

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No. 8650 of 2000

=====

Ashturna Devi, wife of Ramyash Mauar, D/o-Talash Chaudhary, resident of village & P.O. Belaur, P.S. Udwant Nagar, District Bhojpur.

.... .... Petitioner

Versus

1. The State of Bihar
2. The Director, Consolidation, Patna
3. The Deputy Director, Consolidation, Rohtas
4. The Assistant Director, Consolidation, Bhojpur at Ara
5. The Consolidation Officer, Udwant Nagar, District Bhojpur at Ara.
6. Lal Mohan Choubey
7. Lal Dhari Choubey, both sons of late Gulab Choubey, residents of village & P.O. Belaur, P.S. Udwant Nagar, District Bhojpur.
8. Ramawati Devi, wife of Ramshankar Rai (D/o Tungnath Choudhary, resident of village & P.O. Ram Datahi, P.S. Karnampur, District Bhojpur

.... .... Respondents

=====

#### Appearance :

For the Petitioner/s : Mr. Sunil Kumar Mandal  
Mr. Manoj Kumar Ambastha I  
Mr. Shivendra Kumar Sinha

For the Respondent/s : Mr. S.J.Rahman (GP7)  
Mr. Ram Naresh Sharma  
Mr. Sanjay Kumar  
Mr. Ajay K.Singh

=====

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

#### CAV JUDGMENT

Date: 24-01-2018

1. This writ petition has been preferred against the order dated 31.03.2000 passed by the Deputy Director, Consolidation, Rohtas, Headquarter at Patna in Revision Case No. 99/97 and allied cases by which and whereunder the learned Deputy Director, Consolidation set aside the order dated 14.01.1997 passed by the Assistant Director, Consolidation, Bhojpur at Ara and ordered to record the name of respondents no. 6 and 7 in revenue records.

2. It would appear from perusal of the pleadings



placed by the writ petitioner that old khata no. 137 corresponding to new khata no. 327 containing old khesra no. 3086, 3087, 3088, 3089 area 2.21 acres of village Belaur, Block Udwantnagar, District Bhojpur was recorded in the cadastral survey in the name of Branch of Angad Chaudhary. However, the aforesaid land was auction sold in the year 1920 in execution of a rent case and the auction sale was purchased by one Bodhi Chaudhary, who subsequently on 14.02.1927, executed sale deed in favour of one Rukamina wife of Talas Chaudhary and accordingly, Rukamina came in possession of her purchased land. However, during course of revisional survey operation, R.S. Khata no. 1474 area 1.06 acre was carved out in the name of Rukamina but the aforesaid 1.6 acre land is not in dispute in the present writ petition. However, R.S. Khata no. 327 area 2.21 acre was wrongly prepared in the name of Chulhan Chaudhary having 3 shares, Talas Chaudhary and Muni Chaudhary having four shares, Sheo Kumar Chaudhary having two shares, Jobadhana having three shares and Most. Saturna having three shares. Further, case of the writ petitioner is that a forged and fabricated sale deed was got executed on 30.08.1931 in respect of khata no. 137 containing plot no. 2874, 3086, 3089, 3088 by Rukamina in favour of one Sheodhayan. However, Tung Nath Chaudhary, who happens to be father of respondent no. 8 filed Title Suit No. 105 of 1959 in the court of 3<sup>rd</sup> Munsif, Ara for redemption of mortgage deed which had been executed in respect of plot no. 2874, 3086, 3089, 3088 and in that



case, it was held that Rukamina had never executed any sale deed on 30.08.1931 in favour of Sheodhayan. However, the judgment passed in Title Suit No. 105 of 1959 was challenged in Title Appeal No. 40 of 1961/89 of 1974 and the aforesaid Title Appeal No. 40 of 1961/89 of 1974 was allowed by judgment dated 14.05.1977 and against the judgment dated 14.05.1977 passed in Title Appeal No. 40 of 1961/89 of 1974, a second appeal bearing 2<sup>nd</sup> Appeal No. 584/77 was preferred which was dismissed vide judgment dated 31.10.1991. It is further case of the writ petitioner that mother of Sheodhayan executed sale deed in favour of Tung Nath Chaudhary for 1 bigha 14 kattha 12 dhur land but as a matter of fact, Sheodhayan had no right to transfer the aforesaid land as the sale deed said to be executed by Rukamina in favour of Sheodhayan had already been declared illegal and, therefore, Tung Nath Chaudhary did not get any right and title in respect of the aforesaid land. However, the aforesaid Tung Nath Chaudhary is said to have died and after his death, Chulhan Chaudhary, who happened to be uncle of aforesaid Tung Nath Chaudhary, executed gift deeds dated 29.09.81 and 11.05.82 but at the time of execution of aforesaid gift deeds, the consolidation proceeding had already been started in the aforesaid village and no sanction was taken from the competent authority for execution of gift deeds. Moreover, on the basis of aforesaid illegal gift deeds, respondents no. 6 and 7 filed petition under Section 10(2) of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter



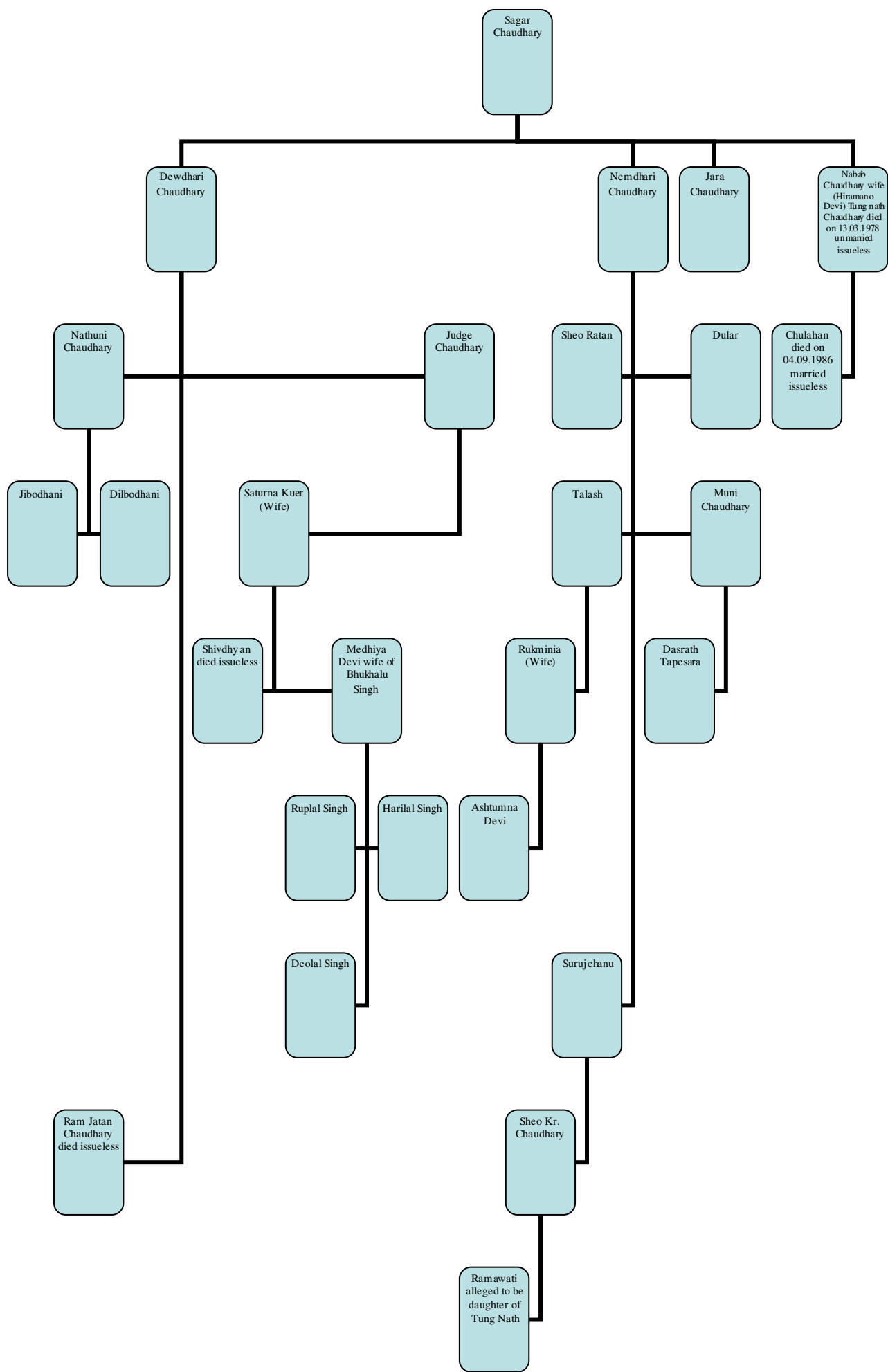
referred to as “Act, 1956”) for correction of relevant documents and the Assistant Consolidation Officer allowed the application of respondent no. 6 and 7 which was challenged before the Assistant Director of Consolidation by filing Appeal no. 14/1989-90 which was allowed but the Deputy Director, Consolidation illegally set aside the order of appellate court passing impugned order.

3. The petitioner has raised some legal questions in this writ petition. Firstly, it has been raised that after notification under Section 3(i) of the Act, 1956, whether the Circle Officer had right to proceed with the mutation proceeding. Secondly, the sanction under Section 5-A of the Act, 1956, could have granted in the year 1981 prior to insertion of amendment of 1982 and thirdly, whether a person can transfer a better title than himself by a gift or not.

4. The respondents no. 6 and 7 contested the writ petition pleading in their counter affidavit and supplementary counter affidavit that petitioner has no right to file this writ petition as she had not raised any objection under Section 10(2) or 10(B) of the Act, 1956. A genealogical table has been given by respondent no. 6 and 7 at para 6 of their supplementary counter affidavit which is reproduced as below here:-

s





5. It is further pleaded at para 6 of counter affidavit



that before executing gift deeds dated 02.09.1981 and 11.05.1982, the donor namely, Chulhan Chaudhary had applied for permission from the consolidation authorities and the permission case was fought by Chulhan Chaudhary and Sheo Kumar Chaudhary up to the court of Deputy Director of Consolidation, Bhojpur at Ara and in Appeal No. 78 of 1981-82, the Deputy Director of Consolidation, Bhojpur at Ara on 26.08.1981 passed the final order on permission matter and held that vide memo no. 1140 dated 11.08.1981 the Director of Consolidation gave exemption from permission of Mauja Belaur for one year and accordingly, the above stated appeal was disposed of and, therefore, there was no need of permission for execution of gift deed on 02.09.1981 and 11.05.1982. Annexure-A has been annexed with counter affidavit in respect of the aforesaid pleading.

6. It has also been pleaded by respondent no. 6 and 7 that Sheo Kumar Chaudhary had fought in civil court as well as in consolidation court but every where he lost and thereafter, he set up his daughter Ramawati Devi (respondent no. 8) before the court and made some manipulation in judicial record for which appropriate authority had taken action against him. Moreover all the aforesaid facts are not much important and in gist the case of the respondent no. 6 and 7 is that it was Sheo Kumar Chaudhary, who was behind the petitioner and respondent no. 8.

7. Respondent no. 8 has also supported the pleading of writ petitioner in course of hearing.



8. Learned counsel appearing for the petitioner submits that admittedly, the gift deeds in question were executed prior to amendment of 1982 and, therefore, it is obvious that there was no provision of exemption under Section 5 of the Act, 1956 in the year 1981 but Annexure-A goes to show that order of exemption was passed in the year 1981 and, therefore, the aforesaid order itself appears to be forged but in my view, it is not proper to hold that Annexure-A is a forged and fabricated document because the said order appears to have been passed in a proceeding initiated by the consolidation authorities and since Annexure-A is a judicial order, therefore, this court will presume that Annexure-A is a genuine document and will not feel hesitation to hold that there was no necessity to take permission from the competent authority prior to transfer of disputed lands of village-Belaur in the year 1981.

9. Petitioner has also raised this question as to whether the Circle Officer had any right to proceed with mutation case during pendency of consolidation proceeding but in my view, the proviso of Section 4 of the Act, 1956 is very clear in this regard because the last proviso of aforesaid sections says that “Nothing of Section 4 shall apply to any proceedings under Sections 144 to 148 of Chapter X of the Code of Criminal Procedure, 1973, the Bihar Tenants Holdings (Maintenance of Records) Act, 1973, Section 48E of the Bihar Tenancy Act, 1885 and the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. It is well



known fact that in the year 1981, the mutation proceedings was to be done under the provision of Bihar Tenants Holdings (Maintenance of Records) Act, 1973. Therefore, it is obvious that even after the publication of Section 3(i) of Act, 1956, the mutation proceeding pending before the Circle Officer under the provision of Bihar Tenants Holdings (Maintenance of Records) Act, 1973 could not be abated.

10. In course of hearing, it has also been argued on behalf of respondent no. 8 that respondent no. 8 is daughter of Tung Nath Chaudhary and after death of Tung Nath Chaudhary, respondent no. 8 inherited the entire property of Tung Nath Chaudhary in accordance with Hindu Law and, therefore, in that circumstance also, Chulhan Chaudhary being uncle of Tung Nath Chaudhary had no right to execute gift deed in respect of the properties of Tung Nath Chaudhary. However, it has been argued on behalf of respondent no. 6 and 7 that respondent no. 8 is not the daughter of Tung Nath Chaudhary and actually, she is daughter of Sheo Kumar Choudhary who having lost his case at all level got set up the respondent no. 8. It appears that the aforesaid fact is a disputed question of fact which cannot be decided in this writ petition and, therefore, in the aforesaid circumstance, I am of the opinion that this writ petition does not have any merit and liable to be dismissed.

11. Accordingly, this writ petition stands dismissed. However, it is made clear that observations/findings given in this



judgment shall not affect right and title of the parties in future litigation in a proper suit.

**(Hemant Kumar Srivastava, J)**

SHAHZAD/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | 03.07.2017 |
| Uploading Date    | 25.01.2018 |
| Transmission Date | N.A.       |

