

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11276 of 2010

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1. Niraj Kumar, son of Sri Ugra Mohan Kumar
2. Santosh Kumar, son of Sri Ugra Mohan Kumar
Both residents of Village- Jhandapur, P.S.- Bihpur, Distt.- Bhagalpur

.... Petitioners

Versus

1. The State of Bihar
2. The Secretary –cum- Commissioner, Revenue Department, Bihar, Patna-1
3. The Collector, Bhagalpur, Distt.- Bhagalpur
4. The Deputy Collector (Land Reforms), Bhagalpur
5. The Circle Officer, Bihpur Circle, Distt.- Bhagalpur
6. Prema Devi, Widow of Late Paro Kumar, resident of village- Jhandapur, P.S. Bihpur, Distt.- Bhagalpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. VIVEKANAND VIVEK
For the Respondent/s : Mr. AC to SC-21

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 06-07-2015

Heard Sri Vivekanand Vivek, learned counsel for the petitioners, learned AC to SC-21 as well as Sri Viveka Nand Singh, learned counsel for Respondent no.6.

2. The petitioners, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order dated 06.02.2010 passed by the learned Collector, Bhagalpur in Mutation Revision Case no.34/2006-07. By the said order, the learned Collector, Bhagalpur has set aside the order dated 28.07.2006 passed by the D.C.L.R., Bhagalpur in Appeal Case no.22/04-05. A prayer has also been made to confirm the order of the

D.C.L.R., Bhagalpur.

3. The case of the petitioners is that they had purchased the land through a registered sale deed from Shashi Bhushan Kumar, son of Respondent no.6. Thereafter, they applied for mutating their names. However, before the Circle Officer, Respondent no.6 appeared and filed a petition. She raised objection saying that she had already executed will in favour of her grand son and daughter-in-law. The said petition was entertained by the Circle Officer and mutation in favour of Respondent no.6 was directed to be done. It was further held by the Circle Officer that during lifetime of Prema Devi (Respondent no.6), no land shall be transferred by her grand son and daughter-in-law. Since the order of the Circle Officer was not in accordance with law, the petitioners preferred an appeal before the D.C.L.R., Bhagalpur vide Mutation Appeal no.22/04-05. The D.C.L.R. after hearing the parties and considering the ground, particularly the ground that the will in question was not at all confirmed in probate proceeding, allowed the appeal and remitted back the matter to the Circle Officer. Against the order of the D.C.L.R, Respondent no.6 preferred a Revision, which has been allowed by order dated 06.02.2010. The same order has been assailed in the present writ petition. The only point, which has been raised by the petitioners, is that in absence of confirmation of the will in the probate proceeding,

neither the Circle Officer nor the Collector was required to entertain the claim of Respondent no.6. The Court is of the opinion that unless the will is confirmed, it is not required to be taken note by the authority concerned. The petitioners had applied for mutation on the strength of registered sale deed. Since the D.C.L.R. had already remitted back the matter to the Circle Officer for passing appropriate order, the Court is of the opinion that the order of the Collector is required to be set aside. Accordingly, the order dated 06.02.2010 passed in Mutation Revision Case no.34/06-07 is set aside and the order dated 28.07.2006 passed by the D.C.L.R. is restored to its original. However, it is made clear that if Respondent no.6 feels that the sale deed executed by her son was not appropriate, she would be at liberty to avail appropriate remedy by approaching the court of competent jurisdiction.

4. The writ petition stands disposed of.

(Rakesh Kumar, J)

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