

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8090 of 2022

1. Ramowtar Lakhotia, Son of Late Chaturbhuj Lakhotia, Partner Shree Mahabir Cold Storage, Hospital Road, P.O. and P.S. Forbesganj, District-Araria.
2. Rajev Kabra, Son of Late Sri Krishan Kabra Partner Shree Mahabir Cold Storage, Hospital Road, P.O. and P.S. Forbesganj, District-Araria.
3. Shree Mahabir Cold Storage, Forbesganj, Hospital Road, P.O. and P.S. Forbesganj, District-Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate-Cum-Collector, Araria.
4. The Additional Collector, Araria.
5. The Deputy Collector Land Reforms, Forbesganj, Araria.
6. The Circle Officer, Forbesganj, Araria.
7. Hemlata Somani through her Power of Attorney Holder Pradeep Kumar Somani Son of Late Surendra Kumar Somani resident of 8th Coral Bay, 4th Seaward Road, Valmiki Nagar, Thiruvannamipur, Chennai-600041.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Jitendra Kishore Verma, Advocate Mr. Ravi Raj, Advocate Mr. Abhay Nath, Advocate Mr. Shreyash Goyal, Advocate
For the State	:	Mr.Sajid Salim Khan (SC25) Mr. W. A. Khan, AC to SC-25
For respondent No.7	:	Mr. R.K. P. Singh, Advocate Mr. S. K. Jha, Advocate Mr. Bal Bhushan Chaudhary, Advocate



CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 24-11-2023

Heard learned counsel for the petitioners, learned counsel for the State, and learned counsel for respondent No.7.

2. The present petition has been filed for setting aside the order dated 14.08.2021 passed in Mutation Appeal No. 56 of 2020-21 by respondent No.5, namely, the Deputy Collector Land Reforms, Forbesganj by which the appellate authority had entertained the appeal against the decision passed by the Circle Officer, Forbisganj in Mutation Case No. 2852 of 2009-10 after lapse of 11 years, particularly, the said decision was affirmed and upheld by the Additional Collector, Araria in Jamabandi Cancellation Case No. 213 of 2018-19.

3. Learned counsel for the petitioners submits that the land under dispute is appertaining to M.S. Khata No. 66, M.S. Plot No. 310, 353 & 91, total area 38 air, situated in Mauza-Bhag Pokhar, Forbesganj Ward No.1 and corresponding C.S. Khata No. 113, C.S. Plot Nos. 32 and 73 and C.S. Khata No.116, C.S. Plot No. 33.

4. Counsel for the petitioners further submits that in the years 1956 to 1957, a scheme was adopted, and in furtherance thereto a cold storage under the name and style of



Shree Mahabir Cold Storage at Forbesganj has been established under a new partnership firm namely, Shree Mahabir Cold Storage on a piece of land including the land in question appertaining to C.S. Khata No. 113, C.S. Plot Nos. 32 and 73, C.S. Khata No. 116, C.S. Plot No. 33 situated at Mauza-Bhagpokhar, Hospital Road, Forbesganj. The said land in dispute were brought in the stock of the firm as contribution of partners who were owners of the property as their investment making it the firm properties after observing all formalities. Subsequently, the concerned firm acquired title thereto in terms of Section 14 of the Indian Partnership Act, 1932 (hereinafter referred to as 'the Act of 1932) and thereafter the two industrial units (one cold storage and one ice factory) were established over the aforesaid lands sometime during 1957 to 1959 after taking loans from Bihar State Financial Corporation. The partners of the aforesaid, firm at that time were the father of respondent No.7, namely, Prayag Chand Periwal, her uncle Hanuman Mal Periwal, and one P.H. Periwal Brothers Private Limited.

5. Learned counsel for the petitioners submits that the loans were secured by virtue of two registered mortgage deeds in favour of the Bihar State Financial Corporation during 1957



to 1959 by mortgaging in total 35 Bigha, 11 Katha and 7.5 dhurs of land which includes the land in question which were shown in the registered mortgage deeds as the asset and property of the firm. Out of two registered mortgage deeds, one is of the year 1957 whereas the another is of the year 1959. The original partnership deed in the name of the predecessor firm namely Prayag Chand Hanuman Mal was of the year 1956 and for the purpose of securing the loans, the original partners Prayag Chand Periwal and Hanuman Mal Periwal had legally transferred the title of the aforesaid lands to petitioner No.3, namely, Shree Mahabir Cold Storage firm. In the mortgage deeds aforesaid it is mentioned that the aforesaid properties are the properties of Shree Mababir Cold Storage firm.

6. Counsel for the petitioners submits that private respondent no.7 has annexed annexures C & D in his counter affidavit which are lease deeds dated 17.06.1982 and 01.01.1983 by which it has been accepted that the suit property is the owned property of Shri Mahabir Cold Storage and it is not the partnership property of Prayag Chand Periwal. He has further drawn the attention of this Court to the agreement to sale dated 29.04.1987 as contained in Annexure-F to the counter affidavit filed on behalf of respondent No.7 by which admission of



petitioners too was there with regard to title and possession of firm Shree Mahabir Cold Storage regarding the property in question.

7. He further submits that according to Section 14 of the Act of 1932, the property of the firm includes, all proprietary rights, title, and interest of the property originally brought into the stock of the firm and acquired by purchase or otherwise by or on behalf of the firm for the purposes of the firm and forms part of the firm property. Counsel for the petitioners further submits that once the property in question, be it movable or immovable was originally brought into the stock of the firm and was mortgaged to BSFC treating it to be firm property, it will be deemed to be the firm property and for that no registered document is required.

8. To substantiate his argument, learned counsel for the petitioners has placed reliance before this Court in a judgment of a Single Judge Bench of the Patna High Court rendered in the case of ***Firm Ram Sahay Mall Rameshwar Vs. Bishwanath Prasad*** reported in ***AIR 1963 Patna 221 (Para-14)***. Further, he has placed reliance on the judgments of the Hon'ble Apex Court rendered in the cases of ***S. V. Chandra Pandian & Ors. Vs. S.V. Sivalinga Nadar And Ors.*** reported



in *(1993) 1 SCC 589 and Addanki Narayanappa & Anr Vs. Bhaskara Krishtappa and 13 Ors.* reported in *1966 AIR 1300* on the point of SEction 14 of the Partnership Act.

9. Learned counsel for the petitioners further submits that the original partners are predecessors-in-interest of private respondent No.7 and one of the partners was Shri Hanuman Mal Periwal who was one of the directors of M/s P.H. Periwal Brothers (P) Ltd. The partners were authorized to enter into and execute the mortgage bond/deed in the capacity of a partner of the said partnership with respect to the firm property and, accordingly, the registered mortgage deeds with regard to said property was executed in favour of BSFC to secure the loan and having derived the advantage of the loan. As such, any partner claiming to be the successor in the interest of the original owners of the property /partners is now estoppel from claiming any interest in the property in question on a personal basis. Particularly, when the mother of respondent No.7 also retired from the firm after taking due shares and due consideration. Thus, the entire family ceased to have any concern with the property, in dispute and cannot be permitted to reopen the issue of title to the property after about more than 60 years.

10. Learned counsel for the petitioners further submits



that petitioner No.1, namely Ramowtar Lakhotia, and petitioner No.2, namely, Rajeev Kabra filed a Mutation Case No.2852 of 2009-10 to get the Jamabandi corrected in the name of the firm and on the basis of which a new Jamabandi being Jamabandi No. 403 was created in the name of Shree Mahabir Cold Storage partner/proprietor Ramowtar Lakhotia and Rajeev Kabra regarding the lands in question having new Khata No. 66, Plot Nos. 310, 353, and 91, and thereafter they started paying and receipts were granted by the State.

11. Learned counsel for the petitioners further submits that in the year 2017-18, respondent No.7, namely, Hemlata Somani, who claimed herself to be the daughter of late Prayag Chand Periwal and his widow Suraj Devi Periwal, represented through her power of attorney holder Pradeep Kumar Somani on the ground that in the partition she was allotted the said disputed plot and, thereafter, she filed an application before the Circle Officer, Forbesganj for cancellation of jamabandi. Subsequently, the Circle Officer forwarded the said application of respondent No.7 to the Additional Collector, Araria after initiating Jamabandi Cancellation Record No. 32/2017-18. On the basis of the recommendation made by the Circle Officer, Araria, a Jamabandi Cancellation Case No. 213 of 2018-19 was initiated,



and vide order dated 30.01.2019, the Additional Collector, Araria rejected the prayer of respondent No.7 for cancellation of Jamabandi No. 403 and dismissed the Jamabandi Cancellation case upholding existing Jamabandi No.403 in favour of the firm. The said order passed by the Additional Collector has not been challenged anywhere till date, as such, according to the petitioners, it acquires finality and is binding upon all the parties in view of the principles of *res-judicata*.

12. Learned counsel for the petitioners further placed reliance on the judgments of the Hon'ble the Apex Court rendered in the cases of ***U. P. State Road Transport Corporation V. State of U.P.*** reported in ***AIR 2005 SC 446, Para 11 and Raj Lakshmi Dasi and Ors.Vs. Banamali Sen & Others.*** reported in ***1953 AIR 33 on page 40.***

13. Counsel for the petitioners further submits that after about lapse of 2 years from the date of the order dated 30.01.2019, the said respondent No.7 had filed a Mutation Appeal No. 56 of 2020-21 before the Deputy Collector Land Reforms, Forbesganj, Araria against the order passed by the Circle Officer, in Mutation Case No. 2852 of 2009-10. The Deputy Collector Land Reforms, Forbesganj, Arari has entertained the said appeal and after the lapse of about 11 years



and totally in gross jurisdictional error, has set aside the order of the Circle Officer passed in Mutation Case No.2852 of 2009-10. He further submits that the order of the Deputy Collector Land Reforms, Forbesganj is non-est, void, and suffering from inherent lack of jurisdiction because as per law, the order under challenge before him had already been decided before the superior officer, i.e. Additional Collector, Araria in Jamabandi Cancellation Case No. 213 of 2018-19 vide order dated 30.01.2019 and in that view of the matter he ought not to entertain the said appeal.

14. He further submits that the Deputy Collector Land Reforms with a *mala fide* intention reserved the judgment on 14.08.2021 in mutation appeal and whereafter from time to time, the petitioners inquired from the office of the DCLR regarding the passing of the order until 24.02.2022 but they were communicated that no order has been passed. Lastly, on 03.03.2022, it was informed to the petitioners that the order had already been passed in the said case on 14.08.2021. Thereafter, the petitioners obtained a certified copy of the order and filed Revision Case No. 06 of 2022 which was subsequently withdrawn in the interest of justice with the liberty to file the revision case afresh after passing of order by the Hon'ble Court,



if required. Hence the present petition.

15. Learned counsel for the State raised a preliminary objection and submitted that the present writ petition has been filed challenging the order passed in mutation appeal and under the statute, the remedy of revision is available under the Bihar Mutation Act, 2011. As such, the writ petition is not maintainable.

16. Learned counsel for respondent No.7 has raised preliminary objection on the maintainability of the writ petition and submits that the writ petition is fit to be dismissed without entering into the controversial facts of this case mainly on two grounds that when there is a statutory remedy available to challenge the impugned order. The writ is not maintainable in the light of the case decided by this Hon'ble Court in the case of ***Surendra Singh Vs. The State of Bihar*** reported in **1990 BBCJ 655 (SB)**. Learned counsel further submits that the writ is not maintainable when the alternative remedy is already available and if any person wants to invoke extraordinary jurisdiction of the Hon'ble High Court then he has to show that the case comes under the exceptional category in the light of the decision rendered in the case of **Than Singh Nathmal Vs. Superintendent of Taxes** reported in **AIR 1964 (SC) 1419** as



well as in the light of the decision rendered in the case of **Assistant Collector of Central Excise Vs. Dunlop India Limited and Ors.** reported in **AIR 1985 (SC) 330**. He further submits that here in the present case, the alternative remedy is available to the petitioners by way of filing statutory revision, therefore, the writ petition is not maintainable and entertainability of the writ petition is nothing but misuse of provision of law and abuse of process of Court.

17. So far as the merit of the present case is concerned, counsel submits that the writ petitioners have obtained order in Mutation Case No. 2852/2009-10, passed by Anchal Adhikari, Forbisganj by fraudulent means after getting the relevant page of Jamabandi Register (Register-II) torn and replacing it by forged and fabricated page showing new Jamabandi No.403. Thereupon, he obtained a rent receipt in respect of the disputed land. He submits that respondent No.7 got information through the Right to Information Act and filed a petition on 08.01.2018 before Anchal Adhikari, Forbisganj vide Annexure-A to supplementary affidavit along with its memo No. 510 dated 17.02.2017 and report dated 15.11.2016 of Karmchari and Circle Inspector which are Annexure-H to the counter affidavit. Counsel submits that the Circle Officer being a



revenue officer of the lowest grade instead of reviewing or recalling the order by which fraudulent Jamabandi No.403 was created referred the matter to the Additional Collector, Araria vide Letter No. 874 dated 03.05.2018 in which he has disclosed that record of Mutation Case No. 2852 of 2009-10 is not available and the basis of mutation is not mentioned in newly created Jamabandi which means that what was the mode of transfer of property by Jamabandi holder in favour of the present writ petitioners had been made by fabricated and fraudulent Jamabandi No.403 in their favour in doubtful manner.

18. He further submits that the Additional Collector, instead of guiding Anchal Adhikari by administrative directions to correct fraudulently created Jamabandi under the wrong notion, proceeded to decide the Jamabandi cancellation case exercising his power under Section 9 of the Bihar Mutation Act, 2011 by registering the Jamabandi Cancellation Case No. 213/2018-19. Counsel further submits that the order passed by the Circle Officer in Mutation Case No. 2852 of 2009-10 sometime during 2009-2010 has not been traced out either by the Circle Officer or by the Additional Collector and without testing the correctness, legality, and validity of a mutation order, alleged to have been passed by the Circle Officer in favour of



writ petitioners, the Additional Collector in a quite arbitrary manner upheld an imaginary undated order which is non-existent and till date it not known that on the basis of which mode of transfer, mutation was allowed in favour of petitioners and on which date. As such, the Additional Collector committed a grave error and acted without jurisdiction in registering and entertaining the Jamabandi Cancellation case.

19. It has been further submitted that respondent No.7 has never filed any application for cancellation of forged and fabricated Jamabandi created fraudulently nor during course of the hearing, she filed any pleading except a few documents before the Additional Collector. As such, the order passed by the Additional Collector is non est in the eye of the law and shall have no binding effect on the parties.

20. In this regard, the counsel submits that the conduct of writ petitioners is also questionable due to the reason that during the pendency of Jamabandi Cancellation Case No.213/2018-19 before the Additional Collector, he has filed CWJC No. 16494 of 2018 on 16.08.2018 in the garb of challenging the virus of the provisions of mutation act but when they succeeded in the order passed by the Additional Collector in their favour, they want to get advantage on that basis in the



present application and deliberately concealed these material facts in the present writ petition. As such, it is fit to be rejected on this ground also. Learned counsel submits that there are a series of decisions in which it has been held that any order obtained by committing fraud can be tested at any stage of litigation particularly in the light of the decision rendered in the case of **Dattatray Nath Pandey Vs. the State of Bihar** reported in **1994 (2) PLJR 612 (Division Bench)**; **Ram Sahni and Ors. Vs. The state of Bihar** reported in **2010 (1) PLJR 499** and in the case of **S.P. Chengalvaraya Naidu v. Jagannath** reported in **AIR 1994 (SC) 853**.

21. Learned counsel further submits that the writ petitioners have first of all committed fraud upon the Circle Officer in getting their name mutated, as Jamabandi No. 399 of the land in dispute was in the name of Prayag Chand Periwal, but after committing fraud and forgery they got their name entered in Jamabandi No.403 in his place, for which no basis is available in the record before any Court or before this Court. He further submits that the petitioners tried to circumvent the passing of the order by the Additional Collector by filing CWJC No. 16494/2018. Thereafter, they filed a Mutation Revision Case No. 6/2022 on 15.03.2022. Thereafter, filed the present



writ petition CWJC No. 8090 of 2022 on 18.05.2022 concealing the story of filing of the previous writ application and in this way, the writ petitioners have also committed fraud upon this Hon'ble Court. He further submits that the creation of Jamabandi NO. 403 in the name of the petitioners in pursuance of the order passed by the Circle Officer, Forbisganj in Mutation Case No. 2852/2009-10 was neither produced before the present Circle Officer nor before the Additional Collector or before the Deputy Collector Land Reforms or before this Hon'ble Court which itself creates serious doubts in the claim of the writ petitioners because the said order was passed behind the back of respondent No.7. Petitioners had not produced any document of transfer or the alleged partnership deed which is apparent from order dated 30.01.2019 (Annexure – 8 of the writ petition).

22. Counsel further submits that application of the new Mutation Act as Bihar Land Mutation Act, 2011 (hereinafter referred to as the 'Act of 2011') does not apply in the present case and hence the Additional Collector should not have exercised his jurisdiction under the new Act for holding the non-existent imaginary order of the Circle Officer acting as a superior officer in administrative capacity and thereby usurped the jurisdiction of the Deputy Collector Land Reforms. He



further submits that under Section 3 of the Act of 2011 different modes of transfer for the purpose of mutation have been prescribed but there is no provision to transfer the immovable property through a partnership deed.

23. He further submits that by the present writ petition, the order dated 14.08.2021 passed by the DCLR in Mutation Appeal No. 56/2020-21 has been challenged whereas there is statutory remedy of appeal already there. In the present writ petition, the petitioner has based their claim for acquiring the disputed property through a so-called partnership agreement dated 01.04.1987 vide Annexure-2 of the writ petition which has been seriously challenged and categorically denied by respondent No-7 in paragraph 9 of the counter affidavit.

24. Counsel further submits that in the present writ petition disputed and highly contested controversial issues of facts are involved including the creation of Jamabandi No. 403 in pursuance of the order passed by the Circle Officer, Forbisganj in Mutation Case No. 2852/2009-10 whose legality, validity and correctness has been affirmed by the Additional Collector in Jamabandi cancellation case instead of testing the said order before the Deputy Collector Land Reforms. The basis of the creation of Jamabandi No.403 in favour of the petitioners



is not available to the petitioners on any early occasion and only in the present writ do they claim the said transfer on the basis of the provision laid down in Section 14 of the Partnership Act.

25. Counsel submits that Schedule C at running page 45 of Annexure-1 of the writ petition, the last three lines of the partnership deed which is an admitted document it would be evident that the disputed property bearing Plot No. 310, 353, and 91 were not transferred to the partnership firm, Mahavir Cold Storage rather C.S Plot No. 23 and 24 of Khata No.156 and CS Plot No. 38 of Khata No.99 total 5 Bigha and 14 Katha were transferred to the cold storage.

26. Learned counsel further submits that from the admitted document i.e. partnership deed, it is clear that out of total area of the land 35 bigha 11 katha 7 1/2 dhur only 5 bigha 14 katha was transferred to the cold storage and in this regard, there is a categorical denial on this point. Counsel for respondent No.7 is relying on a decision rendered in the case of **Ishwari Prasad Jhunjhunwala v. Bihar State Religious Trust Board, Patna** reported in **AIR 1989 Patna 349**. According to which, the question of title to the disputed land cannot be decided by a writ Court. The second point i.e. the property of the partner shall become the property of the



partnership firm and to effect transfer of right, title, and interest under Section 14 of the Partnership Act whether any express consent or agreement is required or not, the respondent No.7 has further relied on a decision rendered in the case of Arjun Kanaji Vs. Santram Kanaji **Vs. Santram Kanaji** reported in **1969 (3) SCC 555, V.N. Sarin Vs. Ajit Kumar Poplai** reported in **AIR 1966 SC 432 and Arun Group Enterprises Limited Vs. Wildrof Restaurant** reported in **2003 (6) SCC 423.**

27. Counsel further submits that the registered partnership deed dated 11.11.1958 (Annexure -B to the counter affidavit) was created among three persons and thereafter two lease deeds were created on 17.06.1982 (Annexure-C to the Counter affidavit) and dated 01.01.1983 (Annexure-D to the Counter Affidavit), but these two lease deeds were not given effect due to the death of Prayag Chand Periwal (Annexure-E to the counter affidavit). The other partner also died and thereby partnership terminated automatically. After the death of Prayag Chand Periwal his interest was inherited by his wife Suraj Devi Periwal and daughter Hemlata Somani but they did not create any partnership in view of the fact that cold storage became defunct and the partnership became non-existent and the lease also expired hence the wife of Prayag Chand Periwal (the



owner) desired to dispose of property and the writ petitioners agreed to purchase the same and in pursuance to which, she executed an agreement for sale on 29.04.1987 but petitioners failed to fulfill the terms and conditions of the agreement and hence sale could not be materialized. Subsequently, Suraj Devi Periwal also died on 15.11.2013 and after her death, in order to grab the property of respondent No.7, the petitioners started hatching a conspiracy and in this regard, they committed a series of acts of fraud and forgery which has been still continuing.

28. It has also been mentioned by counsel for respondent No.7 that petitioner no. 1 is well aware of those facts and only due to this reason he had purchased the land from said P.C. Periwal vide two separate deeds of sale one in his own name and other in the name of his brother Krishna Awatar Lakhotia (Annexure -C and D to the supplementary affidavit).

29. Counsel further submits that the petitioners have challenged the order dated 14.08.2021 passed by the Deputy Collector Land Reforms in Mutation Appeal No. 56 of 2020-21 challenging the order passed by the Circle Officer, Forbisganj in Mutation Case No. 2852 of 2009-10 on the basis of Jamabandi No. 403 was created without any basis and with a view to sustain the illegal and non-jurisdiction order dated



30.01.2019 passed by the Additional Collector, in Jamabandi Case No. 213/2018-19. Counsel further submits that the so-called order passed by the Circle Officer in Mutation Case No. 2852/2009-10 by virtue of which Jamabandi No.403 was created canceling the pre-existing Jamabandi No.399, which was running in the name of Prayag Chand Periwai since last 30 years or more is absolutely illegal and basically by cancelling the old Jamabandi, the petitioners got their name mutated without any legal basis and in this regard counsel submits that a pre-existing Jamabandi in the name of rightful owner and title holder cannot be cancelled in a summary proceeding by any Revenue Officer and the only forum available to the State for cancellation of Jamabandi is restore to civil Court as decided in the case of **Maya Devi Vs. The State of Bihar** reported in **2014 (3) PLJR 584**.

30. Counsel further submits that the admitted owner of the property Prayag Chand Periwai died on 06.01.1983. The alleged cold storage is defunct since before 1987 after his death, it was very difficult for old lady Suraj Devi Periwai to reside in Forbisganj alone. Hence, she migrated from Forbisganj to Chennai till her death on 15.11.2013 with her daughter Hem Lata Somani who was also not residing at Forbisganj at any



point in time and taking benefit of the situation, the petitioners are trying to grab the entire property. As such, this writ petition either may not be entertained, and if entertained an appropriate order may be passed with a view to save the property of the heirs of admitted owner Prayag Chand Periwal who are represented by respondent No.7 or may pass any appropriate order which your lordship may deem fit or appropriate.

31. So far as the question of preliminary objection is concerned, after going through the case of *Sureindra Singh (supra)*; *Than Singh (supra)* and *Collector Excise (supra)* wherein it has been held that when there is statutory remedy available in mutation appeal, writ is not maintainable as well as it has also been held that invoking extraordinary jurisdiction of High Court cannot be permitted to get a shortcut remedy or circumvent the statutory provision by filing a writ, unless it is shown that writ comes under exceptional category, this Court is of the view that in the present case an extraordinary situation occurred in which the raiyati property of individuals has been transferred in the name of a firm without any legal basis and by virtue of transferring the individual property in the name of firm and creation of records of right there is every likelihood that the parties shall create a third party



right, interest and creation of 3rd party right shall further create multiple litigations which shall be resulted into the series of civil and criminal cases. Therefore, with a view to stop the further complications, this Court is of the view that it is an extraordinary circumstances where fraud has been committed and it is necessary to be tested by the Court of competent jurisdiction.

32. Upon going through the pleadings of the parties and hearing the arguments, it transpires to this Court that the property in dispute, in the present case, is admittedly M.S. Khata No. 66, M.S. P.N. 310, 353, and 91 total area 38 aar for which the basic cause of action has arisen after the order passed in Mutation Case No. 2852/2009-10 passed by the Circle Officer, Forbisganj in favour of petitioners being the partner of a firm of which the petitioners were alleged to be the party. There is one document on which both the petitioners and respondents are relying i.e. Annexure-1, which is a mortgage deed created by the initial partners namely, Hanuman Mall Periwal, Prayag Chand Periwal, and Ms. P.H. Periwal Brothers (P) Limited with Bihar State Financial Corporation before whom certain properties were mortgaged and the said mortgage deed was prepared in 1959 by the first party to take money to run the cold storage.

33. The contention made by the petitioners is that



the said firm has put the property for taking loan for the firm and in this way, according to section 14 of the Partnership Act, 1932 the entire property belongs to the firm and when vide Annexures C and D of the counter affidavit, the said cold storage, in partnership, entered into an agreement with another firm meaning thereby all right, title and interest in the property has now come in favour of the new partnership firm and on the basis of the same and applying the principles laid down under Section 14 of the Partnership Act, 1932, the petitioners' firm being the leasee became entitled to get the property in their name and for that they have taken steps and properties came in their name in the records of right, but upon perusal of the records particularly Annexure-1 to the writ petition itself, it is crystal clear to this Court that the original partners of the firm at the time of taking mortgage had categorically mentioned that which properties have been transferred to the Cold Storage and the relevant statement, mentioned in Schedule C, Page-45 of the writ petition (Annexure-1) as follows :-

“The last item under Khata No.156 & 99 total area 5 Bigha, 14 Katha valued Rs.737/- marked as Plot Nos. 23, 24 and 38 have been transferred to Cold Storage on 31.08.59 by Prayagchand Hanuman Mall.”

Whereas it further transpires to this Court that the



dispute in the present case relates to landed property situated in M.S. Khata No. 66, M.S. P.N. 310, 353, and 91 was not transferred to a partnership firm. Therefore, in view of this Court, there was no express consent given by the owner of the property to transfer the same into the partnership firm.

34. One more document on which this Court has relied i.e. Annexure-E which is an enquiry report submitted by the official of the Nagar Parishad, Forbisganj dated 21.09.2022 by which it transpires that Jamabandi record Register-II that C.S. Khata No. 116, MS Khata No. 66 is recorded in the name of Prayag Chand Periwal and Hanuman Mall Periwal, son of Jodh Mall Periwal in which M.S. Khata No.66, Plot No. 310, 353 total area 36 air and Plot No. 91 area 2 air, total area 38 air for which Jamabandi No. 399/403 has been opened. The said Jamabandi No.399 was cut and new Jamabandi No. 399/403 was recorded in the name of Mahavir Cold Storage but the name of proprietor Ramowtar Lakhotia and Rajeev Kabra has been written in different handwriting whereas the mutation case was recorded as Mutation Case No. 2852 of 2009-10 but the record of said mutation case is not available either in the record or the record room nor to the person who has submitted enquiry report. It has also transpired to the person that the Jamabandi created by



them is doubtful and *prima facie* the page of Jamabandi No. 399/403 and the page of other Jamabandi are different, but this aspect has not been considered by the authorities.

35. In the light of the judgment decided in the case of *Arju Kanoji (supra); V. N. Sarin (supra) and ARM Group Enterprises Limited (supra)*, it transpires to this Court that it is mandatory to prove by an express agreement that property of the partner shall become the property of partnership firm to effect transfer of right, title and interest under Section 14 of Partnership Act, 1932 otherwise the property shall not vest in the partnership firm.

36. Here in the present case, there is no such express agreement about the present property to be transferred to the partnership firm rather the express provisions are for different properties which is mentioned in Schedule-C, as contained in Annexure- 1 of the writ petition and it is due to this reason, the rulings on which the petitioners have relied namely *Firm Ram Sahay Mall Rameshwar (supra); S. V. Chandra Pandian & Ors. (supra) and Addanki Narayanappa & Anr. (supra)* are not applicable in the present facts and circumstances of the case similarly the question of *res judicata* as decided in *U. P. State Road Transport Corporation (supra) and Raj*



Lakshmi Dasi and Ors.(supra) are also not applicable as question of *res judicata* in the present case shall not apply due to the reason that the basis of the dispute i.e. creation of Jamabandi from the name of proprietor to the partner particularly, in the light of report of Annexure- E and its non-consideration and non-availability of the record of this mutation case namely Mutation Case No. 2852/2009-10, itself creates doubt in the mind of the Court that some fraudulent activities have been made on the basis of which 30 years old Jamabandi has been disturbed, forged Jamabandi has been created and mutation record has been transferred from the name of proprietorship to the name of partnership which can be decided only after complete adjudication by the competent civil Court.

37. It has been pleaded before this Court by the petitioners that the creation of said Jamabandi was challenged in Jamabandi Cancellation Case No. 213/2018-19 in which the existence of Jamabandi No. 403 in favour of the firm has been upheld.

38. It transpires to this Court that at the time of hearing of Mutation Case No. 2852 of 2009-10, neither the original owners nor their heirs or representatives were heard nor any opportunity of hearing being provided to them and old



created Jamabandi in the year 1957-58 had been disturbed by the Circle Officer in the year 2009-10. It creates doubt in the mind of the Court that only by virtue of a provision made in Section 14 of the Partnership Act, new Jamabandi No. 403 has been created by disturbing the 30 years old Jamabandi No. 399. Due to this reason, this Court restrain himself to interfere in the order under challenge and directs the petitioners to file a title suit for declaration of right, title and interest in their favour relating to the property in question and then only proceed further.

39. It is very much clear that the creation of Jamabandi shall not create a title in favour of anyone but it is necessary for this Court to look into this matter also that by virtue of the creation of Jamabandi no one shall be permitted to create 3rd party right till appropriate title may not be decided.

40. It is due to this reason, this Court hereby directs both the petitioners and respondent No.7 that till a decision from a competent civil about the right, title and interest on the said property comes, no party can create any third party right or interest in favour of anyone and the officials are directed that the *status quo* as maintained in the record of right shall continue till the finality of the decision made in the title suit or without



taking permission from the competent Civil Court, where matters relating to tile shall be filed.

41. With the above observation and direction, the writ petition stands disposed of.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	28/11/2023
Transmission Date	NA

