

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3470 of 2013

In

Civil Writ Jurisdiction Case No. 14324 of 2005

With

Interlocutory Application No. 2756 of 2015

In

Miscellaneous Jurisdiction Case No. 3470 of 2013

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1. Md. Safiqul @ Safique Alam S/O Alam Hussain
 2. Md. Yasin S/O Late Fajuddin
 3. Nesha Muhammad S/O Noor Muhammad
 4. Md. Affaziuddin S/O Alam Hussain
 5. Md. Mubaraj Hussain S/O Alam Hussain
 6. Md. Jamaluddin S/O Alam Hussain
 7. Mokhtar Ahmad S/O Maulvi Mahfoozul Rahman
 8. Md. Mehdi Hassan S/O Maulvi Mahfoozul Rahman
 9. Md. Masood Alam S/O Maulvi Mahfoozul Rahman
 10. Md. Nayeemuddin S/O Obaidur Rahman
 11. Md. Matiur Rahman S/O Anisur Rahman

All are residents of Village Kolhan, P.S- Ajam Nagar, District- Katihar.

12. Rampat Mandal S/O Late Fago Mandal, resident of Village-
Basantpur, P.S- Ajam Nagar, District- Katihar.

.... Petitioners

Versus

1. The State Of Bihar
2. The Collector, Katihar.
3. L.R.D.C. Barsoi, District- Katihar.
4. Circle Officer, Ajam Nagar, District- Katihar.
5. Bideshi Mandal S/O Late Gopal Mandal, resident of Village- Basantpur,
P.S- Ajam Nagar, District-Katihar.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Najmul Hoda, Advocate
For the Opp.Party Nos. 1 to 4 : Mr. Vikash Kumar, AC to PAAG
For the Opp.Party No. 5 : Mr. Md. Musowir, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

5 15-04-2015

Re: **I.A. No. 2756 of 2015**

The instant Interlocutory Application has been filed by the heirs and legal representatives of petitioner no.2, Md. Yasin, fully detailed in paragraph no.2 of the present Interlocutory Application, stating therein that petitioner no.2 died on 06.02.2012

leaving behind the aforesaid applicants as his heirs and legal representatives.

Learned counsel appearing on behalf of the petitioners submits that, in the factual matrixes of the case, even after death of petitioner no.2 right to sue survives, therefore, name of petitioner no.2 may be expunged from the array of the parties of the MJC application as also the main writ petition and his heirs may be substituted in his place and they may further be permitted to prosecute this litigation.

Learned counsel appearing on behalf of the opposite parties does not raise any objection to the aforesaid prayer for substitution.

In the aforesaid facts and circumstances, the prayer for substitution is allowed. Let the name of petitioner no.2 Md.Yasin be expunged from the array of the parties of MJC No. 3470 of 2013 as also CWJC No. 14324 of 2005 and his heirs and legal representatives, fully detailed in paragraph 2 of the instant Interlocutory Application, are directed to be substituted in his place, who all have entered appearance by filing their duly executed vakalatnama.

I.A.No. 2756 of 2013 stands finally allowed with the observations and directions made above.

Re: **MJC No. 3470 of 2013**

The present MJC application has been filed on behalf of the writ petitioners seeking restoration of CWJC No.14324 of 2005 which stood dismissed for want of prosecution by order dated 26.06.2013.

After having heard the parties and taking into consideration the reasons disclosed in the present MJC

application, the prayer for restoration is hereby allowed. CWJC No. 14324 of 2005 is directed to be restored to its original file.

The present MJC application, thus, stands finally disposed of

Re: **CWJC No. 14324 of 2005**

With the consent of the parties, the present writ petition has been taken up for consideration on merit. All the parties are represented through their counsel.

The petitioners are aggrieved by the order dated 14.06.2005 (Annexure-4) passed by the respondent District Collector, Katihar in Mutation Revision Case No. 687/1998-99 whereby the aforesaid revision application filed on behalf of the respondent no.5 has been allowed and original order passed by the Circle Officer, Ajam Nagar and appellate order passed by the respondent DCLR, Barsoi allowing the claim of the writ petitioners for mutation of their names with respect to the lands in dispute have been reversed and set aside.

After having heard the parties and taking into consideration the findings recorded by all the three revenue authorities, this Court finds that there are serious dispute of right, title and possession between the parties with respect to the lands under dispute. The orders passed either by the respondent Circle Officer or by the respondent DCLR in favour of the writ petitioners and the revisional order passed by the respondent District Collector in favour of the respondent no.5 for mutation of their names with respect to the lands under dispute shall not finally and conclusively decide the claims of their right, title and possession. The issues of right, title and possession cannot be effectively decided in a proceeding under Article 226 of the

Constitution of India. Such issues can be effectively decided in an appropriate civil suit by civil court of competent jurisdiction.

For the reasons recorded above and without interfering with the orders impugned, the writ petition is disposed of with a liberty to the person (s) aggrieved to approach the civil court of competent jurisdiction for grant of appropriate relief (s). If such a civil suit is filed either by the petitioners or by the respondent no.5, the same shall be considered and decided in accordance with law only on the basis of evidences/materials produced by the parties but without being prejudiced/influenced by any findings recorded either by the respondent Circle Officer or by the respondent DCLR or by the respondent District Collector in their respective orders with respect to the lands under dispute. The parties shall be at liberty to raise all the issues of fact and law, which are available to them.

The writ petition stands finally disposed of with the observations and directions made above, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

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