

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16357 of 2019

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Syed Irfan Ashraf, aged about 65 years, (Male) son of Habibur Ashrat @ Syed Habib Ashraf, resident of village-Pir Bigaha, P.S. Chaudati, Anchal Belaganj, District-Gaya

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Gaya
3. The Additional Collector, Gaya
4. The Deputy Collector Land Reforms, Gaya
5. The Circle Officer, Belaganj, Gaya

Respondents Ist set

6. Aftab Ahmad aged about 53 years (Male), son of Late Gholam Mustafa, resident of village- Pir Bigaha, P.S.- Chaudati, Anchal Belaganj, District-Gaya.

Respondents 2nd set

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Appearance :

For the Petitioner/s	:	Mr.Radha Mohan Pandey
For the Respondent/s	:	Mr.Sajid Salim Khan (SC-25)
For Private respondents	:	Mr. Dinu Kumar, Advocate
		Ms. Ritika Rani, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

- 2 13-08-2019 An order dated 18.04.2019, passed by the learned Chairman, Bihar Land Tribunal, Patna in B.L.T. Case No. 719 of 2017 is under challenge in the present writ application, whereby after considering the materials available on record, the learned Chairman has refused to interfere with an order dated 02.07.2014, passed by the revisional authority. The revisional authority had allowed a revision application filed by respondent No.6 and had set aside the orders passed by the appellate authority and the Circle Officer for mutation of land in question



in favour of the petitioner. The Tribunal has observed that the nature of dispute, can be adjudicated upon by a competent civil Court only and that the claim of the mutation over the land in question shall abide by the final judgment and decree to be passed by the competent Civil Court.

2. The learned Chairman of the Tribunal has relied on a decision of this Court reported in **2008(3) PLJR 245 (Ramjee Prasad Singh Vs. State of Bihar)** before reaching his conclusion that where complex question of law with regard to inheritance and/or interest in property are called in question, the parties would be well advised to move the competent Civil Court for declaration of their right, title and interest rather than fight it under the Bihar Mutation Act, 2009 before the Anchaladhikari.

3. The dispute is regarding mutation between the petitioner and the contesting respondent No.6 in respect of lands of plot No. 2019 of Khata No. 435 carved out of C.S. Plot No. 1416 of C.S. Khata No. 392.

4. This is not in dispute that one Md. Abid Hussain had two sons, namely, Golam Mustafa and Abdul Sakur. After partition in the family 1 acre of land was allotted to each of them as their respective shares. Respondent No.6 is admittedly



son of Golam Mustafa. The petitioner is claiming his title and possession over the land in question on the basis of an unregistered gift deed dated 21.11.2005, executed by Ahamd Mujtaba, son of Abdul Sakur. It is the petitioner's case that after death of his father, Abdul Sakur, Ahmad Mujataba had orally transferred the land through unregistered gift deed dated 21.11.2005 and had put the petitioner in possession over the land in question. It is also the petitioner's case that the widow of late Ahmad Mujataba had also admitted the execution of gift made in 2005, in favour of the petitioner.

5. The title of the petitioner has been disputed by respondent No.6, who is claiming his title over the land on the ground of registered sale deed dated 13.11.1965, executed by Abdul Sakur, father of Ahmad Maujtaba. According to respondent No.6, after execution of the sale deed, he was put in possession over the land in question and according to him name of Gulam Mustafa, his father was mutated, whereafter he had been paying rent and getting the rent receipts.

6. On the basis of oral gift made by son of Abdul Sakur, Ahmad Mujatba, the petitioner appears to have taken steps for mutation in his favour giving rise to Mutation Case No.936 of 2005-06, which was allowed. Respondent No.6 had



preferred appeal before the appellate authority, which came to be dismissed and thus order of the Circle Officer stood affirmed. The revisional authority, however, interfered with the order of the Circle Officer and the appellate authority by an order, which became subject matter of challenge before the Bihar Land Tribunal. It is not difficult to ascertain from the facts available on record that whereas respondent no.6 is claiming his title over the land in question on the basis of a registered sale deed executed on 13.11.1965 by Abdul Sakur in favour of the father of respondent No.6 and brother of said Abdul Sakur, Gulam Mustafa, the petitioner is claiming his title on the basis of an oral gift made by son of of said Abdul Sakur in the year 2005.

7. It is in the background of the above noted facts and the nature of dispute involved that the Tribunal has held in the impugned order that it is desirable in such circumstance, that the revenue authority should leave the issue to be determined by the Civil Court.

8. Mr. Radha Mohan Pandey, learned counsel appearing on behalf of the petitioner has given much emphasis on the question of law which he has framed in paragraph 3 of the application and as a matter of fact, he has read out the questions verbatim in course of hearing of the case. The said



questions of law read thus:-

“(i) Whether when Jamabandi/demand is running in the name of Ahmad Mujtaba the donor of petitioner how mutation in favour of petitioner can be denied considering the requirement of section 3 of the Bihar Land Mutation Act, 2011.

(ii) Whether Thika Patta Kabuliat Lease dated 04.01.2005 is not a proof that Ahmad Murtaza and Mosmat Bibi Mobina Khatoon jointly executed the lease in favour of Jamil Akhar conclusively denying existence of execution of Registered sale deed 13.11.1965 allegedly described as if executed by Abdul Sakur in favour of Golam Mustafa.

(iii) Whether when respondent no.6 in his counter affidavit dated 09.03.2018 has stated that he is paying rent to the Government of Bihar for Khata No. 392 or Khata No. 395 how his claim can be sustainable even for a moment over the disputed Land of Khata No. 435, R.S. Plot No. 2015 is a matter for adjudication in the present writ application.

(iv) Whether when rent



receipts attached with the counter affidavit in support of Jamabandi/demand running in name of Gholam Mustafa is of Khata No. 395 and 392 how he can claim his any right over the land of R.S. Khata No. 435 and R.S. Plot No. 2015 and whether this fact has not been overlooked by the Hon'ble Bihar Land Tribunal and if so, so it not an apparent error on the face of record inviting interference of this Hon'ble Court for setting aside the impugned order dated 18.04.2019 passed by the Hon:ble Bihar Land Tribunal in B.L.T. Case No. 719 of 2017.

(v) Whether when the impugned order is erroneous on the face of its record whether it should be allowed to sustain.

(vi) Whether granting liberty to approach the competent civil Court will not prejudice materially to this petitioner in spite of having all materials i.e., documentary evidence in his support for mutation of the land gifted to him by his donor Ahmad Murtaza supported by his wife Rashida Khatoon.

(vii) Whether preparation of revisional survey khatian published in the year 1979 in the name of Ahmad



Murtaza one share is not enough to falsify alleged registered sale deed dated 13.11.1965, as if executed by Adbul Sakur, in favour of Gholam Mustafa clearly establishing that said sale deed was never acted upon and acquiesced by efflux of time even much before.

(viii) Whether when contesting respondents have never raised their claim on the basis of registered sale deed dated 13.11.1965 from before of present mutation proceeding, acquisition, waiver and estoppel as well whether will not apply against the respondent No.6.”

9. I do not find any legal infirmity in the impugned order passed by the Tribunal. It is evident that the dispute between the parties revolves around the questions of their respective title and possession. In such circumstance, the learned Chairman of the Tribunal has rightly observed, referring to a decision of this Court in case of **Ramjee Prasad Singh** (supra), that the revenue authority deciding a mutation proceeding should keep themselves away from adjudicating disputed questions of title and possession.

10. Mr. Pandey submits that the petitioner cannot be



forced by the Tribunal to approach the Civil Court for adjudication of the dispute. It is made clear that the Tribunal has not forced either of the parties to approach the Civil Court. The parties are at liberty to approach competent forum or Court for adjudication of the disputes, in accordance with law.

11. This application has no merit and is dismissed accordingly.

(Chakradhari Sharan Singh, J)

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