

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2036 of 1993

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1. Dhanik Lal Mahto, Son of Tetar Mahto.
 2. Ram Lal Mahto, Son of Anup Lal Mahto.
 3. Most. Ram Sakhi Devi, Widow of late Palat Mahto.
 4. Vijay Kumar Mahto @ Vijay Kumar, Son of late Palat Mahto.
 5. Kameshwar Mahto, Son of Sitaram Mahto.
 6. Baleshwar Mahto @ Kameshwar Mahto, Son of Sitaram Mahto.
 7. (a.) Smt. Banarsi Devi, Widow of Late Ram Sagar Mahto.
(b.) Smt. Tara Sinha, Wife of Sri Nagendra Prasad, Daughter of Late Ram Sagar Mahto.
(c.) Smt. Bina Sinha, Wife of Vidyanand Sinha, Daughter of Late Ram Sagar Mahto.
(d.) Smt. Mamta Kumari, Wife of Sri Raj Kishore Singh, Daughter of Late Ram Sagar Mahto.
 8. (a.) Most. Raj Kumari Devi, Widow of Late Hari Narayan Mahto.
(b.) Sri Parmanand Singh.
(c.) Sunil Kumar Singh.
(d.) Navnish Kishore Singh.
All Sons of Late Hari Narayan Mahto, residents of Village-Banhaiti, P.S.-
Bibhutipur, District-Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Joint Director, Consolidation, Muzaffarpur.
3. The Assistant Director, Consolidation, Samastipur.
4. The Consolidation Officer, Bibhutipur, District-Samastipur.
5. Ram Pratap Mahto, Son of Nirdhan Mahto.
6. Ram Baran Mahto, Son of Sri Charan Mahto.
Resident of Village-Banhaiti, P.S.-Bibhutipur, District-Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anshay Bahadur Mathur, Advocate

For the State : Mr. Purnendu Singh, Advocate (G.P. 27)
Mrs. Sunita Kumari, Advocate (A.C. to G.P. 27)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 09-07-2015

Heard learned counsel appearing on behalf of the parties.

2. This is an application seeking quashing of the common order dated 18.11.1992, passed by the Joint Director, Consolidation, Muzaffarpur in Consolidation Revision Nos. 75/89, 76/89, 77/89 and 78/89, whereby, he has affirmed the order dated 06.12.1988, passed by the Assistant Director, Consolidation, Samastipur in Consolidation Appeal Nos. 13/87, 14/87, 15/87 and 16/87. The Assistant Director, Consolidation by his appellate order dated 06.12.1988, had set aside the order passed by the Consolidation Officer, Bibhutipur in Objection Case Nos. 7047, 6431, 6433 and 6434 under Section 10(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (*hereinafter referred to as the 'Act'*).

3. After notices having been issued to the contesting respondent nos. 5 and 6, they entered appearance by filing

Vakalatnamas. However, no counter affidavit till date has been filed on their behalf. This Court has, thus, no option other than to proceed with the hearing of the case on the basis of the averments made in the writ application.

4. The dispute, in the present writ application, relates to land appertaining to C.S. Plot No. 5926 R.S. Plot No. 17178 of C.S. Khata No. 1562 (1 Katha and 7 Dhurs), C.S. Plot No. 5710 R.S. Plot No. 17099 of Khata No. 1562 (18 Dhurs), C.S. Plot No. 5730 R.S. Plot No. 17088 of Khata No. 1562 (18 Dhurs) and C.S. Khata No. 5666 R.S. Plot No. 17045 of Khata No. 1562 (3 Katha and 18 Dhurs), situate in Village-Banhaiti under Bibhutipur Police Station of Samastipur District. Total area of land in dispute is, thus, 7 Katha and 1 Dhur. It is the case of the petitioners that originally, said C.S. Plot No. 5926 of C.S. Khata No. 1562 was recorded in the names of Kari Mahto, Jaggu Mahto and Ganga Mahto, who were full brothers, including other plots having total area of C.S. Khata No. 1562 of 6 Bighas, 17 Kathas and 7 ½ Dhurs. Kari Mahto said to have executed a registered deed of Istaphanama (deed of surrender) dated 07.01.1901, with respect to lands appertaining to C.S. Plot No. 5666 (4 Kathas), C.S. Plot No. 5710 (1 Katha), C.S. Plot No. 5622 (1 Katha), C.S. Plot No.

5730 (2 Kathas 5 Dhurs) and C.S. Plot No. 5926 (1 Katha 6 Dhurs), total area being 9 Kathas and 11 Dhurs, in favour of Ram Raksha Singh, Mahabir Singh and Shiv Narain Singh @ Sorb Narain Singh, sons of Lal Bihar Singh and Shiv Raksha Singh and Ram Jiwan Singh, sons of Kunj Bihari Singh. They had common ancestor, Udhoran Singh. They, accordingly, came in possession over the said land and as a result of private partition amongst the co-sharers, C.S. Plot No. 5666, C.S. Plot No. 5722 and C.S. Plot No. 5710 came in the share of Ram Pragas Singh, son of said Shiv Narain Singh. It is the specific case of the petitioners that Ram Pragas Singh has executed a registered deed of Patta Mokari dated 28.09.1943/29.09.1943, in favour of Tetar Mahto and Bauku Mahto, sons of Ram Tahal Mahto, the ancestors of the original petitioners of the present writ application and the petitioners who came to be substituted, upon their death. It is their case that said Patta Mokari dated 28.09.1943/29.09.1943, related to lands including the land in dispute of C.S. Plot No. 5926 (R.S. Plot No. 17178) appertaining to C.S. Khata No. 1562, admeasuring 1 Katha and 7 Dhurs. It is also the case of the petitioners that Rameshwar Narain Singh and Jagdish Singh, the grandsons of Ram Raksha Singh, executed registered deed of Patta Mokari



dated 26.10.1943, in favour of Badri Mahto, grandson of Tilak Mahto, the ancestor of petitioner no. 5 and settled several C.S. Plots having total area of 6 Kathas and 5 Dhurs including 18 Dhurs of C.S. Plot No. 5710 appertaining to C.S. Khata No. 1562. It is their further case that Ram Pragdas Singh executed a registered deed of Patta Mokari on 06.05.1940, in favour of Jagrup Mahto and Govind Mahto, sons of Tilak Mahto, ancestor of petitioner no. 6, in respect of 6 Kathas and 17 Dhurs of land, out of which, 18 Dhurs of C.S. Plot No. 5730 (R.S. Plot No. 17088) appertaining to Khata No. 1562 is in dispute. Further, Ram Pragdas Singh executed a registered deed of Patta Mokari dated 06.05.1944, in favour of Janak Lal Mahto and Rabbi Mahto, the ancestors of petitioner nos. 7 and 8, in respect of 15 Kathas of land, out of which, 4 Kathas and 3 Dhurs of C.S. Plot No. 5666 (R.S. Plot No. 17045) appertaining to C.S. Khata No. 1562 is in dispute.

5. It is the petitioners' case that their predecessors in interest came in peaceful cultivation over the lands, so settled in their favour and return was filed after abolition of Zamindari and in revisional survey also these lands were found in peaceful possession of the petitioners.

6. The contesting respondent nos. 5 and 6 filed four



objections before the Consolidation Officer, Bibhutipur (Samatipur) under Section 10(2) of the Act vide Objection Case Nos. 7047, 6431, 6433 and 3434 in respect of C.S. Plot No. 5926 (R.S. Plot No. 17178), C.S. Plot No. 5710 (R.S. Plot No. 17099), C.S. Plot No. 5730 (R.S. Plot No. 17088) and C.S. Plot No. 5666 (R.S. Plot No. 17045), appertaining to C.S. Khata No. 1562 with a request to record the said lands in their names. The Consolidation Officer, however, by order dated 13.08.1986, rejected the applications after having found that the petitioners were in peaceful cultivating possession over the disputed lands. The respondent nos. 5 and 6, thereafter, preferred appeals before the Deputy Director, Consolidation, Samastipur, giving rise to Consolidation Appeal Nos. 13/87, 14/87, 15/87 and 16/87. The Assistant Director of Consolidation by order dated 06.12.1986, allowed the said appeals, set aside the order of the Consolidation Officer dated 13.08.1986 and directed to record the disputed plots in the names of the contesting respondents.

7. Against the order dated 06.12.1988, passed by the Assistant Director, Consolidation, Samastipur, the petitioners preferred revision petition before the Director, Consolidation, giving rise to Revision Case Nos. 75/89, 76/89, 77/89 and

78/89. The Joint Director, Consolidation, however, rejected the revision applications mainly on the ground that the registered deed of Istaphanama dated 07.01.1901, said to have been executed by said Kari Mahto on 07.01.1901, was held to be invalid by Civil Court in a title suit.

8. Learned counsel for the petitioners has submitted that the finding of the Joint Director, Consolidation to the effect that the said registered deed of Istaphanama was held to be illegal and invalid in a title suit because it is based on no evidence or it is based on misappreciation of the decisions/orders/judgments/decrees passed by the Civil Courts of competent jurisdiction. Following statement has been made in Paragraph - 13 of the writ application:-

“13. That the Courts below (Respondent no. 2 and 3) have failed to consider that in the earlier suit viz T.A. No. 136/51/39/52 arising out of T.s. 70/49 the dispute was for redemption in respect of few plots of Khata No 1585 where as in the present suit the dispute is in respect of C.S. Khata No 1562 and hence the said decision was in respect of different lands.”

9. This assertion has remained uncontroverted in absence of any counter affidavit having filed by the

respondents. In such circumstance, I am of the view that the decision of the Joint Director, Consolidation, impugned in the present writ application, deserves to be quashed on this ground alone and is, accordingly, quashed.

10. The matter is remitted to the Director, Consolidation, Bihar to pass an order afresh with particular reference to the fact whether the Istaphanama and Decree of the Civil Court in question relate to same land. The Court expects that the Director, Consolidation will take into other aspects of the matter also relating to the dispute and pass order after giving parties due opportunity of hearing, though the impugned order of the Joint Director, Consolidation is being set aside by the present order on the solitary ground of that the statement of the petitioners in Paragraph - 13 of the writ application that the land in dispute in T.A. No. 136/51/39/52, arising out of T.S. No. 70/49, was not the same land with respect to which the registered deed of Istaphanama was executed by Kari Mahto in the year 1901, which is the very foundation of the case of the petitioners of their title over the property in question remained uncontroverted.

11. It is expected that the Director, Consolidation will dispose of Consolidation Revision Nos. 75/89, 76/89, 77/89

and 78/89 as expeditiously as possible, upon the matter being remitted to him by present judgment.

12. This writ application is, accordingly, allowed with the directions as above.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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