

## Suresh Mandal Vs Addl. Member Board of Revenue, Bihar and Others

**Court:** Patna High Court

**Date of Decision:** April 16, 2007

**Acts Referred:** Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 " Section 16(3)

**Citation:** (2007) PLJR 186

**Hon'ble Judges:** Aftab Alam, J

**Bench:** Single Bench

**Advocate:** U.K. Choudhary, for the Appellant; Harshwardhan Prasad, for the Respondent

**Final Decision:** Dismissed

### Judgement

Aftab Alam, J.

Heard counsel for the petitioner. The State counsel is present though no one appears for private respondents 4 to 6. This

writ petition arises from a pre-emption proceeding u/s 16(3) of the Bihar Land Ceiling Act in regard to a transaction that took place about twenty

five years ago in 1983.

2. The petitioner is the pre-emptor.

3. The brief facts of the case may be stated as follows. On 16.1.1983 Lakho Deve respondent No. 6 executed a sale deed in favour of Chhedi

Pd. Mandal (respondent No. 4) for a consideration of Rs. 5000/-. The sale deed was registered on 4.6.1984. The petitioner then filed an

application u/s 16(3) of the Act depositing Rs. 5500/- (being the consideration money plus 10%) and impleading Chhedi Pd. Mandal and Lakho

Devi as opp. party. The claim of pre-emption was based on the ground that the petitioner was both an adjoining raiyat and a co-sharer in regard to

the disputed land. Though the date on which the claim of pre-emption was filed before the D.C.L.R. is not stated, it is admitted that it was filed as

required by law after the registration of the sale deed.

4. According to respondent No. 4 soon after purchasing the disputed land from Lakhi Devi, he sold it under a registered deed, dated 16.2.1983 to

Bhagwat Mandal (respondent No. 5) for a consideration of Rs. 14,500/-. It is undeniable that the deed executed by respondent No. 4 in favour of

respondent No. 5 was duly registered though the date of its registration is nowhere stated in the writ petition. Strangely enough the petitioner did

not file any application for impleadment of Bhagwat Mandal to the proceeding and the D.C.L.R. finally rejected his claim as not maintainable in the

absence of the second transferee. It was only then that the petitioner filed an application before the D.C.L.R. for recall of the final order passed in

the proceeding with a further prayer to allow the petitioner to implead Bhagwat Mandal as a party to the proceeding. The D.C.L.R. naturally

rejected the petition.

5. The petitioner then took the matter in appeal. The Addl. Collector found that the non-impleadment of Bhagwat Mandal was no lacuna because

the sale deed executed by respondent No. 4 in his favour was sham and Farzi. The only ground for taking such a serious view was the difference in

the consideration money in the two sale deeds executed at a difference of one month only.

6. The respondent No. 4 challenged the appellate order in revision before the Board of Revenue. His revision was allowed by order, dated

31.1.1987 passed by the Addl. Member, Board of Revenue. The Addl. Member held, and rightly so. that in the absence of any cogent material it

was not open to the Addl. Collector to hold that the second sale deed in favour of respondent No. 5 was sham and Farzi, simply on the basis of

the difference in consideration money.

7. On hearing counsel for the petitioner and on going through the materials on record, I am satisfied that the Board of Revenue took a very proper

view of the matter. Simply a difference in the consideration amounts cannot lead to the inference that the second sale deed was sham and Farzi and

consequently the non-impleadment of Bhagwat Mandal was fatal to the proceeding. The D.C.L.R. and the Addl. Member, Board of Revenue

took the correct view while the view taken by the Addl. Collector was quite erroneous. I, thus, find no merit in this writ petition. It is accordingly

dismissed.