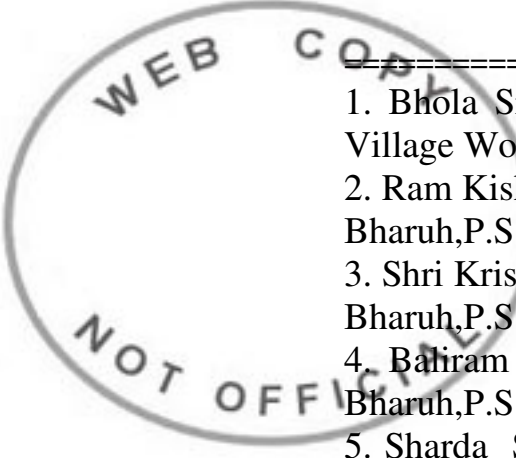


IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.806 of 2010

IN

Civil Writ Jurisdiction Case No. 8890 of 2009

- 
1. Bhola Singh @ Ram Bilash Singh, S/O Late Laxmi Singh, R/O Village Woob, P.O.- Bharuh,P.S.- Obra, District- Aurangabad.
 2. Ram Kishun Singh, S/O Late Laxmi Singh, R/O Village Woob, P.O.- Bharuh,P.S.- Obra, District- Aurangabad.
 3. Shri Krishna Singh, S/O Late Laxmi Singh, R/O Village Woob, P.O.- Bharuh,P.S.- Obra, District- Aurangabad.
 4. Baliram Singh, S/O Late Laxmi Singh, R/O Village Woob, P.O.- Bharuh,P.S.- Obra, District- Aurangabad.
 5. Sharda Singh, S/O Bhola Singh @ Ram Bilash Singh R/O Village Woob, P.O.- Bharuh,P.S.- Obra, District- Aurangabad.
 6. Bikramadiya Singh, S/O Bhola Singh @ Ram Bilash Singh R/O Village Woob, P.O.- Bharuh,P.S.- Obra, District- Aurangabad.
 7. Smt. Moti Sunder Devi, W/O Shri Baliram Singh, R/O Village- Rampur Tola, Daini Bigha, P.O.-Kaithi,P.S.- Obra, District- Aurangabad.

.... Appellant/s

Versus

1. The State Of Bihar.
2. Joint Director Of Consolidation, Magadh Division, Gaya.
3. Deputy Director Consolidation, Gaya, Headquarters, Aurangabad.
4. Consolidation Officer, Aurangabad.
5. Smt. Ram Badan Devi, W/O Late Deosagar Prasad Singh, R/O Village Woob, P.O.- Bharub,P.S.- Obra, District- Aurangabad.
6. Ramanuj S/O Late Deo Sagar Prasad Singh, R/O Village Woob, P.O.- Bharub,P.S.- Obra, District- Aurangabad.
7. Binod Kumar Singh S/O Late Deo Sagar Prasad Singh, R/O Village Woob, P.O.- Bharub,P.S.- Obra, District- Aurangabad.
8. Pramod Kumar, S/O Late Deo Sagar Prasad Singh, R/O Village Woob, P.O.- Bharub,P.S.- Obra, District- Aurangabad.
9. Manoj Kumar, S/O Late Deo Sagar Prasad Singh, R/O Village Woob, P.O.- Bharub,P.S.- Obra, District- Aurangabad.
10. Kamla Devi, D/O Late Deo Sagar Prasad Singh, W/O Vijay Kumar Pandey, R/O Village- Kanchanpur, P.O And P.S Barun, District- Aurangabad.
11. Bimla Devi, D/O Late Deo Sagar Prasad Singh, W/O Late Ram Pravesh Sharma, R/O Village- Makhara, P.O.- Sihari, P.S.- Daudnagar, District- Aurangabad.
12. Urmila Devi, D/O Late Deo Sagar Prasad Singh, W/O Shri Gurucharan Sharma,, R/O Village And P.O.-Dabur,P.S.-Konch,

District- Gaya.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate,
Mr. Parth Gaurav, Advocate,
Mr. Sangeeta Sharma, Advocate,
Mr. Ranjan Kr. Dubey, Advocate,
Mr. Rakesh Chandra, Advocate.

For the State (respondent Nos. 1 to 4): Mr. K.B. Singh, S.C.-22

For the Respondent Nos. 5 to 12: Mr. Pushkar Narain Shahi Sr. Advocate,
Mr. Patanjali Rishi, Advocate,
Mr. Sanjeet Kumar Singh

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

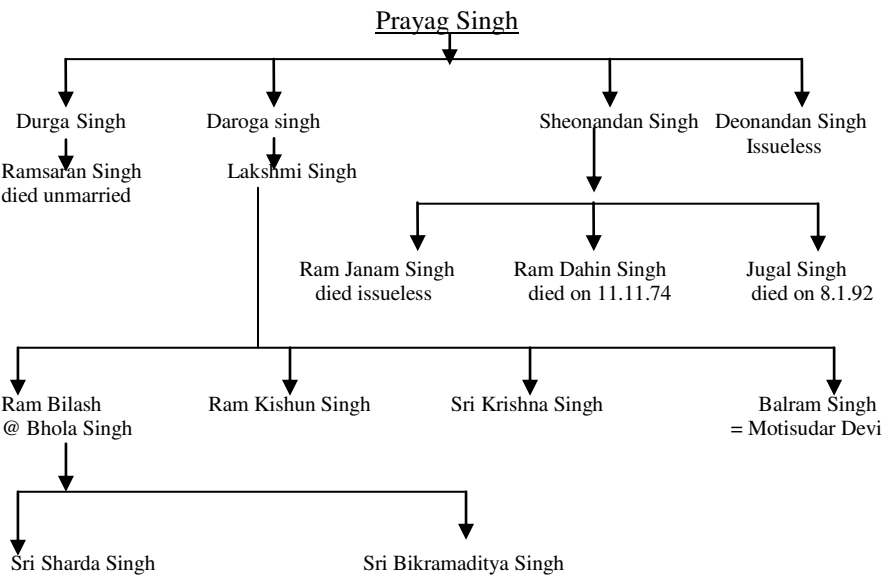
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 22-04-2016

The present Intra-Court Appeal under Clause 10 of the Letters Patent of Patna High Court is against the judgment and order dated 29.03.2010 passed by learned Single Judge of this Court in C.W.J.C. No. 8890/2009.

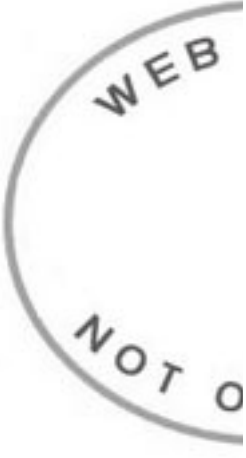
2. The proceedings arise out of orders passed by the Consolidation Authorities in respect of right, title and interest of the parties for the sale in respect of certain properties. The appellants were the respondents 5 to 11 in the writ proceedings, and the writ petitioners are respondent nos. 5 to 12 in this appeal. It appears that the writ petitioners/respondents had claimed before the Consolidation Authorities that their father Deosagar Prasad Singh had purchased certain lands from Ram Dahin

Singh, and as such, they were entitled to be recorded as raiyat in respect of said lands. The respondents/appellants, who are sons of Laxmi Singh, claimed that they have received those lands as gift from Jugal Singh to whom the lands exclusively belong to. Let it be noted that Ram Dahin Singh and Jugal Singh are own brothers and Laxmi Singh is their cousin. The genealogy is given hereunder :



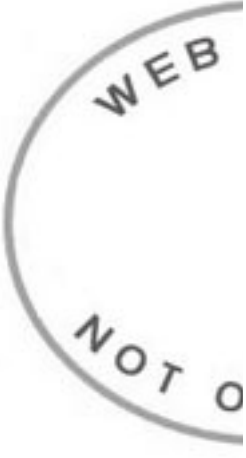
3. Therefore, the moot question before the authorities was, what is the nature of the land which Ram Dahin Singh allegedly sold to the writ petitioners/ respondents.

4. Mr. Shashi Shekhar Dwivedi, learned Senior Counsel appearing for the respondents/appellants submits that the property in question were purchased exclusively by Jugal Singh by registered sale deed or



acquired by way of settlements in his individual capacity. His elder brother Ram Dahin Singh has no right, title or interest in those properties. He had, thus, validly gifted those properties or part thereof to the respondent appellants, and therefore, when the Consolidation proceedings started the respondent appellants were rightly entertained as raiyats of those plots. He further submitted on the strength of the case of Srinivas Krishnarao Kango Vs. Narayan Devi Kango and Ors. since reported in AIR 1954 SC 379; which followed the case of several others and earliest being AIR 1947 Privy Council 189; that onus lies upon the party who seeks to disprove an existing state of affairs and that proof of existence of joint family does not lead to presumption that the property held by any member of the family is joint. The person claiming such jointness, has the onus to discharge.

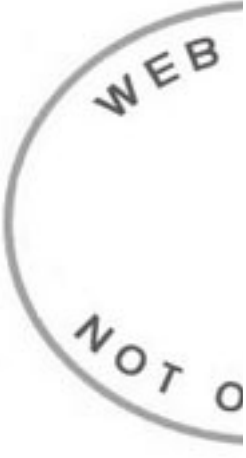
5. On the other hand, Sri P.N. Shashi, learned Senior Counsel for the writ petitioners/respondents submits that assuming, though not conceding, for the sake of argument, that the property were purchased by Jugal Singh in his individual capacity, the very fact, that in respect of part of those properties, there were admittedly



several sale deeds subsequently executed jointly by Ram Dahin Singh and Jugal Singh, in narration whereof also, it was clearly stated with reference to properties having been purchased, were in joint possession and enjoyment of the vendors. This document itself established that, even though, the property was individually purchased by Jugal Singh, it was blended in joint properties and put in common hotchpotch, and was thus, treated by both the brothers as joint family property, and both dealt with it accordingly. Therefore, when later Ram Dahin Singh purported to sale half of his interest in those properties, Jugal Singh's predecessor-in-interest could not challenge that Ram Dahin Singh had no interest in those properties. Even if, they challenged, the onus was upon them to disprove the said sale deeds jointly executed in respect of the same properties.

6. We have considered the facts in detail.

The facts as noted above are not disputed by either Sri Dvivedi or Sri Sahi. What is in dispute is the inference to be drawn from the facts. Facts, which are not in dispute, are narrated at the cost of repetition. There were some properties which had been acquired or settled with



one Prayag Singh, the common ancestor and grand-father of Laxmi Singh and also grand-father of Ramdahin Singh and Jugal Singh. Prayag Singh had four sons but two branches had got extinguished having died unmarried or issueless. The two remaining sons Daroga Singh and Sheonandan Singh continued to grow. Daroga Singh had one son Laxmi Singh who then had four sons and two grand sons who are all appellants in this appeal. Sheonandan Singh had three sons, the eldest Ram Janam Singh died issueless, remaining being Ram Dahin Singh and Jugal Singh. The properties which were with Prayag Singh came to be divided half & half share between Daroga Singh and Sheonandan Singh. This property, *inter alia*, included properties appertaining to Plot No. 97 and 98. Thus, Laxmi Singh got half interest in those properties, whereas the other half fell jointly to the share of Ram Dahin Singh and Jugal Singh. It appears that Ram Dahin Singh out of all properties in relation to plot No. 98 sold his share to some persons, which were pre-empted by the descendents of Laxmi Singh as they had also right in the said plot and were holding lands. This preemption was allowed and contested unsuccessfully by the vendees from

Ram Dahin Singh. The result is that the share of descendants of Laxmi Singh in plot No. 98 increased from 1/2 to 3/4. Thus, in this Plot, Ram Dahin Singh was left with no land and Jugal Singh had 1/4th share, whereas the remaining 3/4th came to descendants of Laxmi Singh. In 1950, 1951 and 1952, Jugal Singh allegedly purchased and/or acquired settlements in relation to various plots including plot Nos. 107, 114, 235, 236 and 881. In 1956, in respect of these plots as well as plot No. 97, three sale deeds were executed i.e. on 18.04.1956, 20.06.1956 and 10.07.1956 jointly by Ram Dahin Singh and Jugal Singh. These properties were sold to some third parties but the fact remains that the vendors were Ram Dahin Singh and Jugal Singh and the narration of these sale deeds clearly mentioned the properties having been purchased in 1952 as also the fact that the two vendors enjoyed the properties and were in possession of the properties and all along jointly enjoyed the property. Later on 19.11.1965, Ram Dahin Singh executed a sale deed in favour of Deosagar Singh in respect of half of the share in the remaining properties appertaining to plot No. 97, 107 and 114, inter alia. These properties were sold to Deosagar Singh whose



sons and daughters were the writ petitioners and respondents 5 to 12 in the appeal.

7. The dispute is essentially with regard to this sale deed. Sri Dwivedi submits that the properties contained in sale deeds were exclusive properties of Jugal Singh having been purchased in 1952, and the sale deed being in his individual name, Ram Dahin Singh had no interest therein, and thus no title passed to the writ petitioners/respondents. He further contended that, if they asserted that Ram Dahin Singh had title or interest in the said properties, the onus was upon them to show and prove the same. He further submitted that the property admittedly having been individually purchased in the name of Jugal Singh, even though there may have been jointness in respect of other properties, there is no presumption that this property would also be joint property, although purchased in the single name of one of the coparceners. The purchasers from Ram Dahin Singh would be required to prove jointness in relation to these properties as well.

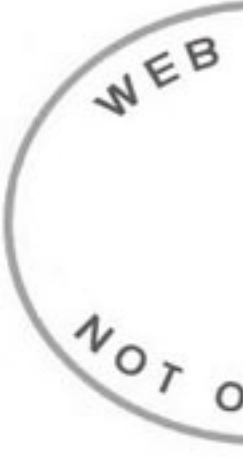
8. On the other hand, Sri Shahi submits that the onus would be on the persons who received gift of the entire properties from Jugal Singh, to prove that the



property continued to be individual property of Jugal Singh and that Ram Dahin Singh had no title over the lands which were sold by him by way of sale deed to Deosagar Singh.

9. We have to see which of the stand is correct. In our view, Mr. Dwivedi is partially correct. When he submits that the sale deeds in respect of purchases made by Yugal Singh in 1952 in his individual name would by itself show that these were his individual properties, and, if persons claiming from Ram Dahin Singh alleged otherwise the onus is upon them to prove that it was in fact, joint family properties. There can be no dispute about this. But, in our view, this onus is duly discharged when it is shown that in 1956, in respect of the some properties, the two brothers joined to sell it with narration in the deed about its purchase and subsequent joint enjoyment and joint possession. These sale deeds, three in number, clearly established the fact that by 1956, these properties which may have been acquired in the name of an individual had become joint. We may notice the contention of the writ petitioners, that in fact, Ram Dahin Singh being the elder brother had purchased these





properties in the name of the younger brother Jugal Singh, so that Jugal Singh could get married, and therefore, it was actually joint family property right from beginning and therefore the sale in 1956 of part of those properties by the two brothers together, was consistent with this plea, even if we do not accept the initial plea. The second transaction of 1956, clearly establishes in the written document executed by the two brothers, that they are in joint possession and enjoyed the property jointly. Thus, the claimant from Ram Dahin Singh discharged the onus to disprove this fact that the 1956 deed included the name of Ram Dahin assuming out of generosity, then onus was exclusively upon claimants from Jugal Singh to disprove the existing state of affairs.

10. On going through order of the Consolidation Authorities, where they have all gone wrong, through shifting the onus on the wrong side. The learned Single Judge corrected this mistake and noticed this fact. The Consolidation Authorities failed to understand the importance of 1956 sale deeds executed jointly by two brothers Ram Dahin Singh and Jugal Singh in respect of the same properties. Whereas, the learned

Single Judge subsequently notices this event, which has not been wished away or explained by the appellants in this appeal.

11. Thus, in our view, the learned Single Judge has committed no wrong in allowing the writ petition and setting aside the orders of the Consolidation Authorities. We find no merit in this appeal. This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/-

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CAV DATE	
Uploading Date	03.05.2016
Transmission Date	