

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1202 of 1995
IN
Civil Writ Jurisdiction Case No. 1844 of 85

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1. Bimal Kumar Srivastava
 2. Nirmal Kumar Srivastava
 3. Anil Kumar Srivastava,
All sons of Late Dr. Murli Manohar, resident of village and P.S. Rafiganj, District Aurangabad
 4. Smt. Daya Kuer wife of A.M. Kumar, resident of 219, Patliputra Colony, Patna, P.S. Patliputra, District Patna
 5. Smt. Lila Lal wife of Sri S.K. Lal, resident of Bhilai Steel Colony, Bhilai (M.P.)
 6. Smt. Vidya Prasad, Resident of Maohar Pharmacy at and P.S. Rafiganj, District Aurangabad
 7. Smt. Ashal Singh @ Asha singh, wife of Sri Durjanand Singh, resident of Q. No.625, Section III E, Bokaro Steel City

.... Petitioner (Writ) - Appellants

Versus

1. The Joint Director of Consolidation, Bihar, Patna.
2. The Deputy Director of Consolidation, Rohtas
3. The Consolidation Officer, Chand, Rohtas
4. Thakur Rishi Kumar Sinha.
5. Thakur Harishi Raman Singh @ Thakur Harshi Raman Singh, Both sons of Late Shyam Bilash Sinha, All residents of Village Lehuan, P.S & Anchal Chand, District Rohtas. At present Respondent no.5 resides at Shri Krishna Nagar, Patna, P.S. Budha Colony, Patna. Respondent no.6 resident at Q. No.E/60, Sector III, H.E.C., Jagarnath Nagar, Ranchi-4.
6. Bishnu Shankar Pandey, minor son of Sudarshan Pandey, under the guardianship of His Father Sudarshan Pandey, resident of Village Amon, P.S. Chand, District Rohtas.
7. Smt. Abhirayh Devi, wife of Jwala Prasad Upadhyay, resident of Village Kanji, P.S. Chainpur, District Rohtas

.... Respondents- Respondents

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Appearance :

For the Appellants	:	Mr. Keshav Shrivastava, Sr. Advocate Mr. Bhubneshwar Prasad, Advocate
For the State	:	Mr. Madhukar Krishna Sinha, SC 1 Mr. Ashutosh Singh, AC to SC 1
For Respondent No.5:		Mr. Srinandan Prasad Singh, Advocate
For the Respondents	:	Mr. Murari Narain Choudhary, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-02-2015

This letters patent appeal is preferred against the order dated 03.08.1995 passed by the learned Single Judge of this Court in CWJC No. 1844 of 1985.

2. The relevant facts of the case are as follows:

One Kuldip Narain Sinha had three sons, namely, Thakur Nand Kumar Sinha, Thakur Manikchand Sinha, Thakur Shyam Bilash Sinha and one daughter Shanti Devi. Thakur Nand Kumar Sinha is said to have separated from the family in the year 1918. Thakur Manikchand Sinha had two sons, namely, Thakur Guru Sevak Sinha and Thakur Hari Sevak Sinha. Both of them remained unmarried and died in the year 1971 and 1972 and their branches did not have any legal heirs. Respondent Nos.4 and 5 are sons of Thakur Shyam Bilas Sinha. The appellants are the heirs of Shanti Devi.

3. The family of Manikchand Sinha had land in Khata Nos.12 and 13 situated in Mauza Safi Anchal Chand. Consequent upon death of Thakur Guru Sevak Sinha and Thakur Hari Sevak Sinha, Shanti Devi, their maternal-aunt (Fua) filed mutation proceeding before the authority of the revenue department and the same was allowed. The entries in respect of land comprising Khata Nos. 12 and 13, were mutated and name of Shanti Devi was entered in the revenue record.

4. Thereafter proceedings under the provisions of Bihar



Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as “the Act”) were initiated in respect of the said land. At that stage, the sons of late Shyam Bilash Sinha, i.e. respondent nos.4 and 5 filed an application before the Consolidation Officer. They pleaded that Thakur Guru Sevak Sinha and Thakur Hari Sevak Sinha died issueless and therefore, they are entitled for the property. In the year 1978, the Consolidation Authority passed an order accepting the contention of respondent nos. 4 and 5.

5. Shanti Devi filed an appeal before the Appellate Authority under the Act. The appeal was allowed and the matter was remanded. After remand, the Consolidation Officer reiterated his earlier order. In the subsequent appeal and revision filed by Shanti Devi, the same was confirmed. Thereupon the petitioners, legal heirs of Shanti Devi, appellants herein, filed the writ petition. The learned Single Judge dismissed the writ petition. Therefore, the present LPA is filed.

6. The principal contention of Sri. Bhubneshwar Prasad, learned counsel for the appellants is that though respondent nos.4 and 5 pleaded that their father Thakur Shyam Bilash Sinha and their uncle Thakur Manikchand Sinha remained joint during their lifetime and the same position remained, by the time the consolidation proceeding was initiated, they failed to prove it. He further submits that at one stage

respondent nos. 4 and 5 pleaded that the two brothers of the family have in fact separated; but still the authorities under the Act, as well as learned Single Judge did not accept the contention of the petitioners.

7. Sri. Madhukar Krishna Sinha, learned standing counsel for the State-respondents and Mr. Srinandan Prasad Singh, learned counsel for respondent nos.4 and 5 submit that the exclusive claim made by Shanti Devi and thereafter appellants herein in relation to the property owned by late Thakur Hari Sevak Sinha and late Thakur Guru Sevak Sinha is totally untenable. They submit that out of three brothers and sons of Late Kuldip Narain Sinha, only the eldest son Thakur Nand Kumar Sinha had separated in the year 1918 and branches of two other brothers were joint. They further submit that assuming that there was a partition between the two brothers, there is no way that Shanti Devi could have got exclusive right over the property left by two sons of Thakur Mankchand Sinha.

8. Though the writ petition is filed under Articles 226 and 227 of the Constitution of India, it has all the characteristics of a civil suit. The Act does not provide for adjudication of any issue arising the proceedings under it, by any civil court. For all practical purposes, the authorities under the Act are conferred with the power to deal with every aspect. Further jurisdiction of the Civil Court is

specifically barred. Therefore, the learned Single Judge had to deal with the question of succession extensively.

9. As rightly pointed by the learned Single Judge, the question that arose for consideration was as to whether devolution of the property of Late Thakur Guru Sevak Sinha and Thakur Hari Sevak Sinha had taken place by survivorship, or through succession. It is not in dispute that both the persons died intestate and unmarried. Since their father was also no more, the estate devolves upon the persons according to the law of succession. In case there was a partition between the father of the deceased on the one hand and their uncle late Thakur Shyam Bilash Sinha, succession to the property must take place among the agnates. In such an event, the legal heirs of other two brothers, namely, Thakur Manikchand Sinha and Thakur Shyam Bilash Sinha became legal descendants. According to law, as it existed then, the scope for Shanti Devi, sister of two brothers to succeed to the property was too remote. It is only in absence of any agnate, that she would get a chance to succeed the property.

10. It is true that in the written statement filed by respondent nos.4 and 5 who are legal descendants of their deceased nephews, it is stated that there was separation among their father and father of Late Thakur Guru Sevak Sinha and Thakur Hari Sevak Sinha. That however, is totally different from stating that a partition

has taken place. Both respondent nos.4 and 5 categorically stated that two families remained joint. Heavy burden rested upon Shanti Devi, mother of the appellants, to prove the factum of partition and that was not discharged. In view of the concurrent findings by all the authorities, the question of possession in respect of the property by Shanti Devi as exclusive owner, does not arise.

11. The three authorities under the Act and the learned Single Judge have consistently held that there was no partition between the two branches and respondent nos.4 and 5 became entitled to become owners of the property, by way of survivorship.

12. We do not find any merit in the appeal. Therefore it is dismissed. There shall be no order as to costs.

13. The interlocutory application, if any, shall stand disposed of.

(L. Narasimha Reddy, CJ)

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(Vikash Jain, J)