

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2622 of 2009

Amarendu Kumar Singh @ Amar Singh S/o late Damodar Prasad Singh, Resident of Mohalla- Topkhana Bazar, P.S. Kotwali, P.O. and District Munger.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Munger.
3. The D.C.L.R. Kharagpur, Distt Munger.
4. The Circle Officer, Tetia Bambar , Dist Munger.
5. Parmeshwar yadav S/o late Bano Yadav
6. Sanjay Yadav S/o Parmeshwar yadav
7. Bagro Devi W/o Parmeshwar Yadav
8. Saryug Sharma son of late Pyare Lal Sharma
9. Jagdeo Pandit S/O late Bhola Pandit
10. Sharwan Kumar S/o late Baleshwar Pandit, 5 to 10 resident of Village Sitakund, Kalyanchak, P.S. Mufassil, District Munger.
12. Arjun Yadav S/o late Chaudhary Yadav
13. Dilip Kapari S/o Shankar Kapari
14. Deoki Mandal S/o late Parmeshwar Pandit
15. Brahmadeo Mandal S/o late Shyam Mandal
16. Urmila Devi W/o Bhuto Yadav
17. Shobha Devi W/o Nago Mandal 2 Nageshwar Mandal
18. Siya Devi W/o Pramod Mandal
19. Premlata Devi W/o Deoki Mandal
20. Rajaram Mandal S/o late Parmeshwar Mandal, 12 to 20 residents of Village- Durmatta , P.S. Harpur, Distt Munger.
21. Rambha Devi W/o Raghu Bhagat Resident of Village- Kasba, P.S. Shambhuganj, Distt Banka.
22. Uday Mandal S/o Late Ganauri Mandal ,
23. Sanichar Mandal son of Late Ganauri Mandal (Expunged vide order dated 12.8.2014).
24. Aitwari Mandal S/o late Ganauri Mandal
25. Binay Kumar Singh S/o late Kuldeep Mandal, 22 to 25 resident of Village Dhauri P.S. Harpur, Distt Munger.
26. Prahlad Chaudhari S/o Faudi Chaudhary, Resident of Village- Kheriya, P.S. Bariyapur, Distt Munger.
27. Dinesh Yadav S/o late Prakash Yadav Resident of Village Sakarpur, P.S. Mufassil, Distt Munger.
28. Domi Yadav S/o firangi Yadav Resident of Village Kalyanchak, Jafrabad, P.S. Mufassil, Distt Munger.
29. Dileshwar Mandal S/o late Pirit Lal Mandal Resident of Village Shambhuganj, P.S. Harpur, Dist munger.
30. Krishnadeo Mishra S/o late Acheylal Mishra resident of Village- & P.O. Shirnea P.S Gogri, District khagaria.
31. Indradeo Mishra son of late Achhey Lal Mishra (Expunged and substituted by his following heirs and legal representatives:)
- 31(A) . Asit Kumar Mishra@ Kundan Mishra

(B). Ajit Kumar Mishra

(C). Amit Kumar Mishra Sons of late Indradeo Misra, all resident of Mohalla-kallubara Munger, P.S Kotwali, District Munger.

32. Manoranjan Mishra S/o late Balmiki Mishra

33. Niranjan Mishra S/o late Balmiki Mishra

34. Shekhar Mishra@Buchchi Misra S/o late Sukhdeo Mishra

35. Shyamdeo Mishra@Hira Mishra S/o late Sukhdeo Mishra, All resident of Village- & P.O. Shirnea P.S Gogri, District khagaria.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Pd. Sinha, Adv.
Mr. V.R.P. Singh, Adv.
Mr. Rajan, Adv.

For the Respondent Nos. 1 to 4 : Mr. Ujjawal Kumar Sinha, AC to AAG-3

For the Respondent Nos. 5 to 21 & 30: Mrs. Rekha Prasad, Adv.

Mr. Shivendra Shankar, Adv.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 22-08-2016

Heard the learned counsel appearing on behalf of the petitioner, the learned AC to AAG-3, appearing on behalf of the respondent nos. 1 to 4, and the learned counsel appearing on behalf of the private respondents.

2. The matter at issue is the validity and correctness of the order dated 31.7.2006 passed in Miscellaneous Case No. 13 of 2003-04 by the respondent District Collector, Munger, as contained in Annexure-8 to the writ petition, whereby the aforesaid miscellaneous case filed on behalf of the petitioner has been dismissed in purported exercise of his revisional powers under Section 16 of The Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (in short Act).

3. From the pleadings of the parties it appears that the dispute between the parties relates with respect to an area of 109 bighas 8 kathas and 8 dhoors of lands. However, full details of the entire lands have not been given either by the petitioner or by the private respondents in their pleadings.



4. The learned counsel, appearing on behalf of the petitioner, submits that originally the lands in question was belonging to one Muktinath Jha, Babulal Jha and their other brothers, all sons of Bhaialal Jha, and they executed two mortgage deeds dated 23.6.1921 in favour of one Chandlal Mishra and others. However, on account of non-payment of rent to the ex-landlord- Banaili Raj, several suits were filed by the ex-landlord for realization of arrears of rent, and the lands in question were auction sold and the same was purchased by the decree-holder. However, subsequently, mortgagor filed Case Nos. 591, 593, 594 and 595, all of the year 1939-40, before the Collector under the provisions of The Bakast Restoration Act, which were allowed. According to the learned counsel, father of the petitioner namely, late Damodar Prasad Singh purchased 3/4th share of aforesaid total area of 109 bighas 8 kathas and 8 dhoors of lands in the name of his mother Medini Devi on 15.11.1943 from aforesaid Muktinath Jha and his other co-sharers. It is further contended that remaining 1/4th share in the lands in question was also purchased through another sale deed dated 13.3.1944 in the name of his mother Medini Devi. It is also the case of the petitioner that when the mortgagee refused to accept the mortgage amount for the lands in question, then Title Suit No. 27 of 1953/ 6 of 1955 was filed for redemption of mortgage in the court of learned 2nd Additional Sub-Judge, Munger and the aforesaid suit was decreed by the judgment dated 17.9.1955 and, accordingly, delivery of possession was given to the father of the petitioner on 28.2.1956. It is further case of the petitioner that in view of dispute of possession between the parties, a proceeding under Section 145 Cr. P.C. was started, which was allowed in favour of the petitioner by the Executive Magistrate, Sadar, Munger vide order dated 10.6.2001. It is pleaded by the learned counsel for the petitioner that the return filed



by the ex-landlord in the name of Achhelal Mishra with respect to the lands in question is a forged and fabricated document. It is submitted that in the aforesaid background, the petitioner filed Miscellaneous Case No. 13 of 2003-04 before the District Collector, Munger for correction of Jamabandi, but that has been rejected by the impugned order dated 31.7.2006 (Annexure-8) and a direction has been issued for cancellation of all the Jamabandi standing in the name of Most. Medini Devi deceased grand mother of the petitioner. Therefore, according to him, the impugned order cannot be sustained in law.

5. Per contra, the learned counsel, appearing on behalf of the private respondents, by referring to the averments made in the counter-affidavits filed on behalf of the respondents, submits that it is true that the lands in question were originally belonging to one Muktinath Jha and his other brothers, but the lands in question were mortgaged in the year 1921 in favour of Dukhmochan Mishra, Chanda Lal Mishra and Kapileshwar Mishra. However, on account of non-payment of rent to the ex-landlord, the lands in question were auction sold and were purchased by the ex-landlord, who came in possession over the same. It is also the case of the respondents that ex-landlord Banaili Raj settled the lands in question to one Achhelal Mishra on 9.9.1938 and, accordingly, the name of aforesaid Achhelal Mishra, ancestor of the respondents was recorded in the Zamindari Sherista of the ex-landlord. It is the specific case of the respondents that after vesting of Zamindari, ex-landlord submitted his return showing aforesaid Achhelal Mishra as the settlee over the lands in question.

6. It is further case of the private respondents that late Damodar Prasad Singh, father of the petitioner, was an Advocate and a great litigant, who got the name of his mother Medini Devi inserted



by interpolating in the revenue records of the ex-landlord. It is contended that the private respondents purchased the lands in question subsequently from aforesaid Achheyral Mishra and his family members/ co-sharers. It is next contended that in the title suit filed on behalf of the grand-mother of the petitioner, namely, Medini Devi, notices were not validly served on the defendants and Achheyral Mishra, and all his brothers and co-sharers had no knowledge and information about the aforesaid title suit. It is further contended by the learned counsel that against the order passed in a proceeding under Section 145 Cr. P.C., a criminal revision was filed before the learned Sessions Court, Munger, which was finally disposed of with a liberty to the revisionist to pursue his claim with respect to the lands in question in the pending Title Suit No. 140 of 2011. It is pleaded by the learned counsel appearing on behalf of the respondents that there is serious dispute of right and title between the parties over the lands in question, which can be conclusively decided only by the civil court of competent jurisdiction and not by the revenue authorities, and admittedly, Title Suit No. 140 of 2011 is still pending in the civil court. Therefore, the order impugned passed by the respondent District Collector, Munger may not be interfered with, but a liberty may be granted to the petitioner to agitate his claims with respect to the lands in question in the aforesaid pending title suit.

7. The learned AC to AAG-3, appearing on behalf of the respondent nos. 1 to 4, by referring to the averments made in the counter-affidavit filed on behalf of the respondent nos. 2 to 4, has supported the impugned order passed by the respondent District Collector, Munger. According to him also, there is serious dispute of right and title over the lands in question between the petitioner at one side and the respondents at the other side. Both sides are claiming



their right and title on the basis of certain documents in their favour, but veracity of all the documents have not been tested by any competent civil court. Therefore, according to him, if the petitioner is at all aggrieved by the order passed by the District Collector, Munger, then he may either pursue his remedy in the pending Title Suit No. 140 of 2011 in which the petitioner is a party-defendant or alternatively, the petitioner may bring a separate title suit for getting his right, title and possession declared over the lands in question claimed by him.

8. After having heard the parties at great length and on going through the materials available on the record, this Court finds that there is serious dispute of right, title and possession between the parties with respect to the lands in question. The respondent District Collector, Munger, has passed the impugned order essentially relying on the return filed by the ex-landlord with respect to the lands in question. According to the petitioner, the return filed by the ex-landlord is a forged and fabricated document, therefore, on that basis, Jamabandi standing in the name of Medini Devi- deceased grand mother of the petitioner, could not have been cancelled.

9. In the considered opinion of this Court, the entire claims raised on behalf of the petitioner vis-a-vis the private respondents with respect to the lands in question are based on disputed question of facts as also disputed documents produced by them in the present proceeding, which cannot be effectively gone into in the present proceeding filed under Article 226 of the Constitution of India. Admittedly, Title Suit No. 140 of 2011 is pending in the civil court for some area of lands in question in which the petitioner is also a party. The documents produced either by the petitioner or the respondents are yet to be tested by the competent civil court. In the



Title Suit No. 27 of 1953/6 of 1955 filed by Smt. Medini Devi, grand mother of the petitioner for redemption of mortgage deed, all the private respondents or their vendors were not parties. In the aforesaid title suit also, all the issues raised herein on behalf of the parties do not appear to have been gone into and a limited issue regarding redemption of mortgage was decided. Therefore, in the considered opinion of this Court, unless and until right and title of the parties is conclusively decided by the competent civil court, after looking into all the materials produced either by the petitioner or by the private respondents in support of their respective claims over the lands in question, the revenue authorities cannot effectively decide either the question of mutation or the question for correction/ creation of jamabandi for the lands in question.

10. In the aforesaid factual matrices and for the reasons recorded above, this Court is not persuaded to interfere with the impugned order dated 31.7.2006 passed in Miscellaneous Case No. 13 of 2003-04 by the respondent District Collector, Munger, as contained in Annexure-8 to the writ petition.

11. However, the petitioner, if so advised, may contest the Title Suit No. 140 of 2011, pending in the Court of learned Sub-Judge, 1st Munger or he may bring a fresh title suit, after impleading all necessary parties including the respondent nos. 5 to 35, besides others, if any, for grant of appropriate relief to him with respect to the lands in question and/or for declaration of his right, title and possession over the same.

12. It is clarified that if such a civil suit is filed on behalf of the petitioner within a period of three months from today with a certified copy of the present order, then the same shall be decided on its own merit on the basis of the evidence/ materials

produced by the parties, but without being prejudiced/ influenced by any finding recorded by the respondent District Collector in the impugned order dated 31.7.2006 (Annexure-8).

13. In the result, the present writ petition is dismissed with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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CAV DATE	
Uploading Date	27-08-2016
Transmission Date	