

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1394 of 2012

IN

Civil Writ Jurisdiction Case No. 16432 of 2009

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1. Parshuram Singh

2. Dhurb Shankar Singh

3. Rama Shankar Singh

All sons of Late Nand Kumar Singh, resident of village - Sihauta Bangra, P.O. Bangra, P.S. Maharajganj, District Siwan.

.... Appellants

Versus

1. The State of Bihar.

2. Mostt. Champa Devi W/O Late Uma Shankar Singh

3. Surendra Kumar Singh S/O Late Uma Shankar Singh

Both resident of village - resident of village - Sihauta Bangra, P.O. Bangra, P.S. Maharajganj, District Siwan.

4. Sri Bangli Singh S/O Late Radha Mohan Singh

5. Sri Rahul Singh S/O Sri Bangali Singh

Both resident of village - Sihauta Bangra, P.O. Bangra, P.S. Maharajganj, District Siwan. Respondent no. 5 is at present Circle Officer, Hisuwa, P.S. Mirganj, District Gopalganj.

6. Pravin Kumar Singh S/O Ramanand Singh, resident of village + P.O. Sihauta Bangra, P.S. Maharajganj, District Siwan.

7. The Circle Officer, Maharajganj, P.O. & P.S. – Maharajganj, District – Siwan.

.... Respondents

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Appearance :

For the Appellants	:	Mr. Shanti Kumar, Advocate Mr. Dhananjay Kumar Tiwary, Advocate Mr. Baban Kumar, Advocate
For Respondent No. 2 & 3	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate Mr. Ranjan Kumar Dubey, Advocate
For Respondent No. 4 & 5	:	Mr. K.N. Chaubey, Sr. Advocate Mr. Krishnakant, Advocate
For the State	:	Mr. Anil Kumar Tiwary, AC to AAG-13

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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: 20-06-2016

The present Intra-Court Appeal under clause 10

of the Letters Patent of Patna High Court has been filed against the judgment and order dated 10.07.2012 passed in C.W.J.C. 16432 of 2009 by the Hon'ble Single Judge of this Court.

2. As all the parties have appeared, and with consent, this appeal is being disposed of at this stage itself.

3. The said writ petition was filed by the appellants herein, the appellants and respondent nos. 4 and 5 to this appeal and the writ petition are agnates. Respondent nos. 2 and 3 of this appeal and the writ petition are unrelated persons to the writ petitioner/appellant or the respondents. It seems that the family of petitioners and respondent nos. 4 and 5 had extensive lands. There were disputes amongst the parties and ultimately the matter was referred for amicable settlement through Panchayat. The Panches gave an Award on 21.03.1986 specifying properties allotted to various parties. It appears to have been registered on or about 01.04.1986. In order to give legal effect to the said Award, Respondent no.4, Sri Bangali Singh, who happens to be a Senior lawyer of Siwan, Civil Court, filed a Title Suit No. 161 of 1986 for making the Award a rule of the Court. While the suit was pending, a compromise petition, by all the



parties, was filed on 17.05.1990, and in pursuance thereto, a compromise decree was passed on 17.05.1990, which was sealed and signed by the Court on 21.06.1990. The Award dated 21.03.1986 was made a part of the compromise decree. Respondent No.4, Bangali Singh, then filed a Mutation Case being Mutation Case No. 97 of 2005/2006 along with other parties, which was allowed, and properties were duly mutated in different names on 15.06.2005.

4. There are two sets of properties which are in dispute in these proceedings before this Court, one, appertains to Survey Khata No.11, Plot Nos. 1144 and 1158 admeasuring 4 kathas and 3 dhurs. The other appertains to khata Nos. 219, 225 appertaining to Plot Nos. 203 and 246 admeasuring 15 Kathas and 14 Dhurs. For implementation of the compromise decree, Respondent No.4, Bangali Singh, instituted Execution Case No. 5 of 1994 before the Sub-Judge-IV, Siwan, where till date the Execution Case is pending. Obviously, Execution Case contained the aforesaid two plots as well. In 2008, Respondent Nos. 2 and 3 filed an application before the permanent Lok Adalat, Siwan, stating that ancestors of respondent Nos. 4 and 5 were big landlords, but they were unable to cultivate all lands by themselves.



There were lands which were not cultivable. Accordingly, in or around 1994, large number of lands belonging to the family of respondent nos. 4 and 5 were taken over by respondent nos. 2 and 3, and since 1944, they were in cultivating possession of those lands. In the year 2008, it was being felt that respondent nos. 4 and 5 would create problem and tried to evict respondent nos. 2 and 3 from those lands, and as such, this pre-litigation case was being filed by respondent nos. 2 and 3, namely Mostt. Champa Devi and Surendra Kumar Singh as against Sri Bangali Singh and Rahul Singh being respondent nos. 4 and 5. It may be noticed here that, upon the own pleadings of respondent nos. 2 and 3 the lands belonged to the ancestors of respondent nos. 4 and 5, but no other family member of the larger family was made a party to this pre-litigation case. It was further averred that the permanent Lok Adalat declared the title and possession of Respondent nos. 2 and 3 having been acquired by adverse possession as against respondent nos. 4 and 5 in respect of the lands as mentioned in the schedule of the said application. It is not in dispute that the said application contained the lands as noticed above.

5. It may be mentioned that the area of the lands



were shown same as that in the execution proceedings, but, we have been shown that the area is not in consonance with the compromise decree for the area of the lands appertaining to Khata no. 11, plot nos. 1144 and 1158, as per the compromise decree, was 4 Kathas 3 Dhurs. In the Execution Proceedings, this was increased to 5 Kathas and 5 Dhurs allegedly, fraudulently.

6. The application having been filed as a pre-litigation application, before the permanent Lok Adalat as a Pre-litigation Case No. 319 of 2008, was filed on or about 19.06.2008. Immediately on the application being filed, on 27.08.2008, i.e., about 1½ months after expiry, respondent nos. 4 and 5 appeared and filed a compromise petition agreeing to the pre-litigation application, and immediately on the same day, the Lok Adalat accepts the compromise and the application so filed and passes an Award, in terms thereof, without noticing any other person even though it was clearly stated that lands belonged to the ancestors to the Respondent Nos. 4 and 5. What was done by the Permanent Lok Adalat was virtually decreeing a suit for declaration of title based on the plea of adverse possession, a jurisdiction which only the Civil Court had.



7. The moment, the writ petitioners came to know of this alleged fraudulent and collusive movements, they filed the present writ petition. Their contention was simple. So far as the aforesaid lands, as noticed above, were concerned, they were admittedly subject matter on execution proceedings pending in the Civil Court. That being so, in terms of Section 20 of the Legal Services Authorities Act, 1987, no application could be entertained in respect thereof by the Lok Adalat or for that matter the Permanent Lok Adalat. The matter could only be referred to it by Civil Court, and therefore, the order of the permanent Lok Adalat was vitiated.

8. We have heard Sri Shashi Shekhar Dvivedi, learned senior counsel for respondent nos. 2 and 3, Sri K.N. Chaubey, learned senior counsel for respondent nos. 4 and 5, learned counsel for the State and also learned counsel for the writ petitioners/appellants.

9. To us, the entire matter as to how the permanent Lok Adalat was moved and how the Award was obtained from it, is clearly collusive and fraudulent. A relief that could be available in a Civil Court cannot be sought for and obtained from Lok Adalat. It is unfortunate that Lok



Adalat are lending themselves to such unscrupulous practices to circumvent the law. Why we say that these proceedings were collusive and fraudulent is, because, respondent no. 4 Bangali Singh is a Senior Advocate of Siwan, he is supposed to be aware of the legal provisions. He was also aware of the execution case as filed by him himself and which was pending in the Civil Court. At least in relation to the aforesaid plots, as noticed above, he could not have included or compromised to get those two plots included in the Award or in the proceedings before the Lok Adalat/Permanent Lok Adalat. He even did not object to the fact that the land area was in variance from the compromise decree passed by the Civil Court, as those mentioned in those proceedings. Within less than a month, virtually a decree in the shape of award was passed by the Permanent Lok Adalat, which even the Civil Court could not have done, if this is not a fraudulent practice it is certainly a collusive practice. Respondent nos. 2 and 3 have virtually perfected their titles and got land transferred to them without there being a sale deed, without there being a suit, without payment of Court fee, without notice to anyone.

10. We may notice another fact on basis of this

Award granted by the Permanent Lok Adalat. Respondent nos. 2 and 3 immediately sold the entire lands appertaining to khata no. 11, plot nos. 1144 and 1158 to respondent no. 6, who has also appeared in these proceedings.

11. Mr. Dvivedi, learned Senior counsel, now before us in the appeal, submits that, learned Single Judge has clearly held that Award of permanent Lok Adalat would not and could not bind the parties who are not parties before it. That is the mischief. If we may say so, you can't compromise on a promise over which you have no right. If such practices are allowed then two persons can easily sit down and partition amongst themselves the property of Tajmahal and becomes owners thereof. This is fraudulent from the very inception. Mr. Dvivedi, then being faced with provision of Section 20 of the Legal Services Authorities Act, 1987, that the application was not maintainable before the Lok Adalat in respect of matters pending before the Civil Court, pointed out that, in 2010, i.e. two years after the Award of the Lok Adalat, these properties were deleted from the Execution Case. This is clearly an attempt to legitimize the Award of the Lok Adalat which was illegally and wrongly obtained. He further agreed before this Court at this



appellate stage that the lands as noticed in this appeal be also deleted from the Award of the Permanent Lok Adalat. It is easily said than done, for as we have noticed above, respondent nos. 2 and 3 have already sold the said land on strength of this Award to respondent no. 6. If the Court was to accept the contention of Sri Dvivedi that all these lands be deleted from the Award of Lok Adalat, the effect will be that, the sale affected by respondent nos. 2 and 3 to respondent no. 6 in respect of khata no. 11, plot nos. 1144 and 1158 would be totally invalidated. On their own showing of the respondents, the sale dated 10.02.2009 would be a void sale, because, if these lands are taken out of the Award, then, respondent nos. 2 and 3 will have no right, title and interest on the said land and if there is no right, title and interest in the said lands, the said lands could not be sold to respondent no. 6. The same is void *ab initio*.

12. Thus on the findings, as recorded above, and the submissions as made on behalf of the respondents, it is to be held that the Award of the permanent Lok Adalat in Pre-litigation Case No. 319 of 2008 (Mostt. Champa Devi & others Vs. Bangali Singh & Another) to the extent that they relate to lands appertaining to khata no. 11, plot nos. 1144

and 1158 are held to be invalid and nonest. The Award would not bind anyone who is not a party to the said Pre-litigation Case. We, accordingly, allow this appeal and modify the order of the learned Single Judge, accordingly.

13. Before closing, we must express our anguish in the manner in which the institution of Lok Adalat is being abused if not misused. The Legal Services Authorities, Bihar, to whom this order may be communicated, would ensure that proper instruction and guidelines are issued so that such fraudulent practices are not perpetuated repeatedly.

14. This appeal, accordingly, stands allowed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

Rajeev/A.F.R.

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