
(2010) 09 PAT CK 0174
In the Patna High Court
Case No : CWJC No. 8573 of 2002

Roshan Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Citation : (2011) 1 PLJR 515

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sheema Ali Khan, J.—The Petitioner has challenged the order contained in Annexure-8 dated 20.12.1996 by which the Divisional Commissioner has relied on the order of the Additional Collector, dated 22.8.1991 contained in Annexure-5 to hold that Ajhauila Devi was the daughter of Khedu Yadav.

2. The facts are that the Petitioner filed an application for entering his name in the revenue records for the lands in question on the basis of a family partition, numbered as 15 of 1978/95 of 1996 of 1986-86, which was allowed on 19.2.1996 in favour of the Petitioner. The Respondent No. 6 also filed an application on 5.3.1986 to mutate his name with respect to 2 acres and 2 decimals of lands, which they had purchased from the daughter of Khedu Yadav. The Circle Officer allowed the application of the Respondent No. 6 on 21.4.1986. The Deputy Collector Land Reforms set aside the order of the Circle Officer on 30.3.1988, which was challenged before the Additional Collector. The Additional Collector decided in favour of Respondent No. 6. The Petitioner being aggrieved by the order of the Additional Collector, filed an application before the Divisional Commissioner. The Divisional Commissioner rejected the application on the ground that he did not have the power to hear the matter. Being aggrieved by the order of the Divisional Commissioner, the Petitioner filed CWJC No. 4752 of 1992 which was allowed and the matter was remanded to the Divisional Commissioner to hear the matter.

3. The case of the Petitioner is that Rekha Yadav had three sons, namely, Lattu Yadav, Nano Yadav and Daro Yadav. Lattu Yadav had one son, namely, Prayag Yadav; Nano Yadav had one son, namely, Khedu Yadav and Khedu Yadav had one daughter, namely, Ajhula Devi, whereas Daro Yadav had two sons, namely, Mahabir Yadav and Bhola Yadav. The Petitioner is the son of Mahabir Yadav.

4. The point raised on behalf of the Petitioner is that Ajhula Devi who had executed the sale deed in favour of Respondent No. 6 could not have done so, until the Respondents/Ajhula Devi had disclosed how and when she inherited the property of Khedu Yadav. The case of the Petitioner is that Khedu Yadav had disappeared and was missing. It was incumbent upon Ajhula Devi or the Respondent to disclose the date on which he had died or is missing in order to substantiate the fact that his daughter had inherited the property.

5. Counsel for the Respondent No. 6, on the other hand, submits that since the Petitioner does not dispute the fact that Khedu Yadav was the son of Nano Yadav and that Ajhula Devi was the daughter of Khedu Yadav, it does not lie in the mouth of the Petitioner to dispute the deed. The Petitioner would not inherit the property of Nano Yadav by virtue of being the brother or nephew of Nano Yadav and as such, the Petitioner has failed to make out a case to show that he prima facie has any right or title to the lands in question, which fell in the share of Nano Yadav.

6. Considering the pleas of both the parties, I do not think that this is a case in which this Court can intervene and hold that the Respondent-State have wrongly allowed the mutation case. The Divisional Commissioner has already observed that all findings in the mutation proceeding would be subject to the result of the findings of the competent Court.

7. In view of the aforesaid facts, I am not inclined to interfere in the order impugned. This writ application is accordingly dismissed.