

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10980 of 2015

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1. Akhilesh Prasad Son of Kishun Prasad, resident of village - Malkanagar, P.S. Hilsa, District - Nalanda at Biharsharif
2. Arbind Kumar Sinha, Son of Sri Bhagwat Prasad, resident of village- Lalganj, P.S. Chandi, District - Nalanda at Biharsharif
3. Satyendra Kumar Sinha Son of Sri Bhagwat Prasad resident of village - Lalganj, P.S. Chandi, District - Nalanda at Biharsharif
4. Kumari Renuka Wife of Sri Navnesh Kumar resident of village - Maheshpur, P.S. Chandi, District - Nalanda at Biharsharif
5. Kamal Nayan Son of Sri Narendra Mohan resident of Mohalla - Jakkanpur D.V.C. Chowk, P.S. Jakkanpur, Town and District - Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Patna Division, Patna
3. The Sub - Divisional Magistrate, Hilsa, District Nalanda at Biharsharif
4. The Deputy Collector Land Reforms, Hilsa, District Nalanda at Biharsharif
5. The Circle officer, Chandi, District Nalanda at Biharsharif
6. Ram Ishwar Prasad Son of Late Lacchu Mahto
7. Manoj Prasad Son of Rameshwar Prasad
8. Mahto Prasad @ Pappu Kumar @ Rajesh Kumar Son of Rameshwar Prasad
9. Pappu Kumar @ Pappu Prasad Son of Late Punit Mahto
10. Rakesh Kumar Son of Late Punit Mahto All residents of village - Jaitipur, P.S. Chandi, District Nalanda at Biharsharif

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar

For the Respondent/s : Mr. Subhash Pd. Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

2 30-08-2018 Heard learned counsel for the petitioners.

The petitioners have filed this writ petition for setting aside the order dated 14.03.2013/10.05.2013 passed by Divisional Commissioner, Patna in Land Dispute Appeal No.13 of 2012 by which learned Commissioner set aside the order of D.C.L.R.



passed in Bihar Land Dispute Redressal Case No.63 of 2011-12.

The brief facts relevant for decision of this case is that the lands of Plot No.5, 63, 174, 170 and 290 of Khata No.85, 17 and 36, area 65 decimals was recorded in the name of Prayag Mahto. Prayag Mahto got four sons namely Mahadev Mahto, Lacchu Mahto, Sahdeo Mahto and Sukhdeo Mahto. Prayag Mahto also got six daughters. According to the case of the petitioners, there was partition among four brothers and the land mentioned above fell in the share of Sahdeo Mahto. Sahdeo Mahto died leaving behind his widow, Bhagwati Devi. Bhagwati Devi was looked after by Akhilesh Prasad and his wife, Saroj Devi. Bhagwati Devi being pleased with the services of Akhilesh and his wife, Saroj executed a gift deed in the year 1985 and on the basis of the aforesaid gift deed, the name of Akhilesh and Saroj were mutated in the record of rights and they started cultivating the lands but according to the case of the respondents, after partition among four brothers, Sahdeo Mahto rejoined with his brother Lacchu Mahto and Sahdeo Mahto died issueless. The sons of Lacchu Mahto inherited the share of Sahdeo Mahto. The petitioners filed petition before the D.C.L.R. and D.C.L.R. by his order dated 05.12.2011 held that Akhilesh and Saroj are entitled to get possession over the land by virtue of the gift deed and on the basis of the mutation, therefore,



D.C.L.R. restrained the respondents from taking over the possession. The respondent Nos.6 to 10 filed Land Dispute Appeal No.13 of 2012. The Commissioner held that there is nothing on record to show that the land was partitioned and Sahdeo Mahto got share in the land standing in the name of his father and set aside the order of the D.C.L.R. holding that the D.C.L.R. declared the possession of the petitioners after going into the title of the land by virtue of the gift deed.

Mr. Sanjay Kumar, learned counsel appearing on behalf of the petitioners submits that the respondents were knowing about the facts of gift executed by Bhagwati Devi, the wife of Sahdeo Mahto. On the basis of the gift deed, names of the petitioners were mutated and Jamabandi No.142 was opened in the name of the petitioners with regard to the disputed land. The D.C.L.R. has rightly held that Circle Officer found the possession of the petitioners on the disputed land and accordingly, mutated their names but the Commissioner erroneously set aside the order holding that there involves a question of title and D.C.L.R. ignored the facts that there is genuine dispute with regard to possession of the land on the basis of title.

Having considered the submission of the learned counsel for the petitioners and on perusal of the records, I find that



admittedly, the lands were standing in the name of Prayag Mahto. Prayag Mahto got four sons. According to the case of the petitioners, the disputed land fell in the share of Sahdeo Mahto and wife of Sahdeo Mahto executed deed of gift. On the basis of deed of gift, executed in the year 1985, the names of the petitioners were mutated but it appears that even at the time of mutation, the Circle Officer did not issue notice to the sons of Prayag Mahto although, the lands were standing in the name of Prayag Mahto. The respondent Nos.6 to 10 claimed possession on the basis of inheritance as Sahdeo Mahto rejoined with his brother Lacchu Mahto. On the facts, there involves question of title and possession and the D.C.L.R. has travelled beyond his jurisdiction in ordering for declaring the possession of the petitioners and the Commissioner has rightly set aside the order of the D.C.L.R. There is nothing on record to show that the petitioners came in possession over the land by virtue of such gift deed executed by Bhagwati Devi.

Having considered the facts aforesaid, I do not find any merit in this writ petition. Accordingly, this writ petition is dismissed.

(Prabhat Kumar Jha, J)

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