

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10545 of 2018

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Ganesh Prasad Singh Son of Late Ramdeo Singh, Resident of Village-
Shahpur, P.S.- Shahpur, District- Bhojpur Bihar.

... .. Petitioner

Versus

1. The State Of Bihar
2. The District Magistrate, Bhojpur at Ara, District- Bhojpur Bihar.
3. The Sub Divisional Officer, Jagdishpur, District- Bhojpur Bihar.
4. The Deputy Collector Land Reforms, Jagdishpur, District- Bhojpur Bihar.
5. The Superintendent of Police, Bhojpur at Ara, District- Bhojpur Bihar.
6. The Circle Officer, Shahpur, District- Bhojpur Bihar.
7. Narendra Kumar Singh, Son of Late Shankar Deyal Singh, Resident of
Village- Shahpur, P.S.- Shahpur, District- Bhojpur Bihar.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Dhanendra Chaubey
For the Respondent/s : Mr. Birendra Prasad Singh, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 11-07-2019 Though this matter was listed analogously with C.W.J.C. No. 15111 of 2018, on 02.07.2019, and were heard together, the said C.W.J.C. No. 15111 of 2018 was disposed of, but, at the request of learned counsel appearing on behalf of the petitioner in the present case, the same has been taken up today for further clarification and is being disposed of separately.

The petitioner has questioned the communication, dated 05.05.2018, issued by the Circle Officer, Shahpur, whereby he has requested the Sub Divisional Police Officer, Jagdishpur, Ara, to make available Magistrate and police force



for delivery of possession of the land appertaining to Khata No. 331, Plot No. 6258, Area 21.5 decimals and Khata No. 1521, Plot No. 6257, Area 05 decimals, for implementation of an order passed by the Deputy Collector Land Reforms, Jagdishpur, exercising powers under the Bihar Land Disputes Resolution Act, 2009.

When the case was taken up on 28.05.2018, this Court, while issuing notice to private respondents No. 7, had stayed the effect of the said impugned letter dated 05.05.2018 of the Circle Officer, with a direction that the respondents shall not take any coercive measure to disturb the possession of the petitioner over the plots in question.

A counter affidavit has been filed on behalf of respondent No. 7. There does not appear any dispute over the fact that the petitioner and respondent No. 7 belong to the same family with their common ancestor, late Ramdeo Singh. A Title Suit, being Title Suit No. 97 of 2000, was filed by this petitioner against his brother Shankar Dayal Singh and his sons for declaration that the properties mentioned in Schedule-I and Schedule-II of the plaint were partitioned property of the plaintiff and the defendants with alternative prayer to declare $\frac{1}{2}$ share in the property mentioned in the schedule.



The suit was partly decreed, holding that the two brothers, namely, Shankar Dayal Singh and Ganesh Prasad Singh, were entitled for partition with equal shares in the joint family property and preliminary decree was prepared accordingly on 30.05.2003. It was in course of preparation of final decree that a compromise was reached between the two and it was agreed that the lands of Khata No. 331, Plot No. 6258, Area 21.5 decimals and Khata No. 1521, Plot No. 6257, Area 05 decimals, are allotted to them to the following effect, as has been stated in the counter affidavit, which has not been controverted by the petitioner : -

“A boundary has been raised over the two plots mentioned above in which inside boundary half of the portion towards eastern side is allotted to the Ganesh Singh and half area towards west side is allotted to respondent No. 7 and his brothers and the remaining part of the plot No. 6258 area approximately 5 decimal outside the boundary wall shall be in the joint possession of at the both the parties.”

The compromise was accepted and it is also the common case of the parties that they accordingly came in possession over their respective shares as there was no need of preparation of a final decree or delivery of possession by process of Court.

It transpires from the pleadings on record that in



respect of Plot No. 6258, admeasuring 21 and $\frac{1}{2}$ decimal, allegedly, some encroachment was made by the outsiders. There was a boundary wall enclosing about 16 and $\frac{1}{2}$ decimal of land out of 21 and $\frac{1}{2}$ decimal of the said plot, but rest, according to the parties, was illegally encroached upon by the outsiders and, thus, the said part remained in their joint possession. In respect of 16 and $\frac{1}{2}$ decimal of land, they came in possession, both half and half. The encroachment was allegedly made by one Triveni Kanu over the rest of the land, which had given cause of action for the petitioner and respondent No. 7 to file a case, under Bihar Land Dispute Resolution Act, before the Deputy Collector Land Reforms, Jagdishpur, Bhojpur, registered as Case No. 86 of 2012-13. The said petition, under the B.L.D.R. Act, was disposed of by Deputy Collector Land Reforms, Jagdishpur, by his order dated 22.06.2013 (Annexure-4), accepting the case of the petitioner and private respondent No.5, and directing thus :-

‘I am, thus, directing the Officer In-charge of the Police Station and the Circle Officer concerned to ensure that their peaceful possession over the land, which they held, was not disturbed’.

It transpires that the boundary wall of the petitioner and respondent No.7 over the plot in question, which was earlier existing, was noticed by the Deputy Collector Land Reforms to



have been earlier demolished by the encroachers, which they wanted to be resurrected. This is to be noted that respondent No. 7 had presented a petition under Section 144 of the Cr.P.C. before the Sub Divisional Officer, Jagdishpur, and a dispute had arisen in respect of their respective possession over the land appertaining to Plot No. 6258. Against certain orders passed by the Sub Divisional Officer, on the application of respondent No. 7, the petitioner has filed a criminal revision petition No. 67 of 2018, where the case is said to be still pending for hearing. It also appears that an application was filed by respondent No. 7 before the Circle Officer for measurement of said Plot No.6258 and 6257 leading to registration of Case No. 58 of 2017-18. Measurement is said to have been done by the Circle officer and thereafter impugned letter dated 05.05.2018 has been issued for effecting possession of the land in favour of respondent No.6.

On close reading of the pleadings on record, it transpires that the dispute is in respect of such part of the property appertaining to Plot No. 6258/6257, which, according to petitioner and respondent No. 7, was encroached upon by certain other persons. Whereas the petitioner is claiming his possession over the disputed property, strictly in terms of the compromise petition, it is the case of respondent No. 7 that the



petitioner dishonestly and cleverly got erected a boundary wall over 10.75 decimal of Plot No. 6258, in his absence, which had compelled him to make an application before the Circle officer for effecting delivery of possession in compliance of the order of the Deputy Collector Land Reforms passed in Case No. 86 of 2012-13. According to respondent No.7, the said letter dated 05.05.2018 has already been given effect to on 23.05.2018, but on total area of 8.21 decimal, i.e., 5.71 decimal on Plot No. 6258, and 2.5 decimal from Plot No. 6257, which was within the boundary wall. It is the stand of respondent No. 7 that the petitioner has misrepresented the facts in the writ application and has asserted that he is in unlawful possession over some part of Plot No. 6258 against the civil Court's decree.

It is evident from the discussions, as noted above, that there is apparent dispute between the petitioner and respondent No.7 over the extent of their rightful title and possession over the lands of Plot No. 6258 and 6257. The crucial facts, asserted in the writ application in support of the petitioner's claim, have been disputed in the counter affidavit.

Mr. Dhanendra Choubey, learned counsel appearing on behalf of the petitioner, has submitted that in the circumstances, the Circle Officer could not have issued the



impugned letter dated 05.05.2018, since he did not have any jurisdiction to seek assistance of police force for delivery of possession over the disputed land in favour of respondent No.7. Mr. Choubey has submitted that since despite this Court's order dated 28.05.2018, the said respondents have not filed any counter affidavit disclosing the source of power in the Circle Officer to interfere with the matter settled under the compromise decree, therefore, this Court should interfere with said action of the Circle Officer, exercising the power under Article 226 of the Constitution of India.

I am not convinced with the submission made by Mr. Choubey, since the dispute between two private parties relates to the extent of their title and possession over the disputed land arising out of a decree based on their compromise. Both the parties are claiming their title and possession on the basis of some compromise decree. This Court in a proceeding, under Article 226 of the Constitution of India, cannot go into such disputed questions of facts touching title and possession of the parties, over immovable property.

The law laid down by the Supreme Court in case of ***Steel Authority of India Ltd. and Ors. vs. National Union Water Front Workers and Ors.***, reported in (2001) 7 SCC 1 and



Rourkela Shramik Sangh v. Steel Authority of India Ltd., reported in **(2003) 4 SCC 317**, supports the view which I have taken. The Supreme Court has clearly held that a disputed question of fact normally would not be entertained in a writ proceeding. In case of ***Dwarka Prasad Agarwal v. B.D. Agarwal***, reported in **(2003) 6 SCC 230**, the Supreme Court has held in paragraph 39 that the Court could have entered into the question of infringement of fundamental right under Article 19 of the Constitution of India only, if facts were undisputed or admitted. The Supreme Court has held that question, as regards infringement of fundamental right, cannot be gone into when the facts are disputed.

As has been noted above, the facts relating to the claim of the petitioner cannot be said to be undisputed, uncontroverted and admitted by the private respondent No.7.

This application is accordingly dismissed.

The parties shall be at liberty approach appropriate forum in accordance with law.

(Chakradhari Sharan Singh, J)

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