

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1390 of 2015

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Smt. Menuka Singh, Wife of Sri Hemendra Kumar Singh, Zivika Grihni Niwas, Resident of Mohalla Madhubani, Rajendra Nagar P.S. Khajanchi Hat, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Revenue and Land Reforms Department Government of Bihar, Patna.
2. The Divisional Commissioner, Purnea .
3. The District Magistrate-cum-Collector, Purnea.
4. The Deputy Collector, Land Reforms, Purnea.
5. The Circle Officer, Purnea East Purnea.
6. The Member (Judicial), Bihar Land Tribunal , Patna.
7. Sudha Devi, Wife of late Awadh Kishore Narayan Ambastha.
8. Subodh Kumar Sinha, S/o Awadh Kishore Narayan Ambastha.
Both resident of Mohalla Dhobi Tola, Rajendra Nagar, P.S. Khajanchi Hat, District- Purnea.
9. Kamal Kant Prasad, Son of Late Yadav Prasad, Resident of Mohalla Madhubani, Rajendra Nagar P.S. Khajanchi Hat, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Bilash Mahto, Adv. Mr. Manoj Kumar Singh, Adv.
For the Respondent/s	:	Mr. Ankit Katriar, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 27-03-2018

Heard learned Counsel for the petitioner and learned AC to AAG-13 for the respondent – State.

This Court is not inclined to issue notice to private respondent nos. 7 to 9 in view of the nature of order this Court intends to pass.

The present writ application has been filed for quashing of the order dated 28.07.2014 passed by respondent no.6, the



Member (Judicial), Bihar Land Tribunal, Patna, in BLT Case No.949 of 2013, as contained in Annexure 5, whereby the order dated 05.09.2013, passed by respondent no.2, the Divisional Commissioner, Purnea, in Land Dispute Appeal No. 178 of 2013, as contained in Annexure 4, has been affirmed. The respondent no. 2 Divisional Commissioner, Purnea had affirmed the order dated 19.02.2013, passed by respondent no.4, the Deputy Collector, Land Reforms, Purnea, in BLDR case No.83 of 2012-13, as contained in Annexure 3, whereby it was held that respondent nos. 7 and 8 have no right to raise any objection with respect to possession of the land in dispute because respondent no. 8 filed an application before the respondent no. 4, DCLR, Purnea claiming the land on the basis of compromise decree passed in Title Suit No. 137 of 1995.

The factual matrix of the case would unveil that the dispute is with regard to the land appertaining to Khata No. 51, Plot Nos. 1014, 1015 and 1026, total area 17 decimals, situated in Mauza – Madhubani. The said land belonged to one Yadav Prasad, who died leaving behind his only son Kamla Kant Prasad, Respondent no. 9 and daughter Prabha Devi, Respondent no. 8 is the son of Prabha Devi. Prabha Devi subsequently filed Title Partition Suit No. 137 of 1995 in the



court of the Sub-Judge, Purnea impleading respondent no. 9 Kamla Kant Prasad as defendant. The said Title Suit was disposed of on the basis of a compromise decree. Paragraph 5 of the compromise petition reads as follows:

“उक्त समझौता आवेदन की कड़िका 5 में यह अंकित है कि “That it has been decided and agreed between the parties that there shall be a private Rasta measuring 5 ft. wide through out 1 decimal 09 kari = 50 point over southern portion of plot no. 1014 and also western portion of plot no. 1014 and 1015 and in the middle of plot no. 1026 adjoining west of the schedule ‘A’ land”

During the pendency of Title Suit, respondent no. 9 Kamla Kant Prasad sold 6 katha 11 dhurs land appertaining to Plot No. 1026 through registered sale deed dated 23.9.1996 in favour of petitioner Menuka Singh. Subsequently, the petitioner, out of the said purchased land, sold 1 ½ katha of land in favour of Neelu Jha. Subsequently, Hemendra Kumar Singh, husband of the sole petitioner and his brother Arvind Kumar Singh started grabbing northern portion of the land of respondent no. 8 appertaining to Plot No. 1026. They also started claiming 8 ft. road instead of 5 ft. as per compromise decree. Hence, respondent no. 8 Subodh Kumar Sinha filed an application before the respondent no. 4,



DCLR, Purnea under Bihar Land Dispute Resolution Act which was numbered as BLDR Case No. 83 of 2012-13. Respondent no. 4, DCLR, Purnea vide order dated 19.2.2013 held that the husband of petitioner namely Hemendra Kumar Singh and his brother Arvind Kumar Singh have no right to overreach the compromise decree and to claim 5 ft. of land as rasta instead of 8 ft. or to claim the land of respondent no. 8. However, he gave liberty to respondent no. 8 to get the land measured by filing an application before the Circle Officer, Purnea and directed respondent no. 5, Circle Officer, East Purnea to get the land measured and to ensure the possession of respondent no. 8 over the land in question.

Thereafter, though the petitioner was not party before the respondent no. 4, DCLR, Purnea but she preferred an appeal before the respondent no. 2, Divisional Commissioner, Purnea which was numbered as Land Dispute Appeal No. 178 of 2013. The Divisional Commissioner, vide order dated 5.9.2013, affirmed the order of the DCLR and dismissed the appeal by holding that since the petitioner purchased the land during pendency of the title suit, hence, she has to abide by the compromise decree, which suggests only 5 ft. road. Subsequently, petitioner and her husband Hemendra Kumar



Singh preferred an application before the Bihar Land Tribunal and the Bihar Land Tribunal also dismissed the application of the petitioner and held that the sale deed in favour of the petitioner has to be guided by the compromise decree on the basis of the principles of lis pendens under section 52 of the Transfer of Property Act, 1882. Relevant portion of the order reads as follows:

“Perused the impugned order, suit was filed in the year 1995 and sale deed was executed in the year 1996, definitely during pendency of the suit because compromise was entered into on 21.04.1998, so the sale will be guided by principle of lis pendens as per the provision laid down under section 52 of Transfer of Property Act 1882, so compromise decree will be binding also upon the applicant.

I do not see any legal infirmity with the order. The application is dismissed being devoid of any merit, so far right of easement for getting a wider rasta is concerned, provision is there under Section 147 of the Code of Criminal Procedure and not under Bihar Land Dispute Resolution Act.”

It is submitted by learned counsel for the petitioner that the DCLR, Divisional Commissioner, Purnea and the Bihar Land



Tribunal failed to understand that 8 ft. wide road is being used by public at large, hence, all the orders of the learned courts below are bad in law and fact as well. Moreover, the compromise decree was never acted upon.

It is submitted by learned counsel for the respondent nos. 1 to 5 that there is a concurrent finding by learned three courts below which does not need any interference by this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India.

Having heard learned counsels for the parties, this Court is of the view that the petitioner purchased the property in question during pendency of the Title Suit No. 137 of 1995, hence, the compromise decree is binding upon her. Since the petitioner has not challenged the compromise decree till date, hence the finding of the compromise decree cannot be unsettled by any court under the Land Dispute Resolution Act. Moreover, there is concurrent finding by all the courts below and it appears that the whole proceeding is vitiated by non-joinder of necessary party as, the application was filed by the husband of the petitioner, namely, Hemendra Kumar Singh and his brother Arvind Kumar Singh before the DCLR. whereas the appeal was filed before the Divisional Commissioner, Purnea by the petitioner only and



thereafter, before the Bihar Land Tribunal the application was filed by the petitioner and her husband and not by the brother of her husband. The present writ application has been filed by the petitioner who has not arrayed either her husband or brother of her husband and others, as respondents, who were party in the Title Partition Suit.

In view of the discussions made above particularly the admitted fact that the petitioner purchased the suit property, during the pendency of a suit, hence the sale made in favour of the petitioner, will be guided by the principle of lis pendens, under Section 52 of the Transfer of Property Act, 1882. In the circumstances, this Court is not inclined to exercise the discretionary jurisdiction under Article 226 of the Constitution of India.

Hence, this Court finds no merit in the writ application. It is, accordingly, dismissed.

(Dinesh Kumar Singh, J)

Ashwini/-Anil/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

