

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15870 of 2006

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1. M. Khatoon Both Daughter of late Yunus Mian All Resident of Village Garhi, Post Office and Police Station Chakai, District Jamui.
 2. Hasina Mian
 3. Mukhtar Mian Both Sons of late Yunu Mian
 4. Mohammad Abbas
 5. Mofia Khatoon Widow of late Yunus Mian
 6. Firoza Khatoon Daughter of late Ulfat Mian All Resident of Village- Garhi, Post Office and Police Station- Chakia, District- Jamui.
 7. Osida Khatoon Daughter of late Ulfat Mian
 8. Md. Usman Son of late Ulfat Mian
 9. Md. Shakoor Son of late Ulfat Mian
 10. Khatoona Khatoon Widow of late Ulfat Mian
 11. Md. Haiyul Son of late Ismail Mian
 12. Hasina Khatoon D/O Late Yunush Mian R/O Village- Garhi, P.O. And P.S.- Chakai, District- Jamui
 13. Md. Khalil Son of late Ismail Mian
 14. Md. Hatim Mian son of late Subhani Mian No. 1 to 5 all Resident of Village Garhi, P.O. and P.S. Chakai, District- Jamui.
 15. Ulfat Mian S/O Late Laljeet Mian R/O Village- Garhi, P.O. And P.S.- Chakai, District- Jamui

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Jamui.
3. The Deputy Collector Land Revenue, Jamui.
4. The Anchal Adhikari, Chakai, District-Jamui.
5. Mairun Khatoon Wife of Jainul Mian
6. Kuresha Khatoon Wife of Jawed Mian Nos. 5 to 6 Both Resident of Village Garhi, P.O. and P.S. Chakai, District- Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Khatim Reza
For the Respondent no. 5&6	:	Mr. Ramesh Kumar Chaudhary
For the State	:	Mr. Anil Kumar Verma, AC to AAG-9

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

8 02-01-2019 Heard learned counsel for the parties.

2. The petitioners have put to challenge the order
dated 09.05.2006 passed by the learned Collector, Jamui in



Mutation Revision Case No. 01 of 2005 and the order dated 02.03.2005, passed by the Deputy Collector, Land Reforms, Jamui in Mutation Appeal No. 08 of 2004, whereby the order dated 15.11.2003 passed by learned Anchal Adhikari, Chakai in Mutation Case No. 0223 of 2004-05 has been reversed. The disputed land pertains to *Khata* no. 71, Ward No. 657 ad-measuring 06 acres 20 decimal in Village-Garhi, District-Jamui.

3. It is the petitioners' case that the said land was settled by the ex-landlord of the land in question, in the name of Laljeet Mian, whose sons and grand sons are the petitioners in the present writ application. A *jamabandi* was accordingly created in the name of Laljeet Mian vide *Jamabandi* No. 71, in respect of the said land. This is not in dispute that wives of the heirs of Summan Mian, are respondent nos. 5 and 6 in the present proceeding. Summan Mian had filed a mutation case in respect of land in question, claiming himself also to be in possession of the said land, in his capacity as brother of Laljeet Mian. It was his case that the land was settled in the name of Laljeet Mian and Summan Mian both. The said mutation proceeding, in which the heirs of Laljeet Mian were parties, was decided in favour of Summan Mian. The petitioners,



thereafter, preferred an appeal giving rise to Appeal No. 22 of 1977-78, in the court of the Deputy Collector, Land Reforms, Jamui, which was allowed in favour of the petitioners. The heirs of Summan Mian had preferred a revision application against the said decision of the appellate authority dated 25.05.1981. During the pendency of the revision application, however, Summan Mian died and the revision application was dismissed for default.

4. It is the case of the petitioners that, once the mutation case of Summan Mian came to be rejected by the appellate authority, he or his heirs could not have initiated any fresh mutation proceeding for getting their names mutated. However, the heirs of Summan Mian, according to the petitioners, wrongly filed a Mutation Case bearing no. 223 of 2004-05 wrongly, in respect of the same suit land, this time in the names of their wives, on the ground that their wives have been gifted the disputed land by them by, two registered *Baimoquasa* in 2002. The mutation case was rejected by order dated 15.11.2003 by the Anchal Adhikari, Chakai.

5. An appeal was preferred by respondent nos. 5 and 6, giving rise to Mutation Appeal No. 08 of 2004-05, before Deputy Collector, Land Reforms, Jamui. The Deputy Collector,



Land Reforms, Jamui allowed the appeal by an order dated 02.03.2005, directing for mutating the names of respondent nos. 5 and 6 in the revenue records. A revision application was thereafter filed, giving rise to Mutation Revision Case No. 01 of 2005. The revision application has been dismissed by the Deputy Collector, Land Reforms, Jamui, which order is impugned in the present application.

6. A counter affidavit has been filed on behalf of contesting private respondent nos. 5 and 6.

7. I have heard Mr. Khatim Reza, learned counsel for the petitioners and Mr. Ramesh Kumar Chaudhary, learned counsel, appearing on behalf of respondent nos. 5 and 6.

8. Learned counsel, appearing on behalf of the petitioners, has placed heavy reliance on the order of the appellate authority dated 25.05.1981 passed in Appeal Case No. 22 of 1977-78 by Deputy Collector, Land Reforms, Jamui, to contend that once the revenue court rejected the claim of Summan Mian for mutation of his name in the revenue records, in respect of land, in question, same dispute could not have been raised by his heirs by initiating fresh mutation proceeding. He has submitted that the disputed land exclusively belongs to Laljeet Mian and for that reason the orders passed in



subsequent proceedings by the appellate authority and the revisional authority under challenge, are wholly without jurisdiction.

9. Mr. Chaudhary, learned counsel, appearing on behalf of the respondent nos. 5 and 6, on the other hand, has submitted that the order of the appellate authority dated 25.05.1981 passed in the earlier proceeding did not put any bar on Summan Mian to take steps for mutation, based on partition in the family. He has also submitted that the Deputy Collector, Land Reforms, Jamui, in the said order dated 25.05.1981, has observed that the land, in question, was not exclusively held by Laljeet Mian but his own brother Summan Mian was also associated with the said land.

10. I have perused the impugned order.

11. From the pleading on record and the submissions advanced on behalf of the parties, it is manifest that there is serious dispute of right, title, interest and possession in respect of the land, in question. The revenue courts have also mentioned in their orders that the dispute in respect of title of the parties could not be gone into by the revenue court, which could be adjudicated upon only in a civil suit.

12. Learned counsel for the petitioners have



submitted that the petitioners are still in possession over the suit property, which fact is being disputed by the learned counsel appearing on behalf of the respondent nos. 5 and 6.

13. Be that as it may, upon perusal of the order of the Deputy Collector, Land Reforms, Jamui, in appeal case no. 22 of 1977-78, I find that while disposing of the appeal, the appellate court did not reject outright the claim of Summan Mian of being in possession and having title over the land, in question. The findings are otherwise. In view of nature of order passed by the Deputy Collector, Land Reforms, Jamui, in Appeal Case No. 22 of 1977-78, initiation of subsequent mutation proceeding, at the instance of the wives of the heirs of the sons of Summan Mian, cannot be said to be completely inappropriate.

14. Learned counsel, appearing on behalf of the petitioners, has submitted that in the light of the previous order of the appellate authority, there were only two possibilities for Summan Mian's heirs before initiating this mutation proceeding, viz. after obtaining partition through the process of the court or on the basis of the registered partition deed. In the absence of these two, the respondents could not have got initiated the mutation proceedings.



15. The mutation is nothing but *prima facie* proof of possession. Which party is in possession and which party has title over the suit property is to be finally adjudicated upon by a civil court of competent jurisdiction.

16. In view of nature of order passed by the revenue court below, instead of interfering with the said order, I dispose of the writ application with an observation that the parties shall be at liberty to approach the civil court of competent jurisdiction to get their disputes adjudicated upon in respect of their right, title and possession over the suit property. It is made clear that findings recorded by the revenue courts, would not prejudice the courts below in deciding the claim of right, title, interest and possession of the parties over the disputed land.

17. This application stands disposed of.

(Chakradhari Sharan Singh, J)

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