

केस का सं० और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी, तारीख के साथ
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IN THE COURT OF THE DEPUTY COMMISSIONER, RANCHI
Misc Appeal No.-48 R 15/2017-18

- 02.01.2021
1. Usha Devi Wife of Late Vijay Kumar Dubey
 2. Tarini Devi Wife of Late Ajay Kumar Dubey
- Both Resident of Village Hatia, P.S. Hatia, District Ranchi
..... Appellants
- Versus-
1. Om Prakash Nath Mishra Son of Late Shiv Bhaskar Nath Mishra
 2. Pradeep Nath Mishra Son of Late Shiv Bhaskar Nath Mishra
- R/o Bijulia, P.S. Ratu, District Ranchi Respondents

ORDER

Present appeal has been preferred against the order dated 19.12.2017 passed by the Learned Land Reforms Deputy Collector, Sadar, Ranchi in Misc Case No.-43 of 2012-13, wherein and whereunder the learned LRDC, Sadar, Ranchi cancelled the demand with respect of land under Khata No.-74, Plot No.-29 area 2.21 Acres of Village Oberia and Khata No.-93, Plot No.-966, 1013, 1477 and 1553 area 5.95 Acres of Village Hatia, P.S. Jagarnathpur, District Ranchi running in the name Vijay Dubey, Ajay Dubey and Nilima Devi and directed the Circle Officer, Namkum Anchal, Ranchi to create demand with respect of aforementioned land in the name of the respondent namely Om Prakash Nath Mishra and Pradeep Nath Mishra.

Heard both the parties. According to the learned Advocate appearing on behalf of the appellants:-

The land comprised within R.S. Plot No.- 29 under Khata No.- 74 of Village Oberiya , P.S. Hatia, District Ranchi and the lands comprised within R.S. Plot Nos. 966, 1013, 1477 and 1553 under Khata No.- 93 of Village - Hatia , P.S. Jagarnathpur, District Ranchi were recorded in the revisional survey record of right in the names of Smt. Dhiraj Kunwar wife of Sukhbhanjan Sukul and Smt. Sita Kunwar wife of Rameshwar Tiwari. The recorded raiyat Sita Kunwar died issueless after the revisional survey and her interest in the aforementioned land devolved upon her surviving full blood sister Smt . Dhiraj

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Kunwar who came in exclusive possession of the aforementioned land. Dhiraj Kunwar died leaving behind her only daughter Sobhan Kunwar Wife of Chuni Ram Dubey who inherited the interest of the deceased in the aforementioned land and came into possession. Smt . Sobhan Kunwar also died in the year 1934 leaving behind a son Rambrit Ram Dubey and a daughter namely Jagrani Kunwar. Since Sobhan Kunwar died in the year 1934 and as such according to the law prevalent at the relevant times her only son Rambrit Ram Dubey, since deceased, father in law of the appellant inherited the property and came into possession thereof. Rambrit Ram Dubey was recognized as a raiyat by the State and after due enquiry jamabandi was opened in his name in the year 1955-56. After vesting of the estate under the provisions of the Bihar Land Reforms Act, 1950 he regularly paid rent to the state since the date of vesting so long alive and after his death his widow Nilima Dubey and two sons namely Vijay Kumar Dubey and Ajay Kumar Dubey inherited the property left by him including the aforementioned land and came into exclusive possession of the same. After the death of Rambrit Ram Dubey his widow Nilima Dubey along with her two sons namely Ajay Kumar Dubey and Vijay Kumar Dubey got their names mutated with respect to the aforementioned lands vide Succession Mutation Case No.-464 R 27/1987-88 and regularly paid rent to the State. Ajay Kumar Dubey , Vijay Kumar Dubey and their mother Nilima Dubey on account of legal necessity as well as Rambrit Ram Dubey while he was alive sold portion of the disputed land measuring about 2.50 acres to different purchasers from the year 1987 and onwards and the respective purchasers are coming in peaceful possession of the respective lands purchased by them and have got their names mutated in the serista of the State and are regularly paying rent to the State . Thus the appellants are absolute owners of the lands including 2.21 acres of land comprised within R.S. Plot No.-966, 1013, 968 and 970 under Khata No.- 93 of village Hatia and are regularly paying rent to the State and while their respective husband were alive they were paying rent to the state after the death

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of their father Rambrit Ram Dubey. While Rambrit Ram Dubey was alive he was paying rent to the State since the date of vesting. Vijay Kumar Dubey has died leaving behind Usha Devi, appellant no. 1 as his widow and Ajay Kumar Dubey has also died leaving behind Tarini Devi appellant no . 2 as his widow.

The learned D.C.LR. Sadar , Ranchi without properly considering the materials on the record and the relevant provisions of law passed order on 19.12.2017 cancelling the long standing jamabandi opened in the name of Rambrit Ram Dubey and after his death in the names of his widow Nilima Devi and his two sons Ajay Kumar Dubey and Vijay Kumar Dubey.

Admittedly jamabandi with respect to the dispute land was opened in the name of Rambrit Ram Dubey who paid rent to the State since the date of vesting. There was no appeal against the order mutating the name of Rambrit Ram Dubey and as such the same became final, conclusive and binding on the respondents as well. It has been held in the judgment reported in 1979 BBJ 605, 1998 PLJR 574 etc that if jamabandi has been opened and there has been no appeal against the order opening jamabandi, the same cannot be cancelled. It has been held in the judgment reported in 2007 (3) JLR 308 that rent receipts issued by the karamchari and Register II maintained in the Circle Officer are strong evidence of possession. It has been consistently held by our Hon'ble High Court in the judgments reported in 2001 (1) JLR 75, 2003 (1) JLR 95, 2003 (3) JLR 793, 2004 (1) JLR 718, 2008 (2) JCR 597 and the judgment dated 19.08.2017 passed by the Hon'ble High Court of Jharkhand in LPA No. 142 of 2010 and LPA No. 307 of 2009 that jamabandies running in the name of particular persons for several years cannot be cancelled. The proper course for claim of the persons claiming cancellation of jamabandies is to move to Civil Court of competent jurisdiction for proper relief. More over in case of rival claim between the two claimants with respect to the land the revenue courts have no jurisdiction to decide the same. It has been held in the judgment reported in 2017 (4) JLR 317 and

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2017 (4) JLR 102 that complicated legal dispute of civil nature cannot be decided by the revenue court . In view of the above judicial pronouncements of our Hon'ble High Court the learned courts below had no option but to dismiss the said Misc Case No.-43 of 2012.

On the other hand according to the Learned Advocate appearing on behalf of the respondents:-

The land in question appertaining to R.S. Plot No.-29 under Khata No.-74 measuring an area of 2.21 Acres of Village Oberia, P.S. Namkum, District Ranchi and Plot Nos.-966, 1013, 1477 and 1553 under Khata No.- 93 measuring an area 5.95 Acres of Village - Hatia , P.S. Jagarnathpur , District Ranchi are seized and possessed or otherwise sufficiently entitled to the said property with their absolute right , title and interest. The erstwhile owner namely Dhiraj Kunwar sold and transferred portion of Plot No.- 29 measuring an area 1 acre out of 2.21 Acre situated at village Oberia , P.S. Namkom , District Ranchi to Smt . Jagsani Kunwar, vide a registered deed of sale being Sale Deed No.- 4636 dated 19.08.1955 duly entered in Book No.- 1 , Volume No.- 32 , Page No.- 597 to 599 in the office of District Sub Registrar , Ranchi and also he sold and transferred portion of Plot No.- 29 measuring an area 1 acre out of 2.21 Acre situated at village - Oberia , P.S. Namkom , District Ranchi to Shiv Bhaskhar Nath Mishra vide a registered deed of sale being Sale Deed No.- 279 dated 11.01.1958 duly entered in Book No. 1, Volume No. 2, Page No. 520 to 522 in the office of District Sub Registrar , Ranchi. Rest of the land of aforementioned both khatas were joint and later on a partition took place vide Partition Suit No.- 1969/74 in which the other properties were partitioned excepting the land already sold as asserted hereinabove and the appeal preferred against judgement passed in aforesaid Partition Suit No.-1969/74 being Title Appeal No.-113/1976 preferred by

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Ram Brit Ram Dubey was dismissed vide order dated 22.06.1978 and despite having knowledge the legal right of the Respondent to this Appeal over the said property, the Appellants managed to get their names mutated by committing fraud upon the mutating authority. It is well settled Law that any order which was obtained on the basis of fraud or tainted with fraud, the same is nullity in the eye of law and as such no right can be said to have accrued in favour of the Appellants. Further while allowing mutation, the mutating authority did not issue notice to the Respondents, the Respondent did not have any option to challenge the said order before the Appellate Forum.

It has been held by the Hon'ble Supreme Court in a case reported in JLR 2003 (4) at page 144 that " Fraud and Justice never dwells together and fraud vitiates every solemn act. It is a fraud in Law if a party makes representations which he knows to be false and any order obtained by fraud is non est in the eye of law. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by any doctrine " Thus in view of decision of Apex Court, the mutation order was rightly declared illegal by the Learned LRDC, Ranchi as same order was procured on the basis of fraud, misrepresentation and concealment of fact

The Appellants have questioned the legality of registered sale deed of the Respondent which was executed way back in the year 1955 and 1958. The Respondent is the custodian of title deed which is more than 30 years old and as such presumption under the law would always be that it conferred right upon the Respondent in view of the provision as laid down under section 90 of The Law of Evidence. It is an established principle that civil court has got wide mechanism and power than the Revenue Court and the issues decided

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long ago cannot be raised in this Appeal. The Appellants have made specific admission in their memo of Appeal that the dispute arose at this juncture is civil in nature, therefore , if the Appellants have a clear vision on the issue to raised and decided in a regular civil suit then this appeal has no legal leg to stand in the eye of Law and the appellant should have preferred regular suit instead of filing the instant appeal.

Having heard both the parties and on perusal of materials available on record, I find that, it is settled law that a long running jamabandi cannot be cancelled in a summary proceeding; unless it is proved that the same has been established through fraud and misrepresentation. In case at hand, Jamabandi with respect of land in question has been created in the name of the appellant in the year 1987-88 vide Mutation Case No.-464 R 27/1987-88 at Vol 1 Page No.-105 of the Register II. On the basis of aforesaid entry, mutations in name of several persons have been allowed, who have acquired interest upon the land in question after purchasing the same from them. It has been claimed by the respondent that they have acquired interest upon the land in the year 1955 and 1958 through registered deed of sale and on the strength of decree passed in partition suit. If the same is correct, it has not been explained by them, what prevented them, not to get their names entered in the Register II? and now after lapse of almost 50-60 years, the respondent have attempted to get their names entered in revenue record after getting the previous entry cancelled, which is not permissible in the eyes of law and that too when several other person have acquired interest upon the same. As per the verdicts of the Hon'ble Court cited above, the revenue courts have no jurisdiction to decide right, title or interest upon a land on the basis of rival claims of the parties concerned. A long running

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jamabandi cannot be cancelled and the proper course for claim of the persons claiming cancellation of jamabandies is to move to Civil Court of competent jurisdiction for proper relief.

For the reasons aforementioned, I find that the learned LRDC, Sadar, Ranchi has exceeded his jurisdiction by deciding right, title and interest of the parties concerned upon the land in question. Hence this appeal is allowed and the impugned order dated 19.12.2017 is hereby set-aside. The aggrieved may get their right, title, interest declared from the competent court of law.

Communicate this order to Land Reforms Deputy Collector, Sadar, Ranchi for information and necessary action.

Dictated & Corrected


Deputy Commissioner
Ranchi


Deputy Commissioner
Ranchi

order communicated to
L.R.D.C. Sadar
Ranchi alongwith
L.C. record no
MIS 43/12-13
Mr. Prakash Mishra
and others vs Rajay
Mr. Dubey and
others for
information and
n. a vide memo
no 246 (ij) dt.
1.2.21