

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13141 of 2014

=====

Pradeep Chandra Sinha Son of Yogendra Prasad Sinha, Resident of Mohalla M.P. Bagh, P.S. - Ara Town, District Bhojpur (Ara) through duly contributed Attorney Holder Manoj Singh son of Sri Ram Janam Singh by power of Attorney dated 04.03.2008, Resident of Civil Lines Pakri, P.S. Ara Nawada, Ara, District - Bhojpur.

.... Petitioner

Versus

1. Kamal Singh son of Late Maharaja Ram Ranvijay Prasad Singh, resident of Bhojpuri Kothi, P.O. - Dumraon, P.S. - Dumraon, District - Buxar.
2. The State of Bihar.
3. The Collector of District Bhojpur, Ara, P.O. + P.S. - Ara, District - Bhojpur.
4. The Anchal Adhikari, Ara Bhojpur, P.S. - Ara, District - Bhojpur, Ara.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Radha Mohan Pandey, Advocate
Mr. Chandra Shekhar Verma, Advocate
For the Respondent/s : Mr. Brij Mohan Kr. Singh, Advocate
Mr. D. Kumar, A.C. to G.P.5

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

9 28-03-2018 The petitioner, who is one of the defendant of Title Suit No.128 of 1996, has filed this writ application for setting aside the order dated 02.06.2014 passed by Subordinate Judge-VII, Ara in Title Suit No.128 of 1996 whereby and whereunder the respondent no.1 was ordered to be transposed as plaintiff and the plaintiff (State of Bihar) was ordered to be transposed in the category of defendants.

2. Heard both sides and perused the record.

3. The fact, in brief, is that the State of Bihar filed the



aforesaid suit against this petitioner and others for declaration of their title and confirmation of possession over the suit land. The respondent no.1 intervened into the matter and he was impleaded as defendant 4th party. He filed a written statement and also a counter claim. The plaintiff (State of Bihar) filed petition on 24.11.2008 under Order 23 Rule 1 of C.P.C. for withdrawal of aforesaid Title Suit No.128 of 1996. The intervener defendant (respondent no.1) filed petition on 09.01.2009 under Order 23 Rule 1A and 151 of C.P.C. for his transposition to the category of plaintiff of Title Suit No.128 of 1996. The petitioner also filed objection against the petition of respondent no.1. The learned Subordinate Judge allowed the withdrawal petition as per order dated 13.08.2009 and rejected the petition filed by respondent no.1 for transposing him as plaintiff. The respondent no.1 filed civil revision against the said order which was converted into civil writ bearing C.W.J.C. No.18805 of 2010. The said writ application after hearing was allowed on 09.05.2011. Thereafter this petitioner filed Civil Review No.299 of 2011 for recalling the said order. After hearing both the sides, civil review application was allowed on 16.11.2011 and C.W.J.C. No.18805 of 2010 was fixed for fresh hearing. The said writ was disposed of on 22.08.2012 and the matter was remanded to the court below with an observation for



fresh hearing on the point of transposition and deciding as to whether any substantial question of law is involved amongst the defendant inter-se. The learned court below as per the impugned order allowed the petition and transposed the respondent no.1 and the State of Bihar vice versa.

4. Learned counsel for the petitioner submitted that the respondent no.1 has no right to get him transposed in the category of plaintiff. The suit was filed by the State of Bihar for declaration of their title. The respondent no.1 claimed title on the basis of his own pleading which is against the pleading of State of Bihar. The intervener defendant cannot get any relief on the pleading of the State of Bihar. The State of Bihar had filed the suit for declaration of their title with respect to the land measuring 6 acres 42 decimals of Plot No.1671 under Khata No.532 of village Pakri, Ara Town which was in khas possession of Dumraon Maharaj. The petitioner claims the said land along with other plots as their settled land by virtue of registered lease deed dated 02.06.1942 in favour of their ancestor. The family of petitioner was in possession over the said land and during revisional survey operation the name of the petitioner as well as other persons who purchased the land were recorded and survey khatian was accordingly prepared. A land acquisition case bearing Case No.03



of 1982-83 was initiated with respect to Plot No.1671 in dispute. The petitioner filed a writ bearing C.W.J.C. No.3203 of 1993 challenging the aforesaid land acquisition proceeding which was subsequently dropped. Thereafter the State of Bihar filed present Title Suit No.128 of 1996 for declaration of title and confirmation of possession. The learned counsel for the petitioner produced copy of order passed in C.W.J.C. No.4148 of 1988, C.W.J.C. No.3203 of 1993, C.W.J.C. No.5456 of 2006, C.W.J.C. No.1321 of 2011 and C.W.J.C. No.18652 of 2011 to show that in the aforesaid writs, the State of Bihar lost the case and this petitioner was held to be owner of the said land on the basis of registered deed of lease dated 02.06.1942. Learned counsel for the petitioner relied upon a decision of this Court reported in A.I.R. 1964 Patna 508 wherein it has been held that transposition cannot be permitted, if the nature of suit is altered because the defendant has to remain within the parameter of the suit as instituted. In the case, in hand, I find that the suit was filed by the State of Bihar for declaration of their title. If the present intervener defendant is allowed to be transposed, he will not get the relief on the pleading of the State of Bihar. The relief of declaration of title was sought against the present petitioner ignoring the registered deed of lease executed in favour of the ancestor of the petitioner in the year



1942. The present defendant has admitted the registered deed of lease in his written statement filed before the court below but he has not challenged the said deed and has filed the petition after 12 years of the institution of the suit.

5. Learned counsel for the respondents, on the other hand, submits that this writ application is not legally maintainable. The petitioner has wrongly claimed to be attorney holder of Manoj Singh. The document produced by the petitioner is not a title deed rather this is a lease deed for agricultural purpose. The respondent has filed written statement as well as counter claim and so the respondent 4th set has rightly been transposed to the category of plaintiff.

6. On perusal of the documents on record, I find that above Title Suit No.128 of 1996 has been filed by the State of Bihar claiming right, title and interest over the land in dispute. The petitioner, on the other hand, claims title on the basis of registered deed of lease of the year 1942. From the documents on record, it appears that several cases were filed by the petitioner against the State of Bihar. In C.W.J.C. No.4148 of 1988 which was filed by the petitioner, the order of Additional Collector, Bhojpur was quashed and the authorities were restrained from treating the land as having vested in the State and directed to dispose of the land



acquisition proceeding, being Miscellaneous Case No.20 of 1981-82 as per direction given by this Court in C.W.J.C. No.2096 of 1983. It further appears that the State of Bihar filed a petition under Order 23 Rule 1 of C.P.C. before the court below which was allowed. Thereafter the intervener defendant filed Civil Revision which was converted into C.W.J.C. No.18805 of 2010. The said writ application was allowed but on the application of this petitioner, this matter was reviewed. The court below was directed to hear the matter of withdrawal as well as the application of intervener defendant for transposing him as plaintiff afresh after giving fresh opportunity of hearing to the parties and until such time the order dated 13.08.2009 was to be kept in abeyance. The intervener defendant has not challenged the order of withdrawal filed by the State of Bihar. The intervener defendant cannot step into the shoes of the State of Bihar as the case of intervener defendant is quite different to the case of the State of Bihar. The suit was filed for declaration of title in favour of State of Bihar whereas the intervener defendant has prayed for his declaration in view of his counter claim. The court below without assigning any reason or adjudicating as to whether substantial question is involved, has allowed the application observing that in the light of direction of High Court the intervener defendant is transposed as



plaintiff.

7. In view of above fact, the order of court below transposing the intervener defendant whose case is quite different and contradictory to the case of State of Bihar is not sustainable. Accordingly, the impugned order is set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

A.F.R.

U			
---	--	--	--

