

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7629 of 1995

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1. Satyanarain Mandal
 2. Sadanand Mandal, Both sons of Fedaru Mandal, resident of village – Laxmipur, P.S. – Kursakanta, District – Araria.

.... Petitioners

Versus

1. The State of Bihar
2. The Collector, Araria.
3. The Additional Collector, Araria.
4. The L.R.D.C., Araria.
5. The Circle Officer, Kursakanta, District – Araria.

.... Respondents First Party

6. Prakash Kumar Mallick, son of late Dinanath Mallick
7. Ashok Kumar Mallick, son of Dinanath Mallick
Both resident of village – Sijhuwa, P.S. – Kursakanta, District – Araria.

.....Respondent Second Party

8. Punit Kumar Mallick, son of Late Shreekant Mallick
9. Binod Kumar Mallick, son of Late Shreekant Mallick

.....Respondent Third party

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL JUDGMENT

Date: 21-05-2015

Learned counsel for the respondent nos. 6 & 7 points out that respondent no. 6 is dead and there has been no substitution in his place. That makes a little difference inasmuch as the estate of respondent no. 6 is duly represented by respondent no. 7 who is his own brother.

2. Heard learned counsel for the petitioners, learned counsel for the contesting respondent no. 7 and learned counsel for the State.

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3. The petitioners are aggrieved by the order of the authorities by which rejecting the objection of the petitioners, respondent no. 6 & 7 were declared to be the under-raiyat, in respect of lands which the petitioners claim.

4. The brief facts are that there were two brothers, namely, Jaykant Mallick and Shreekant Mallick. They had equal shares in respect of 5.05 acres of lands. Petitioners had purchased half share of the said land by Jaykant Mallick vide registered sale deed. So far as the other half of the land, the share of Shreekant Mallick, is concerned, he had taken on usufruct mortgage by registered mortgage deed. This fact of mortgage is duly recognized in the Revisional Survey Khatihan. It is pointed out that in the Revisional Survey, there is no mention of contesting respondent nos. 6 & 7 or their father even as an under-raiyat. Petitioners came to know that a mischievous petition on behalf of respondent nos. 6 & 7 was filed as against the heirs of Shreekant Mallick claiming that the father of respondent no. 6 & 7 was an under-raiyat of the said land. After his death, recently the respondent nos. 6 & 7 became the raiyat, who were threatened for eviction by the heirs of Shreekant Mallick and hence they sought protection. On coming to



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know of this, petitioners intervened in the proceedings. Apart from others, he submitted that the land had been given to the petitioners on usufructuary mortgage. There is no question of any Bataidar of the land. The Revisional Survey did not show any such entry. The very fact that the contesting respondent nos. 6 & 7 filed application against heirs of Shreekant Mallick shows that they did not know the land holder. He further pointed out that Batai was being claimed in respect of over three acres of land, whereas, Shreekant Mallick did not have interest more than half of 5.05 acres i.e. 2.025 acres. The plea of being Bataidar was, thus, false.

5. Petitioners were added as intervener respondents in the proceedings. They further claimed that even though father of contesting respondent nos. 6 & 7 may have been the Bataidar, but upon his death, no application was made or permission sought nor any order passed recognizing respondent nos. 6 & 7 as Bataidar.

6. In that view of the matter, the claim should not be entertained. However, the authorities decided against the petitioners by a Board which had already been constituted for reconciliation much prior to the intervention

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application.

7. Be that as it may, the fact remains that there is serious dispute as to whether the petitioners were in possession or whether respondent nos. 6 & 7 were Bataidars of the said land. One thing cannot be disputed is neither of them is the land holder. Therefore, before the authorities proceeded in the matter, it was incumbent upon them to decide this basic issue on cogent evidence and then order for constitution of Board for reconciliation. Reconciliation is assertion of a right of Bataidar as against the land, but, if it is found that petitioners were never in possession or if it is found that petitioners were in possession then the case would be totally different. While deciding the same, it must be kept in mind that the right of an under-raiyat is not inheritable right without permission of the authorities. This would also be the issue to be decided because the contesting respondent nos. 6 & 7 clearly states that it is after the death of their father, who was the Bataidar, they are being threatened to eviction.

8. Thus, in my view, the impugned orders as passed by the Circle Officer and affirmed by the L.R.D.C. Araria, as also of the Additional Collector in Appeal, cannot

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be sustained. It is, accordingly, set aside. It would be open to the parties to move afresh before the authorities. The authorities to take into consideration various aspects and decide the matter in accordance with law after notice to the interested parties.

9. Accordingly, the writ petition is allowed.

(Navaniti Prasad Singh, J.)

Rajeev/-

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