

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1524 of 1996

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1. Arun Kumar Singh
 2. Ashok Kumar Singh
 3. Rajeev Ranjan Singh
 4. Baljmath Prasad Singh
 5. Shiv Shankar Prasad Singh
 6. Mahesh Prasad Singh, all sons of Chandeshwar Prasad Singh
 7. Mosomat Bindbashni Devi, wife of late Chandeshwar Prasad Singh
 8. Sita Kumari, daughter of Chandeshwar Prasad Singh
 9. Rajeshwar Prasad Singh
 10. Bhubneshwar Prasad Singh, sons of late Jagarnath Prasad Singh, All of village Sindhia Khurd, Thana- Samastipur, District-Samastipur

.... Petitioner/s

Versus

1. The Joint Director of Consolidation, Muzaffarpur
2. Deputy Director of Consolidation, Samastipur
3. Consolidation Officer, Samastipur,
4. (a) Rajeev Kumar Singh
- 4 (b) Laloo Choudhary

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Girjanand Prasad, Advocate

For the Respondent/s : Mr. Mahtab Alam, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 19-05-2015

Heard learned counsel for the petitioners and learned counsel for the State. No one appears for the private respondents.

The petitioners have filed this writ application seeking quashing of the order dated 12.9.1995 passed by the Joint Director, Consolidation, Muzaffarpur in Revision Case No. 290/1994 under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 by which the said revision application filed by the original respondent no.4, Jewar Kunwar was allowed and the appellate order dated 11.8.1994 of the Deputy

Director of Consolidation, Samastipur was set aside and the order of the Consolidation Officer dated 27.4.1993 was upheld. They have also challenged the said order dated 27.4.1993 passed on remand in Revision Case No. 784 of 1991.

The relief sought by the petitioner is that Cadestral Survey Plot No. 462 Khata No. 217, corresponding to Revisional Survey Plot No. 1960 and 1967, area 5 Bighas 12 Katha, situated in village Singhia Khurd, P.S. Samastipur, District- Samastipur should be recorded in the name of the petitioner in Chak Khatian.

It is not in dispute that the petitioners and the respondents belong to two branches of the same family. The case of the petitioners is that the above disputed land was the ancestral property of the petitioners. The said land came into the share of the petitioners on the basis of a partition in partition suit No. 313 of 1931 in which Tauzi No. 17293 was allotted in their favour and upon a further partition the land came in the possession of the father of the petitioners. It is also the stand that the respondent taking undue advantage during the preparation of revisional survey Khatian as well as Chakbandi Khatian got it recorded in her name because the petitioners were residing outside the village. The Consolidation Officer on the basis of the various documents produced by the parties found that the property in question had been purchased in a Court auction by Kunj Bihari Lal in 1904 who had thereafter filed



Execution Case No. 204 of 1909 for delivery of possession and was given delivery of possession on 22.8.1909 and came in possession thereof. The original Respondent No. 4 had thereafter purchased the said land by registered sale deed dated 7.8.1944 and since then she had been coming in possession of the land and after the abolition of Zamindari she was paying rent to the Government of Bihar and in the revisional survey the entry was recorded in her name and similarly in the Chak Khatian also her name was recorded. The Consolidation Officer also noted that the petitioners had filed their objection during the revisional survey which was dismissed after hearing the parties and on the basis of evidence produced by order dated 18.7.1966, which order acquired finality. The Consolidation Officer, accordingly, in the order dated 27.4.1993 passed by him after the matter was remanded in revision Case No. 784/1991 at the instance of the petitioners, decided the matter in favour of the Respondent No.4. Aggrieved by the same the petitioners filed Appeal Case No. 35/1993 which was allowed on 11.8.1994 relying upon, among others, the alleged secret local inspection made by the Deputy Director of Consolidation, whereas the Consolidation Officer had relied upon local inspection duly made upon notice to the parties to the case as also villagers.

Thereafter the original Respondent No. 4 filed Revision Case No. 290/1994 which set aside the order after noting

the facts of the case and also orders passed by the Consolidation Officer and the Deputy Director of Consolidation.

Learned Counsel for the petitioners has sought to assail the revisional order mainly on the ground that it does not deal with the partition of 1933 and thus needs to be set aside on this ground alone and the matter may be remanded for fresh decision in accordance with law. Learned counsel has also sought to argue the case on the various facts which had been argued before the Consolidation Officer and the Deputy Director of Consolidation. He has also referred to the order passed by the Deputy Director of Consolidation in appeal which was decided in favour of the petitioners.

The basis of the order of the Consolidation Officer as also of the revisional authority is the fact that the claim of respondent no. 4 was based upon the sale deeds dated 7.8.1944 and 12.8.1944 from the purchasers of Court auction in the year 1909. The revisional authority further noticed the fact that the petitioners had claimed on the basis of a sale deed of 1944 which was executed after the sale deed of respondent no.4. From the perusal of the order of the revisional authority, this Court finds that he has considered various documents filed by the petitioners. It is true that there is no reference to the partition on the basis of the partition suit of 1933 but the moment it is accepted that the lands had gone out of the control of

the joint family on the basis of Court auction in 1909 then as has been found by the Consolidation Officer, the non-inclusion of the same in a partition suit does not affect the title of the party concerned who had purchased at the Court auction and cannot confer any right and title upon all the members of the family. Moreover, the very fact that the petitioners also rely upon their sale deed dated 6.6.1945 would militate against their reliance upon the partition of the land in the year 1933 on the basis of the partition suit.

The entire submissions of learned counsel for the petitioners is to make this Court decide the present writ petition as though sitting in appeal from the order of the revisional authority under Section 35 of the Consolidation Act. This Court in a proceeding under Article 226 of the Constitution does not sit as a Court of appeal and is only concerned with the decision making process and further as to whether the orders under challenge are perverse or not. Nothing has been pointed out before this Court which would support the stand of the petitioners in that regard.

The writ application is thus devoid of merit and it is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

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