

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5208 of 2017

1. Suresh Prasad Yadav and Anr
2. Kumar Sanjay Both sons of late Bachcha Prasad Yadav residents of village Fakuli, Police Station Panapur, Anchal Masarak, District Saran at Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Collector, Saran at Chapra.
3. The Additional Collector, Saran at Chapra.
4. The Deputy Collector, Land Reforms, Maraura, District Saran at Chapra.
5. The Circle Officer, Masarak, District Saran at Chapra.
6. Madan Rai son of late Kashinath Rai resident of village Fakuli, Police Station Panapur, Circle Masarak, District Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ravindra Nath Dubey
For the Respondent/s : Mr.Sajid Salim Khan -Sc25

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

11 19-06-2025 I have already heard the learned counsel for the petitioners as well as learned counsel for the State-respondents.

2. The present writ petition has been filed for quashing the order dated 1.12.2016 passed in BLT Case No. 758 of 2015 by the learned Member Administrative, BLT (Annexure-7), the order dated 20.04.2015 passed by the Additional Collector, Saran in Mutation Revision No. 75/2014/6/2004 (Annexure-6), the order dated 07.04.2004



passed in Mutation Appeal No. 8/03-04, by the Deputy Collector, Land Reforms, Maraura (Annexure-5).

3. The brief facts of the case is that the petitioners had obtained the property in dispute through a deed of gift dated 12.09.1998 executed by late Harirar Rai, the uncle of the petitioners. The respondent no. 6 Madan Rai is son of late Kashi Nath Rai. Kashi Nath Rai was brother of Late Hariar Rai. Respondent no. 6 claims the disputed property to be purchased property of his father late Kashi Nath Rai. It is an admitted fact that Partition Suit no. 56 of 1970 was filed for partition of the properties between four brothers of late Harihar Rai. Preliminary decree was passed in that suit on 23.09.1978 by the 4th Additional Sub-Judge, Chapra but final decree could not be passed.

4. The petitioners' claim is that after passing of the preliminary decree, a family partition was taken place among four brothers of late Harihar Rai including himself and the property in dispute, as per family partition was given in the share of late Harihar Rai. Later on, he executed gift deed of the said property in favour of the petitioners through the registered gift deed dated 12.09.1998 in respect



of total area of 5 *Bighas* one *Khata*, one *Dhur* and 5 *Dhurkis*. The petitioners filed an application for mutation before Circle Officer, *Mashrakh*, Saran vide Mutation Case No. 215 of 2003-04 on the basis of gift deed. Respondent no. 6 appeared before the Circle officer and filed his objection. The Circle Officer, after conducting the inquiry, allowed the mutation application of the petitioners vide order dated 24.10.2004. Before passing the order dated 24.10.2004, an inquiry in respect of possession of the petitioners over the land was made by the Circle Officer and the *Halka Karmchari* and the Circle Inspector in their reports, found the possession of the petitioners over the land, in question. Respondent no. 6 preferred an appeal before the DCLR, *Marhowrrah*, Saran against the order of Circle Officer which was numbered as Appeal No. 08 of 2004. During pendency of the appeal, the petitioners filed an application before the DCLR on 19.03.2004 (Annexure-4 herein), praying therein to conduct a fresh inquiry either by himself or through the advocate commissioner to satisfy the appellate court about actual possession of the land in dispute which was allotted in the share of late Harihar Rai.



Without passing order on that application, the DCLR set aside the order passed by the Circle Officer and allowed the appeal vide order dated 07.04.2004. The revisional court as well as Bihar Land Tribunal also confirmed the order of the appellate court without exercising their mind judiciously.

5. Learned counsel for the petitioners has submitted that the gift deed executed by late Harihar Rai in favour of the petitioners is still existing. Only a civil court of competent jurisdiction can declare it as null and void/voidable. Unless and until, it is declared as null and void by the competent court of civil jurisdiction, its sanctity should not be disbelieved by the mutation court. It has also been submitted that the Circle Officer conducted an inquiry and found possession of the petitioners but the appellate authority and the other authorities, in hierarchy, disbelieved the possession of the petitioners without any evidence adduced by respondent no. 6 in respect thereof. The Circle Officer mutated the name of the petitioners on the basis of report of *Halka Karmchari*, who found the petitioners' possession over the disputed land but the other authorities, in hierarchy, without any evidence held that the petitioners'



possession was not found over the land, in question. He submitted further that the petitioners' petition dated 19.03.2004 was also not disposed of by the appellate authority wherein a prayer for appointing a pleader commissioner, for verification of possession of the petitioners, was prayed for. He also submitted that the property in question, which is said to be purchased by father of respondent no. 6 was subject matter of the partition suit and in that family partition, it was allotted in the share of late Hariha Rai. Late Harihar Rai executed gift deed of the allotted share in favour of the petitioners.

6. Paragraph Nos. 29 & 30 of the judgment dated 23.09.1978 passed in partition suit no. 56 of 1970 are being extracted hereinbelow:-

29. "Now I will consider the exhibits of Kashi Nath Rai, Exts A-I/I, A-I/II, A-I/III and A-I/IV these sale deeds have been filed to show that the lands were purchased by Kashi Nath Rai.. Exts. A-I/I, A-I/III are the registered two sale deeds in favour of Madan Prasad son of Kashi Nath Rai executed on 5.4.71 by which 19 K. 2 dhooors of land have been purchased from Kheshra Nos.418, 421 and 423 appertaining to khata no.9 92. The present partition suit was filed on 21.02.70. There is no evidence on the



record from the side of the plaintiff to prove that this land in the name of Madan Prasad has been acquired after the filing of the suit by the joint family properties. As such plot Nos.418, 421 and 423 mentioned in Schedule-II is not available for partition because it has been acquired by Kashi Nath Rai in the name of his son after institution of the present partition suit.”

30. “As regards schedule-II in which, zarpeshgi and loans only have been ascribed, there is no positive evidence from the side of the plaintiff is entitled for 1/4th share.”

7. On the other hand, the learned counsel for the respondent no. 6 has submitted that the property, in question, is purchased property of Kashinath Rai, the father of respondent no. 6 and it was not included in the partition suit. So, the family partition in respect of the property which was not included in the preliminary decree cannot be considered for mutation of the names of the petitioners over the land in dispute.

8. From perusal of paragraph nos. 29 and 30 of the judgment dated 23.09.1978 passed in Partition Suit No. 56 of 1970 shows that late Kashinath Rai, the father of respondent no. 6 has purchased the property, in question,



and that property was not subject matter of the Partition Suit No. 56 of 1970. As such late Harihar Rai had no right to execute the gift deed of that property in favour of the petitioners.

9. I do not find merit in the present writ petition and accordingly, it is *dismissed*.

(Nawneet Kumar Pandey, J)

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