

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6723 of 2020

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Madhuri Devi Daughter of Late Madan Choudhary, Wife of Sri Arvind Kumar, Resident of Arizpur, P.O.-Shrisi Buzurg, Arizpur, P.S.-Muzaffarpur, District Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The District Magistrate, Muzaffarpur.
3. The Sub Divisional Officer, Muzaffarpur.
4. The District Land Acquisition Officer, Muzaffarpur.
5. The Deputy Collector Land Reforms, Muzaffarpur.
6. The Circle Officer, Muzaffarpur.
7. Shashi Bhushan Ojha, Son of Late Balram Ojha, Resident of Village-Rautania, P.O.-Chamarva, P.S.-Karja, District-Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar
For the Respondent/s	:	Mr.Rishi Raj Sinha (Sc19)
		Mr. Alok Choudhary

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT

Date : 31-07-2023

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

2. The present application has been filed for setting aside the Award dated 27.08.2010 passed by the Permanent Lok Adalat, Muzaffarpur, on the ground of fraud as well as jurisdictional error as admittedly no ID proof of the opposite party namely Viveki Devi was produced before the Permanent Lok Adalat for identification of Mostt. Viveki Devi and further the jurisdiction of correction of Survey Khatiyan lies with the revenue authorities, but they were never approached by the private Respondents.

3. It has been submitted that the matter arises out of the



property situated at Village- Salahpur, Khata No. 146, Revisional Survey Plot No.- 1800, Area- 1 Acre 76 Decimal and Mansurpur Khata No. 387, Plot No. 29, Area 0.35 decimal, i.e., Total 2 Acre 11 decimal, which as per the Khatian belongs to Bhola Choudhary @ Ramadhar Choudhary son of Makeswar Choudhary.

4. It has further been submitted that the genealogical table has been clearly mentioned by the private respondent Shashi Bhushan Ojha in his application before the Land Acquisition Officer, Muzaffarpur, submitted on 15.12.2012, relating to Record No. 10/2011-12, wherein the status of the petitioner is admitted. The genealogical table has also been recorded by the District Land Acquisition Officer in the **Panchat** of the Record Case No. 10/2011-12.

5. It has been submitted on behalf of the petitioner that from perusal of the genealogical table, it is quite apparent that admittedly Late Ramadhar Choudhary @ Bhola Choudhary died leaving behind his wife Viveki Devi and they were issueless. It would further transpire that Late Madan Choudhary was only brother of Late Ramadhar Choudhary and the petitioner is the only daughter of the Late Madan Choudhary and therefore, in all probability the petitioner Madhuri Devi is the single legal



heir of Late Ramadhar Choudhary. Learned counsel for the petitioner submits that Late Viveki Devi sold a part of piece of land.

6. It has been next submitted that the total three plots i.e., Plot No. 29, 34 and 71 are involved in Khata No. 387, which are recorded in the name of Bhola Choudhary son of Late Mankeshwar Choudhary and out of three plots one plot i.e., Plot No. 29, 22 decimal land sold by Viveki Devi to Smt. Ramdulari Devi by way of registered sale deed dated 20.03.2001. The private respondent did not make any objection on the execution of sale deed by Viveki Devi.

7. He further submits that in the year 2010 Shashi Bhushan Ojha hatched a conspiracy and filed a PreLitigation Civil Case before the Permanent Lok Adalat, Muzaffarpur, stating therein that the land actually belongs to him but at the time of survey proceeding, due to mistake of survey authority, the survey khatian was illegally prepared in the name of Opposite party i.e., Viveki Devi and her husband Bhola Choudhary @ Ramadhar Choudhary. He further contended that the issue has been settled/compromised with Viveki Devi and only for affirmation, the case is being filed.

8. It has been submitted on behalf of the petitioner that



the private respondent Shashi Bhushan Ojha did not enclose even a single chit of paper to establish his *bonafide* that the land belongs to him and the revenue authority at the time of preparation of survey Khatiyan and Khas Khatiyan committed illegality and wrongly recorded in the name of Opposite party, namely, Viveki Devi and her husband Bhola Choudhary @ Ramadhar Choudhary. The paragraph no. 4 of the Pre Litigation Case No. 1/2010 was also wrong to the extent that the Khatiyan was only in the name of husband of Viveki Devi and not in the name of Viveki Devi.

9. It has been submitted that the petition and prelitigation case also does not indicate that the private respondent Shashi Bhushan Ojha ever approached the revenue authority for correcting the mistake, if any, in recording or preparation of the Khatiyan. The jurisdiction to rectify the mistake if any lies only in the hand of revenue authority but the private respondent never approached revenue authority and hatched a conspiracy to obtain an award from Permanent Lok Adalat.

10. It is submitted that no written statement was filed on behalf of Viveki Devi which was necessary in terms of Section 22 C (3)(1)(A) of the Legal Services Authority Act, 1987. He submits that Viveki Devi neither filed written statement nor any



identification proof was filed on her behalf but an affidavit with photograph was filed without identification proof and the learned Permanent Lok Adalat without directing to produce Identification proof passed an Award vide order dated 27.08.2010.

11. Learned counsel for the petitioner further adds that the petitioner is the only title holder and only heir of Late Bhola Choudhary @ Ramadhar Choudhary and therefore, she filed an application before the Circle Officer, Marwan, Muzaffarpur for mutation of her name at the place of Bhola Choudhary, the application was numbered as 2736/R/27 of 2019-2020, soon thereafter the private respondent also filed one application no. 2737/R as someone informed the private respondent and the matter was contested before the Circle Officer and the Circle Officer after considering the totality of the matter and considering the fact that the petitioner is the only heir of Late Bhola Choudhary, the Circle Officer allowed the mutation in her name.

12. It has been submitted on behalf of the petitioner during course of hearing of Mutation case No. 2736/R/27 came to know that the private respondent has obtained an Award fraudulently in her name which necessitated the filing of this



Civil Writ application. The petitioner as soon as she came to know about the fraudulent award obtained certified copy of the entire record and only then she came to know about the fraud and accordingly she was advised to file this Writ application.

The impugned Award has been obtained by playing fraud from the Permanent Lok Adalat.

13. Learned counsel for the petitioner submits that the learned Permanent Lok Adalat accepted the compromise petition without there being any identification proof of the one of the party namely Viveki Devi, the own aunty of the petitioner.

14. He further submits that the basic case of the private respondent was that the land is his ancestral property and by mistake it was recorded by the survey authority in the name of Viveki Devi and her husband Late Bhola Choudhary but the private respondent namely Shashi Bhushan Ojha did not produce even a single chit of paper showing his title.

15. It is argued that the petition for prelitigation Civil Case No. 1/2010, also reveals that the cause of action arose because of action / mistake committed by the survey authority while recording the name in the Khatiyani but the petition did not reveal as to the private respondent ever approached the revenue authority for correction of the survey Khatiyani. The



jurisdiction to correct survey Khatiyan lies in the revenue authority in terms of Mutation Act but admittedly the revenue authority were never approached and the dispute has been illegally settled by the Permanent Lok Adalat.

16. Learned counsel submits that the petitioner is admittedly heir of Mostt. Viveki Devi and her husband late Bhola Choudhary and therefore, she has right to challenge the fraud committed by Shashi Bhushan Ojha. The plaint/complaint filed by the plaintiff in permanent Lok Adalat does not reveal any dispute, which is condition precedent for maintainability of an application in term of Section 22 C of the Legal Services Authority Act.

17. The contesting Respondent No. 7 has filed the counter affidavit and has submitted that Respondent No. 7 owned and possessed the property bearing Khata no. 146, Revisional Survey Plot no. 1800, area 1 acre 76 decimal situated at village Salahpur and the land bearing Khata no. 387, Plot no. 29 Area 0.35 situate at Mansoorpur. The respondent has inherited the said land as ancestral property. However, the said property was recorded wrongly in the name of Viveki Devi and her husband Bhola Choudhary @ Ramadhar Choudhary. It is pertinent to mention here that the Bhola Choudhary @ Ramadhar



Choudhary was the maternal cousin of the Respondent and Viveki Devi was the maternal Bhabhi of the Respondent.

18. It has been stated in the aforesaid counter affidavit that after demise of his uncle Bhola Choudhary @ Ramadhar Choudhary, petitioner can not be the sole legal heir of late Ramadhar Choudhary in accordance with the Hindu Succession Act.

19. He submits that Viveki Devi with the consent of the respondent has sold the land bearing plot no. 29, area 22 decimal to Smt. Ram Dulari Devi through registered sale deed.

The Respondent and his maternal Bhabhi settled the matter in the permanent Lok Adalat after demise of her husband late Bhola Choudhary @ Ramadhar Choudhary regarding wrongly recording of her name and her late husband's name in the Revisional Survey Proceedings relating to ancestral property of the respondent no.-7.

20. It has also been stated that the Lok Adalat proceeding has been conducted properly and, there was no illegality in the final order of the Lok Adalat.

21. I have considered the submission of both the parties.

22. From the records, the first contention of the petitioner is that no written statement has been filed on behalf of Viveki



Devi which was necessary in terms of Section 22 C (3)(1)(A) of the Legal Services Authority Act, 1987. Section 22 C (3) of the Legal Services Authority Act, 1987 reads hereunder:-

“22-C. Cognizance of cases by Permanent Lok Adalat.- (1)

(2)

(3) Where an application is made to a Permanent Lok Adalat under sub-section (1), it-

(a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.”

23. From the records, it appears that no written statement has been filed by Viveki Devi.

24. The contention of the petitioner is that the jurisdiction to correct the Survey Khatiyani lies in the terms of Mutation Act, but the revenue authorities were not approached by the



Respondent No. 7 and the dispute has been shown to be settled in a permanent Lok Adalat. The contention of the learned counsel for the petitioner seems to be correct as two parties cannot get correction done in the Survey Khatiyani in the Permanent Lok Adalat. The power to correct the survey entry is with the authorities and if such a correction is not done by the authorities, the Respondent No. 7 ought to have approached the Civil Court by filing a suit, but without approaching the civil Court, he has misused the provisions of Legal Services Authority Act and has got the order in his favour.

25. In my opinion, the impugned Award dated 27.08.2010 passed by the Permanent Lok Adalat, Muzaffarpur is hereby set aside with liberty to the aggrieved party to approach an appropriate forum/court for correction of the entries in Survey Khatiyani.

26. The petition is, accordingly, allowed.

(Sandeep Kumar, J)

Saif/-

AFR/NAFR	NAFR
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