

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1130 of 1996
IN
Civil Writ Jurisdiction Case No. 5748 of 94**

=====

1. Sridhar Singh son of Ragho Sharan Singh
2. Vijay Kumar Singh son of Ragho Sharan Singh
All residents of Village Barkakir, Police Station Bhabhua, District Bhabhua

.... Appellants

Versus

1. The State of Bihar
2. Research Officer, Consolidation Directorate, Bihar, Patna
3. Deputy Director, Consolidation, Rohta at Sasaram
4. Consolidation Officer, Kundra, Rohtas
- 5(a) Parwati Devi, W/o Late Inderajit Singh
(b) Ashok Singh
(c) Parmod Singh, Both sons of late Inderjit Singh
Resident of village Barkakir, Police Station Bhabhua, District Kaimur
At present village Kanta, P.S. Chandauli, District Chandauli, U.P.
(d) Ambika Singh, wife of Shambhu Singh, D/o Late Inderjit Singh, resident of village Tiari, P.S. Chandauli, District Chandauli, U.P.
(e) Manorma Devi, wife of Chotu Singh, residednt of village Amanon, P.S. Chainpur, District Kaimur.
6. Birendra Kumar Singh son of late Sankata Pd. Singh
7. Anand Singh son of late Sankata Pd. Singh
8. Ramadhar Singh son of late Sri Kant Singh (died issueless)
9. Rajesh Singh son of late Suresh Singh
10. (a) Dharmdeo Singh, son of Late Chandraphal Singh, resident of village Kanta, P.S. Chandauli, District Chandaul, U.P.
11. (a) Chandra Shekhar Singh
11. (b) Bharat Singh, both sons of Late Ekbali Singh, resident of Village Barkakir, Police Station & District Bhabhua
11. (c) Vijay Lakshmi, Wife of Bhola Singh, D/o Late Ekbali Singh, resident of village Duhin, P.S. Chunar, District Mirzapur, U.P.
11. (d) Pratibha Devi, W/o Baldav Singh, D/o Late Ekbali Singh, Village Chaukia, P.S. Kaukia, District Mirzapur, U.P.
11. (e) Sunita, D/o Ekbali Singh, Village Gogahara, P.S. and District Mirzapur, U.P.
12. Prem Chandra Singh son of late Muni Lal Singh
13. Hem Chandra Singh son of late Muni Lal Singh
All residents of Village Barkakir, Police Station Bhabhua, Post Office Sonhan, District Bhabhua

.... Respondents

=====

Appearance :

For the Appellants : Mr. R.K. P. Singh,
Mr. Tribhuwan Narayan, Advocates
For the Respondents : Mr. Devendra Kumar Sinha, Sr. Advocate
Mr. Chakravarti Singh, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-03-2015

I.A. No.4511 of 2007

This interlocutory application is filed with a prayer to bring the legal heirs and representatives of respondent no.5, i.e. respondent no. 5(a), 5(b), 5 (c), 5 (d) and 5 (e) on record. It is stated that respondent nos.5, 8, 10 and 11 died during the pendency of this appeal. As soon as the particulars of their death and legal representatives are known to them, the appellants filed this substitution petition. This petition is opposed by respondent nos.5 and 6 only on the ground of delay.

2. We are of the view that once the steps contemplated under Clause 10 of the Patna High Court Rules read with Order XXII Rules 3 and 4 of the Civil Procedure Code were not taken by the counsel representing the deceased, it cannot be said to be stepped out. It is also stated that some of the heirs and legal representatives are represented by another form.

3. This interlocutory application is, accordingly, allowed.

LPA No.1130 of 1996

4. This Letters Patent Appeal is preferred against the

order dated 20th September, 1998 passed by the learned Single Judge in CWJC No.5748 of 1994. The writ petitioners are appellants.

5. The relevant facts are as under:-

There was a large sized joint family, headed by Sri Choudhary Fateh Singh. He had two sons by name Choudhary Sheo Gulam Singh and Choudhary Hanuman Dayal Singh. Choudhary Hanuman Dayal Singh had a son by name Chingan Singh, who in turn, had two sons by name Chabar Singh and Srikant Singh.

6. Appellants and respondents 5 to 9 are from Choudhary Hanuman Dayal Singh branch (first branch) whereas Respondent nos.10, 11, 12 and 13 represent the second branch.

7. The joint family owned several items of the raiyati lands apart from holding the rights of zaminidari, as regards the other items. Raj Kumari Devi wife of the first appellant purchased 1 acre 31 decimals of raiyati land in Chhotkkir village of District Kaimur from one Daroga Roy through sale deed dated 11.01.1938 (Annexure-4). It was stated that the property was purchased with the Stridhan, amount of Raj Kumari Devi. At the same time, Raj Kumari Devi purchased 15.29 aces of land of village Barkkir from one Mostt. Rajkaliya Devi through the sale deed dated 03.01.1938 (Annexure-5). As regards this, it was stated that the vendor borrowed the amount from Raj Kumari Devi and towards repayment of the amount, the sale deed was

executed. This item of the property however is part of the Zimindari. The name of Raj Kumari Devi was entered in the concerned revenue records and she started paying rent to the Zaminidar. The revenue record is known as Laggit.

8. Sankata Prasad Singh, father of respondent nos.5, 6, and 7 filed Title Suit No. 13 of 1950 in the court of the Subordinate Judge, Sasaram for partition of various items of the properties shown in the Schedule and allotment of shares to the coparceners. The two items of the properties referred to above were not included in the Schedule. A preliminary decree was passed by the trial court and thereafter final decree was passed. It is also stated that the coparceners were delivered possession of the respective shares of the properties.

9. The zamindari in the State of Bihar was abolished through Abolition of Zamindari Act 1948 which was repealed by Zamindari Repealing Act 1950. Thereafter the Bihar Land Reforms Act 1950 came into force and the same was declared ultra virus, in Kameshwar Singh & others Vs. The State of Bihar & anr. [AIR 1951 Patna 91(Special Bench)].The State of Bihar had challenged the decision of the Special Bench in the Apex Court. Through its judgment in The State of Bihar Vs. Sir Kameshwar Singh (AIR 1952 Supreme Court 252),the Supreme Court upheld the validity of Act, except for Sections 4(b) and 23 (1) thereof.

10. By operation of this enactment, zamindari lands vested in the State of Bihar. However, the persons in possession of the properties or land were permitted to remain in possession, subject to payment of rent to the Government. In the list of the properties so vested, the name of Raj Kumari Devi was entered, in relation to the items purchased by her. She started paying rent to the Government.

11. With a view to take forward the Land Reforms, the Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1956 (for short, 'the Consolidation Act') was enacted.. As part of the implementation thereof, revisional survey of the land was undertaken between 1960-1965 in accordance with the Bihar Tenancy Act, 1885. In the revisional survey, two items of the land purchased by Raj Kumari Devi were recorded in her name and the Khatian was also opened. Her right as owner of the land was recognized in the final publication as a sequel to the survey.

12. In the year 1975, respondent nos. 5 to 13 herein filed an application before the 4th respondent Consolidation Officer, Kundra stating that to the extent of 8.31 acres of land, out of two items of the properties referred to above, must be recorded in their names in the consolidation proceeding. They pleaded that though two items of properties were purchased in the name of Raj Kumari Devi, it was with the funds of the joint family and accordingly, it is liable to



be partitioned. They placed reliance on a private partition deed dated 30.06.1972, and filed the application under Section 10 B of the Consolidation Act. The application was resisted by the appellants herein. They pleaded that the property was exclusively owned by Raj Kumari Devi, who, in turn, purchased through Stridhan and there was no basis for respondent nos. 5 to 13 to claim rights over the land. It was also pleaded that the so-called partition that took place in 1972 is fictitious one and it was not binding on Raj Kumari Devi. The 4th respondent rejected the application. An appeal preferred by the petitioners, was allowed and the matter was remanded to the 4th respondent for fresh consideration.

13. On such remand, the 4th respondent passed an order dated 10.07.1985. Respondent nos.5 to 13 filed an appeal before the Deputy Director of Consolidation, Rohtas, 3rd respondent herein feeling aggrieved by the same. The appeal was allowed on 15.01.1990 (Annexure-2). The revision was filed by the appellants before the Director, Consolidation under Section 35 of the Consolidation Act i.e. before the Research Officer, 2nd respondent. He rejected the revision through the order dated 27.06.1994. The same was challenged in CWJC No.5748 of 1994. The learned Single Judge dismissed the writ petition through order dated 20.09.1996. Hence, this appeal.

14. Sri R.K.P. Singh, learned counsel for the appellants



submits that admittedly, the property was purchased by Raj Kumari Devi, who is not a coparcener of the family and that the view taken by the revenue authorities is contrary to law. He submits that the family partition had taken place through the decree passed in Title Suit No.13 of 1950, to which the father of respondent nos.5 to 7 was a party and once it is not disputed that the preliminary decree or final decree passed therein assumed finality, the question of there being any subsequent partition, that too in respect of the property not owned by the coparceners does not arise. He further submits that even otherwise, Raj Kumari Devi, wife of the first appellant, was not a signatory to the so-called private partition deed and there is no way, that her right had been taken away in respect of the land.

15. Sri Devendra Kumar Sinha, learned senior counsel for the respondent nos.5 to 7, on the other hand, submits that respondent nos. 2 and 3 have taken correct view of the matter, and the first appellant, who is party to the private partition, cannot contend otherwise. He submits that in Title Suit No.13 of 1950, the two items of the properties, referred to above, were mentioned in different schedules and partition thereof was not made on account of the fact that the members of the first branch of the family felt that they alone are entitled to enjoy that. He submits that the concurrent findings recorded in the appeal, revision and the writ petition do not warrant

any interference.

16. The brief history of the case has already been furnished in the preceding paragraphs. Undisputed facts are that Raj Kumari Devi, wife of the first appellant, purchased the two items of the properties, way back in the year 1938. Zamindari rights in respect of the land gradually transformed into absolute rights by operation of law. It is not necessary to deal with that aspect in detail.

17. The relationship between the parties is also not in dispute. The parties are from the first and second branch of the family with common origin.

18. The principal objective under the Consolidation Act was to ensure that uneconomical and unviable fragmentation of the lands does not take place on account of the partition or other arrangements, between the parties. It reads as under:

“Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act XXII of 1956) , an act to provide for the consolidation of holdings and prevention of fragmentation, be it enacted by the Legislature of the State of Bihar in the seventh Year of the Republic of India as follows:”

19. The steps contemplated under the Consolidation Act comprise of preparation of the records of holdings of various persons, fragmentation of consolidated holdings, and thereafter inviting objections. In the process, the persons who have any right

over the land, can raise objections if any, in case their rights are not properly reflected in the draft register or publication. Section 10 B is the avenue for addressing the grievance of the parties who feel aggrieved on account of the acts and omission under the Consolidation Act.

20. The respondents submitted application before the Consolidation Officer pleading that they have 50% share in the two pieces of land i.e. 8.31 acres, out of 16.60 acres of land. They placed reliance upon the private partition made in the year 1975.

21. The Consolidation Officer has correctly identified two principal issues, namely, binding nature of the partition deed, and validity of the claim of the appellants and the respondents. It is not in dispute that Raj Kumari Devi was not a party to the so-called partition deed. The second aspect is that once partition was effected through Title Suit No.30 of 1950, it is deemed to be complete and final.

22. It is fairly well settled, that a final decree of partition is deemed to be complete in all respects, unless anything contrary to it is evident from the decree itself. It was not the case of the respondents that any properties of the respondents that were liable to be partitioned were left undivided, to be partitioned at a later point of time. In case the respondents were of the view that the two items of the properties have incorrectly been omitted from the family partition,

they ought to have raised objection in Title Suit No.30 of 1950. Another alternative was to file a separate suit for partition, however, subject to their ability to establish that the partition that took place in the earlier suit was not comprehensive. There was absolutely no basis for taking the plea as to subsequent partition.

23. Even otherwise, the deed of partition relied upon by the respondents could have been taken into account, by the authorities of the revenue if Raj Kumari Devi was party to it. There is no dispute that she was not party to it. In such a situation, the only alternative for the revenue authorities was to require the parties to work out remedies before the Civil Court.

24. Secondly, right of Raj Kumari Devi was recognized not only by the erstwhile Zaminidar and thereafter, by the State of Bihar after abolition of Zamindari, but also in the revisional survey. In case there was any defect, in these proceedings, the aggrieved party was supposed to file a suit within the prescribed period. That did not take place.

25. Raj Kumari Devi, the undisputed owner of the properties, was not the coparcener. If the respondents were of the view that the transaction in the name of Raj Kumari Devi was benami for the benefit of the joint family, a suit for partition in this behalf should have been filed. There cannot be any presumption against a

document which conforms to the provisions of law, including Transfer of Property Act. Restriction on the right of a Hindu Woman to hold the property is another aspect. Whatever may have been the uncertainty in law in that behalf in the year 1938, once Raj Kumari Devi's right was recognized in the year 1965, in the revisional survey, by which time the Hindu Succession Act came into force, she was entitled to be an absolute owner.

26. Viewed from any angle, there is no basis for the 3rd respondent to allow the claim of the respondent nos. 5 to 13.

27. We, therefore, allow the Letters Patent Appeal and set aside the order passed by the Learned Single Judge, in the writ petition. Consequently, the writ petition is allowed and the order dated 15.01.1990 passed by the 3rd respondent, Deputy Director of Consolidation and that the order dated 27.06.1994 passed by the 2nd respondent are set aside. There shall be no order as to costs.

AFR

(L. Narasimha Reddy, CJ)

B.T/-

U			
---	--	--	--

(Vikash Jain, J)