

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1380 of 1998

Pradeep Kumar Tiwari, son of late Bishwanath Tiwari, resident of post office and village – Parbatta, District – Khagaria

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Khagaria
3. The Deputy Collector, Land Reforms, Gogari, Khagaria
4. The Circle Officer, Parbatta, District – Khagaria
5. Anil Tiwari, son of Late Bishwanath Tiwary @ Bachcha Tiwari, resident of village – Parbatta, Police Station – Parbatta, District – Khagaria
6. Ram Ratan Singh, son of Rameshwar Singh, resident of village – Karna, Police Station – Parbatta, District – Khagaria

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. K . N. Choubey, Sr. Advocate

For the Respondent/s : Mr. Rana B. N. Singh, AC to GP-9

For the Respondent No. 6: Mr. Ram Bali Jha

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 01-04-2015

01.04.2015

Heard learned Sr. counsel for the petitioner and the counsel for the private-respondent as well as the State.

A new case cannot be permitted or allowed to be made out at the level of the writ court by the petitioner or the private-respondent no. 5, who happens to be his own brother. Obviously, a new story has been introduced to get over the rigors of the decision rendered by the Collector and held in favour of the private-respondent no. 6 to be a “*Bataidar*” over the land in question.



There is adequate finding that private-respondent no. 5 had participated in the proceedings including the nomination of a "*Panch*" and after the order had gone against his interest, they had filed the writ application trying to take a plea that there was partition between the family and the land belonging to the present petitioner and the private-respondent no. 5 had no right to play. In support thereof only an affidavit has been filed on behalf of private-respondent no. 5 with absolutely no evidence thereof.

Even in the impugned order, no serious defence had been put up with regard to the partition within the family or the land belonging only to the present petitioner.

Contrary to the same, the private-respondent no. 6 has brought adequate evidence on record to show that for all practical purposes all the brothers have asserted their right in other ceiling proceedings as one entity instead of separate entity or persons having their own interest in terms of a partition.

The writ application, therefore, is dismissed. The impugned order is not required to be interfered with, especially on a new plea, which is sought to be taken over and above the adjudication, which has been made

and the Court, sitting under Article 226 of the Constitution of India, will not act as a super-collector in adjudication of such matter and permit the petitioner to argue the matter afresh.

Writ application has no merit, it is dismissed.

Dismissal of the writ application, however, will not come in the way of the right of the petitioner as landlord to claim benefit under section 48 (a) of the BT Act and other provisions of the Act.

(Ajay Kumar Tripathi, J.)

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