

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1671 of 2018

In

Civil Writ Jurisdiction Case No.18080 of 2015

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Kamla Devi, Wife of Sri Keshav Prasad Singh @ Lalan Singh, resident of Village- Munna Chak, P.S.- Patrakar Nagar, Kankarbagh, District- Patna.

... .. Appellant/s

Versus

1. The State Of Bihar, through District Magistrate, Patna.
2. The Additional Collector Land Reforms, Patna Sadar.
3. The District Collector Land Reforms, Patna Sadar.
4. The Circle Officer, Patna Sadar.
5. Smt. Shobha Devi, daughter of Sri Rahuwar Mahto @ Raguwar Singh, Wife of Sri Jagdish Prasad, resident of Village- Shobhi Dumra, P.S.- Ara Muffasil, District- Bhojpur at presently residing at Village- Benbaliya, P.S.- Bihian, District- Bhojpur.
6. Smt. Manju Devi, daughter of Sri Raghuwar Mahto @ Raghuwar Sigh, Wife of Pawan Kumar Singh, resident of Village Shobhi Dumra, P.S.- Ara Muffasil, District- Bhojpur at presently residing at Village- Kante, P.S.- Brahampur, District- Buxar.
7. Smt. Ranju Devi, daughter of Sri Raghuwar Mahto @ Raghuwar Sigh, Wife of Anjit Mahto, resident of Village- Shobhi Dumra, P.S.- Ara Muffasil, District- Bhojpur at presently residing at Village- Darhar, P.S.- Krishna Braham Muffasil, District- Buxar.
8. Shiv Datt Mahto, Son of Ram Prit Mahto, resident of Mohalla- Saguna Danapur, P.S.- Danapur, District- Patna.
9. Sachhidanand Mahto Son of Late Sheo Prasad Mahto, resident of Mohalla- Purvi Nand Gola, New Bangalo of naga Baba, P.O.- Madho Mills (Malsalami), P.S.- Malsalami, Patna- City, District- Patna.
10. Shiv Lakhan Mahto Son of Late Sheo Prasad Mahto, R/o Mohalla- Purvi Nand Gola, New Bangalo of Naga Baba, P.O.- Madho Mills (Malsalami), P.S.- Malsalami, Patna City, District- Patna.
11. Baldeo Mahto, Son of Late Sheo Prasad Mahto, R/o Mohalla- Purvi Nand Gola, New Bangalo of Naga Baba, P.O.- Madho Mills (Malsalami), P.S.- Malsalami, Patna City, District- Patna.
12. Vinod Mahto Son of Late Sheo Prasad Mahto, R/o Mohalla- Purvi Nand Gola, New Bangalo of Naga Baba, P.O.- Madho Mills (Malsalami), P.S.- Malsalami, Patna City, District- Patna.
13. Pramod Mahto, Son of Late Sheo Prasad Mahto, R/o Mohalla- Purvi Nand Gola, New Bangalo of Naga Baba, P.O.- Madho Mills (Malsalami), P.S.-



Malsalami, Patna City, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Bidhanesh Mishra, Advocate Ms. Tanuja Kumari Mishra, Advocate
For the Respondent/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Sunil Kumar, Advocate Mr. Alexander Ashok, Advocate
For the State	:	Mr. Majid Mahboob Khan, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT**

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-07-2023

The issue revolves around a family dispute, as to the ownership with respect to the property which belongs to one Prema Mahto.

2. Prema Mahto had four daughters, namely, Somaria Devi, Rajpatia Devi, Dhanpatia Devi and Rajiya Devi. Kamla Devi is the grand-daughter of Dhanpatia Devi, who asserted that she had received an oral gift from her maternal grandmother, the wife of Prema Mahto. The said Kamla Devi is the appellant in the present case.

3. The appellant filed a mutation case and obtained Annexure-1 order dated 02.04.2005, in her favour which is produced in the writ petition. While matters stood thus, Rajpatia



Devi and other legal heirs of Prema Mahto filed a Mutation Case No. 458/2008-2009 for recording the names of all the four daughters of Prema Mahto in the Record of Rights with regard to the land standing in the name of Prema Mahto. The Circle Officer, Patna Sadar rejected the petition on 13.07.2008. A Mutation Appeal No. 26/2008-2009 was filed before the Deputy Collector Land Reforms (DCLR), Patna Sadar, who by order dated 16.07.2009 reversed the order of the Circle Officer, Patna Sadar and directed the names of all the four daughters of Prema Mahto to be shown in the Record of Rights with regard to the lands recorded in the name of Prema Mahto. Kamla Devi, the appellant herein, filed a Mutation Revision Case No. 27/2009-10 before the Additional Collector, Patna. The Additional Collector, Patna noticed Annexure-1, but dismissed the revision of the appellant vide order dated 28.08.2014 against which the appellant filed BLT Case No. 822 of 2014, wherein the learned Member-Administrative held that the land recorded in the name of Kamla Devi was on the basis of an oral gift deed by her maternal grandmother and hence, the recording of names of all the daughters was improper. Against the order in BLT Case, the other legal heirs had filed the above writ petition.

4. The learned Single Judge found that there was no



partition by metes and bounds during the lifetime of Prema Mahto and even after his death, amongst his widow and four daughters. The widow of Prema Mahto was only entitled to get a share of the land of Prema Mahto, equal to that of his daughters, especially in the absence of any evidence about the partition of the property. There is hence no question of an oral gift being sustained was the finding.

5. We heard learned Senior Counsel appearing for the appellant and also the learned Senior Counsel appearing for the respondents.

6. Annexure-1 was issued long prior to the proceedings, which is not challenged by anyone. However, the learned Senior Counsel appearing for the respondents submits that the mutation carried out, on the basis of an oral gift, without admitting the oral gift as such, would be improper going by Section 6(9) of the Bihar Land Mutation Act, 2011, which prohibits any mutation to be carried out without a registered deed. It is also pertinent that in the proceedings initiated before the Land Tribunal, by the appellant herein, one of the respondents died. There was no substitution made of the said respondent. It is also seen that all the legal heirs were not impleaded before the Land Tribunal.



7. In the above circumstances, the order passed by the Land Tribunal is *non est* in law. The only option available to us is to direct the Land Tribunal to consider the issue afresh after impleading all the legal heirs.

8. We find no reason to interfere with the order of the learned Single Judge insofar as the finding on Section 6(9) of the Bihar Land Mutation Act, 2011, which reads as under;

(9) Mutation claimed on the basis of transfer through sale-purchase, gift or exchange, shall not be allowed unless it is registered.

9. The admitted case, of the appellant that, she has been issued with Annexure-1 based on an oral gift, cannot stand the test of law. However, we find that the order passed by the Land Tribunal is *non est* in law, especially since the legal heirs were not impleaded. The BLT Case No. 822 of 2014 shall stand restored before the Land Tribunal. The parties shall appear before the Land Tribunal on 21.08.2023 on which date, if any further evidence is required, the Land Tribunal shall grant further time, if it is permitted under the rules of procedure and decide the case in accordance with law. The Land Tribunal shall ensure that all the parties interested in the land, including the legal heirs of any of the original claimants under Prema Mahto are impleaded.



10. The LPA stands partly allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.08.2023
Transmission Date	

