

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7521 of 2004

=====

1. Fakruddin Khan son of Jainuddin Khan
2. Hafiz Khan
3. Athar Hussain Khan @ Athar Khan,
both sons of Ishak Khan
4. Islam Khan @ Md.Islam Khan son of Latyab Khan,
All are resident of village Gurdaha Khurd, Tole Manjhi, P.O. & P.S.Manjhi,
District Saran
..... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Saran, Chapra
3. The Deputy Collector, Land Reforms, Saran, Chapra
4. The Circle Officer, Manjhi, District Saran
5. Bibi Nazmun Nissa wife of Late Abdul Hamid Khan, alleged daughter of
Bairam Khan, resident of village Gurdaha Khurd, Tole Manjhi, P.O. & P.S.
Manjhi, District Saran (**Expunged vide order dated 04.09.2013 and
substituted by her following heirs and legal representatives**):
5 (a) Mokhtar Khan
5(b) Mumtaz Khan
Both sons of Late Abdul Hamid Khan
5(c) Laddan son of Late Musataq Khan
6. Khalik Khan son of Late Ishak Khan, resident of Village Gurdaha Khurd , Tole
Manjhi, P.O. & P.S.Manjhi, District Saran
..... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Advocate
Mr. Ved Prakash Srivastava, Advocate

For the Respondent No.5(a) to 5(c) : Mr. Harish Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 25-07-2016

Heard the learned senior counsel appearing on behalf of the petitioners and the learned counsel appearing on behalf of the private respondents. However, none appears on behalf of the State of Bihar and its officials, though the name of the learned State counsel is printed in the daily cause list.

2. The matter at issue is the correction/creation of Jamabandi with respect to the lands in question, fully detailed in paragraph 4 of the writ petition.



3. The original respondent no.5 Bibi Nazmun-Nissa widow of Late Abdul Hamid Khan, claiming to be the daughter of Bairam Khan, filed a petition for correction of jamabandi with respect to the lands in question before the respondent DCLR, Sadar, Chapra giving rise to Jamabandi Correction Case No. 6 of 1993-94. In the aforesaid case, the petitioners and/or their ancestors appeared and contested the claim of original respondent no.5, who is now dead and has been substituted by her heirs. Finally, by order dated 31.10.1997 (Annexure-3), the petition filed on behalf of the original respondent no.5 was disposed of with an observation that the dispute between the parties are essentially the dispute of title; therefore, it would be appropriate for them to get their right and title decided by the competent civil court and only thereafter the prayer for correction/creation of jamabandi can be considered by the revenue authorities.

4. The learned senior counsel appearing on behalf of the petitioners submits that the original respondent no.5, not being satisfied by the aforesaid order, filed Mutation Revision Case No. 54 of 2001 before the respondent District Collector, Saran, Chapra, which was ultimately allowed by the impugned order dated 22.08.2003 (Annexure-4) without reversing the findings of fact recorded by the respondent DCLR, Saran, Chapra. By referring to the averments made in paragraph 19 of the writ petition, he further submitted that during the pendency of the aforesaid revision case, opposite party no. 1 Jainuddin Khan and opposite party no.3 Istehar Khan passed away and their all heirs and legal representatives were not substituted. Only one of the sons of Late Jainuddin Khan namely, Fakruddin Khan, the petitioner no.1 herein, was substituted. Therefore, according to him, on that account also, the impugned

order is not sustainable.

5. In the present case, notices were issued to the private respondents and some of them have entered appearance through their counsel, who is present in the court. However, the learned counsel appearing on behalf of the private respondents has fairly conceded that no counter affidavit has been filed on behalf of the respondents controverting the averments made in the writ petition filed on behalf of the present petitioners. He further conceded that with respect to lands in question issues of right and title between the parties are involved, but no findings of fact regarding right and title of the parties over the lands in question have been recorded by the revisional authority.

6. After having heard the learned counsel for the parties and on consideration of the materials available on the record, this Court finds that the original respondent no.5 Bibi Nazmun-Nissa, claiming to be the daughter of Bairam Khan, made a prayer for correction of Jamabandi with respect to the lands in question. The petitioners, who also claim to be the descendants of aforesaid Bairam Khan, are seriously disputing the claim of original respondent no.5 that she was the daughter of aforesaid Bairam Khan. Apparently, the respondent DCLR, Saran, Chapra came to a finding that issue of right and title with respect to the lands in question is involved between the parties. However, the revisional authority while passing the impugned order has not reversed the aforesaid findings of fact and has not recorded any findings of fact regarding right and title of the parties over the lands in question, yet he has allowed the prayer for correction of Jamabandi made by the original respondent no.5. Furthermore, all the heirs of original opposite party nos.1 and 3 of the aforesaid revision case were not substituted despite their death.

7. For the reasons recoded above, this Court is of the opinion that the impugned order cannot be sustained in law. Furthermore, there is serious dispute of right and title regarding the lands in question between the parties, and unless and until the aforesaid dispute is resolved by the civil court of competent jurisdiction, the question of correction/creation of Jamabandi cannot be appropriately considered by the revenue authorities.

8. In above view of the matter, the impugned order dated 22.08.2003 (Annexure-4) passed by the respondent District Collector, Saran, Chapra in Mutation Revision Case No. 54 of 2001 is hereby set aside and quashed, but liberty is granted to the aggrieved party/parties to approach the civil court of competent jurisdiction for getting his/her/their right, title and possession declared over the lands in question.

9. It is clarified that if such a civil suit is brought by either of the parties, then the same shall be decided strictly in accordance with law on merits on the basis of the evidences/materials produced by the parties.

10. The writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	
CAV DATE	
Uploading Date	31.07.2016
Transmission Date	