

**(2010) 08 PAT CK 0133**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 735 of 1991

Satya Narain Missir and Binoy Kumar Missir

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision :** 31-08-2010

**Acts Referred:**

**Citation :** (2010) 08 PAT CK 0133

**Hon'ble Judges :** Sheema Ali Khan, J

**Bench :** Single Bench

## Judgement

Sheema Ali Khan, J.—The petitioners have challenged Annexure-1 dated 28.4.1981, passed by the Circle Officer, Rupouli, Purnea, Annexure-2 dated 16.5.1983, passed by the D.C.L.R. and Annexure-3 dated 14.12.1990, passed by the Collector, Purnea arising out of a mutation application filed on behalf of the petitioners.

2. Kunjal Missir had two sons Kali Missir and Prem Nath Missir. Prem Nath Missir had a son Chander Mony Missir. Deya Nath Missir had a son Hari Mohan Missir who had two sons namely Satya Narayan Missir and Binoy Kumar Missir who are the petitioners in this application. Chandra Mony Missir had two wives. The first wife Maya Devi died in 1915. Maya Devi was survived by a son Durga Missir who was married to Rajeshwari Devi. Durga Missir is said to have died in the year 1939. The second wife was Blavani Missrain who died in the year 1977. According to the petitioners Blavani Missrain was given the disputed lands as maintenance after her husband's death. She came into possession of the said lands, after the amendment of the Hindu Succession Act in 1956. After her death her step daughter-in-law Rajeshwari Devi came in possession of the lands. Rajeshwari Devi filed a mutation case to get her name recorded in the revenue records. An objection was filed on behalf of the respondents in which they claimed that the said land has been mutated in their favour some years back by filing three separate mutation cases. According to the petitioners, the respondents Jageshwar Jha (R4) and Sitaram Jha (R5) being an advocate clerk

used to look after the affairs of Blavani Missrain and in course of looking after her affairs had stolen her documents and got his name along with his brother's name mutated for the said lands.

During hearing of the mutation cases, the Court below i.e. the Court of the D.C.L.R. as well as the Additional Collector called for the records of the mutation cases but they were not made available, as it appears that they had been misplaced for one reason or the other. It is the case of the petitioners that Rajeshwari Devi had also filed a Miscellaneous Case for setting aside the compromise decree passed in Title Suit No. 41 of 1973 in a case filed by Sitaram Jha against Blavani Missrain. During the pendency of the miscellaneous case Rajeshwari Devi died. The petitioners filed a substitution application which was rejected by the Court and thereafter the petitioners filed civil revision against the order rejecting the substitution petition. The order rejecting the substitution petition, was set aside by this Court in Civil Revision No. 1518 of 1989 dated 18.12.1995.

The case of the respondents is that the name of Blavani Missrain was recorded in the cadastral survey and in the revisional survey. It is their claim that they were gifted the lands in question by Blavani Missrain in the year 1973. It is said that Sitaram Jha filed a case against Blavani Missrain Title Suit No. 41 of 1973 which ended in a compromise. Another case numbered as Title Suit No. 122 of 1943/17 of 1945 was filed by Blavani Missrain against Satya Narayan Missir for setting aside the document said to have been executed by Durga Missir and it was declared that the defendant Satya Narayan Missir had no title to the suit lands, on the basis of the said registered deed in their favour by Durga Missir. On the basis of the aforesaid facts the respondents claim that their names have been mutated and they are in possession of the lands.

3. Learned Counsel for the petitioners on the other hand submits that all the documents have been obtained by the practicing fraud. The compromise decree is not a genuine document. The records would indicate that Blavani Missrain had not appeared in the case and entered into a compromise. It is said that Sitaram Jha had managed the affairs by misleading Blavani Missrain. It has been submitted that the D.C.L.R. and the Additional Collector made attempts to get] the records of mutation proceeding but failed. The respondents were called upon, "to support their case by producing certified copies from the mutation orders in their favour but they too did not produce a chit of paper before the consolidation authorities or before this Court. It is submitted that the orders of the three Courts are fit to be set aside on the ground that the documents on which the Courts are relying are not genuine.

4. This Court while considering the claim and counter claim of both the parties finds that there are several disputed facts involved in this case which cannot be resolved or decided by the Circle Officer/D.C.L.R./Additional Collector or for that matter this Court.

5. In the result, the petitioners are advised to take legal remedies available to them by filing a suit in the Court below. Obviously orders impugned will be subject to the orders passed in the suit.

6. This writ application is disposed of with the aforesaid observations.