

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10064 of 2009

With

Interlocutory Application No. 5487 of 2012

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Radha Mohan Singh son of Late Ram Datta Singh, resident of village Jagdishpur Pathak, P.S.Piro, District Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar
 2. Director Consolidation, Bihar, Patna
 3. Deputy Director of Consolidation, Bhojpur
 4. Assistant Consolidation Officer, Piro, P.S.Piro, District Bhojpur
..... Respondent Ist Party/s
 5. Surendra Singh son of Ram Dayal Singh
 6. Rahul Kumar minor son of Surendra Singh under the guardianship of his father and natural guardian Surendra Singh,
both are residents of village and P.O. Tenduni, P.S.Jagdishpur,,
District Bhojpur
 7. Punam Kumari wife of Babu Ram Singh,
resident of village and P.O. Rajpur, P.S.Rajpur, District Rohtas
..... Respondents 2nd Party
 8. Vidya Sagar
 9. Vikash Kumar
Both minor sons of Kashi Nath Singh
 10. Sima Kumari
 11. Rina Kumari, both minor daughters of Kashi Nath Singh,
Nos. 8 to 11 minors under the guardianship of their father and
natural guardian Kashi Nath Singh, residents of village
Babhanpura, P. Kharari, P.S.Nokha, District Rohta
..... Respondents 3rd Party
- =====

Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Advocate
For the Respondent Nos. 1 to 4 : Mr. Purnendu Singh, GP 27
Mrs. Sunita Kumari, AC to GP 27
For the Respondent Nos.5, 6 & 8 to 11: Mr.Abhishek, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 15-12-2015

Heard the parties.



2. The original petitioner Radha Mohan Singh has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 15.06.2009 passed in Consolidation Revision Case No.14 of 2007 by the respondent Director of Consolidation, Bihar, Patna, as contained in Annexure-5, whereby the aforesaid consolidation revision case filed on behalf of one Raj Kumari Devi, who is now dead and was substituted by her heirs and legal representatives, namely, respondent nos. 5 to 7, was allowed and the order dated 30.10.1986 passed in Case No. 160 of 1985-86 by the respondent Assistant Consolidation Officer, Piro, as contained in Annexure-3, and the appellate order dated 05.12.2006 passed in Appeal Case No. 10 of 2005-06 by the respondent Deputy Director of Consolidation, Bhojpur, as contained in Annexure-4, were set aside and the claim of aforesaid Raj Kumari Devi with respect to the lands in question mentioned in the impugned orders was allowed.

3. During the pendency of the present writ petition, the original writ petitioner Radha Mohan Singh has passed away on 20.05.2012. One Harendra Singh claiming to be the son of aforesaid Radha Mohan Singh has filed I.A.No. 5487 of 2012 seeking his substitution in place of the original writ petitioner and further seeking permission of this Court to prosecute this writ petition.

4. Respondent nos. 5, 6 and 8 to 11 have filed a

counter affidavit in the aforesaid I.A.No. 5487 of 2012 disputing the claim of aforesaid Harendra Singh to be the son of the original writ petitioner Radha Mohan Singh.

5. Learned counsel appearing on behalf of the aforesaid applicant Harendra Singh has filed a supplementary affidavit bringing on record certain documents to show that the applicant Harendra Singh is the son of the original writ petitioner Radha Mohan Singh.

6. Learned counsel appearing on behalf of the original writ petitioner as also the applicant Harendra Singh has raised various issues of fact. According to him, the original writ petitioner Radha Mohan Singh was admittedly the husband of one Ram Keshi, who was the donee of the lands in question from her ancestor and therefore after the death of aforesaid Ram Keshi, Radha Mohan Singh, being her husband, became the sole owner. Therefore, according to the learned counsel, the claim of aforesaid Radha Mohan Singh was allowed by the respondent Assistant Consolidation Officer, Piro, which was affirmed by the appellate authority, but the revisional authority, by committing error of record, has arbitrarily allowed the claim of aforesaid Raj Kumari Devi, whose heirs are respondent nos. 5 to 7.

7. Learned counsel appearing on behalf of the private respondents, on the other hand, submits that the respondent Assistant Consolidation Officer, Piro had allowed the claim of the aforesaid Radha Mohan Singh by a cryptic



order without giving any opportunity of hearing to all concerned including the private respondents. It is contended that the appellate authority did not decide the appeal preferred on behalf of aforesaid Raj Kumari Devi on merits, rather the appeal was dismissed on technical ground of being barred by limitation. It is next contended that the revisional authority considered all the aspects, and after setting aside the orders passed by the original authority as also the appellate authority, has rightly allowed the claim of aforesaid Raj Kumari Devi. Therefore, according to him, order impugned is fit to be affirmed.

8. After having heard the parties and on consideration of the materials available on the record, this Court finds that the claims raised on behalf of the writ petitioner as also the applicant Harendra Singh vis-a-vis claims raised on behalf of the private respondents are based on disputed question of fact. However, indisputably, the respondent Assistant Consolidation Officer, Piro allowed the claim of the aforesaid Radha Mohan Singh without giving any opportunity of hearing to all concerned including the private respondents. The appeal preferred on behalf of the private respondents was not decided on merits by the respondent Deputy Director of Consolidation, Bhojpur at Arrah. The application filed on behalf of Harendra Singh for his substitution in place of the original writ petitioner Radha Mohan Singh requires some sort of evidence, as his claim of

being son of the original writ petitioner Radha Mohan Singh is being strongly disputed by the private respondents.

9. In the aforesaid factual matrix of the case, this Court is of the opinion that the entire matter requires reconsideration and a fresh decision, at the first instance, by the original authority, after giving an opportunity of hearing to all concerned, as rules of natural justice was not followed when the impugned original order was passed, and all the relevant issues regarding lands in question have not been gone into by all the three statutory authorities, who have passed the orders as contained in Annexures-3, 4 and 5 respectively.

10. For the reasons recorded above, the impugned revisional order dated 15.06.2009 passed in Revision Case No. 14 of 2007 by the respondent Director of Consolidation, Bihar, Patna, as contained in Annexure-5 as also the impugned original order dated 30.10.1986 passed in Case No. 160 of 1985-86 by the respondent Assistant Consolidation Officer, Piro, as contained in Annexure-3 and the impugned appellate order dated 05.12.2006 passed in Appeal Case No. 10 of 2005-06 by the respondent Deputy Director of Consolidation, Bhojpur at Arra, as contained in Annexure-4, are hereby set aside and quashed and the entire matter is remitted back to the Consolidation Officer, Piro with a direction to decide the entire matter afresh, after giving reasonable opportunity of hearing to all concerned.

The Consolidation Officer, Piro shall also decide the question of heirship of the original writ petitioner Radha Mohan Singh as well.

11. In order to expedite the matter, the applicant of I.A.No. 5487 of 2012 Harendra Singh and the private respondent nos.5 to 11 are hereby directed to appear before the Consolidation Officer, Piro within a period of six weeks from today with a certified copy of the present order, whereafter the Consolidation Officer, Piro shall proceed further to decide the claims of the parties with respect to the lands in question afresh strictly in accordance with law, but before passing any final order, opportunity of hearing must be given to all concerned.

12. The writ petition stands allowed to the extent indicated, but with the observations and directions made above. I.A.No. 5487 of 2012 stands accordingly disposed of. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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