

(2001) 03 PAT CK 0044
In the Patna High Court
Case No : L.P.A. No. 1620 of 1999

Kalendra Prasad Mandal and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-03-2001

Acts Referred:

Citation : (2001) 3 PLJR 223

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kumar Singh, J

Bench : Division Bench

Advocate : Dineshwar Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

1. The present Letters Patent Appeal has been preferred against the order and judgment of the learned writ Court dated 15th September, 1999 passed in C.W.J.C. No. 5646 of 1990, by which the learned writ Court quashed the order of the Additional Collector, Purnea dated 17/18 April, 1990 in Mutation Revision Case No. 10/89-90, by which he had set aside the order of the Deputy Collector, Land Reforms dated 28.6.89 and had restored the order of the Anchal Adhikari, Rupauli dated 3.5.1988 pass 3d in Mutation Case No. 600/86-87, by which the Anchal Adhikari had reviewed his earlier order of mutation in favour of the vendor of the writ Petitioners and had ordered for mutation in the name of the private Respondents 5 to 7 i.e. Appellants in the present appeal.

2. The question which arises for consideration is as to whether the Anchal Adhikari who had earlier passed an order of mutation in favour of the vendor of the writ Petitioners could have reviewed his earlier order and directed for mutation in favour of the Appellants i.e. Respondents 5 to 7 of the writ application? The second question which is required to be adjudicated is that once right, title, and interest had been decided in favour of the writ Petitioners and the matter had been concluded by the findings of the civil court, whether the revenue authority could have acted contrary to the finding of the civil court and

re-opened the litigation, settled by the civil court?

3. Both the questions are to be answered in negative. It has also been argued by learned Counsel for the Appellants that the Anchal Adhikari could not have re-opened and reviewed his earlier order. If any one was aggrieved by the same he had to move the higher authority. However, he has based his argument on the contention that the review application was not filed by the Appellants but by the writ Petitioners, a fact which is contrary to the record of the case.

4. The short facts are that the vendor of the writ Petitioners namely Smt. Ram Kumari Devi filed T.S. No. 437 of 1962 for declaration of title recovery or confirmation of possession and for correction of survey entry against the vendor of the Appellants i.e. Respondents 5 to 7 of the writ petition. The said suit was decreed by the trial court on 30.4.1969 in favour of Smt. Ram Kumari Devi. The title of the Plaintiff i.e. Ram Kumari Devi was declared and her possession was also confirmed and it was further held that the survey entry was wrong. Father of Respondents 5 to 7 to the writ application i.e. present Appellants preferred an appeal being F.A. No. 135 of 1969 before the Subordinate Judge, Purnea. The said appeal was dismissed and thereafter the aforesaid Mithan Mandal filed S.A. No. 176 of 1975 before this Court. The second appeal was also dismissed by this Court on 17.12.1979. The civil court found the title and possession of Smt. Ram Kumari Devi over the land in dispute and the claim of father of the Appellants i.e. Respondents 5 to 7 of the writ application was rejected. The aforesaid Ram Kumari Devi filed an application for mutation of her name before the Anchal Adhikari, Rupauli who by his order dated 17.7.87 ordered for mutation of name of Ram Kumari Devi and thereafter the writ Petitioners purchased the aforesaid land on 23.10.87 by a registered sale deed and were put in possession of the aforesaid land.

5. After the death of Mithan Mandal, the present Appellants filed an application before the Anchal Adhikari to review the order of mutation passed in favour of the vendor of the writ Petitioner i.e. Ram Kumari Devi which was numbered as Mutation Case No. 600 of 1986-87 and the Anchal Adhikari by his order dated 3.5.1988, a copy of which is annexed as Annexure-1 to the writ application, reviewed his earlier order on the ground that the land was in possession of Respondents 5 to 6 i.e. the Appellants in, the present appeal.

6. Taking the aforesaid scenario into consideration, this Court cannot accept the suggestion of the counsel of the Appellants that the review application was preferred by the purchasers from the original vendor and not by them. Whether the Anchal Adhikari could have reviewed his earlier order or not becomes academic in view of the fact that once the civil court had declared the title and possession of the vendor Ram Kumari Devi, the Anchal Adhikari could not have passed an order contrary to the finding of the civil court. It is well settled that mutation is for collection of land revenue; right, title and interest is not decided in the said proceeding. The same is done on the basis of possession. Here the competent civil court had already declared the title and possession of Smt. Ram

Kumari Devi which has further been affirmed in the First Appeal before the learned Subordinate Judge and the Second Appeal by this Court. The same could not have been re-opened again and again.

7. The contention of learned Counsel for the Appellants is that the Appellants who were Respondents 5 to 7 in the writ application had nothing to do with Mithan Mandal who was the Defendant in the title suit and the land in question was in their exclusive possession since last many years and as such, by virtue of adverse possession the land should be held to be validly possessed by them. To our dismay, we have found that the aforesaid submission is also contrary to the records of the case. The Appellants who were Respondents 5 to 7 were no other but the sons/grand sons of Mithan Mandal. When the records of the case was shown to the learned Counsel for the Appellants he had no answer.

8. In the facts of the case, we do not find any infirmity in the order of learned writ Court, by which he has quashed the order of Additional Collector, Purnea dated 17/18.4.90 and the order of the Anchal Adhikari dated 3.5.1988, by which he had reviewed his earlier order and tried to unsettle and reopen the matter once again which has been settled by the civil court and affirmed by this Court in course of litigation of nearly forty years.

9. In the result, the Letters Patent Appeal fails being devoid of merit and is accordingly, dismissed but we cannot refrain ourselves from showing our displeasure on the conduct of the Appellants in trying to mislead the Court and try to reopen a litigation afresh which has come to its logical conclusion after forty years of litigation by a decree of civil court which has been affirmed by this Court and as such, we award a cost of Rs. 1,000/- on the Appellants which shall be paid to the Respondents 2 to 4 within a period of four weeks from today, failing which the same shall be realised as arrears of land revenue and paid to Respondents 2 to 4.