
(2009) 08 PAT CK 0014
In the Patna High Court
Case No : CWJC No. 8327 of 2003

Ram Ratan and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Citation : (2009) 08 PAT CK 0014

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Anil Kumar Rai, for the Appellant; Binod Kumar, AC to SC V, A.K. Gupta, AC to SC V for the State and Gopal Prasad, for Respondents No. 5 to 7, for the Respondent

Final Decision : Allowed

Judgement

Ravi Ranjan, J.—I.A. No. 61/2009 has been filed for expunging the name of the sole petitioner, Phulpato Devi @ Ful Pato, who died on 11.12.2008 and for substituting her heirs and legal representatives, as described in paragraph 3 of the interlocutory application.

2. Heard learned Counsel for the petitioner, learned Counsel for the State and learned Counsel appearing on behalf of respondents No. 5 to 7.

3. The respondents did not raise any objection to the aforesaid prayer made on behalf of the petitioner.

4. I.A. No. 61/2009 is, thus, allowed. Let the name of the deceased sole petitioner be expunged from the array of parties and, in her place, the names of her heirs and legal representatives, as described in paragraph 3 of the interlocutory application be substituted.

5. The newly added heirs and legal representatives of the deceased sole petitioner have already put in their appearance by filing Vakalatnama.

6. Now, I proceed to consider and dispose of this writ application.

7. The petitioners are seeking quashing of the order dated 25.06.2002, passed in Mutation Revision Case No. 149/1997 by the Respondent No. 2, as contained in Annexure-6, the order dated 29.06.1997, passed in Mutation Appeal No. 149/1997, as contained in Annexure-2, and confirmation of the order dated 20.03.1997, passed in Mutation Case No. 744/1996-97 by the Respondent No. 5, as contained in Annexure-1 to this writ application.

8. Learned Counsel for the petitioners submitted that the entries in the record of rights were in the name of the father-in-law of the original petitioner (since deceased). The Respondent No. 4, Circle Officer, Dumraon, Buxar by an order, contained in Annexure-1, dated 20.03.1997 had rejected the prayer of the father of the Respondents No. 5 to 8 for mutation of the disputed land in his favour. The aforesaid order was challenged by their father, Late Subba Sharma in appeal, which was partly allowed and the same was challenged by filing a revision before the Collector of the District. During the pendency of the aforesaid revision, the original petitioner, namely, Phulpato Devi @ Ful Pato Devi filed a petition informing thereby that the opposite party, namely, Subba Sharma had died and made a prayer for substitution of his heirs. The Respondent No. 2 vide order dated 09.10.2001, as contained in Annexure-5, directed the parties to give evidence and the date of death of the opposite party concerned. Subsequently, it was found that the opposite party had died on 06.08.1997 itself whereas the revision was filed on 31.10.1997. Thus, the Collector had rejected the revision as the same was filed against a dead person.

9. Learned Counsel for the petitioners submitted that since the original petitioner, namely, Phulpato Devi @ Ful Pato Devi was a rustic lady and a widow and was not much aware of the legal implications, she should have been given an opportunity by the Collector concerned and the revision should have been heard and decided on merit as the same would be materially affecting the rights of the respective parties.

10. Learned Counsel for the Respondents No. 5 to 7 submitted that the Collector was right in saying that the revision was filed against a dead person.

11. Learned Counsel for the State fairly submitted that though the revision was filed against a dead person, a petition for impleading the legal representatives of the deceased was filed and that could have been taken into consideration by the Collector concerned.

12. Upon hearing the rival submissions, this Court is of the view that the courts and the authorities concerned should advance the cause of justice and, as far as possible, they should refrain themselves from dismissing the cases merely on the ground of technicalities. Though, it is correct that when the revision was filed, the opposite party had already died. However, subsequently a petition for impleading the legal representatives of the deceased was filed, which should have been considered by the Respondent No. 2. The original petitioner should have been given an opportunity to show cause as to why they could not take that

step at the time of filing of the revision itself.

13. Since it is admitted by the parties that the revision has not been decided on merit, I set aside the impugned order dated 25.06.2002, passed by the Collector, Buxar, Respondent No. 2 in Mutation Revision case No. 149/1997 and remit back the matter to him to decide the controversy between the parties afresh after affording an opportunity of hearing to the petitioners to explain the cause of omission, as aforesaid. The Respondent No. 2 is directed to decide the matter within a period of six months from the date of receipt / production of a certified copy of this order by either of the parties.

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

15. However, it is made clear that this Court has not formed any opinion with regard to merit of the cases of the respective parties.