

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.15 of 2011

In

Civil Writ Jurisdiction Case No. 5798 of 1989

With

Interlocutory Application No.3973 of 2014

With

Interlocutory Application No.5067 of 2014

With

Interlocutory Application No.8329 of 2013

With

Interlocutory Application No.372 of 2011

In

Civil Review No.15 of 2011



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1. Rambahadur Singh
 2. Ramdeo Singh
 3. Ramji Singh

All sons of late Punar Singh Yadav, resident of village-Kakaria, P.S.-Rajpur at present Dhansoi, District-Bhojpur, now buxar.

.... Petitioner/s

Versus

1. The State of Bihar
 2. The Joint Director of Consolidation, Bihar, Patna.
 3. The Deputy Director of Consolidation, Bhojpur at Ara.
 4. The Consolidation Officer, Rajpur, District-Bhojpur now Buxar.
 5. The Assistant Consolidation Officer, Rajpur, District-Bhojpur Now Buxar.
 6. Prabhunath Singh
 7. Ram Nath Singh
- Both are sons of late Shiv Jatan Singh
8. Bharat Singh, son of late Panchratan Singh
 9. Ramshray Yadav
 10. Matar Yadav
- Respondent nos.9 and 10 are sons of late Gariban Yadav
Respondent nos.6 to 10 are resident of village-Kakaria, P.S.-Rajpur, District-Bhojpur at present P.S.-Dhansoi, District-Buxar.
11. Ram Chandra Singh Yadav
 12. Suraj Singh Yadav
 13. Chandrama Singh Yadav
- Respondent nos.11 to 13 are sons of late Yaddu Singh Yadav
14. Bhagan Singh Yadav, son of late Sudarsan Singh Yadav
 15. Bhuer Singh, son of late Sudarsan Singh Yadav
- Respondent nos.11 to 15 are resident of village-Kakaria, Police Station Rajpur at present Dhansoi, District-Bhojpur Now Buxar.
16. Suresh Singh
 17. Mukhlal Singh
 18. Mukhram Singh
- Respondent nos.16 to 18 are sons of late Shiv Dutt Singh, resident of village-Kakaria, P.S.-Rajpur, at present Dhansoi, District-Bhojpur Now Buxar.
19. Dinanath Singh

20. Sri Ram Singh

Respondent nos.19 and 20 are sons of late Shivdutt Singh

21. Prem Lal

22. Ram Ekbal

Respondent nos.21 and 22 are sons of late Raja Ram

Respondent nos.19 to 22 are resident of village-Gobardhanpur, P.S.-Rajpur,
at present Dhansoi, District-Bhojpur Now Buxar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Om Prakash Upadhyay

For the Opposite Party Nos.8&9 : Mr. Md.Waliur Rahman, Adv.

For the Opposite Party Nos.11to13 : Mr.Bhupendra Narain Singh, Adv.
Mr.Shailendra Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

20 04-05-2016

The present review application has been filed by the heirs and legal representatives of the original respondent no.12 of CWJC No.5798 of 1989. The review petitioners seek review/recall of the judgment/order dated 27th July, 2010 passed in the aforesaid CWJC No.5798 of 1989 by a Bench of this Court (Coram: Sheema Ali Khan, J., since deceased).

Learned counsel appearing on behalf of the review petitioners submits that one Punar Singh Yadav, the father of the present petitioners, was impleaded as the respondent no.12 in the aforesaid CWJC No.5798 of 1989. By referring to the averments made in paragraph 8 of the present review application, it is submitted that the aforesaid respondent no.12 died on 10.02.1995 leaving behind the present petitioners as his heirs and legal representatives, but, despite death of original respondent no.12, no steps were taken by the original writ petitioners, who have been impleaded as opposite parties in the present proceeding. According to the learned counsel, the judgment/order under review was passed against the dead person and, therefore, it is fit to be reviewed.



Learned counsel appearing on behalf of the respondent nos.8 and 9 has contested the matter. According to him, if the present petitioners are at all aggrieved by the present judgment/order under review, then they ought to have filed appeal, but the present review application is not maintainable. On the other hand, the learned counsel appearing on behalf of the respondent nos.11 to 13 has supported the review petitioners. According to him, the order passed by the Writ Court is a nullity in the eye of law as it was passed against the dead person without taking steps for substitution.

After having heard the parties and on consideration of the materials available on the record, this Court finds that the aforesaid CWJC No.5798 of 1989 was filed against the order passed by the Director of Consolidation. Indisputably, the father of the petitioners was impleaded as the respondent no.12 in the main writ petition. The respondent no.12 had died in the year 1995 and no steps were taken by the original writ petitioners for substituting the heirs and legal representatives of the aforesaid deceased respondent no.12. The writ petition had, in fact, abated as against deceased respondent no.12 and his heirs and legal representatives and, therefore, it had become incompetent, yet without considering the aforesaid aspect the writ petition was allowed.

It is well settled that the order passed against the dead person is a nullity. The averments made in paragraph 8 of the review application that the father of the petitioners died on 10.02.1995 have not been controverted by the opposite parties herein.

In above view of the matter, this Court is of the opinion that this is a fit case for review of the judgment/order

passed by the Writ Court. Accordingly, the judgment/order dated 27th July, 2010 passed in CWJC No.5798 of 1989 is hereby recalled. The aforesaid CWJC No.5798 of 1989 is directed to be listed under the appropriate heading before the appropriate Bench, as per roster, whereafter the original writ petitioners shall be at liberty to take appropriate steps for substitution of the deceased respondent no.12.

All the Interlocutory Applications referred to above stand accordingly disposed of. The present civil review application stands allowed to the extent indicated above, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

Arvind/-

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