
(2006) 10 PAT CK 0013
In the Patna High Court
Case No : CWJC No. 14572 of 2001

Jagdish Yadav and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-10-2006

Acts Referred:

Citation : (2007) 1 PLJR 54

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : Uma Kant Shukla, for the Appellant; Vijay Kumar Bhagat and Ravi Shankar, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard Mr. Uma Kant Shukla, learned counsel for the petitioners, Mr. Vijay Kumar Bhagat, learned counsel for the respondent No. 5 and J.C. to Standing Counsel No. 5. for the State. The petitioners seek quashing of the order dated 14.12.2000 passed in Jamabandi Correction Appeal No. 3/1979-80 by the Additional Collector, Darbhanga, respondent No. 3, by which he has set aside the order dated 5.6.1979 passed by the DCLR in Case No. 1/1977-78, and for a further direction for restoration of their Jamanbandi.

2. The short facts of the case are that the ancestors of the petitioners had acquired title and possession of Survey plot No. 800. appertaining to Khata No. 34, survey plot No. 803 appertaining to Khata No. 26 and survey plot No. 804 appertaining to khata No. 33 of village Mohanpur Biranja, Anchal Bahadurpur, District Darbhanga on the basis of the registered sale deed dated 27.9.1965 pursuant to which Jamabandi was also recorded in the names of the petitioners' ancestors since the year 1966. Prior to that, it is stated that Jamabandi was in the name of the vendors of the petitioners' ancestors. It is stated by the petitioners that respondent No. 5 and the ancestors of respondent Nos. 6 to 12 approached the Anchal Adhikari, Bahadurpur and succeeded in obtaining a false and collusive recommendation for cancellation of Jamabandi running in the

names of the ancestors of the petitioners and also of Laxmi Narayan Lal Das, the vendor of the sale deed dated 5.11.1973. The Anchal Adhikari without holding any enquiry submitted a false and collusive report alleging that respondent No. 5 and his family members were in possession of the land in question. On the basis of the said recommendation the Deputy Collector, Land Reforms, Darbhanga issued notices to the parties and on hearing them rejected the recommendation of the Anchal Adhikari by order dated 5.6.1979 in Jamabandi Correction Case No. 1 of 1977-78; against the same the contesting respondents filed Jamabandi Correction Appeal No. 3 of 1979-80 before the Additional Collector. Darbhanga impleading the ancestors of the petitioners, namely, Duni Lal Yadav, Musa Yadav and Kari Yadav, as respondent Nos. 1 to 3 as also other respondents. It is stated that the respondent Nos. 1 to 3 of the appeal case before the Additional collector died on 15.7.1981, 23.2.1982 and 15.3.1983 respectively, during the pendency of the appeal. The appeal itself was finally decided by the impugned order dated 14.12.2000 passed in Jamabandi Correction Appeal No. 3/79-80 by the Additional Collector, Darbhanga.

3. The petitioners have assailed the said order on the ground that it being an order against dead persons it is non est in the eye of law and fit to be quashed for the said reasons. In the writ petition notices were issued upon the private-respondents and respondent No. 5, the contesting respondent has appeared through his counsel but no counter affidavit has been filed on his behalf controverting the said stand taken on behalf of the petitioners that their ancestors, the respondent Nos. 1, 2 and 3 before the Additional Collector in the Jamabandi Correction Appeal were all dead long time back before the decision in the appeal during its pendency. It is submitted by learned counsel for respondent No. 5 that it is a mere assertion of the petitioners that the said respondents in the court below had died during the pendency of the appeal and the same is not proved by any death certificate to show that as a matter of fact, the said persons were dead.

4. This Court permitted the petitioners to bring on record any document from which it could be made out that as a matter of fact the said Duni Lal Yadav, Musa Yadav and Kari Yadav had died between the years 1981 and 1983. By a supplementary affidavit, learned counsel for the petitioners has brought on the record three sale deeds dated 11.6.1982, 12.1.1985 and 7.3.1986 in which the petitioners have been shown as purchasers of certain lands and sons respectively of deceased Duni Lal Yadav, Musa Yadav and Kari Yadav. It is further stated in the said supplementary affidavit that the petitioners approached the Panchayat Sewak for death certificate regarding the death of said three persons but the Panchayat Sewak informed that the register for the period prior to 1995 wherein the entry of birth and death was made was not available in the Panchayat. It is under the said circumstances that the petitioners have produced the said registered sale deeds as proof of the death of the said persons, at least from before 7.3.1986.

5. Learned counsel for the respondents states that the assertion of the petitioners that their ancestors died during the pendency of the appeal has to be proved by them by any reliable document, namely, death certificate and if they fail to do that it is not the onus of the respondents to even deny the same by filing a counter affidavit. In support of the said stand learned counsel relies upon the decision of the Supreme Court in the case of Bharat Singh and others vs. State of Haryana and others: 1988 SC 2181, in para-13 whereof the following observations have been made:-

"In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point."

6. From a bare perusal of the law laid down by the Supreme Court in the said case, it is clear that the onus of first pleading a fact and proving it by evidence rests upon the person who raises it whether the petitioner or the respondent in the writ petition or in the counter affidavit. What the court held that if no such fact was pleaded or the evidence in support of such fact is not annexed to the writ petition or the counter affidavit, then the Court will not entertain the point. This is not the position in the present matter. From the very beginning the petitioners had set up their case that their ancestors who were respondent Nos. 1 to 3 in the court below had died between the years 1981 and 1983 and it was thus incumbent upon the respondent No. 5 to have at least made a bare denial of the said fact, that not having been done prima facie, the said fact goes uncontroverted. As a matter of abundant precaution, the petitioners had been asked to produce the death certificate but they were unable to do that in view of the fact that the authorities of the Gram Panchayat showed their inability to issue the death certificate in the absence of the necessary register for the period prior to 1995. That being the position, the registered sale deeds brought on the record must be treated as secondary evidence of the proof of the death of the ancestors of the petitioners, particularly, in view of the fact that the factum of their death has not been denied by the respondents. As a matter of fact, the learned counsel for the respondent No. 5 has admitted that the said persons have died. That only thing that he is neither prepared to admit or deny is the date of death whether it took place before the impugned order dated 14.12.2000 was passed or thereafter. In my view in the absence of any such denial or statement by respondent No. 5 and considering the materials on the record, it must be held that the petitioners have come out with a correct statement that their ancestors had died on the dates mentioned by them in the writ petition read with the supplementary affidavit.

7. In view of the aforesaid findings, it must be held that the impugned order

dated 14.12.2000 of the Additional Collector is non est and cannot be permitted to stand. The said order is accordingly quashed.

8. Learned counsel for the petitioners submits that the petitioners may be permitted to raise the question of jurisdiction of the Additional Collector when the matter goes back to the competent authority on remand. This Court is not expressing any view on the said matter and the parties would be free to raise such point at the stage when the matter is heard afresh by the competent authority. The writ petition is accordingly allowed with the observations and directions given above.