

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5220 OF 2009
(arising out of SLP(C)No.11783 of 2007)

SHEO NARAIN BERIYA & ANR.

... APPELLANTS

VERSUS

STATE OF BIHAR & ORS.
RESPONDENTS

...

ORDER

Leave granted. Heard.

2. This appeal is filed by the appellants in LPA No.100 of 1997 on the file of the Patna High Court challenging the final common order dated 03.11.2006 by which the said LPA No.100 of 1997 as also LPA No.67 of 1997 were dismissed.

3. During the pendency of the said appeals, respondent No.4 in the said LPA (Ramachandra Singh) died, and an application was filed by the appellants to bring his legal representatives on record. The High Court, while dismissing the appeals, referred to the said application and observed that Ramachandra Singh who had failed before the Collector in getting a settlement in his favour, did not challenge the order, and therefore it should be assumed that he was not interested

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in the writ petition (from which the LPA arose). Consequently the High Court recorded the death of fourth respondent but refused to bring on record his legal representatives.

4. The appellants have challenged the order of the Division Bench on several grounds on merits. But this Court on 03.08.2007 issued notice confined to the question as to why the impugned order of the High Court be not set aside and the matter be remitted to the High Court for fresh consideration after allowing the application to bring the legal representatives of the deceased fourth respondent on record.

5. The appellants contend that the property was sold to them by Kamal Singh and their names were mutated in revenue records; that Ramachandra Singh, who was a tenant of a part of the premises, filed a petition in the Court of Collector of Bhojpur for declaring the sale deed executed by Kamal Singh in favour of appellants as null and void; that the said case was dismissed by the Collector by order dated 10.05.1979, but while doing so, he observed that the property in question had vested in the State and directed the sub-Divisional Officer to take steps in that behalf; and that being aggrieved by the said observation the appellants had challenged the said order. It is submitted that therefore the cause of action survived. It is also pointed out if the LRs of Ramachandra Singh are not brought

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on record, they may indulge further rounds of unwanted litigation. When Ramachandra Singh died, and the appellants filed an application to bring his legal representatives on record only two questions arose when considering such application. They are whether the cause of action survives and whether the persons who were sought to be brought on record were the legal representatives of the deceased. The High Court addressed neither of these questions. It assumed without basis that his legal representatives need not be brought on record as the deceased did not show any interest by challenging the order of the Collector dated 10.05.1979. We are of the view that the disposal of the appeal without bringing the legal representatives of fourth respondent on record is erroneous.

6. We therefore allow this appeal and set aside the impugned order dated 03.11.2006, allow the application for bringing legal representatives of fourth respondent on record and remand the matter to the High Court with a request to hear and dispose of the matter afresh after due notice to the legal representatives of the fourth respondent.

.....J.
(R.V. RAVEENDRAN)

(B. SUDERSHAN REDDY)

NEW DELHI,
AUGUST 06, 2009.

ITEM NO.1 COURT NO.7 SECTION XVI

SUPR EME COUR T OF I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11783/2007

(From the judgement and order dated 03/11/2006 in LPA No. 100/1997 of
The HIGH COURT OF PATNA)

SHEO NARAIN BERIYA & ANR.

Petitioner(s)

VERSUS

STATE OF BIHAR & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 06/08/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE P. SATHASIVAMFor Petitioner(s) Mr. P.S. Mishra, Sr.Adv.
 Mr. Upender Mishra, Adv.
 Mr. Dhuru Kr. Jha, Adv.
 Mr. Bijan Kumar Ghosh,Adv.For Respondent(s) Mr. Gopal Singh,Adv.
 Mr. Chandan Kumar, Adv.UPON hearing counsel the Court made the following
ORDER

Leave granted. Heard.

The appeal is allowed in terms of the signed order.

(Pawan Kumar)
Court Master(M.S. Negi)
Court Master

(signed order is placed on the file)