

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 7668 of 1995

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Kesho Pal, son of Dev Nandan Pal, resident of Village – Jehanabad, PS – Kudra,
District – Kaimur (Bhabhua)

.... Petitioner/s

Versus

- 1 The Joint Director of Consolidation (Headquarters), Bihar, Patna
- 2 Dy Director of Consolidation, Rohtas at Sasaram
- 3 Consolidation Officer, Kudra, District – Kaimur (Bhabua)
- 4 Assistant Consolidation Officer, Kudra, District – Kaimur (Bhabua)
- 5 Ayodhya Pal, son of late Basgit Pal
- 6 Parmeshwar Kuer, wife of late Basgit Pal, residents of Village – Jehanabad, At
& PO – Kudra, District – Kaimur (Bhabua)
- 7 Kailash Pal, son of Bihari Pal, resident of Jehabanad, Tola – Lalapur, PS –
Kudra, District – Kaimur (Bhabua)

.... Respondent/s

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For the Petitioner/s : M/s D N Jha, Dr Kislay & Jyoti Ranjan Jha, Advs

For Respondents No 5 & 6 : M/s Mahesh Pd No 2 & Rewati Kant Raman, Advs

For Respondent No 7 : Ms Mallika Mazumdar, Advocate

For the S t a t e : Mr Rajiv Kumar Singh, GP II with
Mr Indrajeet Bhushan, AC to GP II

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 02-07-2015

Heard the learned counsel for the petitioner, learned
counsel for respondents No 5 and 6 as well as respondent No 7.
Counter affidavits and rejoinder have been filed and are on record.

2 The petitioner is aggrieved by the orders passed by
the Consolidation Officer, Kudra, District – Bhabua in Case No 824
of 1988-1989 being order dated 20.08.1988 and order dated
19.12.1994 passed in Revision Case No 513 of 1994 by the Deputy
Director, Chakbandi (Headquarters), Bihar, Patna by which revisional

order, the appellate order, in favour of the writ petitioner, was set aside.

3 On behalf of petitioner, it is submitted that petitioner and respondents No 5 and 6 descend from a common ancestor. The grandfather of petitioner and grandfather-in-law of respondent No 6 were brothers. Long time back, there had been partition and the two branches became separate at their own properties and were in possession thereof. When the consolidation proceeding started, respondent No 5 dishonestly filed an application before the Consolidation Officer stating that there were certain lands which were shown in the name of father of petitioner and shown in his possession which was in fact joint family property and parties had come to an amicable settlement to partition the said land. A compromise petition or an agreement of compromise was filed in support thereof. The learned Consolidation Officer, noting that the parties were present and compromise petition having been filed, there being no objection, accepted the compromise petition and ordered for correction of revenue entries showing division of the land amongst petitioner and respondent No 5 in the shares as mentioned in the compromise petition. This order is Annexure 2 to the writ petition and was passed on 20.08.1988. The so-called compromise petition, which was filed in the proceeding, is Annexure 1 to the writ petition. I have noted the

compromise petition at this stage because a mere look at the compromise petition shows that it is signed only by respondent No 5 and not by both the parties.

4 Petitioner asserts that he had neither been noticed in the aforesaid proceedings nor he had appeared in the proceedings. He had never signed any compromise petition and all those have been fraudulently managed by respondent No 5. He was not aware of the order as well. Much later when the petitioner heard rumours in the village that his land had been partitioned, he made enquiries and having learnt about this fraudulently obtained order, filed an appeal before the Deputy Director (Chakbandi), Rohtas being Appeal No 210 of 1992-1993 under Section 10 (6) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (For brevity, *the Act*). This appeal was allowed by order dated 12.10.1993 and this order is Annexure 3 to the writ petition. Noticing the aforesaid facts, the appellate Court set aside the order of the Consolidation Officer. It may be noted here that in these proceedings, notices were issued to respondents No 5 and 7 but inspite of service of notice, they did not appear and, as such, the appellate proceedings proceeded ex parte.

5 At this stage, it may be relevant to notice that on 02.11.1993, State Government issued notification in terms of Section 4 (a) of the Act cancelling the notification under Section 3 (1) of the



Act in respect of initiation of consolidation proceeding, inter alia, in Kaimur and, in particular, the area where petitioner's lands are situated. The effect of this notification would be that the consolidation proceedings would stand terminated. Thus, the consolidation authorities could not deal with matters covered by the said notification any more. This is the position that obtained in 1993 but notwithstanding the aforesaid, in 1994, the Deputy Director, Consolidation (Headquarters) entertained the revision application filed on behalf of respondent No 5 being revision application No 513 of 1994. The Revisional Court, merely, relying on the order passed by the Consolidation Officer, held that as the Consolidation Officer had held that there had been a partition by mutual consent (compromise petition), the Appellate Court was wrong in interfering in the matter notwithstanding the fact that on behalf of petitioner, strong exception was taken to the fact of compromise and as noticed earlier, the compromise petition itself shows that it was not signed by both the parties. It was filed only by respondent No 5. Thus, the Revisional Court restored the order of the Consolidation Officer. Petitioner was then advised to file a suit because in the meantime, some of the lands were sold by respondents No 5 and 6 to respondent No 7. The suit was dismissed in terms of Section 4 (c) of the Act noticing that there was no notification in view of Section 26 A of the

Act. However, an appeal against the said judgment is pending.

6 On behalf of respondents No 5 and 6, in the counter affidavit, the ordersheet of the Consolidation Officer and other documents in support of the contention that petitioner had duly appeared and the statement recorded in the ordersheet is not wrong, is sought to be established. I am afraid that does not inspire confidence where the main order, which is bone of contention being order dated 20.08.1988 passed by the Consolidation Officer is concerned, there is only signature of respondent No 5. Signature of both the parties is on the earlier order. As noticed earlier, the so-called compromise petition on which the Consolidation Officer acted, which is Annexure 1 to the writ petition, remains unchallenged. It is also a part of the counter affidavit which clearly shows that it has only been signed by respondent No 5.

7 Thus, when this fact was in contest, whether petitioner had agreed to compromise or not and these evidences were there, it was fit and proper for the authorities to set aside the order of the Consolidation Officer and remand the matter for fresh consideration. The only result of that would have been that both the parties would have got a fair chance of hearing. Unfortunately, no one thought that this would be proper because in such an event one or the other party is bound to lose after a fair trial which they did not

want. That is what justice demanded. It must not be forgotten that where talking and discussing about important rights of persons could by these sharp practices, someone gets undue advantage, it would be the duty of the Court to see that fair procedures are adopted and matters fairly decided and resolved.

8 In that view of the matter, I have no option but to set aside the order of not only the revisional authority but also the appellate authority and the consolidation authority and remand the matter to the Consolidation Officer for a fresh hearing and a fresh decision after hearing the parties.

9 The writ application, thus, stands disposed of.

(Navaniti Prasad Singh, J)

M.E.H./-

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