

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8278 of 2009

- =====
1. Md.Moshabbir
 2. Rizwan
 3. Md. Imran All S/O Late Md. Habibur Rahman
 4. Bibi Husna Ara W/O Late Md. Habibur Rahman
 5. Bibi Farida D/O Late Md. Habibur Rahman
 6. Tabassum Nazreen D/O Late Md. Habibur Rahman
All R/O Village Braili, P.S. Amaor, Distt- Purnia
 7. Md. Daud Alam Son of Late Sk. Badlhum resident of Village
Braili, P.S. Amoar, Distt. Purnea

.... Petitioner/s

Versus

1. The State Of Bihar
2. Commissioner, Purnea Commissioner, Purnea
3. The Addl. Collector (Land Reforms), Purnea
4. Abdus Shakur @ Chittan S/O Sk. Guddar Ali Resident of Village
Baraili, P.O. Bara Idgah, P.S. Amoar, District- Purnea (Vendee)
5. Md. Mojib S/O Late Sk. Naseeruddin
6. Md. Najmuddin S/O Late Sk. Naseeruddin
7. Md. Nasim S/O Late Sk. Naseeruddin, Heirs of the
Deceased Vendor Late Mosmat Zahirun Sl. No. 5, 6
& 7 Resident of Village Denga Baraili, P.S. Amoar, P.S. Bara Idgah, Distt. Purnea

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. MD.BAHAUDDIN
For the Respondent/s : Mr. KUMARI AMRITA(SC(C)1)

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 16-02-2017

1. Heard the parties.
2. This petition has been filed for quashing the order dated 19.7.2006 passed by the Addl. Collector, Land Reform, Purnea in Ceiling Appeal no. 22/2003 by which he allowed the aforesaid appeal setting aside the order passed by Deputy Collector, Land Reform, Baisi. The petitioner has also challenged the order dated 4.2.2009 (wrongly mentioned in petition as 21.1.2009) passed by



Commissioner, Purnea in Revision case no. 165 of 2006/42 of 2006-07 by which and whereunder he dismissed the aforesaid revision.

3. The fact which lies to file this petition is that original petitioner, namely, Md. Habibur Rahman filed a petition under section 16 (3) of the Bihar Ceiling Act before the D.C.L.R, Purnea claiming his preemptory right in respect of land of khata no. 424 khesra nos. 898 and 899 area 24 decimal which had been transferred by Mostt. Zahirun in favour of private respondent no.4 by executing registered sale deed dated 3.4.2001 but in course of hearing of the aforesaid petition, it came to light that D.C.L.R, Purnea had got no jurisdiction to entertain the aforesaid petition because the lands in question were situated under the jurisdiction of Baisi. Thereafter, D.C.L.R, Purnea sent the record to D.C.L.R, Baisi who subsequently, having heard the parties, allowed the petition filed under section 16 (3) of the Bihar Ceiling Act passing order dated 25.6.2003 which was challenged by the vendee before the Collector, Purnea by filing Ceiling Appeal no. 22/2003 which was heard by the Addl. Collector, Land Reform, Purnea and vide impugned order dated 19.7.2006, he allowed the aforesaid appeal on the ground that D.C.L.R, Purnea had got no right to transfer the record to D.C.L.R, Baisi as only the Collector had got power to transfer any record from one court to other court. The Addl. Collector referred some decisions in his impugned order. The original petitioner challenged the order dated 19.7.2006 passed by the Addl. Collector, Ceiling by filing revision bearing Revision case no. 165 of 2006/42 of 2006-07 before Board of Revenue which was subsequently, transferred to the court of the Commissioner, Purnea for



hearing but the Commissioner, Purnea dismissed the aforesaid revision on the ground that the vendor, namely, Mostt. Zaihrun who was party to the aforesaid petition had died during the pendency of litigation but her legal heirs were not brought on record and, therefore, entire revision petition was abated.

4. It is an admitted position that the vendor, namely, Mostt. Zaihrun died during the pendency of the aforesaid proceeding but her legal heirs were not brought on the record. Furthermore, it is also an admitted position that dispute was between vendee and preemptor. So far as vendor is concerned, she was only a proper party and even if vendor of the present case died during pendency of the proceeding and was not substituted by legal heirs, then also, it is apparent from the facts of the case that right to sue was survived and due to death of vendor, it can not be said that entire litigation was abated and, therefore, I am of the view that the Addl. Collector, Land Reform, Purnea committed error in passing impugned order dated 4.2.2009.

5. It is an admitted case of the parties that initially, petition under section 16 (3) of the Bihar Ceiling Act was filed before D.C.L.R, Purnea and an objection regarding maintainability of the aforesaid petition was raised on the ground of jurisdiction and thereafter, D.C.L.R, Purnea sent the record to D.C.L.R, Baisi for disposal and D.C.L.R, Baisi passed the order on the petition. There is no dispute that only the Collector had power to transfer the case from one D.C.L.R to another D.C.L.R and D.C.L.R had no power to send any record directly to another D.C.L.R. However, even if one D.C.L.R sends any record directly to another D.C.L.R due to lack of



jurisdiction, the same is mere an irregularity which can not vitiate entire proceeding and claim of any person cannot be thrown in dustbin only on the ground of aforesaid irregularity. It is an also admitted position that neither Addl. Collector nor Commissioner decided the dispute of the parties on merit and, therefore, I am of the opinion that dispute of the parties should be decided on merit.

6. On the basis of the aforesaid discussions, the impugned order dated 19.7.2006 passed by the Addl. Collector, Land Reform, Purnea in Ceiling Appeal no. 22/2003 as well as order dated 4.2.2009 passed by Commissioner, Purnea in Revision case no. 165 of 2006/42 of 2006-07 stand quashed and the matter is remitted back to the Addl. Collector, Land Reform, Purnea with direction to hear Ceiling Appeal no. 22/2003 on merit giving opportunity of being heard to both parties and pass fresh order.

Shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.2.2017
Transmission Date	23.2.2017

