

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11455 of 2017

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Ajay Kumar S/o Late Parmanand Singh, R/o Village- Tithipar, P.O.- Khaddi -
Lodipur, Police Station- Telhara, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Additional Collector, Nalanda.
3. Deputy Collector, Land Reforms DCLR, Hilsa, Nalanda.
4. Circle Officer, Ekangarsarai,
5. Birendra Prasad @ Pappu.
6. Vijay Prasad, sr. no. 5 and 6 are sons of Late Ram Parvesh Singh.
7. Ravindra Singh, Son of Late Ram Bahadur Singh.
8. Ashok Singh, Son of Late Krishna Nandan Singh.
9. Vishwajeet Singh, Son of Mr. Balmiki Singh,
10. Mithlesh Singh, Son of Nathun Singh, Respondent no. 5 to 10 are resident of
Village- Tilhipur, P.O.- Khadi Lodipur, P.S.- Telhara, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Senior Advocate Ms. Surya Nilambari, Advocate
For the Respondent/s	:	Mr. Raj Kishore Roy, GP18

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT

Date : 11-04-2023

Heard learned Senior counsel for the petitioner, learned
counsel for the State and learned counsel for the respondent nos.
5 to 10.

The petitioner has filed the instant application for the
following reliefs:

*“That this application is being preferred on
behalf of the Petitioner challenging the order dated
03.07.2017 page 29 passed in BLT Case No.*



337/2016, filed by this Petitioner's father (Late Parmanand Singh) whereby and whereunder the Hon'ble Tribunal confirmed 9.58 the orders dated 07.02.2013 page 58 passed by the Additional Collector, Nalanda; dated 05.04.2011, page 51 passed by the DCLR (Hilsa, Nalanda) and dated 23.05.2010 page 48 passed by the Circle Officer, Ekangarsarai, Nalanda by which the application preferred by the Petitioner's father for mutation of his name with respect to Chak no. 478 and subsequently appeal and review thereto filed by Late Parmanand Singh (Petitioner's father) were rejected in view of the objections to the title of Late Parmanand Singh, regarding the aforementioned plot, respondents herein. made by the the respondents herein.

That it is also prayed that the respondent State be directed, by way of issuance of writ of mandamus, to mutate the name of the Petitioner in respect of Chak no.- 478, Mauza- Lodipur, Thana no. 99, Khata no. 11, Area- 9 Kathas, Dhur 16."

The case of the petitioner in brief is that the subject matter of the instant application is the land measuring an area of 9 kathas 12 dhurs appertaining to Chak no.478 Mauza- Lodipur Thana no.99, Khata no.11.

A registered deed of exchange dated 19.11.1981 was entered between Late Parmanand Singh (father of the petitioner) on one hand and Late Ram Pravesh Singh (father of respondent nos. 5 and 6) and Ravindra Singh (respondent no.7) on the other.



By the deed of exchange Late Parmanand Singh transferred 19 kathas 12 dhurs of land in Chak no. 252 and received 30 ½ decimals of land in Chak no.478. Both the parties came in possession of the plots and continue in possession even today.

Late Parmanand Singh filed Mutation Case no.216 of 2010-11 before the Circle Officer, Ekangarsarai for mutation of 30 ½ decimals of land in Chak no.478 and issuance of receipt in his name. The claim of the petitioner's father was objected to by the respondents. By order dated 23.5.2010 (Annexure-4) in Mutation Case no.216 of 2010-11, the Circle Officer, Ekangarsarai was pleased to reject the petitioner's prayer for mutation. Thereafter the petitioner's father preferred Appeal no.4 of 2010-11 before the Deputy Collector, Land Reforms, Hilsa, Nalanda ('DCLR' in short) which was also rejected by the DCLR vide order dated 25.4.2011 (Annexure-5). The petitioner's father then filed a revision application which was registered as Mutation Revision Case No.1 of 2011. By order dated 7.2.2013 the Additional Collector, Nalanda was pleased to reject the revision application. It is stated by learned counsel for the petitioner that the petitioner's father thereafter approached the Patna High Court by filing C.W.J.C. no. 23578 of 2013, however this Court was pleased to dispose of the said case by its order dated 4.1.2016 granting liberty to the petitioner to



approach the Bihar Land Tribunal, Patna ('BLT' in short). The petitioner's father filed BLT Case no.337 of 2016 challenging the order passed by the Additional Collector. By order dated 3.7.2017 the Member (Administrative), Bihar Land Tribunal, Patna was pleased to dismiss the application.

It is submitted by learned counsel for the petitioner that so far as the registered deed of exchange dated 19.11.1981 is concerned, pursuant to which the exchange of land between Parmanand Singh on one hand and Late Ram Pravesh Singh and Ravindra Singh took place, the same has never been challenged by any of the parties till date. The petitioner's father came in possession over the land in question pursuant thereto and the application for mutation was filed in the year 2010 seeking mutation. It is submitted that mutation is to be decided on the basis of possession and there was no report to the contrary against the petitioners. It was further submitted that with respect to a registered document there is a presumption in law that it is validly executed and there cannot be presumptive invalidity attached to such a transaction.

Learned counsel for the petitioner in support of contention relied on the judgment in the case of Depta Tewari and ors. versus State of Bihar and ors. (1987 PLJR 1037) and Amarendra Narain Sharma and ors versus Tapeswar Mistri



[2014 (2) PLJR 295].

It was submitted by learned counsel for the State respondents that the father of the petitioner filed application for mutation of the land on the basis of the exchange deed dated 19.11.1981 after 29 years, in the year 2010. On an enquiry report having been called for by the Circle Officer, Ekangarsarai, it was reported that Ram Pravesh Singh and Ravindra Singh are shareholders of only 14 decimals according to the genealogical chart whereas exchange was done with respect to an area of more than 16 decimals. As such by order dated 23.5.2010 the Circle Officer held that the mutation of land is not justified and thus rejected the petition for mutation. The order of the Circle Officer was affirmed by order dated 25.4.2011 passed by the DCLR, Hilsa and further the revision preferred was dismissed by order dated 7.2.2013 passed by the Additional Collector. Finally, the BLT case filed by the petitioner's father was also dismissed by the Member (Administrative), Bihar Land Tribunal.

Learned counsel for respondent nos. 5 to 10 filed a separate counter affidavit stating about the orders passed by the respondent authorities. Learned counsel submitted that the petitioner after exchange of land never came in possession and further after the death of Ram Bahadur Singh his two sons



namely Pram Pravesh Singh and Ravindra Singh have share of 7 decimals each. As such this statement to the effect that both of them came to acquire $30 \frac{1}{4}$ decimals in Chak no.478 is wrong and denied. The mutation case was filed before the Circle Officer after a lapse of 29 years. The Circle Officer adopted the due process and rightly dismissed the mutation case. The petitioner lost his case at the appellate, the revisional and also at the stage of the Bihar Land Tribunal. Thus it was submitted that there is no merit in the writ application and the same be dismissed.

Heard learned counsel for the parties and perused the materials on record.

The case of the petitioner is that the total area of the plot in question is 1 acre 12 decimals. In the '*Khangi Batwara*' amongst the sons of Mitarjeet Singh, Late Durga Singh was not allotted any share. 1 acre 12 decimals was divided amongst the three sons in which Kuldeep Singh was allotted $45 \frac{1}{4}$ decimals. After his death the plot was partitioned between his sons in which Ami Singh got 15 decimals and Ram Bahadur Singh got $30 \frac{1}{4}$ decimals. This $30 \frac{1}{4}$ decimals went to the sons of Ram Bahadur Singh namely, Ram Pravesh Singh (father of respondent nos. 5 and 6) and Ravindra Singh (respondent no.7). By a registered deed of exchange dated 19.11.1981 entered into



between the father of the petitioner on one hand and father of respondent nos. 5 and 6 and Ravindra Singh (respondent no.7) on the other, Late Parmanand Singh (father of petitioner) received 30 ½ decimals of land in Chak no. 478 while Late Ram Pravesh Singh (father of respondent nos. 5 and 6) and Ravindra Singh (respondent no.7) received 19 kathas and 12 dhurs of land in Chak no.252.

It may be mentioned here itself that it is not in dispute that this registered deed of exchange dated 19.11.1981 has not not been challenged by any person till date.

It would be relevant to note here that the Hon'ble Supreme Court in the case of **Prem Singh & ors. versus Birbal & ors. [(2006) 5 SCC 353]** in paragraph no.27, with respect to a registered document, has held as follows:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption”.

At this stage itself it would be relevant to refer to the judgment of this Court in the case of **Sita Sharan Prasad versus Manorma Devi [2012 (2) PLJR 190]** wherein this Court in paragraph no.14 held as follows:

“14. From the statement made in the plaint as well as from the recitals in the sale deed dated



18.8.1973, it is clear that the said document cannot be said to be void ab initio and there cannot be "presumptive invalidity" attached to such a transaction. Such document comes within the category of documents which remain valid, on the principle that the apparent state of affairs is the real state of affairs, until the facts invalidating the same are established. It is only then that such document becomes void from the very beginning as distinguished from a document, witnessing a voidable transaction, which ceases to have legal effect from the day on which it is set aside and not prior to it. The plaintiff was therefore, required in law to bring a suit for cancellation of the said document or at least seeking necessary declaration in order to avoid its legal effect. Thus Article 59 of the Limitation Act or the residuary Article 58 are clearly applicable to the facts and circumstances of the case. Under both these articles the starting period of limitation is three years from the date when the facts entitling the plaintiff to obtain the relief against the document by cancellation or setting aside the same first accrues. The plaintiff was well aware that she had executed a registered document of sale in favour of the defendant which according to her was a sham transaction and therefore her right to obtain the necessary relief by declaration or by cancellation had already accrued to her on the date of the execution of the document itself. The subsequent acts of assertion of title by the defendant on different dates will not be material for the purpose of limitation which starts running when the right to sue first accrued."



Thus from the ratio of the two judgments quoted herein above so far as the registered deed of exchange is concerned, the same having been validly executed it would be prima facie valid in law and there cannot be a 'presumptive invalidity' attached to such a document. In case the respondents were effected by the same, the onus lay on them to file an appropriate case to rebut the presumption of its validity.

Further from perusal of the order dated 23.5.2010 of the Circle Officer, it transpires that a report was called for but there is no mention of any report to the effect that the petitioner was not in possession. Instead from perusal of the contents of the order dated 25.4.2011 of the DCLR, the order dated 7.2.2013 of the Additional Collector and order dated 3.7.2017 of the Bihar Land Tribunal it would transpire that it is the categorical and consistent case of the petitioner that pursuant to the registered deed of exchange dated 19.11.1981, the petitioner came in possession of the land in question and are continuing in peaceful possession even today. There is no evidence to the contrary on record.

At this stage it would be relevant to take note of the judgment of this court in the case of **Depta Tewari versus State of Bihar and ors. (1987 PLJR 1037)** wherein this Court in paragraph no.6 held as follows:



“6. From a perusal of the impugned order it appears that the respondent nos. 2 and 3 have rightly decided the case of the respective parties on the basis of the possession. It is not disputed nor can it be in law, that an order with regard to mutation has to be passed on the basis of possession only inasmuch as the authorities concerned cannot decide in such a case a disputed and complicated question of title. The findings of fact by aforementioned respondents having been arrived after taking into consideration all relevant facts and as such I am not in a position to interfere therewith.”

Thus taking into consideration the facts of the case, the material available on record and the ratio of the judgments referred to hereinabove, the case of the petitioners being that they came in possession of the land in question pursuant to the registered deed of exchange dated 19.11.1981 and continue in peaceful possession even today, no material to the contrary being available on record with respect to the possession of the petitioner and the said registered deed of exchange not having been challenged by any person in Court till today, in the opinion of the Court, the Circle Officer erred in his order dated 23.5.2010 in not allowing the application for mutation filed by the petitioner. Further the DCLR in his order dated 25.4.2011, the Additional Collector in his order dated 7.2.2013 and the Member (Administrative), Bihar Land Tribunal in its order dated 3.7.2017 also committed error in affirming the order of



the Circle Officer. The orders are thus illegal and not sustainable in law.

Thus the order dated 23.5.2010 (Annexure-4) passed in Mutation Case No. 216 of 2010-11 by the Circle Officer, Ekangarsarai, Nalanda, the order dated 25.4.2011 (Annexure-5) passed in Mutation Appeal Case no. 4 of 2010-11 by the DCLR, Hilsa, Nalanda, the order dated 7.2.2013 (Annexure-6) passed in Mutation Revision Case No. 1 of 2011 by the Additional Collector, Nalanda and the order dated 3.7.2017 (Annexure-1) passed in BLT Case no. 337 of 2016 by the Member (Administrative), Bihar Land Tribunal, Patna, are all set aside.

In view of the above, the Circle Officer, Ekangarsarai, Nalanda (Respondent no.4) is directed to pass orders on the application for mutation filed by the petitioner, in view of the observations made herein, within a period of three months.

The writ application is allowed.

(Partha Sarthy, J)

Bibhash

AFR/NAFR	
CAV DATE	16.2.2023
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Transmission Date	

