

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20967 of 2013

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1. Shatrughan Prasad Yadav S/O Late Dhaneshwar Yadav Resident Of Mohalla Babu Tola, Present Ward No. 07, Old Ward No. 8/5 In The Town Of Banka, P.S. And District Banka.
2. Smt. Sulochana Devi W/O Sri Shatrughan Prasad Yadav Resident Of Mohalla Babu Tola, Present Ward No. 07, Old Ward No. 8/5 In The Town Of Banka, P.S. And District Banka.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. The Hon'ble Chairman, Bihar Land Tribunal, Patna.
3. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
4. The Deputy Collector, Land Reforms, Banka.
5. Surendra Kumar Yadav S/O Late Dhaneshwar Yadav Resident Of Mohalla Babu Tola, Present Ward No. 07, Old Ward No. 8/5 in Banka Town, P.S. And District Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. BRIJ NANDAD PRASAD

For the Respondent/s : Mr. ANIL KR UAPDHYAY

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 28-06-2016

Heard Mr. Prasad for the petitioner and Mr. Pankaj Kumar Sinha for respondent no.5.

Both the party are full brothers. In relation to possession/dispossession of a dwelling house as per his title, a proceeding was filed by respondent no.5 before the Deputy Collector, Land Reforms (for short 'the DCLR') vide Case No. 51 of 2012-13. The DCLR declined to grant relief saying that a partition suit in relation to the property is pending at the instance of another brother of the respondent not. 5. Aggrieved thereby, an appeal was preferred before the respondent Divisional Commissioner vide Appeal No. 65 of 2012-13. After hearing both sides, the appellate authority, by a proceeding dated

11.03.2013 (Annexure-4), granted the relief to the respondent no.5 considering the fact that his title over the land was not disputed by the petitioner inasmuch as an undertaking on affidavit was filed by the petitioners in respect of the suit property. Aggrieved thereby, the petitioner filed an appeal before the Bihar Land Tribunal, Patna vide BLT Case No.238 of 2013. On a consideration of the materials on record, the Chairman of the Bihar Land Tribunal dismissed the application observing as under:-

“7. Considering the submissions made by the petitioners and opposite parties as well as documents annexed in support of the prayer, I find that petitioners cannot go against their own undertaking on affidavit, specially when there is no denial by the petitioners that they have purchased land from opposite party, which is part of the same plot. They have accepted right, title and interest of opposite party over the landed property as well as residential house of the opposite party. Simply because the lands in question have been included in the list of property under schedule of the plaint, petitioners cannot take advantage of this situation.

8. I find that well considered order has been passed by the Commissioner, Bhagalpur. Pendency of title suit could not have affected merit of the case considering the facts and circumstances of the present case. So far petitioners are concerned, they have purchased land out of same plot from opposite party no.2 for valuable consideration. They cannot deny title of opposite party no.2 with respect to the land and residential house. This aspect of the matter has fully been considered by the Commissioner while passing impugned order. The order passed by the Divisional Commissioner is well-considered and

legally sound as such needs no interference.”

No illegality in the order of the Divisional Commissioner was found and the said order was upheld by the Tribunal.

The counsel for the petitioners submits that the suit property is included in the suit. The order passed by the authority under the Act should abide by the judgment and decree to be passed in the pending suit.

Mr. Pankaj Kumar Sinha, on the other hand, submits that there is no patent illegality in the order. The salient facts of the case have been noticed by the learned Tribunal as well as the appellate authority. The petitioners had filed an undertaking on affidavit accepting the title of respondent no.5 over the suit property. He also states that, as on today, the suit property has been vacated by the petitioners and is in possession of the respondent no.5.

On a consideration of the rival contentions of the parties and after going through the two orders passed by the appellate authority as well as the Bihar Land Tribunal, I am of the view that no patent illegality as such has been committed in passing those two orders. A suit is pending between the brothers in which rightly or wrongly the property in question has been incorporated. The verdict of the civil court in the pending suit shall govern the rights of the parties.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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