

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.561 of 2019

Ram Krishna Pandey, aged about 63 years, male, Son of Late Radha Raman Pandey R/o Village-Puchrukhiya, P.S.-Koilwar, District-Bhojpur (Arrah), At present living of Village Murlipur, P.S.-Sheosagar, District-Rohtas

... .. Defendant No.3/ Petitioner

Versus

1. Sudarsan Giri Mahanth Bodh Gaya Math, P.S.-Bodh Gaya, District-Gaya
2. Din Dayal Giri Manager, Bodh Gaya Math, P.S.-Bodh Gaya, District-Gaya
.....Defendant 1st Set/ Respondent 1st Set
3. Bihar State Board of Religious Trust through President of the Board Vidaya Path Marg, Patna
4. The State of Bihar through Collector, District-Rohtas (Sasaram)
...Defendant 2nd Set/ Respondent 2nd Set.
5. The Anchal Adhikari , Sheosagar P.S.-Sheosagar, District-Rohtas
6. The Anchal Adhikari, Nokha P.S. -Nokha, District-Rohtas
7. The Anchal Adhikari ,Dinara P.S. Dinara, District-Rohtas
...Defendant 3rd Set/ Respondent 3rd Set
8. Akhilesh Kumar Pandey Son of Radhe Raman Pandey R/o Village-Pachrukhiya, P.S.-Koilwar, District-Bhojpur (Arrah)
9. Sugandha Kuwar Wife of Late Kaushal Kishore Pandey R/o Village-Pachrukhiya Kala, P.S.-Koilwar, District-Bhojpur (Arrah)
10. Prashant Kumar Pandey S/o Kaushal Kishore Pandey R/o Village-Pachrukhiya Kala, P.S.-Koilwar, District-Bhojpur (Arrah)
11. Prakash Pandey Son of Kaushal Kishore Pandey R/o Village-Pachrukhiya Kala, P.S.-Koilwar, District-Bhojpur (Arrah)
12. Indra Shukla Wife of Arbind Kumar Sukla, D/o Kaushal Kishore Pandey R/o Village-Rayish (Barh), P.S.-Pandarak, District-Patna
13. Khushboo Tiwari Wife of Ranjit Tiwari, D/o Kaushal Kishore Pandey R/o Mohalla-Vivek Nagar, Maharaniipur Colony, Shushwani, P.O. and P.S.-Lanka Building No. 62/1, Uttar Pradesh.

..... ..Plaintiff/ Respondent 4th Set.

Appearance :

For the Petitioner	:	Mr. Ful Man Singh-Advocate
For the Respondent No.3:		Mr. Ganpati Trivedi-Sr. Advocate
		Mr. Madan Mohan-Advocate
For the State	:	Mr. Sangha Mitra Ghosh-AC to GP-15

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT



19-09-2019

Heard learned counsel for the petitioner, learned counsel for the Respondent No.3 and 4, and learned counsel for the State.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner (Defendant No.3 before the trial Court) for setting aside the order dated 20.08.2018 passed by the Sub-Judge-IVth, Rohtas (Sasaram) in Title Suit No.139 of 2001 by which, he has rejected the amendment petition dated 29.06.2018 filed under Order-6, Rule-17 of the Code of Civil Procedure (for short C.P.C.) as well as dismissed the suit.

3. Mr. Fulman Singh, learned counsel appearing for the petitioner submitted that in the ceiling proceeding initiated by the Collector, Rohtas at Sasaram, 43.24 acres of village Murlipur and Sotwan Math was declared surplus, but as a matter of fact, the Schedule-A property mentioned in the suit is Khas and own property of the petitioner and respondent nos.8 to 13. He contended that the trial court erred in law to dismiss the suit as not maintainable as well as amendment petition of the petitioner. He contended that to file suit with regard to any land is a matter of right of the petitioner as Civil Court, is an original Court of fact. The trial Court ought not to have dismissed the



suit on technical grounds. He pleaded that the Civil Court is empowered to declare the right, title and interest of the parties and in case, the order impugned is not set aside, the petitioner would suffer irreparable loss and injury.

4. Sri Ganpati Trivedi, learned Senior Counsel appearing for the Respondent No.3 and 4 submitted that there is no illegality in the order passed by the trial Court. He contended that the trial Court has rightly held that the suit is barred under Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (for short 'the Act'). He pleaded that since the amendment had been brought after framing of the issues, there was no occasion for the trial Court to have allowed the application of the petitioner only under Order-6, Rule-17 of the C.P.C. for amendment in the relief portion by the petitioner. In support of his submission, he has placed reliance on a Division Bench judgment of this Court in the matter of **Pandit Rudranath Mishir and others vs. Pandit Sheo Shankar Missir and others** since reported in **A.I.R. 1983 Patna 53**.

5. I have heard learned counsel for the parties and perused the materials on record in the Title Suit No.139 of 2001, the plaintiff had prayed for the following reliefs:-



“(1) That the defendants no.5 to 8 be restrained to proceed with land Ceiling Case no.9/2000 arbitrarily in connivance with defendants no.1, 2 and 4, through issuance of permanent injunction, ignoring the subsisting title and possession of plaintiff over the suit land.

(2) That cost of the suit be awarded to the plaintiff.

(3) That relief or reliefs which the plaintiff is found entitled be also given to him.”

6. The proposed amendment sought by the petitioner in his application under Order-6, Rule-17 of the C.P.C. reads as under:-

“1. That at the end of the statements made in para no.11 of the plaint following averments may kindly be made:-

“On the basis of sale deeds made much before 1970 on the basis of title and possession R.S. Khatyan concerning Schedule-A land stands recorded in the name of Radha Raman Pandey along with his wife Sumitra Devi and sons etc.

II. That after para no.29 of the noted



statements noted in para no.29 and statements made therein following para and statements made kindly be inserted.

Para-29 'A': That during pendency of the suit plaintiffs came to know that District Collector, Rohtas, acquired 43.73 acres of lands out of entire area of Schedule-A land vide order dated 02.12.2011 in Ceiling Case No.9/2000 behind the back of the plaintiffs and have distributed to the same to the various persons. The order dated 02.12.2011 referred to above is also illegal, invalid and void, ab-initio, having no legal consequence and the same has also got no binding effect on the plaintiffs.

III. That relief no.1 noted in the plaint may kindly be deleted and at that place following relief may kindly be noted down at that place:-

Relief no.(i): That on the consideration of the fact noted in the plaint title of the plaintiffs may kindly be declared over Schedule-A land of the plaint and their possession



may kindly be restored over the suit land noted in the plaint.

(ii) That on consideration of the fact stated in the plaint it may kindly be declared that order dated 01.08.2000 as well as order dated 02.12.2011 passed by learned District Collector, Rohtas, are illegal, invalid and void ab-initio, having no legal consequences and the same having no binding effect on the plaintiffs.”

7. The trial Court has passed the order impugned by which 20.08.2018, it has been rejected the amendment petition dated 29.06.2018 as well as dismissed the suit mainly on the ground that it has inherent lack of jurisdiction to entertain the suit itself in view of Section 43 of the Act.

8. **Section 43 of the Act**, which is relevant for the purpose of deciding the present application is reproduced as under:-

“43. Bar of jurisdiction of Civil Court.-(1) *Save and except as provided in this Act no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act, required to be settled, decided or*



dealt with by the Board of Revenue [Word “Commissioner” omitted by Act 22 of 1976] the appellate authority or the Collector.

(2) No order of the Board of Revenue, [Word “Commissioner” omitted by Act 22 of 1976] the appellate authority or the Collector made under this Act, shall be questioned in any Court.”

9. It is apparent from Sub-Section-1 of Section 43 of the Act that the jurisdiction of the Civil Court is barred to settle, decide or deal with any question which is by or under this Act, required to be settled, decided or dealt with by the Board of Revenue, the appellate authority or the Collector.

10. Sub-Section-2 of Section 43 lays down that the orders passed by the Board of Revenue, the appellate authority or the Collector made under this Act, shall not be questioned in any Court.

11. It is well settled position in law that if the power does not vest in any Court, the purported exercise of it would be an exercise of non-existent power and would be void.

12. In **Union of India and another vs. Tulsiram Patel** since reported in **A.I.R. 1985 SC 1416**, the Supreme



Court observed:-

“The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it. It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not some other source under which were that power exercised, the exercise of such power would be invalid and without jurisdiction.”

13. The Supreme Court also observed:-

“There cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void.”

14. Since the jurisdiction of the Civil Court itself is barred under Section 43 of the Act, no illegality can be found with the order impugned whereby the suit has been dismissed as not maintainable. As far as the application filed under Order-6, Rule-17 of the C.P.C. by the petitioner Mr. Fulman Singh, learned advocate is concerned, Mr. Ganpati Trivedi learned



Senior Counsel has rightly referred the Division Bench of this Court of **Pandit Rudranath Mishir** (Supra) wherein it has been held as under:-

“The granting of an amendment postulates an authority of the Court to entertain the suit. But where there is inherent lack of jurisdiction in the court to entertain the suit itself, it cannot make any order for amendment of the plaint to bring the suit within its jurisdiction. In such s case the Court would be exercising its jurisdiction which is not vested in it and, therefore, passing of any order would amount to usurping a jurisdiction not vested in it. In such a case the Court is bound to return the plaint to be represented to the proper Court in which the suit ought to have been instituted. After the plaint is returned for presentation to the proper Court, the plaintiff can amend the plaint and represent it to the same Court.”

15. Keeping in mind the discussions made herein above and the ratio laid down by the Supreme Court and the Division Bench of this Court in the judgments referred to herein



above, I see no merit in the application, it is dismissed accordingly.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.09.2019
Transmission Date	24.09.2019

