

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.62 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 4243 of 2012**

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Thakur Kamlesh Kumar Singh @ Kamlesh Kumar Singh, son of Late Ram Prasad Singh, resident of Village- Mahuaria, Police Station- Sheohar, District- Sheohar.

.... Petitioner- Appellant

Versus

1. The State of Bihar.
2. The District Magistrate, Sheohar.
3. The Dy. Collector Land Reforms, Sheohar.
4. The Circle Officer, Piprahi, District-Sheohar
5. The Principal Secretary, Human Resources and Development Department, Government of Bihar.

..... Respondents- Respondents 1st Set

6. Thakur Keshri Nandan Singh @ Keshri Nandan Singh, son of Late Ram Prasad Singh, resident of Village- Mahuaria, Police Station- Sheohar, District- Sheohar.

.... Petitioner-Respondent 2nd Set.

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Appearance :

For the Appellant : Mr. Bindhyachal Singh, Advocate
Mr. Satya Prakash, Advocate

For the Respondents 1st Set : Mr. Prabhat Kumar Singh, S.C.-12
Mr. Pramod Kumar Singh, A.C. to S.C.-12

For the respondent 2nd Set : Mr. Thakur Jai Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 13-05-2016

The order dated 1st October, 2012 passed by the learned Single Bench in C.W.J.C. No.4243 of 2012 is subject matter of challenge in the present Letters Patent Appeal. By the said order, the appellant was given liberty to file civil suit for declaration of his title

over the land in question.

2. The State was recorded as owner in respect of Plot No.218, Khata No.315 measuring an area of 12.13 acres of village-Harakava. The appellant filed an application for correction of the Revenue record under Section 106 of the Bihar Tenancy Act, 1885. Admittedly, the State was not impleaded as a party respondent, but the Consolidation Officer allowed the said application on 29th April, 1974. It is the said order which is the basis of the claim of the appellant before the writ Court and even now.

3. The learned Single Judge relegated the appellant to seek his remedy before the Civil Court for the reason that the question as to whether the appellant or the State is the owner of the land in question is a question of title which is required to be decided by the Civil Court only on the basis of the evidence led by the parties.

4. Learned counsel for the appellant contends that in fact, the Civil Suit is barred as the land is subject to consolidation, therefore, in terms of Section 37 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, the remedy of the civil suit is barred.

5. On the other hand, learned counsel for the respondents pointed out that on 29th April, 1974, when the Consolidation Officer passed an order, the Consolidation Authorities had no jurisdiction to



decide the question of the correctness of the revenue record as such power was conferred on the Consolidation Authorities by virtue of Bihar Act No.27 of 1975 when Section 12 was substituted giving right to interested person affected by draft consolidation scheme or who disputed the propriety and correctness of the entries in the draft consolidation scheme may file objection before the Assistant Consolidation Officer. Since on the day the order was passed there was no such provision under the Act, therefore, the question of title has to be decided by the Civil Court alone as such matter does not fall within the jurisdiction of the Consolidation Officer.

6. We have heard learned counsel for the parties and find no merit in the present appeal.

7. The order, the basis of claim of the petitioner, was passed on 29th April, 1974 by the Consolidation Officer correcting the revenue record in favour of the appellant changing the ownership of the land in question from the State of Bihar in their favour. Not only the State was not impleaded as a party, but such question as to who is the owner of the land could not have been decided in a proceeding for correction of the revenue record. But the facts remain that there is dispute of the title of the land in question and such disputed questions are required to be decided by the Civil Court. The Consolidation authorities will have the jurisdiction over the matter if any scheme is affected by the question of

title. Since there is a dispute about the title, therefore, such dispute of title does not affect the draft or final consolidation proceedings prepared by the consolidation authorities, therefore, the jurisdiction of the Civil Court cannot be said to be barred in view of Section 37 of the Act.

8. Consequently, the Letters Patent Appeal is dismissed. It shall be open to the appellant to take recourse to the remedy in accordance with law.

9. Before parting with the judgment, we may say that any observation made hereinabove is for the purpose of deciding the Letters Patent Appeal and the Civil Court will not be influenced by any such observation. The Civil Suit shall be decided on the basis of the evidence led before the Civil Court.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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