

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.214 of 2014

In

Civil Writ Jurisdiction Case No.8514 of 1992

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Mithilesh Kumar Pandey Son Of Keshav Kumar Pandey Resident Of Village-
Hakimpur, Tola Akhtiarpur, Police Station- Garkha, District- Saran

... .. Appellant

Versus

1. The State Of Bihar
2. The Additional Mamber, Board Of Revenue, Old Secretariat, Patna- 1
3. The Additional Director, Sadar, Saran
4. The Deputy Collector, Land Reforms, Sadar, Saran
5. Singheshwar Pandey Son Of Ram Nehi Pandey Resident Of Village-
Akhtiarpur, Police Station- Garkha, District- Saran
6. Shri Krishna Nand Pandey Son Of Late Ram Ratan Resident Of Village-
Akhtiarpur, Police Station- Garkha, District- Saran

... .. Respondents

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Appearance :

For the Appellant : Mr. Anil Singh, Advocate

For the Respondents : Mr. Satya Ranjan Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 03-11-2017

Heard learned counsel for the parties.

The present Letters Patent Appeal arises out of the order dated 20.09.2013 passed by a learned single Judge of this Court in C.W.J.C. No. 8514 of 1992, by which the writ application preferred by the present appellant has been dismissed by the learned single Judge taking note of the fact that all the authorities under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, have come to a concurrent finding that the land in question is not in the boundary of the land



of the appellant rather the boundary raiyat is the father of this appellant, who had acquired the land as his self-acquired property.

Learned counsel representing the appellant submits that in fact the findings are perverse which the learned single Judge has not been able to appreciate because in a Hindu undivided family there is a presumption of jointness unless it is rebutted by bringing cogent evidences on the record. Learned counsel submits that on the basis of the fact stated in the affidavits brought on the record not only of this appellant but his father and brother before the authorities below would show that the land held in the name of the father, belong to the joint family, and this small piece of land was purchased in the name of the appellant, who is serving in Army just for purpose of amalgamating with the piece of land held in the name of the father to construct a residential house thereon. Learned counsel submits that not only the evidences both before the authorities below and the learned single Judge were ignored, but contrary to the settled proposition of law that burden lies upon the person who alleges partition to prove that, all the authorities have simply stated that the land standing in the name of the father of this appellant is his self acquired property.



On the other hand, learned counsel representing the respondent pre-emptor submits that the fact that it is not the self-acquired property of his father not stated in the sale deed taken by this petitioner-appellant would show that it is not a joint family property and what has been acquired by this appellant as well as his father are two separate transactions in two different names and have been obtained from self-acquired income. Therefore, according to the learned counsel the authorities below have rightly come to a conclusion that it is the self-acquired property of the father of the appellant and hence this appellant would not be able to take the benefit of his father being a boundary raiyat of the land in *lis*.

Learned counsel for the appellant has relied upon paragraph 4 of a Division Bench judgment of this Court in the case of ***Baijnath Gutgutia vs. The State of Bihar and others***, reported in 1980 BBCJ 49, which reads as under :

“4. Where a family is joint and acquisition is made by the joint family the mere fact that the acquisition has been made in the name of the karta or even in the name of one of the members of the joint family does not necessarily lead to the conclusion that the acquisition is self acquisition. It is also possible for a member of the joint family to



make self acquisition and put that self acquisition into the common hotch potch. The correct legal position has been stated by Mulla in Article 233 (2), head note (h) and Article 227 of his Book on Hindu Law.”

We have considered the rival submissions at the bar and have perused the records.

A perusal of Annexure-4, which is the order passed by the Deputy Collector Land Reforms, clearly shows that he has not at all considered the submissions and the evidences brought on the record by this appellant, he has categorically submitted that the land owned by his father in boundary of the present land is a joint family property and in fact this piece of land was also purchased as a joint family acquisition. This plea has been supported by his father in form of his affidavit. The learned Deputy Collector Land Reforms has jumped to a conclusion that only because the name of this appellant is not there in the sale deed owned by his father, the same cannot be said to be a joint family property.

We have also found that once the Deputy Collector Land Reforms held that it is self-acquired property of the father of the appellant, all other authorities, subsequently, at appellate as well as the revisional stage, did not look into the records and simply endorsed the order passed by the Deputy Collector Land Reforms.



The learned single Judge has rejected the writ application only on the ground that the authorities below had given concurrent finding of fact.

As we have come to a conclusion that those finding are perverse and contrary to the materials available on record and are against the settled principles of law, the right of pre-emption being a weak right, it is a fit case to exercise our appellate jurisdiction by setting aside all the impugned orders passed by them under the Act which were under challenge in writ as well as the order passed by learned single Judge.

The impugned orders are accordingly set aside and the appeal is allowed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	06.11.2017
Transmission Date	N/A

