

Civil Writ Jurisdiction Case No.6601 of 2023

- Petitioner/s

1. The State of Bihar represented through Principal Secretary Revenue Department, Govt. of Bihar, Patna.
2. The Collector, Patna, District-Patna.
3. The Additional Collector, Patna Sadar, District-Patna.
4. The Deputy Collector Land Reform, Masaurhi, District-Patna.
5. The Circle Officer, Punpun, District-Patna.
6. Shyam Nandan Singh S/o Late Shiya Singh Resident of Village-Jat Dumari, P.S.-Punpun, P.O.-Jat Dumari, District-Patna.
7. Raj Kishori Devi W/o Late Jagarnath Singh Resident of Village-Jat Dumari, P.S.-Punpun, P.O.-Jat Dumari, District-Patna.

... .. Respondent/s

For the Petitioner/s : Ms.Kiran Kumari
For the Respondent/s : Mr.Raj Kishore Roy (GP 18)
Mr. Vivekanand Singh, AC to GP-18

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2. The learned counsel for the petitioners submits that the property in dispute in the instant writ application belongs to one Deo Prasad Singh. It is submitted that Deo Prasad Singh was married to Sita Devi and during the life time of Sita Devi,



the said Deo Prasad Singh married Lalita Devi (Petitioner No. 1) and from the said wedlock, Asha Kumari (Petitioner No. 2) was born. It is next submitted that Sita Devi died issueless on 9-1-2002, as such the entire property of Deo Prasad Singh devolved upon the petitioners, but petitioners came to know that half of the property of the Deo Prasad Singh has been mutated in the name of Shyam Nandan Singh (Respondent No. 6) and his brother Jagarnath Singh, husband of Raj Kishori Devi (Respondent No. 7), on enquiry, it transpired that Shyam Nandan Singh and his brother Jagarnath Singh, based on a forged and fabricated registered will dated 3-12-2001 allegedly executed by Sita Devi with regard to half of her share in their favour, had filed Probate Case No. 68 of 2003 in the court of learned District Judge, Patna, for grant of probate of the said will without impleading the petitioners as respondents in Probate Case No. 68 of 2003. The Probate Case No. 68 of 2003 was allowed by the learned ADJ-III, Patna and probate was granted in favour of Shyam Nandan Singh and Jagarnath Singh, based on which they filed Mutation Case No. 79/2004-05 for mutating the property under the will before the Circle Officer, Punpun and the same was allowed.

3. It is submitted that petitioners, on coming to know



about the said fraud, filed Probate Revocation Case No. 154 of 2005 and during pendency of Probate Revocation Case No. 154 of 2005, the petitioners also filed Mutation Appeal No. 12/2010-11 before the DCLR, Masaurhi against the order of C.O, Punpun in Mutation Case No. 79/2004-05.

4. It is submitted that the learned Adhoc Addl. District Judge-I, Patna, allowed Probate Revocation Case No. 154 of 2005 vide his order dated 7-6-2013 and the Probate Case No. 68 of 2003 was converted into Title Suit No. 4 of 2014, which is pending adjudication. Further the DCLR, Masaurhi, dismissed the Mutation Appeal No. 12/2010-11 by his order dated 11-1-2014 holding that the Mutation Appeal No. 12/2010-11 was filed after seven years and the mutation order was passed by the Circle Officer based on the grant of probate and now the grant of probate has been revoked, but matter regarding the will is still pending adjudication, hence it would be just and proper to continue with the existing jamabandi till the will is not decided by the learned Civil Court.

5. It is next submitted that the petitioners, being aggrieved by the order of the DCLR, Masaurhi, in Mutation Appeal No. 12/2010-11, filed Mutation Revision Case No. 82/2013-14 before the Additional Collector, Patna. The



Additional Collector, Patna allowed the Mutation Revision Case No. 82/2013-14 by his order dated 27-3-2020 holding that after the death of Deo Prasad Singh, his both widows will inherit half of his properties and rest half will devolve upon his daughter, i.e. Asha Kumari, further also held that after cancellation of the order granting probate, Shyam Nandan Singh and Raj Kishori Devi wife of Jagarnath Singh ceased to have any claim over the property, as the very basis of mutation in their favour ceased to exist.

6. It is submitted that Shyam Nandan Singh, being aggrieved by the order dated 27-3-2020 in Mutation Revision Case No. 82/2013-14 passed by the Additional Collector, Patna, filed BLT Case No. 148/2021, in which the petitioners were impleaded as OP- 1st set and Raj Kishori Devi, wife of Jagarnath Singh, was impleaded as OP- 2nd set, who despite receiving notices, chose not to appear and contest.

7. The learned counsel next submits that the learned Member Judicial, BLT, without appreciating the facts of the case in its correct perspective, allowed BLT Case No. 148 of 2021 by his order dated 19-7-2022, which is impugned in the instant writ application. It is next submitted that it is a settled principles of law that based on will, mutation cannot be done until and unless



the will is probated, but in the instant case, the will, which was probated *ex parte*, was revoked by an order dated 7-6-2013 passed by the learned District Court, Patna, as such the basis on which the mutation of the property of Deo Prasad Singh was done in favour of Shyam Nandan Singh, ceased to exist.

8. The learned counsel appearing on behalf of the State, Shri. Vivekanand Singh, vehemently rebuts the submission of the learned counsel appearing on behalf of the petitioners and submits that there is absolutely no infirmity in the order passed by the learned Member Judicial, BLT. It is next submitted that initially when property of Deo Prasad Singh was mutated in the name of Shyam Nandan Singh and his brother Jagarnath Singh, at that point of time the will executed in their favour by Sita Devi was probated and based on the probate, the property in the will was mutated in favour of Shyam Nandan Singh and his brother. It is further submitted that from perusal of the pleadings made in the writ application, it would manifest that the petitioners herein had filed Probate Revocation Case No. 154 of 2005 on the ground that they were not impleaded as party respondents in Probate Case No. 68 of 2003 and thereafter the probate revocation case was allowed and Probate Case No. 68 of 2003 was converted into Title Suit No. 4 of 2014.



9. The learned State counsel next submits that in the event if Title Suit No. 4 of 2014 is decided in favour of Shyam Nandan Singh, in that case what will happen, it is thus submitted that DCLR, Masaurhi, while dismissing the appeal, had rightly observed that matter regarding the will is still pending adjudication hence it would be just and proper to continue with the existing jamabandi till the will is not decided in the Title Suit No. 4 of 2014.

10. The learned State counsel next submits that the learned Member Judicial, BLT, also while allowing BLT Case No. 148 of 2021, has correctly held that – *"It is obvious from the materials available on the record that after revocation of the probate, the Probate Case has been converted into Title Suit No. 4 of 2014 which is pending now meaning thereby that the matters regarding adjudication of genuineness and validity of said will is still pending in the court of competent jurisdiction. Under the facts and circumstances, the appellate authority appears to have rightly and correctly opined that till the disposal of probate matter relating to the will aforesaid, it would be just and proper to continue with the existing jamabandi"*.

11. After hearing the learned counsel for the parties,



the Court is in complete agreement with the submission made by the learned State counsel and thus finds no merit in the instant writ application.

12. Accordingly, the instant writ application is **dismissed.**

(Satyavrat Verma, J)

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