

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9820 of 1996

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1. Lakshman Tatma
 2. Yashwant Tatma

.... Petitioners

Versus

1. The State of Bihar.
2. Sub-divisional Officer, Banmankhi, Purnea.
3. Anchal Adhikari, Banmankhi, Purnea
4. Krishna Kumar Singh.
5. Ani Kumar Singh

Both sons of Late Devanand Mandal, resident of village Kachahri Balua,
P.S. Sarsi, District Purnea.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Kumar Uday Singh, Advocate
For the State	:	Mrs. Nivedita Nirvikar, G.A. X
		Mr. Manoj Kumar, AC to G.A. X
For the Respondent	:	M/s . Arun Prasad Ambastha &
Nos. 4 and 5		Raghwendra Singh, Advocates

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 09-04-2015

I have heard the parties and perused the records of this case.

The petitioners seek quashing of the order dated 25.7.1996, as contained in Annexure 5, passed by the Sub Divisional Officer, Banmankhi in Appeal Case No. 35 of 1996 by which he has reversed the order dated 5.1.1996 passed by the Anchala Adhikari, Banmankhi passed in Case No. 53/95-96.

The land in dispute is of R.S. Plot No. 2407 of an area of 0.42 acres appertaining to R.S. Khata No. 919 of Mauza Kachahari



Balua. It is contended on behalf of the petitioners that, in the revisional survey khatian, the name of petitioners' father Lachai Tatma has been recorded as Sikmidar with respect to the land in dispute and the name of Devanand Mandal, i.e., the father of respondent nos. 4 and 5 stands recorded as raiyat of the said land. The petitioners applied under Section 48 D of Bihar Tenancy Act, 1885 for their acceptance as a raiyat of the said land. His application was allowed by the Anchala Adhikari vide Annexure 4 dated 5.1.96. The respondent nos. 4 and 5 challenged the aforesaid order passed by the Anchala Adhikari by preferring appeal before the Sub Divisional Officer, Banmankhi in particular against such declaration with respect to the plot no.2407. The Sub Divisional Officer by his order dated 25.7.96 contained in Annexure 5 has reversed the finding of the Anchala Adhikari and held that the petitioners having failed to show that they are in possession of the land in question continuously since last 12 years as under raiyat, they cannot claim to have acquired the right of raiyat.

Learned counsel appearing for the petitioners has submitted that admittedly the name of father of the petitioners has been entered in R.S. khatian as Sikmidar whereas the name of the respondent nos. 4 and 5 stands recorded as raiyat. It is contended that according to the custom prevailing in Banmankhi area, Sikmidar

right is heritable. The case of the petitioners is that their father having died about 1 ½ to 2 years back, they should be treated as Sikmidar in continuation and, thus, should be conferred raiyati right.

However, a counter affidavit has been filed on behalf of the respondent nos. 4 and 5 disclosing the admitted position that in 1996 a brick kiln was established by their father which is not working since last ten years and the petitioners claimed that they are cultivating the lands since 1 ½ to 2 years back only. It has been contended that, unless they are in a position to establish their possession on the land concerned since 12 years, there is no question of their acquiring raiyati rights. In support of his submission learned counsel has placed reliance upon a decision of Division Bench of this Court rendered in **Jageshwar Mandal and others v. Mostt. Safia and others** [AIR 1972 Patna 297]. It is contended that Division Bench held that onus would lie upon the person who is claiming such occupancy right being in possession for more than 12 years to prove his continuous possession as such and since the petitioners have miserably failed to prove such possession, the appellate authority has rightly reversed the finding of the Anchala Adhikari.

On anxious consideration of the rival contention this Court does not find force in the submission raised on behalf of the

petitioners.

It has been urged on behalf of the petitioners that there revisional survey khatian was prepared sometime in the year 1958 in which the name of their father stands recorded as Sikmidar and the name of the father of the respondent nos. 4 and 5 stands entered as raiyat. However, from the materials produced before the authority below and from the witnesses led by the parties, it also appears that admittedly the brick kiln was established in the year 1960 on the plot no. 2407 which was not working for last 10 years from the date of passing of Annexure 4, i.e., the order passed by the Anchala Adhikari. However, the petitioners claim that they are in cultivating part of the plot no. 2407 since last 1 ½ to 2 years which was vacant as on some part of that a brick kiln was previously running and about ten thousand bricks were still staked there. That goes to show that, after entry in the revisional survey records of right, i.e., in the year 1960, the sikmidar could not remain in possession of the land as brick kiln was being run by the father of the respondent nos. 4 and 5 and admittedly the petitioners are in cultivating possession of part of the land since last 1 ½ to 2 years only, thus, they cannot be said to have acquired occupancy right upon the plot no. 2407 as their father was not in possession thereof since admittedly a brick kiln was being run over there. Even if it is assumed that there is a

prevailing custom in Banmankhi area of Sikmi right being heritable character, at best the petitioners can enter into the shoes of their father but, since their father himself was not in possession for the last continuous 12 years, they also cannot claim it. If they independently claim the occupancy right then again they are not in continuous possession for the last 12 years as admittedly they are cultivating part of the land concerned since last 1 ½ to 2 years only.

It is, thus, held that petitioners have not been able to point out any error in the order impugned warranting interference of this case. As a result, this writ application falls and is, accordingly, dismissed. However, there would be no order as to cost.

(Dr. Ravi Ranjan, J)

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