

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13481 of 2010

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Shail Kumari @ Shail Kumari Devi D/O Sheoji Sahay @ Pujan Sahay R/O Sherghati, P.S.Sherghati, Distt-Gaya

.... Petitioner/s

Versus

1. The State Of Bihar , Through The Collector Gaya
2. The Superintendent Of Survey Gaya
3. The Assistant Superintendent Of Survey Gaya
4. Kripa Shankar Jaiswal S/O Late Laxmi Narayan Jaiswal R/O Moh Lalpur Chauk Ranchi, Distt-Ranchi, Jharkhand
5. Sheo Narayan Jaiswal S/O Late Laxmi Narayan Jaiswal R/O Moh Lalpur Chauk Ranchi, Distt-Ranchi, Jharkhand

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 16173 of 2010

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Shail Kumari @ Shail Kumari Devi D/O Sheoji Sahay @ Pujan Sahan Sahay And W/O Ashok Kr. Srivastava R/O Sherghati, P.S.- Sherghati, Distt.- Gaya

.... Petitioner/s

Versus

1. The State Of Bihar Through The Collector, Gaya
2. The Superintendent Of Survey, Gaya
3. The Assistant Superintendent Of Survey, Gaya
4. Kripa Shankar Jaiswal S/O Late Ram Narayan Jaiswal R/O Mohalla- Lalpur Chauk Ranchi, Distt.- Ranchi, Jharkhand
5. Sheo Narayan Jaiswal S/O Late Laxmi Narayan Jaiswal R/O Mohalla- Lalpur Chauk Ranchi, Distt.- Ranchi, Jharkhand

.... Respondent/s

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Appearance :

(In CWJC No.13481 of 2010)

For the Petitioner/s : Mr. Ashok Kumar
Mr. Madan Prasad
Mr. Surendra Prasad Singh
Mr. Mritunjay Kumar Sinha
Mr. Navesh Nandan

For the Respondent/s : Mr.Shailendra Kumar Sinha
Mr. Nand Kishore Prasad Sinha

For the State Mr. Gautam Kumar Yadav AC to GP-26

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 13-02-2017

Heard learned counsel for the petitioners and learned



counsel for the respondent nos. 4, 5 and 6 as well as learned counsel for the State in both the aforesaid writ petitions.

2. Both the above stated writ petitions have arisen out of order dated 15.03.2010 passed by Superintendent of Survey, Gaya (Respondent No.2) whereby and whereunder he allowed the appeal no. 288 of 2005 and appeal no. 289 of 2005, which had been filed against the order dated 30.12.1998 passed by the Assistant Superintendent of Survey, Gaya (Respondent No.3) in Objection Case No. 578 of 1997 as well as order dated 23.06.2005 passed by the Assistant Superintendent of Survey, Gaya (Respondent No.3), in Objection Case no. 614 of 2003. The above stated writ petitions having been heard together are being disposed of by this common Judgment.

3. The relevant facts of the present case lie in a narrow compass. The petitioner in both the writ petitions filed objection under section 9 of Bihar and Orissa Municipal Survey Act, 1920 against the entry made in respect of old cadastral survey plot no. 1966, measuring an area of 3 acres 7 decimals of land, on the ground that the aforesaid cadastral survey plot no. 1966 was a big plot and 71 decimals land of the aforesaid plot was settled in favour of ancestors of the petitioners by ex-landlord sometime in the year 1932 and rent receipts were issued in favour of the ancestors of petitioners by the then landlord.



Furthermore, the ex-landlord mentioned the name of the ancestors of the petitioner as Asami while they had filed return of the aforesaid land but at the time of revisional survey, the aforesaid land was wrongly recorded in the name of the State of Bihar and, thereafter, petitioners filed objection before Assistant Superintendent of Survey, Gaya (Respondent No.3) , who allowed the objection and ordered for making correction in the concerned documents. However, respondent nos. 4 and 5 challenged the order of Assistant Superintendent of Survey, Gaya (Respondent No.3) in appeal and also filed objection under section 9 of the aforesaid Act before Assistant Superintendent of survey (Respondent No.3). The objection filed on behalf of the respondent no. 4 and 5 was rejected vide order dated 25.06.2005 and, subsequently, the respondent nos. 4 and 5 preferred separate appeal against the order dated 25.06.2005 passed by the Assistant Superintendent of survey (Respondent No.3). Both the aforesaid appeals were heard together and disposed of by common impugned judgment.

4. The respondent nos. 4 and 5 took stand before the concerned authorities that the land in question was purchased by their ancestors sometime in August 1992 through registered sale deed and the land in question was put on auction for execution of decree of Title Suit no. 34 of 1937 and, subsequently, when family partition



took place, the aforesaid land fell in the share of respondent nos. 4 and 5 and since then they are coming in possession of the aforesaid land.

5. It is pertinent to mention here that during the pendency of these writ petitions, respondent no. 6 filed I.A no. 347 of 2015 praying therein to implead him as a party-respondent as the aforesaid land was disputed land and belonged to Babu Sivraj Prasad Singh, who gifted the said land to Rama Shray Satsang Mathura sometime in the year 1959 but the entry regarding gifted land in revenue record was wrongly made and the aforesaid fact came to notice of intervenor (respondent no. 6) recently and then he filed aforesaid I.A. No. 347 of 2015 to get him implead as party-respondent to the writ petitions. The aforesaid I.A No. 347 of 2015 was allowed vide order dated 30.06.2016 and, accordingly, he was impleaded in these writ petitions as respondent no.6.

6. Learned counsel appearing for the petitioners challenged the impugned judgment arguing that the learned appellate Court failed to appreciate the evidence in its right perspective because the sale deed of respondent nos. 4 and 5 does not contain the disputed plots and, similarly, the disputed plot had not been mentioned in partition suit. He submitted that the learned court below failed to take note of this fact that there was no document before the appellate court to show that the land in question was ever put on auction and the same



was purchased by the ancestors of respondent nos. 4 and 5. He further submitted that the Assistance Superintendent of survey, Gaya (Respondent No.3), specifically, mentioned in his order that the return filed by the ex-landlord contains the name of ancestors of the petitioners as Asami and the rent receipts were issued in favour of ancestors of the petitioners but the appellate court did not take pain to discuss the aforesaid fact as well as documents rather observed that no document had been filed on behalf of the petitioners before him which is factually incorrect.

7. Learned counsel appearing for the respondent nos. 4 to 5 submitted that the huge properties were put on auction for sale in Title Suit no. 34/1937 and disputed plot was part and parcel of Manpur distillery and, as a matter of fact, when sale deed was executed in favour of ancestors of respondent nos. 4 and 5, the descriptions of properties were mentioned in sale deed as mentioned by Advocate Commissioner at the time of preparation of map of the properties of Manpur distillery and that is the reason, the disputed plot number was not given in the sale deed.

8. Learned counsel appearing for the respondent no. 6 submits that neither petitioner nor respondent nos. 4 and 5 raised objection against the pleading of respondent no. 6 and, therefore, the pleadings of respondent no. 6 is left to be uncontroverted.



9. Admittedly, before the Superintendent of Survey, Gaya (Respondent No.2), only petitioner and respondent nos. 4 and 5 made their claim and the intervenor(respondent no.6) did not raise his claim and, therefore, in the aforesaid circumstance, the Assistant Superintendent of survey, Gaya (Respondent No.3) had no opportunity to consider the claim of respondent no. 6. Moreover, it is admitted position that the sale deed of the ancestors of the respondent nos. 4 and 5 does not bear the disputed plot number. The impugned judgment of the learned appellate court goes to show that the entire findings of learned appellate court is based upon presumption that the disputed plot was purchased by the ancestors of respondent nos. 4 and 5 in auction sale.

10. As I have already stated that the auction sale of ancestors of respondent nos. 4 and 5 does not bear the disputed plot number but the aforesaid fact was not considered by the appellate court nor the appellate court gave any finding regarding the documents furnished on behalf of the petitioners. Moreover, when one new claim has come forward, I think it proper that the matter should be remitted back to the appellate court to decide the matter afresh keeping in mind the above stated observations also by giving opportunity to respondent no. 6 to raise his grievance before the appellate court. However, the appellate court below shall be at liberty



to examine the question of maintainability of claim of respondent no. 6.

11. Accordingly, both the above stated writ petitions are allowed and order dated 15.03.2010 passed by Superintendent Municipal Survey is quashed. Accordingly, the appellate court below is directed to pass a fresh order in appeal no. 288 of 2005 and appeal no.289 of 2005 keeping in mind the above stated observations.

12. The appellate court must pronounce the judgment in both the aforesaid appeals within six months from the date of receipt/ production of a copy of this order.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2017
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