

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.638 of 2018
In
Civil Writ Jurisdiction Case No.18672 of 2016

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Makendra Kumar, son of Late Dallu Yadav, resident of Village Mirganj, P.S.-
Sakurabad, District- Jehanabad.

... .. Appellant.

Versus

1. The State of Bihar through Secretary, Revenue and Land Reforms,
Government of Bihar, Patna.
2. The District Magistrate, Jehanabad.
3. The Additional District Magistrate, Jehanabad.
4. The District Land Acquisition Officer, Jehanabad.
5. The Deputy Collector, Land Reforms, Jehanabad.
6. The Anchal Adhikari, Jehanabad.
7. The Additional Superintendent of Police, Jehanabad.
8. The Registrar, District and Sessions Court, Jehanabad.
9. The District Bar Association, Jehanabad through its Secretary, District Bar
Association, Jehanabad.

... .. Respondents.

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Appearance :

For the Appellant/s	:	Mr. Jitendra Kishore Verma, Advocate. Mr. Anil Kumar Sinha, Advocate.
For the Respondent/s	:	Md. Khurshid Alam, AAG-12. Mr. Rakesh Ranjan, AC to AAG-12.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 12-12-2019

This appeal under Clause-10 of the Letters Patent



of the Patna High Court Rules, 1916 has been preferred by the appellant challenging the judgment dated 22.03.2018 passed by the Writ Court in C.W.J.C. No.18672 of 2016, whereby the writ petition filed by the petitioner for directing the respondents to vacate the *raiyati* land of the petitioner and handover possession of the same has been dismissed.

2. The dispute in the writ petition relates to land of Khata No.212, Plot Nos. 964, 995, 997, 1010, having total area of 2.39 acres, situated in Mauza Erki, Police Station and District Jehanabad.

3. The contention of the appellant is that the property involved in the present case is *raiyati* land recorded in the name of Late Mahangu Gope, who was his great grandfather. The revisional record of right was prepared in the name of his father. After the death of Mahangu Gope, the same was allotted in favour of his father, on the basis of oral partition amongst the family. Appellant's further contention is that the demand had also been made in the name of his father and on the basis of that he is paying rent to the government for which rent receipts have been granted by the revenue authorities. His further contention is that his father was an illiterate person and due to dispute in the family he left the village and the District



Magistrate took over the possession of the land and constructed residential premises. Although his father tried his best to get the land, he could not succeed during his lifetime. After his death when the appellant came to know from his family members that revisional record of right has been prepared in the name of common forefather Mahangu Gope, he started digging the issue by filing application under Right to Information Act.

4. The appellant admits that presently the land is in possession of the Civil Court, Jehanabad and the building of local District Bar Association is standing over it.

5. Mr. Jitendra Kishore Verma, learned counsel for the appellant submitted that even if the appellant is not in possession over the property for sufficiently long time, the State cannot usurp the same. He submitted that in view of Article-300 A of the Constitution of India, the appellant cannot be dispossessed of the property without taking recourse of land acquisition proceeding. He contended that when the matter was taken up by the learned Single Judge in writ jurisdiction, he could not appreciate the facts involved in the case in correct perspective and an erroneous order has been passed, whereby the writ petition has been dismissed.

6. On the other hand, learned counsel for the State



submitted that there is no error in the order passed by the learned Single Judge. He has rightly appreciated all the facts involved in the instant case. He contended that the land in question never belonged to the appellant or his ancestors. The raiyati record of register would show that earlier the *raiyyat* was one Bishu Yadav, son of Kail Yadav. There was an apparent interpolation made in Register-II and the name of appellant's father Dallu Yadav was entered without following the due process of mutation. Earlier, vide demand paper, lands of Khata No.163, Plot No.175, admeasuring 39 decimals was cut and new Khata No.212, 213, Plot No.997, 1017 and 1022, admeasuring 2.46 decimals, was entered. He contended that in the writ petition the State had filed its counter affidavit and after taking into consideration all these facts, the writ court has rightly dismissed the writ petition.

7. We have heard the parties and perused the record. As a matter of fact, through the writ petition, the appellant tried for recovery of possession of the property, which is not in his possession since the time his grandfather was alive. It is not known when the appellant's grandfather died. It is also not known when appellant's father died. There is nothing on record to show that the appellant's grand-father ever took any



step for recovery of possession of the land in question during his lifetime. It is also not known whether the property in question was ever transferred in the name of the appellant's father. It is also not established by any court of law as to how the appellant is related to Late Mahangu Gope. There is also a serious allegation as interpolation in Register-II whereby the name of appellant's father was entered without following the due process of mutation.

8. The claim of the appellant is purely speculative in nature. His representation filed before the authorities as annexed to the writ petition would show that he is himself unaware about many facts relating to the land. He seems to have derived knowledge about the land in question through hearsay information.

9. In absence of any clarity in the pleadings of the appellant or any material to show his title over the land in dispute, in our considered opinion, by no stretch of imagination, any Court exercising writ jurisdiction should have ever issued mandamus to the respondents to hand over the possession of the land to the appellant.

10. In our opinion, the writ court has rightly dismissed the writ petition.



11. The appeal, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

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