

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2598 of 1996

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1. Raj Kumar Rai
 2. Shiv Kumar Rai
 - Both sons of late Sukhpal Rai.
 3. Ram Pravesh Rai, son of late Dhani Rai
 4. Rajendra Rai
 5. Bhagwan Das Rai
 - Both sons of Late Chandarma Rai
 6. Ramdeo Rai, son of Mahatam Rai,
 7. (i) Most. Shyam Pati Devi widow of Jag Narain Rai deceased
(ii) Jitendra Rai
(iii) Surendra Rai
 - Both sons of Jag Narayan Rai deceased
 - (iv) Jatha Devi wife of Radheshyam Singh and daughter of Jag Narayan Rai deceased, all resident of village and P.O. Bagar, P.S. Sikarhata District Bhojpur
 8. Jag Belash Rai
 9. Jag Behari Rai
 10. Awadhesh Rai
 11. Baban Rai
 - All sons of Late Sonadhari Rai.
 12. Abhiraj Rai
 13. Brij Nandan Rai
 - Both sons of Rupdhari Rai(deceased).
 14. Narain Rai, son of late Jagdish Rai
 15. Raja Muni Rai, son of late Butan Rai
 16. Kiran Kunwar, wife of late Sadhu Rai, all are residents of village Bagar P.O. Bagar Anchal Tarari, P.S. Shikrahata, District Bhojpur

.... Petitioner/s

Versus

1. Raja Ram Rai son of Din Bhandhu Rai resident of village & P.O. Bagar, Anchal Tarari, P.S. Sikrahata, District Bhojpur
....opposite party 1st set-respondent 1st set.
2. (a) Mostt. Girmano Kur wife of late Lalan rai
(b) Styendra Rai
(c) Dhananjay Kumar
(d) Bimlesh Kumar, son of Lalan Rai village +post Bagar, P.S. Sikarahata, District Bhojpur
(e) Urmila Devi, daughter of late Lalan Rai village +post Jagdishpur, P.S. Nasriganj, District Rohtas
3. Gupteshwar Sharma, son of late Isari Sharma
4. Chandeshwar Rai, son of late Bhabhuti Rai,
5. Banke Behari Rai
6. Jagdish Rai
7. Bikarma Rai
- Sons of Raj Nath Rai
8. Yadu Rai, son of late Ram Sudisth Rai
9. Pravesh Rai, son of Ram Tawakya Rai
10. Nand Kishore Rai, son of late Lal Bahadur Rai
11. Ram Sakal Rai, son of late Hridya Nand Rai, all are residents of village and P.O. Bagar, P.S. Sikrahata, Anchal Tarari, District Bhojpur

..... Opposite party 2nd set-respondent 2nd set
12. Joint Director, Consolidation(Head Office), Bihar, Patna
13. Deputy Director of Consolidation, Bhojpur
14. The Consolidation Officer, Tarari, Bhojpur
15. Assistant Consolidation Officer, Tarari, Bhojpur
16. The State of Bihar

..... Respondent 3rd set

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyendra Kumar Sinha, Adv.
Mr. Arbind Kumar Singh, Adv.
For the Respondent/s : Mr. Ram Naresh Sharma, Adv.
Mr. Uday Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 16-04-2015

Head Mr. Satyendra Kumar Sinha, learned counsel for the petitioners, learned counsel for the State and Mr. R.N. Sharma, learned counsel for the private respondents.

This writ petition under Article 226 of the Constitution of India is directed against the order dated 12.1.1996 passed by the joint Director, Consolidation, Bihar, Patna in Consolidation Revision Case No. 3 of 1995 (Raj Kumar Rai and Ors. Vs. Raja Ram and Ors.) whereby the revision application has been dismissed on grounds of being hopelessly barred by limitation as well as on the principles of issue estoppel. The petitioners herein claim to be descendants of Mostt. Sumitra Devi and Mostt. Basmati Devi. The land in question is a plot bearing Khata No. 134, C.S. Plot No. 4655 having an area of 1.28 acres of which the petitioners claim right, title and interest over 1/3 share thereof which is equal to 0.42 acres. The grievance of the

petitioners with reference to a family genealogy present at page 25 of the writ petition is that whereas they are descendants through Raghunath Rai, the private respondents are descendants of Hari Dayal Rai a different branch.

Mr. Sinha, learned counsel for the petitioner has straight way taken this Court to an order passed by the Consolidation Officer in Case No. 17 of 1982-83 (Nand Kishore Rai Vs. Banke Bihari Rai) to submit that although this proceeding pertains to the plot in question but mischievously the contesting parties who are descendants from a different branch did not arraign them as a party and it is in their absence that the Consolidation Officer while declaring the possession of the petitioners to the application directed for opening of a Khata in their name. It is submitted that the petitioners gathered knowledge of such proceeding very belatedly and since the period of limitation to file an appeal had expired that they invoked the revisional jurisdiction of the Director, Consolidation vested under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act') and which revision application of the petitioners have been dismissed by the impugned order passed on 12.1.1996. The issue raised by Mr. Sinha to question the order passed by the Consolidation Officer dated 2.9.1985 in Case No. 17 of 1982-83 as well as the revisional order dated 12.1.1996 passed in Revision Case No. 3 of 1995 is inter alia on grounds that it has been passed



behind the back of the petitioners and without any opportunity of hearing and the revisional authority did not appreciate these aspects rather has mechanically dismissed the case on grounds of limitation when the fact was that since the petitioners had no information of such case that it could not be filed within the prescribed period. He submits that the petitioners have been put to prejudice not only before the Consolidation Officer, Tarari District-Bhojpur but even the revisional order is without having regard to the accompanying circumstances.

The arguments of Mr. Singh has been contested by Mr. Sharma appearing for the private respondent who has submitted that there were three proceeding initiated with regard to the plots in question of which whereas the petitioner filed an application giving rise to Case No. 120 of 1982-83 which was dismissed in absence of compromise amongst the parties vide order passed on 14.5.1982 placed at Annexure-4 and which has not been appealed against. A second proceedings was initiated at the instance of respondent No.1 and some others giving rise to Case No. 96 of 1986-88 and in which the petitioners were also arraigned as a party and they have also filed their respective objections which is reflected from the report of the Assistant Consolidation Officer present at Annexure-2/A. It is submitted by Mr. Sharma that even this report passed in the proceedings arising from Case No. 96 of 1982-83 was not appealed



by the petitioners and which action has become final and binding on the parties. He submits that it is considering such circumstances that the Revisional Court vide the order impugned passed on 12.1.1996 has dismissed the revision application which was filed with unexplained delay of 11 years despite the participation of the petitioners in Case No. 96 of 1982-83 and Case No. 120 of 1982-83. He thus submits that the petitioners herein having accepted this position for all the 11 years, it is too late in the day for any interference with the revisional order.

I have heard learned counsel for the parties and I have perused the materials on record.

Whereas it is sought to be established by Mr. Sinha that the revision case was directed against the order passed by the Consolidation Officer in Case No. 17 of 1982-83 but even while making such contention, Mr. Sinha could not give any answer as to why the petitioners remained silent in respect of the orders passed in two other collateral proceedings arising from Case No. 96 of 1982-83 and Case No. 120 of 1982-83 when these proceedings also arose from the plot in question as is reflected from the records of the proceedings.

Considering the materials on record as well as the finding of the revisional authority as also noticing that there is nothing on record to show that the petitioners made any grievance against the orders passed in two other collateral proceedings, he cannot by taking refuge

to the order present at Annexure-2 be allowed to reopen a proceeding which stood concluded 11 years ago. A remedy to legal recourse is available to vigilant litigants who are aware of their rights and not for persons who have slept over their rights. In the present case the records are sufficient indication of the fact that the petitioners were aware of the consolidation as well as the litigations prevailing and have also participated therein but never tried to question the order so passed in the proceedings.

Whether the petitioners are entitled or not entitled to any share in the ancestral property cannot be a subject matter of consolidation proceeding and the remedy for the petitioners on such issue lies elsewhere. The findings of the statutory authorities under 'the Act' is on the issue of possession. Considering that the petitioners have tried to reopen a proceeding after 11 years delay, nothing persuades this Court to grant indulgence to the issues raised by the petitioners at such belated stage. This writ petition is dismissed accordingly.

Bibhash/-

(Jyoti Saran, J)

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