

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1393 of 1993

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1. Sonfullah Devi, Wife of Sarbjit Choudhary.
 2. Kalawati Devi, Wife of Prakash Sharma @ Kapil Choudhary.
Both resident of village+P.S.-Sandesh, District-Bhojpur. At present residing at
Village-Kathrai, P.S.-Charpokhari, District-Bhojpur.
 3. Indrasani Devi, Wife of Late Sachchidanand Rai, resident of Village-Kathrain,
P.S.-Charpokhari, District-Bhojpur.
 4. Sarbjit Choudhary, Son of Sidheshwar Choudhary, resident of Village-Kathrain,
P.S.-Charpokhari, District-Bhojpur.
 5. Prakash Sharma @ Kapil Choudhary, Son of Sarbjit Choudhary, resident of
Village-Katharain, P.S.-Charpokhari, District-Bhojpur.
 6. Shayam Sundar Rai.
 7. Ram Chandra Rai.
Both Sons of Late Sachchidanand Rai, resident of Village-Katharain, P.S.-
Charpokhari, District-Bhojpur.

..... **Petitioner/s**

Versus

1. The State of Bihar.
2. The District Collector, Bhojpur at Arrah.

..... **Respondents 1st Set**

3. Lallan Rai.
4. Baijnath Rai.
5. Dwarika Rai.
All Sons of Late Dasrath Rai, residents of Village-Katharain, P.S.-Charpokhari,
District-Bhojpur.

..... **Respondents 2nd Set**

6. Bijoy Kumar Rai, Son of Muneshwar Rai, resident of Village-Katharain, P.S.-
Charpokhari, District-Bhojpur.

..... **Respondents 3rd Set**

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Appearance :

For the Petitioner/s : Mr. Ras Bihari Thakur, Advocate

For the Respondents-State : Mr. Rakesh Kumar Sharma, Advocate (Act to GP-27)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 14-05-2015

This is an application seeking quashing of an order dated 16.12.1992 passed in Revenue Miscellaneous Case No. 3 of 1990-91 by the Collector, Bhojpur at Arrah, whereby, he has allowed a petition filed by the respondents 2nd set and has cancelled the sale-deeds executed in favour of the petitioner nos. 1, 2 and 3 by the father of respondents 2nd set, invoking provisions of Section 32 of the Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1956 [hereinafter referred to as the 'Act'].

2. Heard learned counsel for the petitioners and learned counsel representing the respondents-the State of Bihar. Despite notice upon the private respondent nos. 3 to 6, neither there is any representation on their behalf nor any counter affidavit has been filed.

3. The dispute relates to the land described as follows:-

<u>Chak Khata No.</u>	<u>Chak Plot No.</u>	<u>Rakba</u>
15	25	3.18
	30	1.61
	57	.51

4. Certain facts are not in dispute. The village, in question, was notified under Section 3 of the Act by the State Government, declaring its intention to make scheme for consolidation of holdings in the said village and it has not been denotified so far, under Section 26A of the Act. This is also not in dispute that the father of respondents 2nd set had executed sale-deeds in favour of the petitioners in the year 1977 on the basis of which, the names of these petitioners were mutated in the year 1981. This is also not in dispute that no prior permission was obtained by the petitioners as required under Section 5 of the Act, which prescribes that no person shall transfer any lands which are notified under Section 3 of the Act by way of sale, gift, exchange or partition, without previous

sanction of the Consolidation Officer. Section 32 of the Act, declares transfer of any land, contrary to provisions of the Act to be void and makes the owner of the land, so transferred, liable to pay fine, not exceeding Rs. 250/-.

5. Learned counsel for the petitioner, assailing the impugned order, has submitted that the sale-deeds were executed in favour of the petitioners in the year 1977 and more than 12 years thereafter, the respondents 2nd set, the sons of the vendor, filed Revenue Miscellaneous Case No. 3 of 1990-91 before the Collector, Bhojpur at Arrah, seeking a declaration that the sale-deeds were void. He submits that even if the sale-deeds are treated to be void by operation of Section 5 of the Act, the petitioners acquired title over the property by adverse possession. He has further submitted that till date, the petitioners are in possession over the property in dispute. He has also contended that the Collector of the district in exercise of power under Section 32 of the Act, could only impose fine of Rs. 250/-, but he has not been empowered to declare transfer of the land, having been made contrary to the Acts, to be void. He has further submitted that the vendor

had died leaving behind his sons, who have impleaded as respondent 2nd set and other heirs also (daughters). He has, accordingly, submitted that the daughters were not impleaded as party in the application preferred before the Collector.

6. I find it difficult to interfere with the order passed by the Collector, Bhojpur at Arrah dated 16.12.1992, which is under challenge in the present writ application, in view of the admitted facts and clear legal position. Despite the order of the Collector dated 16.12.1992, impugned in the present case, the petitioners' right to claim title over the property on the ground of adverse possession is not whittled down. They shall still have remedy before the appropriate forum to claim title over the property in question on the ground of adverse possession.

7. This application is, accordingly, disposed of.

8. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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