

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8657 of 1998

With

I.A. No.92 of 2008

With

I.A. No.6293 of 2012

1. Janki Singh, son of Late Marai Singh.

2. Ashok Singh, son of Late Laxmi Singh.

Both are residents of Village- Jalalpur, P.O.- Gultenganj, P.S.-
Chapra Mufasil, District- Chapra.

.... Petitioner/s

Versus

1. The State of Bihar.

2. The A.D.M., Saran at Chhapra.

3. The D.C.L.R., Saran at Chhapra.

4. Shankar @ Manish Kumar

5. Suraj @ Manoj Kumar.

Respondent nos.4 and 5 are sons of Laxman Pd. Singh, Dakshini
(Southern) Mandiri, Kathpool, Patna-1, P.S. - Budha Colony, District- Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Narayan Singh, Sr Advocate with
Mr. Ram Charitra Singh
Mr. Ram Babu Singh

For the Respondent/s : Mr. Rajeev Kumar Singh, GP-2

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-07-2015

Heard Mr. Narayan Singh, learned senior counsel
appearing on behalf of the petitioners and Mr. Rajeev Kumar Singh,
learned Government Pleader No.2 for the State.

Though private respondent nos.4 and 5 have registered
appearance through counsel but there is no representation on their
behalf when this matter is taken up for hearing and is being
disposed of by this judgment.



The two petitioners by this writ petition filed under Article 226 of the Constitution of India have prayed for issuance of a writ in the nature of certiorari for quashing the order dated 12.5.1997 passed by the Deputy Collector, Land Reforms, Saran at Chapra ('DCLR' for the sake of brevity) in Jamabandi Correction Case No.1 of 1996-97, whereby the jamabandi running in the name of the petitioners has been cancelled to be opened in the name of the private respondents. A copy of the order is placed at Annexure-5 to the writ petition. The petitioners have also questioned the order dated 13.11.1997 passed by the Additional Collector, Saran at Chapra in Mutation Revision No.5 of 1997, whereby the appeal (revision) preferred by the petitioners has been dismissed and the second revision arising from Mutation Revision No.73 of 1997-98 preferred by these petitioners before the Commissioner, Saran Division has also been rejected on grounds of maintainability in view of the deletion of section 17 from the Bihar Tenant Holdings (Maintenance of Records) Act, 1973. A copy of the orders passed by the Additional Collector and the Divisional Commissioner are present at Annexures 6 and 7 respectively.

The facts of the case briefly stated are that the two petitioners herein are the lineal descendants of one Marai Singh who was survived by two sons, namely, Janki Singh i.e. petitioner



no.1 and Laxmi Singh, i.e. father of petitioner no.2 and one daughter Parwati Devi who was married to Dr. Jai Gopal Lal. It is the case of the petitioners that Marai Singh deceased while in possession of the ancestral land admeasuring about 17 kathas and after his death his widow Tileshwari Kuwar purchased eight plots of land in between the year 1954 to 1968 admeasuring 1 bigha 10 kathas and 18 dhurs, all of which are situated in Village- Jalalpur in the district of Saran and are adjacent to ancestral holdings of these petitioners. It is further the case of these petitioners that since they were minors hence the lands were purchased by the mother of the petitioner no.1 and the grand-mother of petitioner no.2 Tileshwari Kuwar in the name of Jai Gopal Lal, the brother in-law of petitioner no.1 with a view to provide guardianship to the children as well as for protection of the land. It is the case of the petitioners that when they attained majority that they requested to Dr. Jai Gopal Lal to transfer the said eight plots of land which had been purchased by Tileshwari Kuwar in his name, in their favour and on the request so made Dr. Jai Gopal Lal executed a deed of Ladavi on 26.4.1979. It is the case of the petitioners that since the Ladavi was executed by way of family arrangement and that there was no dispute on the issue hence it was executed on a plain paper, a copy of which is present at Annexure-1 to the writ petition. It is next stated that



following the Ladavi executed on 26.4.1979 that the two petitioners approached the Circle Officer, Sadar Anchal, Chapra for correction of the Jamabandi which was running in the name of Dr. Jai Gopal Lal to be corrected in their name and for opening the account in their names with the support of the deed of Ladavi as well as the statement made by the wife of late Dr. Jai Gopal Lal, namely, Parwati Devi who deposed in favour of these petitioners and accepted that the lands in fact belonged to her mother and her brothers and that there was no dispute regarding the deed of Ladavi. A copy of the statement of Parwati Devi is present at Annexure-2. It is the specific case of the petitioners that even after execution of the sale deed in favour of Dr. Jai Gopal Lal although the receipts were being issued in his name but in the column of payee, the names of the petitioners were clearly mentioned. The Circle Officer being satisfied by the documents on record accepted the request and made correction in the jamabandi by incorporating the names of the two petitioners vide order passed on 31.3.1985, a copy of which is placed at Annexure-3. It is the case of the petitioners that the possession of the lands all along remained with the petitioners and after correction of the jamabandi vide order dated 31.3.1985 (Annexure-3) receipts are being issued in the names of the present petitioners. It is contended that the matter rested at such stage and

no dispute at any stage was raised either by Parwati Devi or the son of Dr. Jai Govind Lal and Parwati Devi, namely, Laxman Prasad Singh who is the father of the private respondents.

It is the case of the petitioners that the dispute only started when the grand-son of Dr. Jai Gopal Lal attained majority who started staking claim on the land in question by surreptitiously obtaining the sale-deed. An objection petition was filed before the Circle Officer by the private respondents on 13.6.1996, a copy of which is Annexure-4 to the writ petition which was referred before 'the DCLR' giving rise to Jamabandi Case No.01 of 1996-97 and the DCLR vide order passed on 12.5.1997 in consideration of the sale deed which admittedly is in the name of Dr. Jai Gopal Lal has set aside the jamabandi opened in the name of the petitioners and has issued directions for opening of the jamabandi in the name of private respondents. The appeal preferred by the petitioners numbered as Mutation Revision No.5 of 1997 was dismissed by the Additional Collector, Saran at Chapra vide order dated 13.11.1997 and the second revision bearing Mutation Revision No.73 of 1997-98 was dismissed by the Commissioner, Saran Division, Chapra on grounds of maintainability present at Annexure-7 and being aggrieved the two petitioners are before this Court.

Mr. Narayan Singh, learned senior counsel appearing

on behalf of the petitioners has raised the following issues to question the impugned orders:

- (a) The revenue authorities are not vested with jurisdiction to adjudicate upon the issue of title and thus the orders impugned are in excess of jurisdiction;
- (b) The facts available before the revenue authority fully supported the case of the petitioners and it is upon being satisfied that the Circle Officer has made correction in the jamabandi which required no interference;
- (c) If at all the respondents were aggrieved, their remedy lay before the Civil Court of competent jurisdiction and not before the revenue authorities.

Mr. Narayan Singh, learned senior counsel appearing for the petitioners with reference to the deed of Ladavi present at Annexure-1 and the statement of Most Parwati Devi, wife of late Dr. Jai Gopal Lal submitted that even if the deed of Ladavi is on a plain sheet yet its recitals stand admitted by the statement of the wife of the executant as well as the receipts issued by the revenue authorities which show the name of the depositor. It is submitted that the Circle officer being satisfied by the circumstances existing and the fact that the petitioners were in possession of the land in



question, had made correction in the jamabandi by incorporating the names of the petitioners in place of Dr. Jai Gopal Lal. He submits that the revenue authorities in entering on the issue of title in the backdrop of the sale-deed have gone beyond the jurisdiction so conferred upon them and in which view of the matter the orders are unsustainable.

Mr. Rajeev Kumar Singh, learned Government Pleader No.2 appearing for the respondents while admitting to the legal position regarding the jurisdiction of the revenue authorities has submitted, that the opinion of the statutory authorities is on the basis of materials on record.

I have heard learned counsel for the parties and I have perused the materials on record.

The arguments advanced by Mr. Narayan Singh to support the claim of the present petitioners for questioning the impugned orders and in support of opening of the jamabandi in their names finds support from the observation of this Court in the Bench decision rendered in the case of **Depta Tiwari vs. State of Bihar** reported in **1987 PLJR 1037** and I am tempted to quote paragraph 9 of the said judgment:

“In my view the Officers passing the orders on mutation matter do not exercise any judicial or quasi-judicial function. They arrive at a decision of possession on the basis of the evidences placed before them including the reports of the officers

concerned. Respondent nos.2 and 3, in my opinion, cannot be said to be a 'Court' within the meaning of section 3 of the Evidence Act and as such it was not necessary for them to follow the procedure laid down under the Evidence Act for the purpose of proving any document or otherwise."

What has been prohibited by this Court in the judgment referred to above is exactly what has been done by the statutory authorities vide the impugned orders. Whereas the documents available before the Circle Officer for correction of the jamabandi to run in the name of the present petitioners in place of Dr. Jai Gopal Lal was based upon the evidence produced by these petitioners in respect of their title and possession, the DCLR while passing the impugned order in directing deletion of the names of the present petitioners has in fact adjudicated on the issue of title which is not a jurisdiction vested in a revenue authority. Whether the deed of Ladavi is genuine? Whether the statement of Parwati Devi supporting the deed of Ladavi executed by Dr. Jai Gopal Lal on 26.4.1979 is a genuine piece of document? Whether the application filed by Most Parwati Devi, widow of Dr. Jai Gopal Lal is a genuine document? Whether the receipts so in possession of the petitioners reflecting the deposit made by them are correct? These are issues which could only be adjudicated by a Civil Court of competent jurisdiction.

Apart from the above, the very fact that since after



correction of the jamabandi in the name of the petitioners on 31.3.1985 vide Annexure-3 for complete 11 years there was no objection forthcoming either from Parwati Devi or her son Laxman Pd. Singh who is father of the private respondents and it took 11 years for the private respondents to stand up and protest, is another instance which in fact draws in favour of the petitioners. In fact the objection petition filed by the private respondents present at Annexure-4 nowhere indicates why for all these years, the respondents or their parents never raised objection to such correction.

In the accompanying circumstances and the facts available on record, there leaves no room for confusion that the satisfaction drawn by the Circle Officer in correcting the jamabandi in the name of the petitioners in place of Dr. Jai Gopal Lal on the basis of a Ladavi deed executed by him on 26.4.1979 (Annexure-1) and the statement of Parwati Devi, wife of late Jai Gopal Lal dated 5.10.1982 (Annexure-2) as well as the receipts in possession of the petitioners, suffered no infirmity warranting interference.

In result the order dated 12.5.1997 passed by the DCLR, Chapra in Jamabandi Correction Case No.01 of 1996-97 impugned at Annexure-5, the order dated 13.11.1997 of the Additional Collector, Saran at Chapra in Mutation Revision No.5 of

1997 impugned at Annexure -6 and the order dated 11.9.1998 of the Commissioner, Saran Division impugned at Annexure-7 cannot be upheld and are accordingly set aside.

The writ petition is allowed. The interlocutory applications stand disposed of.

(Jyoti Saran, J)

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