

(2009) 08 PAT CK 0013
In the Patna High Court
Case No : CWJC No. 3993 of 2003

Bharat Prasad, Dinesh Kumar Rai, Umesh Kumar and Nirman Rai APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Citation : (2009) 08 PAT CK 0013

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Suresh Pd. Singh No. 1, Vitesh Kumar Singh and Lalbabu Keshri, for the Appellant; Binod Kumar, AC to SC V for the State, D.K. Sinha and Shashi Shekhar Pd. Sinha, for the Respondents No. 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

Ravi Ranjan, J.—. IA. No. 1497/2006 has been filed on behalf of the petitioners for expunging the name of the petitioner No. 1, Dhaneshwar Rai, who died on 21.9.2005, leaving behind him the heirs and legal representatives, as described in paragraph 1 of this interlocutory application.

2. Heard learned Counsel for the petitioners, learned for the State and learned Counsel appearing on behalf of the respondents No. 5 and 6.

3. The respondents have not raised any objection to the aforesaid interlocutory application. I.A No. 1497/2006 is, thus, allowed. Let the name of the deceased petitioner No. 1, Dhaneshwar Rai be expunged from the array of parties and in his place the names of his heirs and legal representatives, as described in paragraph 1 of the interlocutory application be substituted.

4. The legal representatives of deceased petitioner No. 1 have already entered appearance by filing Vakalatnama. Let the Vakalatnama filed on their behalf be accepted.

5. Now I proceed to consider this writ application.

6. Petitioners are aggrieved by the order dated 21.7.1999 passed by the revisional authority, as contained in Annexure-3 and the order dated 11.12.2002 passed in Misc. Case No. 1/2000-01 (Annexure-4), whereby the Respondent No. 2, Collector, Patna had dismissed the review application filed by the petitioners, as well as the order passed by the Anchal Adhikari, Sadar, Patna, as contained in Annexure-1, allowing the application for correction of Jamabandi filed on behalf of the respondents No. 5 and 6.

7. Learned Counsel for the petitioners submitted that on the basis of oral partition in the family, the parties were coming in possession of their respective shares. The respondents No. 5 and 6 filed a petition before the Anchal Adhikari, Sadar, Patna, Respondent No. 4 for correction of Jamabandi and the Anchal Adhikari without issuing notices to the petitioners allowed the application filed by them and the Jamabandi, which was running for half (1/2) share of total area in the names of the petitioners was reduced to one third (1/3) share. The petitioners preferred an appeal before the Deputy Collector Land Reforms, Patna, Respondent No. 3, who after hearing the parties set aside the order passed by the Anchal Adhikari, Sadar, Patna and held that by looking into the correctness of the mode of partition in the family, he had transgressed his jurisdiction. Respondents No. 5 and 6, thereafter, filed a revision before the Collector, Patna. It has been urged on behalf of the petitioners that the matter was not heard for several times, as would be evident from the entire order sheets, which had been brought on record as Annexure-5, and suddenly on one date, i.e. 11.08.1998, it had been recorded as under in the order sheet:

Heard learned Advocate on behalf of the appellant. Opposite party absent. Post for orders.

8. Thereafter, the order dated 21.07.1999 was passed after long lapse of time wherein it has been stated that both the parties were heard in detail. According to the petitioners, it sufficiently raises question mark on the legality of the order itself.

9. Mr. D.K. Sinha, learned Sr. Advocate appearing on behalf of the respondents No. 5 and 6 submitted that, in fact, the mode of partition was such that the petitioners would get only third (1/3) share, therefore, a petition was filed for correction of Jamabandi in the manner in which the partition was actually effected in the family and there was nothing wrong on the part of the Anchal Adhikari concerned to pass an order in this regard. He has further pointed out that the petitioners had filed a title suit also for declaration of their right, title and interest over the lands in question. However, the title suit was dismissed for default. But the question raised by the petitioners is that as to how, after recording that none were heard on behalf of the opposite parties, the Collector could have passed a detailed order expressing therein that he has heard all the parties at length and decided the matter on merit.

10. The State has not filed any counter affidavit.

11. The aforesaid question could not be answered by the learned Counsel appearing for the State.

12. In view of the aforesaid I am constrained to hold that the impugned order dated 21.07.1999 (Annexure-3) and the order dated 11.12.2002 (Annexure-4) suffer from the gross illegality, as would be apparent from a bare perusal of the records. The order dated 21.07.1999 has been passed after considerable delay, i.e. more than about 11 months after closure of hearing and it appears from the records that though the petitioners were not heard, the Respondent No. 2 had stated in the order sheet that they were heard at length. Thus, the revisional order dated 21.09.1999 (Annexure-3) and the order dated 11.12.2002 (Annexure-4) refusing review of the order dated 11.12.2002 are set aside. The matter is remitted back to the Collector concerned for deciding it afresh in accordance with law after hearing the parties preferably within a period of six months from the date of receipt/production of a certified copy of this order by the parties.

13. As a result, this writ application stands allowed.