

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 198 of 2009

IN

Civil Writ Jurisdiction Case No 10199 of 1989

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Raj Mohan Singh @ Ranjit Singh, son of Shri Hari Narain Singh, resident of
Village – Pakauli, PS – Bidupur, District - Vaishali

.... Appellant/s

Versus

- 1 The State of Bihar
- 2 The Collector, Vaishali at Hajipur
- 3 (i)
 - (a) Mostt Janki Devi, wife of late Sri Krishna Singh
 - (b) Mostt Daiji Devi (daughter-n-law), wife of late Shambhu Singh
 - (c) Ritika Rai @ Ashu Singh, minor son of late Shambhu Singh under the guardianship of Mostt Daiji Devi
 - (d) Pallabi Singh, Minor Daughter of late Shambhu Singh under the guardianship of Mostt Daiji Devi
 - (e) Anisha Kumari, minor daughter of late Shambhu Singh under the guardianship of Mostt Daiji Devi
 - (f) Manju Singh, daughter of late Sri Krishna Singh, residents of Village – Pakauli, PS – Bidupur, District – Vaishali
- 3 (ii)
 - (a) Mostt Mala Devi, wife of late Ajay Kumar Singh
 - (b) Juli Devi, daughter of late Ajay Kumar Singh
 - (c) Golu Devi, daughter of late Ajay Kumar Singh
 - (d) Nidhi Kumari, minor daughter of late Ajay Kumar Singh under the guardianship of Mostt Mala Devi
 - (e) Aman Kumar, minor son of late Ajay Kumar Singh under the guardianship of Mostt Mala Devi, residents of Village – Pakauli, PS – Bidupur, District – Vaishali
- 3 (iii)
 - (g) Pappu Singh, son of Umesh Prasad Singh
 - (h) Guddi Devi, daughter of Umesh Prasad Singh
 - (i) Pushpa Devi, daughter of Umesh Prasad Singh
 - (j) Bebi Devi, daughter of Umesh Prasad Singh, residents of Village – Sheikhpura Dih, PS – Amnour, District – Saran. Presently residing at Village – Dighi Kalan, behind Dr H N Roy, Umesh Cinema Hall Road, PS – Sadar, District – Vaishali
- (iv) Smt Raj Kumari Devi, daughter of Smt Ram Sakhi Devi, resident of Village – Pakuli, PS – Bidupur, District – Vaishali
- 4 Umesh Prasad Singh, son of late Sukhdeo Singh, resident of Village – Sheikhpura Dih, PS – Amnour, District – Saran, at present residing at Village – Dighi Kalan, Back of Dr H N Roy, Umesh Cinema Hall Road, PS – Sadar Thana, District - Vaishali

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Shravan Kumar, Sr Advocate with

M/s Ashok Kr Dubey & Satish Kr Singh, Advocates

For the Respondent/s : M/s Suresh Chandra Pd Sinha, Ratan Kr Sinha & Madhukar Pandey, Advocates

For the State : Mr Shailendra Kr Jha, AC to AAG 13

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
&
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 08-04-2016

The present intra-Court Appeal is by private respondent No 4 to the writ petition, being aggrieved by the judgment and order dated 15th of January, 2009 passed in CWJC No 10199 of 1989.

2 The facts are not in dispute. One Ram Sakhi Devi, wife of Shri Hari Narain Singh, the parents of the appellant were in possession of certain lands. By a registered sale deed dated 01.03.1973, she sold some part of the said land to the writ petitioner Umesh Prasad Singh who is respondent No 4 in this appeal. At this time, it is not in dispute that consolidation proceedings had been going on under the provisions of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for brevity, *the Consolidation Act*). The appellant was about 17 to 18 years of age on the day when this transaction took place. It appears that when the consolidation proceedings were concluded, serious objections were taken by the villagers which were enquired into and decisions were



taken to renotify the consolidation process which was, accordingly, done in the year, 1981. Thereafter, upon application having been made, the land register, in so far as the present land is concerned, was amended after hearing the parties. This also happened early in 1982. It may be noted that in these proceedings, the appellant had appeared and supported the sale having been made by his mother and it is on basis of that, the land register was amended. It appears, thereafter, the appellant got wiser. After about 15 years of sale, as made by his own mother which he himself had acknowledged before the Authority on basis of which land register was amended, he filed an application before the Collector which was registered as Application No 107 of 1987-1988 for declaring the sale deed dated 01.03.1973 to be void. It is consequent to this, order was passed by the Collector that the sale, having been affected without permission/consent of the consolidation authorities, the sale deed was declared void. Against the order of the Collector, the writ petition was filed by the purchaser/writ petitioner and allowed. Hence, the appeal.

3 On behalf of the writ petitioner, contesting respondent in this appeal, it is submitted that looking to the fact that the son of the vendor, who had himself acknowledged the sale, cannot, after 15 years of the sale, ask the Collector to declare the sale deed void not for any other purpose or not on any ground of misrepresentation, non-



payment of consideration money, right, title but on a hyper technical ground that permission to sell had not been obtained by his mother. Having obtained benefit as a consequence of the sale and not having protested within reasonable time and the mother being alive, not having protested or herself not having moved the authorities, it was improper on the part of the Collector, after such unreasonable delay, to interfere. For the said purpose, learned counsel for the contesting respondent relies on the judgment dated 01.07.2015 of Division Bench of this Court passed in *LPA No 375 of 2010* (Panna Devi – Versus- State of Bihar & Others). On the other hand, Shri Shravan Kumar, learned Senior Counsel places reliance on the judgment of Full Bench of this Court dated 11.05.2010 in *LPA No 375 of 2010* (Panna Devi –Versus- State of Bihar & Others) (Full Bench) since reported in *2010 (2) PLJR 1066* wherein it has been held that the sale deed executed, without permission of authorities, under the provisions of the Consolidation Act, would be void for all purposes.

4 In our view, in view of the judgment of the Full Bench, there can be no dispute that the sale deed could be void for not having taken permission of the consolidation authorities but, as was held by the Division Bench after the judgment of Full Bench, the exercise of power by the Collector, after unreasonable delay and after 15 years, could not be countenanced. The Collector ought not to have



interfered in the matter after this unreasonable delay. The Division Bench, noticing the Full Bench judgment and noticing various provisions of the Act as also the series of judgments of the Apex Court that even though there is no period of limitation prescribed, the authorities must act within a reasonable time and having not so acted, within a reasonable time, they are precluded from taking any action. The judgments rendered in the cases of *State of Gujarat –Versus- Patel Raghav Natha & Others*, AIR 1969 Supreme Court 1297 (paragraphs 11 and 12), *Mansaram –Versus- S P Pathak & Others*, (1984) 1 Supreme Court Cases 125 (paragraph 12), *State of W B & Others –Versus- Karan Singh Binayak & Others*, (2002) 4 Supreme Court Cases 188 (paragraph 17), *T Vijayalakshmi & Others –Versus- Town Planning Member & Another*, (2006) 8 Supreme Court Cases 502 (paragraph 18) and *Joint Collector Ranga Reddy District & Another –Versus- D Narsing Rao & Others*, (2015) 3 Supreme Court Cases 695, it was held that the power under Section 35 of the Consolidation Act would not be exercised after undue delay. It may be noted that as against this judgment of the Division Bench in LPA No 375 of 2010, as decided by the Division Bench on 01.07.2015, there was an appeal to the Apex Court being Special Leave to Appeals (C) No 23363-23364 of 2015 which was dismissed on 26.08.2015.

5 In the present case, not only is the son of the vendor being

fully aware of the sale deed as made by his mother and having stood by the sale deed at the time of correction of land records, now after 15 years, turns around and challenges it only to gain unjust enrichment. There is no explanation why he did not move the authorities in the last 15 years. Even the Collector did not ask this question as to why he was moving this application 15 years after the execution of a sale deed of which he was fully aware. We do not think that we can affirm the action taken by the Collector after more than 15 years of the deed being executed, parties having acted upon and parties having taken benefit thereof.

6 Thus, we find no merit in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-AFR

(Nilu Agrawal, J)

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