

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 1804 of 2010
IN

Civil Writ Jurisdiction Case No. 12460 of 2001

- =====
1. Sunil Kumar
 2. Ravi Kumar
Both are sons of Late Ram Lakhan Singh, resident of Sector D-5, People's Co-operative House, Kankarbagh Colony, P.S. Kankarbagh, Patna-800020.
 3. Anamika Sharma, wife of Late Anil Kumar
 4. Pushkar Bhardwaj (Minor), Son of Late Anil Kumar.
Both are resident of Sector D-5, Peoples Co-operative House, Kankarbagh Colony, P.S. Kankarbagh, Patna-20
 5. Sunita Singh, wife of Sri Bipin Bihari Singh, Professor Colony, Punaichak, P.S. Shastri Nagar, District- Patna.
 6. Anita Sharma, wife of Sri Upendra Kumar Sharma, resident of Jai Publication, Patel Nagar, P.S. Shastri Nagar, District- Patna.

.....Respondents-Appellants

Versus

1. The Vice Chairman, Patna Regional Development Authority, Patna
2. Patna Regional Development Authority, Block-C, Maurya Lok, Patna through its Chairman.

..... Respondent-Respondent-1st Set.

3. Nagendra Sharma S/o Sri Dholan Sharma R/O Vill.-Neori, P.O.- Neora, P.S.- Bihta, District.- Patna.

.....Petitioner- Respondents-2nd Set.

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Appearance :

For the Appellants : Mr. Prabhakar Kumar, Advocate

For the Respondents : Mr. Nagendra Sharma, (in person),

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 21-06-2016

The appellant has died during the pendency of
this appeal and has been substituted by legal heirs.

2. The present Intra-Court appeal is directed
against judgment and order dated 08.09.2010, passed by

learned Single Judge of this Court in C.W.J.C. No. 12460 of 2001 (Nagendra Sharma Vs. The Vice Chairman, P.R.D.A. & Ors.).

3. We have heard learned counsel for the appellant, who was respondent no.3 in the writ proceedings and the writ petitioner, who is respondent no.3 in the appeal and appears in person, and with their consent we are disposing of this appeal at this stage itself.

4. The facts are not in dispute. The appellant, who was respondent no.3 in the writ petition, is the aunt (*Chachi*) of the writ petitioner/respondent no.3 in the appeal. It appears that the land in question was owned and possessed by one Hardeep Singh, who happened to be the grand-father of the writ petitioner/respondent no.3 in appeal and father-in-law of respondent no.3 appellant herein. Upon his death both the appellant and respondent no.3 in this appeal filed separate Letter of Administration Cases in the Civil Court at Patna, claiming the said property upon inheritance by virtue of Will executed by Late Hardeep Singh. The appellant's claim was that the Will was a duly registered Will, in which one of the witnesses was the father of the writ petitioner, who happened to be the appellant's brother-in-law. The Will was registered and, as such the, land being bequeathed to her. Letter of Administration be issued in her favour. This was L.A. Case



No. 47 of 1992. The writ petitioner/respondent no.3 herein had already filed another Letter of Administration Case No. 37 of 1989 stating that the Will of late Hardeep Singh bequeathing the same property to the writ petitioner/respondent no.3 herein, was executed subsequent to the Will produced by the appellant, and that being so, the last Will is the Will that could be executed in respect of which Letter of Administration be granted. Both the cases being contested, both the L. A. Cases were converted into Testamentary Suits. It is a matter of concern that though these Testamentary Suits are of the year 1991 and 1998. They are neither being heard together nor in the last 2 ½ decades have been disposed of. The material date would be that the appellant's L. A. Case No. 47 of 1992 was converted into Testamentary Suit No. 15 of 1998 by order dated 12.08.1998. This is relevant.

5. There is another fact to be noted. L.A. Case No. 37 of 1989 as filed by the writ petitioner/respondent no.3 herein was converted to Testamentary Suit No. 07 of 1991 in which this appellant was a contestant. Therefore, this appellant was fully aware from 1991 that the succession to this land was in serious dispute. Her own L. A. Case got converted into Testamentary Suit by order dated 12.08.1998, she could not have pleaded that she was unaware of this position. Notwithstanding, the same, she



applied through her developer for sanction of building plan of that land and in support thereof filed an affidavit on 24.09.1998, clearly stating that there was no litigation in respect of the land and if the settlement is found to be incorrect, the plan may be treated cancelled under section 38 of the Patna Regional Development Authorities Act (it should actually be Bihar Regional Development Authority Act). It appears that the plan having been sanctioned by Patna Regional Development Authority (hereinafter referred to as the "P.R.D.A.") upon the affidavit as given, the appellant through the developers started constructing a building. It was immediately objected to by the writ petitioner and a vigilance case was started by P.R.D.A. In the Vigilance Case, after due notice to the appellant, orders were passed in terms of section 38 of the Act, which clearly provided that in case a plan was got sanctioned on misrepresentation of material facts, the sanction would be deemed to be cancelled. The order of the Vice Chairman of P.R.D.A., thus, having been passed revoking the sanction, proceedings were then taken up under section 54 of the Act for removing/demolishing the construction as that construction would now be deemed to be without a sanction at all. It is at that stage that the appellant preferred appeals before the Building Tribunal and succeeded there to get the order passed under section 38

and proceeding under section 54, to be set aside. The writ petitioner being aggrieved by those actions filed the writ petition, which was allowed and the order of the Tribunal was set aside and the order of the Vice Chairman and the proceeding initiated under section 54 were restored.

6. Learned counsel for the appellant submits that it was under misapprehension of law or ignorance of law that such an affidavit was filed. All we can say is ignorance of law is no excuse. We are not satisfied with the bona fide of the appellant, inasmuch as, the affidavit clearly mentioned section 38 of the Act. It would be safe to assume that she was fully aware of the consequences for she was swearing the affidavit that there was no litigation in respect of the land. This affidavit was sworn on 24.09.1998 when she was aware that right from 1991, the property had become litigious and was subject matter of serious dispute. Yet, she chose to speak otherwise. We cannot, thus, accept that it was a bona fide mistake. Even otherwise, mistake or no mistake, the law is clear. It is well settled that if there is a conflict between law and equity, it is law that has precedent and not the equity.

7. The next submission is that the flats having been constructed and sold the flat owners would suffer. The learned single Judge had already dealt with the issue elaborately and correctly. Their rights are dependent upon



the rights of the appellant. Appellant chose to take risk, having failed, the boat sinks with the occupants. Court cannot hold that the appellant being at fault and in contravention of law, the successor-in-interest cannot be in conflict with law. The appellant had no right to get the sanction to construct and if the sanction goes, so goes the rights of all others, dependent upon the sanction.

8. We, thus, find no merit in this appeal. This appeal is, accordingly, dismissed.

9. The order of status quo as granted earlier stands vacated. The Patna Regional Development Authority or its successor P.R.D.A. would now be free to proceed in accordance with law.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

R.K.Sinha/Rajeev
A.F.R.

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