

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1409 of 2018

In

Civil Writ Jurisdiction Case No.11513 of 2018

-
-
1. Mister Aalam
 2. Imtiyaj Aalam
 3. Mukhtar Aalam
 4. Israel Aalam
All Sons of Late Bhikhari Miyan @ Bhikhari Ali,
All Resident of Village - Aminabad, Anchal and P.S. - Barari, District -
Katihar.

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Govt. of Bihar, Revenue
Department, Patna.
2. The Member, Administrative, Bihar Land Tribunal, Patna.
3. The Addl. Collector, Katihar, District - Katihar.
4. The D.C.L.R., Katihar, District - Katihar.
5. The Anchaladhikari, Barari Anchal, P.O. and P.S. - Barari, District - Katihar.
6. Md. Azij, S/o Md. Ishaque Ali, Resident of Banka Tola, Janeradhar, P.O.
Semapur, P.S. - Barari, District - Katihar.
7. Most. Tajmul Begum, Wife of Late Bhikhari Miyan @ Bhikhari Ali, P.S. -
Barari, District - Katihar.
8. Tajrum Nisha, Daughter of Late Bhikhari Miyan @ Bhikhari Ali, Wife of
Anjar Ansari, Village - Gehuan, P.O. and P.S. - Jalalgarh, Care of Mostt.
Tazmul Begum, W/o Bhikhari Miyan @ Bhikhari Ali, Village - Aminabad,
P.O. - Semapur, District - Katihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sri Narayan Singh, Sr. Advocate Mr. Birendra Kumar Singh, Advocate
For RespondentNos.6-8 :		Mr. Dhirendra Kumar Jha, Advocate Mr. Suresh Prasad Barnawal, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-03-2019

Heard Shri Narayan Singh, learned Senior



Counsel for the appellants.

2. This Letters Patent Appeal arises out of a dispute of mutation of a certain land which belonged to one Bhikhari Miyan. It is stated that the appellants had inherited the said property under a registered Will and therefore they were the sole successors of the said land left behind by Bhikhari Miyan. The Will was executed in the year 2007. Bhikhari Miyan died in 2009. Mutation was carried out in favour of the appellants. Later on, in the year 2016 one Mohammad Azij who is said to have purchased the said land from the first wife of Bhikhari Miyan, namely, Mostt. Tajmul Begum, staked his claim along with them in respect of the land which had been purchased by him as above.

3. It is not disputed that Mostt. Tajmul Begum (Respondent no.7) was the first wife of Bhikhari Miyan and Tajrum Nisha (Respondent no.8) is a daughter born from the said wedlock. They are therefore the heirs of Late Bhikhari Miyan. The mutation proceedings were questioned on the ground that mutation had been carried out without putting the heirs to notice.

4. Shri Narayan Singh contends that this dispute



was raised in the year 2016 which reflects, that when the mutation had been carried out in the year 2010 and the Will had been acted upon with the tacit consent of the contesting opposite parties, it was not open for the mutating authority to have entertained any such objection after such a long time.

5. The second contention of Shri Singh is that the Will was a registered document and therefore so long as it remains unquestioned and its validity is not demolished by any lawful method, the same was capable of being accepted for mutation and therefore the mutation had been rightly carried out.

6. The third contention is that a general notice had been issued as well as to the co-tenure-holders and therefore in the given circumstances, the mutation had been carried out after full and complete enquiry. Accordingly, there was no occasion for the mutation order to have been reversed by the D.C.L.R. in appeal. The affirmance of the same by the Additional Collector is also equally erroneous which was later on affirmed by the Land Tribunal. The learned single Judge has also overlooked the aforesaid aspects of the matter and consequently, the impugned



judgment is erroneous additionally for the ground that the learned single Judge has mentioned that the Will ought to have been probated. Shri Singh submits that under Mohammedan Law, the probate of the Will is not necessary and therefore the conclusion of the learned single Judge being not sustainable in law, the impugned judgment as well the order of the reversal should be set aside and the mutation order should be maintained. Shri Singh has relied on the observations made by a learned single Judge in C.W.J.C. No. 8657 of 1998 (Janki Singh & Anr. vs. State of Bihar & Ors.), decided on 9th of July, 2015.

7. Before proceeding with the matter, we may place on record that the law of mutation in the State of Bihar earlier was the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973, under which Rules were framed known as 'the Bihar Tenants' Holdings (Maintenance of Records) Rules, 1976'. Under the said Rules, on an application for mutation the persons interested in the holding had to be put to notice apart from general notice. The said Act and Rules were repealed later on and have been substituted by the Bihar Land Mutation Act, 2011 and the Bihar Land Mutation Rules, 2012. A perusal



of these Rules would leave no room for doubt that these are summary proceedings for the purpose of maintaining the records and in the present case, it was after the death of Bhikhari Miyan in the year 2009 that the issue of mutation arose when the 1973 Act read with 1976 Rules were in force. The mutation was carried out. However, when the objections were filed, the 2011 Act and the 2012 Rules were in force as the earlier Act and Rules had been repealed by a repeal and saving clause. The matter was examined and the appellate authority came to the conclusion that the heirs of Bhikhari Miyan had not been put to notice, namely, his first wife and his daughter. It is correct that the subsequent purchaser had raised the issue, but the fact remains that the mutation had been carried out without any notice to them. Learned counsel has urged that there was a general notice. In the absence of notice to the interested persons, a general notice or a notice to the co-tenure-holders would not be a deemed notice unless there is any demonstrable evidence on record to establish the same. The appellate authority therefore came to the conclusion that in the absence of any notice to the said heirs, the matter could not have been proceeded with. It is



this order which has been maintained up to the stage of the learned single Judge.

8. However, Shri Singh is aggrieved by the observation made by the learned single Judge on the issue of a Will being probated. From the Bihar Land Mutation Rules, 2012, we find that there is a provision for supplying of an attested copy of a probated Will. However, this may not have been the position at the time when Bhikhari Miyan died. The question as to whether the Will required probate or not need not be gone into and can be examined by the competent forum inasmuch as once it has been found that notice had not been served on the interested persons, then the matter could have proceeded only after putting the heirs to notice. In the above background, the contention with regard to the genuineness or otherwise of the Will does not arise inasmuch that can be looked into by the appropriate forum and even for the purpose of mutation, such a Will can be taken into consideration as the contention of the appellant is that it is a registered Will. Even otherwise it is settled that mutation proceedings begin summary, they do not create or extinguish rights.



9. We in the ultimate analysis therefore do not find any error in the conclusion drawn by the learned single Judge without prejudice to the rights of the appellants to stake their claims before the mutating authority for mutation, in accordance with law on all possible legal issues.

10. The appeal stands accordingly consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM/Saif

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

