दिनांक 27.07.96 के माध्यम से उप समाहर्ता भूमि सुधार, मधेपुरा के न्यायालय से इस आशय की जानकारी चाही तो उनके न्यायालय द्वारा दिनांक 14.08.96 को जानकारी दी गई कि इस वाद में उप समाहर्ता भूमि सुधार, मधेपुरा के न्यायालय द्वारा दिनांक 18.06.96 को अंतिम आदेश पारित किया जा चुका है।



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प्रथम पक्ष के विद्वान अधिवक्ता का आगे कहना है कि इस वाद में बिना किसी सूचना के एवं बिना युने ही उप समाहर्ता भूमि सुधार, मधेपुरा के द्वारा आदेश पारित किया जाना विल्कुल ही न्याय संगत नहीं है तथा रद्द करने योग्य है।

प्रथम पक्ष के विद्वान अधिवक्ता द्वारा उप समाहर्ता भूमि सुधार, मधेपुरा वाद संख्या- 44/92-93 में दिनांक 18.06.92 को पारित आदेश को रद्द करने हेतु अनुरोध किया गया है।

द्वितीय पक्ष के विद्वान अधिवक्ता का कहना है कि वे विवादित भूमि के दो तरफ चौहद्दी में हैं एवं उनका दावा सही है।

द्वितीय पक्ष के विद्वान का आगे कहना है कि बिहार भू हदबन्दी अधिनियम 1961 की धारा 16(3) के अन्तर्गत दो तरफ चौहद्दीदार रैयत होने के नाते उप समाहर्ता, भूमि सुधार, मधेपुरा के द्वारा पारित आदेश दिनांक 18.06.96 नियमसंगत एवं सही है।

द्वितीय पक्ष के विद्वान अधिवक्ता ने इस अपील आवेदन को खारीज करने का अनुरोध किया है।

निम्न न्यायालय के अभिलेख एवं उसके साथ संलग्न अन्य कागजातों का भी अवलोकन किया। सुनवाई के कम में उभय पक्षों के विद्वान अधिवक्ताओं को सूने, निम्न न्यायालय के अभिलेख एवं अन्य कागजातों के अवलोकन तथा सुनवाई के कम में उभय पक्षों द्वारा समर्पित कागजातों / साक्ष्यों के अवलोकन करने के पश्चात् सम्यक् विचारोपरान्त मैं इस निष्कर्ष पर पहुँचता हूँ कि :-

1. निम्न न्यायालय के आदेश फलक दिनांक 26.03.06 के अवलोकन से यह स्पष्ट होता है कि बिना उभय पक्षों को सुने इस वाद में आदेश पारित कर दिया गया है जो पुनर्विचारण योग्य है।

2. प्रतिवादी के दाखिल निबंधित केवाला में चौहद्दी के स्थान पर मात्र खेसरा संख्या अंकित है इसके साक्ष्य में प्रतिवादी के द्वारा कोई कागजात दाखिल नहीं किया गया जिससे स्पष्ट हो सके कि चौहद्दी में अंकित खेसरा प्रतिवादी का है एवं वे चौहद्दीदार रैयत हैं।

अतः उभय पक्षों के विद्वान अधिवक्ताओं को सूने, सुनवाई के कम में उपलब्ध कराये गये साक्ष्यों के आधार पर निम्न न्यायालय के अग्रकथ अपील वाद संख्या-44/92-93 में भूमि सुधार उप समाहर्ता, मधेपुरा द्वारा दिनांक 18.06.92 को पारित आदेश को दिखंडित करते हुए उक्त वाद को पुनः भूमि सुधार उप समाहर्ता, मधेपुरा के न्यायालय में पुनर्विचारण हेतु प्रतिप्रेषित (Remand) किया जाता है एवं भूमि सुधार उप समाहर्ता, मधेपुरा को निदेश दिया जाता है कि उक्त वाद में उभय पक्षों को विधिवत नोटिश तामिला कराकर एवं उभय पक्षों को सुनकर तथा उभय पक्षों द्वारा दाखिल साक्ष्य एवं स्थलीय जॉबोपरान्त संगत प्रावधानों के आलोक में नियमानुसार आदेश पारित करें।

आदेश की प्रति के साथ निम्न न्यायालय के मूल अभिलेख भूमि सुधार उप समाहर्ता, मधेपुरा को अनुपालन हेतु भेजे।

आदेश से उभय पक्षों को अवगत करा दें।

लेखापित एवं शुद्धिकृत

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