

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5655 of 2007

Meena Devi, wife of Murli Singh, resident of village- Jethwar, Police Station-
Tarari, District, Bhojpur

.... Petitioner

Versus

1. The State of Bihar
2. Collector, Bhojpur at Ara
3. Land Reforms Deputy Collector, Piro, Bhojpur
4. Anchal ADhikari, Tarari, Bhojpur
5. Birendra Kumar Singh
6. Sunil Kumar Singh
7. Atul Kumar Singh

5 to 7 are sons of Ram Raj Singh and are residents of village +
Post Office- Jethwar, Police Station- Tarari, District- Bhojpur

.... Respondents

Appearance :

For the Petitioner : M/s. Mrigendra kumar,
Kushum Kumari, Advocates

For the Respondent

Nos.5 to 7 : Mr. V. S. Modi, Advocate

For the State : Mr. Amitabh Bhardwaj, A.C. to S.C. 12

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 20-01-2015

I have heard the parties.

The point of controversy relates to plot
nos.1278 and 1281 appertaining to khata no.38 of an area of 1
acre and 20 decimal of land of village, Jethwar, Police Station-

Tarari, District, Bhojpur. The petitioner claims to be the purchaser of that land by registered sale deed dated 24.12.2001 from one Keshav Prasad Sharma son of Hulas Sharma. The respondent nos. 5 to 7 claim to have purchased the land from another son of Hulas Sharma, namely, Raj Kishore Sharma, on 16.01.2002 through five registered sale deeds.

Learned counsel for the petitioner submits that there was a partition amongst the sons of Hulas Sharma after his death and, accordingly, the memorandum dated 14. 09. 1989 was prepared granting the land in question in favour of Keshav Prasad Sharma and on that basis he had purchased the land. It is further submitted that after compromise having been arrived at in the aforesaid manner, all the brothers approached the Circle Officer for their respective entries in the revenue records in view of the compromise but it appears that one of the sons, namely, Raj Kishore Sharma, filed partition suit no.192-197 in which he had stated that the compromise partition was a piece of forgery. Thereafter, a joint compromise petition was again filed in the partition suit and in that compromise petition the lands were allotted in favour of Raj Kishore Sharma and on that basis, respondent nos.5 to 7 claim that they have purchased the land from Raj Kishore



Sharma. However, it appears that the respondent nos.5 to 7 had entered into an agreement for the sale of the land concerned on 03.10.2001, i.e, even before filing of the joint compromise petition in the aforesaid partition suit. Subsequently, a compromise petition was filed in which the lands were shown in the schedule of Raj Kishore Sharma son of Hulas Sharma. Petitioner claims that an objection to the compromise was filed by the vendor of the petitioner, Keshav Prasad Shamra. Both the parties submit that partition suit is still pending but the respondent nos.5 to 7, during the pendency of the partition suit and before passing of any decree accepting the compromise petition, had purchased the aforesaid land from Raj Kishore Sharma on 16.01.2002.

From the order passed by the D.C.L.R., it appears that he has accepted such compromise without its acceptance by the court concerned and has set aside the order passed by the Circle Officer allowing mutation in petitioner's name on the basis of purchase from a person in whose name a jamabandi was already running. None of the aspects raised by the petitioner appears to have been dealt with by the revisional authority also which has passed the order stating that the order passed by the DCLR being detailed one, appears to be correct.

In my considered opinion, such order is cryptic and cannot be sustained.

Accordingly the order passed by the revisional authority is set aside. The matter is remitted back to the District Magistrate, Bhojpur at Ara to take a fresh decision on its own merit and in accordance with law. At the time of taking such decision he would also have to keep in mind that the orders of mutation cases are passed only for the purposes of collection of rent as a Full Bench of this Court as back as in the year 1974 in **Nand Kumar Rai and others Vs. State of Bihar and others and other analogous matters [1974 PLJR 27]** has held that entry in the record of rights does not create or extinguish any right, title and interest and, thus, he would also examine as to whether the issue raised in the mutation cases regarding who is competent to alienate a property and whose vendor had the title to execute the sale deed would be decided by the mutation authority and whether they are empowered or required to consider all these aspects specially when partition suit is pending before the competent civil court? Thereafter, he would be required to pass a reasoned order after granting opportunity of hearing to all the parties concerned within a period of three months from the date of receipt/production of a

copy of this order.

This writ application stands allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

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