

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10492 of 1992

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Adhikaro Kuwar wife of late Shioshankar Singh daughter of late Udit Roy,
resident of village-Galimapur, Police Station-Ekma, district-Saran, at
present Bilashpur, Police Station-Bhagwanpur Hatt, District-Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Assistant Consolidation Officer, Bhagwanpur Hatt.
3. Bachcha Singh
4. Lalan Singh
5. Phulena singh

Sons of Late Deonandan Roy, resident of village-Bilashpur, Police
Station-Bhagwanpur Hatt, Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Prasad Sinha
For the Respondent 3 to 5	:	Mr. Udit Nr.Singh
For the State	:	Mr. Anjani Kumar, A.A.G.-6 Mr. Sanjay Kumar, AC to AG6

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 23-03-2015

1. The petitioner seeks quashing of an order dated 30.06.1992

passed by the Assistant Consolidation Officer, Bhagwanpur Hatt,
Siwan (Annexure-3) whereby he has rejected the petitioner's claim
that she being the daughter of, one Udit Roy, was entitled for her
share.

2. From the impugned order, it appears that there was dispute as
to whether the petitioner is daughter of Udit Roy or not inasmuch as
the Respondents herein who are said to be the sons of Deonandan
Roy, full brother of Udit Roy, took specific plea before the Assistant
Consolidation Officer that said Udit Roy died issueless.



3. Learned counsel appearing on behalf of the petitioner has submitted that contesting Respondents No. 3 to 5 did not bring evidence in support of their plea before the Assistant Consolidation Officer that the petitioner was not the daughter of Udit Roy. This plea, in my view is not acceptable. Respondents No. 3 to 5 were not required to prove before the Assistant Consolidation Officer that the petitioner, Adhikaro Kuwar was/is not daughter of Udit Roy. It was the petitioner upon whom onus was there to prove that she was the daughter of Udit Roy, before Assistant Consolidation Officer.

4. Learned counsel appearing on behalf of the petitioner has submitted that Respondents No. 3 to 5 cannot question the status of the petitioner as daughter of Udit Roy inasmuch as the petitioner has executed a sale deed on 27.08.1988 in favour of one Ram Kripal Pandey much prior to institution of the consolidation case. In the registered sale deed, the petitioner has been described as the daughter of Udit Roy and she sold the property through the sale deed which fell in the share of said Udit Roy. He submits that the said sale deed has not been challenged by the Respondents No. 3 to 5 or any other person.

5. Be that as it may, from the pleadings in the writ application and the submissions made on behalf of the petitioners, it is evident that there is disputed questions of fact as regards status of the

petitioner as to whether she is daughter of said Udit Roy or not.

6. Such disputed questions of fact cannot be adjudicated upon in a proceeding under Article 226 of the Constitution of India. Such disputed question of fact can be adjudicated only through regular suit.

7. This application is accordingly dismissed with a liberty to the petitioner to approach court of competent jurisdiction for resolution of the dispute, involved in the present case.

(Chakradhari Sharan Singh, J.)

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