

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.473 of 2023

1. Braj Bhushan Dubey Son of Late Raj Nath Dubey, Resident of Village-Diyari, P.O. Amaon (Baraon), P.S. Karamchat, District- Kaimur at Bhabua.
2. Banshidhar Dubey, Son of Late Raj Nath Dubey, Resident of Village-Diyari, P.O. Amaon (Baraon), P.S. Karamchat, District- Kaimur at Bhabua.
3. Vijay Shankar Dubey, Son of Late Raj Nath Dubey, Resident of Village-Diyari, P.O. Amaon (Baraon), P.S. Karamchat, District- Kaimur at Bhabua.
4. Uma Shanker Dubey, Son of Late Raj Nath Dubey, Resident of Village-Diyari, P.O. Amaon (Baraon), P.S. Karamchat, District- Kaimur at Bhabua.
5. Dev Shankar Dubey, Son of Late Raj Nath Dubey, Resident of Village-Diyari, P.O. Amaon (Baraon), P.S. Karamchat, District- Kaimur at Bhabua.
6. Jogindra Dubey @ Yogendra Dubey, Son of Late Markandey Dubey, Resident of Village- Diyari, P.O. Amaon (Baraon), P.S. Karamchat, District-Kaimur at Bhabua.
7. Jitendra Dubey, Son of Late Markandey Dubey, Resident of Village- Diyari, P.O. Amaon (Baraon), P.S. Karamchat, District- Kaimur at Bhabua.
8. Rahul Kumar Dubey @ Upendra Dubey, Son of Late Markandey Dubey, Resident of Village- Diyari, P.O. Amaon (Baraon), P.S. Karamchat, District-Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Patna.
2. The Collector, Kaimur at Bhabua.
3. The Deputy Collector Land Reforms, Bhabua, District- Kaimur.
4. The Circle Officer, Rampur, District- Kaimur at Bhabua.
5. Raj Narayan Dubey, son of Late Kalicharan Dubey, Resident of Village-Diyari, P.O. Amaon (Baraon), P.S. Karamchat, District- Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Garg, Adv.
For the Respondent/s	:	Mr. Rishi Raj Sinha, SC-19.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 22-06-2023

Heard learned counsel for the petitioners and
learned counsel for the State.

2. The present writ petition has been filed by
petitioners for setting-aside the order dated 22.12.2022 passed by

Chairman, Bihar Land Tribunal, Patna in BLT Case No.596 of 2019 by which the order dated 18.07.2019 passed by Collector, Kaimur in Mutation Revision No.77 of 2017 has been affirmed, wherein the Collector, Kaimur has set aside the order dated 14.09.2017 passed by Deputy Collector Land Reforms, Bhabua in Mutation Appeal No.15 of 2016-17.

3. Learned counsel for the petitioners submits that one Kalicharan Dubey who was the common ancestor, died leaving behind three sons, Prasidhan Dubey, Rajnath Dubey and Raj Narayan Dubey, and that after his death all the brothers had become separate in the year 1989 and came in the separate possession of their respective shares followed by Mutation Case No.221 of 1988-89. Counsel for the petitioners further submits that cause of dispute between the petitioners and private respondents is the property of one of the brothers Prasidhan Dubey who was unmarried and had acquired both partitioned and self acquired property during his lifetime. He had gifted both his partitioned property and self acquired property to his Sister-in-law (Bhabhi) Gheodhari Devi on 20.08.1986 and on 04.11.1991 by virtue of separate gift deeds in lieu of her services and care. He further submits that petitioners are the sons of said Gheodhari Devi. He submits that the property which Prasidhan Dubey had executed by virtue of two different gift deeds in the name of

petitioners' mother in the year 1986 and 1991 were mutated in the name of petitioners' mother. Counsel for the petitioners submits that the said properties are situated in different Mauja and circle, therefore, different mutation cases were filed and allowed in her favour. Being aggrieved and dissatisfied with the said mutation orders, private respondent no.5 preferred Mutation Appeal Nos.34, 37, 38 & 39 of 1998 to get the mutation cancelled. The said litigation further resulted into Mutation Revision No.06 of 2000 and Mutation Revision No.07 of 2000 which private respondents lost, vide order dated 05.03.2005 passed by Collector, Kaimur. Thereafter, the said order had not been challenged by respondent no.5 before any Court and it acquired finality.

4. Learned counsel for the petitioners further submits that respondent no.5 thereafter filed Title Suit No.145 of 1998 for partition of half share, on the basis that Kalicharan Dubey had three sons namely Prasidhan Dubey, Rajnath Dubey and Raj Narayan Dubey, and since Prasidhan Dubey died unmarried, the entire property belongs to Rajnath Dubey and Raj Narayan Dubey only. Wherefore, he is entitled for one half share in the entire land. In the said title suit, a prayer for declaration that the alleged gift deed executed in favour of Gheodhari Devi by Prasidhan Dubey be declared null and void had also been

made. Counsel for the petitioners submits that the said Title Suit No.145 of 1998 was decreed and preliminary decree had been prepared vide order dated 27.02.2016 in which the gift deed was declared as nullity. He further submits that the said preliminary decree had been further challenged in Title Appeal No.22 of 2016. The said title appeal filed by the petitioners' mother was dismissed on 30.01.2017, thus affirming the judgment and decree passed in Title Suit No.145 of 1998 dated 27.02.2016. Counsel further submits that the private respondent no.5 had filed a fresh Mutation Case No.901 of 2015-16 on the basis of judgment and decree dated 27.02.2016 passed in Title Suit No.145 of 1998 for his name to be entered in the Records of Right being the co-sharer of half of the property as decided in the title suit. Counsel for the petitioner submits that being aggrieved with the said order passed in Mutation Case No.901 of 2015-16 petitioners preferred Mutation Appeal No.15 of 2016-17 before the Deputy Collector Land Reforms, Bhabua on the ground that only preliminary decree had been passed in respect of one half share of the land of the joint property in favour of respondent no.5 and that the final decree had not prepared as yet, wherefore, it shall be deemed that title suit has not concluded finally. The Revisional Court considering the provision of Section 6(12) of Bihar Mutation Act, 2011 allowed the Mutation Appeal in favour of the petitioner.

5. Being aggrieved and dissatisfied with the order passed in the mutation appeal, the private respondent no.5 preferred a Mutation Revision No.77 of 2017 before the Collector, Bhabua. The petitioners had taken the plea before the court that they have preferred second appeal bearing S.A. No.145 of 2017 pending before this Hon'ble Court against the judgment and decree passed by the Appellate Court in which the judgment and decree passed in Title Appeal No.22 of 2016 dated 30.07.2017. In revision, the matter was decided against the petitioners vide order dated 18.07.2019 and thereon. Against the said decision, the petitioners preferred BLT Case No.596 of 2019 before Bihar Land Tribunal, which again was dismissed. Thereafter the petitioners have preferred the present writ petition before this Court, solely on the ground that during pendency of the Mutation Revision, Title Suit No.145 of 1998 was presumed to be pending due to the reason that final decree has not been prepared, and it is yet to be executed. Therefore, principles of Section 6 (12) of Bihar Mutation Act, 2011 shall apply. They also relied on the judgment in the case of Ganduri Koteswaramma and Another Vs. Chakiri Yanadi and Another reported in (2011) 9 SCC 788 while putting emphasis on paragraph no.14 of the said judgment which is set-out hereinbelow:-

“14. A preliminary decree determines

the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation.”

6. Counsel for the petitioners submits that since only preliminary decree has been passed while no final decree has been prepared, then in that case it should be treated such that the suit is pending and principles laid down in Section 6(12) of Bihar Mutation Act, 2011 should be applicable, thus making the order passed by Bihar Land Tribunal fit to be set-aside.

7. Learned counsel for the State submits that preliminary decree has been passed in Title Suit No.145 of 1998

against which Title Appeal No.22 of 2016 had been preferred and again dismissed, in furtherance of which, Second Appeal No.145 of 2017 was filed which is *subjudice* before this Hon'ble Court, and since appeal is the continuation of suit, the petitioners should be granted benefit of Section 6(12) of Bihar Mutation Act, 2011.

8. Upon going through the submissions, and the records of the case, particularly the order passed by the Bihar Land Tribunal, it transpires to this Court that the Title Suit No.145 of 1998-99 was not a normal partition suit, rather, it was a suit in which the relief for declaration to set-aside the gift deeds of 1986 and 1991 were also made. At the time of passing judgment dated 27.02.2016, both the gift deeds which were made in favour of petitioners' mother were declared void-ab-initio. The said judgment dated 27.02.2016 passed in Title Suit No.145 of 1998-99 is basically preliminary in nature for the purpose of partition but final on the point of validity of gift deeds. As such the plea of the petitioners that the said judgment & decree is preliminary in nature is not correct, rather it is partly preliminary and partly final decree. The petitioners are claiming for their names to be continued in the mutation records on the basis of gift deeds, which have already been declared *null and void* by Court of competent jurisdiction. Petitioners had challenged the judgment & decree of the Title Suit No.145 of 1998-99 dated

27.02.2016 in Title Appeal No.22 of 2016, which affirmed former. The Bihar Land Tribunal held, that the very basis of the claim of the petitioners was the two gift deeds dated 20.08.1986 and 04.11.1991 executed in favour of their mother, which were declared void, inoperative and illegal by the court of competent jurisdiction and was subsequently affirmed in appeal, therefore, continuation of mutation on the basis of these two gift deeds would be bad in law and the claim of petitioners is found unreasonable. Thus, this Court is not inclined to interfere in the order passed by the Bihar Land Tribunal.

9. So far as the judgment of Hon'ble Supreme Court on which the learned counsel for the petitioners relied upon is in concern, the same has been perused by me and it transpires that the said reported decision is related only to partition, whereas there was no challenge of any gift deed in this case and hence, the said judgment shall not be of help to the petitioners in any manner.

10. Therefore, due to the reasons as mentioned above, this Court is not inclined to interfere in the order dated 22.12.2022 passed by Bihar Land Tribunal in BLT Case No.596 of 2019 and hence the present Writ Petition is hereby dismissed.

11. The Mutation Authority shall do all the needful in the light of judgment passed in Title Suit No.145 of 1998-99

which was affirmed in Title Appeal No.22 of 2016 in favour of both the parties.

12. Be that as it may, liberty is hereby granted to the petitioners that in case, the Second Appeal is decided in their favour, they shall be at liberty to prefer application before the mutation authority afresh.

13. With this observation, the present Writ Petition stands dismissed.

(Dr. Anshuman, J.)

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Uploading Date	
Transmission Date	