

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10134 of 2008

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1. Sunaina Devi widow of Late Shobha Kant Jha R/o Village- Ghoripachma, P.S.- Korha, District- Katihar
 2. Babita Devi widow of Late Vijay Jha R/o Village- Ghoripachma, P.S.- Korha, District- Katihar
 3. Nayan Kumar Jha S/o Late Vijay Jha R/o Village- Ghoripachma, P.S.- Korha, District- Katihar
 4. Sonal Kumar Jha Minor S/o Late Vijay Jha, under the guardianship of his Mother Namely Babita Devi, widow of Vijay Jha R/o Village- Ghoripachma, P.S.- Korha, District- Katihar
 5. Bal Ram Kumar Jha Minor S/o Late Vijay Jha, under the guardianship of his Mother Namely Babita Devi, widow of Vijay Jha R/o Village- Ghoripachma, P.S.- Korha, District- Katihar
 6. Vishal Kumar Jha Minor S/o Late Vijay Jha, under the Guardianship of his Mother Namely Babita Devi, widow of Vijay Jha R/o Village- Ghoripachma, P.S.- Korha, District- Katihar
 7. Puja Kumari minor D/o Late Vijay Jha, under the guardianship of her Mother Namely Babita Devi, widow of Vijay Jha R/o Village- Ghoripachma, P.S.- Korha, District- Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Katihar, District- Katihar
3. The Additional Collector, Katihar, District- Katihar
4. The Deputy Collector, Land Reforms, Katihar, District- Katihar
5. The Circle Officer, Korha, District- Katihar
6. Chhutharu Ravidas @ Shyam Narayan Ravidas S/o Fahim Ravidas R/o Village- Ghoripachma, P.S.- Korha, District- Katihar
7. Rajendra Ravidas S/o Fahim Ravidas R/o Village- Ghoripachma, P.S.- Korha, District- Katihar
8. Shankar Ravidas S/o Fahim Ravidas R/o Village- Ghoripachma, P.S.- Korha, District- Katihar
9. Bhola Ravidas S/o Fahim Ravidas R/o Village- Ghoripachma, P.S.- Korha, District- Katihar

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10337 of 2008

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1. Sunaina Devi widow of Late Shobha Kant Jha R/o Village - Ghoripachma, P.S.- Korha, District- Katihar
2. Babita Devi widow of Late Vijay Jha R/o Village - Ghoripachma, P.S.- Korha, District- Katihar
3. Nayan Kumar Jha S/o Late Vijay Jha R/o Village - Ghoripachma, P.S.- Korha, District- Katihar

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4. Sonal Kumar Jha Minor S/o Late Vijay Jha, under the guardianship of his mother namely Babita Devi, widow of Vijay Jha R/o Village - Ghorī Pachma, P.S.- Korha, District- Katihar
 5. Bal Ram Kumar Jha Minor S/o Late Vijay Jha, under the guardianship of his Mother Namely Babita Devi, widow of Vijay Jha R/o Village-Ghorī Pachma, P.S.- Korha, District- Katihar
 6. Vishal Kumar Jha Minor S/o Late Vijay Jha, under the guardianship of his Mother Namely Babita Devi, widow of Vijay Jha R/o Village-Ghorī Pachma, P.S.- Korha, District- Katihar
 7. Puja Kumari Minor D/o Late Vijay Jha, under the guardianship of her mother Namely Babita Devi, widow of Vijay Jha R/o Village-Ghorī Pachma, P.S.- Korha, District- Katihar

.... Petitioner/s

Versus

1. The State of Bihar
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6. Chhutaru Ravidas @ Shyam Narayan Ravidas S/o Fahim Ravidas R/o Village- Ghorī Pachma, P.S.- Korha, District- Katihar
7. Rajendra Ravidas S/o Fahim Ravidas R/o Village- Ghorī Pachma, P.S.- Korha, District- Katihar
8. Shankar Ravidas S/o Fahim Ravidas R/o Village- Ghorī Pachma, P.S.- Korha, District- Katihar
9. Bhola Ravidas S/o Fahim Ravidas R/o Village- Ghorī Pachma, P.S.- Korha, District- Katihar

.... Respondent/s

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Appearance:

(In CWJC No. 10134 of 2008)

For the Petitioner/s : Mr. Vishwanath Pd. Sinha, Sr. Advocate
Mr. Yugal Kishore, Advocate
Mr. Nand Kishore Singh, Advocate
Mr. Nitin Kumar, Advocate

For the private respondent Nos. 6 to 9 : Mr. Bhola Prasad, Advocate
Mr. Mukesh Kumar Jha, Advocate

For the State : Mr. Saroj Kumar Sharma, A.C. to AAG-5

(In CWJC No. 10337 of 2008)

For the Petitioner/s : Mr. Vishwanath Pd. Sinha, Sr. Advocate
Mr. Yugal Kishore, Advocate
Mr. Nand Kshore Singh, Advocate
Mr. Nitin Kumar, Advocate

For the private respondent Nos. 6 to 9 : Mr. Bhola Prasad, Advocate
Mr. Mukesh Kumar Jha, Advocate

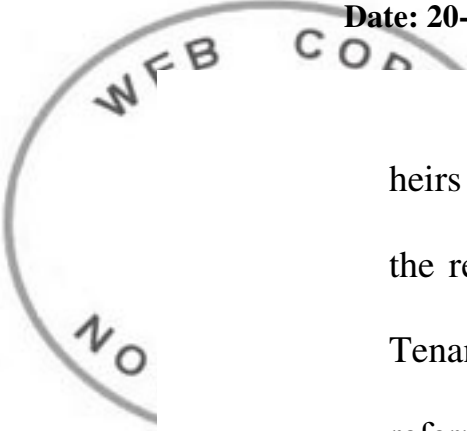
For the State : Mr. Saroj Kumar Sharma, A.C. to AAG-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-07-2015



The petitioners in the writ petitions who are the substituted heirs of Late Shobha Kant Jha, have questioned the order passed by the revisional authority in exercise of power vested under the Bihar Tenant Holdings (Maintenance of Records) Act, 1973 (hereinafter referred to as 'the act') whereby the challenge by the petitioners to the order of mutation granted in favour of the private respondent nos. 6 to 9 in the two writ petitions in respect of land bearing Khata No. 22, Plot No. 258 admeasuring 40 decimals in each of the two proceedings i.e. 80 decimals and odd, has been rejected.

Facts of the case briefly stated is that one Bishwanath Choudhary owned land in village-Gorhi Pachma in the district of Katihar. The land which is the subject matter of the dispute is a plot bearing Khata No. 22, Plot No. 258 having a total area of 5.22 acres of which the area in dispute is 80 decimals. The said Bishwanath Choudhary died issueless and his widow Mosmat Shyam Sundari Devi inherited his property. The said Syam Sundari executed a will on 01.09.1987 in respect of 25 acres of land in village Korha in the district of Katihar in favour of the original writ petitioner Late Sobha Kant Jha which was inclusive of the land bearing Khata No. 22, Plot No. 258 to the extent of 1.65 acres. The will was registered on



02.9.1987 and a copy of the same is placed at Annexure-1. The will was probated under judgment and order dated 13.1.1994 passed by the District Judge, Katihar placed at Annexure-2 to the writ petition and which has attained finality. It is the case of the petitioners that by virtue of the will and the probate granted by the Court, the original petitioner came into the possession of the entire land including the land in question bearing Plot No. 258 to the extent of 1.65 acres. The writ petitioner applied for mutation and was granted receipt by the Anchal Adhikari in respect of the entire land so bequeathed under the will vide order dated 30.8.1997 passed in Mutation Case No. 505 of 1997-98 (Annexure-3). The matter rested at this stage and the writ petitioner was being granted receipts since after the mutation of his name in the revenue records on 13.11.2005. The writ petitioner also executed several sale deeds in favour of the different persons after the land was so bequeathed upon him. The petitioner was subsequently informed regarding a mutation order being passed in favour of the private respondents when he approached the block office and obtained the order passed in Mutation Case No. 1023 of 2002-03 and Mutation Case No. 1160 of 2002-03 whereunder orders were passed for recording the name of the private respondents in the revenue records in respect of Plot No. 258 to the extent of 80 decimals. Upon making further investigation that the petitioner gathered knowledge that one



Bina Devi wife of late Sachidanand Kuer stated to be the maternal nephew of Bishwanath Choudhary had executed two sale deeds on 27.10.1997 in favour of the respondent no. 6 to 9 and vide each of the two sale deeds the said Bina Devi had also sold 40 decimals each in Plot No. 258 alongwith Plot No. 263 to the extent of 65 decimals each. The two sale deeds executed by Most. Bina Devi widow of late Sachidanand Kuer is impugned at Annexure-6 to each of the two writ petitions. It is following the execution of the two sale deeds in respect of land bearing Plot No. 263 admeasuring 65 decimals and Plot No. 258 admeasuring 40 decimals in each of the two sale deeds that the vendees approached the Circle Officer giving rise to Mutation Case No. 1023 of 2002-03 and 1160 of 2002-03 which was allowed on 17.09.2002 and 21.9.2002 respectively. Copies of the orders are impugned at Annexure-7 to the two writ petitions. The writ petitioner being aggrieved filed statutory appeal against the order passed by the Circle Officer giving rise to Appeal No. 130 of 2003-04 arising from Mutation Case No. 1023 of 2003 and Appeal No. 131 of 2003-04 arising from Mutation Case No. 1160 of 2002-03 and both appeals were dismissed vide order passed on 22.8.2003 impugned at Annexure-8. The writ petitioner preferred a revision against the order passed by the Deputy Collector Land Reforms giving rise to Revision Case No. 790 of 2003 arising from the order passed in Mutation



Appeal No. 130 of 2003-04 and Revision No. 783 of 2003 arising from Mutation Appeal No. 131 of 2003-04 and which two revision applications also were dismissed vide order passed on 03.4.2008 and the petitioner aggrieved by the orders passed by the statutory authorities in the two set of proceedings is before this Court in the two writ petitions. The original writ petitioner Sobha Kant Jha deceased and has been substituted by his legal heirs.

Since the plot numbers and the transaction are the same except that the two sale deeds have given rise two set of proceedings, as discussed hereinabove, the two writ petitions have been heard analogous and with the consent of the parties are being finally disposed of at the stage of admission itself.

Mr. Vishwanath Prasad Sinha, learned senior counsel has appeared for the petitioner in the two writ petitions, the State is represented by the State counsel and the private respondent nos. 6 to 9 in each of the two writ petitions is represented by Mr. Bhola Prasad and Mr. Mukesh Kumar Jha.

Mr. Singh, learned counsel for the petitioners with reference to the registered will placed at Annexure-1 to the writ petition and the probate granted under the orders of the District Judge, Katihar placed at Annexure-2 to the writ petition submits that whereas there is no dispute regarding the right, title and interest of the petitioners over



the Plot No. 258, although the private respondents claim their title by virtue of the sale deed executed by Bina Devi, the widow of late Sachidanand Kuer who was the maternal nephew of late Bishawanath Choudhary but the sale deed so executed on 27.10.1997 as contained in Annexure-6 to the writ petition very clearly speaks that the vendor was exercising her right under the gift deed so executed by Bishwanath Choudhary in favour of the husband of the vendor late Sachidanand Kuer. Mr. Singh, learned counsel appearing for the petitioner straightway referred to the gift deed executed by Bishwanath Choudhary in favour of Sachidanand Kuer, the late husband of the vendor Bina Devi, placed at Annexure-5 to the writ petition and to submit that the lands so gifted by late Bishwanath Choudhary to Sachidanand Kuer are mentioned in the gift deed and do not include plot no. 258 which is manifestly absent from the list of the plots so gifted to Sachidanand Kuer. He submits that only three plots were gifted to Sachidanand Kuer by late Bishwanath Choudhary i.e. Plot nos. 263, 302 and 214 but there is no mention of Plot No. 258 and thus the sale deed executed by Bina Devi relying upon the gift deed insofar as it related to Plot No. 258, is clearly without any title. He submits that whereas at the stage of mutation proceedings before the Circle Officer, no notice was served on the petitioner, the Additional Collector while considering the appeal has simply rejected



the appeal on grounds of delay and insofar as the revisional authority is concerned, the reason assigned to support the transaction, was not even advanced by the private respondents. He submits that although the vendor relies upon the gift deed to execute the sale deed, the revisional authority has wholly illegally upheld the same on the law of inheritance which was not even the case pleaded by the private respondents.

The argument of Mr. Singh has been contested by learned counsel for the State as well as the private respondents inter alia on grounds that in absence of any demarcation to the property so bequeathed on the writ petitioner under the registered will dated 02.9.1989 and since admittedly the Plot No. 258 had a larger area, hence no infirmity could be attached to the orders impugned.

Although Mr. Mukesh Kumar Jha appearing for the private respondents submits that the gift deed impugned at Annexure-5 to the writ petition is not the correct reproduction of the deed but even while submitting as such he agrees that plot no. 258 was never gifted to Sachidanand Kuer.

I have heard learned counsel for the parties and I have perused the materials on record. There is absolutely no dispute insofar as the right of the writ petitioner over Plot No. 258 is concerned which is supported by the registered will placed at Annexure-1 and



the probate granted thereto by the District Judge, Katihar. 12 plots were bequeathed upon the petitioner under the will including the plot in question to the extent of 1.65 acres. The absence of demarcation would in no manner affect the right, title and interest of the petitioner over the same. In fact it is not the right of the writ petitioner over the plot in question in dispute, the dispute is whether the vendor Bina Devi had any right, title or interest over plot no. 258 to execute the sale deed in favour of the private respondents. The two sale deeds executed on 27.10.1997 are placed at Annexure-6 to the respective writ petition and the vendor has clearly mentioned in the recital that she has received the lands in question through her late husband who had received the same by gift. Although the gift deed executed by the land owner late Bishwanath Choudhary in favour of the husband of the petitioner, namely, Sachidanand Kuer is present at Annexure-5 and although plot no. 263 is mentioned therein to the extent of 1.30 acres and thus the execution of the sale deed to the extent of 65 decimals in each of the two sale deeds in respect of plot no. 263 cannot be faulted with, but in absence of any mention of Plot No. 258 in the gift deed, clearly the vendor had exceeded her right in selling the Plot No. 258 for this plot of land was never gifted to her husband by the land owner. Even though the private respondents are claiming mutation by virtue of the registered sale deed present at Annexure-6 to



the respective writ petitions and which clearly mentions plot no. 258 but before proceeding to consider such prayer, the revenue authorities were required to satisfy themselves as to the right of the vendor to execute the sale deeds and insofar as the present case is concerned, since the vendor has clearly mentioned that she derives her right by virtue of the gift deed executed in favour of her late husband by the land owner, the least which the revenue authorities could do was to consider the gift deed to satisfy whether at all the vendor had any right to transact the plot no. 258. The illegality is clear and has been perpetuated when appellate authority has refused to interfere and the revisional authority has tried to justify the same by holding that the widow inherited the property. The husband of the vendor was the maternal nephew of the land owner and thus whether he could have inherited the plot no. 258, is a debatable issue best left to be tested by a competent court. The admitted circumstances is that the land owner even while executing the gift deed in favour of his maternal nephew Sachidanand Kuer did not gift plot no. 258 and thus the widow of Sachidanand Kuer should not have exercised any right beyond the gift deed. The legal position is very clear and the revenue authorities have clearly committed a serious error insofar as the order of mutation relates to plot no. 258 of khata no. 22 over area of 1.65 acres.

For the reasons aforementioned, the order passed by the

Circle Officer in Case No. 1023 of 2002-03 and 1160 of 2002-03 as affirmed by the Deputy Collector Land Reforms and the revisional authority in Revision Case No. 790 and 783 of 2003 impugned at Annexure-7, 8 and 9 respectively to the two writ petitions insofar as it relates to plot no. 258 of khata no. 22 of village-Gorhi Pachma, P.S. Korha in the district of Katihar cannot be upheld and are accordingly set aside.

The two writ petitions are allowed.

(Jyoti Saran, J)

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