

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1036 of 1996
IN

Civil Writ Jurisdiction Case No. 1357 of 85

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1. Jaleshwar Manjhi, son of Katen Manjhi
 2. Jhabu Manjhi, son of late Lakhi Manjhi
 3. Gokul Modi, since dead, son of late Hari Modi, substituted by his legal heirs namely:
 - (i) Bharat Prasad Modi
 - (ii) Vijay Modi
- Both son of late Gokul Modi, Vill. – Chitkatoun, P.O. – Dahijor, P.S. – Mohanpur, District – Deoghar.
- Appellants

Versus

1. Gauri Shankar Modi, since dead, son of late Shyam Lal Modi, substituted by his legal heirs namely:
 - (i) Tara Bhatiya
 - (ii) Pushpa Agrawal
 - (iii) Shakuntala Dukaniya
 - (iv) Santosh Jhunjhunwala
 - (v) Manju
 - (vi) Kusum Sarek
 - (vii) Saroj Goenka
 - (viii) Sujata GoenkaAll daughters of late Gauri Shankar Modi, resident of village - Chhit Katom, P.S. – Mohanpur, P.O. – Dahijor, District – Deoghar.
2. The State of Bihar
3. The Commissioner, Bhagalpur Division, Bhagalpur
4. The Additional Deputy Commissioner, Dumka
5. The Sub Divisional Officer, Deoghar
6. Land Reforms Deputy Collector, Deoghar
7. 16 Annas Raiyats through Circle Officer, Mohanpur Anchal, P.S. – Mohanpur, District – Deoghar.
8. Tahadi Mahto, since dead, son of late Sukar Mahto, substituted by his legal heirs namely:
 - (i) Radha Mohan Yadav
 - (ii) Digambar Yadav
 - (iii) Ganesh Yadav
 - (iv) Rajendra YadavAll sons of Late Tahadi Mahto, resident of village – Chhit katom, P.O. – Dahijor, P.S. – Mohanpur, District – Deoghar.
9. Ganga Prasad Mandal, since dead, son of late Debi Mandal, substituted by his legal heirs namely:
 - (i) Moti Prasad Mandal
 - (ii) Okil Prasad Mandal
 - (iii) Uday Prasad MandalAll sons of late Ganga Prasad Mandal, respondent no. 9, resident of village – Chhit Katoun, P.S. – Mohanpur, P.O. –

Dahijor, District – Deoghar.

.... Respondents

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Appearance :

For the Appellants : Mr. Shrinandan Pd. Singh, Advocate
Mr. Naresh Nandan, Advocate
Mr. Manoj Kumar – 1, Advocate
Mr. Surendra Pd. Singh, Advocate
Mr. Ashok Kumar, Advocate
For the Respondents : Smt. Asha Verma, Advocate
Mr. Amrendra Kumar Singh,

Advocate

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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

This Intra-Court Appeal is directed against the order and judgment dated 23rd August, 1996, by the learned Single Judge of this Court in C.W.J.C. No. 1357/1985 (Gauri Shankar Modi vs. State of Bihar and others). The private respondents are the appellants.

Heard learned counsel for the parties and with their consent this appeal is being disposed of at this stage itself.

It appears that the land in dispute was settled by Laxmipur Estate in favour of one Basudeo Lal who died issueless in the year 1947. This was Khas Jamindari of Laxmipur Estate. Basudeo Lal having died issueless, the lands were declared “Fauti” lands. This means that the lands were opened to fresh settlement. Laxmipur Estate made settlement with the ancestors of the writ petitioner who were



already Raiyats in the said village. As per the provisions of Santhal Paraganas Tenancy Act, when Jamindari vested, the Laxmipur Estate filed returns showing the name of petitioner's ancestors as the raiyats. Register – II i.e. tenants register was accordingly prepared, and rents were paid, though belated. In 1971, the writ petitioner made an application for mutation of his name instead of his ancestor who had since died. Upon inquiry being made, that was allowed, accordingly, the writ petitioner continued to be in possession. The possession of writ petitioner through their ancestors are since 1948. In 1978, upon recommendation of the Member of the Legislative Assembly, an application was made by the private respondents, the Sub-Divisional Officer declared the lands to be "Fauti" lands as a consequence of death of Basudeo Lal, and thereafter, made settlement with the private respondents. On coming to know of this, the writ petitioner appealed before the Deputy Commissioner, Dumka. The Deputy Commissioner heard the matter and held that the writ petitioners were the earlier settlees and had been in possession of the land since 1948. The said land could not again be declared "Fauti" lands after 30 years, and resettled. He set aside the order of Sub-Divisional Officer, Deoghar. The private respondents being aggrieved filed a Revision Application before the Commissioner, Bhagalpur Division, who set aside the order of Deputy Commissioner,

Dumka and restored the order of Sub-Divisional Officer, Deoghar. It is against that, the writ petition was filed.

The learned Single Judge has noticed the facts elaborately and come to a finding that once the lands were declared "Fauti" land on the death of Basudeo Lal in the year 1947 and settled with the ancestors of the writ petitioner, the actions taken by the Sub-Divisional Officer cannot be countenanced. Accordingly, the writ petition was allowed and the order of Commissioner was set aside and that of the Deputy Commissioner was restored, restoring the settlement of the writ petitioner.

Before us, it is urged that the settlement, as made in favour of the writ petitioner, was made for the first time in the year 1971. We are not impressed. In 1971, an application was filed for mutation of name of heirs of the original settlee. The report of Circle Officer, as appended as a part of Annexure-3, clearly shows that the settlement was made in the year 1948 in the name of Shyamlal Modi and several others. Shyamlal Modi happens to be the father of the writ petitioner. Upon his death, it was substitution, that was sought. This substitution having been done in the year 1971, if the private respondents had any grievance, they could have within one year filed an appeal and/or which could have been set aside, but they did not. Instead, they took dubious route and got the settlement made in their

favour in the year 1978, after getting the land declared “Fauti” Lands as a consequence of death of Basudeo Lal, who undisputedly died in the year 1947. It is not disputed that the writ petitioner was in possession from before, at least from 1971, though they claimed to be in possession from 1948 itself. The appellants took no steps to get rid of their possession. Admittedly, appellants were never in possession. They were only trying to disturb and take over the possession from the writ petitioner through a devious channel.

In the facts and circumstances, we are of the considered view that the judgment and order of learned Single Judge needs no interference. We, accordingly, are unable to entertain this appeal. This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

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