

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1164 of 1995

1. Satyendra Kumar Mishra, son of Late Chhabiraj Mishra, resident of village – Purkhauli, P.S. – Lalganj, District – Vaishali.

2. Sharda Devi, wife of Satyendra Kumar Mishra, resident of village – Purkhauli, P.S. – Lalganj, District – Vaishali.

-----Petitioner

Versus

1. The State of Bihar

2. The Director of Consolidation, Bihar, Patna.

3. Principal Consolidation Training Institute, Bihar, Patna.

4. Deputy Director of Consolidation, Vaishali at Hajipur.

5. Consolidation Officer, Lalganj, District – Vaishali at Hajipur.

-----Respondent 1st Party.

6. Baleshwar Mishra, son of Late Chhabiraj Mishra, resident of village - Purkhauli, P.S. – Lalganj, District – Vaishali at Hajipur.

7. (I) Sushila Devi, wife of Late Nawal Kishore Mishra

(II) Nitesh Kumar Mishra, son of Late Nawal Kishore Mishra, Both are resident of village - Purkhauli, P.S. – Lalganj, District – Vaishali at Hajipur.

-----Respondents

With

Civil Writ Jurisdiction Case No. 921 of 1995

Satyendra Kumar Mishra, son of Late Chhabiraj Mishra, resident of village – Purkhauli, P.S. – Lalganj, District – Vaishali.

-----Petitioner

Versus

1. The State of Bihar

2. The Director of Consolidation, Bihar, Patna.

3. Principal Consolidation Training Institute, Bihar, Patna.
4. Deputy Director of Consolidation, Vaishali at Hajipur.
5. Consolidation Officer, Lalganj, District – Vaishali at Hajipur.
-----Respondent 1st Party.
6. Baleshwar Mishra, son of Late Chhabiraj Mishra, resident of village
- Purkhauli, P.S. – Lalganj, District – Vaishali at Hajipur.
7. (I) Sushila Devi, wife of Late Nawal Kishore Mishra
(II) Nitesh Kumar Mishra, son of Late Nawal Kishore Mishra, Both
are resident of village - Purkhauli, P.S. – Lalganj, District – Vaishali
at Hajipur.

-----Respondents

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Appearance :

For the Petitioners : Sri Ajay Kumar Thakur, Advocate

For the Respondent No. 6 & 7: Sri Kamal Nayan Choubey, Sr. Advocate
Sri Ashok Kumar Sinha-III

For the State : Sri Niraj Kumar, AC to SC-22

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 23-04-2015

It is stated that petitioner no. 1, namely, Most. Sampat Kunwar died in one of the writ petition. She has already been expunged as her heirs and legal representative are already on record. Let her name be expunged from the second writ petition as well on the same grounds.

2. The private contesting respondent no. 7 Nawal Kishore Mishra has also died. Interlocutory Application No. 2970/2015 is allowed. His heirs namely Sushila Devi, widow

and son Nitesh Kumar Mishra, are allowed to have substituted who already appeared through Vakalatnama.

3. Heard Sri Ajay Kumar Thakur, learned counsel for the petitioners in the two writ petitions and Sri Kamal Nayan Choubey, learned Senior Counsel appearing for the contesting private respondents in the two writ petitions.

4. The petitioners are aggrieved by the order dated 14.11.1994 passed by the Principal, Consolidation Training Institute, Bihar, Patna, by which the permission granted to the writ petitioners by the Deputy Director, Consolidation to sell/gift some of their lands has been set aside, on an objection being made by the contesting private respondents. The facts are not in dispute. In village Purkhauli, P.S. – Lalganj, District – Vaishali, there was one Chhabiraj Mishra who had substantial agricultural lands. His wife is Most. Sampat Kunwar. He had earlier married as well being married to Savitri Devi. During consolidation proceedings, it appears that Chhabiraj Mishra died. He had been pre-deceased by his first wife. Thus, at the time of his death his second wife Most. Sampat Kunwar and his sons, namely, Satyendra Kumar Mishra, Baleshwar Mishra and Nawal Kishore Mishra were there. There is no dispute amongst the parties that all these four persons then acquired right, title





and interest in the land of Late Chhabiraj Mishra. At no point of time, before any authority any person had disputed the right, title and interest of any of these four persons in the agricultural lands in the said village. At the same time, I must take note that there has been no partition in the family amongst the four persons as aforesaid. When consolidation proceedings were started by issuance of notification as contemplated under Section 3 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as the “Act”) 1956, objections were invited, records were prepared, Principles of Consolidation were settled, land holdings were consolidated and the consolidated lands were confirmed as per the consolidation plans. Parties were put in possession, consolidation possession certificates were issued. In other words, by the year 1984, for all practical purposes the entire consolidation proceedings were over. What was remaining was appropriate notification under Section 26 of the Act, denotifying application of the Consolidation Act upon completion of consolidation proceedings. These facts are also not in dispute.

5. It appears that considering the aforesaid fact, Director, Consolidation, issued a letter noticing that as



consolidation proceedings in this village had been finalized and concluded for all practical purposes, there would be no restriction on transfers of land by the land holders. It appears, as technically Section 26 of the Act, notification, which was the only thing to be done at the stage after 1984 and which for reasons unknown was not being done, Section 5 of the Act being operative, no person could make any transfer by way of sale or gift without permission of the Consolidation Authority. Most. Sampat Kunwar applied for permission to make a gift of certain lands to her daughter-in-law Sharda Devi, wife of her son Satyendra Kumar Mishra. Similarly, she sought permission to transfer her interest for some lands to her son Satyendra Kumar Mishra. She, accordingly, sought permission of the Deputy Director, Consolidation, in this regards.

6. The moment, notices were issued, two sons of Late Chhabiraj Mishra from the first wife, namely, Baleshwar Mishra and Nawal Kishore Mishra appeared and objected. Their objection was not with regard to right, title and interest of Most. Sampat Kunwar to transfer by way of sale or gift any land, but their objection was that there had been no partition in the family and, as such, their step-mother had no right to either gift or sell her interest in any part of the land. To note here the



objection was absurd on the face of it. Such a plea could not have been raised before the court of competent civil jurisdiction, what to talk of consolidation authorities, because, it is well settled that a person having undivided share in any land, is competent to sell his interest in the land and there is no law which prohibits exercise of such a right subject to the extent of the interest. The Deputy Director, Consolidation, noticing the letter issued by the Director, Consolidation, and noticing that the consolidation proceedings had virtually come to an end and finding that there was no dispute as to the right, title and interest in the land granted permission to Most. Sampat Kunwar to sell and gift the land as sought by her.

7. It is again not in dispute that pursuant to the permission so granted gift and sale deeds were duly executed and registered. Thereafter, the contesting private respondents being the two steps-sons of Most. Sampat Kunwar filed a Revision Application before the Principal, Consolidation Training Institute, Bihar, Patna, for setting aside the order of Deputy Director, granting permission effectively nullifying the transfer deeds executed. The Principal, Consolidation Training Institute, Patna, by his impugned order dated 14.11.1994 held that as under Section 26 of the Act notifications de-notifying



had not been issued, the Director, Consolidation should not have issued a letter stating that consolidation proceedings were over and as such there would be no restriction in land transactions. He went further to hold that as lands had not been finally partitioned, the Deputy Director could not have granted permission to sell or gift the lands and, accordingly, he cancelled the permission as was granted without noticing that the permission had already been acted upon and transfers had already been made. It is this order under challenge.

8. Mr. Ajay Kumar Thakur, learned counsel appearing in support of the two writ petitions submits first that once pursuant to permission granted transfers had been effected, then, subsequently, the Principal in exercise of Revisional jurisdiction could not and ought not to have cancelled the permission because the permission and transfers had created third party rights. The right, title and interest stood transferred to the vendees. He then submitted that the Revision application itself was not maintainable, because the transferees i.e. the vendees who had acquired right, title and interest in the property but were not made a party and what effectively sought from the Revisional forum was cancellation of those transfer documents that could not have been ordered in their absence



and without making them party. He then submits that consolidation proceedings have been concluded as far back as in 1984, parties had been put in possession. Certificates of possession having been issued, absolutely nothing remained to be done except de-notifying notification under Section 26 of the Act, which notification for reasons unknown was not being issued by the State Government. How long could the right of persons to transfer or deal with their property be suspended and made dependent upon permission to be granted to the authorities?

9. Thus, keeping this in mind that the Director, Consolidation rightly issued the letter dated 30.08.1990, there would be now no restriction on the right of citizens to sell or deal with their in the manner in which they like. It is after that in the year 1991, permission was sought and rightly granted. The whole object of Section 5 of the Act was to prevent people from transferring lands and consequently further fragmenting lands while the consolidation process was on, but once they were all completed, any further restriction would have been unreasonable. By transferring lands in no manner would the object of the Act be defeated.

10. Thus, seen the interference and the manner in

which interference was done by the Principal, Consolidation Training Institute, Bihar, Patna, was wholly unwarranted.

11. On the other hand, Sri Kamal Nayan Choubey, learned Senior Counsel appearing for the contesting private respondents the step-sons of Most. Sampat Kunwar, submits and reiterates that so long as there is no partition in the family, a person has no right to sell and objection to those proceedings could have been validly taken.

12. In fairness to the learned Senior Counsel, he could not show a single authority in support of the said submission. He then submitted that Director, Consolidation could not have issued the letter removing the restriction on transfers so long as de-notifying notifications was not issued under Section 26 of the Act. He further submits that objection by family members having been raised, the Deputy Director, Consolidation ought not to have granted permission.

13. Having considered the matter, in my view, the contentions raised on behalf of the contesting private respondents are wholly misconceived and so also the order of the Principal, Consolidation Training Institute, Patna. Firstly the revision application itself was not maintainable, because, admittedly transfer deeds by way of sale and gift had already





been duly executed the right, title and interest of the venders stood transferred to the vendees. If, their rights were to be effected, adversely in any manner then they had a right to be heard. They were necessary parties to any such proceeding affecting their rights. It cannot be said that at best they could be only proper parties. It is well settled that in absence of necessary parties to a proceeding, the proceeding itself becomes not maintainable.

14. Thus, on this issue itself, the Principal ought to have dismissed the revision application. The revision application itself being not maintainable, the order of the Principal thereon cannot be sustained.

15. Again, another issue arises, once pursuant to orders passed by the authorities under the Act, transfers had been duly effected then the Revisional Authority ought not to have interfered in the matter, because, there was nothing illegal in the transfer. The transferor has right, title and interest to transfer and the transferees were willing to accept the transfer. The transfer was with a permission duly granted. It is not that Section 5 of the Act puts an absolute embargo on transfers. Section 5 of the Act merely stated that without permission no transfer can be made. The whole object of Section 5 of the Act



is to avoid complications while consolidation proceedings are taking place, but once the consolidation proceedings, as in the present case, were completed, could, on any ground whatsoever, permission to transfer be refused, the answer would be no. If that be the situation then if transfers had been effected, could the Principal interfered, again the answer would be no. While on this issue I commend the Director for having issued the letter as aforesaid removing restrictions on transfer. Once, for over all practical purposes, as far back as in 1984 the consolidation proceedings ended, the Government was bound to immediately issue de-notification notification as contemplated under Section 26 of the Act. For some inexplicable reason, the government slept over the matter. That would not make the transactions bad because neither the object of the Act was being defeated in any manner nor consciously law was being defied. In this connection, I may refer judgment of this Court in a case *Sitaram Singh Vs. The State of Bihar* since reported in **1995 (2) PLJR 750**, wherein this Court held in paragraph – 6 as under:

“6.If one goes through the scheme of the Act it will appear that the provisions can be broadly classified into two parts – one dealing with the preparation of



records/register of lands and the other dealing with preparation and finalisation of the consolidation scheme. Of course consolidation of holding is the prime object of the Act but, obviously, no scheme can finally be prepared unless the right, title and interest of the land owners in the lands have been determined from before. The bar contemplated by Section 5 of the Act has been created only to ensure that indiscriminate transfers are not made so as to result into further fragmentation of land which would create difficulty for the authorities in finalisation of the consolidation scheme.”

16. Thus, I may consider the last objection of Sri Choubey, learned Senior Counsel, the only ground given by the Principal for cancelling the permission was that partition had not taken place as noticed earlier. This can be no ground even before the civil court to injunct a joint owner from selling his right, title and interest. Even though, it may be indivisible or undivided. The law is clear, it is for the transferee to look into whether he would buy such undivided right, title and interest and what happens thereafter is also well established. If the transferee can get possession as per the description of the property transferred so well so good. Otherwise, he has the

right to file a suit for partition and get that property assigned to his vendor and then take possession thereof. In either event, he has a right to accept the transfer, thus, the ground given by the Principal is untenable in fact and in law.

17. For the reasons aforesaid, the impugned order dated 14.11.1994 passed by Principal, Consolidation Training Institute, Bihar, Patna, in Revision Case Nos. 761 and 540 of 1991 are set aside in entirety. Writ petitions are allowed.

(Navaniti Prasad Singh, J.)

Rajeev/AFR

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