

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1014 of 2023

In

Civil Writ Jurisdiction Case No.4805 of 2020

Shyama Devi, aged about 65 years, Gender-Female, Daughter of Late Dwarka Prasad Mandal, Wife of Jaynarayan Mandal, Resident of Village - Tikapatti, Ward - 18, Dhusar Tikapatti, P.S. - Tikapatti, District - Purnea.

... .. Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Collector-cum-District Magistrate, Katihar.
4. The Additional District Magistrate, Katihar.
5. The Deputy Collector Land Revenue, Katihar.
6. The Superintendent of Police, Katihar.
7. The Sub Divisional Magistrate, Katihar.
8. The Circle Officer, Sameli, District - Katihar.
9. The Station House Officer, Falka (Pothia), District - Katihar.
10. The Principal, District Institute of Education and Training (D.I.E.T.), Katihar.

... .. Respondents

Appearance :

For the Appellant : Mr. Raghvendra Kumar Singh, Advocate
For the Respondents : Mr. Md. Khurshid Alam, A.A.G. 12

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

5 28-04-2026 Heard learned counsel for the appellant and learned counsel for the respondents.

2. The present *intra court* appeal has been preferred against the judgment and order dated 20.07.2023 passed by the learned Single Judge in C.W.J.C. No. 4805 of 2020, whereby



the writ application filed by the appellant was disposed of.

3. The following was the relief sought for by the writ petitioner before the learned Single Judge:

“ The present writ petition has been filed for directing the respondent no.10 not to interfere with the peaceful possession of the piece of land inherited and possessed by the petitioner and, further, for a direction upon the State Respondents to safeguard and protect the Constitutional Right of the petitioner.”

4. The following was the submissions of the parties before the learned Single Judge:

“Counsel for the petitioner submits that the land situated in Mauja-Chandpur, Thana No. 270, Khata No. 649, Khesra No.-4333-4334, total area measuring 1 Acre 13 Decimal and another land of Mauja-Chandpur, Thana No.-270, Khata No. 4331-4332, total area measuring 1 Acre 12 Decimal were recorded in the name of petitioner’s father who died on 23.11.1986 and after his death, they came into the possession of the said land.

Counsel for the petitioner further submits that respondent No. 10 is a training institution, namely, District Institute of Education and Training (D.I.E.T.), Tikapatti (Katihar) in whose name, the ancestor of the petitioner and other co-villagers have donated 6 Acre 29 Decimal of land. Counsel submits that the raiyatiland of the petitioner is being disturbed continuously by respondent No. 10. He submits that the said land belongs to petitioner and there are different records by which he is showing that it is his land.

Counsel for the respondent has filed



counter-affidavit as well as supplementary counter-affidavit in which it has been submitted that the land in question has been claimed by the Training Centre, Tikapatti and the report of the Circle Officer, Sameli, Katihar which has been prepared upon perusal of Register-2 as well as upon the spot verification indicates that in the registered column by red pen 'training center, Tikapatti' for the land in question has been written. It has also come that the name of the petitioner is there and along with his name by red pen the name of training center, Tikapatti has also been entered."

5. The learned Single Judge after considering the submissions of the parties had made the following observation:

" Upon hearing the argument of both the parties, it transpires that it is a disputed question of facts which cannot be decided by this Court and, therefore, petitioner is directed to file his representation before the Collector, Katihar who upon going through the documents produced by both the parties as well as after verifying the actual physical possession and also after taking evidence in summary proceeding shall decide this matter within 4 months from the date of representation filed by petitioner."

6. The brief facts of the case are that the father of the appellant, namely Dwarika Prasad Mandal, was recorded as a *Raiyat* in the cadastral survey in respect of land admeasuring 1 Acre 13 Decimal situated at Mauja- Chandpur, Thana No. 270, Khata No. 649, Khesra Nos. 4333-4334. He also jointly held another parcel of land admeasuring 1 Acre 12 Decimal under



Mauja- Chandpur, Thana No. 270, Khata No. 1121, Khesra Nos. 4331-4332 along with Bhukhal Mandal and Ugri Mandal. It is stated that upon the death of the appellant's father on 23.11.1986, the appellant came into possession thereof, continuing to cultivate the land for her livelihood. It is further submitted that adjacent to the appellant's land, an institute in the name of District Institute of Education and Training, Tikapatti, Katihar is functioning over land admeasuring 6 Acre 29 Decimal under Mauja-Chandpur, Khata Nos. 1190 and 1991. The said institute is also stated to be in possession of additional parcels of land situated in Mauja-Dhusar Tikapatti, which were gifted by villagers in favour of the Governor of Bihar and duly registered in the cadastral survey in the year 1958.

7. It is alleged that the respondent no. 10 with mala fide intentions by letter dated 08.02.2014 requested the Circle Officer, Sameli, District Katihar (respondent no. 8), to prohibit cultivation on land claimed to fall within the boundary of the said institute. Subsequently, by letter dated 01.03.2014, respondent no. 10 is stated to have requested initiation of mutation proceedings in respect of the land alleged to be in possession of the institute. In these circumstances, the writ petition came to be filed seeking a direction upon the



respondents not to interfere with the peaceful possession of the appellant over the land inherited and possessed by her.

8. Learned counsel for the appellant submits that upon the death of the appellant's father, the appellant came into possession of the land in question and has been cultivating the same for her livelihood. It is further contended that the learned Single Judge failed to appreciate that the writ petition had been instituted seeking issuance of an appropriate writ directing respondent no. 10 not to interfere with the appellant's peaceful possession over the land inherited and possessed by her. It is also submitted that the appellant is seeking protection of her constitutional rights through the said proceedings.

9. Learned counsel for the respondents submits that the land in question has all along been in possession of the institute concerned. However, recently the appellant and some unscrupulous elements have starting disturbing the peaceful possession of the institute over the land in question. It is further submitted that none of the grounds raised by the appellant are tenable. It is also submitted that the nature of the dispute is such that it can only be effectively resolved at the ground level, and therefore, the learned Single Judge has rightly directed the appellant to approach the Collector, Katihar. Learned counsel



for the respondents, further, referred to paragraph 7 to 12 of the counter affidavit on behalf of respondent no. 10, which are reproduced hereinbelow:

“7. That it is humbly stated that the present appeal has been filed with an ulterior motive to stall the proceeding before the Collector, Katihar, who has been directed to decide the proceeding after verifying the actual physical possession and also after taking evidence in summary proceeding.

It is pertinent to mention here that in pursuance of the direction contained in the impugned order, the learned court of District Magistrate, Katihar has instituted a case bearing Misc. Case No. 73 of 2023-24 (Shyama Devi Vs. State of Bihar & Ors) and a notice has been issued to the answering respondent vide memo no. 1989 dated 28.08.2023 to appear with relevant documents.

8. That it is stated that the subject matter of the connected writ application was land admeasuring 1 acre 13 decimal under Mauja-Chandpur, Thana No. 270, Khata No. 649, Khesara No. 4333-4334 and also jointly claiming land admeasuring 1 Acre 12 Decimal under Mauza- Chandpur, Thana No. 270, Khata No. 1121, Khesra No. 4331-4332 with one Bukhai Mandal and Ugri Mandal, which the appellant claimed to be her.

9. That it is humbly stated that the institute in question had been established in the year 1948 in the name of ‘Teachers Training College’ on and over the land donated by the villagers of village-Takapatti.

10. That it is humbly stated that during the passage of time, several buildings were constructed over the land in question like Hostel, Teacher’s residence, Principal’s residence etc.

11. That it is important to mention



here that the land in question were and is under the possession of the institute in question. However, recently the appellant and some unscrupulous elements have starting disturbing the peaceful possession of the institute over the land in question.

12. That in this connection, it is further stated that the illegal activity of the appellant and some others have disturbed the academic atmosphere of the institute in question particularly with respect to a lady's hostel constructed over the land in question, recently. The answering respondent is facing difficulty in maintaining the cordial academic atmosphere in the institute in question."

10. The limited issue that arises for consideration in the present *intra-court* appeal: Whether a disputed question of fact relating to possession of land in question, can be determined by the Writ Court ?

11. Upon perusal of the materials available on record, it is apparent that the present controversy does not merely involve a pure question of law, but is deeply entangled with disputed questions of fact, particularly concerning the issue of possession over the land in question. The parties have advanced rival claims, each asserting possession over the land in question. Such competing claims would necessarily require a closer scrutiny of the evidence on record. The nature of the dispute demands a thorough examination of the documents as well as a verification of the actual physical possession. It is



important to take note of the decision in the case of ***Sohan Lal v. Union of India***, reported in ***(1957) 1 SCC 439***, wherein the Hon'ble Supreme Court has observed the following:

“6. We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. There are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Article 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.”

12. Moreover, in the case of ***State of U.P. v. Ehsan***, reported in ***(2024) 14 SCC 269***, the Hon'ble Supreme Court has observed that although the existence of an alternative remedy does not operate as an absolute bar to the exercise of writ jurisdiction, yet where the dispute involves seriously contested questions of fact which cannot be satisfactorily adjudicated on the basis of affidavits and the material available on record, the



Writ Court ought not to exercise its jurisdiction. In such circumstances, the appropriate course is to relegate the parties to a competent forum for proper adjudication. The relevant paragraph is reproduced hereinbelow:

“28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.

30. ... And if the writ court finds it difficult to determine such question, either for insufficient/inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable.”

13. Similarly, in the case of ***Shubhas Jain v. Rajeshwari Shivam***, reported in ***(2021) 20 SCC 454***, it has been observed that:

“25. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions



of facts.....”

14. It is a well-settled principle of law that issues involving seriously disputed questions of fact are not suited for adjudication in writ jurisdiction under Article 226. The writ jurisdiction, though wide in its amplitude, is not designed to resolve factual controversies where the parties are at variance on foundational facts. Proceedings under Article 226 are not intended to substitute a full-fledged trial, particularly in cases where determination of rights hinges upon contested questions of fact requiring detailed evidence. The Writ Court, in exercise of such jurisdiction, does not ordinarily engage in a detailed fact-finding inquiry or attempt to conclusively determine competing factual claims. Where the dispute turns upon contested facts that cannot be satisfactorily resolved on the basis of the material available on record, the Court would ordinarily refrain from exercising its writ jurisdiction and would instead leave the parties to seek redress before a competent forum. In the present case, the core issue revolves around the question of possession of the land in question, which is clearly a matter of serious factual dispute between the parties. Each side asserts its own claim, and the resolution of such a dispute would necessarily require a fuller and more appropriate adjudicatory



process. In that view of the matter, the learned Single Judge was justified in holding that the writ petition, involving disputed questions of fact not amenable to determination under writ jurisdiction, ought to be pursued before an appropriate forum.

15. Further, the appellant has been unable to substantiate the grounds of the present appeal to dislodge the findings of the learned Single Judge. The Scope of a Letters Patent Appeal is limited, and normally in absence of cogent reasons, Division Bench would not differ from a finding of fact recorded by learned Single Judge. The relevant paragraph of the Judgment of the Hon'ble Supreme Court in ***Umabai v. Nilkanth Dhondiba Chavan*** reported in ***(2005) 6 SCC 243***, is reproduced as under:

“52. It may be, as has been held in Asha Devi[(1974) 2 SCC 492] that the power of the appellate court in intra-court appeal is not exactly the same as contained in Section 100 of the Code of Civil Procedure but it is also well known that entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the learned Single Judge. Even as noticed hereinbefore, a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint.”

16. It is also relevant to take note of the Judgment of the Hon'ble Supreme Court in ***Narendra & Co. (P) Ltd. v.***



Workmen reported in **(2016) 3 SCC 340**, wherein the court held that merely on the ground that another view is possible, the order of the Single Judge should not be interfered with. The relevant paragraph of the said judgment is reproduced as under:

“5.Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.”

17. In view of the discussions made above, the approach adopted by the learned Single Judge does not warrant any interference in the present *intra-court* appeal. The reasoning proceeds on settled principles governing the exercise of writ jurisdiction under Article 226, particularly where the matter involves disputed questions of fact not amenable to determination in such proceedings. We, therefore, find no infirmity or illegality in the impugned order.

18. If so advised, the appellant may make an appropriate application in respect of possession over the land in question under Section 144 of the Cr.P.C., now corresponding to Section 163 of the B.N.S.S., 2023, or before a competent authority, with a liberty to place all the documentary evidence as



well as ocular evidence during the proceeding. The same shall be decided preferably within a period of nine months from the date of making of such application.

19. With the aforesaid liberty, the present *intra court* appeal stands disposed of.

20. Pending application (s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Shailendra Singh, J)

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