

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.628 of 2016

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1. Kapil Deo Chauhan, Son of Late Kali Prasad Chauhan
2. Most Lawangi Devi, Widow of Late Sita Ram Chauhan
3. Sunil Chauhan
4. Rajesh Chauhan

Nos. 3 and 4 sons of Late Sita Ram Chauhan

5. Ram Chhabila Chauhan, Son of Late Kali Prasad Chauhan
6. Chandra Bhan Chauhan, Son of Late Tilak Chauhan
7. Kamla Chauhan @ Kamla, Son of Late Tilak Chauhan
8. Dhrub Chauhan, Son of Late Raghunandan Chauhan
9. Bishwanath Chauhan
10. Ramchandra Chauhan
11. Kishore Chauhan

Nos. 9 to 11 sons of Late Nirgun Chauhan @ Nirgun

12. Most. Sahdeva Devi, Widow of Late Ganpat Chauhan
13. Ram Ishwar Chauhan
14. Muna Chauhan
15. Chandan Chauhan

Nos. 13 to 15 sons of late Ganpat Chauhan

16. Indra Deo Chauhan, Son of Late Jagdeo Chauhan
17. Kanchan Chauhan, Son of Late Singhasan Chauhan
18. Prahlad Chauhan @ Prahlad, Son of late Singhasan Chauhan
19. Suraj Bhan Chauhan, Son of late Sukdeo Chauhan
20. Briraj Chauhan, son of late Indrasan Chauhan
21. Dilram Chauhan @ Dilram, son of Indrasan Chauhan
22. Srikant Chauhan, Son of Late Indrasan Chauhan
23. Babu Lal Chauhan, Son of Late Jodhan Chauhan
24. Champa Devi, daughter of late Paltu Chauhan

All residents of village - Kalyanpur Anchal and Police Station Kataya, District - Gopalganj

.... Appellant/s

Versus

1. The State of Bihar through the secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
2. The Joint Director, Consolidation, Muzaffarpur
3. The Deputy Director, Consolidation, Siwan
4. The Consolidation Officer, Kataiya, District - Gopalganj
5. Radha Chauhan, Son of Late Nath Chauhan
6. Harkesh Chauhan, Son of Late Moti Lal Chauhan
7. Kailash Chauhan, Son of Late Rajeshwar Chauhan
8. Ram Naresh Chauhan, Son of Late Rajeshwar Chauhan
9. Ram Autar Chauhan, Son of Late Rajeshwar Chauhan
10. Rama Shankar Chauhan, Son of Jaleshwar Chauhan
11. Uma Shankar Chauhan, Son of Jaleshwar Chauhan
12. Chadra Deo Chauhan, Son of Bhola Chauhan
13. Ram Deo Chauhan, Son of Bhola Chauhan

All residents of village - Kalyanpur, Post office, Anchal and Police Station Kataya, District - Gopalganj



.... Respondent/s

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Appearance :

For the Appellant/s : Mr. K.N. Choubey, Sr.Adv.
Mr. Ambuj Nayan Chaubey, Adv.
Mr. Ashok Kumar Garg, Adv.
Mrs.Ritu Priyadarshini, Adv.
Mr. Dineshwar Pandey, Adv.
Mr. Yogendra Kumar Dwivedy, Adv.
Mr. Animesh Kumar, Adv.
Mr. Prashant Kumar, Adv.
For the Respondent nos.5to13: Mr. Durgesh Nandan, Adv.
Mrs. Manisha Prakash, Adv.
For the State : Mr.P.K.Verma, AAG-5
Mr. Rishi Raj Sinha, SC-19
Mr. Saurabh Kumar, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT
(Per: **HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**)
Date: 28-11-2017

Heard learned counsel for the parties.

2. Writ petitioners-appellants are aggrieved by the order dated 15.03.2016 passed by the learned Single Judge of this Court in CWJC No.13720 of 2007 by which the writ application preferred by these appellants for setting aside the revisional order dated 18.07.2007 passed in Consolidation Revision Case No.14 of 2007 by the Joint Director of Consolidation, Muzaffarpur (respondent no.2) and the appellate order dated 08.02.2007 passed in Consolidation Appeal No.09 of 2006 by the Deputy Director of Consolidation, Siwan (respondent no.3) has been dismissed.

3. Admittedly, petitioners-appellants and the



respondent nos.5 to 13 are the descendants of the common ancestors. It is the case of the petitioners-appellants that they belong to the branch of one Bachan whereas private respondents belongs to the branch of Kanhai. Bachan and Kanhai were two sons of one Ram Bakash Nonia. According to the petitioners, two sons of Ram Bakash Nonia separated from each other and partitioned their ancestral land and came in possession of their respective share of land in the year 1908. In the year 1917, when the revisional survey took place in the village of the petitioners, the name of Bachan was recorded for Khata Nos.71 and 72. So far as khata no.73 is concerned, admittedly, the same being the ancestral land of Bachan and Kanhai had been recorded in revisional survey in the joint name of Bachan and Kanhai in equal share.

4. The petitioners submitted that entry in the revisional survey Khatian remained unchallenged and the parties continued in the possession accordingly. According to the petitioners, the lands recorded under Khata nos.71 and 72 exclusively belong to Bachan and for that reason the legal heirs and representatives of Bachan partitioned those land under Khata nos.71 and 72. It is their further case that the lands under Khata nos.71 and 72 were also dealt with and transfer deeds i.e. sale deeds, gift deeds were executed in favour of different persons and the transferees were also mutated in the



records and they are in possession and paying rent to the government. Some instances have been provided in the writ application.

5. On the initiation of the consolidation proceeding in the village, a draft publication was made under Section 8 of the Bihar Consolidation Act, 1957 as per existing possession and title, lands of old khata nos.71 and 72 were prepared in the name of the petitioners whereas land of khata no.73 was prepared half in the name of the petitioners and half lands were prepared in the name of the respondents as per their title, share and possession and new khatian was published and given to the petitioners and private respondents.

6. At this stage, the respondents filed objection under Section 10(4) before the Consolidation Officer, Kataiya claiming that they are also entitled for $\frac{1}{2}$ share in old khata nos.71 and 72. It is their claim that these lands are also ancestral lands like lands of khata no.73 and accordingly they prayed to amend the Khatian. Three cases were filed which were numbered as 108 of 1989 filed by Radha Nonia, Case No.327 of 2004 by Chandradeo and Ramdeo and Case No.328 of 2004 by Harikesh and others.

7. A perusal of the order contained in Annexure-2 series showing various orders passed by the Consolidation Officer, it appears that the objectors were given several opportunities to produce evidences and ultimately all the three cases were dismissed for not



submitting the evidences in support of their cases.

8. Being aggrieved by the orders passed by the Consolidation Officer, Kataiya in all the three cases only one appeal being Case No.09 of 2006 was filed under Section 10 (6) of the Consolidation Act before the Deputy Director, Consolidation, Siwan. The said appeal was heard and finally allowed.

Appellate Order

9. The Appellate Authority was of the view that the disputed land was recorded in the old khatian in the name of Ram Bakash Nonia and the fact that the khata no.73 has been opened in the joint name of Bachan and Kanhai goes to show that they were in jointness, therefore the opening of khata nos.71 and 72 in the name of Bachan alone cannot disprove the factum of jointness. Further the Appellate Authority drew an adverse inference against the appellants because they could not submit any paper of settlement according to their own story that the lands appertaining to khata nos.71 and 72 were settled by Hathua Raj in favour of Bachan alone by virtue of services rendered by him in Hathua Raj. The Appellate Authority has, however, taken note of the evidences produced on behalf of the present appellants who were respondents before the Appellate Authority. The photocopy of Hal Survey Khatian, photocopy of Bainama document no.8444, photocopy of gift deed no.11605 and the



revenue receipts of the year 1984 and 1985 appertaining to khata no.71 measuring 3 bighas, 14 katha, 15 dhur and further rent receipts of the year 1988-89, 1981-82, 1976-77 and 1975-76 were also produced .

10. The Appellate Authority came to a conclusion that dismissal of the objection by the Consolidation Officer was not correct and being the local officer he should have done physical verification and local inspection of the land which was not done. The Appellate Authority found that the Consolidation Officer had passed a very short and cryptic order, therefore the order is bad. The story of settlement by Hathua Raj in favour of Bachan has not been believed. The Appellate Authority has therefore held that the private respondents of this appeal are entitled for $\frac{1}{2}$ share also in khata nos.71 and 72.

Revisional Order

11. The revision application preferred under Section 35 of the Consolidation Act against the order of the Appellate Authority was also dismissed by the Joint Director holding that there is no illegality or infirmity in the order. The learned Single Judge while hearing the writ application held that since both the authorities have recorded concurrent findings of fact that the entire lands in question are the ancestral properties, therefore the Court did not find any good



ground to interfere with the orders impugned.

CONSIDERATION

12. In appeal before us, Sri K.N. Chaubey, learned senior counsel representing the appellants submits that entry in the revisional survey as regards khata nos.71 and 72 is clearly showing that it is Bachan Nonia alone who has got title and possession over the land appertaining to those khatas. Learned senior counsel submits that the khatian was also published on 9th November, 1917 and this has never been challenged. Learned senior counsel further submits that although three objections were filed before the Consolidation Officer, but the orders passed in the three objection cases came to be challenged in only one appeal and, therefore, the only appeal itself should have been confined to one objection case. In such circumstance there being no appeal against the orders passed in two other objection cases, that order passed by the Consolidation Officer in two cases will attain finality. It is further submitted that finality of orders passed in two objection cases shall operate as 'Res-judicata'. Reliance has also been placed on a decision of the coordinate Bench of this Court in LPA No.216 of 2016 which was disposed of on 11.08.2017. In the said case, the coordinate Bench of this Court has upheld the order passed by the learned Single Judge allowing the writ application on the ground that only one appeal against the decision in



three cases was preferred, this was in view of the law laid down by the Hon'ble Apex Court in the case of Sheodan Singh Vs. Daryao Kunwar, reported in AIR 1966 SC 1332. Learned senior counsel submits that on this ground alone the order passed by the appellate authority and the revisional authority are fit to be set aside.

13. On the other hand, learned counsel representing the respondents submits that both the appellate authority as well as the revisional authority have rightly passed the orders impugned in the writ application. The grounds on which both the authorities have passed the order have been agitated once again before us.

14. We have considered the rival submissions at the bar and perused the materials available on the record. It appears to us that the contention of the learned senior counsel that only one appeal was preferred against three separate orders though of the same date in three separate cases of objection which was not in accordance with law has got force. In the case of Sheodan Singh Vs. Daryao Kunwar (supra), the Hon'ble Supreme Court was considering a question raised as to applicability of the principle of res-judicata in a case where out of four appeals preferred by the appellant against a common judgment and decree in four separate suits involving common issues related to respective rights of the parties to the suit properties, two appeals were dismissed on the ground of limitation in one case and on the ground



of failure of the appellant to apply for translation and printing of the record as required by the Rules of the High Court in another case, it was held that the other two appeals shall be liable to be dismissed by applying principles of res-judicata. This view was taken by the Hon'ble Supreme Court because the judgment of the Additional Civil Judge showed that there were five issues common to all the four suits which were decided by the learned Additional Civil Judge after consolidating all the four suits. All the four suits were decided on the same day by the same judgment and therefore if two of the appeals out of four were dismissed on one ground or another, the judgment and decree rendered in those two suits attained finality. After discussing the facts of the case, the Hon'ble Supreme Court inter alia held as under:-

“.....We cannot, therefore, accept the contention that even though the trial court may have decided the matter on the merits there can be no res judicata if the appeal court dismisses the appeal on a preliminary ground without going into the merits, even though the result of the dismissal of the appeal by the appeal court is confirmation of the decision of the trial court given on the merits. Acceptance of such a proposition will mean that all that the losing party has to do to destroy the effect of a decision given by the trial court on the merits is to file an appeal



and let that appeal be dismissed on some preliminary ground, with the result that the decision given on the merits also becomes useless as between the parties. We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.”

15. In the present case, the Consolidation Officer dismissed all the objections involved in three separate cases raising common issues and the order rejecting the objection was passed on the same day in all the three cases. Thus, if only one appeal was filed by the objectors, the appeal was required to be restricted with respect to one case only. In such circumstance, the decision of the Consolidation Officer rejecting the objection in other two cases against which no appeal could be preferred would attain finality. If the decision of the Consolidation Officer in two objection cases attained finality, the same cannot be set at naught by entertaining one appeal and allowing the same. The contention of the learned senior counsel



has though force, but there is nothing on record before us to show that any objection as to maintainability of a consolidated appeal before the Deputy Director, Consolidation against all the three objection cases were taken by the present appellants, who were respondents before the appellate authority. It appears from the record that the objectors of all the three cases joined together and filed one consolidated appeal. Since there is nothing before us to find out whether any objection was taken on behalf of the respondents at the appellate stage, we would not record our opinion on this issue at this stage.

16. A perusal of the order passed by the Appellate Authority would show that he was of the view that the Consolidation Officer had passed a short and cryptic order without locally inspecting the land and without spot verification. In our view, this was a correct finding of the Appellate Authority, therefore, the Appellate Authority was required to set aside the order passed by the Consolidation Officer and should have further directed him to pass a fresh order after thorough verification, but having said that, the Appellate Authority himself proceeded to decide the appeal on the mere contentions of the parties. In our opinion, the contention of the appellants that the land appertaining to khata nos.71 and 72 have been dealt with by the legal heirs of Bachan Nonia in past by executing the transfer deeds and gift deed and the transferees have got heir name mutated in respect of the



said piece of land and are in possession were required to be verified before taking final view of the entire matter. The Appellate Authority has recorded that the lands appertaining to khata nos.71 and 72 were recorded in the old khatian in the name of Ram Bakash Nonia, but from where this finding has come is also not clear from the impugned order passed by the Appellate Authority. The revisional authority has done no better by just rewriting the views of the Appellate Authority briefly and then confirming the same.

17. In view of the discussions and observations made hereinabove, in our opinion, the orders passed by the Consolidation Officer, Kataiya, the appellate authority and the revisional authority are all bad in law and those are not fit to sustain. As a result, all the orders passed by the Consolidation Officer, appellate authority and revisional authority are hereby set aside. The Consolidation Officer, Kataiya shall examine the objections under Section 10(4) of the Consolidation Act after giving appropriate opportunities of hearing to both sides, allowing them to place their evidences and after spot verification. The Consolidation Officer shall pass an appropriate order on the objections of the objectors (private respondents) within a period of six months from the date of receipt/production of a copy of this order. The impugned order passed by the learned Single Judge dismissing the writ application is also set aside and the writ



application as well as present appeal are allowed to the extent indicated hereinabove.

18. There will, however, be no order as to cost.

(Rajeev Ranjan Prasad, J)

Ajay Kumar Tripathi, J: I Agree.

(Ajay Kumar Tripathi, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	14.11.2017
Uploading Date	28.11.2017
Transmission Date	N/A

