IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11956 of 1992

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Ganesh Prasad Singh, Son of Rajendra Singh, resident of Village-Singhara, P.S.-Mahua, District-Vaishali.

.... **Petitioner/s**

Versus

1. Joint Director of Consolidation, Bihar, Patna.
2. Deputy Director of Consolidation, Vaishali at Hajipur.
3. Consolidation Officer, Pathepur, District-Vaishali.

.... **Respondents 1st Party**

4. Shyamnandan Singh.
5. Ramnandan Singh
   Sons of Late Daroga Singh
6. Uma Singh.
7. Upendra Singh
   Sons of Late Jainandan Singh

All residents of Village-Govindpur alias Garra, P.S.-Pathepur, District-Vaishali

.... **Respondents 2nd Party**

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Advocate
Mr. Mithilesh Kumar Khare, Advocate

For the Respondent/s (State) : Mr. Praveen Kumar, Advocate (AC to G.P.-27)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 13-04-2015

Heard learned counsel for the petitioner and learned counsel for the State of Bihar.

2. Despite service of notice upon private respondents, there is no representation on their behalf. No counter affidavit has been filed. This application is, accordingly, being disposed of on the basis of uncontroverted facts as asserted in the writ application and the submissions made on behalf of the petitioner:-

3. One Ram Dhani Singh had three sons, namely, (i) Jhanu Singh @ Anuplal Singh, (ii) Munshi Singh and (iii) Daroga Singh. Pradhuman Singh and Bhagwatia Devi are the son and daughter, respectively, of Late Jhanu Singh. Jainandan Singh was son of Munshi Singh. Daroga Singh had two sons, namely, (i) Shyamnandan Singh and (ii) Ram Nandan Singh, who are respondent nos. 4 and 5, respectively in the present proceeding. Jainandan Singh had two sons, namely, (i) Uma Shankar Singh and (ii) Upendra Singh. The petitioner, namely, Ganesh Prasad Singh is son of Bhagwatia Devi, daughter of Late Jhanu Singh. Pradhuman Singh, son of Late Jhanu Singh, died issueless. Pradhuman Singh's only sister, namely, Bhagwatia Devi, died leaving behind her son, namely, Ganesh Prasad Singh, the present petitioner. With this genealogy, as given in the writ application, there a is dispute between Ganesh Prasad Singh, on the one hand, and heirs of Munshi Singh and Daroga Singh on the other.

4. It is the claim of the petitioner that brother of Bhagwatia Devi, namely, Pradhuman Singh having died issueless, the entire share of Jhanu Singh in the Joint Family Property devolved upon him, whereas, the claim of the petitioner has been resisted before the Revenue Courts below by the heirs of Munshi Singh and Daroga Singh with the plea that Bhagwatia Devi having died in the year 1952, she could not have inherited any share of Jhanu Singh and the entire share of Jhanu Singh devolved upon Pradhuman Singh, who had died issueless. It is their case that there was a family arrangement according to which, though Pradhuman Singh could enjoy the fruits of the share inherited by him upon death of Jhanu Singh during his life time, but after his death, the share would be going to heirs of Munshi Singh and Daroga Singh.

5. In the background of the case, which have been briefly noted hereinabove, the petitioner is aggrieved by an order dated 16.01.1984 passed by the Deputy Director of Consolidation, Vaishali at Hajipur in Appeal Case No. 88/83-84 and Appeal Case No. 191/83-84 as well as an order passed by the Director, Consolidation, Bihar, Patna in Revision Case No. 472 of 1984. From the facts pleaded in the writ application, it would appear that upon death of his maternal uncle, Pradhuman Singh, the petitioner had filed an application for mutation of his name in the revenue records. His name was directed to be mutated by an order passed by the Deputy Collector, Land Reforms passed in Appeal No. 1/76-77. The appeal preferred against the order of the Deputy Collector dated 19.09.1977, came to be dismissed by the Additional Collector, Hazipur. Thereafter, the Commissioner, Tirhut Division, Muzaffarpur by his order dated 01.03.1983, had dismissed the revision application preferred against the order of Appellate Authority, i.e., Deputy Collector, Consolidation.

6. Upon implementation of consolidation scheme, the petitioner is said to have filed an application before the Consolidation Officer, Pathepur, Vaishali for recording his name in the register and for allotment of Chak to the extent of area inherited by him. By an order dated 30.05.1983, the Consolidation Officer is said to have directed for recording petitioner's name with respect to $1/9^{th}$ share, though he had claimed $1/3^{rd}$ share. The respondents preferred an appeal before the Deputy Director, Consolidation, bearing Appeal No. 88/83-84. The Deputy Director, Consolidation allowed the appeal by an order dated 16.01.1984 on two grounds. Firstly, the petitioner is said to have failed to produce succession certificate and, secondly, as per registered agreement among the heirs of descendants of Ram Dhani Singh and Pradhuman Singh had neither any right to deal with the property nor the property was nor inheritable. The petitioner, thereafter, preferred revision before the Director, Consolidation giving rise to Revision Case No. 472/84, who, by an order dated 16.12.1987, dismissed the said revision case on the same grounds that the petitioner failed to obtain and submit succession certificate from the competent Court and he also failed to produce the documents to show that he was the heir of Pradhuman Singh.

7. The orders passed by the Appellate Authority and the Revisional Court are being challenged on two grounds. Firstly, that the Revenue Courts below of the Deputy Director, Consolidation and Director, Consolidation have committed an error of law while holding that the petitioner was required to produce succession certificate in support of the claim that he was the legal heir of Late Pradhuman Singh. It is their plea that the Consolidation Officer ought to have decided this dispute. It has been submitted with reference to

Section 370 of the Indian Succession Act, 1925 that succession certificate cannot be granted under that provision with respect to rights over immovable property. It has been submitted that the Consolidation Authorities under "The Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1956" are vested with the power of Civil Court and were, therefore, required to inquire and decide on the basis of evidence adduced as to whether the petitioner was the legal heir of Late Pradhuman Singh or not. It has further been submitted that the Consolidation Authorities ought not to have based their decision on an agreement alleged to have been entered into among the decedents of Ram Dhani Singh (except this petitioner) as such agreement is contrary to law because the said agreement required that Pradhuman Singh will not be competent to alienate his share by any means during his lifetime and after his death, share will devolve upon the sons of his two brothers.

8. I find substance in the submissions made on behalf of the petitioner that the Consolidation Authorities were not justified in asking the petitioner to produce succession certificate with respect to the immovable properties, inherited by said Pradhuman Singh. Section 370 of the Indian

Succession Act, 1925 **(hereinafter referred to as the 'Act')** deals with the restrictions on grant of succession certificate under Part X of the Act and reads thus:-

> **"370. Restriction on grant of certificates under this Part.**–(1) A succession certification (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate:
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> Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.
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> (2) For the purpose of this Part, "security" means-
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> (a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;
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> (b) any bond, debenture, or annuity charged by Act of Parliament [of the United Kingdom] on the revenues of India;
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> (c) any stock or debenture of, or share in, a company or other incorporated institution;
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> (d) any debenture or other security for money issued by, or on behalf of, a local authority;
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> (e) any other security which the [State Government] may, by notification in the

Official Gazette, declare to be a security for the purposes of this Part.

9. Bare reading of Section 370 of the Act, makes it clear that a succession certificate cannot be granted under Part 10 of the Act with respect to any debt or security to which a right is acquired by Section 212 or Section 213 of the Act to be established by letters of administration or probate. It would be in fitness of things to refer Section 212 of the Act, which deals with right to inter States property which reads thus:-

> ***"212. Right to intestate's property.***–*(1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.*
>
> *(2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina. [India Christian or Parsi]."*

Reading of Section 372 of the act also makes it clear that no succession certificate under Part 10 of the Indian Succession Act, 1925 can be issued with respect to immovable properties.

10. Mr. Mishra, learned counsel appearing on behalf of the petitioner, appears to be right in his submission that the petitioner being sister's son of Pradhuman Singh had right to inherit the share of Pradhuman Singh upon his death, if there is no dispute about the fact that the petitioner is son of Bhagwatia Devi, who was sister of Pradhuman Singh and Pradhuman Singh died issueless.

11. I find that the reasons assigned by the Consolidation Authorities of rejecting the petitioner's claim are not tenable. The order of the Deputy Director, Consolidation dated 16.01.1984 (Annexure-5) as well as the order dated 16.12.1987 passed by the Director, Consolidation are quashed. The matter is remanded back to the Court of Director, Consolidation to take a decision afresh in accordance with law keeping in mind the observations made hereinabove within a period of six months from the date of receipt/production of a copy of this judgment.

11. This application is, accordingly, allowed.

12. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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