

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2763 of 1999

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Banarsi Lal Chaudhary, Son of late Tetar Chaudhary Resident of Village-
Jagdishpur, P.S. Barari, District- Katihar Petitioner

Versus

1. Abdul Hanan
 2. Andul Hnan
 3. Rassuddin, sons of Liasi Hasimuddin, resident of village Jagdishpur,
P.S. Barari, district Katihar
 4. The State of Bihar
 5. The Director of Consolidation, Bihar, Patna
 6. Assistant Director of Consolidation, Kaihar
 7. The Consolidation Officer, Barari, district Katihar Respondents
- =====

With

Miscellaneous Jurisdiction Case No.2764 of 1999

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1. Banarsi Prasad Chaudhary, Son of late Tetar Chaudhary Resident of
Village- Jagdishpur, P.S. Barari, District- Katihar Petitioner

Versus

1. Sheikh Mojibur Rahman
 2. Sheikh Abujan Ali Both Sons of Haji Sharafat Ali
 3. Manaur Ali Son of late Abdul Hatim Resident of Village- Seshia tola
Para, P.O. Jagdishpur, P.S. Barari, District- Katihar.
 4. Hassan Ali Son of Arshad Ali
 5. Abdul Rafique Son of Afsar Ali All Residents of Village- Sesia tola
Para, Post Office- Jagdishpur, Police Station- Barari, District- Katihar.
 6. The State of Bihar.
 7. Director of Consolidation, Bihar, Patna.
 8. Assistant Director Consolidation, Katihar.
 9. Consolidation Officer, Barari, District- Katihar. Respondents
- =====

Appearance :

(in both the cases)

For the Petitioners : Mr. Naresh Chandra Verma, Adv.

For the Respondents : Mr. Rajiv Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

9 08-12-2017 Both these MJC petition have been filed for recalling
the order, dated 27.07.1999, passed in C.W.J.Cs. No. 1323 and
3467 of 1988.

Mr. Naresh Chandra Verma, the learned counsel for
the petitioner submits that the aforesaid writ petitions were listed
for hearing on 19th July, 1999, but the name of the respondent-
petitioner's counsel did not appear in the cause list, therefore, the
learned counsel for contesting respondents of both the writ
petitions, who are petitioners here, could not mark the list. Again,



on 27.07.1999 the case was listed at serial no. 3 before a Bench presided over by Hon'ble Mr. Justice R.N. Sahay, the then, but, the name of learned counsel of respondent no. 5 did not appear in the cause list and both the writ petitioners were allowed.

The learned counsel for the petitioners submits that since the petitioner who was respondent no. 5, in both the writ petitions, could not present his case on account of non-appearance of the name of the learned counsel for respondent no. 5 and, therefore, order, dated 27.07.1999, may be recalled and the case may be listed for hearing afresh.

The learned counsel for the petitioner placed his reliance on the judgment of the Supreme Court in the case of G. Raj Mallaiah & Anr. Vrs. The State of Andhra Pradesh. In the aforesaid case the criminal appeal was dismissed without hearing the convicts and on such the Supreme Court remanded the case to the High Court for hearing afresh. The learned counsel for the petitioner is requested to argue the case on merit and on such the learned counsel for the petitioner submits that of course the case is decided on pure question of law as to whether the Consolidation Officer has got jurisdiction to declare the registered deed of adoption is void or voidable or inoperative. The learned counsel has submitted the registered deed of adoption is void and the order of the Consolidation Authority does not require any interference, but, I do not find any merit. The Consolidation Court has got no jurisdiction can declare a registered deed of adoption as void, inoperative and only Civil Court of competent jurisdiction to declare the deed of adoption to be void and inoperative that is why this Court held that the Consolidation Court without having jurisdiction declared the deed void and ordered for entry in the record of rights and consequently the writ was allowed by setting aside the order of the Consolidation Court.

Having considered the facts, aforesaid, I do not find any merit to recall the order, dated 27.07.1999 which were decided



purely on the question of law that since the consolidation Courts have got no jurisdiction to declare a registered deed of adoption to be void or voidable, but, consolidation Courts ordered to enter the lands in name of respondent no. 5 after holding the deed of adoption to be invalid.

Considering the facts, aforesaid, both these MJC applications are dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

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