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.... Petitioner/s

1. The State of Bihar
2. Joint Director, Consolidation, Muzaffarpur.
3. Dy. Director of Consolidation, Vaishali
4. Consolidation Officer, Goraul, Vaishali
5. (a) Most. Monakia devi, wife of Late Gorishankar Singh
(b) Shashi Kumar Singh, son of Late Gorishankar Singh
(c) Phulo Prasad son of Late Gorishankar Singh

All resident of village-Mergi, P.S.-Mahua, District-V

.... Respondent/s

For the Petitioner/s	:	Mr. Naresh Chandra Verma Mr. Natraj Verma
For the State	:	Mr. Rakesh Kumar Verma, A.C. to G.P.-27
For the Respondent/s	:	Mr. Niranjan Kumar

ORAL JUDGMENT

Heard learned counsel for the petitioners, learned counsel representing private Respondents No. 5(a), 5(b) and 5(c) as well as learned counsel representing the State of Bihar.

2. The petitioners seek quashing of the order dated 18.06.1992 passed by the Joint Director, Consolidation, Muzaffarpur in Revision Case No. 1780 of 1988 whereby he has set aside the order of the Deputy Director, Consolidation dated 28.03.1988 passed in



Appeal No. 580/87-88 and has restored the order of the Consolidation Officer dated 02.11.1987 passed in Consolidation Case No. 680 and 681 and has accordingly directed for registering the name of Sundri Kuer (original Respondent No. 5, substituted by her legal heirs upon her death during the pendency of this application) giving her 1/3 share, over the lands in question.

3. The disputed lands appertain to Revisional Khata No. 345, 346, 347, 348, 349, 1031, 1032, 1053, 1054, 1055 and 1056 situated in the village Rasulpur Korigawn, Thana No. 81, Anchal-Goraul. This is to be noted that there appears to be inadvertent typographical error in paragraph No. 3 of the writ application, inasmuch as in place of Khata number, R.S.P. number has been mentioned with respect to the lands in question. The description of the lands in the present order has been taken from the orders passed by the Revenue Authorities, right from the Consolidation Officer to the Joint Director.

4. From the pleadings and submissions made on behalf of the parties, it transpires that one Teju Singh had three sons viz. Daroga Lal Singh, Mewa Lal Singh and Ram Sewak Singh. Sundri Devi, who was impleaded as Respondent No. 5 in the writ application was widow of Ram Sewak Singh, has been substituted by her heirs and legal representatives after her death as Respondents No. 5(a), 5(b) and 5(c). There are three disputed questions of facts involved in the



present proceeding viz. (1) Whether there was any partition in the family after the death of said Teju Singh or the family remained in jointness. (2) Whether Ram Sewak Singh died prior to 1937 as claimed by the petitioners herein or on 10.01.1938 as claimed by Respondent No.5. (3) Whether disputed lands were purchased jointly in the name of Daroga Lal Singh and Mewa Lal Singh through registered sale deeds of different dates from 09.03.1939 to 06.06.1948 out of their own income or from joint family fund of the Hindu Undivided Family.

5. From the facts stated in the writ petition as well as the counter affidavit it appears that deceased Respondent No. 5 Sundri Devi had filed an objection under Section 10(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 before the Consolidation Officer, claiming 1/3 share in the joint family property upon death of Teju Singh which was acquired by him from 09.03.1939 and, thereafter, which was acquired through registered sale deeds jointly in the name of Daroga Lal Singh and Mewa Lal Singh.

6. The Consolidation Officer by an order dated 02.11.1987 sustained the objection raised by the said Sundri Devi and directed for necessary rectification in the register giving her 1/3 share in the said property. Petitioner preferred appeal against the order of the



Consolidation Officer before the Deputy Director, Consolidation, Vaishali, which gave rise to Appeal Case No. 580/87-88. The Deputy Director, Consolidation, upon considering the rival claims came to the conclusion that the Respondent No. 5 could prove that the disputed lands were purchased from the joint family fund in the year 1938 in favour of Daroga Lal Singh and Mewa Lal Singh. The Deputy Director considered the registered sale-deed before coming to a conclusion that it could not be proved that the said property was purchased from the joint family fund. The said Sundri Kuer, thereafter, preferred Revision Case No. 1780 of 1988, aggrieved by the order of the Deputy Director in Appeal Case No. 580/87-88, giving rise to Revision Case No. 1780/88. The Joint Director came to a finding that husband of Sundri Kuer died on 10.01.1938, on the basis of photostat copy of the certified copy of birth-death register maintained in the concerned police station and rejected the case of the petitioner that said Ram Sewak Singh, husband of Sundri Kuer had died prior to 1937.

7. It is not in dispute that Teju Singh was the father of Daroga Lal Singh, Mewa Lal Singh and Ram Sewak Singh. Sundri Kuer is the widow of Ram Sewak Singh, the third son of Teju Singh. In the background of this genealogy, the controversy is, whether the disputed lands were purchased by Daroga Lal Singh and Mewa Lal



Singh jointly, after death of said Ram Sewak Singh who died living behind his widow, said Sundri Kuer or the lands were purchased from the joint family fund. Another dispute which is being raised in the present proceeding is as to whether Sundri Kuer, upon the death of Ram Sewak Singh acquired right by way of inheritance. The date of death of Ram Sewak Singh has bearing on the dispute as to whether the widow of Ram Sewak Singh was entitled for a share in the property, left behind by Teju Singh. As regards the death of Ram Sewak Singh, it is the case of the petitioners that he died prior to 1937 therefore, his widow did not have any right to share in the joint family property. On the other hand, it is the case of the Respondents that said Ram Sewak Singh died in the year 1938 and, therefore, Sundri Kuer had 1/3 share in the joint family property. The dispute as to whether Ram Sewak Singh died before 1937 or on 10.01.1938 has been decided by the Revisional Court merely on the basis of photostat copy of certified copy of relevant birth-death register maintained in the concerned Police Station. The Revisional Authority, on the basis of photocopy of certified copy of the said register has held that said Sundri Kuer was entitled for her 1/3 share in the property left behind by Teju Singh. He also held that some of the properties in dispute, which were purchased jointly in the name of Dargoa Lal Singh and Mewa Lal Singh were in fact, purchased from the joint family fund.

8. I have perused the order of the Revisional Court which is under challenge in the present writ application. From the order, it appears that the only evidence on the basis of which it came to a finding that Ram Sewak Singh died on 10.01.1938 was a photostat copy of birth-death register maintained in the Police Station.

9. Learned counsel for the petitioner appears to be right in his submission that merely on the basis of secondary evidence, the Revisional Court ought not to have come to a definite conclusion as regards date of birth of Ram Sewak Singh. I am also of the view that the finding recorded by the Revisional Court that the property in question was purchased by the Daroga Lal Singh and Mewa Lal Singh were purchased from joint family fund are based on conjecture and surmises. The order passed by the Joint Director, Consolidation dated 18.06.1992, therefore, cannot be sustained and is accordingly set aside.

10. The matter is remanded back to the Court of Director, Consolidation, Bihar, Patna for adjudication on the dispute afresh after giving the parties reasonable opportunity of hearing to establish their rival claims.

11. This application is allowed.

(Chakradhari Sharan Singh, J)

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