

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3205 of 1993

- 1.Manoj Kumar
2.Sanjay Kumar
3.Rajesh Kumar
4.Rajib Kumar

All sons of late Bijay Kumar

- 5.Kumari Hemlata d/o late Bijay Kumar
6.Most. Kishori Devi w/o late Bijay Kumar
7.Most. Surya Mukhi Devi w/o late Jagdish Lal

All residents of village-Muradabad, P.S. Sasaram, District- Rohtas.

8. Ajay Kumar Sinha
9. Ajit Kumar Sinha

Both sons of late Jai Gobind Lal, resident of village- Muradabad,
P.S. Sasaram, District- Rohtas

10. Smt. Prabha Devi (Daughter) w/o Sri Shiva Prasad Lal, resident of village-
Bhardvan, P.S. Chenari, District- Rohtas.
11.Smt. Manorma Devi(daughter) w/o Sri Gopal Narain Lal, resident of village-
Dhangua, P.S. Karahagar,District- Rohtas.
12. Smt.Saroj Devi (daughter) wife of Sri Ashok Kumar Sinha, resident of village-
Parasathu, P.S. Kochas.
13. Smt. Sabita Devi(daughter) w/o Sri Mukesh Kumar Sinha, resident of village
Makhara, P.S. Barun,District- Aurangabad.
14. Ajay Kumar son of late Jai Govind Lal.

Residents of village- Muradabad, P.S. Sasaram,District- Rohtas.

.... Petitioner/s

Versus

- 1.State of Bihar
2.The Principal, Chakbandi Prashikshan Santhan, Bhumi Vikash Bhawan, 4th
floor,Budh Marg, Patna.
3. The Director of Consolidation, Bihar Bhumi Vikash Bhawan, 4th floor,Budh
Marg, Patna.
4. The Deputy Director of Consolidation, Rohtas at Sasaram
5. The Consolidation Officer, Sasaram, District- Rohtas.
6. Shankar Lal son of late Kailash Lal, resident of village- Muradanad, P.S.
Sassaram, District- Rohtas.

.... Respondent/s

Appearance :

For the Petitioners : Mr. Rajendra Narayan Singh, Sr. Adv.
For Respondent no.6 : Mr.; Daya Nand Singh
For the State : Mr. Praveen Kumar, A.C. to G.P. 27

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

ORAL JUDGMENT

Date: 11-05-2015

Heard learned Senior Counsel for the petitioners and learned Counsel for the respondents.

2. Order dated 18.03.1985 passed by the Consolidation Officer, Sasaram, in Case No.15/ 1982-83 and Case No. 18/ 1982-83, Order dated 23.01. 1989 passed by Deputy Director of Consolidation, Rohtas, Sasaram, in Appeal No. 101/ 1985-86 and 102/ 1982-83 as well as the order dated 24.02.1993 passed by the Principal, Consolidation Training Institute, Patna, in Revision Case No. 576 of 1989 are under challenge, in the present application under Article 226 of the Constitution of India.

3. The matter arises out of proceedings initiated before the Consolidation Officer, Rohtas , Sasaram under Section 8A of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act').

4. Before I address the dispute involved in the present application, it would be apt to extract the genealogical table, as given in para 5 of the writ application, which would indicate the relationship between the contesting parties;

Deo Nandan Lal
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/	/	/
Kailash Lal (Manjharia Devi) (widow)	Jai Govind Lal (Gaura Devi) (widow)(P-2)	Jagdish Lal (P-1)

/
Shankar Lal
(Respondent no.6)

/
Ajai Kumar
P-3)

5. Jagdish Lal, petitioner no.1 and Gaura Devi petitioner no.2, widow of Jai Govind Lal, died during the pendency of this application and they have duly been substituted by their heirs/ legal representatives.

6. The said Jagdish Lal , Gaura Devi and petitioner no.3,Ajai Kumar had filed a case before the Consolidation Officer, Rohtas, Sasaram under Section 8A of the Act claiming partition in the property registered in the name of father of respondent no.6, described as Khesra Nos. 11/121, area 41 decimals, Khesra no. 224, area 57 decimals, Khesra No., 525 , area 43 decimals and Khesra no. 528, area 34 decimals of Khata no. 179, Khata nos. 543 and 655, area 42 decimals and 36 decimals. They claimed before the Consolidation Officer that the said property was purchased in the name of father of respondent no.6, Kailash Lal, he being the eldest member of the Hindu undivided Family from the joint family fund.

7. Respondent no.6 had filed Case No. 18/1982-83, on the other hand, seeking correction in the revisional survey entries with respect to the land appertaining to Khata No. 178 plot nos. 69, area 18 decimals, 68, area 9 decimals, 482, area 3.27 acres, 281, 9

decimals, 74- area 9 decimals, 478- area 2.99 acres, 481- area 16 decimals, 250- area 9 decimals, 653- area 22 decimals, 514- area 32 decimals and 95- area 2 decimals.

8. The Consolidation Officer, by order dated 18.03.1985, rejected the claim of these petitioners raised under Section 8A of the Act that the lands i.e. plots of Khata no. 179 were purchased in the name of father of respondent no.6, Kailash Lal being elder son of Deo Nandan Lal from the income derived from joint family property.

9. From the pleadings filed and submissions made on behalf of the parties and from the order, which is under challenge, there is no dispute about the fact that the said property, which was subject matter of dispute in Case No. 15/ 1982-83 before the Consolidation Officer were purchased in the years 1941 and 1942 .

10. The Consolidation Officer has recorded in the order that there was partition in the family, prior to purchase of the said properties in the name of Kailash Lal.

11.Learned Senior Counsel appearing on behalf of the petitioners has submitted that there is a presumption of jointness in the Hindu Family, and once the petitioners asserted before the Consolidation Officer that the properties appertaining to Khata no. 179 were purchased from the joint family property, the burden was on respondent no.6 to establish that it was separately purchased by his



father Kailash Lal from his own income in order to make out a case that the property in dispute was self acquired property of Kailash Lal which could not be subjected to partition. He has submitted that the Consolidation Officer, merely on the basis that name of respondent no.6 was entered in the rent receipt, came to an erroneous finding that the said lands were purchased by the father of respondent no.6, Kailash Lal from his own income. He has further submitted that the findings arrived at by the Consolidation Officer are based on irrelevant consideration and therefore require interference by this Court. He has further contended that despite there being admitted fact that the land appertaining to Khata no.178 was a joint family property and the name of the petitioner and respondent's father were entered in the register, the Consolidation Officer without assigning any reason in his order dated 18.03.1985 allowed Case No. 18/1982083 and directed for correction in the revisional survey entry for recording the name of respondent no.6 only

12.Learned Senior Counsel has submitted that as a matter of fact, the application filed by respondent no.6 under Section 8 of the Consolidation Act was not maintainable in view of the nature of the dispute raised by him. He has submitted that Section 8 of the Act can be invoked only for the purpose of seeking partition in a joint family and has contended that the said provision could not have been

invoked for correction of entry in the record.

13. From the order of the appellate authority i.e. the Deputy Director, Consolidation, it appears that he took into account the fact that the Consolidation Officer had not done local inspection, which was required under Section 10(7) of the Act. The appellate authority is said to have held local inspection himself and thereafter passed the impugned order on 23.01.1989. The Deputy Director concluded that the 10 Acres of the land which belonged to the joint family was un-irrigated and it was not possible to acquire the lands of Khata no. 179 from the income derived from the said property. After having held so, considering the fact that Kailash Lal was in Government service since long whereas Jagdish Lal was in service since 1938 only, the Deputy Director concluded that the property appertaining to Khata no. 179 was the self acquired property of Kailash Lal, which upon his death devolved solely upon respondent no.6.

14. Assailing the order of the appellate authority viz. Deputy Director, Consolidation, the learned Senior Counsel has submitted that no material has been referred by the Deputy Director on the basis of which he came to a finding that the land which belonged to the joint family was un-irrigated and no property could be purchased out of the income from the said property. He has also



submitted that the reasons assigned by the Deputy Director for rejecting the petitioner's appeal are not sustainable. He has drawn my attention to Annexure 3 of the writ application, which is show cause filed by respondent no.6 in Case No., 43 / 1990-91 in a proceeding under Section 48E of the B.T. Act before the Deputy Collector, Land Reforms, Sasaram wherein the jointness of the family has been admitted by him.

15. Assailing the order of the revisional authority, learned Senior Counsel has submitted that the revisional authority has failed to take into account the fact that there was no evidence before the court below that the said property appertaining to Khata no. 179 was purchased by the father of respondent no. 6 from his own income.

16. Learned counsel appearing on behalf of respondent no.6 has opposed the relief sought for in the present writ application. He has contended, referring to the order passed by the Board of Revenue that the courts have taken into account the evidence available before then and upon consideration of the evidence they came to a particular conclusion that the plot of Khata no. 179, in dispute, was purchased by the father of respondent no.6 from his own income and that being the self acquired property, could not be subjected to partition under Section 8A of the Act. He has further submitted that there was onus upon the petitioners to establish before the revisional



court that the said property was purchased from joint family fund in the name of father of respondent no.6, which they failed. He has contended that the father of respondent no.6 was in service since long and from the income of service he had purchased the plot, in question. He further pointed out that exercising writ jurisdiction, this court may not interfere with the findings of the appellate court, which are based on the materials before it and on the basis of which the revisional court came to the findings, which are impugned in the present writ application. He has lastly submitted that the dispute in the present application is covered by Bihar Land Tribunal Act, 2009 and invoking the provision under Section 15 of the said Act, the case should be remitted to the land Tribunal.

17. I reject the prayer to remit the case at this stage when the writ petition has remained pending for more than two decades that too after hearing the matter at length.

18. I find substance in the submission made on behalf of the petitioners that there was absolutely no occasion for the Consolidation Officer to have allowed Case No. 18/ 1982-83, which was filed by respondent no.6, seeking correction in the record of rights. No reason has been assigned in the order dated 18.03.1985 while disposing of Case No. 18/1982-83 in favour of Respondent No.6. From the order of the Consolidation Officer I also find that he

has not at all discussed the oral evidence, which according to him was adduced in course of the said proceeding under Section 8A of the Act. The order of the Consolidation Officer dated 18.03. 1985 cannot be sustained and is accordingly quashed.

19. So far as order passed by the Deputy Director in appeal is concerned, learned counsel for the respondent no.6 has failed to point out any material which was there before the appellate authority to come to a finding that the land was un-irrigated. I find substance in the submission made on behalf of the petitioners that the finding to this effect recorded by the Deputy Director is perverse without any evidence.

20. Curiously enough, the appellate authority has recorded in his order while rejecting the appeal that the petitioners failed to prove on the basis of oral evidence that the family was joint. Learned Senior Counsel for the petitioners is correct in his submission that onus was on the other side to prove partition, there being presumption of jointness in a Hindu family. The appellate authority came to a finding that the purchase was made by Kailash Lal after partition. I find that there is no material which has been discussed in order, on the basis of which he could come to a conclusion that the family was separate during the life time of Kailash Lal. The revisional authority has not taken into consideration

this aspect and dismissed the revision application.

21.In view of the above, the impugned orders dated 18.03.1985, 23.01.1989 and 24.02.1993 are hereby quashed. The matter is remanded back to the Consolidation Officer for passing an order afresh after giving the parties reasonable opportunity of being heard. If the area in question has been denotified under Section 26A of the Act, the parties will be at liberty to approach competent court of civil jurisdiction for adjudication of their disputes in accordance with law.

22.This application is allowed accordingly.

23. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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