

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23968 of 2018

1. Shashi Nath Pandey @ Shashi Kant Pandey and Anr Son of Late Chandrama Pandey.
2. Ram Kumar Pandey @ Babul Pandey Son of Shashi Nath Pandey @ Shashi Kant Pandey. Both Resident of Village- Barki Nainijore, P. S.- Nainijore, District- Bhojpur Presently Residing at Village- Babhangawan, P. O.- Gundi, P. S.- Krishnagarh, District- Bhojpur Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Patna Division, Patna
3. The District Magistrate, Bhojpur at Ara
4. The Deputy Collector Land Reforms , Sadar Ara, Dist.-Bhojpur
5. The Circle Officer, Gundi, Dist.-Bhojpur
6. Satendra Kumar Tiwary Son of Ram Gopal Tiwary Resident of Village- Babhangawan, P.O. Gundi, P.S. Parhara, Dist.-Bhojpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dhanendra Chaubey, Adv.
For the State/s	:	Mr. Mukul Prasad, AC to GP-18
For the Resp. No.6	:	Mr. A.B., Ojha, Sr. Adv.
	:	Mr. Md. Ataul Haque, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 27-07-2023

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

2. The present writ petition has been filed for setting aside the order dated 24.10.2018 passed by Bihar Land Tribunal in B.L.T. Case No. 292 of 2014 and also to set aside the order dated 03.10.2013 / 13.01.2014 passed by the Commissioner, Patna Division in L.D. Appeal No. 399 of 2013 and further for

setting aside the order dated 21.03.2013 passed by the L.R.D.C. in L.D. Case No. 137 of 2012-13.

3. Counsel for the petitioners has raised one legal issue in this case i.e., entertainment of his case under Section 9 of the Bihar Land Disputes Resolution Act, 2009 by the L.R.D.C. is itself bad in law as he has no jurisdiction to decide this dispute.

4. Counsel for the petitioners submits that the petitioners are the persons to whom the land in dispute has been allotted through a Will and for probate of the Will, he has filed Probate Case no.- 37 of 1997. The contest has been filed in probate case and as such, the said probate case has been converted into Title Suit No. 01 of 2000. Counsel also submits that during pendency of the said title suit (converted from probate case), the private respondent No.6 has purchased the said land by virtue of sale deed dated 23.01.2001 from one Most. Bela Kuer and Smt. Lilawati Devi. Counsel himself admits in his pleadings that the said Bela Kuer is wife of one Ramdhayan Upadhyay and Lilawati Devi is daughter of Ramdhayan Upadhyay. As such, he admits that respondent No.6 is the purchaser of the property from the heir of Ramdhayan Upadhyay who is admittedly, the decendent of Bishwas

Upadhyay who is the common ancestor of Ramdhar Upadhyay whose daughter has created certain right in the land in dispute in favour of the petitioners. Counsel submits that the D.C.L.R. in its order dated 21.03.2013 has decided the title for which he is not competent, only Civil Court can decide the title.

5. Counsel further submits that after being aggrieved from the order passed by the D.C.L.R., the petitioners preferred appeal before the Divisional Commissioner and the Divisional Commissioner has also passed the order against the petitioners. Upon rejection of the appellate order, the petitioners have challenged the said order before the Bihar Land Tribunal in B.L.T. Case No. 292 of 2014. The tribunal has also dismissed the B.L.T. case of the petitioners holding that probate case filed by the petitioners is yet to be decided whereas O.P. No.2 got the sale deed registered and created Jamabandi in his favour. It has been held that admittedly, the probate case is still pending and no advantage accrued to the petitioners during pendency of the probate case. It has also been decided that since the petitioners have not challenged the registered sale deed executed by the second wife and daughter of Ramdhayan Upadhyay who is admittedly, the heirs of the common ancestor of Bishwas Upadhyay before any competent Civil Court by

bringing a specific and categorical suit to this effect. It has also been acknowledged by the B.L.T. that Jamabandi has been created in favour of the vendee and subsequently the rent receipt was issued. Finally, the said B.L.T. case was decided against the present petitioners and being aggrieved with the said order, the petitioners have preferred the present writ petition.

6. Counsel for the State submits that this writ petition is not maintainable due to the reason that the title has not been decided rather entries in the records of right has been made. There is only discussion about the title in all the three Courts Below.

7. Learned Senior counsel for the private respondent No.6 submits that the entire claim of the petitioners is based by virtue of a Will which was pending till disposal of B.L.T. Case, but after rejection of the case of the petitioners before the B.L.T. case, the probate case was decided and it was held that Will is good but counsel submits that the order passed in Title Probate Case No. 01 of 2000 dated 28.01.2022 has been annexed by the petitioners themselves.

8. Learned senior counsel further submits that the internal page-14 of the judgment itself indicates that at the time of deciding this probate case, Court has looked into the question

about validity of the Will only, but it has not been tested that whether the said Sona Kuer who has executed the Will in favour of the petitioners, has actually right, title and interest in the property of Bishwas Upadhyay or not; and it is necessary to be tested before the Court of competent jurisdiction.

9. Learned senior counsel further submits that even if, this Will which has been probated in favour of the petitioners, shall not help the petitioners in any manner. Counsel also submits that the said Title Probate Case No. 01 of 2000 may become final but it has not acquired finality and it is still under challenge before this Hon'ble Court being F.A. No. 25 of 2022.

10. After going through the pleadings and hearing the argument of all the parties on the point of jurisdictional error raised by the counsel for the petitioners that the Court of D.C.L.R. has no jurisdiction to pass any order deciding the title. This Court finds that in the operative part, title has not been decided rather discussion has been made on the title but all the three Courts are well aware that they are not touching the title. As such, the preliminary question raised by the counsel for the petitioners has no subsistence in the eyes of law. It is clear that petitioners' right has been created by virtue of Will on the one hand. Right of respondent No.6 has been created by virtue of the

registered sale deed by wife and daughters of Ramdhyan Upadhyay. Valid title holder and the said registered sale deed have nowhere challenged before any court. Respondent's right shall lie definitely on a higher footing in comparison to right to the petitioners who are claiming by virtue of right on the basis of probate case which has been still under dispute due to pendency of first appeal and not acquired finality.

11. In this background, this Court is of the view that the there is no need of interference in the order dated 24.10.2018 passed by the B.L.T. in B.L.T. Case No. 292 of 2014 and hence, this writ application is hereby dismissed.

(Dr. Anshuman, J.)

prakashmani/-

AFR/NAFR	NAFR
CAV DATE	NA
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