

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1128 of 2014
IN
Civil Writ Jurisdiction Case No. 19818 of 2011**

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1. Renu Jaiswal Wife of Pawan Jaiswal resident of village - Sisia, P.S. Korha, District - Katihar

2. Pawan Jaiswal son of Late Ganga Prasad Jaiswal resident of village - Sisia, P.S. Korha, District - Katihar

3. Smt. Uma Devi wife of Saldeo Yadav and Daughter of Late Mohan Yadav resident of village Bhavanipur, P.S. Krityanand Nagar, District - Purnea

.... Appellant/s

Versus

1. Deepak Jaiswal Son of Late Devendra Prasad Jaiswal resident of village - Sisia, P.S. Korha, District - Katihar, presently residing at C//39, Housing, Kankarbagh Colony, P.S. Kankarbagh, P.O. Lohia Nagar, District - Patna

2. The State of Bihar through the Secretary Department of Law & Justice, Government of Bihar

3. Chakbandi officer, Kohra, Katihar

4. Assistant Chakbandi officer, Kohra, Katihar

5. The Deputy Director, Consolidation, Bihar

6. The Circle Officer, Kohra, Katihar

7. The District Registrar, Katihar

8. The District Magistrate, Katihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Raghib Ashan, Sr. Advocate
Mr. Bipin Kumar

For the Respondent/s : Mr. Avinash Kumar

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 11-04-2017

Heard learned counsels for the parties.

The three respondents in the writ application, i.e., Respondent Nos. 8, 9 and 10 have now jointly surfaced and have filed this Letters Patent Appeal against the order, dated 14.05.2014, passed by the Learned Single Judge in C. W. J. C. No. 19818 of



2011. Since the Learned Single Judge has addressed the history of the litigation and narrated the events, which has led to the present round of litigation, this Court is tempted to reproduce the narration in the words of the Learned Single Judge himself:

“2. The case has a very chequered history. The matter is in relation to 0.45 acres of land (45 decimals) situated at village Sisia, P.S. Korha in the district of Katihar. Petitioner is aggrieved by orders of the authorities permitting mutation in the name of respondent no.10 in respect of the entire 45 decimals of land, which she allegedly purchased from respondent no.8 by registered sale deed.

3. Petitioner submits that the petitioner’s father and uncle had filed a title suit in the year 1960, being Title Suit No.239 of 1960, before the Court of Munsif, Katihar, District Purnia, as it then was. This title suit was in relation to these very 45 decimals of lands. The defendant was one Mohan Yadav, who happens to be the father of respondent no.8. The father and uncle of the petitioner claimed that these 45 decimals of lands were their khatiyani land, but, in course of revisional survey in the year 1958, Mohan Yadav got wrongly entered his name as raiyat. Thus, the suit was for declaration of title and confirmation of possession. This suit was decreed. Title of petitioner’s father, uncle and their possession over the entire 45 decimals of land was declared and confirmed. Let it be noted that though everyone is aware of this decree till date it has neither been varied nor set aside by any Court of competent jurisdiction. The matter remained thus till 1991. In 1991, respondent no.9 made an application before the consolidation authorities, while the consolidation operations were being carried out, claiming that 5 decimals out of this 45 decimals of lands belonged to him. He had his house thereon and it



should be mutated in his name. This application undisputedly was filed by respondent no.9 and he may Mohan Yadav, uncle of petitioner and petitioner. In these proceedings, which was Case No.1096 of 1991 under Section-10 (3) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the 'Consolidation Act'). Petitioners appeared. It was reported that Mohan Yadav was dead. Petitioner opposed this application on the ground that this entire land had been decreed in favour of the petitioner by Court of competent jurisdiction. The consolidation authority adjourned sine die the proceedings in view of the Civil Court proceedings. From this, it is apparent that respondent no.9, Pawan Jaiswal was aware that there was a Civil Court decree against Mohan Yadav in respect of this entire land whereby the entry in his name was held to be bad and the title of petitioner was declared.

4. Having failed to get mutation of 5 decimals of land in his name, respondent no.9 then set up his wife, respondent no.10. They connived with respondent no.8, the daughter of Mohan Yadav and got an application filed before the consolidation authority whereby concealing the Civil Court decree that Mohan Yadav had no right, title or interest in respect of this 45 decimals of lands, the daughter of Mohan Yadav, respondent no.8, sought permission to transfer the entire land of 45 decimals in favour of the wife of respondent no.9, i.e., through respondent no.10. At the cost of repetition, it may be noted that first respondent no.9 claimed 5 decimals of this 45 decimals as his land. Now, he sought transfer of this entire 45 decimals of land from respondent no.8 to his wife, respondent no.10. Petitioner was not made a party. Behind the back of the petitioner and concealing the Civil Court decree permission was obtained. Respondent no.8, daughter of Mohan Yadav, then executed registered sale deed in favour of respondent no.10, wife of



respondent no.9, in respect of entire 45 decimals of land. It is pursuant to that application was made for mutation which was opposed by the petitioner. On petitioner coming to know of this nefarious step, this what has laid to various litigation thereafter, whereby parties have come to this Court. Finally, this Court has remanded the matter for fresh consideration. Now, the order has been passed that pursuant to earlier order of the consolidation authority in the year 1992, to which petitioner was not a party, the mutation has been ordered in favour of respondent no.10 in respect of entire 45 decimals of land, having been purchased from respondent no.8, the daughter of Mohan Yadav, against whom the Civil Court decree operates.”

The submission of the learned counsel, representing the appellants, now, that there has been error of fact and law, committed by the Learned Single Judge in allowing the writ application, by passing the order, which has been crystallized in paragraph-7, is required to be interfered with, does not merit consideration, because the conclusion, so reached, has rightly declared the law and status, if not the right of the present appellants, who have been hell-bent upon to get rid of the effect of the civil court's decree, which was passed way back in the year 1960.

Paragraph 7 of the order impugned reads as follow

7. Having considered the matter, in my view, learned counsel for the petitioner is correct in submitting that efforts to get out the Civil Court decree are being made without anyone challenging the Civil Court decree of the year 1960 in accordance with law. So long as the Civil Court decree operates, whether it be right, wrong or indifferent, and so long as it is not varied or set aside by a Court of competent jurisdiction, no party is



at liberty to wish it away. It is a judgment in personem as between the father and uncle of the petitioner and Mohan Yadav whose daughter is respondent no.8. It binds respondent no.8. She has been aware through respondent no.9 of this entire situation at least since 1991 for almost 2½ decades but she has not chosen to challenge the same. If the Civil Court decree operates then even the consolidation authorities lacked the jurisdiction to declare the said decree null and void in any manner because that decree was granted before the consolidation proceedings started. Thus, so long as the said decree operates Mohan Yadav was left with no right, title or interest in the said 45 decimals of land and, if that be so, respondent no.8 could not have acquired a better title upon the death of his father. She has no right, title or interest and, thus, could not have transferred any right, title or interest to respondent no.10. If that be so, then the order of the authorities granting permission to respondent no.8 to transfer the land to respondent no.10 or on basis of the said transfer subsequently made ordering mutation of the name of respondent no.10 in respect of the entire 45 decimals of land to the prejudice of the petitioner, in whose favour the Civil Court decree was, cannot be sustained. The order of mutation as made in favour of respondent no.10 has to be accordingly held to be *null and void* based on no semblance of the title.

After having perused the order as well as the records, the Division Bench is of the opinion that the three appellants, who have joined together in the present appeal, are rank dishonest litigants, who have been jointly and selectively litigating in a strategic manner to shake off the effect of declaration of a civil court and the decree passed way back in the year 1960, when the said decree has not been interfered with or challenged by any of these three or the



daughter of Mohan Yadav at any point of time in the last six decades or so. Such litigations are not required to be given encouragement and it was a fit case where appeal should be dismissed with exemplary cost and even cost should have been imposed to discourage such kind of litigations, wasting a valuable judicial time.

Appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

SKM/-

AFR/NAFR	N.A.F.R.
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