

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9473 of 1994

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1. Chanarik Bhagat, husband of Late Laxmi Devi.
 2. Ramswaroop Paswan,
 3. Subodh Paswan,
- Both sons of Chanarik Bhagat and all residents of village-Dighi Khurd, P.S.-Hajipur Sadar, District-Vaishali.
4. Lalmuni Devi, wife of Bindeshwar Paswan, D/o-Chanarik Bhagat, resident of village-Chaksikandar Jhakralya, P.S.-Rajapakar, District-Vaishali.
 5. Munni Devi, wife of Umesh Paswan, D/o-Chanarik Bhagat, resident of village & P.S. Asadharpur, District-Vaishali. Petitioners.
- Versus

1. The State of Bihar.
 2. The Collector, Vaishali at Hajipur.
 3. Bimal Paswan, son of Chandradeep Paswan.
 4. Chandradeep Paswan, son of Shrestha Paswan.
- Both residents of village-Dighi Khurd, P.S.-Sadar Hajipur, District-Vaishali. Respondents.
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Appearance :

For the Petitioners : Mr. Dharmesh Kumar, Advocate.
For the State : Mr. Mahbood Ashraf, AC to SC-27
For the Private-Respondents : None

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 16-04-2015

Heard learned counsel for the petitioners and the State. The private-respondents were noticed. They have appeared but they are not represented.

The original writ-petitioner, Laxmi Devi died during pendency of the writ petition and had been substituted by her husband and children.

The original writ petitioner had purchased certain lands in village Dighi Khurd, P.S. Hajipur Sadar, District Vaishali from respondent no.4-Chandradeep Paswan by registered sale

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deed. Respondent no.3 happens to be the son of respondent no.4 and he challenged not only the authority of his father but to sell the land. He had challenged the sale deed as being void in view of the fact that consolidation proceedings had been notified and the sale deed was made without permission of the Collector. When the matter was taken up by the Collector on objection of respondent no.3, the Collector admits that the lands in question falling within the jurisdiction of the Patna Regional Development Authority and the High Court in a writ proceedings had stayed the consolidation operation in those areas. The plea of the writ petitioner was that the consolidation proceeding having been stayed, there was no requirement of seeking permission for sale of land which position in law was correct. The Collector, however, disregarding the position, held that by sale of land it would lead to fragmentation and, therefore, as if he was duty bound to stop the fragmentation, declared the sale deed to be void.

Having considered the matter, in my view, the writ petition has to be allowed. Firstly, if respondent no.4 intended to challenge the authority or the right, title or interest of his father respondent no.4 to sell the property, the proper course available to respondent no.3 was to file a civil suit against his father to sell his property standing in his name. Alternatively, respondent no.3

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could have sought a partition but this indirect method of frustrating the sale made by the father cannot be countenanced. This Court further finds that the sale was admittedly executed when this Court had stayed the consolidation proceedings in the area. Once the consolidation proceedings were stayed rightly or wrongly the provisions of the Act so far as to operate, the sale deed requires no prior permission from the Collector.

Thus, on both those issues, the writ petition must succeed and the order of the Collector dated 12.09.1994/ 03.10.1994 passed in Case No.R/124/89-90 and R.Case No. 125/89-90, as contained in Annexure-2, is set aside.

Accordingly, the writ petition is allowed.

(Navaniti Prasad Singh, J.)

Trivedi/NAFR

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