

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10438 of 2014

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Gyan Chandra Chaudhary, S/o Late Satish Chandra Chaudhary, R/o
Village- Pindaruch, P.S.- Kamtaul, Distt- Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Darbhanga
3. The Sub-Divisional Magistrate, Sadar, Darbhanga, Distt- Darbhanga
4. The Circle Officer, Kewati, Distt- Darbhanga
5. The Thana-in-charge, Kamtaul, Distt- Darbhanga
6. Asarfi Roy, S/o Late Ganga Roy
7. Jogi Roy S/o Late Baidya Roy
8. Shivjee Chaupal S/o Late Biyout Chaupal
9. Rambriksh Chaupal S/o Binde Chaupal, All are R/o vill- Pindaruch, P.S.-
Kamtaul, Distt- Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Avinash

For the Respondent/s : Mr. AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 19-07-2017 Learned counsel for the petitioner is permitted to
make necessary correction in the petition, as prayed for.

Heard learned counsel for the petitioner and AC to
AAG 13 for the respondent nos. 2 to 5.

This court is not inclined to issue notice to
respondent nos. 6 to 9, in view of the nature of order this court
intends to pass.

The present writ application has been filed for a
direction to the respondent authorities for getting the



encroachment removed over the land pertaining to Khata No. 274, Plot No. 1476, situated in Mauza Pindaruch, which has been encroached upon by respondent nos. 6 to 9, by constructing a house.

It is submitted by learned counsel for the petitioner that the land in question is the ancestral land of the petitioner, which has been encroached by respondent nos. 6 to 9 by constructing a house over the same. In survey Khatian, name of the father of the petitioner has been recorded, but the private respondents have encroached the part of the land on the basis of forged and fabricated claim, based on some settlement. Only 14 dhurs of land was transferred by the father of the petitioner to one Rohini Devi. After the death of the father of the petitioner, the petitioner and his elder brother and other legal heirs are in possession of the remaining land in question. The petitioner represented before the local authorities but till date encroachment has not been removed, hence this writ application.

Counter affidavit has been filed on behalf of respondent nos. 2, 3 and 4, stipulating therein, that in pursuance to the representation filed by the petitioner, the Circle Officer, Keoti, called for a report from the Circle Inspector. The Circle Inspector submitted the report to the effect that Plot Nos. 1476



and 1123, an area measuring 7 decimals is situated in Mauza Pindaruch and Govind Chaudhary and Satish Chandra Chaudhary are the recorded raiyat of the land in question. Out of the said land, 14 dhurs of the land was sold by one Jagnath Mishra on which one Rambriksha Choupal has constructed his house. In the circumstances, though, notices were issued to respondent no. 9 and he failed to appear and keeping in view, the civil nature of dispute the representation of the petitioner has been disposed of.

From the discussions made above, this is admitted fact that the land in question is not a public land. The foundational facts to come to a finding whether the petitioner is having right, title or possession over the land in question or not, is not available on record. Moreover, such serious disputed question of fact, when the private respondents are also claiming the land in question through settlement, the claim of the petitioner can only be decided in regular suit by the competent Civil Court.

Having heard learned counsels for the parties, this Court feels necessary to deliberate upon the issue, whether factual issue and the disputed question of facts can be looked into, while exercising discretionary jurisdiction under Article 226 of the Constitution of India. Though there is no binding rule



that the High Court cannot try the issue of facts in a writ application, but in such cases where relief has been prayed for on the basis of disputed question of facts which cannot be determined without leading of evidence, the Court should ordinarily relegate the parties aggrieved to agitate the issue before the Civil Court.

The Apex Court in the case of State of Rajasthan Vs. Bhawani Singh and Others AIR 1992 SC 1018, held that disputed questions relating to title cannot be satisfactorily gone into or adjudicated upon in a writ proceeding. Paragraph 9 reads as follows:

“9. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.”

In each case, the court has to consider whether the party seeking relief has an alternative remedy which is equally efficacious. Hence, when the party claims title or possession over



the property then in such case equally efficacious remedy would be to institute a suit before a court of competent jurisdiction.

In the case of D.L.F. Housing Construction (P) Ltd Vs. Delhi Municipal Corpn. and Others (1976) 3 Supreme Court Cases 160, the question related to the right of ownership over a land, a Four Judge Bench of the Apex Court held that in a case where the basic facts are disputed and complicated question of law and fact depending on evidence are involved, the writ court is not a proper forum for seeking relief. Paragraph 18 reads as follows:

“18. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit.”



Accordingly, this writ application is disposed of with a liberty to the petitioner to avail the remedy for his grievances before the appropriate forum.

(Dinesh Kumar Singh, J)

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