

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2936 of 1991

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1. (i) Rameshwar Singh
(ii) Maheshwar Singh
(ii) Dinesh Singh
(iv) Tribhuwan Singh
All sons of the deceased
(v) Vedmati Singh
(vi) Sandhya Singh, both daughter of deceased
2. (i) Chhotelal Kushwaha, son of deceased
(ii) Ujjawal Kushwaha
(iii) Ambrish Kushwaha
(iv) Archana Kushwaha
(v) Preety Kushwaha
All 2(ii) to 2(v) sons and daughters of deceased son of Late Lallan
Pd. Kushwaha
(vi) Tapeshwari Devi, wife of Late Lallan Pd. Kushwaha
(vii) Shiv Kumari Devi, daughter of deceased.
3. (a) Sarjani Devi, wife of Late Ishwar Chandra Singh
All residents of village0Sukulwan Khurd, Police Station-Gopalganj,
District-Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. Addl. Member, Board of Revenue, Patna.
3. The Collector Gopalganj.
4. The D.C.L.R., Gopalganj
5. Subhash Kumar Singh son of Bihswanath Singh
6. Prasad Sah son of Laljee Sah
Respondent No. 5 and 6 resident of Village-Sukulwan Khurd,
Police Station-Gopalganj, District-Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ragho Prasad
For the State : Mr. Sushant Praveer, A.C. to S.C. 27

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL ORDER

13 02-03-2015 1. Heard learned counsel for the petitioners and learned
counsel appearing on behalf of the Respondents-State of Bihar.
There is no representation on behalf of Respondent No. 5, who

was the purchaser of the land in question in a proceeding under Section 16(3) of Bihar Land Ceiling Act, 1961.

2. The petitioners seek to challenge the order dated 30.03.1991 passed by learned Additional Member, Board of Revenue, Patna in Board Revision Case No. 463 of 1989 whereby he has reversed the findings recorded by the learned D.C.L.R., Gopalganj in his judgment and order dated 29.08.1985 in Ceiling Case No. 36 of 1984-85. The petitioners are the preemptors, whose application for preemption under Section 16(3) of the Act was allowed by the said order of the Deputy Collector, Land Reforms dated 29.08.1985 in Ceiling Case No. 36 of 1984-85. The Collector, Gopalganj, upon an appeal preferred against the order of the Deputy Collector, Land Reforms, Gopalganj, affirmed the order of the Deputy Collector, Land Reforms, Gopalganj and dismissed the appeal vide order dated 21.08.1989. Respondent No. 5 thereafter filed revision case numbered as Revision Case No. 463 of 1989 which came to be allowed by an order dated 30.03.1991.

3. It seems that the writ application was earlier heard by this Court and vide order dated 09.09.2010, it was allowed and the order of learned Additional Member, Board of Revenue, Patna was quashed with following observation:-

“It is submitted on behalf of the petitioners

that the Additional Member, Board of Revenue has committed a gross error in deciding the matter in favour of the vendee. It has been presumed by the Additional Member, Board of Revenue that the story of exchange put forward by the pre-emptor is true and on the aforesaid assumption has decided in favour of respondent no. 5. The purchaser has not been able to substantiate the story of exchange by any documentary or oral evidence and as such the finding in favour of the respondent has to be set aside by this court. The order of the Additional Member, Board of Revenue is bad on the face of the record and has to be therefore, set aside.”

4. Respondent No. 5 thereafter filed an application for review of the order of this Court dated 09.09.2010 by filing Civil Review No. 314 of 2010, on the ground that when the matter was taken up, the name of learned counsel for Respondent No. 5 who had appeared through Vakalatnama did not appear in the Daily Cause List on account of which he could appear and the Respondent thus remained unrepresented. He also took a plea that the petitioner had died during the pendency of this writ application itself.

5. Upon such submission, this Court vide order dated 17.01.2014 allowed Civil Review No. 314 of 2010 and recalled the order dated 09.09.2010 passed in C.W.J.C. No. 2936 of 1991. It is in the background of these facts that the matter has been placed again for hearing.

6. As has been recorded above, there is no representation on behalf of Respondent No. 5, though, name of learned counsel

Mr. Satyendra Kumar Sinha is appearing on the Daily Cause List.

7. No counter affidavit has been filed on behalf of Respondent No. 5. Learned counsel for the petitioners submits that the petitioners are boundary-raiyats on two sides of land in question and on a wrong presumption of exchange of land by the vendee i.e. Respondent No. 5, the Additional Member, Board of Revenue reached to an erroneous conclusion that Respondent No. 5 was the adjoining Raiyats, though he had failed to produce any documents in support of his plea of such exchange of land.

8. From the impugned order passed by learned Additional Member, Board of Revenue, I do not find reference to any evidence or document on the basis of which he reached to the conclusion that the Respondent No. 5 had exchanged the land with his co-sharers and thus he became adjoining raiyat of the land in question. I find substance in submission made on behalf of the petitioners that finding of fact arrived at by the learned Additional Member, Board of Revenue, Patna is patently illegal and erroneous on the face of it. The impugned order passed by learned Additional Member, Board of Revenue dated 30.03.1991 passed in Board Revision Case No. 463 of 1989 is set aside.

9. This application is allowed accordingly.

(Chakradhari Sharan Singh, J.)

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