
(1999) 01 PAT CK 0055
In the Patna High Court
Case No : C.W.J.C. No. 6039 of 1987

Jagdish Choudhary and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) 1 PLJR 744

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : B.P. Verma and Murli Manohar Singh, for the Appellant; Bhrigunath Singh, for the Respondent

Judgement

N. Pandey, J.—In this petition under Articles 226 and 227 of the Constitution of India, Petitioners have assailed the validity of the order of the Superintendent of Municipal Survey (Respondent No. 2) dated 31.8.97, contained in Annexure-5, whereby, Appeal Nos. 3 and 4 of 1984 were dismissed and Appeal No. 27 of 1984 was partly allowed. A prayer has also been made to quash the orders of the Assistant Superintendent of Municipal Survey (Respondent No. 3) contained in Annexure-4, whereby and where under he has rejected the objections, filed by the Petitioners for opening khata after making necessary correction in the survey entry.

2. The case of the Petitioners is that originally on 30.1.1932 Pratap Chandra Choudhary and Domi Choudhary executed registered Patta No. 336 in favour of late Jaduni Choudhary (father of the Petitioners) with respect to C.S. Khata No. 425, C.S. Plot No. 2070 area 8 Kattha and put him in possession. There under, in the year, 1941-42 cess valuation return was submitted to the State Government by the Ex-Landlord in the name of Tetar Choudhary, grand-father of the Petitioners and with respect to 34 Decimals rent was fixed. Even the Ex Landlord had also, granted rent receipts with respect to 8 kattha which is the subject matter of dispute. The Saharsa Municipality also created Holding No. 497 in the

name of the Petitioners father and granted rent receipts from 1963 to 1967. The building plan for construction of the house was also approved on 14.5.1968 by the Municipality over Plot Nos. 2071 and 2070 and thereafter, the house In question was constructed. Even during the revisional survey proceeding, new plot Nos. B 760 and 761 (In part "ka" to "JA") were found in possession of the Petitioners as their homestead.

3. The claim of the contesting Respondent No. 4 as would appear from the materials on record, is that one Ram Prasad Sao acquired 2 kattha and 19 Dhurs of" and in C.S. Plot No. 2063 and 2071 through a registered Patta No. 258. dated 16.12.1912 from the Ex-landlord. He further acquired 5 kattha of land in those very plots through settlement in the year, 1929, total altogether 7 kattha 19 Dhurs. Ram Prasad Sao had two sons, Jageshwar Sao and Dularchand Sao. After the death of Ram Prasad Sao, his two sons disposed of 5 kattha of land to one Bakur Sao through a registered sale deed on 4.7.1934 and remaining 2 kattha and 19 Dhurs were sold on 10.1.1936 to one Banshidhar Prasad. Saku Sao subsequently sold 5 kattha of land to Laxmidhar Prasad. Respondent No. 4 further claims that the aforesaid Banshidhar Prasad and Laxmidhar Prasad executed a sale deed No. 664 dated 11.12.1941 with respect to 7 kattha 19 Dhurs of old plot Nos. 2063, 2070 and 2071 in favour of Late Desh Ratna Dr. Rajendra Prasad (the Chairman of the Provincial Congress Committee, Bihar). It is stated even the Ex. Landlord had also submitted return in the name of Dr. Rajendra Prasad at the time of abolition of Jamindari and accordingly Jamabandi No. 91 was created in his name. The claim of Respondent No. 4 is that later Dr. Rajendra transferred the land in question through a letter dated 5.5.1951 in the name of "District Congress Committee", Saharsa, and ultimately the said committee by a resolution, dated 16.1.1972, transferred the land in favour of Respondent No. 4 (Binoba Ash ram), which is the basis of the claim of Respondent No. 4 regarding title and possession.

4. Mr. Verma contended that the Respondent authorities have completely failed to appreciate that a bare perusal of the sale deed of Banshidhar Prasad and Laxmidhar Prasad in favour of Late Dr. Rajendra Prasad would show that it was nothing else but a manufactured document. Because in the year, 1941 Dr. Rajendra Prasad was neither appointed as President of India nor was honoured as "Desh Ratna". Therefore, there was no occasion for the executants to mention in the sale deed Dr. Rajendra Prasad as "Desh Ratna" and "the President of India". He contended similarly the other party of the case of Respondent No. 4 regarding transfer of the land by Dr. Rajendra Prasad in favour of the District Congress Committee through a letter dated 5.5.1951 also appears doubtful. Because no title can be conveyed in favour of the District Congress Committee simply by a letter. It has always to be done through a registered document. Similar would be the effect of the resolution of the District Congress Committee, whereby, the land was transferred in favour of Respondent No. 4. Thus, entire claim of Respondent No. 4 regarding title and possession becomes doubtful.

5. The grievance is inspired by all these materials on record, the Re-visional Survey authority in a most mechanical and arbitrary manner opened the khata in favour of Respondent No. 4 with respect to Plot Nos. 760, 761 and 947. The Petitioners were only shown in the remarks column in "Awaidh Dakhal" over Plot No. 760. It is stated as would appear from the materials available on the record that before the final disposal of Appeal No. 3 of 1984, Respondent No. 2 had held local inspection and found possession of the Petitioners over part of the land in question, as their homestead. The grievance is though Respondents No. 2 and 3 have recorded that the part of the lands in question is in possession of the Petitioners, but completely ignored to record any finding with regard to the title and claim with respect to the remaining land.

6. It is further stated that apart from the factual aspect, as noticed above, Respondent No. 2 has also committed an error of record while holding that Petitioners had lost their claim with respect to the land in dispute in Title Suit No. 33 of 1972 as well as 42 of 1981. It is stated that as would appear from the record that the land in question appertains to old plot Nos. 2070 and 2071 corresponding to new plot Nos. 760 (whole), 761 (part) and 947 (part), total 8 katthas out of the total area of 14 katthas of Plot No. 2070. No decision whatsoever has been taken by the Civil Court in none of those suits with respect to the land in dispute.

7. It is stated that from the facts, as stated in the supplementary affidavit, it would appear that Title Suit No. 33 of 1972 was filed by Jaduni Choudhary against Radha Krishna Tekriwal, Adyakchha, Gram Swaraj Samiti, Sanarsa with respect to 1 and 1/2 kattha of land of Plot No. 2070. The said case was dismissed for want of proper valuation. Thereafter, a Misc. Appeal No. 21 of 1977 was filed by the Plaintiffs, which was also dismissed by the judgment dated 7.5.1980 affirming the order of the Munsif on the question of valuation of the suit. Therefore, it was wrongly held by Respondent No. 2 that in the above-mentioned title suit Petitioners had lost their claim of title and possession.

8. Similar error was also committed while giving reference of Title Suit No. 42 of 1981, which was filed by Md. Ali and his son Mahmood Alam against Binoba Ashram (Respondent No. 4) and others. In the said suit 3 Kattha 10 Dhurs of land of plot No. 2070 are involved whereas in the present writ petition total area invoiced is 8 kattha. It has been contended even suit No. 42 of 1981 is decided either in favour of the Plaintiff or in favour of the Defendants, it will have no effect with regard to the title and interest of the Petitioners. Therefore, from a bare reference to the facts, stated above, it would appear that entire basis with regard to the findings to dislodge the claim of the Petitioners while giving reference to the decisions in Title Suit No. 33 of 1972 or the pendency of Title Suit No. 42 of 1981 appears honest either on facts or in law.

9. As nobody has appeared on behalf of the Respondents save and except the counsel for the State nor any counter affidavit was filed to controvert the facts, alleged in the writ application, therefore, averments made by the Petitioners

either in the writ petition or supplementary affidavit remain unmerited.

10. As noticed above, to question the validity of the impugned orders, four basic questions have been raised for after minion, (a) Whether on the basis of doubtful and suspicious character of the sale deed executed by Bansidhar Prasad and Laxmidhar Prasad, title had been conveyed to late Dr. Rajendra Prasad. The details of materials facts to raise doubt about the validity of document has been noticed in the foregoing paragraphs, (b) Whether on the basis of a letter dated 5.5.1951 the title could have been conveyed in favour of the District Congress Committee? (c) Whether by a resolution adopted by the District Congress Committee in absence of any document of registration, the land could be conveyed in favour of Respondent No. 4 (Binoba Ashram) and lastly (d) Whether the erroneous findings about the decisions of Title Suit No. 33 of 1972 to rebut the claim of the Petitioners can be allowed to sustain?

11. The Revenue authorities have of course relied on the above-mentioned documents to record a finding in favour of Respondent No. 4, but no attempt was made to answer the questions referred to above. True it is in order to answer the questions raised in this case, a court will be required to examine different documents and evidence of the parties, which probably would neither be possible before this Court in a writ Jurisdiction or before the Revenue authorities.

12. Therefore, in my view, until such facts are adjudicated by a proper court, having regard to the claim of title and possession of the parties, it would be proper to direct them to maintain status quo with regard to their possession over the suit land. I further direct that none of the findings recorded by the Revenue authorities in the impugned orders would stand in the way of either party until and unless the questions referred to above, are finally adjudicated, either by the Revenue authorities or by a civil court. Because from a bare reference to the impugned orders it would appear that the authorities have decided the matter halfheartedly, without any attempt to adjudicate the real grievance of the Petitioners. Not only that, error of record has also been committed to state that Petitioners had lost their title and possession in Title Suit No. 33 of 1972.

13. I, therefore, taking into consideration the facts, stated above, set aside the impugned order with a liberty to the parties either to get the matter finally adjudicated by the Respondent authorities or before the civil court. But in view of the facts, noticed above, until and unless the dispute is finally adjudicated, status quo of the parties with regard to the possession over the land, as obtaining today, shall be maintained.