

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4966 of 1996

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Vijay Singh, son of Ghamandi Singh resident of village-Jarang Rampur, P.s.
Vaishali, District- Vaishali.

.... Petitioner/s

Versus

1. State of Bihar
2. Director, Consolidation, Bihar, Patna.
3. Joint Director, Consolidation, Muzaffarpur
4. Deputy Director, Consolidation, Vaishali
5. Consolidation Officer, Vaishali, Disktrict- Vaishali
.....Respondent Ist set.
6. Chandravati Devi wife of Lakshmi Singh, resident of village- Bhuar, P.S.
Saraiyan, District-Muzaffarpur.
..... Respondent IInd set

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur
Mr. Amit Kumar
Mr. Nilesh Kumar

For the Respondent/s : Mr. Mahtab Alam, A.C. to S.C.III

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 30-07-2015

Heard learned counsel for the petitioner and learned
counsel for the State. No one appears for respondent No.6.

The petitioner seeks quashing of the order dated
20.10.1994 passed by the Joint Director, Consolidation, Muzaffarpur
in Revision Case No.210 of 1992, by which he has allowed the
revision application filed by respondent No.6 and ordered to open
khata in her name.

The short facts of the case are that one Narayan Singh,
father of respondent No.6 was the holder of various pieces of land in



village- Jarang Rampur, Thana No.229, Khata No.285, Khesra Nos. 932, 935, 936, 937 and 938, Chak No.1114, area 44 decimals, Khesra No.1088, Chak No.993, area 1 ½ decimals, Khesra No.2218, Chak No.1694, area 36 decimals. Since the notification under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act was already in operation in the area, the said Narayan Singh filed an application for obtaining permission for selling the said land. The Consolidation Officer by his order dated 14.12.1990 passed in Case No.1091 of 1990-91 granted permission for sale. Thereafter, Narayan Singh executed a registered deed of Ataynama in favour of the petitioner transferring the right, title and interest over the property in question on 28.12.1990. An appeal against the said order of the Consolidation Officer granting permission was filed by respondent No.6 and by order dated 12.3.1992, the Deputy Director of Consolidation, Vaishali dismissed the appeal. A revision application, being Revision Case No.210/1992, thereafter was filed by respondent No.6 before the Joint Director, Consolidation, Muzaffarpur. The same was allowed by order dated 18.03.1993 but since the petitioner had not been heard in the matter, this Court by order dated 16.02.1994 passed in C.W.J.C. No.8523/1993 set aside the order dated 18.3.1993 and remanded the matter before the Joint Director, Consolidation, Muzaffarpur to hear and dispose of the same afresh after giving an



opportunity of hearing to the petitioner. Thereafter, upon hearing the parties, the impugned order dated 20.10.1994 was passed by the Joint Director, Consolidation setting aside the order passed by the Deputy Director of Consolidation, Hajipur.

Learned counsel for the petitioner submits that the impugned order is beyond the jurisdiction of the Consolidation authorities as the same amounts to setting aside or cancelling a deed of Ataynama which authority is vested only in the Civil Court. It is further submitted that the present case was not a case where the question of authority to execute the deed was involved or the legal effect of the deed was in question, rather it was simply a case where the allegations of fraud, etc. had been made with regard to the deed in question which had been executed by a competent person. It is urged that the question of competency of the executor was not in issue, hence, the effect of the deed could not be taken away except by its cancellation which could have been done only by a Civil Court of competent jurisdiction and not by the Consolidation authority.

In support of the aforesaid proposition, learned counsel for the petitioner relies upon a decision of the Supreme Court in the case of Gorakh Nath Dubey vs. Hari Narain Singh and others: AIR 1973 Supreme Court 2451, in paragraph No.5 of which it has been held as follows:-



“5. There is no decision of this Court directly on the question whether a suit for cancellation of a sale-deed, which was pending on the date of the notification under Section 4 of the Act, abates under Section 5 (2) of the Act. A decision of a Division Bench of the Allahabad High Court, in Jagarnath Shukla v. Sita Ram Pande, 1969 All LJ 768 directly dealing with the question before us, was then cited before us. Here, we find a fairly comprehensive discussion of the relevant authorities of the Allahabad High Court the preponderating weight of which is cast in favour of the view that questions relating to the validity of sale deeds, gift deeds, and wills could be gone into in proceedings before the consolidation authorities, because such questions naturally and necessarily arose and had to be decided in the course of adjudications on rights or interests in land which are the subject matter of consolidation proceedings. We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have



legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective, but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it. In the case before us, the plaintiff's claim is that the sale of his half share by his uncle was invalid, inoperative, and void, such a claim could be



adjudicated upon by consolidation courts. We find ourselves in agreement with the view expressed by the Division Bench of the Allahabad High Court in Jagarnath Shukla's case, 1969 All LJ 768 (supra), that it is the substance of the claim and not its form which is decisive."

Learned counsel for the State does not assail the stand taken by learned counsel for the petitioner.

On a consideration of the facts and circumstances of the case as also the submissions of learned counsel for the petitioner, it is evident that what was sought by the respondent No.6 before the appellate and revisional authorities was a declaration as invalid or cancellation of the deed of Ataynama on the ground of fraud and collusion. It was not a case where the consolidation authorities were required to consider the legal effect of the document in question or the authority of the person executing the document. Thus, it was not open to the consolidation authorities to have discarded such document executed by a competent person unless it had been set aside by a court of competent jurisdiction and it was not open to the consolidation authorities to have held otherwise on the basis of any subsequent gift deed executed by Narayan Singh in favour of the private respondent.

Thus, in my view the case of the petitioner is squarely covered by the proposition laid down by the Apex Court in Gorakh Nath Dube's case (supra) and it is really a case of setting aside a legally valid document which was beyond the purview of the consolidation authorities.

The writ application is, accordingly, allowed and the impugned order dated 20.10.1994 of the Joint Director, Consolidation, Muzaffarpur is set aside.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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