

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17874 of 2008

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Bhola Prasad

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Jamui
3. Deputy Collector, Land Reforms, Jamui
4. Anchal Adhikari, Jamui
5. Basanti Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baxi S.R.P. Sinha, Sr. advocate

For the Respondent/s : Mr. (AAG3)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

6 26-03-2018

Heard both sides.

The petitioner has filed this writ petition to quash the order dated 10.08.2005 passed by the District Magistrate in Revision Case No. 3/2002-03 and the order of Deputy Collector, Land Reforms, in Appeal No. 23 of 2001-02 dated 12.07.2002.

Sri Buxi S. R. P. Sinha, the learned senior counsel for the petitioner, submits that Lalita Devi @ Lalita Shakhi Devi was the widow of Kamleshwari Prasad, son of first wife of Munshi Shiv Nath Sahay. Munshi Shiv Nath Sahay got one son, namely, Bhola Prasad and one daughter Basanti Devi from his second wife. Kamleshwari Prasad died in the year 1948 and his widow, Lalita Devi @ Lalita Shakhi Devi, got restricted right of maintenance on the property. A Khorpos (deed of maintenance) was executed by Bhola Prasad in favour of Lalita Devi @ Lalita Shakhi Devi but Lalita Devi @ Lalita Shakhi Devi executed a deed of gift in the year 1990 in favour of Basanti Devi, respondent No.5, but immediately thereafter the deed of gift was cancelled. Basanti Devi filed Mutation case on the basis of the said deed of gift. The Circle Officer rejected the petition of respondent No.5 for mutating her name. Thereafter, respondent No.5 filed appeal



before the Deputy Collector, Land Reforms and the DCLR vide order dated 12.07.2002 allowed the appeal and ordered to mutate the name of Basanti Devi. The petitioner preferred revision but the Collector without looking into legal questions involved in the case dismissed the revision vide order dated 10.08.2005.

The learned senior counsel for the petitioner submits that Lalita Devi @ Lalita Shakhi Devi got restricted right of maintenance and she has got no title over the land. Therefore, she got no right to execute the deed of gift in favour of respondent No.5 but the appellate court by committing illegality set aside the order of Circle Officer and the revisional court confirmed the order of appellate court.

Having considered the submissions and on perusal of the records, I find that admittedly Lalita Devi @ Lalita Shakhi Devi died after coming into force of Hindu Succession Act in the year 1956 and after coming into effect of Hindu Succession Act the restricted ownership of a lady vanishes and she became absolute owner. Lalita Devi @ Lalita Shakhi Devi executed the deed of gift in favour of Basanti Devi. Therefore, I do not find any illegality in the order mutating the name of respondent No.5. This writ petition is, accordingly, dismissed as devoid of any merit.

If the petitioner is aggrieved by the order of mutation, he may resort to suit for declaration of title over the land.

The order of mutation, in any way, shall not come in the way while deciding the title of the parties.

(Prabhat Kumar Jha, J)

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