

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5675 of 2023

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1. Ram Shankar Sharma S/o Late Ram Dahin Sharma R/o Village and P.O.-Pirokhar, P.S. and Block-Madhwapur, District-Madhubani, Bihar-843319.
 2. Kaushal Kishore Sharma S/o Late Ram Bahadur Sharma R/o Village and P.O.-Pirokhar, P.S. and Block-Madhwapur, District-Madhubani, Bihar-843319.
 3. Ram Nath Sharma S/o Late Ganga Raut R/o Village and P.O.-Pirokhar, P.S. and Block-Madhwapur, District-Madhubani, Bihar-843319.
 4. Chandan Kumar S/o Late Mahindra Sharma R/o Village and P.O.-Pirokhar, P.S. and Block-Madhwapur, District-Madhubani, Bihar-843319.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Revenue and Land Reforms
2. District Collector, Madhubani.
3. Additional Collector, Madhubani
4. Circle Officer, Madhwapur, District-Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Dvivedi, Adv
		Mr.Parth Gaurav
For the Respondent/s	:	Mr.Sajid Salim Khan (SC-25)

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 05-05-2025 1. Heard learned counsel for the petitioners and learned AC to SC-25.

2. The learned counsel appearing on behalf of the petitioners submits that land pertaining to Khata No. 383(old), 952 (new), plot no. 162 (old), 242 (new) situated at village-Pirokhar Pargana-Lautan, P.S.-Madhwapur, District-Madhubani was purchased by the ancestors of the petitioners vide Registered Sale Deed dated 23-9-1939.



3. It is submitted that a title suit with regard to land in dispute was filed by the ancestors of the petitioners as their possession over the land was being disturbed by the local people and the State of Bihar. It is next submitted that initially State of Bihar was not made a party in the title suit, but subsequently the State of Bihar was added as a party defendant and the Title Suit No. 44 of 1956 was dismissed against which the ancestors of the petitioners filed Title Appeal No. 34 of 1958 and the same was allowed by judgment and decree dated 13-8-1938. It is further submitted that in pursuance of the judgment passed in Title Appeal No. 34 of 1958, the possession of plot no. 162 was handed over to the petitioners by the State of Bihar as pleaded at Para-11 of the writ application.

4. The learned State counsel vehemently disputes the said submission of the learned counsel appearing on behalf of the petitioners that in pursuance of the order passed in Title Appeal No. 34 of 1958 in favour of the ancestors of the petitioners, the possession of the land in dispute was handed over to the ancestors of the petitioners. It is next submitted that in the counter affidavit, it has been specifically pleaded at Para-16 – that State of Bihar never handed over possession of land in question to the petitioners or their ancestors at any time.



It is further submitted that at para-17 of the counter-affidavit, it is pleaded – that the petitioners having been coming in possession over the land in question.

it is humbly submitted that so-called report of the karamchari is without any legal force, so the allegations levelled against the answering respondent are wrong, incorrect and baseless.

5. The learned State counsel thus submits that in the counter-affidavit a specific stand has been taken that in view of the judgment and decree dated 13-8-1938 in Title Appeal No 34 of 1958, the possession of plot No. 162 was never handed over to the ancestors of the petitioners.

6. The learned State counsel next submits that since the title appeal was decided in favour of the ancestors of the petitioners in that event the ancestors of the petitioners ought to have filed an execution case for getting the decree executed for seeking possession, as from perusal of Para-9 of the writ application, it would manifest that the learned Subordinate Judge, Darbhanga in Title Appeal No. 34 of 1958 /37 of 1958 observed- “It is declared that the plaintiffs have got subsisting title to the suit land, they are found to be in possession over all the plots except Plot No. 162. With respect to Plot No. 162, it



appears that the State of Bihar has taken up re-excavation and they have taken the possession of the same. The defendants shall give up possession in favour of the plaintiffs failing which the plaintiffs shall be put in possession of Plot No. 162. The defendants are restrained from doing the excavation work and changing the *status quo* of the suit land.

7. The learned State counsel thus submits that since it was clearly recorded in the judgment passed in Title Appeal No. 34 of 1958 /37 of 1958 that possession has been taken by the defendants as such the petitioners herein were required to get the decree in title appeal executed for seeking possession of Plot No. 162, which is in dispute in the present writ application, but then the same was not done.

8. The learned State counsel next submits that the possession of plot No. 162 was never handed over to the ancestors of the petitioners by the State of Bihar, but then the instant writ application has been filed by the petitioners seeking a direction upon the authority not to disturb the peaceful possession of the petitioners over the disputed land which has been given a seal of court by judgment of competent civil court passed in favor of their ancestors against the State, being affirmed up to second appellate stage.



9. The learned State counsel further submits that the State against the judgment and decree dated 13-8-1938, in Title Appeal No. 34 of 1958, had preferred Second Appeal No. 1555 of 1958, which was also dismissed, but then the ancestors of the petitioners never got the decree in the title appeal executed for getting possession over the land in dispute, i.e., plot No. 162.

10. The learned counsel appearing on behalf of the petitioners though is not in a position to rebut the submission of the learned counsel appearing on behalf of the State, but then makes an endeavour by submitting that after the order was passed in Title Appeal No. 34 of 1958, the State handed over possession of the land in dispute in favor of the ancestors of the petitioners, as would manifest from the report of the Karamchari dated 11-10-2022 (Annexure-4 to the writ application), on which the learned State counsel submits that in the counter-affidavit, the said report of the Karamchari is rebutted.

11. After hearing the learned counsel for the parties, it becomes clear that a disputed question of fact has arisen with respect to Plot No. 162, which is in dispute in the instant writ application, as from pleadings made in the instant writ application with respect to the Title Appeal No. 34 of 1958/ 37 of 1958, it would manifest that the judgment recorded that – the



defendants shall give up possession in favor of the plaintiffs, failing which the plaintiffs shall be put in possession of plot No. 162, which amply demonstrates that the defendant, i.e., State of Bihar, was in possession of the land in dispute, i.e., plot No. 162, and was directed to hand over possession of the plot in favor of the ancestors of the petitioners, failing which the ancestors of the petitioners would be put in possession of plot No. 162, which amply demonstrates that if possession was not handed over by the State of Bihar, in that event, the possession would have been given to the ancestors of the petitioners through process of court, but then from pleadings made in the writ application, it is clear that there is no averment that the petitioners for getting the decree executed filed any execution case. Since the issue of possession is being disputed by the authorities, as such the Court is not inclined to exercise extraordinary jurisdiction under Article 226 of the Constitution of India.

12. The writ application is dismissed.

(Satyavrat Verma, J)

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