

(2009) 09 PAT CK 0049

In the Patna High Court

Laxmi Prasad Mandal and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Citation : (2009) 4 PLJR 999

Hon'ble Judges : Ravi Ranjan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ravi Ranjan, J.—Heard learned Counsel for the petitioners and learned counsel appearing on behalf of the State.

2. Though notices were issued upon the respondents No. 4 to 7 as far back as on 30.04.2004, which stands validly served in the year 2004 itself, as per the office report, no body has appeared on their behalf.

3. Petitioners seek quashing of the order dated 08.08.2003, passed by the Anchal Adhikari, Dagaruwa, Purnea in Mutation Case No. 281/2000-2001, as contained in Annexure-9, whereby the earlier jamabandi running in the name of the petitioners had been cancelled and the same had been created in the name of the respondents No. 4 to 7.

4. Brief facts of the case, as appears from the writ application, are as follows:

5. Petitioners by several sale deeds registered in between 1963 to 1982 had purchased lands from several persons including the respondent No. 5, the husband of respondent No. 5 and their transferees, as per the detailed descriptions given in paragraphs 5 to 11 of the writ application and, after purchase, their names were mutated in the record of rights maintained by the State, which started receiving rents from the petitioners and, in token thereof, rent receipts were issued in their favour. Respondents No. 4 to 7 filed Title Suit No. 522/1996 impleading the petitioners as defendants for declaration that the

sale deeds in favour of the petitioners with respect to the lands in dispute are illegal, void, not binding upon the parties and for further declaration of their right, title and possession upon the suit land as well as with an alternative relief that if they are found to be dispossessed then a decree with regard to the recovery of possession be also drawn. The title suit concerned was dismissed on contest and the sale deeds concerned were declared to be valid and the petitioners were found validly in possession of the lands in dispute and there had been a specific finding of the court that the plaintiffs thereof (respondents No. 4 to 7 herein) were not found in possession of the suit land. Copies of the title suit concerned and the judgment and decree have been appended to this writ application as Annexure-2 and Annexure-2/A respectively. The aforesaid judgment and decree was challenged by the respondents No. 4 to 7 in First Appeal No. 409/1999. In the meantime, the respondents filed a petition before the Anchal Adhikari concerned for mutation of the lands in dispute in their favour, which was rejected by the order dated 09.10.2001 upon consideration of the reports of the Halka Karamchari and the Circle Inspector as well as in view of the judgment and decree passed in Title Suit No. 522/1996. However, an appeal was preferred thereof by the respondents concerned which was allowed and the matter was remitted back to the Anchal Adhikari concerned for fresh determination clarifying therein itself that the judgment and decree passed in the title suit concerned would certainly have preference. The Anchal Adhikari concerned by the order dated 08.08.2003 had passed an order exactly reversing his earlier view in the order dated 09.10.2001 and had allowed the petition of the respondents concerned and ordered for creation of their jamabandi with respect to the lands in dispute after cancelling the jamabandi of the petitioners.

6. Learned counsel for the petitioners submitted that none of his objections had been considered by the Anchal Adhikari while passing the impugned order. It was further submitted that the effect of the judgment and decree passed in the Title Suit No. 522/1996 had also not been discussed anywhere in the impugned order and the order had been passed cancelling the jamabandi in favour of the petitioners with respect to the lands which were the subject matter of the title suit aforesaid filed by the respondents No. 4 to 7, which was dismissed recording a positive finding of possession in favour of the petitioners.

7. No counter affidavit has been filed on behalf of the State. No body had appeared on behalf of the respondents No. 4 to 7 in spite of valid service of notice upon them.

8. Learned counsel for the State submitted that upon 9 acres of land appertaining to Khata No. 271 concerning plot Nos. discussed in the impugned order, the jamabandi in favour of the respondents had been directed to be created on the basis of their possession thereon and spot verification. However, learned Counsel could not show that those lands were not covered under the Schedules of the plaint of the title suit concerned which had been brought on record by the petitioners as Annexure-2/A. It is an admitted fact that the

jamabandi was running in the name of the petitioners and that had been cancelled and created in favour of the respondents No. 4 to 7.

9. In view of the aforesaid discussions this Court is of the opinion that the impugned order dated 08.08.2003 passed by the Anchal Adhikari concerned suffers from serious errors inasmuch as despite the direction of the Sub Divisional Officer concerned, without discussing anything with regard to the judgment and decree passed in Title Suit No. 522/1996, the order has been passed. It is manifest from perusal of the entire order that the objections raised on behalf of the petitioners have not at all been considered. A Division Bench of this Court in Kalendra Prasad Mandal and Ors. v. The State of Bihar and Ors. 2001 (3) LLJR 223 has held that order of revenue authority which is contrary to the declaration of title and possession of civil court is illegal.

10. Thus, this Court is constrained to set aside the impugned order dated 08.08.2003 passed by the Respondent No. 3, as contained in Annexure-9, and remit back the matter to the Anchal Adhikari concerned, Respondent No. 3 for re-determination in accordance with law after hearing the parties concerned. Since the petitioner is not sure about the stage of First Appeal No. 409/1999 preferred against the judgment and decree of Title Suit No. 522/1996, it is clarified that the Anchal Adhikari concerned will take into account the judgment and decree of the first appeal aforesaid also, in case the same had been decided and its judgment and decree is produced by either of the parties.

11. This order would be operative only with regard to the lands which are the subject matter of this writ application, as stated in paragraphs 5 to 11, and are covered under the judgment and decree passed in Title Suit No. 522/1996.

12. Accordingly, this writ application stands allowed.