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**(2023) 12 PAT CK 0018**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No. 1003 Of 2023 In Civil Writ Jurisdiction Case No. 23968 Of 2018

Shashi Nath Pandey @ Shashi Kant Pandey

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision :** 07-12-2023

**Acts Referred:**

Bihar Land Dispute Resolution Act, 2009 — Section 4(1)(d), 4(1)(h)

**Citation :** (2023) 12 PAT CK 0018

**Hon'ble Judges :** K. Vinod Chandran, CJ;Rajiv Roy, J

**Bench :** Division Bench

**Advocate :** Dhanendra Chaubey, Md. Khurshid Alam

**Final Decision :** Dismissed

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**Judgement**

1. Heard the parties.

2. The present appeal has been preferred against the judgment and order dated 27.07.2023 passed by the learned Single Judge in CWJC No. 23968 of 2018 by which the Writ Court chose not to interfere with the order dated 24.10.2018 passed by the Bihar Land Tribunal, Patna (henceforth for short 'the B.L.T.') in B.L.T. Case No. 292 of 2014.

3. The matrix of facts giving rise to the present appeal is/are as follows:-

4. The appellants claim that the land in question belonged to one Ram Dhyan Upadhyay who had two wives namely Smt. Dularo Devi and Smt. Bela Devi. Smt. Dularo Devi was blessed with one daughter namely Lilawati Devi and the appellant no. 1 is her husband. The second wife of Ram Dhyan Upadhyay, Bela Kuer had one daughter, Lilawati Devi from whom the respondent no. 06 purchased the land.

5. One Sona Kuer executed a registered deed of Will dated 03.07.1995 in favour of the appellant no. 1 in respect of all her properties including the disputed land.

She died on 20.09.1996 and after her death, the Probate Case No. 37 of 1997 was filed.

6. The Respondent No.6 on the other hand came out with a case that he purchased the disputed land from second wife Bela Devi and their daughter Lilawati Devi through registered sale deed dated 23.01.2001 and are coming in possession and rent receipt also being issued to him.

7. He preferred L.D. Case No. 137 of 2012-13 before the Deputy Collector Land Reforms, Sadar, Ara under Section 4(1)(d) of the Bihar Land Dispute Resolution Act, 2009 (henceforth for short 'the 2009 Act') in which the appellants appeared and filed their pleadings stating that a Title Suit No. 1 of 2000 is pending before the learned Additional District Judge-II with regard to the properties mentioned.

8. The Respondent No.4 after hearing the parties and considering the documents on record passed an order on 21.03.2013 in favour of the respondent no. 6.

9. Aggrieved, L.D. Appeal No. 399 of 2013 was preferred before the Commissioner, Patna Division, Patna which rejected the claim of the appellants vide an order dated 03.10.2013/13.01.2014.

10. Thereafter, the appellants preferred B.L.T. Case No. 292 of 2014 before the B.L.T., Patna. It was heard on 24.10.2018 and the same was dismissed holding that:

sale deed, remaining unchallenged, a jamabandi remaining unchallenged, cannot be wished away by the petitioner by only filing Probate Case, which is still pending.

11. Still aggrieved, the CWJC No. 23968 of 2018 was preferred by the appellants herein. The said writ petition was taken up by the learned Single Judge on 27.07.2023 and after hearing the parties and perusing the records, the writ Court passed the following orders:-

10. "So far as the facts of the instant case is concerned, in the opinion of the Court, the same are similar to the facts of the case of Basudev Saw (supra). Herein also the petitioner through his ancestors claim to be khatiani raiyat. The petitioner was paying rent and was being granted rent receipts. It is not in dispute that the petitioner herein is neither an allottee nor a settlee of the land in question nor is the petitioner claiming right over the land in question as a result of the same having been settled under any one of the six Acts mentioned in Schedule I of the Bihar Land Disputes Resolution Act, 2009. Thus in the opinion of the Court the very application filed by the petitioner on 21.11.2017 under section 4(1)(h) of the Bihar Land Disputes Resolution Act, 2009 before the Deputy Collector Land Reforms was not maintainable.

11. Consequently the order dated 9.2.2018 (Annexure-4) passed in Land Dispute Case no. 9/2017-18 by the D.C.L.R., Kahalgaon would without jurisdiction. As such the orders dated 8.10.2018/22.10.2018 (Annexure-5) passed in Misc.

(B.L.D.R.) Case no. 2/1018-19 by the Divisional Commissioner, Bhagalpur as also the order dated 13.1.2020 (Annexure-8) passed in B.L.T. Case no. 172 of 2019 by the Bihar Land Tribunal, Patna would also not be sustainable. As such the order dated 9.2.2018 (Annexure-4), order dated 8.10.2018/22.10.2018 (Annexure-5) and order dated 13.1.2020 (Annexure-8) are all set aside."

12. This is how the appeal has now come before us challenging the said order of the Writ Court.

13. Mr. Dhanendra Chaubey, learned counsel for the appellants submit that the learned Single Judge while passing the order completely ignored the fact that the lands were purchased during the pendency of the Title Suit No. 01/2000 (arising out of Probate Case No. 37/1997) and the Writ Court further wrongly observed that the Court below had not discussed the Title. According to him, when the respondent-DCLR, Ara, Sadar gave direction for vacating the land within 30 days, it virtually decided the title.

14. It is his further submission that when the Will was there in his favour which followed the Probate case and finally Title Suit No. 01/2000; no order could have been passed favouring the respondent no. 6 but the learned Single Judge chose to look the other way.

15. In support of the case, he has cited the judgment of the learned Single Judge in the case of Ram Bachan Singh Vs. The State of Bihar & Ors reported in 2023 (3) BLJ 449. He as such submits that the appeal is fit to be allowed and all the orders passed by the Courts below as also the Writ Court be set aside.

16. Having heard the learned counsel for the appellants and perusing the records, we are in complete agreement with the observations made by the learned Single Judge that the successive Courts have not touched upon the Title of the land. The fact remains that the sale deed (by virtue of which the respondent no. 6 put his claim on the land) was never challenged by the appellants herein. Further, even the subsequent mutation of the land remained unchallenged and in that background, the only way a decision can come is/was for the parties to move before an appropriate court by filing suit. Instead, what the appellants want is an indirect order from this Court.

17. So far as the decision cited by the appellants in the case of Ram Bachan Singh (supra) is concerned, the learned Single Judge in that case observed that the petitioner was neither allottee nor a setlee of the land nor claiming right over the land, his petition under Bihar Land Dispute Resolution Act before the DCLR was not maintainable.

18. Taking into account the aforesaid fact, the learned Single Judge set aside all the orders upto the order passed by the BLT, Patna. However, while disposing of the writ petition, the learned Single Judge gave liberty to the petitioner to approach the Civil Court of Competent Jurisdiction.

19. The said decision of the learned Single Judge cited by the appellants before

the Division Bench do not come to his rescue inasmuch as the appellants herein are claiming hold over the land on the basis of a Will and thus the same can be decided only in a proper Civil Suit. Even if probate of the Will is granted it has to be adjudicated whether the executant of the Will had the right to make the bequest.

20. Thus, we are of the considered view that there is no error in the order passed by the learned Single Judge. The parties are free to move before the Civil Court for the redressal of their grievance, if they so want.

21. The appeal stands dismissed.