

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1192 of 2015

Pradeep Kumar Tiwari son of late Bishwanath Tiwary, resident of village and Post Office Parbatta, District Khagaria.

... .. Appellant/s

Versus

1. The State of Bihar and Ors
2. The Collector, Khagaria.
3. The Deputy Collector, Land Reforms Gogri , Khagaria.
4. The Circle Officer, Parbatta, District Khagaria.
5. Anil Tiwari son of late Bishwanath Tewari alias Bachcha Tiwari, resident of village Parbatta, Police Station Parbatta, District Khagaria.
6. Ram Ratan Singh son of Rameshwar Singh resident of village Karna , P.S. Parbatta, District Khagaria.

... .. Respondent/s

With

Letters Patent Appeal No.1221 of 2015

Pradeep Kumar Tiwari son of late Bishwanath Tiwary, resident of village and Post Office Parbatta, District Khagaria.

... .. Appellant/s

Versus

- 1 The State of Bihar and Ors.
2. The Collector, Khagaria.
3. The Deputy Collector, Land Reforms Gogri, District Khagaria.
4. The Circle Officer, Parbatta, District Khagaria.
5. Anil Tiwari son of late Bishwanath Tewari alias Bachcha Tiwari, resident of village Parbatta, Police Station Parbatta, District Khagaria.
6. Subhash Kumar Singh son of Saryug Singh, resident of village Karna , P.S. Parbatta, District Khagaria.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No.1192 of 2015 & L.P.A. No.1221 of 2015)

For the Appellant/s : Mr. Ambuj Nayan Chaubey, Sr. Adv.

Mr. Ambuj Nayan Chaubey, Adv.

For the State : Mr. Birju Prasad, G.P.13

Mr. Ajit Anand, AC to G.P.13

Ms. Sweta Anand, A.C. to G.P.13

for the Respondent No.6: Mr. Rambali Jha, Adv.

Mr. Mritunjay Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)



Date : 15-01-2019

While L.P.A. No.1192 of 2015 arises from a judgment and order of a learned Single Judge dated 01.04.2015 passed in C.W.J.C. No.1380 of 1998 (Pradeep Kumar Tiwari versus State of Bihar and Ors.), L.P.A. No. 1221 of 2015 arises from a judgment and order dated 01.04.2015 passed in C.W.J.C. No.1382 of 1998 (Pradeep Kumar Tiwari versus State of Bihar and Ors.).

Since the two orders of the learned Single Judge passed in two separate proceedings initiated under Section 48E of the Bihar Tenancy Act, 1885 (hereinafter referred to as 'the Act') are in identical matters, each drawing in favour of the Bataidars, that the two appeals have been heard analogous and are being disposed of by a common judgment.

Mr. K.N. Chaubey, learned Senior counsel has appeared for the appellants-writ petitioners with the Advocate on record Mr. Ambuj Nayan Chaubey, the State is represented by Mr. Birju Prasad, learned G.P.13 assisted by Mr. Ajit Anand and Ms. Sweta Anand, A.C. to G.P.13, the respondent No.5 is represented by Mr. Anand Kumar Ojha and the Bataidar respondent No.6 in each of the two writ petitions is represented by Mr. Rambali Jha and Mr. Mritunjay Kumar.

These appeals find their roots in a proceeding initiated under the provisions of Section 48E of 'the Act' on an application



filed by the Bataidars who are respondent No.6 in each of the two cases seeking protection from a threatened ejectment.

I would be dealing with the foundational facts present in each of the two appeals briefly before dealing with the contentions advanced by Mr. Chaubey to contest the orders passed by the statutory authorities in appeal as well as the order of the learned Single Judge to uphold the order.

Re: L.P.A. No.1192 of 2015 arising from

C.W.J.C. No.1380 of 1998

The contest relates to a plot bearing Khata No. 39 Khesra No.210 admeasuring 0-16-10 acres in Mauza- Karna, P.S. Parbatta in the district of Khagaria. On an application filed by the respondent No.6 Ram Ratan Singh under Section 48E of 'the Act' a proceeding was registered bearing Bataidari Case No.19 of 1992-93 and the Deputy Collector, Land Reforms vide order passed on 05.09.1992 directed the Circle Officer to do the needful. For the constitution of the Board, the parties were asked to name their Panch. While the Bataidar named his Panch, the land holder named Ram Awatar Choudhary as their Panch and thus a Board was constituted consisting of the Circle Officer as its Chairman and the respective Panches named by the contesting parties. The records transpire that since after naming his Panch, the land holder did not participate in the enquiry so held. The Circle Officer,



Parbatta as the Chairman of the Board submitted his report in favour of the Bataidar and recommended for his protection against the threatened ejectment. The report of the Circle Officer, Parbatta dated 24.11.1992 is enclosed at Annexure 1 to the writ petition. It was reported by the Circle Officer that the Bataidar was tilling the land in question since last 15-16 years as per the statement given by the local villagers. The Collector under 'the Act' i.e the Deputy Collector, Land Reforms recorded his opinion in disagreement with the report and which was in favour of the land holders. According to the D.C.L.R, the evidence was unreliable. The D.C.L.R. as Collector under 'the Act' while disagreeing with the report of the Board, chose to reject the application vide his order passed on 03.03.1993 at Annexure-2 to the writ petition.

The matter travelled to the appellate authority i.e the Collector, Khagaria giving rise to Bataidari Appeal Case No.45 of 1993-94 and the Collector, Khagaria on examination of the stand taken by the contesting parties and taking note of the fact that the attempt of finding a settlement by the Board, did not fructify, upheld the claim of the Bataidar because according to the appellate authority there was sufficient evidence to uphold the claim of the Bataidar that he was in Bataidari for last 15 to 16 years and simply because the evidence of the local villagers was identical on this issue, it could not be rejected. The Collector, Khagaria also took



notice of the fact that while during the course of inspection the Bataidar along with his Panch was present but the land holder as well as his Panch did not appear at that stage although they contested the matter before the Deputy Collector, Land Reforms thereafter. It is taking note of the materials and evidence on record that the Collector, Khagaria upheld the claim of the Bataidar to allow the appeal vide order passed on 02.08.1995 enclosed at Annexure-3 to the writ petition. It is feeling aggrieved by this order passed in appeal that the writ petitioner who is the brother of the respondent No.5, Anil Tiwari who had contested the matter at each of proceedings before the statutory authorities, came before this Court to question the order passed on the appeal through the writ petition in question and since the writ petition has been dismissed by the order impugned, hence this appeal.

Re: L.P.A. No.1221 of 2015 arising from

C.W.J.C. No.1382 of 1998

Identical facts accompany the said appeal save and except that it relates to a plot bearing Khata No.39, Khesra No.210 admeasuring 0-18-10 in Mauza Karna, P.S. Parbatta in the District of Khagaria. The Bataidari rights in this case was being claimed by the respondent No.6, Subhash Kumar Singh giving rise to Bataidari Case No. 9 of 1992-93. The report of the Board is in favour of the Bataidar dated 24.11.1992 and enclosed at Annexure



1 to the writ petition which was rejected by the Collector under 'the Act' i.e the D.C.L.R who rejected the application of the Bataidar vide order passed on 3.3.1993 at Annexure-2. Feeling aggrieved the respondent No.6 filed appeal. The order of the Collector, Khagaria upholding the Bataidari rights of the respondent No.6 in Bataidari Appeal No.39 of 1993-94 vide order passed on 02.08.1995 at Annexure-4 to the writ petition was questioned before the Single Judge but was rejected & hence the second appeal.

Since identical facts govern the two cases it is to avoid repetition that only the relevant facts stands noted in so far as the second case is concerned.

Mr. K.N. Chaubey, learned Senior counsel appearing for the appellant- petitioner has raised the following issues for seeking indulgence in the order passed by the learned Single Judge and consequently in the appellate orders impugned in the respective writ petitions passed by the Collector, Khagaria

(a) A partition took place in respect of the landed assets in which the land in question fell in the share of the writ petitioner who was not arraigned as a party in the Bataidari proceedings.

(b) The jamabandi created was in the name of the writ petitioner.



(c) No notice was served to the writ petitioner at any stage of proceedings.

(d) The respondent No.5 even though is the own brother of the writ petitioner but he had no right or authority to contest the matter on behalf of the writ petitioner which was done half heartedly.

(e) Since no notice was issued to the writ petitioner who is the real land owner, the application was not maintainable and was fit to be rejected.

Counter affidavits were filed on behalf of the respondent No.6 the Bataidar in the two writ petitions in which it is specifically stated that the land in question was an ancestral property and was being managed by the father of the writ petitioner and respondent No.5 namely, Late Bishwanath Tiwari as the Karta of the joint family. It is mentioned that on the death of the Bishwanath Tiwari his four sons including the writ petitioner i.e. writ petitioner Pradeep Kumar Tiwari, the respondent No.5, Anil Kumar Tiwari, Sunil Kumar Tiwari and Mukund Kumar Tiwari came in joint possession of the land which was being cultivated by the responded No.6 in each of the two cases. It is intimated that a ceiling case was initiated in respect of the land of Bishwanath Tiwari which included the lands in question giving rise to Ceiling Case No. 60 of 1975 -76 and in which proceeding



the four sons jointly contested the matter and applied for permission to sale the land which is evident from a copy of the order bearing Memo No.150 dated 10.6.1998 enclosed at Annexure- A to the counter affidavit of the respondent No.6 in the two writ petitions. According to the respondent No.6, the land in question form part of joint family property and it is in such state of jointness that the respondent no.6 as Bataidar came into the cultivating possession of the lands.

The learned Single Judge taking note of these very arguments has by the orders impugned in the two appeals held that the appellant writ petitioner being the own brother of the respondent No.5 who pursued the matter before the statutory authority, cannot be permitted to make out the third case to get past the order passed in the statutory proceedings. The learned Single Judge has also taken note of the fact that no evidence of partition or in support of partition or in support of the claim as set up by the appellant- writ petitioner that the land fell in his share consequent upon such partition was placed on record. It is taking note of the absolute lack of foundation in the plea raised by the appellant writ petitioner that the writ petition was dismissed and even before this Court Mr. Chaubey learned Senior counsel appearing for the appellant writ petitioner has completely failed to



support the claim of the appellant writ petitioner that there ever was a family partition and that the land fell in his share.

Even otherwise the objection raised by the respondent No.5 as the land owner before the D.C.L.R., a copy of which is enclosed at Annexure-5 to the writ petition would confirm that at no stage did the respondent No.5 who is the own brother of the appellant writ petitioner drew the attention of the D.C.L.R. that it is the appellant writ petitioner who was the real land owner and not the respondent No.5. On the contrary, a bogey was raised at para 20 of the objection that Circle Officer as the Chairman of the Board constituted under Section 48E (4) of 'the Act', did not try to find out the real owner when this onus fell exclusively on the respondent No.5 while contesting the matter. In our opinion the appellant writ petitioner in an attempt to get over this relevant aspect of the matter where the respondent No.5 had contested the matters, has stated in paragraph 6 of the respective writ petitions that there was half hearted opposition by the landowner.

Mr. Anand Kumar Ojha learned counsel has chosen to appear for the respondent No.5, Anil Tiwari to state that he is a Senior practicing advocate in the High Court of Judicature at Allahabad and that he never participated in the Bataidari proceeding at any stage.



It is strange that while the objection filed in the Bataidari proceedings at the behest of the respondent No.5 Anil Tiwari does not support the stand of the appellant writ petitioner on the family partition or the land falling in his share, the stand taken by the respondent No.5 before this Court regarding his non participation in the Bataidari proceeding neither finds support in the pleadings of the writ petition nor the said Anil Tiwari chose to file any affidavit before the learned Single Judge.

In the nature of ghosts that is sought to be created by the two brothers i.e. the writ petitioner and the respondent No.5 with evidence on record supporting the claim of the Bataidars and nothing to support the claim advanced either at the stage of writ proceedings or before this Court, we find no reason to interfere with the judgment and order passed by the learned Single Judge on the respective writ petitions and accordingly L.P.A. No.1192 of 2015 and L.P.A. No.1221 of 2015 are dismissed but without any order as to costs.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Bibhash/-

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