

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16938 of 2012

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1. Smt. Lakho Devi W/O Late Lala Rai Resident Of Mohalla Ramjee Chak, Police Station Digha, District Patna.
 2. Naresh Rai S/O Late Lala Rai Resident Of Mohalla Ramjee Chak, Police Station Digha, District Patna.
 3. Manoj Rai @ Manoj Kumar S/O Late Lala Rai Resident Of Mohalla Ramjee Chak, Police Station Digha, District Patna.
 4. Narendra Rai @ Narendra Kumar S/O Late Lala Rai Resident Of Mohalla Ramjee Chak, Police Station Digha, District Patna.
 5. Dharmendra Rai @ Dharmendra Kumar S/O Late Lala Rai Resident Of Mohalla Ramjee Chak, Police Station Digha, District Patna.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Department Of Revenue And Land Reforms, Govt. Of Bihar, Patna.
2. The District Magistrate, Patna.
3. The Deputy Collector Land Reforms, Danapur District Patna.
4. The Circle Officer, Danapur Circle Danapur District Patna.
5. Suraj Prasad S/O Late Tek Narayan Rai Resident Of Village Ramjee Chak Digha, P.O. Digha, Police Station Digha, District Patna.
6. Ram Deo Rai S/O Late Tek Narayan Rai Resident Of Village Ramjee Chak Digha, P.O. Digha, Police Station Digha, District Patna.
7. Amar Nath Rai S/O Late Mahipat Rai Resident Of Village Ramjee Chak Digha, P.O. Digha, Police Station Digha, District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Narain Singh
Mr. Kundan Kumar Sinha
For the Respondent/s : Mr. Tej Pratap Singh, A.C. to G.P.-17
For the Respondent
Nos. 5, 6 and 7 : Mr. Lakmesh Marvind
Mr. Satyanarain Prasad

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 02-02-2016

The writ application has been filed aggrieved by the non-grant of rent receipts on tender of the rent in respect of the subject land claimed by the petitioner for the year 2010-13. The subject land



appertains to survey plot no. 258, Khesra no. 867, Tauji No. 5855, Thana no. 17 measuring an area of 33 ½ decimals situated in mauza Sikandarpur within Danapur Police Station in the district of Patna. Such claim is raised on the basis of an order dated 15.12.2008 (Annexure-1) passed by the respondent Deputy Collector Land Reforms.

According to the petitioners, they inherited the subject land from their father Late Lala Rai. The total area of the subject land was 67 decimals. It was later divided between the two brothers namely Lala Rai and Laxmi Rai, both sons of Mahavir Rai. Laxmi Rai sold his share (33 ½ decimals) to one Staya Narayan Singh who arbitrarily got an order of mutation in his name in respect of entire 67 decimals of land. Respondent no. 6 (Suraj Prasad) illegally claimed title over half part of the subject land and filed appeal against the order of Circle Officer vide Appeal No. 12 of 2007-08 in which the said order (Annexure-1) was passed. The petitioner, in the light of the said order, applied to the Circle Officer for grant of rent receipts on payment of the land rent in relation to 33 ½ decimals of land. The Circle Officer rejected the application vide order dated 24.02.2012 (Annexure-3). Private respondent Suraj Prasad aggrieved by mutation of certain part of plot no. 258 in favour of Smt. Pramila Singh and Puja Pragya who claimed purchaser(s) of part of the land from Satya



Narayan Singh. The respondent D.C.L.R. in the two appeals bearing Mutation Appeal No. 10 of 2009-10 and 12 of 2009-10 passed an order (Annexure-4) whereby the appeals were allowed. The jamabandi of 33 ½ decimals of subject land of Satya Narayan Singh was cancelled. In effect, the D.C.L.R. reviewed its order dated 15.12.2008 (Annexure-1) passed in Mutation Appeal No. 12 of 2007-08.

On the other hand, the case of the contesting respondent nos. 5, 6 and 7 is that according to both the parties, the subject land measuring a total area of 1.29 acres and 0.9 decimals was recorded in the name of Ex-landlords Baij Nath Singh and Jagar Nath Singh. The Ex-landlord(s) sold the aforesaid land to Mahavir Raut son of Ram Gulam Raut and Ram Bilas Raut son of Ram Autar Raut vide registered sale deed dated 24.7.2015 (Annexure-1 to the supplementary counter affidavit). In 1917, there was a khangi batwara between Mahavir Raut and Ram Bilas Raut in respect of plot nos. 852 (1.29 acres) and 867 (0.67 decimals). 0.98 decimals of plot no. 852 fell in the share of Mahavir Raut whereas 0.31 decimals of plot no. 852 and entire 0.67 decimals of plot no. 867 came in the share of Ram Bilas Raut who came in exclusive possession thereof. Mahavir Raut executed registered mortgage deed in the year 1929 for five years in favour of Aulab Chand Raut and Most. Hiria in respect



to the lands measuring 1 bigha 9 kathas and 5 dhurs in both plot nos 852 and 853. In the said document, name of Ram Bilas Raut was given as the boundary raiyat on the northern side of plot no. 852 and 853 (Annexure-2 to the supplementary affidavit). Later, Ram Narayan Rai (brother of Mahavir Raut) and Sitaram Rai, son of Mahavir Raut) executed registered mortgage deed dated 8.2.1972 in favour of Chamelee Devi with respect to land measuring 1.17 acres in plot no. 852 and 853 for three years. In the content of this mortgage deed it was stated that the mortgagor got the said plots by way of Khangri batwara from Ram Autar Raut. However, quite mala fide, the mortgagor gave the name of Ram Dasia Devi instead of Ram Bilas Raut in the northern boundary. Abhilakh Raut had three sons who constituted a joint family. One brother Ram Autar Raut had one son called Ram Bilas Raut who died issueless before the death of his father. Later, Ram Autar Raut also died. Another brother Imrit Raut also died issueless. Hence, one brother namely Gulab Chand Raut got the entire land of plot no. 852 (0.31 decimals) and 867 (0.67 decimals). Gulab Chand Raut again had two sons namely Tek Narayan Rai and Mahipat Rai. Tek Narayan Rai had two sons namely Suraj Prasad and Ramdev Rai. Mahipat Rai had only one son namely Amarnath Rai. After the death of Tek Narayan Rai and Mahipat Rai, their sons came in exclusive possession and were getting the rent



receipts issued by the ex-landlord in respect of the land of plot no. 867 (0.67 decimals). Rent suit no. 1501/1041 was filed by the Ex-landlord against Ram Autar Raut in respect of land of khata no. 258 which was decreed ex-parte. The rent was paid by Gulab Chand Rai. On strength of these, the respondents have asserted that they remained in possession of 0.67 decimals of land. 33 ½ decimals of land was, however, illegally given to Ram Dasia Devi and others by Executive Magistrate in 1956 which prompted filing of Title Suit No. 56 of 1964/54 of 1974 against Ram Dasia Devi and others for declaration of their right, title and interest in respect of 33 ½ decimals of land of plot no. 867. The suit was decreed in favour of the plaintiffs Tek Narayan Rai and Mahipat Rai. In Execution Case No. 5 of 1974, they got the possession of 33 ½ decimals of land. The sons of Mahipat Raut started claiming illegally the entire 0.67 decimals of plot no. 867 on the strength of a forged sale deed showing Mahipat Rai as the sole vendee. In the background of these facts, Lala Rai and Laxmi Rai approached the Circle Officer to mutate their names of plot no. 867 stating that they were purchasers from Mahipat Rai which was allowed against which the appeal was preferred before the D.C.L.R. The respective claims of the parties have purposely been noted in order to appreciate the rival contention of the parties.

The present writ petition has been filed by the heirs of



Lala Rai claiming 33 ½ decimals of land in plot no. 867 which, as noticed above, was the subject matter of the aforesaid title suit which was decreed in favour of the father of the respondent nos. 5, 6 and 7. The D.C.L.R. in the order (Annexure-4) has noticed that there is a judgment of a Court of competent jurisdiction in favour of respondent nos. 5, 6 and 7. The previous orders passed in mutation proceeding in favour of Lala Rai and Laxmi Rai were passed without noticing the decision of the Trial Court or declining to abide by the order of the Civil Court setting out reason(s) therefor.

I have heard Mr. Aditya Narayan Singh for the petitioners, Mr. Lakmesh Marvind for respondent nos. 5, 6 and 7 as also the Counsel for the State.

Contention of Mr. Singh is that the D.C.L.R. cannot review its own order. Under the order (Annexure-1), it was directed that 33 ½ decimals of land shall continue in the revenue records in the name of the writ petitioners whereas in the subsequent order passed on appeal(s) preferred by the contesting respondent(s), an order was passed contrary to the order passed earlier (Annexure-1). The D.C.L.R. was considering an appeal filed by respondent Suraj Prasad against the mutation order passed in respect of the plot no. 258 in favour of Pramila Singh and Puja Pragya. The order passed by the D.C.L.R. in those two appeals would amount to review of the earlier

order (Annexure-1).

The Revenue Court, while considering the mutation matter, is not supposed to decide the title of the respective party. The order is passed to enable the party in possession to pay the land rent of the State. Without further delving into the respective claims of the parties, what crystallizes is that the order passed in the two appeals by the D.C.L.R. (Annexure-4) notice the order/judgment passed by a competent Civil Court. Such declaration made by the competent Court cannot be ignored by the Revenue Courts, particularly, in the matter of mutation. Even otherwise, the Court in exercise of writ jurisdiction, is not required to go into the veracity of such orders since they do not create title over the land. Law in this regard is settled beyond cavil. Mutation order neither creates nor extinguishes title. Parties aggrieved by such mutation or denial of mutation may always go to the Civil Court for appropriate declaration. Rival contentions of both the writ petitioners and the contesting respondent *prima facie* show that a serious dispute exists between them over title of the subject land. Review of the previous order by the D.C.L.R. shall not have much relevance so long as it is found that the said order is consistent with the judgment and decree of the Court in respect of the suit land.

In the aforesaid setting of facts and the submissions of the parties, in my view, it shall be appropriate on the part of this Court

to decline interference in the impugned order dated 11.12.2009 passed in Mutation Appeal nos. 10 of 2009-10 and 12 of 2009-10 (Annexure-4) passed by the respondent D.C.L.R. by invocation of its extraordinary and discretionary writ jurisdiction leaving the parties to agitate their claim/grievance before the appropriate forum/Court in accordance with law.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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