

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8933 of 1997

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1. (a) Most. Badrun Bibi, wife of Late Abdul Gani Khan
(b) Azad Khan, son of Late Abdul Gani Khan
(c) Sahjehan Khan, son of Late Abdul Gani Khan
(d) Amina Khatun, daughter of Late Abdul Gani Khan
 2. Karabat Khan, son of Late Abdul Gaffor Khan
 3. Shamsun Bibi, wife of Late Hasnain Khan
 4. (i) Samrun Bibi @ Samrun, wife of Late Akbar Khan
(ii) Aasmin Bibi @ Asmin, D/o Late Akbar Khan, W/o Irshad Khan
(iii) Sahina, D/o Late Akbar Khan, W/o Afgan Khan, (ii)(iii) resident of Village + P.O. + P.S. Chainpur, District Kaimur
(iv) Farjana Khatun
(v) Sahjadi Khatun, both daughters of Late Akbar Khan
(vi) Aurangjeb Khan
(vii) Aftab Khan
(viii) Tauba Khan, all sons of Late Akbar Khan 4(i) and 4(iv) to 4(viii) are residents of Village Mansoorpur, P.O. Kasthari, P.S. Durgawati, District Kaimur (Bhabhua)
 5. Ekbal Khan, son of Late Hasnain Khan
 6. (i) Rijbana Khatun, wife of Late Anbar Khan
(ii) Asfaque Khan, son of Late Anbar Khan
(iii) Farida Khatun, daughter of Late Anbar Khan, all resident of village Mansoorpur, P.O. Kasthari, P.S. Durgawati, District Kaimur (Bhabhua)
 7. Zamila Bibi, D/o Late Hasnain Khan, W/o Saffarar Khan
 8. Noorjahan Bibi, D/o Late Hasnain Khan, W/o Shammillal Khan
All residents of Village Mansurpur, P.O. Kasthari, P.S. Durgawati, District Kaimur (Bhabhua)

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director Consolidation, Bihar, Patna
3. The Deputy Director Consolidation, Rohtas at Sasaram
4. The Consolidation Officer, Durgawati, Kaimur (Bhabhua)
5. Kamruddin, son of Late Badshah
6. (i) Imran Khan
(ii) Gufran Khan @ Sonu
(iii) Irfan Khan, all sons of Late Mahmood Khan
(iv) Guddi Khatun, daughter of Late Mahmood Khan, wife of Kalam Khan, resident of Village Biur, P.O.+ P.S. Chainpur, District Kaimur (Bhabhua)
(v) Soni Khatun
(vi) Reshma Khatun
(vii) Tarnum Khatun, daughters of Late Mahmood Khan, 6(i) to 6(iii) and 6(v) to 6(vii) are residents of Village Mansoorpur, P.O. Kasthari, P.S. Durgawati, District Kaimur (Bhabhua)
7. Khobhari Yadav, son of Jagarnath Yadav
8. Bhajan Yadav, son of Faudar Yadav
9. Sudeshwari Devi, wife of Khublal Prasad
10. Rajbansh Singh, son of Ghurphakan Singh, all residents of Village Mansurpur, P.O. Kashthari, P.S. Durgawati, District Kaimur (Bhabhua)
11. Jama Khan, son of Late Abdul Gafar Khan, resident of Village Mansurpur, P.O. Kashthari, P.S. Durgawati, District Kaimur (Bhabhua)

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Mahesh Prasad 2, Advocate
For the State : Mr. Din Bandhu Singh, GP-9
Mr. Sandip Singh, AC to GP-9
For the Respondents : Mrs. Mallika Mazumdar, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

ORAL JUDGMENT

Date: 30-07-2015

Counsel for the petitioner is permitted to correct the averments made in paragraph 4 and the prayer portion of I.A. No. 4895 of 2015.

2. I.A. No. 4895 of 2015 praying inter alia to expunge the name of petitioner nos. 4, 6 and respondent nos. 5, 6 on account of their death is allowed and the heirs, as indicated in the Interlocutory Application, are directed to be substituted in their place.

3. Heard learned counsel for the petitioners, the State and the counsel for private respondents including the substituted heirs.

4. Petitioners have filed this writ petition assailing the different orders passed by the consolidation authorities including the order dated 28.07.1997, Annexure-7 passed by the Director, Consolidation, Bihar, Patna whereunder learned Director, Consolidation has held that the subject-matter of consolidation proceeding is beyond the subject-matter of the decree passed in Title Suit No. 131 of 1960 by the court of Munsif, Sasaram and having held as above, further said that the subject-matter of the consolidation proceeding being beyond the decree passed in the said title suit, will not be governed by the operative portion of that decree as the same is in possession of the private respondents herein, which fact is being

disputed by the learned counsel for the petitioners, as according to him the subject-matter of the consolidation proceeding is exactly the same which was the subject-matter of the said suit. In this connection, counsel for the private respondents has referred to pages 32, 33 of the brief and with reference to the contents of pages 32, 33 it is submitted that the lands detailed therein were only the subject-matter of the suit but in the consolidation proceedings subject-matter is beyond the lands mentioned at pages 32, 33.

5. It is submitted that the lands, which is not mentioned at pages 32, 33, was the subject-matter of consolidation proceeding, according to the counsel for the respondents, is in possession of the private respondents.

6. In view of the rival submission, the writ petition is disposed of observing that the findings recorded by the Consolidation Officer that private respondents are in possession of the lands in question will be only to the extent of the lands which were not the subject-matter of the earlier suit. Anything, which was not the subject-matter of the said suit between the parties, will not be governed by the operative portion of that decree. It shall be open for the aggrieved party to approach the competent civil court for declaration of title and possession over the lands which were not the subject-matter of the earlier suit.

(V.N. Sinha, J)

Rajesh/-

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