

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.502 of 2024

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Fulvas Devi W/o Birendra Singh @ Birendra Kumar Singh, R/o Village Jahanabd (Kudra), P.S.-Kudra, District-Kaimur (Bhabhua).

... .. Petitioner/s

Versus

1. Arti Devi W/o Vijendra Singh, R/o Village Fulli, P.O. Pipara, P.s.-Kudra, District-Kaimur (Bhabhua).
2. The State of Bihar through the Principal Secretary, Department of Revenue, Government of Bihar, Patna.
3. The Collector, Kaimur.
4. The Additional Collector, Kaimur.
5. The Deputyv Collector Land Reforms (D.C.L.R.) Kaimur.
6. Manikraj Kunwar, wife of Late Bindeshwari Singh, resident of Village-Fulli, P.S.-Kudra, District-Kaimur (Bhabhua).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Parth Gaurav. Advocate
For the Respondent/s : Mr.Tripurari Nath Ambastha, SC-26

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 19-04-2024 Heard Mr. Parth Gaurav, learned counsel for the

petitioner and learned SC-26.

2. The petitioner has prayed for the following reliefs:

(i) for issuance of appropriate writ/order/direction, quashing the order dated 8.9.2023 passed by Member (Judicial) in B.L.T. Case No. 522 of 2022 and the same was allowed reversing the order dated 31.5.2022 passed by learned Additional Collector, Kaimur at Bhabhua in Mutation



Revision Case No. 19 of 2013-14.

3. According to the case, late Bindeshwari Singh gifted a piece of land bearing Khata No. 186, Plot No. 1196 of area 6.46 acres situated at village-Fulli, P.S.&Anchal-Kudra, District-Kaimur to his second wife, Manikraj Kunwar on 16.5.1996. The lady subsequently, gifted the said land to her daughter Arti Devi on 8.7.2011. Said Bindeshwari Singh died on 24.7.2010 whereafter, this petitioner who is the daughter from his first wife preferred Title Suit No. 160 of 2011 challenging the deed of gift. It is to be noted that the first transaction took place on 16.5.1996 when Bindeshwari Singh gifted the said land to his second wife, Manikraj Kunwar. The petitioner herein chose to wait for the death of said Bindeshwari Singh and once he died on 24.7.2010, immediately, thereafter, the Title Suit No. 160 of 2011 was filed.

4. So far as the Manikraj Kunwar is/are concerned, Jamabandi was created in her name, she was paying rent, applied for mutation vide Mutation Case No. 900 of 2011-12 before the Circle Officer, Kudra, who on the basis of report submitted by Halka Karamchari/Circle Inspector passed an order on 1.10.2011 and allowed the mutation in her name. The petitioner then preferred Mutation Appeal Case No. 47 of 2011-



12 before the D.C.L.R., Mohania who without taking into account the aforesaid facts allowed the appeal, setting aside the order of the Circle Officer, Kudra on the ground that the Title Suit No. 160 of 2011 is pending.

6. The family of Manikraj Kunwar, respondent no.6 preferred revision which came to be dismissed by the revisional authorities in Mutation Revision Case No. 19 of 2013-14.

7. Still aggrieved, she preferred B.L.T. Case No. 522 of 2022 before the Bihar Land Tribunal which was taken up by the Member (Judicial), Bihar Land Tribunal, Patna and vide a reasoned order dated 8th September, 2021 after recording the findings which has been incorporated in paras-8 and 9 allowed the petition. The aforesaid two paragraphs are being incorporated hereinbelow:

"8. Section 6(12) of the Act, 2011 stipulates that 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. This provision no doubt restricts to pass order on mutation on merit during the pendency of a Title



Suit if the land proposed to be mutated is the subject matter of suit. In this case, the actual owner of the subject land had executed a deed of gift in favour of his second wife on 16.05.1996 and thereafter mutation was created in her favour and the subject land was running under her jamabandi. The opposite party by virtue of being the sole daughter of the actual owner appears to have challenged the said deed of gift by filing a Title Suit No. 160 of 2011 which is still pending now. This suit appears to have been instituted on 16.05.2011 but in the meantime said jamabandi raiyat transferred the land in favour of petitioner by executing a deed of gift dated 08.07.2011. The enquiry report of revenue officials of the circle office reveals that the land has been coming in possession of the petitioner and both the Appellate and Revisional authority have not considered the



possessory aspect of the land in question. It is well settled in law that possessory aspect of the land is the most important element for creating mutation of the same. The Circle Officer further in its order has recorded that the mutation is being created in favour of petitioner for the purpose of collection of land revenue only as jamabandi raiyat has transferred the land in her favour. It is well settled propositions of law that jamabandi neither creates any right and title nor extinguishes the title of anyone nor it has got any presumptive value on title. The jamabandi of a holding/land has got some significance on possessory aspect of the land but it is subject to rebuttal. Furthermore, petitioner was not a party to said suit. Under the peculiar facts and situation, to my view, it was justified for the Appellate Authority to continue with the mutation created in favour of



petitioner with direction that the same would be subject to final decision to be taken in the said suit. But this aspect was not considered and the Appellate Authority simply set aside the mutation order passed by the Circle Officer invoking Section 6(12) of the Act, 2011 without any further direction in whose name henceforth mutation of the land in question will continue and who will continue to pay the land revenue to the State. Id. Revisional Authority without considering the above aspects, simply affirmed the order passed by appellate authority.

9. In the facts and discussions set forth above, this Tribunal concludes that orders impugned herein i.e. both passed by the Id. Addl. Collector and the D.C.L.R. are not sustainable in law as such, they are set aside and the order passed by the Circle Officer is hereby



restored. It is made hereby clear that in future, mutation of the subject land shall abide by the final decision to be taken in the pending Title Suit between the parties. This case is thus allowed. Let send the copy of this order to the Circle Officer concerned for information and needful.

8. Now it was the turn of the petitioner to move before this Court.

9. Learned counsel for the petitioner submits that when the Title Suit No. 160 of 2011 was already pending, the Mutation proceeding should not have taken place and as such, the DCLR and the Additional Collector were justified in passing the order which has now been overturned by the learned B.L.T. As such, the order has to go.

10. Learned State Counsel on the other hand submits that Title Suit No. 160 of 2011 has been filed by the petitioner herself after a long gap of 15 years i.e. that the first gift was executed by the late father of the petitioner on 16.5.1996. It is his further submission that the B.L.T. has clearly explained what is mutation and how allowing the said mutation of lady in no



way of affects the case (Title Suit No. 160 of 2011). He as such submits that the writ petition has no merit and is fit to be dismissed.

11. Having gone through the facts of the case and rival submissions, this Court finds force in the submissions put forward by the learned State Counsel. It is an admitted fact that in the year 1996, Bindeshwari Singh gifted the land in question to his second wife, Manikraj Kunwar. The daughter of first wife chose to remain silent for next 15 years. On 24.7.2010, Bindeshwari Singh left this world. The petitioner now got opportunity to challenge the gift of deed executed by her late father in favour of her second mother. In between, the lady Manikraj Kunwar had gifted the land to Arti Devi's who is/was her brother's wife.

12. The petitioner having preferred Title Suit No. 160 of 2011 simply had to bring on record the order of the Circle Officer, Kudra in the said title suit so that the Court concerned can take cognizance of the same and pass an appropriate order. Instead, she chose to move on a parallel road, despite filing of Title suit herself.

13. In that background, the B.L.T. while setting aside the order of DCLR and Additional Collector rightly observed



that in future, mutation of the subject matter and shall abide by final decision to be taken in the pending Title suit between the parties.

14. The Title suit is of the year 2011. Instead of taking the matter to its logical conclusion by appearing before the Title Court, the petitioner chose to invoke the jurisdiction of this Court, the same is fit to be dismissed with cost which is quantified at Rs. 3000/- The same has to be deposited with the Patna High Court Legal Services Committee.

(Rajiv Roy, J)

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