

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13238 of 2012

With

Interlocutory Application No.6265 of 2012

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1. Shyama Devi, W/O Late Rajeshwar Prasad Choudhary
2. Sunil Kumar Choudhary
3. Ajay Kumar Choudhary
Both Sons Of Late Rajeshwar Prasad Choudhary, Resident Of Sirsa, P.O. Dalan,
Police Station Muffasil, District Katihar

.... Petitioner/s

Versus

1. Shyam Nandan Chaudhary, Son Of Late Bhagwat Choudhary
2. Ramanand Chaudhary, S/O Bhagwat Prasad Chaudhary
3. Surendra Prasad Chaudhary, Son Of Bhagwat Prasad Chaudhary
4. Gajendra Prasad Chaudhary Son Of Late Bhagwat Prasad Chaudhary (expunged
vide order dated 14.12.2012 and substituted by his following heirs and legal
repeetnatives):-
(i) Most.Shanti Devi, wife of late Gajendra Prasad Chaudhary
(ii) Krishna Murari Choudhary, son of late Gajendra Prasad Chaudhary
(iii) Rajeev Kumar Choudhary, son of late Gajendra Prasad Chaudhary
(iv) Babloo Choudhary @ Pritam Kumar, son of late Gajendra Prasad Chaudhary
(v) Priti Kumari, daughter of late Gajendra Prasad Chaudhary
5. Nirmala Devi, Widow Of Late Yogendra Prasad Chaudhary
6. Azad Kumar Chaudhary, Minor Son Of Late Yogendra Prasad Chaudhary
through his Mother and natural guardian Nirmala Devi
7. Bindeshwari Prasad Chaudhary, Son Of Late Bhagwat Prasad Chaudhary
8. Anil Kumar Choudhary, S/O Rajeshwar Pd. Choudhary
All Resident of Mauza Dalan, P.O. Dalan Tola Sirsa, Police Station and District
Katihar

.... Respondent/s

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With

Civil Writ Jurisdiction Case No. 13271 of 2012

With

Interlocutory Application No.6264 of 2012

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1. Bindeshwari Prasad Chaudhary, S/O Late Bhagwat Prasad Chaudhary
2. Ramanand Chaudhary, S/O Late Bhagwat Prasad Choudhary
Both R/O Sirsa,P.O.- Dalan, Police Station- Muffasil, District- Katihar

.... Petitioner/s

Versus

1. Shyam Nandan Chaudhary, S/O Late Bhagwat Choudhary,
2. Surendra Prasad Chaudhary, S/O Bhagwat Prasad Chaudhary
3. Gajendra Prasad Chaudhary, S/O Late Bhagwat Prasad Choudhary (expunged
vide order dated 14.12.2012 and substituted by his following heirs and legal
repeetnatives):-
(i) Most.Shanti Devi, wife of late Gajendra Prasad Chaudhary

(ii) Krishna Murari Choudhary, son of late Gajendra Prasad Chaudhary
(iii) Rajeev Kumar Choudhary, son of late Gajendra Prasad Chaudhary
(iv) Babloo Choudhary @ Pritam Kumar, son of late Gajendra Prasad Chaudhary
(v) Priti Kumari, daughter of late Gajendra Prasad Chaudhary
4. Nirmala Devi, Widow Of Late Yogendra Prasad Chaudhary
5. Azad Kumar Chaudhary, Minor S/O Late Yogendra Prasad Chaudhary, through his mother and natural guardian Nirmala Devi
All R/O Mauza Dalan, P.O.- Dalan Tola Sirsa, Police Station And District-Katihar

.... Respondent/s

Appearance :

(In CWJC No.13238 of 2012)

For the Petitioner/s : Mr. J.S. Arora, Adv.
Mr.Sanjeev Ranjan, Adv.
For the Respondent no.1 : Mr. P.K.Jaipuriyar, Adv.
Mr.A. Jaipuriyar, Adv.
Miss. Anukriti Jaipuriyar, Adv.
For the Respondent no.4(i) to (v) : Mr.S.S.Dwivedi, Sr.Adv.
For the Respondent nos.2&5to7 : Mr.Vasudeo Ram, Adv.
Mr.Vivekanand Jha, Adv.

(In CWJC No.13271 of 2012)

For the Petitioner/s : Mr. J.S. Arora, Adv.
Mr.Sanjeev Ranjan, Adv.
For the Respondent nos.3(i) to (v) : Mr. S.S.Dwivedi, Sr.Adv.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 04-12-2015

Heard the parties.

2. Since the issues of facts and law involved in both the writ petitions are almost identical and common; therefore, on the request of the parties, both the aforementioned matters have been heard together and are being disposed of by this common judgment.

2. For the convenience, facts appearing in CWJC No.13238 of 2012 shall govern both the writ petitions, if not otherwise specifically referred to in the present order.

3. Indisputably, the parties in both the writ petitions are descendants of their common ancestor. The petitioner no.1 Shyama Devi is the widow and the petitioner no.2 Sunil Kumar Choudhary and the petitioner no.3 Ajay Kumar Choudhary are the sons of late



Rajeshwar Prasad Choudhary, who was the full brother of the respondent nos. 1 to 3 and 7. The substituted respondent nos.4 (i) to (v) happen to be the heirs and legal representatives of late Gajendra Prasad Choudhary, who was full brother of aforesaid late Rajeshwar Prasad Choudhary and was originally impleaded as the respondent no.4. Similarly, the respondent nos. 5 and 6 are the heirs and legal representatives of late Yogendra Prasad Chaudhary, and the respondent no. 8 is the son of late Rajeshwar Prasad Chaudhary. The parties of CWJC No.13271 of 2012 are respondents in CWJC No.13238 of 2012. I.A.No.6265 of 2012 and I.A.No.6264 of 2012 have been filed for impleadment of parties.

4. The petitioners of both the writ petitions are aggrieved by the order dated 30.09.1994 passed in Consolidation Revision Case No.75 of 1991 by the Research Officer, Directorate of Consolidation, Bihar, Patna, as contained in Annexure-3 in both the writ petitions, whereby the aforesaid revision application filed on behalf of the respondent no.1 was disposed of in terms of the compromise allegedly arrived at by the parties and the order passed by the appellate authority was accordingly modified/revised to the extent indicated in the compromise petition.

5. The learned counsel appearing on behalf of the petitioners has assailed the impugned order primarily on three grounds: firstly, the impugned order has been passed behind the back of Rajeshwar Prasad Choudhary, the deceased husband of the petitioner no.1 and the deceased father of the petitioner nos.2 and 3; secondly, the compromise was not entered into by all the co-sharers and on the basis of the alleged compromise arrived at by the two co-sharers only the revision application could not have been disposed of in terms of compromise, and thirdly, the Research Officer, Directorate



of Consolidation, Bihar, Patna could not have decided the revision application of the respondent no.1 by exercising his powers under Section 35 of The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short 'Act, 1956') particularly in view of the judicial pronouncement of this Court in the case of Danu Mahto Vs. The State of Bihar [1998(1) PLJR 352]. To buttress the aforesaid submissions, the learned counsel has referred to the averments made in the writ petition and the documents annexed thereto.

6. The learned senior counsel appearing on behalf of the substituted respondent no.4 and the learned counsel appearing on behalf of the respondent nos.2, 5, 6 and 7 have not only supported the submissions raised on behalf of the petitioners, rather they have also added some more points. According to them, the impugned revisional order passed by the Research Officer of the Consolidation Directorate, Bihar, Patna on the basis of the alleged compromise is the result of fraud committed by the respondent no.1. The learned senior counsel submitted that the fraud vitiates everything and, therefore, on that ground also, the impugned revisional order is liable to be set aside and quashed.

7. The learned counsel appearing on behalf of the respondent no.1, on the other hand, has contested the matter by referring to the averments made in the counter affidavit filed on his behalf. According to him, the impugned revisional order was passed on 30.09.1994 and these writ petitions were filed in the year 2012; therefore, the writ petitions suffer from delay and laches, and are liable to be dismissed on that ground alone. However, despite repeated query made by this Court, he has not been able to show that the petitioners or their ancestor Rajeshwar Prasad Choudhary were given any opportunity of hearing before passing the impugned order



or they also joined the alleged compromise. He has further fairly conceded that the Research Officer, Directorate of Consolidation, Bihar, Patna was not vested with the power of hearing revision cases in terms of Section 35 of the Act, 1956. However, he lastly submitted that a Title (Partition) Suit has also been filed by the co-sharer of the petitioners in the year 2012, but he has not been able to show that any notification under Section 26A of the Act, 1956 has been issued for the unit/Mauza in question, so as to make the aforesaid Title (Partition) Suit maintainable.

8. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the entire matter requires re-consideration and fresh decisions by the revisional authority. Though the writ petition was filed after a delay of about 18 years, but there has been violation of the principles of natural justice. The petitioners or their ancestor had earlier no knowledge/information about the impugned order. Furthermore, the Research Officer, Directorate of Consolidation having not been vested with the power of hearing revision cases in terms of Section 35 of the Act, 1956 could not have passed the impugned order disposing of the revision application filed on behalf of the respondent no.1 in terms of the alleged compromise. Apparently, all the co-sharers had not joined the aforesaid compromise and, therefore, on that basis alone, the revision application could not have been disposed of and the appellate order could not have been accordingly modified/revised.

9. For the reasons recorded above, the impugned order dated 30.09.1994 passed in Consolidation Revision Case No.75 of 1991 by the Research Officer, Directorate of Consolidation, Bihar, Patna, as contained in Annexure-3 in both the writ petitions, is hereby set aside and quashed, and the entire matter is remitted back to the

Director of Consolidation, Bihar, Patna with a direction to decide the aforesaid revision application filed on behalf of the respondent no.1 afresh, but before passing any final order, an opportunity of hearing must be given to all concerned including the petitioners and the private respondents of both the writ petitions.

10. In order to expedite the matter, the petitioners and the private respondents of both the writ petitions are hereby directed to appear before the Director of Consolidation, Bihar, Patna within a period of two months from today with a certified copy of the present order, wehreafter the Director of Consolidation, Bihar, Patna shall fix a firm date of hearing and shall decide the matter afresh in accordance with law.

11. The parties shall be at liberty to raise all the issues of facts and law before the Director of Consolidation, Bihar, Patna, which may be available to them, with respect to the lands under dispute.

12. Both the writ petitions stand accordingly allowed to the extent indicated, but with the observations and directions made above. I.A.No.6265 of 2012 and I.A.No.6264 of 2012 are also disposed of accordingly. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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