

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 1217 of 1996

Arising out of

Civil Writ Jurisdiction Case No. 1351 of 84

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1. Arvind Kumar Singh
 2. Ravindra Kumar Singh
Both Sons of Jagdish Singh. Both residents of Village & P.O.- Burhwal, P.S. Karakat, District- Rohtas.
 3. Panjari Devi daughter of Raghubansh Singh, Wife of Dadan Singh, resident of Village, P.O. & P.S. Dehri-on-Sone, District- Rohtas.

.... Respondent/s Appellant/s

Versus

1. (a) Ridhika Kuer, Wife of Late Kamleshwar Singh.
(b) Bisal Kumar Singh S/O Late, Bipin Singh, Resident of Village and P.O. Burhwal P.S. Karakat, District- Rohtas.
 2. (a) Yosoda Devi, W/O Late Raghunath Singh
(b) Rajnish Singh, W/O Late Raghunath Singh
Both resident of Village and P.O. Burhwal, P.S. Karakat, District- Rohtas.
-Petitioner/s – Respondent/s
3. Joint Director of Consolidation, Bihar, Patna.
 4. Deputy Director of Consolidation, Rohtas, Sasaram.
 5. Consolidation Officer, Karakat, P.S. Karakat, District- Rohtas.
 6. Bhagwan Singh Son of Jagdish Singh
 7. (a) Lal Kuna Devi @ Lal Muni Devi, W/O Late Surendra Singh, Resident of Village and P.O.- Burhwal, P.S. Karakat, District- Rohtas.
(b) Rajendra Singh, Son of Late Bikarma Singh, Resident of Village and P.O. Burhwal, P.S. Karakat, District- Rohtas.
 8. Munna Singh, Son of Late Babban Singh, Resident of Village + Burhwal, P.S.- Karakat, District- Rohtas.
 9. Ram Binay Singh, Son of Late Ramashish Singh, Resident of Village- Burhwal, Police Station- Karakat, District- Rohtas.
 10. Chedi Singh Son of Late Ramadhar Singh, Resident of Village- Burhwal, Police Station- Karakat, District- Rohtas.
 11. (a) Sita Devi, Wife of Late Sukhdeo Singh
(b) Lallan Singh @ Lallan Kumar S/O Late Sukhdeo Singh.
Both resident of Village- Burhwal, Police Station- Karakat, District- Rohtas.
 12. (a) Ganga Kuer, W/o Late Singhashan Singh.
(b) Lilawati Devi, D/o Late Singhashan Singh
Both resident of Village and Post- Burhwal, P.S.- Karakat, District- Rohtas.

.... Respondent/s

with

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Letters Patent Appeal No. 1218 of 1996

Arising out of

Civil Writ Jurisdiction Case No. 1314 of 84

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1. Arvind Kumar Singh
2. Ravindra Kumar Singh

Both Sons of Jagdish Singh, resident of Village and P.O.- Burhwal, Police Station- Karakat, District- Rohtas.

3. Panjari Devi Daughter of Raghubansh Singh, Wfie of Dadan Singh, resident of Village + P.S. and P.O. Dehri-on-Sone, District- Rohtas.

.... Respondent/s / Petitioner/s
Versus

1. (a) Lal Kuna Devi @ Lal Muni Devi, W/O Late Surendra Singh, Resident of Village and P.O.- Burhwal, P.S. Karakat, District- Rohtas.
(b) Rajendra Singh, Son of Late Bikarma Singh, Resident of Village and P.O. Burhwal, P.S. Karakat, District- Rohtas.
2. Munna Singh, Son of Late Babban Singh, Resident of Village + Burhwal, P.S.- Karakat, District- Rohtas.
3. (a) Ganga Kuer, W/o Late Singhashan Singh.
(b) Lilawati Devi, D/o Late Singhashan Singh
Both resident of Village and Post- Burhwal, P.S.- Karakat, District- Rohtas.
4. Ram Binay Singh, Son of Late Ramashish Singh, Resident of Village- Burhwal, Police Station- Karakat, District- Rohtas.
5. Chedi Singh Son of Late Ramadhar Singh, Resident of Village- Burhwal, Police Station- Karakat, District- Rohtas.
6. (a) Sita Devi, Wife of Late Sukhdeo Singh
(b) Lallan Singh @ Lallan Kumar S/O Late Sukhdeo Singh.
Both resident of Village- Burhwal, Police Station- Karakat, District- Rohtas.

.... Writ Petitioner/s Respondent/s

7. The State of Bihar.
 8. The Joint Director of Consolidation, Bihar, Patna.
 9. The Deputy Director of Consolidation, Rohtas, Sasaram.
 10. The Consolidation Officer, Karakat, District- Rohtas.
 11. Shri Bhagwan Singh, Son of Late Jagdish Singh.
- All residents of Village- Burhwal, P.S. Karakat, District- Rohtas.

.....Respondent/s / Respondent/s

Appearance :
(In LPA No. 1217 of 1996)

For the Appellant/s : Mr. Shash Shekhar Dwivedi, Sr. Adv.
Mrs. Sangeeta Sharma, Adv.
Mr. Ranjan Kumar Dubey, Adv.
Mr. Satyendranath Shukla, Adv.

For the Respondent/s : Mr. Sumar Kumar, Adv.
Mr. Subodh Chandra Jha, Adv.

(In LPA No. 1218 of 1996)

For the Appellant/s : Mr. Shash Shekhar Dwivedi, Sr. Adv.
Mrs. Sangeeta Sharma, Adv.
Mr. Ranjan Kumar Dubey, Adv.

Mr. Satyendranath Shukla, Adv.

For the Respondent/s :

Mr. Sumar Kumar, Adv.

Mr. Subodh Chandra Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: **HONOURABLE MR. JUSTICE V.N. SINHA**)

Date: **01-04-2015**

L.P.A. No. 1217 of 1996 has been filed by two brothers of respondent no. 7 and daughter of respondent no. 6 in C.W.J.C. No. 1351 of 1984. L.P.A. No. 1218 of 1996 has been filed by the sons of respondent no. 8, brothers of respondent no. 9 and daughter of respondent no. 7 of C.W.J.C. No. 1314 of 1984.

2. Both these appeals arise out of common judgment and order dated 25.09.1996 passed by learned Single Judge in the aforesaid two writ petitions whereunder the order dated 03.02.1984 passed by the Joint Director, Consolidation in Consolidation Revision Nos. 529, 530 of 1978-79 has been set aside holding that the lands in question that is the subject matter of the two revisions will devolve upon the heirs of Most. Dhanwanti Kuer including the writ petitioners as she died issueless and there seems no dispute that Dhanwanti Kuer inherited the said lands from her husband under Clause (b) of sub Section (2) of Section 15 of the Hindu Succession Act by inheritance. It is submitted on behalf of the appellant that writ petition was filed by heirs of Manraj and Fauzdar assailing the



aforesaid order dated 03.02.1984 in which sons of Raj Ballam were impleaded as respondents and after appearing in the writ petition and filing counter affidavit, three of them left for heavenly abode in 1984, 1988, 1994 and without substituting the three respondents the writ petition was allowed. The order disposing of the writ petition dated 25.09.1996 is a nullity. It is further submitted that after initiation of consolidation proceeding and death of Sheo Prasad, Dhanwanti united with sons of Raj Ballam i.e., Padum, Baijnath, Raghubans and Jagdish. While living with the heirs of Raj Ballam i.e., Padum, Baijnath, Raghubans and Jagdish, she left for heavenly abode on 26.02.1975. The lands inherited by Dhanwanti after her departure devolved upon sons of Raj Ballam i.e., Padum, Baijnath, Raghubans and Jagdish. After initiation of consolidation proceeding, Padum, Baijnath, Raghubans and Jagdish approached the Consolidation Officer for opening the khata with regard to the lands in question in their name. Consolidation officer passed order dated 15.11.1975, two years later heirs of Manraj and Fauzdar approached the Consolidation Officer in Case No. 266 of 1977 requesting him to correct the khata with regard to the lands in question in their name but such request was rejected under order dated 30.12.1976 against which Consolidation Appeal Nos. 257, 261 of 1977-78 were filed by the writ petitioner/contesting respondent in the two Appeals. The Deputy Director, Consolidation considered the appeal and allowed the same under order dated 15.07.1978,

while setting aside the order dated 30.12.1977, he also set aside in effect the earlier order dated 15.11.1975 passed by Consolidation Officer as he relied upon the mutation of the lands in question made in favour of the writ petitioners by the Revenue authorities after notice to the other heirs of Raj Ballam i.e., Padum, Baijnath, Raghubans and Jagdish.

3. It is submitted on behalf of the appellant that the learned Single Judge while passing the impugned judgment has set aside the impugned order passed by the Joint Director without taking note of the counter affidavit filed by the respondents i.e. respondent nos. 4 to 7 in C.W.J.C. No. 1351 of 1984 and Respondent nos. 5 to 9 in C.W.J.C. No. 1314 of 1984 on 09.05.1984 affirming the order dated 15.07.1978 passed by the Deputy Director and thereby also set aside the order dated 15.11.1975, Annexure-2 passed by the Consolidation Officer which was never appealed against before the Deputy Director in Consolidation Appeal Nos. 257, 261 of 1977-78 filed against order dated 30.12.1977. Padum, Baijnath, Raghubans and Jagdish being the sons of Raj Ballam claiming unity of title with Dhanwanti has claimed title over her lands as they are the class-II heirs of her husband Sheo Prasad who died issueless claimed title over the lands inherited by Dhanwanti and with reference to such claim requested the Consolidation Officer to open the khata of the lands in question which was allowed under order dated 15.11.1975. Aforesaid order is contained in Annexure- 2 to the

writ petition. Perusal thereof indicates that the same has been passed in the light of the request made under sub Section (2) of Section 10 of the Consolidation Act without notice to the other heirs who claimed unity of title with her namely heirs of Manraj and Fauzdar and only on the basis of report of Mukhia of the Gram Panchayat which has hardly any evidentiary value.

4. In the circumstances, while considering the Appeal against order dated 30.12.1977 whereunder the request of the heirs of Manraj and Fauzdar to create the khata of the lands in question on the ground of unity of title with Dhanwanti was rejected on the ground that Consolidation Officer had earlier passed order dated 15.11.1975, the Deputy Director in our opinion should have not only set aside the order dated 30.12.1977 but was also required to have set aside the order dated 15.11.1975 as the said order had not decided claim of unity of title of all the heirs of Dhanwanti after her death and created khata on the basis of the report of Mukhia which has hardly any evidentiary value. Learned Single Judge while considering the challenge made by the heirs of Manraj and Fauzdar to the order dated 03.02.1984 passed by the Joint Director has observed in the impugned judgment that the lands in question after the death of Dhanwanti shall devolve upon her heirs including the petitioners and having recorded such finding has set aside the order dated 03.02.1984 passed by the Joint Director.

5. In the facts and circumstances of the case, the



question whether Dhanwanti after the death of her husband united with the heirs of Raj Ballam i.e., Padum, Baijnath, Raghubans and Jagdish or also with the other heirs of her husband i.e., Manraj and Fauzdar as also any other heir shall be decided by the competent Civil Court. So far any findings recorded either by us or by the learned Single Judge or by the Consolidation Authorities or by the Revenue Authorities will not bind and cast prejudice to the Civil Court. Present possession over the lands in question, entry in the Consolidation and Revenue records are concerned, there shall be a status quo subject to the ultimate findings recorded by the competent Civil Court. With the aforesaid observations, the two appeals are disposed off.

6. The submission that the impugned order passed by the learned Single Judge is a nullity as the same has been passed without substituting the three contesting respondents who left for their heavenly abode, Baijnath in 1984, Raghubans in 1988 and Padum in 1994 is also misconceived as the three deceased respondents had earlier filed their counter affidavit on 09.05.1984 in two writ petitions along with 1, 2 other contesting respondents and it was the duty of the surviving contesting respondents to bring it to the notice of the writ Court that the aforesaid three respondents have left for their heavenly abode and are required to be substituted. Surviving contesting respondents having not discharged their obligation, the writ Court, in our opinion, rightly proceeded to consider the submission made in the writ petition

and passed the impugned order dated 25.09.1996, which is not a nullity.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

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