

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11513 of 2018

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1. Mister Aalam
2. Imtiyaj Aalam
3. Mukhtar Aalam
4. Israel Aalam All Sons of late Bhikhari Miyan @ Bhikhari Ali Resident of Village - Aminabad, Anchal & P.S. - Barari, District - Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Deptt. of Revenue, Govt. of Bihar, Patna.
2. The Member, Administrative, Bihar Land Tribunal, Patna.
3. The Addl. Collector, Katihar, District-Katihar.
4. The D.C.L.R. Katihar, District - Katihar.
5. The Anchaladhikari, Barari Anchal, P.O. & P.S. - Barari, District - Katihar.
6. Md. Azij S/o Md. Ishaque Ali Resident of Banka Tola, Janeradhar, P.O. Semapur, P.S. - Barari, District - Katihar.
7. Most. Tajmul Begum Wife of Late Bhikhari Miyan @ Bhikhari Ali P.S. - Barari, District - Katihar.
8. Tajrum Nisha Daughter of Late Bhikhari Miyan @ Bhikhari Ali, Wife of Anjar Ansari Village - Gehuan, P.O. & P.S. - Jalalgarh, Care of Mostt. Tazmul Begum, W/o Bhikhari Miyan @ Bhikhari Ali, Village - Aminabad, P.O. - Semapur, District - Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surya Narayan Poddar
For the Respondent/s : Mr. Sajid Salim Khan -SC25
Mr. Suresh Pd. Sah @ Baranwal

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

2 28-08-2018 Heard Mr. Narayan Singh, learned counsel appearing on behalf of the petitioners, learned counsel for the State and Mr. Dharendra Kumar Jha, learned counsel appearing on behalf of the respondent no. 6 to 8.

The petitioners have filed this writ petition for setting aside the order dated 14.05.2018 passed by the Member (Administrative), Bihar Land Tribunal, Patna in B.L.T. Case



No.624 of 2017.

The facts which are admitted and relevant for the disposal of this writ petition are that the lands of Kheshra No.130 along with others were standing in the name of Uchit Miyan. Bhikhari Miyan was the son of Uchit Miyan. Bhikhari Miyan got one daughter from his first wife and thereafter, he solemnized second marriage from which Bhikhari Miyan got four sons and one daughter. The petitioners are sons of Bhikhari Miyan. Petitioners filed petition before the Circle Officer for mutating their names with regard to the lands standing in the name of Uchit Miyan on the ground that Bhikhari Miyan executed a deed of Will to bequeath the entire property in their favour and vide Mutation Case No.3566 of 2009-10, the lands were mutated in the names of all the four sons of Bhikhari Miyan on the basis of the said so called Will executed by Bhikhari Miyan. The first wife of Bhikhari Miyan executed the sale deed in favour of respondent no.6, Md. Azij. When the respondents came to know about the order of mutation in favour of the petitioners, they filed Mutation Appeal No.1067 of 2015-16 before the D.C.L.R., Katihar and the D.C.L.R. vide order dated 21.07.2016 set aside the order of the Circle Officer, mutating the names of the petitioners on the basis of unprobated Will. The petitioners filed revision before the Additional Collector against the order of the D.C.L.R. but the Additional Collector also dismissed the revision. Thereafter the



petitioners filed case before the B.L.T. in B.L.T. Case No.624 of 2017, the Member (Administrative), Bihar Land Tribunal dismissed the case of the petitioners finding no merit. The petitioners filed this petition against the order passed by Member (Administrative), Bihar Land Tribunal.

Mr. Narayan Singh, learned counsel for the petitioners submits that Bhikhari Miyan with the consent of his first wife and second wife executed deed of will in favour of his four sons. In Mohammedan law, the Will is not required to be probated. The names of the petitioners were mutated in the year 2011-12 but the respondents after five years filed appeal before the D.C.L.R. Therefore, the orders of the D.C.L.R., the revisional authority and the B.L.T are illegal and fit to be set aside. It is further submitted that the Will can be challenged only in the Civil Suit.

Mr. Dharendra Kumar Jha, learned counsel for the respondent no. 6 to 8 submits that on the ground of unprobated Will, the petitioners filed mutation case before the Circle Officer and on the next day, the Circle Officer without giving notice to the wife and daughters of Bhikhari Miyan ordered for mutation of the names of the petitioners. When this fact was brought to the notice of the Appellate Authority, the Appellate Authority set aside the order of the Circle Officer and, therefore, the orders do not require any interference.



It is apparent from the facts that Bhikhari Miyan got two wives. From first wife Bhikhari Miyan got one daughter and from second wife he got four sons and one daughter. Bhikhari Miyan is alleged to have executed the Will but the Will was not probated. The genuineness of the Will is yet to be tested but in the meantime, petitioners filed petition for mutation of their names and the Circle Officer without giving notice to the first wife and the daughters of Bhikhari Miyan ordered for mutation of the names of the petitioners. When the respondents filed appeal before the Deputy Collector, Land Reforms, the Deputy Collector, Land Reforms set aside the order of the Circle Officer, mutating the names of the petitioners, on the ground that no notice was given to the other legal heirs of Bikhari Miyan and his wives and on the basis of unprobated Will, the genuineness of which is yet to be tested, mutated the names of the petitioners, therefore, I find that the D.C.L.R. has rightly set aside the order mutating the names of the petitioners without giving notice and on the basis of unprobated Will. The same order has been affirmed by the revisional authority and the Member(Administrative), B.L.T.

Thus, I do not find any merit in this writ petition and the same is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/Rajan.

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