

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8828 of 1992

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1. Smt. Gangam Devi wife of late Nawal Kishore Singh
2. Ravi Ranjan Singh, son of Nawal Kishore Singh
3. Kundan Kumar, Son of Nawal Kishore Singh
4. Smt. Chanchal Devi daughter of Nawal Kishore Singh
5. Smt. Sanju Devi, daughter of Nawal Kishore Singh
All resident of village-Bhayatpur Prabodhi, Police Station Lalganj, District
Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. The director of Consolidation Bihar, Patna
3. Dularo Devi wife of Gagandeo Singh, resident of Village Enayatpur Prabodhi,
Police Station Lalganj Dist- Vaishali
4. Ram Chandra Singh Son of Shiv Nath Singh, village Kanhari P.S.
Bhagwanpur Po Bhagwanpur Dist-Vaishali
5. Shiva Dulari Devi wife of Sri Ramashray Singh Village Diwawanpur P.s.
Biddupur PO Biddupur Dist- Vaishali
6. Smt. Pushpa Devi, wife of Sri Shiv Kumar Singh, resident of Meghalaya

.... Respondent/s

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Appearance :

For the Petitioner/s	Mr. Harendra Pd. Singh -1 Mr. Santosh Kumar
For the Pvt. Respondent/s :	Mr. P.N. Shahi, Sr. Advocate With Mr. Sanjeet Kr. Singh
For the State :-	Mr. Kamal Kumar Sinha, AC to AAG-2

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 26-02-2015

1. Heard Mr. Harendra Prasad Singh, learned counsel
appearing on behalf of the petitioners, Mr. Sanjeet Kumar Singh,
learned counsel appearing on behalf of Private respondent and Mr.
Kamal Kumar Sinha, learned AC to AAG-2 appearing on behalf of
the State of Bihar.

2. A very short question is involved in the present



application under Article 226 of the Constitution of India wherein the petitioner is aggrieved by an order dated 11.5.1986/14.5.1986 passed by the Director, Consolidation, Bihar, Patna whereby and whereunder he has set aside the order of the Consolidation Officer, Lalganj dated 28.11.1977 passed in Consolidation case No. 82 of 1975 has been set aside. The said Consolidation Case No. 82 of 1975 was instituted by the petitioner for recording his name on the basis of registered deed of gift dated 22.12.1972 executed in his favour by Respondent nos. 3 and 4, namely, Dularo Devi, since deceased.

3. This is to be noted that the original petitioner Nawal Kishore Singh and Respondent No.3 Dularo Devi died during the pendency of this writ application and they have been substituted by their legal heirs.

4. The Consolidation Officer, however, dismissed the case of the petitioner on the ground that the gift deed was executed without due permission as required under Section 6 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 1956 Act). He, however, directed for recording possession of the petitioner over the disputed plot. It was against this order of the Consolidation Officer that the matter travelled to the Director, Consolidation, Bihar, Patna under Section 35 of the said Act. Following is the order passed by the Director,

Consolidation, Bihar, Patna:-

“Mater earlier duly heard on 2.5.1986. The petitioner’s claim that the entry of the name of O.P. in the remarks column is not in accordance with the Consolidation Act, as there cannot be two possession of the same plot of land for which a chak is carved out.

2. From hearing the parties and after perusing the record, it is clear that there could have been no gift of joint property which was subsequently sold by the donee.

3. It also appears that there was compromise in between the shares of the joint family through Court and accordingly parties came in possession. Since the deed of gift is not substantial in law and also that in Consolidation Holding there can not be any question of gasban kabja, as it is held that the impugned order passed by the learned Consolidation Officer, Lalganj the dispute in 82/75 is set aside. The revision petition is allowed.

Inform all concerned.”

5. Mr. Harendra Prasad Singh, learned counsel appearing on behalf of the petitioner has contended, relying upon Supreme Court decision in case of Gorakh Nath Vs. H.N. Singh (1973 SC 2451) in order to submit that it was not within the jurisdiction of the Director, Consolidation to have declared the gift deed to be invalid as according to him such declaration could have been made only by a civil Court of competent jurisdiction in a proper suit. For the same proposition, he has placed reliance upon Full Bench decision of this Court in case of Seikh Haidar Zan vs. Md. Yusuf Ansari reported in 2000(2) PLJR 339 and another full

Bench judgment in case of Sheoratan Chamar Vs. Ram Murat Singh reported in 1985 PLJR 86.

7. Learned counsel appearing on behalf of the private respondents, on the other hand, in order to defend the order under challenge passed by the Director, Consolidation has contended that the said order cannot be said to be a declaration as regards validity of the gift deed in question. He submits that while considering the question of the petitioner's possession over the disputed property, the learned Revisional Court simply observed that the joint family property could not be transferred through gift deed.

8. I find substance in the submission made on behalf of the petitioner. Learned counsel for the petitioner is right in his submission while relying upon Supreme Court judgment in case of Gorakh Nath Vs. H.N.Singh (supra), relevant portion of paragraph 5 of which is being quoted hereinbelow:-

“5..... but where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a Court having the power to cancel it.”

9. Relying upon the said Supreme Court Judgment, a full bench judgment of this Court in case of Sheoratan Chamara

Vs. Ram Murat Singh (supra) held in paragraph 12 as follows:

“12. Now applying the ratio of Goraknath Dubey’s case to the case where the issue, rests solely or primarily on the challenge to a particular document or deed, the resultant consequence is that if the said document is void ab initio then necessarily the proceeding will abate and the matter would come squarely within the jurisdiction of the consolidation authorities. However, if such a document is only voidable in nature and is sought to be voided by one of the parties on any ground, then the Court has to adjudicate upon the same and set it aside, and, therefore, no abatement of such a proceeding would follow and the forum, including the Civil Court, will have continued jurisdiction to deal with the same.”

10. Subsequently, relying upon another Full bench judgment of this Court in case of *Seikh Haidar Zan Vs. Md. Yusuf Ansari*(supra), while relying upon the full bench judgment of this Court in case of *Sheoratan Chamara* (supra) held in paragraph 32 as follows:-

“32. From bare reading of Section 378 it is evident that the consolidation authorities do not have all the powers of the civil court as conferred upon it (civil court) by the, Code of Civil Procedure. They have power to summon witnesses and examine them on oath, to issue commission for that purpose, compel production of any document and punish a person for contempt. They do not have the power to issue injunction or appoint Receiver, attach the subject matter of dispute, and so on. Besides having limited jurisdiction in matters of procedure, they have limited jurisdiction to decide the dispute itself. For example, they have no power to set aside or cancel a deed, entertain suits for permanent injunction, redemption of mortgage and so on. By way of illustration, reference may be made to the decisions



reported in AIR 1973 SC 2451 and 1985 PLJR 76 (Cases of cancellation of a deed), 1989 PLJR 579 (case of permanent injunction), 1979 BBCJ 566 (Specific performance of Contract), 1979 BBCJ 738 and 1989 PLJR 536 (homestead land), 1980 BBCJ 191 (ejectment), 1986 BBCJ 343 (Action based on allegation of fraud), and so on. In all these cases the suits of nature mentioned within brackets have been held to be maintainable in the Court courts because consolidation authority have no jurisdiction to grant and relief in such cases. The point is will settled that all suits or proceedings do not abate under Section 4(c) of the Act. I have therefore referred to only some of the cases above as illustrative cases. The law journals are replete with case law on the point and it is not necessary to refer to all of them in this judgment.”

11. A bare reading of the impugned order will show that in effect by the said order the Director, Consolidation, Bihar while exercising power under Section 35 of the Act held the gift deed executed in favour of the petitioner to be invalid, which power he did not have in view of the law laid down by the Supreme Court in case of Gorakh Nath Vs. H.N. Singh (supra) as well as in the light of the full Bench judgment of this Court in case of Sheoratan Chamara(supra) and another full Bench judgment of this Court in case of Seikh Haidar Zan vs. Yusuf Ansari (supra).

12. The impugned order passed by the Director, Consolidation, Bihar Patna in Revision Case No. 2196 of 1984 cannot be sustained and it is accordingly set aside.

13. The matter is remanded back to the Court of Director Consolidation, Bihar, Patna to consider the matter afresh and pass appropriate order on the revision petition filed by the petitioner in accordance with law.

14. This application is allowed.

(Chakradhari Sharan Singh, J)

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