
(2012) 01 PAT CK 0016
In the Patna High Court
Case No : CWJC No. 5009 of 1997

Yunus Ali APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Bihar and Orissa Municipal Survey Act, 1920 — Section 15, 9

Citation : (2012) 3 PLJR 542

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : Abbas Haider, for the Appellant; Ajay Kumar Mathur and Mrs. Archana Sinha For the State, for the Respondent

Judgement

Shivaji Pandey

1. Heard Learned Counsel for the petitioners and Learned Counsel for the State. The counsels for both the parties have informed that the petitioner no. 2 and respondent no. 6 have already died.

2. In this case basically the issue has been raised about the validity of the order passed by the Superintendent of Survey, Darbhanga in Appeal Nos. 33 and 34 of 1996. One party is claiming the right over the property because of the oral gift and subsequently the possession was handed over whereas the another party is claiming the property on the basis of registered sale deed executed by heirs deceased. According to petitioners, deceased had died leaving behind sisters and nephews they inherited the property and sold to them which cannot be faulted. The disputed land is concerning Municipal Holding Nos. 52 and 60. The deceased did not leave any son and daughter and he got sale deed executed by aforesaid persons.

3. It has been submitted that certain portion from the northern side was in the possession of Md. Ahmad Raza Soz whereas certain portion from the southern side was in the possession of Millat Education Society. The claim of petitioners is

that they had purchased the land through a registered sale deed from the sisters and nephews whereas respondent side has claimed that these properties were given by oral gift and subsequently the possession of the property was given.

4. The land in dispute was recorded as a land of Bihar Govt. but at the Tanaja Stage the petitioner side has filed an objection on the basis of documents, their names were entered and later on respondent side also filed an objection.

5. The Assistant Settlement Officer, respondent No. 4 passed the order (Annexure-2) in favour of petitioners. The respondents further filed an objection stating that premises constituting the northern and southern portion has orally been gifted to them but no order was passed.

6. It has been further submitted by the respondent that not only the property was gifted orally but possession was also given but before the death of the doner, deceased had filed an application for mutation of the names of respondent Nos. 5 & 6 but no order could have been passed.

7. According to petitioners, the objection was filed and by Annexure-4 the same was rejected and against that the respondents filed the appeal vide Appeal No. 94/1996 and the same was allowed by impugned order (Annexure-1) passed by Superintendent of Survey.

8. The counsel for the petitioner submits that under the Bihar & Orissa Survey Act, 1990, the Survey Authority has no jurisdiction to decide the title of the parties and the Authority has exceeded his jurisdiction. The right and title can only be decided by the Civil Court of competent jurisdiction and the Authority is only to make an entry on the basis of possession. Any finding recorded by the authority concerned is of no value because only the Civil Court is competent to decide right and title whereas the counsel for the respondent disputed the contention and stated that the order passed by the authority concerned i.e. Annexure-1 cannot be interfered as the Authority has considered all aspects of the matter and decided the case. There is no illegality in the order.

9. Having considered the contention of both the parties and in view of the judgment reported in the case of Kanhaiya Lal Sah and Others Vs. The State of Bihar and Others, which specifically states that the Superintendent of Survey under the Bihar & Orissa Municipal Survey Act while deciding the issue under Sections 9 and 15 of the Act has no jurisdiction to decide the title of the parties and the question of title can only be adjudicated by the civil court of competent jurisdiction.

10. In this view of the matter, this Court is directing both the parties to approach the Civil Court of competent jurisdiction for deciding the issue with regard to title of the parties and finding or any opinion recorded by the Authorities concerned will be of no value for the purposes of Civil Suit. With the above observation and direction, this writ petition is disposed of.