

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.551 of 2019

In
Civil Writ Jurisdiction Case No.20635 of 2014

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1. Gajendra Pratap Singh, aged about 58 years (Male) Son of Late Rajendra Pratap Singh Resident of Krishna Niwas, Bulla Sahid Road, Mohalla- Lakhibag, P.S.- Mufassil, District- Gaya
 2. (a) Sanyukta Singh aged about 63 years (female) wife of Late Kitendra Pratap Singh @ Kritendra Pratap Singh.
(b) Mridula Pratap Singh aged about 40 years (Female) daughter of Late Kitendra Pratap Singh @ Kritendra Pratap Singh.
(c) Vishalendra Pratap Singh aged about 37 years (Male) son of late Kitendra Pratap Singh @ Kritendra Pratap Singh.
(d) Kaushalendra Pratap Singh aged about 36 years (Male) son of late Kitendra Pratap Singh @ Kritendra Pratap Singh.

All appellant No. 2(a) to 2(d) are resident of Krishna Niwas, Bulla Sahid Road, Mohalla- Lakhibag, P.S.- Mufassil, District- Gaya at present residing at 302, Mamta Palace, Kitab Bhawan Lane S.K. Puri, Boring Road, Near- A.N. College, Patna, District- Patna.

3. Devendra Pratap Singh aged about 65 years (Male), Son of Late Rajendra Pratap Singh Resident of Kapasia House, First Floor, Buniyadganj, District- Gaya at present residing at Sukiyake, Village- Kharati, Gaya- Dobhi Road, Near- D.A.V. School, Gaya, District- Gaya.

... .. Appellant/s

Versus

1. The State of Bihar through the District Magistrate, Gaya.
2. The District Magistrate Gaya.
3. The Additional Collector Gaya.
4. The Deputy Collector Land Reforms Gaya.
5. The Circle Officer Manpur, District- Gaya.
6. Sushma Devi @ Sushma Singh Wife of Murli Manohar Singh, Daughter of Rajendra Pratap Singh Resident of Mohalla- Mahavir Ashthan Manpur, P.S.- Muffasil, District- Gaya, at present residing at House No.58, Patliputra Colony, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Hemendra Pd. Singh, Sr. Adv. Mr. Shailesh Kumar, Adv.
For the State	:	Mr. Md. Khurshid Alam (AAG12)
For the Resp. No.6	:	Mr. Chitranjan Sinha, Sr. Adv. Mr. Sanjeet Kumar, Adv.



**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 03-04-2023

Re.: I.A. No.2 of 2020

Heard Mr. Hemendra Prasad Singh, learned senior advocate in I.A. No. 2 of 2020 which has been filed for substituting the appellant no.2, namely, Kitendra Pratap Singh @ Kritendra Pratap Singh, who died during the pendency of this appeal.

A prayer has been made in the aforementioned interlocutory application that late Kitendra Pratap Singh @ Kritendra Pratap Singh be substituted with his wife Sanyukta Singh and three children, namely, Mridula Pratap Singh, Vishalendra Pratap Singh and Kaushalendra Pratap Singh.

Mr. Chitranjan Sinha, learned senior advocate appearing for the respondent No.6, has no objection to the aforementioned substitution.

Thus, the appellant no.2/late Kitendra Pratap



Singh @ Kritendra Pratap Singh stands substituted by his wife Sanyukta Singh and three children, namely, Mridula Pratap Singh, Vishalendra Pratap Singh and Kaushalendra Pratap Singh respectively.

A fresh Memo of parties shall be filed by the appellants by tomorrow. The Registry shall also amend the cause title accordingly immediately after receiving the fresh memo of parties.

The I.A. No. 2 of 2020 stands allowed.

Mr. Singh has further informed this Court that the appellant no.4/Smt. Krishna Devi has also died now but, all her children and heirs are parties in this appeal. There would be no necessity for substituting appellant no.4. A request, therefore, has been made for expunging the name of appellant no.4.

Mr. Chitranjan Sinha, however, objects to it by suggesting that a formal application is required to be filed and that according to the information provided to him by his instructing counsel, another sister of the



appellants/daughter of late appellant no.4 survives, but she has not been made party which would be necessary in this case.

Both the objections have been noted only to be rejected for the reasons that when a request is being made for expunging the name of appellant no.4, there is no need to file any formal application especially when all her heirs are parties in this appeal.

The issue of another daughter of late Krishna Devi being alive who could also have interest in this subject property is only conjectural and is not needed to be impleaded as it is the special case of respondent no.6 that she had obtained Patta from the ex-jamindar, which does not talk about such Patta having been issued in the name of another sister.

Even otherwise, the instructing advocate to Mr. Hemendra Pd. Singh has submitted that the other daughter of late Krishna Devi has also died.

Thus, the objections raised by respondent no.6



are overruled.

Let the name of appellant no.4/Smt. Krishna Devi be expunged from the cause title of this appeal.

The Office is directed to do the needful.

On merits, we have heard Mr. Hemendra Prasad Singh for the appellants and Mr. Chitranjan Sinha for the respondent No.6.

Vide order dated 10.11.2022, this Court had noticed certain facts which are, in the opinion of this Court, basic facts on which the result of this appeal shall hinge.

The appellants are the own brothers who have contested the case against their own sister/respondent no.6.

The land in question was mutated in the name of the appellants by the Circle Officer in the Camp court, which was put to challenge by respondent no.6 before the Deputy Collector, Land Reforms. The challenge was sustained and the matter was remanded to the Circle



Officer again to afford hearing to all the parties before passing an order of mutation. The remand order passed by the D.C.L.R., referred to above, was questioned by the appellants by way of revision. In this instance, the revision petition was allowed and the order passed by the Circle Officer, mutating the name of the appellants was restored. It was only thereafter that the respondent no.6 had approached the Bihar Land Tribunal but she did not succeed.

Pursuant to this, the matter came before the learned Single Judge who, on finding from the records that the provisions contained under Section 12 and 14 of the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973 was not followed in letter and spirit, set aside the order passed by the Tribunal. However, the matter was not remanded to the Circle Officer for deciding the issue afresh.

Be it noted that the learned Single Judge had found that surreptitiously, a petition for mutation was



filed and without giving any date on such application, the matter was decided behind the back of respondent no.6, necessitating interference even at such late stage of litigation.

Be that as it may, the tenor of the order passed by the learned Single Judge does not indicate that he had meant that the land should remain mutated in the name of respondent no.6. If for the reason of surreptitious handling of the mutation petition by the appellants resulted in setting aside of such mutation order, the same applied for respondent no.6 and the matter had to be, perforce, decided afresh by the Circle Officer.

Mr. Hemendra Prasad Singh submits that what is sauce for the goose is sauce for the gander and therefore, the order passed by the learned Single Judge, to that extent, is capable of being misunderstood.

By way of rejoinder to the counter affidavit, Mr. Singh has also stated that the subject parcel of land is



being sold off by respondent no.6 and after the acquisition of some part of the land, the respondent no.6 has been appropriating compensation for the said land and the representations and complaints preferred by the appellants before the District Magistrate of the concerned District has gone totally unheeded.

Mr. Chitranjan Sinha for respondent no.6 however contends that he has no information about any sale of land after the order was passed by the learned Single Judge or that the property was acquired and she has obtained compensation for the same. Mr. Sinha further submits that if a Title Suit is pending, mutation order ought not to be passed by the Circle officer, who should in all fairness, await the verdict of the Court in the Title Suit.

In support of the aforesaid contention, he has referred to sub-Clause 12 of Section 6 of the Bihar Land Mutation Act, 2011 which reads as hereunder:-

"Mutation of a holding or a part



thereof shall not be allowed in cases in which title suit with regard to that holding or a part thereof is pending in the Competent Court.”

Be it also noted that the appellants have preferred Title Suit which is still pending whereas the Title Suit preferred by the respondent no.6 has been dismissed for default but the same has not yet been restored.

After having giving a thoughtful consideration over the matter, we are of the view that on the learned Single Judge finding that the mutation order passed in the favour of the appellants was not correct, the matter was required to be remanded to the Circle Officer for a fresh determination.

To that extent, we modify the order of the learned Single Judge and direct that the parties shall appear before the Circle Officer for the needful. The Circle Officer would abide by the law in that regard.

It is further directed that in the meantime, till a



final decision is arrived at in the Title Suit, *status-quo* shall be maintained, but no part of the subject property shall be alienated by anyone of the parties.

In case of any breach of this direction, the parties would be at liberty to bring the matter before the Competent Civil Court trying the Title Suit of the appellants. Any Jamabandi created in the name of the respondent no.6 after the order passed by the learned Single Judge shall remain inoperative till the final decision. In that case, it is also directed that the Trial Court in seisin of the Title Suit preferred by the appellants shall be disposed of expeditiously and in the event of the appellants delaying the disposal of the Title Suit, the respondent no.6 shall have the liberty to bring it to the notice of the competent Civil Court.

This Court further directs that till finally Jamabandi is created in favour of either of the parties, the concerned District Magistrate shall not hereafter release any payment towards compensation for



acquisition of the property, if it all it has been acquired.

The appeal stands disposed of accordingly.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
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