

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.459 of 2015

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Baidyanath Mishra son of Late Yosodhar Mishra, Resident of Village-
Bahilwara @ Gadha, P.O. Gadha, P.S. Runnisaidpur, District- Sitamarhi.

... .. Appellant/s

Versus

1. Gayatri Devi, wife of Late Lakhan Chaudhary and daughter of Late Yasodhar Mishra.
2. Savitri Devi, wife of Late Chulhai Kumar and daughter of Late Yasodhar Mishra.
3. Anpurna Devi, wife of Late Anandi Kumar and daughter of Late Yasodhar Mishra.
4. Ichhawati Devi, wife of Sri Satyadeo Thakur and daughter of Late Yasodhar Mishra
5. Sita Devi, wife of Sri Kamali Chaudhary and daughter of Late Yasodhar Mishra
6. Pratima Devi, wife of Atardeo Kumar and daughter of Late Yasodhar Mishra
All resident of Village- Sonebarsa, P.O. Sonebarsa, P.S.-Bihpur, District- Bhagalpur.
7. Mostt. Sangyan Devi @ Sangyan Ojhain, wife of Late Ramchandra Jha.
8. Mukesh Kumar Jha, son of Late Ramchandra Jha.
Both resident of Village- Bahilwara @ Gadha, P.O. Gadha, P.S. Runnisaidpur, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Siddhartha Prasad, Advocate
		Mr. Sumit Kumar, Advocate
For the Respondent/s	:	Mr. Alok Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
Date : 12-12-2022

Heard Mr. Siddhartha Prasad, learned counsel for the



appellant and Mr. Alok Kumar Jha who represent the respondent 2nd set.

2. The present appeal is directed against judgment and order dated 14.07.2015 passed by learned Ad-hoc Additional District Judge, Ist, Sitamarhi in Succession Certificate Case No.08 of 2007 by which the succession petition preferred by the appellant herein was dismissed with further observation that if the appellant has any grievance, he should move before a proper forum as directed by the Land Acquisition Officer, Sitamarhi.

3. The matrix of facts giving rise to the present appeal is/are as follows:

4. The appellant is related to the family of Mohan Lal Jha, he being the grandson of Manthan Devi who in turn was the granddaughter of said Mohan Lal Jha.

5. Mohan Lal Jha had two sons, Jiv Lal Jha and Shiv Lal Jha. While Jiv Lal Jha was blessed with Ganga, Yamuna, Triveni as also Manthan Devi (as claimed by the appellant) as children, Shiv Lal Jha was blessed with Anirudh Jha, the respondent no.7 being daughter-in-law of the said Anirudh Jha.

6. It is proper to provide genealogy of the family as claimed by the appellant:



Mohan Lal Jha
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Jiv Lal Jha
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Ganga Jha /
Yamuna Jha /
Triveni Jha /
Manthan Devi /
Yasodhar Mishra /
Baidyanath Mishra
(Appellant)

7. The story started when the Railway decided to acquire the suit land (R.S. Plot No. 2173, 2172, 2366, 2370, R.S. Khata No.519, measuring an area of 32 decimals in the village- Bahilwara @ Gadha under Runnisaidpur Circle, Sitamarhi) for the construction of new Railway Line between Sitamarhi and Muzaffarpur. The land at that point of time was in the name of Yamuna Jha and Triveni Jha.

8. The respondent no.7, thereafter, moved before the Circle Officer, Runnisaidpur vide Mutation Case No.1245/ 2002-03 for mutation of the aforesaid suit land in their favour claiming that her husband Ramchandra Jha is the son of Yamuna



Jha and as Ganga Jha died without any issue and Triveni Jha died unmarried they are the sole heir. The Circle Officer, Runnisaipur vide an order dated 28.10.2002 allowed the said mutation petition.

9. Armed with the said order, the lady moved before the Railways and accordingly was compensated with Rs.59,000/- for the acquisition of the suit land.

10. When the appellant's side came to know about the said fraud committed by the respondent 2nd set, it moved before the District Land Acquisition Officer, Sitamarhi, bringing on record the facts that although Ganga Jha died issueless, both Yamuna Jha and Triveni Jha died unmarried and that since Yamuna Jha was unmarried there was no question of her being blessed with a son Ramchandra Jha and thus the respondent 2nd set have illegally taken the compensation amount. In fact, Ram Chandra Jha is son of Anirudh Jha and grandson of Shiv Lal Jha.

11. The appellant also moved before the Deputy Collector, Land Reforms, Sitamarhi Sadar for setting aside the order passed by the Circle Officer, Runnisaipur. This gave rise to the Mutation Appeal Case No.02/ 2007-08. Although the respondent 2nd set was noticed, they chose not to contest the



matter.

12. Accordingly, vide an order dated 19.02.2008, the appeal was allowed holding that the order passed by the Circle Officer, Runnisaipur is not in accordance with law.

13. The D.C.L.R., Sitamarhi Sadar further hold that from the order, it is clear that on the basis of wrong genealogy and affidavits, the order was passed although no local inquiry was conducted on the point of physical possession.

14. Meanwhile, the District Land Acquisition Officer, Sitamarhi on the petition dated 19.12.2006 of the appellant disposed of his petition on 23.12.2006 holding that it would be appropriate that the appellant takes order from a competent court for his title.

15. The appellant, thereafter, preferred the aforesaid Succession Case No.08 of 2007.

16. The basic point raised by the learned counsel for the appellant before the concerned court was that as Ganga Jha died issueless, Yamuna Jha and Triveni Jha died unmarried, Manthan Devi being the only child of Jiv Lal Jha and he being the grandson of Late Manthan Devi, was the only person entitled for taking hold of the land of Jiv Lal Jha. The further case that Shiv Lal Jha was blessed with single child, Anirudh



Jha and Ramchandra Jha was his son and as such there was no occasion for the respondent no.7 Sangyan Ojhain, wife of Ramchandra Jha to claim that her husband was son of Yamuna Jha and accordingly got the order of the Circle Officer, Runnisaidpur and on the basis of which the compensation amount was granted to her.

17. It was his further contention that in the aforesaid circumstance and in the background of the fact that the D.C.L.R., Sitamarhi Sadar has overturned the order of the Circle Officer, Runnisaidpur, he is entitled to the succession certificate.

18. The case of the respondent 2nd set there was that in Title Suit No.45 of 2000, it was the claim of the appellant Baidyanath Mishra before the concerned court that Manthan Devi is the daughter of Mohan Lal Jha. In fact, Mohan Lal Jha was blessed with Jiv Lal Jha, Shiv Lal Jha and Manthan Devi and on the basis of said claim appellant succeeded in getting that case allowed in his favour. He as such now cannot take a 360 degree turn and claim that Manthan Devi was granddaughter of Mohan Lal Jha. Respondent 2nd set thus submitted that the succession case is fit to be dismissed.

19. The court of learned Ad-hoc Additional District Judge, Ist, Sitamarhi took up the matter on 14.07.2015 and hold



that there is impediment in granting succession certificate with respect to the land in dispute and accordingly dismissed the same observing that as directed by the Land Acquisition Officer, Sitamarhi Sadar, he should take recourse to Title suit for the redressal of his grievance.

20. Aggrieved, the present appeal has been filed.

21. Heard learned counsel for the parties.

22. Mr. Siddhartha Prasad, learned counsel for the appellant submits that it is an admitted fact that respondent 2nd set belong to the family of Shiv Lal Jha and not Jiv Lal Jha, the respondent no.7 being wife of Ramchandra Jha, who is son of Anirudh Jha and grandson of Shiv Lal Jha. It is his further case that Jiv Lal Jha was blessed with three sons and a daughter, Manthan Devi and as stated, Ganga Jha died without any issue, Yamuna Jha and Triveni Jha died unmarried, the lands of Jiv Lal Jha will automatically come to his direct descendant, Manthan Devi.

23. It is his further case that the appellant herein being the only grandson of Manthan Devi, he was entitled to the succession certificate and as such the learned court erred in refusing the same.

24. It is his further case that admittedly the respondent



2nd set gave a false affidavit before the Circle Officer, Runnisaipur and accordingly got the land mutated in their name and consequently, got the compensation amount. However, the mutation order was overturned by the learned D.C.L.R., Sitamarhi.

25. Regarding Title Suit No.45 of 2000, the claim of Manthan Devi being the daughter of Jiv Lal Jha and not granddaughter is concerned, he submits that it was on the basis of wrong information furnished by the 'Panjekar', Chakradhar Jha that the appellant claimed her grandmother to be daughter of Mohal Lal Jha. He however submits that in any case, daughter or granddaughter, the fact remains that they belong to the family of Jiv Lal Jha and as such are entitled to the suit land and the learned court erred in dismissing the said petition.

26. Per contra, Mr. Alok Kumar Jha, learned counsel who represent the respondent 2nd set submits that there is no existence of Manthan Devi as claimed by the appellant and to get a succession certificate, it is important for the appellant to prove beyond doubt with the support of the documents/exhibits to show that Jiv Lal Jha was blessed with three sons and a daughter, Manthan Devi.

27. It is his contention that Jiv Lal Jha was blessed



with only three sons namely, Ganga Jha, Yamuna Jha and Triveni Jha and was not having any daughter. As Ganga Jha died issueless, Yamuna Jha and Triveni Jha died without getting married, the entire land came within the purview of the family of Shiv Lal Jha and she being the daughter-in-law of Anirudh Jha, it naturally bequeathed upon her.

28. However, there was no answer to the question when entire land of Jiv Lal Jha came to be devolved upon Shiv Lal Jha and his family, what was the necessity to claim herself to be daughter of Yamuna Jha to get an order from the Circle Officer, Runnisaidpur and consequently the compensation amount when admittedly Yamuna Jha died unmarried.

29. Learned counsel for the respondent 2nd set however submitted that for the grant of succession certificate, it is for the appellant to prove beyond doubt that Manthan Devi was daughter of Jiv Lal Jha and as rightly pointed out by both the District Land Acquisition Officer, Sitamarhi as also the concerned court, the appellant should have gone in title to finally decided the matter.

30. At this stage, Mr. Siddhartha Prasad, learned counsel for the appellant submits that pursuant to the order passed by the learned Ad-hoc Additional District Judge, Ist,



Sitamarhi a Title suit has already been preferred before the concerned court against the present respondent 2nd set which is presently pending.

31. Learned counsel for the respondent 2nd set showed his ignorance about the said pendency of the Title Suit.

32. After having gone through the rival contentions, this Court is of the view that both the sides have not come out with the clean hands.

33. While the appellant in Title Suit No.45 of 2000 claimed that her grandmother Manthan Devi is daughter of Mohan Lal Jha and accordingly succeeded in that Title suit, subsequently he changed track before the District Land Acquisition Officer, Sitamarhi as also the D.C.L.R., Sitamarhi Sadar stating that she actually is granddaughter of Mohan Lal Jha and daughter of Shiv Lal Jha.

34. Similarly, the respondent 2nd set admittedly being the daughter-in-law of Anirudh Jha, who inturn is son of Shiv Lal Jha submitted a mutation petition before the Circle Officer, Runnisaidpur with respect to the land that was going to be acquired by the Railways where she claimed herself as the daughter-in-law of Yamuna Jha and accordingly succeeded in getting the order of mutation in her favour which resulted into



release of Rs.59,000/- by the Railways to her.

35. Taking into account the aforesaid facts, the learned Ad-hoc Additional District Judge, Ist, Sitamarhi was right in observing that it would be appropriate for the appellant to move before the Title court to get a title in his favour.

36. As already been averred by Mr. Siddhartha Prasad, learned counsel for the appellant that a Title Suit is already being fought before the concerned court between the appellant and the respondent 2nd set and all the issues relating to the genealogy, title shall be decided in that court.

37. Thus in the opinion of this Court the order in question Succession Certificate Case No.08 of 2007 needs no interference and the Title of the respective parties shall be decided in the Title Suit.

38. It is made clear that the court concerned where the Title suit is pending will decide the matter on its own merit and on the basis of the averments and /or the statement of the witnesses and or the documents/exhibits produced before it without being prejudiced by any observation/order passed by either the court of learned Ad-hoc Additional District Judge, Ist, Sitamarhi or the grant of compensation amount to the respondent 2nd set.



39. With the aforesaid observations, the M.A. No.459 of 2015 stands disposed of.

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.12.2022
Transmission Date	NA

