

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9020 of 1995

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Kedar Nath, son of Late Biswanath Prasad, resident of Mohalla – Chowk Road, Kazi Ki Gali, Dumraon, P.S. – Dumraon, District – Buxar.

.... Petitioner

Versus

1. The State of Bihar
2. Joint Director of Consolidation, Patna.
3. Deputy Director of Consolidation, Arrah.
4. Consolidation Officer, Dumraon.
- 5(a) Sheo Jatan Yadav
- 5(b) Ram Jatan Yadav
Both sons of Ram Swaroop Yadav, resident of village – Dumraon, Mohalla – Hata, P.S. – Dumraon, District – Buxar.
- 5(c) Sarjoo Yadava, son of Bishwanath Yadav, deceased. Resident of village – Parari, P.S. – Simari, District – Buxar.
- 5(d) Ram Nagina Singh
- 5(e) Bikrama Singh
- 5(f) Chadrama Singh
- 5(g) Indrajit Singh
- 5(h) Ramjit Singh
- 5(i) Baliram Singh
All sons of Mukhram Singh, resident of village – Saihar, P.S. – Dumraon, District – Buxar.
6. Paras Nath Gupta, son of Naubat Ram Sonar, deceased, resident of Mohalla patwa bandhan Road, Dumraon, P.S. – Dumraon, District – Buxar.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Brij Mohan Kumar Singh, Advocate
For the Respondent no.5	:	Mr. Radha Mohan Pandey, Advocate
For the State	:	Mr. Kamlesh Kumar Sharma AC to SC-22

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL JUDGMENT

Date: 09-07-2015

Heard learned counsel for the petitioner and learned
counsel for the contesting respondent no. 5.

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2. This dispute has a long history and arises ultimately from proceedings under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the “Act”).

3. To cut short the matter, the entire sequence of events up to 2nd April, 1975 is fully recorded in the order of this Court, then in Civil Revision No. 1300/1974 as filed by Most. Manmato Kuar who happens to be the mother of respondent no. 6 and aunt of the writ petitioner.

4. It appears that Ram Sakal Tiwary and Sitaram Tiwary were two brothers. Sitaram Tiwary sold certain land by two sale deeds in the year 1943 to one Most. Masmato Kuar. Subsequently, in 1973, the two Tiwary brothers were involved in a Partition Suit in which Most. Manmato Kuar was also made a defendant, by virtue of the two sale deeds executed in her favour in respect of the land of which partition was sought. It appears that she lost interest in the suit and ex-party judgment and decree followed in which no share was given to her, even though, in the plaint itself, her share was admitted by virtue of the sale deeds. She filed an application for amendment on coming to know of the final decree preparation. That was not entertained by the Munsif. She filed a Civil Revision before this court which was



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disposed of in the year 1971 directing the Munsif to entertain her application. Again, though she ought to have filed Review Application having not paid deficit court fee, she filed Miscellaneous Application. This was again dismissed by the Munsif. It is against this order that the aforesaid Civil Revision No. 1300/1974 was filed in this Court.

5. This Court, noticing the pleadings, held that Most. Manmato Kuar had a share in the property as admitted in the plaint itself by virtue of the two sale deeds executed in her favour in the year 1943. In view of that admission in the plaint itself, the same was not being disputed. The final decree cannot be said to be in conformity with the judgment which had, in fact, noticed these facts. Thus, the Civil Revision was allowed by judgment and order dated 2nd April, 1975 with a clear direction to the Lower Court to amend the Preliminary decree and final decree in the light of this judgment. It appears that the respondents now want to take advantage of the fact that the court did not ultimately act in accordance with the directions of this Court and, as such, Most. Manmato Kuar would have no right in the said partition decree.

6. I am afraid, this is a preposterous submission. This court issued virtually a mandamus to the trial court and that



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being so, whether the trial court amended the decree or not, the right of the Most. Manmato Kuar became crystallized therein.

7. The issue now is whether the judgment, preliminary decree and the final decree in the said Partition Suit being Title Partition Suit No. 172/1963 has altered and amended by the judgment of this Court in Civil Revision No. 1300/1974 dated 2nd April, 1975 would be binding on the Consolidation Authority or not? The obvious answer would be. That they would be binding not only on the Consolidation Authority but on the parties claiming thereunder. What has been argued by the contesting private respondent who claims to be successor-in-interest of land from one of the Tiwary brothers is that the decree not being amended, it was necessary for the petitioner to file a fresh suit which he did for cancellation of the same case in respect of her land. That suit having abated, she had no right to claim before the Consolidation Authorities nor her successor-in-interest i.e. the petitioner or respondent no. 6 have any right to contest the matter and that too directly in this Court.

8. I am afraid, I cannot accept that proposition. Once the judgment, preliminary decree and the final decree got altered or amended under the directions of this Court in the Civil Revision, the right of Most. Manmato Kuar cannot be ignored by



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any court and that would operate as res judicata against the Tiwary brothers and their successor-in-interest. At any stage, the Consolidation Authorities cannot wish away the judgment, preliminary decree and final decree passed in the Title Suit as altered in Civil Revision, and if, that be so, all subsequent steps taken by the writ petitioner who is successor-in-interest of Most. Manmato Kuar like filing of suit etc. became irrelevant. He was forced to take those steps to counter the plea of the contesting respondent stating that the decree remained un-amended. The fact is otherwise.

9. In that view of the matter, the impugned orders as contained in Annexures – 1 and 2 being passed by the Consolidation Authorities are quashed thereby restoring Annexure – 3. They will have to reconsider the matter afresh in accordance with the judgment of this Court.

10. The writ application is allowed.

(Navaniti Prasad Singh, J.)

Rajeev/N.A.F.R.

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