

Letters Patent Appeal No.987 OF 2000

Against judgment and order dated 2.3.2000 passed by a learned single Judge of this Court in C.W.J.C.No.9122 of 1992.

BALESHWAR SAH

Appellant

Versus

THE STATE OF BIHAR & ORS -----

Respondents

For the Appellant : Mr.Shashi Shekhar Dwivedi, Sr.Adv.

For the State : M/s Shashi Bhushan Kumar, S.C.16 with
J.K.Roy, J.C. to S.C.16

P R E S E N T

THE HON'BLE MR. JUSTICE BARIN GHOSH

THE HON'BLE MR. JUSTICE JAYANANDAN SINGH

Barin Ghosh

&

Jayanandan Singh, JJ:

Heard learned counsel for the appellant. No one appears for the private respondents. Learned counsel for the State is present.

2. The appellant filed the writ petition challenging the order dated 15th May, 1992 passed by respondent no.3. The order issued a direction for giving protection to respondent nos.4, 5 and 6. Respondent No.4 is the own brother of the appellant, respondent nos.5 and 6 are sons of respondent no.4. The reason for the appellant to approach this Court was that the father of the appellant and of respondent no.4 Sukata Sah purchased 10 dhurs of land out of 1 katha 2 dhurs of land situate at plot no.769, khata no.145 in village Balua. Subsequently, respondent nos.4, 5 and 6 got purcha under the Bihar and Orissa

Privileged Persons Homestead Tenancy Act in respect of the entire 1 katha 2 dhurs of land situate at Plot no.769, khata no.145 in village Balua. Subsequent thereto, a family arrangement was registered on 23rd February, 1987 to which the appellant as well as respondent nos.4, 5 and 6 were the signatories. In terms thereof, the appellant got 11 dhurs of land out of said land of 1 katha 2 dhurs situate at plot no.769, khata no.145 in village Balua.

3. In the circumstances, it is the contention of the appellant that he being entitled to construct his dwelling house on 11 dhurs of land situate at plot no.769, khata no.145 in village Balua, constructed his dwelling house on the said plot. It is the contention of the appellant that subsequent thereto respondent nos.4,5 and 6 obtained the said order dated 15th May, 1992 behind the back of the appellant suppressing the said registered family arrangement with the object of evicting the appellant from his dwelling house. It is the contention of the appellant that although the order dated 15th May, 1992 do not direct eviction of the appellant but the respondent nos.4,5 and 6 on the strength of the said order are seeking his eviction.

4. The order dated 15th May, 1992 impugned in the writ petition, as noted by the learned single Judge, who dealt with the writ petition,

has not directed eviction of the appellant from any where. The said order directs giving of protection to respondent nos.4,5 and 6 against the writ petitioner. On the strength of the said order, therefore, writ petitioner could not be evicted. In the event police has come to evict the appellant from his dwelling house on the strength of the said order, that was an improper and illegal act on the part of the police. However, the matter must be sorted out by respondent no.3 and accordingly, the appellant is directed to approach respondent no.3 and to present before him the said registered family arrangement dated 23rd February, 1987, whereupon, respondent no.3 shall do the needful.

With the observations as above, the appeal stands disposed of.

(Barin Ghosh,J.)

(Jayanandan singh,J.)

**Patna High court,
30th June, 2008
N.A.F.R./Pradeep.**