

आदेश की क्रम
संख्या और तारीख

आदेश और पदाधिकारी का हस्ताक्षर

आदेश पर की गई
कारवाई के बारे में
टिप्पणी तारीख के
साथ

In The Court Of: Land Reforms Deputy Collector, Arwal.

Mutation Appeal No – 09/2015-2016

Urmila Devi & others –Appellant

Vrs

Circle officer, karpi

Om Prakash Singh & others–Defendant.

Present- Rakesh Kumar, DCLR

Learned Advocate of appellant

1. Sri Digvijay Narain Singh

Learned Advocate of defendant.

1. Sri. Arvind kumar.

ORDER

Both the parties appeared at the time of hearing. The present case is related to

Schedule

Mauza	P.S. No	Khata	Area A-D	"Lagan"	"Jamabandi "
(i) Angari	57	17, 172, 173, 174, 63, 64, 27, 84, 88, 103, 05, 06, 177, 168, 152, 144, 108	0-71 $\frac{1}{4}$ (out of total area 6.90 $\frac{3}{4}$ acre share of each onc is 71 $\frac{1}{4}$)	39-70	68-1
(2) Angarichak	58	03, 06, 130, 132, 125, 060, 133, 018, 020, 028, 098, 007, 039	0-47.5 D (out of total area 4.76 acre, share of each one is 47.5 dismal)	27-12	66-1

Village- Angari, post- shankerpur imamganj, p.s.-kinjar, Anchal-karpi, Dist-Arwal.

Learned advocate of appellant submitted the Geneological Table of the family and said that father of both the parties namely Late Ramshiva Prasad singh had two wives namely Late Ramrati devi and

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suryamani devi. However, appellants of this case namely Urmila devi (applicant no-1), Madhuri devi (applicant no-2), Savitri devi (applicant no-3) and Gayatri devi (applicant no-4) are the daughters from Late Ramrati devi where as Reena devi, Suchitra devi, Puja devi, Ranju devi, Jagriti kumari & Om Prakash singh (opposite party 02) are born from suryamani devi and Minta devi (opposite party 3) is w/o Om prakash singh (opposite party 2) . Learned advocate submitted that altogether Late Ramshiva Prasad singh has ten children, so every one has equal share in property of their father. Learned advocate of appellant also submitted that surymani devi, mother of opposite party 2 has sold $7\frac{1}{4}$ katthas of land of her share about five years ago for marriage of her daughters. Learned advocate informed that appellants applied for mutation on their name as per share by correcting jamabandi no- 66-1, 68-1 which is in name of their father. However, learned circle officer karpi rejected their application and they were told that all lands which was on name of their father has been mutated in name of omprakash singh (opposite party -2) in year 2009-10 and later it has been transferred in name of his wife minta Devi vide mutation case no 1144/ 2014-15 and 1145/2014-15. Learned advocate emphatically said that opposite parties has no right over all land and they can claim only over share as per law of land. Learned advocate alleged that learned circle officer has not done proper enquiry at spot as appellants has

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possession over their share, inspite of this demand was shifted to Om prakash singh (opposite party 2) and later it was mutated in name of his wife and in this context, Learned advocate quoted the enquiry report of Revenue clerk (karamachari). Learned advocate argued in court that no notice was sent to appellants prior to mutation though Geneological Table given by appellants are accepted by both the parties. He also stated that appellants had no information that mutation was done in camp court, So they could not challenge it in due time. Learned advocate of appellants has also submitted written argument where he mentions that opposite party has got transferred the demand on his name by showing the "Basiyat" i.e. will document in camp court of circle officer but learned advocate contended that a will document is of no use, if it is without probate. He further stated that in L.C.R., it is mentioned that no partition in family has been done and alleged that opposite party 2 has transferred the land to his wife (opposite party 3) who in turn has sold some of its areas. Learned advocate emphatically said that appellants along with their half brother omprakash singh is in possession of said land. So appellants has right to have their name in demand document of circle office. Learned advocate also quoted the Amended Hindu succession Act -2005 rule-06 to prove that daughters has right in property of father and said that this rule is valid in this case as demand has been shifted in name of omprakash singh

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in year 2009-10. Learned advocate has tried to counter the argument of opposite party in relation to Hindu succession Act 1956 rule-8 and said that in this Act also sons & Daughters has equal right as both are in schedule-1 . Further, in this connection he also quoted ruling given in shanty Devi Vrs kusum Devi, 2003(2) AIC 435 (437) patna 2002(3) BLJ 515. Learned advocate states that opposite parties are of two minds, one side they talks of having whole property through "Basiyat" and another side talks of Hindu succession Act 1956. Learned advocate alleged that "Basiyat" of opposite party is false & fabricated. Learned advocate is of view that if 'Basiyat" was done in favour of opposite party 2 in year 1992 then how could his Mother sale some of land of her husband about 5 yrs ago. Learned advocate countered the arguments of opposite party regarding limitation that appellants were unaware about mutation done in camp court in favour of opposite party, So they can not be barred by this Act. Learned advocate was of view that even if "Basiyat" has been written in favour of opposite party and its probate has not been done then opposite party can not get right to protection of that property on their own, infact permission is required from competent civil court. Learned advocate argued that learned circle officer karpi has done wrong by ignoring the report of karamchari and finally pleaded for an order directing circle officer for inclusion of appellants name in mutation done in property mentioned in schedule.

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Learned advocate of opposite party submitted that Genealogical Table given in memo of appeal by appellant is admitted by them but the case is not maintainable based on law as well as facts. He said that Ramsheo Prasad singh, the father of both the parties married mother of Om Prakash singh (opposite party 2) after his first wife, mother of appellants died in young age. However, he executed a registered deed of 'will' in year 1992 in favour of his only son namely Om Prakash singh (opposite party 2) with respect to his agriculture land measuring an area of 06 Acre 97 dec as well as his house. measuring an area 08 dec situated at Mauza- Angari, P.S.- karpi, Dist- Arwal and accordingly Om Prakash singh came in to possession over the same as absolute owner and title holder. He said that in year 1992, daughters had no share in "Naihar" property during life time of her father. Learned advocate said Om Prakash singh (opposite party 2) is only son in family, so as per tradition he lived in parental house where as appellants resided in their matrimonial house after marriage and never came in possession of disputed property. Learned advocate mentions in written argument that circle officer, had visited spot then learned circle officer karpi has mutated the land in favour of defendants. He also said that opposite party 2 being owner of his father's property, gifted some of it to his wife Minta devi through two registered deed of gift and based on that mutation has been done in her favour by circle office. Learned advocate stated that enquiry was done by circle officer in case of opposite party and alleged that report of 'karamchari' in case of appellants was done in collusion with them.

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Learned advocate of opposite party has also submitted written arguments and mentions that appellants has preferred this mutation appeal in this court against the order passed by Anchal Adhikari, karki in mutation case No- 1824/2014-15 but appellant has not disclosed the date of order passed by Anchal Adhikari, karki. He further states that appellants has not mentioned in memo of appeal that for which order, appellants preferred appeal in this court. Further, appellants has neither given the date of impugned order nor mentioned any ground to set-aside the impugned order in memo of appeal, Besides, this the appellants has not prayed to set-aside the impugned order passed in mutation case No- 1824/2014-15. Learned advocate said that appellants had full knowledge about mutation case No 1144/2014-15 and 1145/2014-15 respectively in name of opposite parties but they preferred appeal in this court on 02.05.2015 after lapse of one year though u/s 07 of Bihar Land Mutation Act 2011 appeal against order of circle officer can be done only within 30 days. Learned advocate states that appellant has filed the appeal for cancellation of Jamabandi made in name of opposite party 2 & opposite party 3 but this court has no Jurisdiction of cancellation of Jambandi, in fact u/s 09 of Bihar Land Mutation Act, the additional collector of the District has power to make enquiry, if any Jamabandi has been created in violation of any law. Learned advocate also states that Ram sheo Prasad singh died leaving second wife and her five daughters but appellants didn't make them party in this case. So the case suffers from non joinder of parties and it is violation of provisions of order 1 rule 09 of CPC. Learned advocate has quoted section 08 of Hindu

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succession Act, 1956 and states that sons are coparcener of properties and his right is created in property while he is in mother's womb. Where as daughters are not coparcener rather they are co-sharers Which means share of daughters will be created after death of father. However, learned advocate writes that amendment in section 08 of Hindu succession Act was done in 2007, by which daughters become co- parcener but in this case Late Ram sheo Prasad has executed a registered deed of will in favour of opposite party 2 in year 1992. So Om Praksh singh (opposite Party 2) is entitled with respect to his half share on basis of registered will executed by his father. Finally, learned advocate pleaded that appeal filed on behalf of appellants has no merit and it is fit to be dismissed.

Heard the learned advocate of both the parties & perused the documents available on record. Appellants has submitted written arguments and rules related to mutation and Hindu succession Act-1956 as amended in 2005. The opposite party has submitted written argument, rulings related to Hindu succession Act 1956 section 8 which mentions that son of a male dying intestate shall acquire right in his father's property, papers related to mutation done by circle officer karpi in favour of smt Minta Devi (opposite part 2) w/o Om Praksh singh (opposite party 1) and sri Jawala Prasad singh, the vendee of sri Om Praksh singh (opposite party 2) as well as copy of probate case No 20/2015 related to court of Honourable District Judge, Jehanabad. The opposite party has also submitted rules related to cancellation of Jamabandi to show that cancellation power lies with Additional collector of the

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District. Further, rules related to limitation in filing case & misjoinder & Non joinder in code of civil procedure. In addition to these documents LCR of circle office karpi is available in record. After looking these documents it is found that applicant's emphasis is on report of Halka karamchari Sri Mithilesh kumar Mishra who has reported that land is in possession of appellants and they claims share as per Hindu succession Act-1956 as amended in year 2005. However, after perusing the documents related to mutation case No- 1144 and 1145 of 2014-15 done in favour of Minta Devi (opposite party 2) and case No-1081 of 2014-15 done in favour of Jawala Prasad, the vendee of Om Prakash singh (opposite party 1), it is found that same Halka karamachari sri Mithilesh kumar Mishra reports that land is in possession of these persons. So the report of Halka karamchari is contradictory, how can same land can be in possession of different persons and karamchari recommends for mutation in favour of both parties in different cases. Since, the said land has been mutated in favour of smt Minta Devi & others, on earlier date then naturally appellants of this case can not be accommodated by circle officer as they applied late for mutation, moreover as per report of karamchari in LCR it seems that parts of disputed land has been sold by Om Prakash singh to his wife & other persons namely Jawala Prasad s/o Late Ram Bhaju sao, Din Dayal singh s/o Vidya Nand singh, Sikandar Prasad & Avadh Kishor sinha s/o Late Bhagwan singh, Manorama Devi w/o Sikandar Prasad so dispute related to it has to be firstly resolved by civil court as kewala to many persons has been done, then only further action can be taken for mutation. Learned advocate of defendants has also

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submitted copy of probate case No-20/2015 of honourable District court Judge, Jehanabad. After perusing, it seems that father of opposite party has given "will" of property in favour of opposite party sri Om Prakash singh. However, its veracity is to be verified by Honourable Judges of civil court. So overall it is clear that report of karamchari is contradictory as same karamchari reports in favour of all concerning parties for mutation. Further, share of both the parties has to be decided by honourable civil court after the probate of "will" written by father of both the parties. Thus, this court can not give any relief to appellants based on above mentioned facts, infact they should wait till honourable civil court, Jehanabad decides the complex issues involved in the case. Thus, claim of appellants is rejected and case is dismissed.

Dictated and corrected.


30/06/16

Land Reforms Deputy Collector
Arwal


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