

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18025 of 2011

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1. Md.Ashfaque Alam Son Of Late Fakrun Nissa Wife Of Late Azhar Ali
2. Md. Ayub Son of Late Fakrun Nissa Wife of Late Azhar Ali
3. Md. Shoaib Alam Son of Late Fakrun Nissa Wife of Late Azhar Ali
4. Md. Haji Gulfam Son of Late Fakrun Nissa Wife of Late Azhar Ali
5. Md. Zakir Son of Late Fakrun Nissa Wife of Late Azhar Ali
6. Md. Reyazuddin Son of Late Aisha Khatoon and Late Motiur Rahman
7. Md. Rizwan Son of Late Aisha Khatoon and Late Motiur Rahman
8. Bibi Husna Ara Daughter of Late Most. Bibi Fakrun Nissa, Wife of Anisur Rahman
9. Kausar Parwez
10. Jhannu Khatoon Wife of Md. Qamruz Zaman
11. Pano Kahtoon Wife of Sabir
12. Wajra Khatoon Wife of Shamsad
Respondent nos. 9 to 12 sons and daughter Of Late Anisa Khatoon, Widow Of Md. Nazeemuddin, all Resident Of Village- Salepur Maheshpur, Police Station- Falka, District- Katihar

.... Petitioner/s

Versus

1. The State Of Bihar through the Collector, Katihar
2. The Sub-Divisional Magistrate, Katihar
3. The Anchaladhipkar, Falka, District- Katihar
4. Chalitar Mandal
5. Most. Pao Devo
6. Gopi Mandal
7. Bibhuti Kumari
8. Naresh Mandal
9. Manoj Mandal
10. Rupan Mandal , all sons and daughter of late Giro Mandal
11. Lakchhatar Mandal, S/O Late Budhan Mandal
All R/O Village- Govindpur, Diyara, Police Station - Falka, District- Katihar
12. Most. Shola Devi, Widow of Late Kamleshwari Mandal
13. Most. Maro Devi, D/O Late Kamleshwari Devi, W/O Late Ram Bilas Mandal
Both R/O Village- Bhawanipur Birsal, Police Station - Bhawanipur, District- Purnea
14. Smt. Shibo Devi, W/O Kalo Mandal, D/O Late Kamleshwari Mandal, R/O Village- Moli, Police Station- Dhandaha, District- Purnea
15. Shankar Mandal, S/O Late Bishan Mandal
16. Chulhai Mandal, S/O Late Brahmi Mandal
All R/O Village- Govindpur, Diyara, Police Station - Falka, District- Katihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghib Ahsan, Sr.Adv.
Mr.S.M. Shabbir Alam, Adv.

For the Respondent nos.1to3 : Mr. Lala S.N. Rais, AC to GP-2
 For the Respondent nos.4to16 : Mr.Dhirendra Kumar Jha, Adv.
 Mr.Suresh Prasad Sah @ Barnwal, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 30-08-2016

Heard the parties.

The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 08.10.2010 passed in Appeal Case No.14 of 1996 by the respondent S.D.O., Katihar, as contained in Annexure-1 to the writ petition, whereby the aforesaid appeal originally filed by one Bibi Fakrun Nissa under Section 48-D of the Bihar Tenancy Act, 1885 (in short B.T. Act) and the Rules made thereunder has been dismissed and claim of the petitioners to be the heirs and legal representatives of aforesaid Bibi Fakrun Nissa has been rejected.

The learned counsel appearing on behalf of the petitioners submits that aforesaid Bibi Fakrun Nissa, the original appellant, died on 17.02.1997 and the petitioners claiming to be her heirs and legal representatives filed a petition for their substitution, but that was dismissed by the appellate authority by an order dated 07.02.2001, and the claim of the petitioners for their substitution as heirs and legal representatives of the deceased appellant Bibi Fakrun Nissa was not accepted. It is next contended that the petitioners, being aggrieved by the aforesaid order, approached this Court in CWJC No.14751 of 2001, which was finally disposed of by an order dated 15.01.2009 (Annexure-9) and the matter was remitted back to the appellate authority with a direction to decide the question of substitution raised on behalf of the petitioners and thereafter decide the appeal on merits.

According to him, in view of the aforesaid order of remand, the aforesaid appeal was taken up for consideration afresh by the S.D.O., Katihar, but, by the impugned order dated 08.10.2010, he again rejected the prayer for substitution made on behalf of the petitioners and thereby original order as contained in Annexure-2 passed by the respondent Circle Officer, Falka has been affirmed. It is contended that the impugned order cannot be sustained in law.

The learned State counsel appearing on behalf of the respondent nos.1 to 3 as also the learned counsel appearing on behalf of the respondent nos.4 to 16 have contested the claims raised on behalf of the petitioners and have supported the impugned order. The learned counsel appearing on behalf of the contesting respondent nos.4 to 16, by referring to the averments made in the counter affidavit filed on their behalf as also by referring to the orders passed in the aforesaid Appeal Case No.14 of 1996, the entire order-sheet of which has been brought on record as Annexure-A to the counter affidavit, submitted that right from 1997 several opportunities were given to the petitioners to produce the relevant documents particularly the genealogy of the family as also the succession certificate in support of their claims to be the heirs and legal representatives of the deceased appellant, but no such document was produced; therefore, in view of the objections raised by the contesting respondents about the date of death of aforesaid Bibi Fakrun Nissa as also about the relationship between the original appellant and these petitioners, their petition for substitution has rightly been rejected. It is contended that, even after remand made by this Court, the relevant documents were not produced by the petitioners. Therefore, according to him, the impugned order cannot be legally faulted. It is next contended that

the writ petition is liable to be dismissed also on the ground of alternative remedy available to these petitioners before the learned Bihar Land Tribunal, Patna.

At this stage, it would be relevant to mention here that by an order dated 02.08.2016, this matter was adjourned enabling the learned counsel to file rejoinder to the counter affidavit filed on behalf of the respondent nos.4 to 16, but, despite opportunity given, no rejoinder affidavit has been filed on behalf of the petitioners to the aforesaid counter affidavit.

After having heard the parties and taking into consideration the materials available on the record, this Court finds that there is serious dispute of claim of the petitioners to be the heirs and legal representatives of the deceased appellant Bibi Fakrun Nissa. Apparently, opportunity was given to these petitioners by the appellate authority to produce the valid documents in support of their claim to be the heirs and legal representatives of the deceased appellant. Even after remand made by this Court by an order as contained in Annexure-9, reasonable opportunities appear to have been given to these petitioners, but they failed to produce any valid documents in support of their claims, particularly in view of serious objection raised by the contesting respondents herein. Therefore, the respondent S.D.O., Katihar has rightly dismissed the petition filed on behalf of the petitioners seeking their substitution in the aforesaid appeal. The disputed questions of facts cannot be effectively decided in a proceeding under Article 226 of the Constitution of India, unless and until the oral and documentary evidence produced by the parties are examined by a Civil Court of the competent jurisdiction or by a prescribed authority.

In above view of the matter, this Court is not inclined to interfere with the impugned appellate order dated 08.10.2010 passed in Appeal Case No.14 of 1996 by the respondent S.D.O., Katihar, as contained in Annexure-1 to the writ petition. Accordingly, the writ petition is dismissed.

However, this shall not come in the way of the petitioners to approach the Civil Court of competent jurisdiction for getting them declared as the heirs and legal representatives of the deceased appellant Bibi Fakrun Nissa. If such declaration is made by the competent Civil Court, after giving an opportunity of hearing to all concerned including the private respondent nos.4 to 16, then they shall be at liberty to approach the S.D.O., Katihar once again for grant of an appropriate relief with respect to the lands in question.

(Birendra Prasad Verma, J)

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