

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.10503 of 1995**

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1. Chandeshwar Prasad Verma son of Late Gulabchand Prasad Singh
  2. Smt. Kamla Devi Verma wife of Chandeshwar Prasad Verma
- Both residents of village-Debisarai, P.S. Deep Nagar, District-Nalanda, at present residing at village-Sadikpur, P.S.Ekangarsarai, District-Nalanda.
- .... .... Petitioner/s

Versus

1. State of Bihar
  2. The Director of Consolidation, Government of Bihar, Patna.
  3. Sri C. Rajak, Principal, Chakbandi Prashikshan Sansthan, Patna.
  4. Sia Saran Singh, son of Late Paras Mahto
  5. Shyam Sundari Devi, wife of Late Paras Mahto
- Both residents of village-Sadikpur, P.O. Telhara, District-Nalanda.
- .... .... Respondent/s
- =====

**Appearance :**

For the Petitioner/s : Mr. Raj Kishore Pd. Singh  
Mr. Manish Kishore  
Mr. Amrendra Nath Vishwas

For the Respondent/s : Mr. Narendra Kumar, A.C. to G.P.2

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**

**ORAL JUDGMENT**

**Date: 23-04-2015**

Heard learned counsel for the petitioners and learned counsel for the State.

The petitioners seek quashing of the order dated 4.12.1989 passed by the Principal, Chakbandi Prashikshan Sansthan, Patna in Revision Case Nos.2659/1988 and 2660/1988 under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, by which it was directed to open a separate khata in the names of respondent No. 4, Siya Sharan Singh and respondent No.5, Shyam Sundari Devi by carving out 13 and 14 decimals in favour of respondent No.4 and 22 decimals in favour of respondent No.5 out of

Chakbandi Khata No.71, Khesra No.655, area 65 decimals.

Respondent Nos. 4 and 5, namely, Siya Saran Singh and Shyam Sundari Devi filed Revision Case Nos. 2659/1988 and 2660/1988 under Section 35 of the Act after the confirmation of consolidation proceedings in their village claiming that Survey Khata Nos. 216 and 219, Khesra Nos. 913 and 914 respectively, area 13 decimals and 14 decimals purchased by registered sale deed No.1025 dated 5.5.1958 by late Paras Mahto, father of respondent No.4 and the husband of respondent No.5 and they have been coming in possession over the same since the date of purchase; but during the consolidation proceedings the said plots were entered in Chakbandi Khata No.71, Khesra No.655, area 65 decimals in the name of the grandfather of respondent No.4, who has since died on 5.5.1964. Since the aforesaid plot was self-acquired property of Paras Mahto, hence, a separate khatian ought to have been opened with respect to it.

It is further stated that Paras Mahto died on 4.8.1979 leaving behind five sons, including the respondent No.4.

Similarly, Revision Case No.2660/1988 was filed by respondent No.5 claiming that her husband, Paras Mahto, had purchased land of Survey Khata Nos. 214 and 222, Khesra Nos. 911 and 912, area 22 decimals by registered sale deed No.5407 dated 18.6.1952, which was the self-acquired property and was wrongly

included in Chakbandi Khata No.71, Khesra No.655, area 65 decimlas because at the time of consolidation proceedings, the father of Paras Mahto was still alive. Accordingly, a prayer was made to prepare a separate Chakbandi Khatian with respect to the said plots of land.

In the said revisional proceedings, it is not in dispute that the petitioners had not been made parties and the stand has been taken that Paras Mahto was the only son of late Mouzi Mahto. Both the revision applications were allowed with the directions aforesaid.

The case of the petitioners is that petitioner No.2 is the daughter of Fateh Narain @ Biltu, who was the son of Late Mouzi Mahto and full brother of Paras Mahto. It is stated that petitioner No.2 and her mother, widow of Fateh Narain alias Biltu had jointly filed Title (Partition) Suit No.126 of 1966 on 20.12.1966 for partition of the joint family properties in which the contesting defendant, Paras Mahto, father of respondent No.4 and the husband of respondent No.5 filed his written statement on 1.12.1967 and the suit was decreed on 30.7.1976 with respect to the property of the family, including the property in question as joint family properties. Thereafter the final decree was also prepared on 24.3.1984 and in the consolidation plot No.655 also half share of the plaintiffs was carved out. First Appeal No.720 of 1976 was filed by the respondent Nos. 4 and 5 in this Court on 11.6.1976 against the preliminary decree which is still pending and

similarly First Appeal No.105 of 1984 was filed against the final decree, which is also pending in which the petitioners have already appeared.

Learned counsel for the petitioners, in view of the aforesaid facts, submits that the respondents were parties to the title suit for partition and have also filed first appeals in the matter which facts were completely suppressed by them before the Court of Director, Consolidation while filing the revision case and further they were knowing full facts about the decree against them. Hence, in the said circumstances, the impugned order dated 4.12.1989 of the Principal, Chakbandi Prashikshan Sansthan, Patna is based upon a fraud played by respondent Nos. 4 and 5 on the Revisional Consolidation Court and for the said reason alone, the impugned order is fit to be set aside.

It is further submitted by learned counsel for the petitioners that the petitioners were necessary parties to any such revisional case but they have not been made party to the said proceedings. Thus, the impugned order is violative of the principles of natural justice, non est, illegal and ab initio void.

Learned counsel for the petitioners further submits that no explanation is to be found in the revision applications as to why objections under Section 10 (2) and appeal under Section 10 (6) of the

Act were not filed by them. For the said reason alone, the revision application ought not to have been entertained.

Learned counsel for the State is unable to meet the aforesaid submission of learned counsel for the petitioners.

On a consideration of the facts and circumstances of the case, as discussed above, it is evident that in view of the judgment and decree passed in Title (Partition) Suit No.126 of 1966, the revision application could not have been entertained without impleading the petitioners, who were necessary parties to any such proceedings. The petitioners not having been made parties, any order passed therein would be in complete violation of the principles of natural justice, non est and fit to be set aside.

This Court is in agreement with the submission of learned counsel for the petitioners that the private respondents, by suppressing the facts, judgment and decree passed in title suit and by not even making a mention of the said title suit in the revision application, have played a fraud upon the consolidation court in obtaining the impugned order.

It is well established that any order obtained from a Court or Tribunal after playing fraud would be non est in the eye of law.

This Court is also in agreement with the submission of learned counsel for the petitioners that the revision application ought

not to have been entertained unless some explanation had been given by the applicants as to why no objection had been taken by them at the stage of the proceedings under Section 10 of the Act.

Thus, for the aforesaid reasons, the impugned order dated 4.12.1989 is quashed. The writ application is, accordingly, allowed.

**(Ramesh Kumar Datta, J)**

V.P.Sinha/-

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