

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6047 of 1992

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1. Dhruv Prasad Khatri
 2. Umashanker Prasad Khatri
 3. Bacchi Devi W/o Late Rameshwar Prasad
 - 4(i) Rajiv Kumar Khatri
 - 4(ii) Dinanath Khatri
 - 4(iii) Govind Kumar, all sons of deceased Rewati Devi
 - 4(iv) Savitri Khatri D/o deceased Rewati Khatri
 5. Satyabhama Devi W/o Sideshwar Prasad
 6. Anjani Khatri W/o Arbind Kumar Khatri

.... Petitioners

Versus

1. The State of Bihar
2. The Joint Director of Consolidation, Gaya
3. Deputy Director of Consolidation, Gaya-Nawada, Aurangabad
4. Consolidation Officer, Arwal district Jehanabad
- 5(i) Sabita Devi
- 5(ii) Shakti Ranjan @ Sadhu
- 5(iii) Prabhat Ranjan
- 5(iv) Navin Ranjan @ Dharmatma
- 5(v) Pravin Kumar @ Sonu
- 5(vi) S. Kishore
- 5(vii) Sushma Khatri D/o deceased
- 5(viii) Seema Khatri D/o deceased
- 5(ix) Soni Khatri
- 5(x) Moni Khatri
- 5(xi) Teni Khatri
- 5(xii) Mansi Khatri @ Mittu, 5(ix) to 5(xii) are D/o Awadh Bihari Khatri
6. Kunti Devi
7. Veena Devi
8. Janki Devi
9. Asha Devi, No. 6 to 9 daughters of Late Jatan Lal Khatri
10. Manna Lal S/o Suraj Prasad Khatri and Nati of Late Jatan Lal Khatri
11. Rang Bahadur S/o Late Ram Ratan Lal Khatri
12. Noonu Lal S/o Late Ram Ratan Lal Khatri, all residents of village Arwal Sipah PS Arwal district Jehanabad

.... Respondents

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Appearance :

For the Petitioner : Mr. Mrigendra Kumar
For the State : Mr. D. S. Jamuar, AC to AAG 6
For Resp. 5(iv) : Mr. Mahesh Pd. No. 2

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 17-03-2015



The petitioners seek quashing of the order dated 05.06.1992 passed by the Joint Director, Consolidation, Gaya in Consolidation Revision case No. 1391/1990-91 whereby, he has reversed the judgement and order dated 09.09.1990 passed by Deputy Director, Consolidation, Gaya in Consolidation Appeal Case No. 26 of 1990. The Deputy Director of Consolidation had affirmed the order passed by the Consolidation Officer in Consolidation case No. 1 of 1978-79.

From the records, it appears that the petitioners herein had filed an objection under Section 10(gha) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 with specific plea that there was partition among the heirs of common ancestor Banshilal on 30.10.1957. The Consolidation Officer accepted the plea and from the order of the Consolidation Officer, it appears that he also held physical verification of the land in question described as revisional survey plot No. 669, 670 and 684 admeasuring 0.05 decimal, 0.06 decimal and 0.11 decimal of khata NO. 304/10, 79/10 and 86/31 respectively. Finding to this effect arrived at by the Consolidation Officer came to be affirmed by the Appellate Authority that there was a partition among the heirs of Banshilal on 30.10.1957.

The finding as regards partition said to have taken



place on 30.10.1957 has been upset by the revisional authority by his order dated 05.06.1992, which is impugned in the present writ application. He has come to a finding that the partition, it appears, had taken place in the family prior to 1943. I do not find any basis in the impugned order for the revisional authority to have reached to this finding. There is specific plea by the petitioners in paragraph 21 of the writ application that the fact that there was partition in the family on 30.10.1957 is admitted, which reads thus:-

“21. That Noonu Lal, Rang Bahadur Lal, Awadh Bihari Lal respondent no. 12, 11 and 5 respectively had executed a registered sale deed dated 14.5.59 in favour of Nanhak Sao and others. In that sale deed they had specifically submitted that partition was made among Jatan Lal on one hand and the sons of Ratan Lal on the other hand and Ekrarnama for Yadaast was prepared duly signed by the parties on 30.10.57. Similar admission was also made in the registered sale deed dated 14.8.59 executed by Noonu Lal, Rang Bahadur Lal and Awadh Bihari Lal in favour of Mahbooban Nisa and the registered sale deed dated 3.2.59 executed by Noonu Lal, Awadh Bihari Lal in favour of Nanhku Sao”.

A counter affidavit has been filed on behalf of respondent Navin Ranjan in reply to such averment.

In paragraph 25 of the counter affidavit, following averment has been made:-

“As regards the recital made in sale deed dated 3.2.1959, Joint Director has taken into consideration that at the relevant time Awadh Bihari

Khatri was minor and same do not bind him which also would go to show that there is no illegality in the same”.

Thus, there is no specific denial of the fact that even in the sale deeds executed by sons of Ratan Lal, they had mentioned about the partition to have taken place on 30.10.1957.

Learned counsel for the petitioners has contended that this point was specifically taken before the revisional court by the petitioners, who did not consider this aspect, which was very relevant for the purpose of adjudication, while passing the impugned order.

Learned counsel for the respondent has raised several other objections and has also contended that father of the answering respondent, whose name also figures in the said registered sale deed, was a minor on the alleged date of the registration of sale deed. He submits, therefore, that the sale deed is not binding upon him. Here is not the question whether the sale deed is binding upon him or not. The question is as to whether the recital in the sale deed that there was partition in the family on 30.10.1957 was duly considered by the revisional authority or not. In my opinion, this was a very important aspect, which ought to have been duly considered by the revisional authority, while reaching to a conclusion that partition had taken place on

30.10.1957 and thus upsetting the concurrent finding on this point by two revenue courts

. The order is, therefore, set aside. The matter is remanded back to the Director, Consolidation, Bihar, Patna for fresh consideration on revision application. Let the Director, Consolidation pass an order afresh on revision case No. 1391/1990-91. He will consider the entire matter afresh and will not be prejudiced by any observation made in the impugned order dated 05.06.1992 which has been set aside by the present order. He will also consider the question, keeping in view the nature of land, whether it comes within the provision of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

This writ application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

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