

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.184 of 2023

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1. Dudheshwar Pandey Son of Late Sadhu Sharan Pandey Resident of Village and P.O.- Kanddap, P.S.- Gaurichak, District- Patna.
 2. Gupteshwer Pandey, Son of Late Sadhu Sharan Pandey Resident of Village and P.O.- Kanddap, P.S.- Gaurichak, District- Patna.
 3. Chandan Kumar, Son of Late Dhaneshwar Pandey Resident of Village and P.O.- Kanddap, P.S.- Gaurichak, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The Commissioner, Patna Division, Patna.
3. The Collector cum District Magistrate, Patna.
4. The Deputy Collector Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Sampatchak Block, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Pandey, Adv.
For the Intervener	:	Mr. R.K. Sinha No.2, Adv.
For the Respondent/s	:	Mr. W.A. Khan (A.C. to S.C. 25)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 19-06-2023 1. Counsel for the petitioners, counsel for the State and counsel for the Intervenor are present.

2. Counsel for the petitioners submits that the present writ application has been filed for directing the Respondent no.5, i.e. the Circle Officer, Sampatchak Block, Patna to issue revenue receipt in favour of the petitioner in compliance of its own order dated 24.01.2017 passed in Mutation Case No. 850/2 of 2012-13.

3. Counsel for the petitioners submits that all the petitioners are descendants of one Sadhu Sharan Pandey, son of

Braj Bhushan Pandey, who got mutated his land bearing Mutation Case No.733/09 of 1995-96 vide order dated 31.08.1995, by virtue of partition in the family. Counsel for the petitioner submits that since 1995 onwards, the name of the father of the petitioners was going on in Register-2. He submits that after death of Sadhu Sharan Pandey, partition took place among the three brothers of Dhaneshwar Pandey and with consent the partition took place by virtue of Annexure-6, on a non-judicial stamp, thereafter, they applied to mutate their names on the lands, which were continuing in the Records of Rights in the name of their father i.e. late Sadhu Sharan Pandey and by virtue of Annexure-7, page 72 the name of the petitioners were mutated in the records of rights and rent were issued in their names vide Annexure-8.

4. Counsel for the petitioners further submits that one stranger to the family, namely Mahesh Pandey, showing himself as son of Madho Sharan Pandey (Cousin brother of Sadhu Sharan Pandey) filed a Mutation Appeal no. 27 of 2014-15 and in the said Mutation Appeal final order was passed after hearing the petitioners, in which the Mutation order passed in favour of petitioners was set-aside and the matter was remanded back to the Circle Officer to pass order afresh after hearing all the

petitioners and upon physical inspection of the land in question. The said order in Mutation Appeal has been passed on 11.07.2015 by D.C.L.R., Patna Sadar.

5. In compliance of the said order, the Circle Officer, Sampatchak Block, Patna started fresh hearing in Mutation Case No. 850/2 of 2012-13, arising out of Mutation Appeal no. 27 of 2014-15. In the said case, final order was passed on 24.01.2017, in which Circle Officer, Sampatchak Block, Patna held that the question of Title can be decided by the competent Civil Court and the *Jamabandhi*, the Mutation Case and order passed in Mutation Case No.850/2 of 2012-13 were set-aside but *Jamabandhi* no. 18, 19, 28 and 74 were directed to be retained in the name of Madho Sharan Pandey and Sadhu Sharan Pandey. With this direction the proceeding of the case was dropped. Counsel for the petitioners submits that the said Mahesh Kumar Pandey has preferred a Title Partition Suit No. 1933 of 2014 before Sub-Judge-6th, Patna which was rejected vide order dated 16.02.2017, with direction which are set-out hereinbelow:-

“Plaintiff is absent. On call nobody appeared on behalf of plaintiff. Perused the case record. From perusal of which it appears that plaintiff has not complied the previous order regarding filing of requisites for

appearance of the defendant. Sufficient opportunities has been given to the plaintiff to file requisites for appearance of defendant but he failed.

From the perusal of record, it appears that despite knowing the fact plaintiff fails to comply with the provision of Order VII, R-9 of C.P.C. Thereafter, the plaint is rejected Order VII, R-11(f) of C.P.C. O/C to deposit the record in the record room.”

6. He further submits that after the order of rejection was passed, the plaintiff has neither preferred any appeal nor any fresh suit and therefore, it acquired finality. Counsel submits that the order under challenge i.e. order dated 24.01.2017 passed by Circle Officer, Sampatchak Block, Patna in Mutation Case No. 850/02 of 2012-13 is without jurisdiction, due to the reason that it has been passed in favour of a dead person, as it is the case of the plaintiff that Madho Sharan Pandey and Sadhu Sharan Pandey had already expired. Hence, passing of order to retain the Mutation in the name of dead person is basically an order without jurisdiction and without application of mind.

7. Counsel submits that it is true that he has not preferred appeal and came before this Court under Article 226 of the Constitution of India, only due to the reason that this order is

without jurisdiction, as this order itself is in nullity and it is basically an un-executable order.

8. In this view of the matter, the order dated 24.01.2017 (Annexure-13) is to be set-aside.

9. Counsel for the State submits that this order is well reasoned but upon query that whether the *Jamabandi* can be maintained in the name of dead person, counsel for the State became silent on it.

10. Counsel for intervenor has filed I.A. No.1 of 2023 in CWJC No. 184 of 2023 requesting this Court to add him as party-respondent in the said case. He further submits that the said Mahesh Saran Pandey, who is alleged to be intervenor petitioner no.3, was party in Mutation Case No.850/2 of 2012-13. He also submits that he is cousin-family member of late Sadhu Saran Pandey, therefore, he may be directed to be added as a party-respondent in this case.

11. Upon specific query from the parties that whether Mahesh Kumar Pandey of Mutation Case No. 850/2 of 2012-13, Mahesh Pandey of Title Partition No. 1933 of 2014 and Mahesh Sharan Pandey of I.A. no. 2013 in CWJC of 184 of 2013 are one and the same person or not, in which both the parties (petitioner as well as intervenor) agreed that the said Mahesh Pandey @

Mahesh Sharan Pandey @ Mahesh Kumar Pandey is one person and the same person i.e. son of Madho Sharan Pandey cousin of Sadhu Saran Pandey.

12. Upon going through the documents as well as the pleadings, it transpires to this Court that on the instance of the present Intervenor, the Mutation of the petitioners were disturbed, which was initially in the name of Sadhu Sharan Pandey and after his death it came in the name of the petitioners vide order dated 15.12.2012 passed in Mutation Case No. 850/2 of 2012-13.

13. Vide Annexure-14, it is clear that the Title suit filed by the intervenor, acquires finality in the year 2017, thereafter, neither fresh suit nor any appeal has been preferred. As such nothing held for intervenor in this dispute.

14. After going through the order under challenge that Circle Officer, vide order dated 24.01.2017 in Mutation Case No. 850/2 of 2012-13 has directed to retain the *Jamabandi* in the name of dead person is bad in law. Therefore, order dated 24.01.2017 passed in Mutation Case No. 850/2 of 2012-13 is hereby set-aside and particularly after closing of the Title Partition Suit No. 1933 of 2014 there is nothing left for intervenor when the said Title suit acquires finality. Therefore, it

is hereby directed to revive the order dated 15.12.2012 passed in Mutation Case No. 850/2 of 2012-13.

15. The Circle Officer is directed to restrain the said order within 90 days from today.

16. The I.A. No.1 of 2023 is hereby rejected and this Writ petition is hereby allowed.

(Dr. Anshuman, J.)

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