

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.46 of 2020

In

Civil Writ Jurisdiction Case No.25218 of 2019

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1. Sk. Manjur @ Sk. Manzur, Son of Late Supan @ Shekh Shuppan.
 2. Bibi Noor Jahan, Wife of Sk. Manjur @ Sekh Manzur
- Both are residents of Village and P.O.- Dularpur, P.S.- Manihari, District-Katihar.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Government of Bihar, Department of Revenue and Land Reforms, Patna.
 3. The Member, Administrative, Bihar Land Tribunal, Patna.
 4. The Collector of Katihar, District at Katihar.
 5. The Additional Collector, Katihar.
 6. The Sub Divisional Officer, Manihari Sub Division, District- Katihar.
 7. The Land Reforms Deputy Collector, Manihari, Sub-Division, District-Katihar.
 8. The Circle Officer, Manihari Anchal, District- Katihar.
 9. Sk. Mangania, Son of Sk. Rahmat.
 10. Sk. Rahmat, Son of Late Sk. Supan.
- Both are residents of Jaffargunj, P.O.- Sirnia, P.S.- Manihari, District-Katihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jai Krishna Prasad, Adv.
For the Respondent No.9 : Mr. Manish, Adv.
For the State : Ms. Nutan Sahay, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and



**HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)
Date : 19-12-2022**

Respondent No. 9 has filed response to the petition across the Board.

2. Let it be taken on record.

3. The hard copy of the counter affidavit has also been filed on behalf of the State/respondent Nos. 1 to 8 across the Board.

4. Let that also be taken on record.

5. Heard Mr. Jai Krishna Prasad, the learned Advocate for the appellants and Mr. Manish, the learned Advocate for the respondent No. 9.

6. The State/respondent Nos. 1 to 8 are being represented by Ms. Nutan Sahay, the learned counsel.

7. The respondent No. 10 died during the pendency of this appeal, who, incidentally, is the father of respondent No. 9.



8. The appellants, on being aggrieved by mutation of land which they had purchased from respondent Nos. 9 and 10, in the name of respondent Nos. 9 and 10, approached the authorities for mutating the names of the appellants only.

9. The appellants had purchased the property in question from respondent Nos. 9 and 10 and had actually got the land mutated in their names. The dispute arose when it was found that the name of respondent No. 9 was also mutated on the same set of property.

10. The Bihar Land Tribunal rejected the claim of the appellants on the ground that, as against the order of mutation, the appellants were required to approach the next higher authority/appellate authority, which they had not done.

11. When the afore-noted order of the Tribunal was challenged before this Court, the learned Single Judge in CWJC No. 25218/2019 *vide* his order



dated 17.12.2019 found that the property in question had already been gifted by respondent No. 10 to respondent No. 9, which event took place prior to the purchase/sale of the land to the appellants. The learned Single Judge took the view that in *Mohammedan Law*, the gift, which is known as *Hiba*, is not required to be executed. Thus, the property which had passed on to the respondent No. 9 as gift, could not have been sold later by the vendor, who is none else but the father of respondent No. 9.

12. On the last occasion, *vide* order dated 07.07.2022, this Court was of the tentative view that a clever stratagem was adopted by respondent No. 10 (since deceased) to fob the appellants of their money by selling the property which had already been gifted by him to his son and then setting-up the son (respondent No. 9) to get the sale-deed cancelled.

13. Respondent No. 9 has filed the hard copy of the counter affidavit today in Court, which has been



accepted and kept on record.

14. The effort of the respondent No. 9 is to prove that the land in question was obtained by his father [respondent No. 10 (since deceased)] by way of gift from his father, way-back in the year 1968. Thereafter, the land was gifted to respondent No. 9 in 1994. The respondent No. 9 had the dominion over the property which he had obtained by way of gift.

15. Thus, the contention of respondent No. 9 is that his father [respondent No. 10 (since deceased)], who had already alienated the property by way of gift, could not have sold the same property to the appellants.

16. We have perused the sale-deed by which the land has been purchased by the appellants.

17. The recital is very clear that the land was sold by respondent No. 10 on behalf of his son/respondent No. 9. This fact itself puts at rest all controversies regarding *Hiba* and the animus to pass of the dominion over the property in question.



18. Assuming that the property in question had already been gifted to respondent No. 9 by way of *Hiba* and dominion over the property was also given to him, it could yet have been sold by respondent No. 9, but through the agency of his father, who in this case is respondent No. 10 (since deceased). If the dominion had not passed on respondent No. 9, it was only an extra care taken by the vendors that the name of respondent No. 9 also was entered as one of the vendors to the property.

19. Thus, the appellants are justified in claiming that their names ought to be mutated in the land records with respect to the land in question.

20. We have found that there are two orders of mutation; one in favour of the appellants and the other, in favour of the respondent No. 9, with respect to the same property. This obviously is because of the dispute having been created over the right of respondent No. 10 to have sold the property which was earlier gifted



to his son (respondent No. 9)

21. As noted above, we find that the sale-deed had been executed by late respondent No. 10 as the natural guardian of respondent No. 9, who had been gifted the property by respondent No. 10.

22. This is a valid transfer of property by sale-deed.

23. The appellants, therefore, would be required to prove their possession and furnish other formalities for their names to be mutated.

24. With this observation, we set-aside the order of the learned Single Judge and direct that in case the appellants approach the Circle Officer afresh for mutation, the Circle Officer shall examine everything in detail and on finding the entitlement of the appellants, shall pass necessary orders in accordance with law.

25. Any order which aggrieves either the appellants or the respondent No. 9 could be challenged by either of them before the appropriate authority.



26. The appeal stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

Praveen-II/

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