

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5775 of 1998

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1. Gopal Prasad Singh
 2. Shashi Bhushan Singh
 3. Atish Prasad Singh
 4. Nishikant Singh, all are sons of Late Chulhay Mahto
 5. Sudama Devi, wife of Late Chulhay Mahto
 6. Neelam Devi
 7. Meera Devi, both daughters of Late Chulhay Mahto, all resident of village Haripur, P.S. Banka, District- Banka.

.... Petitioners

Versus

1. The State of Bihar.
2. The joint Director of Consolidation, Bihar, Budh Marg, Patna.
3. The Assistant Director of Consolidation, Bhagalpur, District- Bhagalpur.
4. The Assistant Consolidation Officer, Anchal Banka, District- Banka.
5. Shankar Pd. Singh.
6. Anandi Pd. Singh, Both sons of Late Prayag Narayan Singh.
7. Awadesh Singh.
8. Naresh Singh.
9. Shiv Pujan Singh.
10. Rama Kant Singh.
11. Dilip Kuamr Singh, All respondent no.7 to 11 sons of Shyam Sunder Singh.
12. Musahab Prasad Singh.
13. Sita Ram Singh, both sons of Gobardhan Singh.
14. Anirudh Pd. Singh, son of Ramadhin Singh.
15. Pancha Nand Singh, son of Maharaj Singh.
16. Niranjana Choudhary.
17. Mantu Choudhary.
18. Bablu Choudhary.
19. Pankaj Choudhary, All sons of respondent no.16 to 19 Bhagwat Choudhary. All the residents of village Haripur, P.S. & District- Banka.

.... Respondents

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Appearance :

For the Petitioners : M/s. Subodh Kumar Jha,
Pranav Kumar Jha and
Bal Krishna Mishra, Advocates

For the State : M/s. Kumary Amrita, G.P.10 and
Mithilesh Kumar Upadhyay, A.C. to G.P.10

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 14-05-2015

Perused the explanation of the office.

It has been stated that omissions in printing the names of

counsel are appearing in view of introduction of New Computerized Listing System, however, while hearing the admission matters no such anomaly has been noticed by me. It is not understandable as to why the same has repeatedly occurred in hearing matters specially fixed on Thursday.

Let further explanation be submitted by the office in this regard.

I have heard learned counsel for the petitioners and the State and have perused the records of the case. None has appeared on behalf of the respondent nos.5 to 19.

Through this writ application, petitioners seek quashing of the order dated 01.04.1998 passed in Revision Case No.543 of 1992 as contained in Annexure-4 by the Joint Director Consolidation (Headquarter) in purported exercise of powers under Section 35 of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1986 (hereinafter referred to as "the Act"). They also seek quashing of the order dated 08.06.1992 passed in Appeal No.179 of 1991-92 by the Assistant Director Consolidation, Bhagalpur (Annexure-2) as well as the order dated 29.01.1990 passed by the Assistant Consolidation Officer, Anchal Banka (Annexure-1).

Short facts which would be necessary for consideration of a *lis* stand enumerated as under :

Disputed land is of an area of 4 decimals of Plot No.2771 appertaining to Khata No.145 which, according to the petitioners, has been carved out from old Plot No.1541 of old Khata No.292 of Mauza Karma Revenue Thana No.105, Banka Anchal within the Sub Divisional and District Banka.

According to the petitioners, the Plot No.1541 appertaining to old Khata No.292 stood recorded in the name of Soukhi Mahto, Mahipal Mahto and Natoo Mahto in the cadastral survey records of rights. The said plot along with other lands were auction purchased by one Brahmdeo Narayan in rent suit and, thus, the khatiyani tenants ceased to have any right, title and interest thereupon. It is further stated in the writ petition that Mahipal Mahto, i.e., the common ancestor of the petitioners and the private respondents, his sons and grand sons separated with each others and, thereafter, ceased to have any interest with the property of the other branches. Meaning thereby, there is no unity of title between them. The original petitioner (since deceased) claims to have purchased about 8 bigha 4 katha 2 dhur of Mauza Karma Tola through a registered sale deed dated 22.07.1964 from Bhupendra Narayan son of late Brahmdeo Narayan, who was the auction purchaser as mentioned above. The original petitioner (since deceased) claimed to be in possession of the land purchased and got his name mutated in the



revenue records maintained by the State of Bihar and was paying rent and, acknowledging the same, the State of Bihar was granting receipts. The name of the original petitioner was recorded when the register of land was prepared under Section 9 of the Act. However, the petitioners claim that on an ante dated application filed in Case No.49 of 1989-90, the Assistant Consolidation Officer, Banka, vide his order dated 29.01.1992, without notice to the petitioner, directed for inclusion of the name of private respondents with respect to the lands in dispute. Since the petitioner was never served any notice, and order was passed behind his back he could not file appeal within the prescribed period of limitation. However, when the appeal was filed later on, that was dismissed vide order dated 08.06.1992, as contained in Annexure-2, by the Assistant Director Consolidation, Bhagalpur in Appeal Case No.179 of 1991-92 on the ground of being barred by limitation and refusal of the concerned appellate authority to condone the delay in the facts and circumstances of the case.

The petitioner, thereafter, filed Consolidation Revision Case No.543 of 1992 under Section 35 of the Act in which the private respondents also appeared, as would be apparent from the order dated 14.05.1993 and matter was adjourned. Subsequently, Lower Court Records also appear to have been called for. However, it appears from the order dated 28.12.1993 that further proceeding was dropped in



view of the fact that the Mauza in which disputed land is situated stood notified under Section 4(A) of the Act cancelling the earlier Section 3 notification. Thereafter, in view of the decision of this Court rendered in L.P.A. No.14346 of 1995 and subsequent Notification No.145 dated 03.02.1996 by the State Government, the matter was again re-opened and notices were issued to the parties on 12.11.1996. Thereafter, matters were adjourned several times awaiting receiving of Lower Court Records. It appears from the order dated 21.05.1997 that the learned counsel appearing for the opposite parties pointed out to the Revisional Authority that the opposite party no.1 had died in the year 1994 itself whereas opposite party no.2 passed away in the year 1996 but the petitioner did not file any petition for substitution of their heirs and legal representatives. On that count, he prayed for dismissal of the case. Thereafter, a substitution petition appears to have been filed on behalf of the petitioner on 26.11.1997 which was dismissed by the impugned order dated 01.04.1998 on the ground of having been filed after much delay and as a consequence thereof the revision case itself was dismissed.

Learned counsel appearing for the petitioners submits that the order of dismissal has been passed under gross misconception as admittedly the opposite party nos.1 and 2 died after 08.12.1993 on which an order was passed by the Revisional Authority dropping the



proceeding in view of the notification under Section 4(A) of the Act and prior to the revival of the case on 22.11.1996 whereas opposite party no.7 died in February, 1997. It is submitted that there was no question of filing a petition for substitution during the period the revision case stood dropped in view of notification under Section 4(A) of the Act. Thereafter, the notices were issued on 12.11.1996. It appears that on 21.04.1997 petitioner was present but the opposite party had filed time petition and, subsequently, the opposite parties pointed out regarding the death of the opposite party nos.1 and 2 on 21.05.1997. The matter was adjourned for filing of such petition by the petitioner. However, it appears from the order sheet that the matter was adjourned on 25.07.1997, 29.08.1997, 22.09.1997 and lastly on 27.10.1997 fixing a date on 26.11.1997 on which date the substitution petition was actually filed.

From perusal of order, it appears to me that, while considering the delay in filing of substitution petition, the revisional authority has also considered and added the period commencing from August, 1994 when the opposite party no.1 had died and which was during the period when the proceeding stood dropped in view of the aforesaid development which, in my considered opinion, could not have been done. Of course, later on, even though the Revisional Authority was not available as has been claimed by the petitioner



from 25.06.1997 to 27.10.1997, the substitution petition could well have been filed in the office of the revisional authority but learned counsel submits that the same could not have filed under misconception since the authority was not available. In my considered opinion, when serious issues were raised by the petitioner regarding violation of principle of natural justice while passing the impugned order and the allegation of forgery with respect to the letter accepting the case of the private respondents which was filed by them before the Assistant Consolidation Officer, and the objection under Section 10(2) of the Act having been entertained admittedly after expiry the period of limitation, in my considered opinion, the substitution petition ought to have been allowed and matter ought to have been disposed of by the Revisional Authority after consideration of merit of the cases of the respective parties by passing a reasoned and speaking order as the same was last fact finding remedial authority available under the Act.

None has appeared for the respondents at the time of hearing.

Having regard to the aforementioned facts and circumstances, in my considered opinion, the impugned order as contained in Annexure-4 passed by the revisional authority cannot be sustained in law, accordingly, the same is quashed and set aside and the matter is remitted back to the respondent authority for fresh

consideration on merit of the case after granting reasonable opportunity to all the parties concerned and for passing the reasoned and speaking order after allowing the substitution petition filed by the petitioner for substitution of the heirs and legal representatives of opposite party nos.1, 2 and 7.

(Dr. Ravi Ranjan, J)

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