

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7582 of 2007

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1. Birendra Kumar @ Tunni Singh
 2. Narendra Kumar @ Babloo Singh
 3. Jitendra Kumar @ Vihan Singh

All are sons of late Krishandeo Singh @ Krishna Singh
and are residents of village, Gogan, P.S. Akbarpur, District,
Nawadah

.... Petitioners

Versus

1. The State of Bihar
2. The District Magistrate, Nawadah
3. The Land Reforms Deputy Collector (L.R.D.C.), Rajauli, Nawadah
4. The Circle Officer, Akbarpur, Nawadah
5. The Circle Inspector, Akbarpur, Nawadah
6. The Revenue Clerk, Akbarpur Block, Nawadah

.... Respondent I st set

7. Balmiki Singh, son of late Lakhan Singh
8. Punyadeo Singh, son of late Basudeo Singh
9. Sunil Kumar, son of Punyadeo Singh
10. Subin Prasad, son of Punyadeo Singh

All 7 to 10 are residents of village- Gogan, P.S. Akbarpur,
District, Nawadah

11. Ram Chandra Singh, son of late Mathura Singh,
12. Umesh Singh, son of Ramchandra Singh

Both residents of village- Parauta, P.S. Akbarpur, District,
Nawadah.

..... Respondents II nd set.....

Respondents

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Appearance :

For the Petitioners : Mr. Arbind kumar Singh, Advocate

For the respondent

Nos. 7 to 10 : Mr. J. S. Arora,
Mr. Gopal Bohra,
Mr. Sunil Kumar Sharma, Advocates

For the State : Mr. Sunil Kumar, A.C. to A.A.G. 6

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 20-01-2015

I.A. No.2960 of 2014 has been filed in view of the
leave granted vide order dated 5.2.2009 for transposing
respondent no.7, Jitendra Kumar @ Vihan Singh as petitioner in

this case in view of the common cause.

Learned counsel appearing for the respondents does not raise any objection to that.

A vakalatnama has also been filed on behalf of the aforesaid Jitendra Kumar @ Vihan Singh.

Accordingly, I.A. No.2960 of 2014 is allowed. Let the respondent no.7 be transposed as petitioner no.3. Let the vakalatnama filed on behalf of the respondent no.7 be considered as one having been filed by the transposed petitioner no.3.

The petitioners have challenged the order dated 03.04.2003 passed in Mutation Appeal No.23 of 2002-03 (Annexure 3) by the respondent no.3, i.e., D.C.L.R., Rajauli, Nawadah as well as the revisional order dated 23.3.2007 passed in Case No.06 (R) 2003/31(R) (Annexure 4) by respondent no.2, i.e., the District Magistrate, Nawadah, and also for confirming the order dated 20.03.2003 passed by respondent no.4, i.e., the Circle Officer, Akbarpur, in favour of the petitioners in Mutation Case No.620 of 2001-02.

The petitioners filed a mutation case no.620 of 2001-02 before the respondent no.4 for mutation of the land in question which has been detailed in Annexure 2. The prayer was allowed but the order concerned was challenged by respondent

Balmiki Singh in appeal. The appellate authority vide its order dated 3.4.2003 passed in Mutation Appeal No.23 of 2002-2003 had set aside the order of the Circle Officer on the ground that in view of the compromise decree in partition title suit no.44/1992 of the court of sub-Judge I, Nawadah. The appellate order has been confirmed by the revisional authority also.

Learned counsel for the petitioners submits that they have filed the miscellaneous case under Section 151 of the Code of Civil Procedure for setting aside the compromise decree which was dismissed. Thereafter, the petitioners approached this Court by filing Civil Revision No.1818/2004 which was again dismissed, however, granting liberty to the petitioners to approach the Court concerned once again by filing a fresh application under Section 151 of C.P.C. challenging the compromise accepted in view of the provision under order XXIII Rule 3A of the Code of Civil Procedure. The Miscellaneous Case No.10/2009 has been filed and still pending in which the respondents have also appeared. Petitioners submit that after making their appearance and filing objection in miscellaneous case, the respondents are alienating the lands.

However, in my considered opinion, till the compromise decree is set aside, there is no option before the

mutation authority other than to pass order in terms of the decree concerned but the moment that decree is set aside that order would have to be rectified accordingly. The issue as who is in actual possession and whether the respondents are alienating the lands correctly or incorrectly is not within the scope of this proceeding which has been filed only for challenging the order passed by the mutation authority. Petitioners would be at liberty to raise it before a competent authority which would be available to them under law.

With the aforesaid observations and findings, this writ application stands disposed of.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

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