

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7475 of 2008

With

Interlocutory Application No. 1249 of 2016

=====

Ayodhya Prasad Dubey son of Late Muneshwar Dubey, resident of Village Kochas, P.S.Kochas, District Rohtas (**Expunged vide order dated 24.04.2013 and substituted by his following heirs and legal representatives**)

1. Rajendra Prasad Dubey S/O Late Ayodhya Prasad Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas (**Expunged vide order dated 02.03.2015 and substituted by his following heirs and legal representatives**)

1(i) Mostt. Sitapato Kuer w/o Late Rejendra Prasad Dubey

1(ii) Krishna Kumar Dubey son of Late Rajendra Prasad Dubey

1(iii) Ashok Kumar Dubey son of Late Rajendra Prasad Dubey

2. Subhash Dubey S/O Late Ayodhya Prasad Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas

3. Yamuna Pd. Dubey S/O Late Ayodhya Prasad Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas

.... Petitioner/s

Versus

1. The State of Bihar

2. Director, Consolidation, Bihar, Patna

3. Joint Director, Consolidation, Bihar, Patna

4. Assistant Director Consolidation, Rohtas

5. Consolidation Officer, Kargahar, Rohtas

6. Jai Shankar Dubey S/O Murlidhar Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas

7. Sri Kant Dubey S/O Late Gauri Shankar Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas

8. Uma Shankar Dubey S/O Hiradhar Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas (**Expunged vide order dated 16.03.2016 and substituted by his following heirs and legal representatives**)

8(i) Mostt. Patirajo Kuer w/o Late Uma Shankar Dubey

8(ii) Nagendra Kumar Dubey son of Late Uma Shankar Dubey

8(iii) Shashi Kant Debey son of Late Uma Shankar Dubey

9. Mukha Kuer @ Mostt. Peyari Kuer W/O Late Kedar Nath Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas (**Expunged vide order dated 16.03.2016 and substituted by his following heirs and legal representatives**)

9(i) Bindhyachal Tiwary husband of Madurna Devi D/o Late Mukha Kuer

9(ii) Lacchuman Tiwary S/o Bindeyachal Tiwary and Late Madurma Devi, Both resident of village Hathini, P.O. Baraon, P.S. Nokha, District Rohtas

10. Bindhyachal Dubey S/O Late Narbadeshwar Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas

11. Birendra Dubey Son Of Late Achchaibar Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas

12. Jhunna Dubey S/O Late Achchaibar Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas

13. Runna Dubey Son Of Late Achchaibar Dubey R/O Vill. + P.S. + P.O.- Kochas, Distt.- Rohtas

14. Sarswati Devi D/O Aliyar Dubey W/O Bashista Tiwary R/O Village- P.O.- Hathini And P.S. Nokha, Distt.- Rohtas

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Mahesh Prasad No.2, Advocate
Mr.Rewti Kant Raman, Advocate
For the Respondent Nos. 1 to 5: Mr. Yogendra Pd.Sinha, AAG 15
For the Respondent Nos. 6 & 7: Mr. Mr. Umakant Verma, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 28-06-2016

Re: I.A.No. 1249 of 2016

The instant Interlocutory Application has been filed on behalf of the petitioners stating therein that, during the pendency of the present writ petition, respondent no.10 Bindheyachal Dubey has passed away on 27.01.2016 leaving behind his heirs and legal representatives, fully detailed in paragraph no.2 of the instant Interlocutory Application.

The learned counsel appearing on behalf of the petitioners submits that the writ petitioners as also the private respondents are descendants of their common ancestor and the dispute is regarding their right and title over the lands in question, but, according to him, even after death of respondent no.10, cause of action survives. Hence, his heirs may be substituted.

The learned AAG 15, appearing on behalf of the respondent nos. 1 to 5 and the learned counsel appearing on behalf of the respondent nos. 6 and 7 have not disputed the aforesaid submissions.

In above view of the matter, the prayer for substitution is allowed.

Let the name of the deceased respondent no. 10 Bindheyachal Dubey be expunged from array of the parties of the main writ petition and he be substituted by his heirs and legal representatives, fully detailed in paragraph no.2 of the instant

Interlocutory Application.

The present Interlocutory Application stands finally disposed of with the observations and directions made above.

Re: CWJC No. 7475 of 2008

On the request of the learned counsel appearing on behalf of the parties, the main writ petition has been taken up for consideration on merits.

The original writ petitioner Ayodhya Prasad, Dubey, who is now dead and has been substituted by his heirs and legal representatives, had filed the present writ petition assailing the validity and correctness of the order dated 27.04.2007 passed in Consolidation Revision Case No. 2 of 2001 by the respondent Joint Director of Consolidation (Headquarters), Bihar, Patna, as contained in Annexure-7, whereby the aforesaid consolidation revision case filed on behalf of the original writ petitioner has been dismissed on various grounds and the orders passed by the appellate authority as also the original authority have been affirmed.

It is not in dispute that the substituted petitioners as also the private respondents are descendants of their common ancestor. The dispute between the parties relates to partition of lands in question, which have been fully detailed in paragraph 7 of the writ petition.

With respect to preparation of register of lands in terms of Section 9 and preparation of statement of principles in terms of Section 9A and their publication under Section 10 (1) of The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short, "the Act"), the original writ petition filed an objection which gave rise to Case No. 486 of 1991-92 and the respondent Consolidation Officer, Kargahar, Rohtas in exercise of his powers



under Section 10(4) of the Act dismissed the aforesaid case by a reasoned and speaking order dated 19.05.1993 (Annexure-3) and rejected the claim of the original writ petitioner with respect to the lands in question. The original writ petitioner, being aggrieved by the aforesaid original order, preferred Consolidation Appeal No. 14 of 1993-94 under Section 10(6) of the Act, which was also finally dismissed by a reasoned and speaking order dated 22.12.2000 (Annexure-6). The original writ petitioner, still being aggrieved, preferred Consolidation Revision Case no. 2 of 2001 under Section 35 of the Act, which was considered and finally dismissed by the impugned revisional order dated 27.04.2007 passed by the respondent Joint Director of Consolidation (Headquarters), Bihar, Patna, as contained in Annexure-7.

The learned counsel appearing on behalf of the substituted petitioners while assailing the validity and correctness of the aforesaid impugned orders passed by the original authority, appellate authority and revisional authority has submitted that all the three authorities have not considered the case of the petitioners in correct perspective and all the documents placed by the original petitioner were not properly examined; therefore, the impugned orders are not sustainable in law. In support of his above contentions, he has referred to several paragraphs of the writ petition filed on behalf of the original writ petitioner.

Au-contrain, the learned AAG 15, appearing on behalf of the respondent nos. 1 to 5, and the learned counsel appearing on behalf of the respondent nos. 6 and 7 have supported the impugned orders and have opposed the prayer made in the present writ petition. According to them, issues of fact raised on behalf of the petitioners have been considered by all the three statutory authorities and they

have recorded the concurrent findings of facts against the petitioners and have rejected their claims. Therefore, according to them, the writ petition is liable to be dismissed.

After having heard the parties and on consideration of the materials available on the records, this Court is of the opinion that in view of concurrent findings of fact recorded by all the three statutory authorities rejecting the claims of the petitioners with respect to the lands in question, the impugned revisional order as contained in Annexure-7 affirming the original order as contained in Annexure-3 as also the appellate order as contained in Annexure-6 cannot be legally faulted and must not be interfered with in a proceeding filed under Article 226 of the Constitution of India. The writ petition is devoid of merit and it is accordingly dismissed. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.07.2016
Transmission Date	