

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9889 of 1993

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1. Smt.Manna Devi Wife of Late Shankar Prasad
 2. Anil Kumar @ Anil Kumar Chourasia, son of Late Shankar Prasad
 3. Jagdish Prasad @ Jagdish Prasad Chourasia,
 4. Surendra Prasad @ Surendra Prasad Chourasia,
 5. Kapil Muni Prasad
- All three sons of Late Bhagwan Ram, All residents of Village Kathar, P.S. Krishana Brahma, District Buxar.

Petitioners

Versus

1. The State of Bihar
2. The Joint Director of Consolidation, Head quarter- Patna District- Patna
3. The Assistant Director of Consolidation, Bhojpur at Ara
4. The Consolidation Officer, Simri, Distt- Buxar (previously Distt.Bhojpur)

Respondents Ist Party

5. Radha Mohan Ram @ Barai son of Late Ram Rekha Ram, R/O Village-Kathar, P.S. Krishna Brahma, Distt- Buxar
6. Om Prakash Chourasia
7. Jai Prakash Chourasia
8. Bijay Prakash Chourasia, All three sons of Late Radha Krishan Barai
All originally residents of Village Kathar, P.S. Krishna Brahma, Distt- Buxar, presently residing at 'Chajrasia Brothers', Ra Katara, Bara Bazar, Calcutta-7.

Respondents-2nd party

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Appearance :

For the Petitioner/s : Mr. Amiya Kunal, Advocate
For the Respondent-State : Mr. Praveen Kumar (AC to GP 27)
For the respondents : Mr. Rajendra Nath Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 29-06-2015

The present writ application has been filed for quashing the order dated 20.6.1984 passed by the Consolidation Officer, Simri in Case No.4 of 1984-85 (Annexure-2), whereby he has ordered for deletion of the name of the petitioners (or their predecessors-in-interest) from the Consolidation Khata No.154, Chak Plot No.224, measuring 1 acre 12 decimals. The subsequent appellate order dated 15.6.19987 passed by the Assistant Director of Consolidation,



Bhojpur at Ara in Consolidation Appeal No.98 of 1984-85 and the order dated 2.4.1993 passed by the Joint Director of Consolidation, Patna in Consolidation Revision Case No.1752 of 1987, whereby the appellate authority and the revisional authority have affirmed the order of the Consolidation Officer, are also under challenge in the present writ application.

2. There are certain facts, which are indisputable. One Ram Snehi Ram was the common ancestor of the contesting parties in the present writ application. He had three sons, namely, Brahma Ram, Sheopujan Ram and Ram Rekha Ram. The land in dispute was purchased through a registered sale deed dated 13.1.1942 in the name of Ram Rekha Ram. It is the case of the petitioners that the said land was purchased by Ram Snehi Ram in the name of Ram Rekha Ram from the joint family fund. It is also their case that Brahma Ram, one of the sons of Ram Snehi Ram, had separated from the family for convenience and there was no partition in the family by metes and bounds, on the date of purchase of the aforesaid land, i.e. dated 13.1.1942. The petitioners are the descendents of Sheopujan Ram, whereas the contesting private respondents are descendents of Ram Rekha Ram. It is the case of the contesting respondents that the land in dispute was purchased from the personal earnings of said Ram Rekha Ram in his name and it was thus a self acquired property of said Ram Rekha Ram and Sheopuijan Ram and his successors did not have any right, title or interest in the said property.

3. It appears that in the Chak Khata prepared in course of consolidation exercise, names of Bhagwan Ram son of Sheopujan Ram and sons of Ram Rekha Ram were entered against the said Chak Plot No.224. An objection was raised by the successors-in-interest of Ram Rekha Ram against the entry of names of Sheopujan Ram in the



said Chak Khata against the plot in question under Section 10(B) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act'), giving rise to Case No.4 of 1984-85. The Consolidation Officer, Simri, by order dated 20.6.1984, sustained the objection and directed for deleting the name of Bhagwan Ram son of Sheopujan Ram with respect to the land appertaining to Chak Plot No.154, Khata Plot No.224.

4. Learned counsel appearing on behalf of the petitioners, referring to the impugned order passed by the Consolidation Officer, Simri, has submitted that while exercising jurisdiction under section 10 (B) of the Act, the Consolidation Officer was acting as quasi judicial authority and for all practical practices, determining the respective right, title and interest of the parties before him. Learned counsel further submits that the Consolidation Officer, merely on the basis of the sale deed, without going into the question of jointness of the family, passed the order impugned, which according to him is illegal and not sustainable. He has submitted that the Consolidation Officer ought to have allowed the parties to adduce evidence on the issues in dispute and on the basis of such evidence, he could have come to a conclusion with respect to the title of the parties over the disputed land. He also submits that the original order and subsequent orders passed by the appellate authority and revisional authority also can not be sustained.

5. Learned counsel appearing on behalf of the contesting respondents, on the other hand, has submitted that the plea which is being raised here before this Court on behalf of the petitioners was not raised by them before the Consolidation authorities. He has submitted that the only plea which the petitioners raised before the Consolidation Officer was with respect to the maintainability of the

objection under Section 10(B) of the Act. He submits that the objection so-raised by the petitioners before the Consolidation authority as regards the maintainability of the objection was rightly not sustained by the Consolidation Officer.

6. I have perused the order dated 20.6.1984 passed in Consolidation Case No.4 of 1984-85 by the Consolidation Officer. From the order, it appears that he has taken into account the only fact that the land in dispute was purchased jointly by the father of the predecessors-interest of the contesting parties in the name of Ram Rekha Ram. Only on the ground of this finding, without going into the facts as regards the partition in the family, the Consolidation Officer passed the order for deleting the name of Bhagwan Ram, son of Sheopujan Ram. The order on the face of it, appears to be cryptic and without reason. The order dated 20.6.21984 passed by the Consolidation Officer in Case No.4 of 1984-85 is, accordingly set aside. The order passed by the appellate authority, i.e Assistant Director of Consolidation, Bhojpur at Ara in Consolidation Appeal No.98 of 1984-85 and the order dated 2.4.1993 passed in Consolidation Revision Case No.1752 of 1987 are also set aside as I find that no evidence was adduced before the Consolidation Officer on the question of partition in the family.

7. The writ application is accordingly allowed. The matter is remanded back to the Consolidation Officer, Simri for passing an order afresh in Consolidation Case No.4 of 1984-85 in accordance with law after giving the parties due opportunity of hearing and adducing evidence.

8. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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