

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18080 of 2015

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1. Smt. Shobha Devi, Daughter of Sri Rahuwar Mahto @ Raguwar Singh, Wife of Sri Jagdish Prasad resident of Village- Shobhi Dumra, P.S.- Ara Muffasil, District- Bhojpur, presently residing at Village Benbaliya, P.S.- Bihian, District- Bhojpur.
 2. Smt. Manju Devi, Daughter of Sri Raguwar Mahto @ Raguwar Singh, Wife of Pawan Kumar Singh, resident of Village- Shobhi Dumra, P.S.- Ara Muffasil, District- Bhojpur, presently residing at Village Kante, P.S. Brahampur, District- Buxar.
 3. Smt. Ranju Devi, Daughter of Sri Raguwar Mahto @ Raguwar Singh, Wife of Anjit Mahto, resident of Village- Shobhi Dumra, P.S.- Ara Muffasil, District- Bhojpur, presently residing at Village Darhar, P.S.- Krishna Braham Muffasil, District- Buxar.

... .. Petitioners

Versus

1. The State of Bihar, through District Magistrate, Patna.
2. Additional Collector, Patna.
3. District Collector Land Reforms, Patna Sadar.
4. Circle Officer, Patna Sadar.
5. Kamla Devi, Wife of Keshav Prasad Singh @ Lalan Singh resident of Mohalla- Munna Chak, P.S.- Patrakar Nagar Kankarbagh, District- Patna.
6. Shiv Datt Mahto, Son of Ram Prit Mahto, resident of Mohalla- Saguna Danapur, P.S.- Danapur, District- Patna.
7. Sachhidanand Mahto
8. Shiv Lakhan Mahto
9. Baldeo Mahto
10. Vinod Mahto
11. Pramod Mahto, Respondent No. 7 to 11, Sons of Late Sheo Prasad Mahto, R/o Mohalla- Purvi Nand Gola, New Bangalo of Naga Baba, P.O.- Madho Mills (Malsalami), P.S.- Malsalami, Patna City, District- Patna.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Kumar Uday Bhanu Roy, Advocate Mr. Sunil Kumar, Advocate
For the State	:	Mr. Ajeet Kumar, G.A. 9
For Res. No.5	:	Mr. Bhupendra Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 30-10-2018

Heard learned counsel for the petitioners, learned counsel
for the State as well as learned counsel appearing on behalf of



respondent no.5. Nobody appears on behalf of respondents no.6 to 11.

2. The petitioners have filed this writ petition against the order dated 23.09.2015, passed by learned Member (Administrative), Bihar Land Tribunal, Patna in BLT Case No.822 of 2014 by which the learned Member set aside the order dated 16.07.2009, passed by Deputy Collector Land Reforms, Patna Sadar in Mutation Case No.26/2008-2009 and the order dated 28.08.2014, passed by the Additional Collector, Patna in Mutation Revision Case No.27/2009-10 and thereby allowing the mutation recorded in the name of Kamla Devi, respondent no.5 in the Record of Rights with regard to Plot No.336 of Khata No.334 area 12 decimals and Plot No.327 of Khata No.343 area 15 decimals.

3. The facts, which are relevant for disposal of this writ petition can be summarized as follows:

Prema Mahto got four daughters, namely, Somaria Devi, Rajpatia Devi, Dhanpatia Devi and Rajiya Devi. Petitioners are the legal heirs of Rajiya Devi and respondent no.5, Kamla Devi is the grand daughter of Dhanpatia Devi, one of the daughters of Prema Mahto. Respondents no.6 to 11 are the legal heirs of other three daughters. Rajpatia Devi and others filed Mutation Case No.458/2008-2009 for mutating the names of all the four daughters of Prema Mahto in the Record of Rights with regard to the land



standing in the name of Prema Mahto but the Circle Officer, Patna Sadar rejected the petition on 13.07.2008. Rajpatia Devi and others filed Mutation Appeal No.26/2008-09 before the DCLR, Patna Sadar. The DCLR, Patna Sadar vide order dated 16.07.2009 directed the Circle Officer to record the names of all the four daughters of Prema Mahto in the Record of Rights with regard to all the lands recorded in the name of Prema Mahto. Respondent no.5 filed Mutation Revision Case No.27/2009-10 before the Additional Collector, Patna and the Additional Collector, Patna dismissed the revision of the respondent no.5 vide order dated 28.08.2014. Kamla Devi, respondent no.5 filed BLT Case No.822 of 2014 and the learned Member Administrative held that the land record in the name of Kamla Devi was on the basis of oral gift deed by his maternal grandmother and has wrongly been recorded in the name of all the daughters and legal heirs of the daughters of Prema Mahto and accordingly set aside the order of the appellate court as well as the revisional court.

4. Mr. Kumar Uday Bhanu Roy, the learned counsel appearing on behalf of the petitioners submits that Mahendra Prasad Mahto and Shiv Datt Mahto are opposite parties no.1 and 2 before the BLT. Mahendra Prasad Mahto died during the pendency of the case before the BLT but respondent no.5, who was the petitioner before the BLT, did not substitute the legal heirs of Mahendra Prasad



Mahto. It is submitted that the BLT case automatically abated against Mahendra Prasad Mahto and the order of the BLT is fit to be set aside on this ground alone that the order was passed against a dead person. It is further submitted that on the petition of Kamla Devi, respondent no.5, the Circle Officer without giving any notice to all the four daughters of Prema Mahto and Kauleshwari Devi mutated her name on the basis of oral gift deed. It is admitted that the entire land was recorded in the name of Prema Mahto and after death of Prema Mahto and Kauleshwari Devi, all the four daughters of Prema Mahto are entitled to get equal share in the lands of Prema Mahto and Kauleshwari Devi and the Circle Officer should have recorded the name of all the four daughters and their legal heirs in the Record of Rights but on the petition of Kamla Devi, the respondent no.5, the Circle Officer illegally mutated her name without giving notice to the other legal heirs. It is further submitted that the DCLR in his order (Annexure-3) has elaborately discussed the entire facts and set aside the order of the Circle Officer refusing to mutate the names of all four daughters of Prema Mahto in the Record of Rights and directed the Circle Officer to mutate the name of all the four daughters in the Record of Rights as they are entitled to get equal share. The revisional authority dismissed the revision of the respondent no.5 but the Member Administrative, Bihar Land Tribunal without appreciating these facts set aside the appellate order as well as the



revisional order holding that the Circle Officer rightly, on the basis of an unregistered gift deed, mutated the name of Kamla Devi in the Record of Rights of Plot No.336 of Khata No.334 area 12 decimals and Plot No.327 of Khata No.343 area 15 decimals and the order is not legal and not sustainable.

5. Mr. Bhupendra Kumar Verma, the learned counsel appearing on behalf of respondent no.5 submits that Kauleshwari Devi, the maternal grandmother of Kamla Devi, respondent no.5, executed deeds of gift and on the basis of such deeds of gift, Kamla Devi filed petition for mutation. The subject matter of the gift was valued less than Rs.100/- at the time of gift, therefore, the gift deeds were not required to be registered. The Circle Officer rightly mutated the name of Kamla Devi, respondent no.5 with regard to the gifted property. It is further submitted that the Member Administrative, Bihar Land Tribunal has rightly passed the order with liberty to the petitioners and private respondents to approach the civil court for redressal of the grievance.

6. On consideration of submissions of both sides, the one and only question arises whether the order of Member Administrative, Bihar Land Tribunal suffers from any illegality? From the facts of the case, it is apparent that Prema Mahto died leaving behind his widow and four daughters. Widow Kauleshwari Devi also died. All the lands were recorded in the name of Prema



Mahto. All the four daughters of Prema Mahto filed petition before the Circle Officer to get their names mutated but the Circle Officer rejected their petition that the daughters did not produce any cheat of paper about the transfer of the lands. On appeal, the DCLR set aside the order of the Circle Officer holding that since Prema Mahto died leaving behind four daughters, all the four daughters are entitled to get equal share in the lands of Prema Mahto and after death of Prema Mahto, the Record of Rights should be prepared in the name of all the four daughters of Prema Mahto mentioning of equal share among all the four daughters and their legal heirs but from perusal of the order of the learned Member Administrative, Bihar Land Tribunal, it is evident that without taking into consideration the facts that Kamla Devi, respondent no.5 is one of the daughters of Dhanpatia Devi, one of the daughters of Prema Mahto and Dhanpatia Devi filed petition for mutation of her name on the basis of unregistered gift deed but the Circle Officer did not issue any notice to the other legal heirs of Prema Mahto and got her name mutated on the basis of such unregistered gift deed. Admittedly the land was not partitioned by metes and bounds during the life time of Prema Mahto and even after his death among his widow and four daughters. Kauleshwari Devi, the widow of Prema Mahto, was entitled to get share in the lands of Prema Mahto equal to that of her daughters and in absence of any evidence about the partition of the property among legal heirs of



Prema Mahto, the widow of Prema Mahto is not entitled to gift the property. The DCLR has rightly recorded the names of all the legal heirs of Prema Mahto in the Record of Rights but the learned Member Administrative, Bihar Land Tribunal without considering all these facts committed illegality that the name of Kamla Devi, respondent no.5 has rightly been mutated. It further transpires that Mahendra Prasad Mahto died during the pendency of the case before the BLT but he was not substituted and the order was passed against a dead person and, therefore, the order of the Member Administrative, Bihar Land Tribunal is illegal on this ground also. Accordingly, the order dated 23.09.2015, passed by learned Member Administrative, Bihar Land Tribunal, Patna in BLT Case No.822 of 2014 is set aside and this writ petition is allowed.

(Prabhat Kumar Jha, J.)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.11.2018
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