

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1379 of 2014

IN

Civil Writ Jurisdiction Case No 17497 of 2009

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Meera Gupta, wife of Ashok Kumar Gupta, Resident of Mohalla – Salimpur Ahra,
PS – Gandhi Maidan, Town and District – Patna. At Present c/o Ashok Kumar
Gupta, Calcutta Auto Centre Madhav Market Opposite Vikram Hotel, Exhibition
Road, Patna

.... Appellant/s

Versus

- 1 The State of Bihar through Secretary, Urban Development and Housing
Department, Government of Bihar, Patna
- 2 The Patna Municipal Corporation through the Town Commissioner, Patna
- 3 The Town Commissioner, Patna Municipal Corporation, respondents No 2 & 3
having office at Mauryalok Commercial Complex, Dak Bungalow Road,
Kotwali, Patna
- 4 Shri Amar Kasera
- 5 Shri Anup Kasera, sons of Sri Gopal Kasera, Resident of Mohalla –
Chamdoria, Patna City, PO – Patna City, PS – Chowk, District – Patna,
presently residing at Prachi Kanishak Apartment, Bazar Samiti Road, PO –
Mahendru, PS – Bazar Samiti, District - Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Kamal Nayan Choubey, Sr Advocate with
Mr Vinod Kumar, Advocate

For the Respondent/s : Mr J S Arora, Sr Advocate with
M/s Manoj Kr & Gaurav Pratap, Advocates

For the S t a t e : Mr Abhimanyu Vatsa, AC to GA 9

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 13-01-2016

IA No 7622 of 2014 has been filed for condoning the
delay in filing the appeal. Heard.

2 For the reasons mentioned in IA No 7622 of 2014,

the delay in filing the appeal is condoned.

3 IA No 7622 of 2014 stands disposed of.

4 The present intra-Court Appeal under Appendix E, Clause 10 of the Patna High Court Rules, Letters Patent Appeal, has been filed by the private respondent to the writ petition being CWJC No 17497 of 2009 being aggrieved by judgment and order passed therein on 01.12.2011.

5 We have heard Shri Kamal Nayan Choubey, learned Senior Counsel in support of the appeal and Shri J S Arora, learned Senior Counsel, who appears for the private respondents in the appeal who were writ petitioners and, with their consent, we are disposing of this appeal at this stage itself.

6 At the very outset, we must observe that writ proceedings are proceedings summary in nature and the Writ Courts, generally and ordinarily, should avoid going into intricate questions of right, title or interest which are highly in dispute. The matter is better left to Civil Court.

7 It appears that certain properties were to be settled by the Patna Improvement Trust in favour of Mangal Das Mehta in the year, 1963. On his request, it was allotted in the name of his son Hanuman Das Mehta @ Subhash Chand Mehta and ultimately deed was also registered in the name of Hanuman Das Mehta on

18.08.1972. In the family, there was a partition suit filed being Title Partition Suit No 89 of 1973 which was decreed and pursuant thereto, Execution Case No 6 of 1989 came to be filed. One party claims that in execution of the partition decree, the property in dispute was delivered to her by Court. The other is now contending that this property was never subject matter of partition though, as would be noticed, accepts that delivery of possession had been made by Court and the other party is not in possession thereof. On the strength of delivery of possession, a mutation case was instituted in which mutation was allowed by the Municipal authorities in favour of the first party based upon the claim of delivery of possession. The second party claimed that the property, not being subject matter of partition, was rightfully her property and she was wrongly deprived of her title and possession by the first party. A suit is then filed being Title Suit No 246 of 2001 for declaration of her (second party's) title and restoration of possession clearly praying for declaring that the first party had no right, title or interest in the property and removing them from the possession thereof. Let it be noted that the suit was filed by the vendee of the vendee from the alleged original title holder who was the vendor. The Title Suit, having been filed, the second party then moved the mutation authorities and got the order first stayed and then reversed. The mutation order had attained finality. This is what

brought the writ petitioners to this Court, inter alia, taking the plea that once the mutation authorities had decided the matter and that matter had attained finality, it could neither be stayed nor reviewed by the mutation authorities and that too after decades and especially when in respect of the same property, a suit, inter party, was already pending. However, the Writ Court entertained the writ petition and allowed the writ petition after hearing the parties but while doing so, it made various observations. It set aside the subsequent order of the mutation authorities and restored the earlier order passed by the mutation authorities in favour of the first party that is the writ petitioners. This is what has occasioned of filing of appeal by the respondents to the writ petition.

8 Having heard learned Senior Counsels and considered the matter, in our view, it, being an admitted fact that Title Suit, as between the parties, was pending, all reliefs, that could be sought by either parties being available, resort to the municipal proceedings, was not warranted. The earlier order of the municipal authorities had attained finality. The suit was filed thereafter. The facts being in serious dispute, the parties should have availed the forum of the Civil Court for any interim or final or adjudicatory relief, as the case may be but during pendency of the suit, leaving the Civil Court and the case before it to hibernate, moving the Municipal

authorities to recall orders, was not appropriate. Further, when the Writ Court took up the matter, the Writ Court also should have refrained itself from going into disputed facts as the matter was already before Civil Court of competent jurisdiction where all facts, all issues were open for adjudication as between the parties and the parties had already appeared in the said suit. Instead of tackling the issue directly in the Civil Court, this indirect approach of trying to get the same relief to municipal authorities in mutation case, was not a proper course to be taken. The matters, being in serious dispute, it was to be left to the Civil Court to decide all the issues so that all dispute were decided in one forum which was the competent forum and once and for all as between the parties.

9 We, therefore, are not inclined to entertain this appeal and we would, accordingly, dismiss it but while doing so, we would like to observe that any observation made by the Writ Court or this Court, in relation to the facts would have no binding on the Civil Court whatsoever as they have only been observed for the purposes of disposal of the writ petition and the appeal and not for deciding the right, title or interest or possession of either party which only a competent Civil Court can do.

10 Needless to say that the Title Suit being of the year 2001, both parties are expected to cooperate in its early disposal as

also the Civil Court would take all expeditious steps for disposal of the said Title Suit at the earliest.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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