

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14257 of 2010

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1. Mahendra Kumar Jha S/O Late Deo Kant Jha R/O Mohalla- Ashok Nagar Pokharia, Ward No.24, P.S. Begusarai Town, Distt.- Begusarai
2. Yatindra Kumar Jha S/O Late Deo Kant Jha R/O Mohalla- Ashok Nagar Pokharia, Ward No.24, P.S. Begusarai Town, Distt.- Begusarai
3. Navin Chandra Mishra S/O Late Satya Deo Mishra R/O Mohalla/Vill.- Birsai, P.S.- Pandaul, Distt.- Madhubani, at present Ashok Nagar Pokharia, Ward No.24, P.S. Begusarai Town, Distt.- Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna
3. Home Secretary, Government of Bihar, Patna
4. Director General of Police, Police Department Old Secretariat, Patna
5. The Deputy Inspector General of Police, Munger
6. The Superintendent of Police, Begusarai
7. The District Magistrate, Begusarai
8. The Sub Divisional Officer, Begusarai
9. The Officer-Incharge, Begusarai Town, P.S.- Begusarai
10. Sarwan Kumar, Police Inspector Begusarai Town Police Station
11. Manoj Kumar (Singh), the then Officer-in-charge of Begusarai Town P.S., Distt.- Begusarai
12. Jyoti Nandan Azad, Sub Inspector of Police Begusarai Town Police Station
13. Circle Officer, Begusarai Anchal, Distt.- Begusarai
14. Circle Inspector, Begusarai Anchal, Distt.- Begusarai
15. Koshlendra Singh, Halka Kramchari of Begusarai Anchal, Begusarai
16. Navin Singh S/O Late Rajendra Singh R/O Vill.- Bariarpur, P.S.- Balia, Distt.- Begusarai, at Present Mohalla- Ashok Nagar Pokharia, Ward No. 27, Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Jha, Advocate Mr. Yatindra Kumar Jha, Advocate Mr. Pranav Kumar, Advocate
For the Respondent Nos. 1 to 15	:	Mr. Uma Shankar, GP 4 Mr. Anil Kr. Singh, AC to GP 4
For the Respondent No. 16	:	Mr. Rajeev Ranjan Prasad, Advocate Mr. Manoj Kumar No.1, Advocate Mr. Rakesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 19-02-2015

Heard the parties.

2. The matter at issue is the dispute of possession between the parties over two plots of lands bearing Khesra Nos. 272 and 273,

appertaining to khata no. 32, total area being 3 katha 10 dhurs situate at Mauza Mokimpur in the town and district of Begusarai (in short, the lands in question”).

3. Learned counsel appearing on behalf of the petitioners submits that the petitioners or their ancestors have been coming in possession over the lands in question since the year 1942/1943. However, according to him, subsequently, one Ravindra Prabha Ojhain @ Shakuntala Devi filed Title (Partition) Suit No. 35 of 1966 before the Civil Court at Begusarai, in which the writ petitioners besides others were the defendants. He has fairly conceded that the aforesaid Title Suit was finally decreed by judgment and decree dated 31.03.1997. It is also pointed out that against the aforesaid judgment and decree, the petitioners filed F.A. No. 236 of 1997, which is still pending before this Court.

4. The grievance of the petitioners in the present writ petition filed under Article 226 of the Constitution of India is that the original decree holder Smt.Ravindra Prabha Ojhain transferred the lands in question during the pendency of the title suit itself to one Ravi Shankar Prasad by a registered sale deed. Subsequently, from the sons of aforesaid Ravi Shankar Prasad, the respondent no.16 purchased the lands in question through a registered sale deed dated 06.01.2009 and on the basis of the aforesaid sale deed, the petitioners have been unlawfully dispossessed from the lands in question. Therefore, a prayer has been made for issuance of a direction to put back the petitioners in possession over the lands in question.

5. The matter has been contested by learned GP4, appearing on behalf of the official respondents as also by learned counsel appearing on behalf of the respondent no.16. Both sets of the respondents have filed their separate counter affidavits controverting

the claims raised on behalf of the petitioners.

6. Learned GP 4 has submitted that if the petitioners are, at all, aggrieved by their alleged dispossession from the lands in question, then they have alternative remedy under Section 6 of the Specific Relief Act, 1963 and therefore, the petitioners are not entitled for the reliefs sought for in the present writ petition. It is also pointed out that the criminal case filed by the petitioners regarding alleged unlawful dispossession from the lands in question was thoroughly investigated by the Police and during the course of investigation the allegation was found to be false and accordingly final report has been submitted in the aforesaid criminal case.

7. Learned counsel appearing on behalf of the respondent no.16, while resisting the prayer made on behalf of the petitioners, submits that, in fact, question of possession between the parties was gone into in the mutation proceeding. The competent revenue authority considered the claim/materials of both the parties and thereafter mutation order has been passed in favour of the respondent no.16 holding therein that the respondent no.16 is in possession over the lands in question. According to him, the petitioners, being aggrieved by the aforesaid order of mutation, filed an appeal before the appellate authority, which is still pending.

8. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the claim raised on behalf of the petitioners regarding their dispossession from the lands in question is within the realm of disputed question of fact, though, according to the learned counsel appearing on behalf of the petitioners, despite the petitioners being the judgment debtors by virtue of judgment and decree passed in Title Suit No. 35 of 1096 they were still in possession over the lands in

question. However, the claim of the petitioners has been seriously disputed by the learned counsel appearing on behalf of the respondent no.16 and it has been asserted that in the mutation proceeding the petitioners were not found in possession over the lands in question. In fact, according to him, the claim of possession of respondent no.16 was accepted by the competent authority.

9. Indisputably, the respondent no.16 has purchased the lands in question from the persons, whose father was purchaser from the decree holder of the aforesaid title suit. If the petitioners have been unlawfully dispossessed from the lands in question, then they have got an efficacious and alternative remedy before the Civil Court by filing an appropriate civil suit. Section 6 of The Specific Relief Act, 1963 also provides for filing of a suit in case of dispossession from the immovable property.

10. Since the entire claim of the petitioners is based on a disputed question of fact, this Court is not inclined to accede to the prayer made on behalf of the petitioners in the present writ petition.

11. In the result, the writ petition has to fail and is accordingly, dismissed, but without costs. However, the petitioners shall be at liberty to approach the Civil court of competent jurisdiction for grant of appropriate relief (s) for which they may be found entitled to under the law. If such a suit is filed by the petitioners, then the same shall be considered and decided by the court concerned in accordance with law, and without being prejudiced by any observation made/finding recorded by this Court in the present order.

(Birendra Prasad Verma, J)

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