

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4451 of 1993

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1. Wakil Sahni
 2. Birendra Sahni
 3. Chandeshwar Sahni
 4. Dhani Lal Sahni
 5. Bishundeo Sahni, all residents of village Bandahan tola Maniari PO Jhakhra PS Nautan District West Champaran

.... Petitioners

Versus

1. The State of Bihar
2. The Joint Director, Consolidation, Muzaffarpur
3. The Deputy Director, Consolidation, West Champaran, Bettiah
4. The Consolidation Officer, Nautan West Champaran, Bettiah
5. Ram Dayal Sahni S/o Late Narayan Sahni, resident of village- Jhakhra Tola Basawaria PS Nautan District West Champaran

.... Respondents

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Appearance :

For the Petitioners : Mr. Durga Nand Jha, Advocate

For the State : Mr. R. K. Sharma, AC to GP 27

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

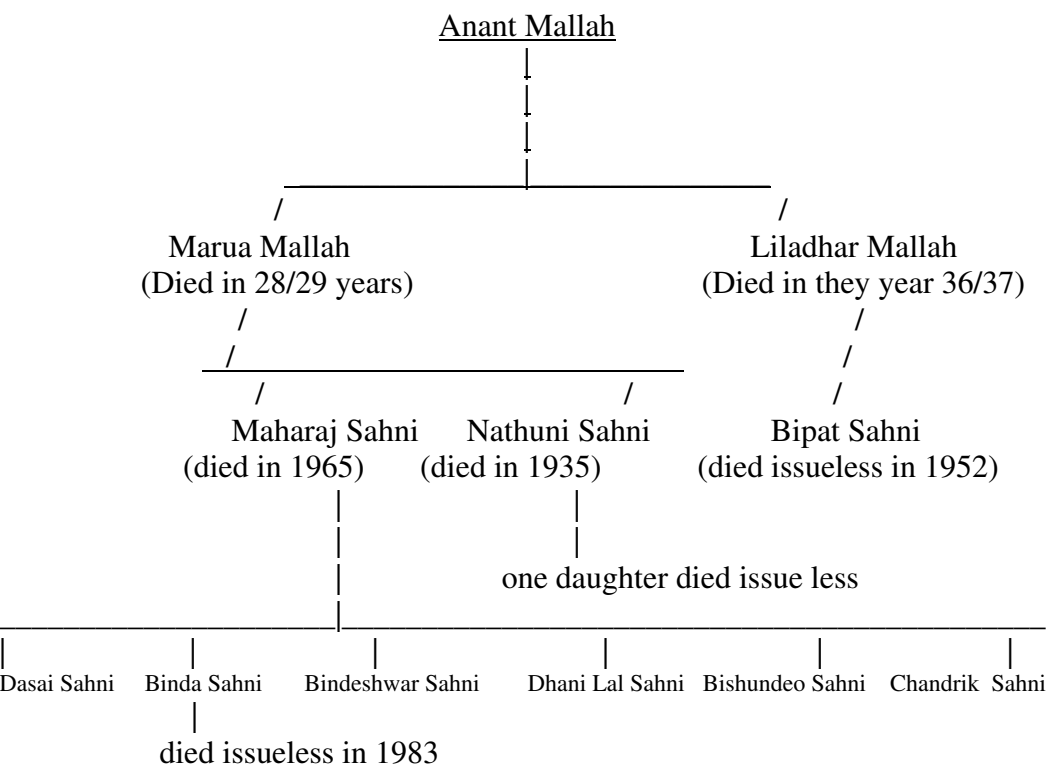
Date: 12-05-2015

This is an application seeking quashing of the order dated 12.02.1993 passed by Joint Director, Consolidation, Muzaffarpur in Revision Case No. 185/1990 whereby, a revision application filed by respondent No.5 has been allowed and direction has been issued to delete the names of petitioners from the records of rights and to enter the name of respondent No.5 in their place.

Despite service of notice upon respondent No.5, he has not entered appearance. No counter affidavit has been filed on behalf of respondents in this case. This court has, therefore, no other option

than to proceed with the case on the basis of averments made in the writ application.

Before I deal with the dispute, I must refer to the genealogical table mentioned in paragraph 6 of the writ application which has remained uncontroverted:-



The dispute relates to lands appertaining to revisional survey khata No. 260, new khata No. 296 plot Nos. 373, 375, 392,425, 561, 562 which constituted recent Khesra No. 573, 575, 579, 629, 630 and 1102.

From the impugned order passed by Joint Director, Consolidation, Muzaffarpur, it appears, which fact is not in dispute,



that the lands in question were khatiyani land of the ancestors of the petitioners. It appears that after the start of consolidation proceedings in the area, the petitioners had approached the Consolidation Officer for entering their names and the Consolidation Officer allowed their petition by an order passed in case No. 1/80. The names of the petitioners were, accordingly, entered.

In the year 1988, respondent No. 5 filed a petition under section 10(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Act) asserting his title and possession over the property and disputed the correctness of entry of petitioners' names in the records. The Consolidation Officer, however, turned down the objection by an order dated 01.03.1989 passed under section 10(4) of the Act and confirmed the entries in favour of petitioners. Respondent No.5 thereafter preferred an appeal before the Deputy Director, Consolidation giving rise to Appeal No. 56/1989. The Deputy Director, Consolidation rejected the appeal filed by respondent No.5 by an order dated 27.12.1989. From the order of Consolidation Officer dated 01.03.1989, which was challenged in appeal by respondent No.5 before the Deputy Director, Consolidation, it appears that he had called for a report from local Amin with respect to actual status of the land in question and upon perusing the entire records as



well as the said report he had rejected the objection of respondent No.5 filed under section 10(2) of the Act. Respondent No.5 thereafter preferred revision which was registered as revision case No. 185/1990 in the court of Joint Director, Consolidation, Muzaffarpur. The Joint Director, Consolidation allowed the revision case filed by respondent No.5 and came to a finding that title of respondent No.5 stood proved on the basis of entry in the records to the effect that the land in question was in illegal possession of petitioners.

From the order of the revisional authority, it appears that respondent No.5, though admitted the fact that the disputed land was khatiyani land of ancestors, these petitioners took a plea that the said land was auction sold in a rent execution case No. 1347/36-37 which was purchased by one Md. Isha. He had sold the said property to one Ram Bahadur Pathak and Ram Bahadur Pathak had subsequently sold the lands to one Kamla Kant Bajpayee and from Kamla Kant Bajpayee father of respondent No.5 Late Narayan Sahni is said to have purchased the disputed land.

From the discussions made in the order passed by the Joint Director, Consolidation, Muzaffarpur, I find that respondent No.5 took a plea that the said Md. Isha had purchased the land from the khatiyani raiyat, i.e., the ancestors of the petitioners. The revisional authority noticed this contradictory stand taken by respondent No.5 in



his revision petition before him. However, on the basis of an entry made in the register to the effect that the dispute land was in illegal possession of the petitioners and on the basis of some documents he held title of respondent No.5 over the disputed property. I am of the opinion that the revisional authority has passed the order dated 12.02.1993, which is impugned in the present application, in a perfunctory manner, which cannot be sustained.

Mr. Durga Nand Jha, learned counsel for the petitioners, has submitted, with reference to the averments made in paragraph 18 of the writ application, that certain portion of land in question was acquired by the State Government for construction of Dhanauti bandh and in course of preparation of award for payment of compensation, respondent No.5 had raised a dispute. He has submitted, with reference to the statement made in paragraph 18 of the writ application, that the Sub Judge, Bettiah upon examining the documents and evidence, passed a final order in March, 1992 directing that petitioner Dasai Sahni (since deceased) was entitled to receive the compensation from the land acquisition officer in respect of lands acquired by the State Government.

Since I find the order of the Joint Director, Consolidation, Muzaffarpur in revision case No. 185/1990 to be perfunctory, it cannot be sustained. The order dated 12.02.1993 passed by Joint

Director, Consolidation, Muzaffarpur in revision case No. 185/1990 is accordingly quashed. The matter is remanded back to the Director, Consolidation, Patna to pass an order afresh on the dispute raised by respondent No.5.

This writ application is, accordingly, allowed. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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