

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 913 of 2008

IN

Civil Writ Jurisdiction Case No 9528 of 2001

Kanhaya Pandey, son of late Girdhari Pandey, resident of Village – Ijari Sriram,
Police Station – Buxar (Pandey Patti), District – Buxar, at present residing at
Village – Banni, PS – Rajpur, District - Buxar

.... Appellant/s

Versus

- 1 The State of Bihar
- 2 The Director, Consolidation, Bihar, Patna
- 3 The Deputy Director, Consolidation, Bhojpur, Ara
- 4 The Consolidation Officer, Rajpur, District – Buxar
- 5 Sabir Hussain
- 6 Sakir Hussain
- 7 Hasnat Hussain
- 8 Hasib Hussain, sons of late Mir Israil
- 9 Ali sah
- 10 Mohammad Sah
- 11 Ersad, sons of late Ali Hussain
- 12 Kasim
- 13 Sahid
- 14 Khalik, sons of late Noor Hussain
- 15 Mir Mustafa
- 16 Mir Murtaza
- 17 Istiyak Ahmad
- 18 Mir Intiyaz
- 19 Mir Nausad, sons of late Islam, residents of Village – Banni, Police Station –
Shansoi, District - Buxar

.... Respondent/s

For the Appellant/s : M/s Surendra Kr Singh, Radha Mohan Pandey, Avinash
Sekhar, Tulika Singh, Chandra Shekhar Verma &
Vibhuti Ranjan, Advocates

For the Respondent/s : N O N E

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 18-08-2015

We have heard the appellant. The private respondents have

been served but have not appeared.

IA No 6452 of 2015 has been filed for substituting the appellant who was respondent No 5 (i) in the writ petition. Heirs have been stated in paragraph 4 and there is a vakalatnama alongwith the IA.

IA No 6452 of 2015 is allowed. The appellant is substituted by the heirs as mentioned in paragraph 4. No notice need be issued because they have already appeared through the vakalatnama.

The appellants are aggrieved by the order of the learned Single Judge in which though the learned Single Judge refused to interfere in the writ petition, he has made a declaration with regard to possession. What we find curious is though the declaration is made in paragraph 7 of the order, in paragraph 8, he leaves the question open. Be that as it may, in our view, the order of the learned Single Judge is liable to be set aside in respect of declaration of possession of the writ petitioners who are the contesting respondents herein.

Suffice to note brief facts. Original respondent No 5 to the writ petition had purchased the properties from one Banarsi Das. He had purchased the property in auction by the custodian under the Administration of Evacuee Property Act, 1950. That sale had become final. Thus, legally Banarsi Das was the owner of the property having full title and right to transfer the same to original respondent No 5 to



the writ petition. When consolidation proceedings started, the consolidation authorities started treating the writ petitioners to be the owner of the land based on their assessment of their possession. This brought the proceedings ultimately at the instance of original respondent No 5 to the writ petition to the Court of Director, Consolidation in revision. The Director, Consolidation clearly observed in his order that though the writ petitioners would have some claim to possession of the land, the question remains undisputed that the title vests in respondent No 5 to the writ petition and the consolidation authorities had to take note of the title to the properties and not mere possession. He, therefore, set aside the order of the consolidation authorities virtually recognizing respondent No 5 to the writ petition as the owner of the property. This is what brought the writ petitioners to this Court. The learned Single Judge, by the impugned order, noticing the facts aforesaid, has refused to interfere in the matter but while doing so, he had virtually allowed the writ petition by observing that it cannot be disputed that the writ petitioners are in total possession of the property. In our view, that was neither the question before the consolidation authorities nor was there any occasion for the Writ Court to get into this issue. The issue was as to who is the owner of the property and that stands concluded as aforesaid.

In that view of the matter, we are unable to sustain the order of the learned Single Judge in respect of observation of possession. We set aside the same and allow this appeal.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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