

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6279 of 1995

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1. Jagannath Singh
 2. Akhileshwar Prasad
 3. Kameshwar Singh
 4. Abhishek Kumar Singh

All four sons of Late Mukund Singh, resident of village – Mahathi
Dharam Chand, P.S. – Tisiauta, District - Vaishali.

----- Petitioners

Versus

1. The State of Bihar
2. The Joint Director of Consolidation, Muzaffarpur.
3. Sukhari Singh, son of Deo Narain Singh, resident of village Mahathi
Dharam Chand, P.S. Pateypur, District – Vaishali.

----- Respondents

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Appearance :

For the Petitioners : None.
For the Respondents : Mr. Vindhya Keshri Kumar, Sr. Advocate
Mr. Vijay Anand Singh
For the State : Mr. Harsh Singh, AC to GA-II

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL JUDGMENT

Date: 19-05-2015

By this writ petition Mukund Singh, who was the original petitioner and died during pendency of the writ petition and has been substituted by his sons, has challenged the order of the Joint Director, Consolidation, Bihar, Patna, in Revision Case No. 965/1989 by which order, the Joint Director has held that Sukhari Singh, being the brother of Nagendra Singh, would inherit the property received as per Will from one Chulhai Singh. Sukhari Singh is respondent no. 3 and is represented by Sri Vindya Keshri Kumar, learned Senior Counsel.

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2. No one is present on behalf of the writ petitioners. Heard Sri Harsh Singh, Assistant Counsel to Government Pleader – III, who points out from the genealogy in the writ petition, which is not under challenge, that Chulhai Singh has dissended from family of Gopal Singh who is the youngest brother of Rampal Singh from whom Nagendra Singh and Sukhari Singh being descended. Mukund Singh is the cousin of Chulhai Singh from the common ancestor Gopal Singh. Chulhai Singh did not have any issue. The land belonging to him was made subject matter of a Will by Chulhai Singh. He allegedly willed his land in favour of Nagendra Singh and Mukund Singh. According to the petitioner's case Nagendra Singh died during life time of Chulhai Singh. Thus, as per Will, the property had to devolve upon Mukund Singh, if the Will was probated. It is not in dispute that the Will was not probated, yet it appears that Sukhari Singh got his name mutated under Section 103 of the Bihar Tenancy Act (hereinafter referred to as the "Act") upon death of Chulhai Singh. When the consolidation proceedings started, Mukund Singh made an application before the Consolidation Officer in terms of Section 10(4) of the Consolidation Act for correction of records. After notices to parties including Sukhari Singh, the Consolidation Officer



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allowed the plea of the writ petitioner Mukund Singh and ordered land of Chulhai Singh be recorded in the name of Mukund Singh. Respondent no. 3 Sukhari Singh, filed an Appeal unsuccessfully and then he filed Revision Application before the Joint Director, Consolidation which Revision Application has been allowed and the order of the Consolidation Officer has been set aside. It is this order under challenge.

3. The Joint Director, Consolidation, has relied upon the Will and the fact that Mukund Singh was unable to bring any evidence on record to show that Nagendra Singh had died before the death of Chulhai Singh. Learned counsel for the State points out that this order cannot be supported inasmuch as no reliance can be placed upon the unprobated Will. Sri Vindyakesri Kumar, learned Senior Counsel appearing on behalf of the respondent no. 3 Sukhari Singh, and contesting the writ petition conceded that he cannot support the order of Joint Director, Consolidation based upon the unprobated Will. He, however, submitted that the petitioner had moved the Consolidation Officer after undue delay.

4. In my view that makes little difference, once we see the fact as noted above. There is no dispute that Chulhai Singh died issueless, there is no dispute that the land belonging

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to him if he died intestate, then his property would devolve upon his nearest heir who would be anyone who was descendent from Gopal Singh's branch. If that be so, then it could only be Mukund Singh and not Sukhari Singh, by any stretch of imagination, as Sukhari Singh was not from Gopal Singh's Branch. He was from the Branch of elder brother of Gopal Singh i.e. Rampal Singh. It has not been his case that either the land was gifted to him by Chulhai Singh or he had purchased it from Chulhai Singh, rather his specific case is based upon the unprobated Will which learned Senior Counsel conceded could not be the basis.

5. Thus, I am unable to uphold the order of the Joint Director, Consolidation, passed in Revision Application aforesaid and it is, accordingly, set aside. The writ petition is allowed.

(Navaniti Prasad Singh, J.)

Rajeev/-

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