

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.274 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 8679 of 2010**

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Bimla Tilak Wife of Late Raghukl Tilak, Resident of Village - Dhanupara, P.S. -
Ara Town, District - Bhojpur.

.... Petitioner / Appellant

Versus

1. The State of Bihar.
2. The Collector, Bhojpur at Ara, District - Bhojpur.
3. The Sub-Divisional Officer, Ara, District - Bhojpur.
4. The Circle Officer, Ara, District - Bhojpur.
5. The Ara Municipal Corporation through the Town Commissioner, Ara, District -
Bhojpur.
6. The Town Commissioner, Ara Municipal Corporation, Ara, District - Bhojpur.
7. The Additional Town Commissioner, Ara Municipal Corporation, Ara, District -
Bhojpur.

.... Respondents / Respondents

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Appearance:

For the Appellant/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate,
Mr. Ranjan Kumar Dubey,
Mr. Parth Gaurav and
Mr. Brajesh Kumar, Advocates.

For the Respondent/s : Mr. Anjani Kumar, AAG 4 and
Mr. Sanjay Prasad, AC to AAG 4.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 23-06-2017

The appellant's Writ Application was dismissed by the
learned Single Judge on 16.09.2014 giving liberty to her to move a
Civil Court of competent jurisdiction for an appropriate declaration to
protect her so-called right, title and interest over a piece and parcel of
land which are Plot No. 526, having area of 2.78 acres, and Plot No.



527 having area of 2.75 acres, appertaining to Khata No. 210 of Village Dhanupara in the district of Bhojpur.

Initially a Writ Application was filed with an allegation that the municipal authorities are illegally trying to harass and dispossess this petitioner-cum-appellant over her rightful and peaceful possession. Since the municipal authorities were alleged to be mischief makers, the learned Single Judge gave a direction upon the Municipal Corporation to consider and decide the matter on the basis of the materials and evidence which may be available.

Notices were issued. Parties were heard. A lot of controversies were thrown up. Serious dispute was raised about the authenticity of the claim of the appellant being the rightful owner or her ever being in possession of the land in question. In fact, the decision is that the land in question had vested in the State after coming of the Zamindari and only an effort is being made from a superficial kind of evidence to assert a right, as if it is a case of inheritance from ex-landlord.

Mr. Shashi Shekhar Dwivedi, learned Senior Counsel was his best in persuasive assistance before this Court trying to convince that it is a pure question of law and facts are settled. Such an attractive argument is required to be repelled for the simple reason that there are dominant evidence as well as materials which have been



brought by the other side, to *prima facie* show that the assertion of the appellant and the declaration, which the appellant is looking for through a summary proceeding under Article 226 of the Constitution of India, can not come her way, as easy as is being sought to be made out.

The learned Single Judge, after considering the rival dispute and perusing the order of the Municipal Commissioner, came to a considered opinion that it is a case of serious dispute of title and possession. It is not an open and shut case which is sought to be made out on behalf of the appellant with regard to her right, title and interest and, therefore, refused to exercise his discretion under Article 226 of the Constitution of India.

The submission of the learned Senior Counsel for the appellant that it is a mere question of law which is required to be decided is not correct for the reason that the question of law cannot be decided in abstract. The bundles of facts are such that mere assertion on an affidavit cannot help in certifying or declaring a right, title and interest including possession of a litigant.

The learned Single Judge, therefore, was correct in his view that the remedy for the appellant would be filing of a suit. This order is with a rider that none of the observations made by any authority having reflection on the right, title and interest of the



appellant will come in the way of the adjudication if it is required to be made at the instance of the appellant.

The appeal has no merit. It is dismissed.

The liberty, as granted by the learned Single Judge, remains.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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