

**(1985) 12 PAT CK 0010**  
**In the Patna High Court**  
**Case No : LPA No. 121 of 1980**

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| Upendra Mishra and Another       | Vs | APPELLANT  |
| Smt. Inchan Mishrain and Another |    | RESPONDENT |

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**Date of Decision :** 20-12-1985

**Acts Referred:**

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3), 16(3)(iii)

**Citation :** (1986) 34 BLJR 666 : (1986) PLJR 763

**Hon'ble Judges :** S.S. Sandhawalia, C.J.; Ramnandan Prasad, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Ramnandan Prasad, J.—This appeal is directed against the decision of the learned single Judge of this Court in C.W.J.C. No. 4226 of 1978 whereby he has allowed the writ application filed by respondents 1st party and set aside the orders of the revenue authorities, as contained in Annexure 1, 2 and 3 of the writ application.

2. It appears that the present appellants initiated a proceeding u/s 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, before the Land Reforms Deputy Collector, Samastipur, claiming pre-emption in respect of 2 kathas 19 dhors and one and a half Kanawa of land bearing plot No. 4414 under Khata No. 927 of village Khas-Tabhka, which was purchased by the present respondent 1st party from respondent 2nd party through a sale deed executed on 19-6-1972 and registered on 13-9-72. The plea of the pre-emptor i.e, the present appellants was that they were the owners of the adjoining lands, whereas the respondents 1st party were neither co-sharers of the transferor nor the raiyats of the adjoining lands. As the respondent 1st party did not appear before the Deputy Collector, In charge Land Reforms, he decided the matter ex-parte allowing the application of the applicants for pre-emption on the finding that they were the owners of the adjoining lands, being

the sons of Rajendra Mishra, who held land on the eastern, western and southern boundaries of the land in question and further that the respondent 1st party were neither the co-sharer of the transferor nor the raiyats of the adjoining land. Annexure-1 is the copy of the said decision. The respondents 1st party went in appeal before the learned Additional Collector, Samastipur, against the said decision, but the same was dismissed and the decision of the learned Deputy Collector In charge Land Reforms, was affirmed. Thereafter, respondents 1st party went in revision before the Member, Board of Revenue, which was dismissed for default on 23-1-1978 by the Additional Member, Board of Revenue, and the application filed by them for restoration of the said revision application was also dismissed on 10-5-1978. Ultimately, respondents 1st party filed C.W.J.C. No. 4226, of 1978, which was allowed by a learned single Judge of this Court on the finding that although the name of the father of the pre-emptor appeared on the southern boundary, the name of the husband of petitioner No. 1, i.e., the present respondent No. 1 also appeared on the eastern and western boundaries and, therefore, the ground advanced by the pre-emptor was neutralised.

3. The submission of the learned Counsel appearing for the appellants is that the claim of pre-emption made by the appellants could not be neutralised, even if the husband of respondent No. 1 was a co-owner of the land of the eastern and western boundaries. In this connection it was further submitted that the sale deed stood in the name of respondent No. 1, who is the wife of Mahendra Mishra, the alleged co-owner of the boundary lands on the east and west and there is no presumption under the law that the land standing in the name of wife shall be deemed to belong to the husband. In the present case it may be pointed out that the pre-emption is being claimed against Smt. Inchan Mishra and not against her husband Mahendra Mishra, besides Sukhdeo Mishra who is the son of Shivanandan Mishra. It was also pointed out that it was not the case of the respondents 1st party that Mahendra Mishra had purchased the land in question through the said sale deed in the Benami name of his wife. In such a situation, it would be presumed that the purchase was made by the wife herself, as the theory of advancement is not applicable in India. Regarding respondent No. 2 Sukhdeo Mishra it was stated that he does not hold any land on the boundary and there is concurrent finding of fact of the revenue authorities in this regard and this Court, in its writ jurisdiction, should not ordinarily disturb such a finding of fact. In my opinion, there is substance in the submissions made by the learned Counsel for the appellants.

4. It would be relevant to point out here that the learned single Judge has not gone into the question as to whether respondent No. 1 was a Benamidar of her husband. Indeed there is nothing in the decision to indicate that respondent No. 1 had made out of a case that she was the Benamidar of her husband or that the husband was the real purchaser. The learned Judge seems to have refused the claim of the pre-emptors on the sole ground that the husband of respondent No. 1 was the owner of the adjoining lands on two sides of the land in question, and

as such the ground of pre-emption advanced by the pre-emptor was neutralised. With great respect to the learned single Judge, the claim of a pre-emptor cannot be refused, simply because the husband of the transferee of the sale deed was the owner of adjoining land, as the wife has a separate identity of her own and the property standing in her name shall be deemed to be her own property, and as such the husband cannot be presumed to be the real owner of the land, unless a case of benami purchase is made out, and established. This aspect of the matter was considered by a Full Bench of this Court in the case of Ram Jiwan Singh and Others Vs. State of Bihar and Others, . The following observations of Hon"ble U.N. Sinha, J. (as he then was) with whom Hon"ble the Chief Justice and Hon"ble S.N.P. Singh, J. (as he then was) agreed, make the position clear:

Learned Counsel for the petitioners has argued that the sale deed in question states that the disputed properties had been sold to the three ladies, and even if their husbands were raiyats of the adjoining lands, the ladies must be compelled to transfer the disputed lands in favor of the petitioners, if they themselves are neither co-sharers of the transferred lands, nor are they raiyats of adjoining lands. So far as the petitioners are concerned, reference is made to paragraph 3 of the writ application where the petitioners have mentioned their interest in the adjoining lands, a fact which is said to have gone unchallenged in this Court.

Learned Counsel for the petitioners has also referred to the case of Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Another, and to the case of Hazaribagh Mica Mining Company Limited Vs. Mrs. Ashalata Kapoor and Others, urging that when the husbands had not proved that they were, in fact, the purchasers of the disputed land, the petitioners' application u/s 16(3) of the Act should not have failed. Learned Counsel for opposite parties Nos. 4 to 9 has referred to paragraph 5 of the rejoinder, quoted above, and has argued that the husbands had purchased the disputed properties from Srimati Urrnila Devi, in the name of their wives who were really Banaradars, and therefore, the husbands were justified in contesting the application for re-transfer as raiyats of adjoining lands. Having heard the learned Counsel for the parties, I am of the opinion, that the main contention urged on behalf of the petitioners must prevail on the facts and circumstances of the case and the order of reconveyance passed in favor of the petitioners had rightly been made u/s 16(3)(iii) of the Act. The ladies had not proved that they were either co-sharers of the vended lands and, therefore, the Additional Member of the Board of Revenue had erred in reversing the orders passed by the authorities subordinate to him.

5. The Full Bench has further observed as follows:

...On the general question of a Benami transaction raised by the learned Counsel for the contesting respondents, it is enough to state that the matter had not been urged before the Additional Collector and the Commissioner, and the learned Additional Member of the Board of Revenue had not decided the question, and so it is not necessary to deal with this matter at this stage.

6. In the present case also the question of Benami transaction was not urged before the revenue authorities and as such it is not necessary to deal with this matter in this appeal.

7. In view of the aforesaid Full Bench decision, respondent No. 1 cannot claim protection against the claim of pre-emption made out by the appellants, simply because her husband was a co-sharer of some of the adjoining lands of the land in question. That being so, the question of neutralising the claim of the pre-emptor, in the circumstances of the case, cannot arise, and the impugned order has, therefore, to be set aside.

8. In the result, the appeal is allowed with costs against respondents 1st party and the orders of the revenue authorities, as contained in Annexure 1, 2 and 3 are restored.