

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10599 of 1992

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1. Jit Narayan Singh,
 2. Ram Narayan Singh,
 3. Ramji Singh,
All sons of Reepu Singh
 4. Reepu Singh, son of Guddari Singh
All resident of Village Gurura, Police Station Kudra, District Rohtas

.... Petitioner/s

Versus

1. State of Bihar
2. Director of Consolidation, Bihar, Patna
3. Deputy Director of Consolidation, Rohtas at Sasaram
4. Consolidation Officer, Kudra, District Rohtas at Sasaram
5. Subh Narayan Singh, Son of Dewan Singh
Resindent of Village Gurura, Police Station Kudra, District Rohtas
6. Navrang Singh, father name not known,
Resindent of Village Gurura, Police Station Kudra, District Rohtas

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10600 of 1992

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1. Ramji Singh,
2. Ram Narayan Singh,
3. Jeet Narayan Singh,
All sons of Reepu Singh
4. Reepu Singh, son of Guddari Singh
All resident of Village Gurura, Police Station Kudra, District Rohtas

.... Petitioner/s

Versus

1. State of Bihar
2. Director of Consolidation, Bihar, Patna
3. Deputy Director of Consolidation, Rohtas at Sasaram
4. Consolidation Officer, Kudra, District Rohtas at Sasaram
5. Subh Narayan Singh, Son of Dewan Singh
Resindent of Village Gurura, Police Station Kudra, District Rohtas
6. Navrang Singh, father name not known,
Resindent of Village Gurura, Police Station Kudra, District Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s :

Ms. Mallika Majumdar

With Prem Kumar

For the Respondent Nos. 1 to 4 : Mr. Praveen Kumar, AC to GP-27

For Respondent NO.5

: Mr. R.K. Sinha No2, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT**Date: 22-06-2015**

1. Since foundational facts in both the cases are almost identical and parties to both the applications are same, with the consent of the learned counsel for the parties, both the cases have been heard together and are being disposed of by the present common judgment.

2. There is no dispute about the fact that the petitioners and respondent no.5 in both the cases are descendants of common ancestor, Gudar Singh. Gudar Singh had three sons, namely, Dewan Singh, Ripu Singh @ Reepu Singh (Petitioner No.4) and Raghunath Singh. The said Ripu Singh and his three sons, namely, Ramji Singh, Ram Narayan Singh and Jeet Narayan Singh are the petitioners. Respondent no.5, Subh Narayan Singh is son of said Dewan Singh. This is also not in dispute that Raghunath Singh, is the step brother of said Dewan Singh and Ripu Singh. Gudar Singh died in the year 1950. It is the case of the petitioners that after death of Gudar Singh

in 1950, Raghunath Singh, being step brother of Dewan Singh and Ripu Singh separated from the family with his share in the year 1950 itself whereas Dewan Singh and Ripu Singh remained joint, with Dewan Singh as karta of the family. It is the case of respondent no.5 Subh Narayan Singh, on the other hand, that partition had taken place in 1950 in the family and all the three brothers Dewan, Ripu and Raghunath had separated completely and managed their properties independently and there was no jointness thereafter. It is the case of the petitioners that partition between Dewan and Ripu, in fact, took place in the year 1987 and transactions were jointly made by the two with respect to the properties, in the meanwhile, in the name of Subh Narayan Singh, as karta of the family.

3. The dispute relates to lands purchased on 19.6.1963 in the name of Respondent no.5 Subh Narayan Singh through a registered sale deed from one Balraji Kuar of following description:-

<u>Khata No.</u>	<u>Khesra No.</u>	<u>Area in Acres</u>
120 of Mauza	174	3.03
Charmin, Anchal	20	.83
Kudra, Distt Rohtas	23	.16
	37	1 .15
	173/1070	<u>.32</u>
		Total area 5.49

4. It is the case of the writ petitioners that the said property was purchased from the joint family fund in the name of Subh



Narayan Singh when the two brothers, namely, Dewan Singh and Ripu Singh were in state of jointness and Dewan Singh, being karta of the family had purchased the lands in the name of Subh Narayan Singh (Respondent no.5) and, accordingly, the petitioners also have also share in the said property, purchased in the name of respondent no.5.

5. The lands so-purchased through sale deed dated 19.6.1963 were recorded in the revisional survey in the name of State of Bihar. Respondent No.5, Subh Narayan Singh filed an objection over the said entry before the Consolidation Officer, Kudra, Rohtas, for making correction in the entry and entering his name in the record of rights on the basis of the said sale deed dated 19.6.1963 executed by Balraji Kuar. The Consolidation Officer, Kudra came to a finding that after execution of sale deed with respect to the aforesaid lands, the lands were mutated in the name of Respondent no.5 and a new Jamabandi was accordingly, created in his name in Register-II. He also came to a finding that respondent no.5 had been paying rent up to 1970-1971. The Consolidation Officer, by an order dated 24.1.1976 passed in Case No. 999 of 1975-1976 ordered that a new khata be created in the name of respondent no.5 with respect to the land in question, and thus allowed the objection/claim of Respondent No.5.

6. More than 12 years after the said order dated 24.1.1976,



the petitioners herein, filed an appeal bearing No. 842 of 1988-1989, under Section 10(6) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Act), challenging the said order dated 24.1.1976. The Deputy Director of Consolidation allowed the said appeal by an order dated 15.9.1989 holding that the family of the petitioners and respondent No.5 were joint at the time of purchase of the said property on 19.6.1963. The genealogy of the parties being admitted, he held that the appellants were entitled to half share in the said property. He accordingly, ordered for necessary correction in the record of rights and modified the order of the Consolidation Officer dated 24.1.1976. From the order of the Deputy Director, Consolidation in Appeal No. 842 of 1988-1989, it appears that the petitioners took specific plea that the said Raghunath Singh, step brother of Ripu Singh and Dewan Singh had partitioned long ago and Dewan and Ripu being full brothers remained in jointness. It was thus, the case of the petitioners themselves that there was a partition in the family long back, prior to execution of sale deed dated 19.6.1963. There seems to be no stand taken by the petitioners before the appellate authority that there was re-union between Ripu Singh and Dewan Singh after partition in the Hindu joint family consisting of three brothers, namely, Dewan Singh, Ripu Singh, Raghunath Singh all sons of Gudar Singh. They

took a plea before the Deputy Director, Consolidation that Subh Narayn Singh had no independent source of income on the date of purchase i.e. 19.6.1963 of the property in question. The lands were purchased from joint family fund and, therefore, they were entitled to half share in the said property. The respondent no.5, on the other hand, pleaded that the partition had taken place in the year 1950 itself and the said property was purchased separately in the year 1963 in the name of Respondent no.5 by his father Dewan Singh. He denied that he was ever karta of the family.

7. From the discussions made by the Deputy Director, Consolidation in his order dated 15.9.1989, it appears that he held that onus of proving that there was partition in the family in the year 1950 was on respondent No.5 as it was his stand that the partition had taken place in the year 1950, there being presumption of jointness in a Hindu family. He, accordingly, allowed the appeal preferred by the petitioners in the terms as indicated above as Respondent No.5 failed to prove partition in the family in the year 1950 and on any date prior to execution of sale deed dated 19.6.1963.

8. Respondent NO.5 thereafter, preferred revision petition before the Director, Consolidation, Bihar, Patna being Case No. 3385 of 1989 under Section 35 of the Act. The Director, Consolidation by his order dated 15.6.1992 reversed the order of the Deputy Director

Consolidation while coming to the conclusion that there was no jointness in the family on the date of execution of the sale deed dated 19.6.1963 through which the lands as described above, having area of 5.49 acres were purchased in the name of Respondent no.5.

9. The said order dated 15.6.1992 passed by the Director, Consolidation, Bihar passed in case No. 3385 of 1989 is thus, under challenge in CWJC No. 10600 of 1992.

10. It must be noted here at this stage that Appeal No. 842 of 1988-1989 filed by the petitioners was confined to the lands appertaining to Plot Nos. 174,20,23,37 having total area of 5.17 acres and not with respect to other lands ad-measuring 32 decimals of Plot No. 173/1070.

11. It is difficult to say that whether it was mere coincidence that in the year 1984, one Navrang Singh (Respondent No.6) filed a petition under Section 10(b) of the Act being Case No. 821/1984-85 claiming correction in the revisional survey entry with respect to several lands recorded in the name of the State of Bihar including the lands appertaining to R.S. Plot No. 173/1070 of area 32 decimals. Total area of land of Plot No. 173/1070 has been described to be 64 decimal. This has to be kept in mind that in the proceeding before the Consolidation Officer, initiated by Respondent no.5, Respondent No.5 had claimed his right over 32 decimal of land of Plot No. 173/1070.

While considering the case of Navrang Singh, the Consolidation Officer, in view of concession made by learned Government Pleader directed by his order dated 11.5.1987 to make correction by substituting his name in place of State of Bihar in the land register with respect to the lands claimed by him, including the said 32 decimals of land appertaining to Plot No. 173/1070.

12. Against the said order passed by the Consolidation Officer in Case No. 821 of 1984-1985 in case of Navrang Singh (Respondent No.6), petitioners preferred an appeal before the Deputy Director, Consolidation being Appeal No. 951 of 1988-1989 with respect to R.S. Plot No. 173/1070 of R.S. Khata No. 120 having area .32 acres towards south out of total area of 64 acres. Same plea was taken by petitioner no.4 in his Appeal No. 951 of 1988-1989 before the Deputy Director, Consolidation that the said plot was purchased in the name of Subh Narayan Singh (Respondent No.5) from the joint family fund and by mistake, R.S. Khatian was prepared in the name of Anabad Bihar Sarkar. In his appeal, they took a plea that Subh Narayan Singh in his case before the Consolidation Officer had wrongly mentioned the area of Plot No. 173/1070 to be 32 decimal though total area of the said plot, 64 decimal was purchased along with other lands in the name of Subh Narayan Singh (Respondent No.5), through sale deed dated 19.6.1963 from Balraji



Kuar. In the proceeding before the Deputy Director, Consolidation, petitioner no.4, though impleaded Navrang Singh as party but did not implead respondent no.5 as party initially, who subsequently intervened. As has been noted above, Appeal No. 842 of 1988-1989 was allowed in favour of these petitioners by an order dated 15.9.1989, by another order dated 15.9.1989 passed in Case No. 951 of 1988-1989, for the same reasons, the Deputy Director of Consolidation allowed the appeal holding that the petitioner Ripu Singh had valid claim over R.S. Plot No. 173/1070 of their share admeasuring 32 decimal towards south. He accordingly, modified the order dated 11.5.1987 passed by the Consolidation Officer, Kudra in Case No. 821 of 1984-1985. Thus, there were two orders passed on 15.9.1989 by the Deputy Director of Consolidation, one in Case No. 842 of 1988-1989 (Ripu Singh and others vs. Subgh Narayan Singh) and in case No. 951 of 1988-1989 (Ripu Singh Vs. Navrang Singh).

13. Respondent No.5 preferred revision petition before the Director, Consolidation vide Case No. 3386 of 1988-1989 against the order dated 15.9.1989 passed in case No. 951 of 1988-89 by the Deputy Director, Consolidation which came to be allowed by an order dated 15.6.1992.

14. **The said order dated 15.6.1992 passed in Case No. 338 of 1988-89 by the Director Consolidation is under challenge in**

CWJC No. 10599 of 1992.

15. This is the circumstance in which both the cases have been heard together and are being disposed of by the present common judgment.

16. From the facts as noted above and material on record it is evident that, this is an admitted position by the parties before the consolidation courts that the common ancestor of the contesting parties Gudar Singh had three sons, namely, Dewan Singh, Ripu Singh and Raghunath Singh. According to the case of the petitioners themselves, Raghunath had separated completely from the joint family long back immediately after the death of Gudar Singh in the year 1950. Once this fact is admitted that there was partition among the sons of Gudar Singh, presumption of jointness in the Hindu joint family, does not continue any more. In my opinion, it was incorrect on the part of the Deputy Director Consolidation to have held that there was presumption of jointness in the family and onus was upon respondent no.5 to prove that there was partition in the family before the date of execution of the sale deed dated 19.6.1963 in the facts and circumstances of the case as the petitioners, who were appellants before him, themselves had taken plea of partition in the family in 1950 itself. No proof to this effect was required to be adduced by the respondent as regards partition in the year 1950 as it was the case of



the petitioners themselves before him that the other sons of Gudar Singh, namely, Raghunath had separated from the joint family, much before execution of sale deed dated 19.6.1963 in favour of Subh Narayan Singh, respondent no.5. In my opinion, if the petitioners wanted to make out a case that despite separation of Raghunath, Dewan and Ripu remained joint, the onus was upon them to prove either that they Dewan and Ripu remained in jointness or that there was re-union between Dewan and Ripu, like any other fact. There is nothing on record to suggest that they ever took such plea at any stage or attempted to prove this fact. Reference may be made in this regard to Supreme Court decision in case of *Kalyani Vs. Narayan* (AIR 1980 SC 1173).

17. This is to be noted that claim of the petitioners with respect to lands appertaining to Keshra No. 174,20,23,37, 173/1070 of Khata No. 120 is based on sale deed executed by Balraji Kuar in favour of Respondent No.5 Subh Narayan Singh and from no other source.

18. Contradictory stand has been taken by the petitioners with respect to the land of Plot No. 173/1070. On the one hand it was been asserted that through sale dated 19.6.1963, entire area of 64 decimal of the said plot was purchased in the name of Subh Narayan Singh and he wrongly mentioned the area to be 32 decimal in his



application before the Consolidation Officer, it has been stated in paragraph 17 of the writ application, on the other hand that the Navrang Singh and his son, during the pendency of the appeal No. 951 of 1988-89 before the Deputy Director, Consolidation executed sale deed in favour of the petitioners with respect to the said land. From the order of the Deputy Director, Consolidation in Appeal No. 951/1988-1989, it appears that said Navrang Singh and these petitioners entered into some compromise and said Navrang Singh is said to have relinquished his title with respect to the said 32 decimal of land of Plot No. 173/1070. The alleged compromise and the land relinquishment in favour of the petitioners as recorded in the order of the Deputy Director, Consolidation in case No. 951 of 1988-1989 is evidently not bonafide, and a collusive effort to obtain order in their favour.

19. Upon perusal of the orders of the Deputy Director, Consolidation, both dated 15.6.1992 passed in Case No. 3385 of 1989 (impugned in CWJC No. 10600 of 1992) and Revision Case No. 3386 of 1988-1989 (impugned in CWJC No. 10599 of 1992), it appears that the revisional authority rightly came to a conclusion that there was partition in the family in the year 1950, itself which fact was admitted by the petitioners also by, saying that one of the brothers Raghunath had separated since then.

20. I do not find much force in the submission made on behalf of the petitioners that the Deputy Director, Consolidation wrongly came to a conclusion that there was partition in the family before execution of the sale deed dated 19.6.1963. It has been argued by the learned counsel for the petitioners that on the date of purchase of lands in question in the year 1963, respondent no.5 was minor and, therefore, it cannot be said that the said property was acquired by him, through said sale deed out of his own independent income.

19. I do not find much force in the submission. It has never been in case of Respondent no.5 that he had purchased the property through his own source of income. It is his case that the lands were purchased by his father Dewan Singh in his name, when there was already partition among sons of Gudar Singh.

20. In my opinion, these writ applications lack bonafide. The orders of the Director, Consolidation impugned in the present writ applications, do not require any interference.

21. These applications are, accordingly, dismissed.

22. However, there shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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