

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5095 of 2008

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1(i) Harilal Bhagat
1(ii) Jalendhar Bhagat
1(iii) Butan Bhagat
1(iv) Ram Kumar Bhagat (minor son)
All 1(i) to 1(iv) are son of Late Bir Bahadur Bhagat
1(v) Pawan Kumar, minor son of Late Vijay Bhagat
1(vi) Baby minor daughter of late Vijay Bhagat
1(vii) Most Parwari, wife of late Bir Bahadur Bhagat
1(viii) Manorama Devi, wife of late Vijay Bhagat
2. Nand Gopal Bhagat, son of late Dhanraj Bhagat, Residents of Village Kuwaridih,
P.O. Bhorey, P.S. Bhorey, District Gopalganj.

.... Petitioners

Versus

1. The State of Bihar
2. The Joint Director Consolidation, Muzaffarpur
.... Respondents 1st Set.

3. Rama Shankar Bhagat, Son of Late Natha Bhagat
4(i) Raj Kishore Bhagat
4(ii) Bhagwan Bhagat
4(iii) Prem Sagar Bhagat
4(iv) Ramawati Devi
4(v) Premawati Devi
4(vi) Johriya Devi
4(vii) Tetri Devi
4(viii) Kolebhani Devi

Sr. 3 and 4 are village-Koela Dewa Semarbari, P.S. Mirganj, P.O. Mishra,
Batarahan, District Gopalganj.

..... Respondents 2nd Set.

5. Ram Naresh Bhagat, Son of Late Chhokat Bhagat, resident of village-Inderpatti,
P.O. & P.S. Kateya, District Gopalganj

..... Respondents 3rd Set.

6. Nand Kishor Bhagat
7. Deo Nandan Bhagat

Both sons of Chhathu Bhagat, resident of village- Kurwa, P.O. Radhaganj, P.S.
Mirganj, District Gopalganj

8. Jyotish Lal, son of Suryabali Bhagat, Resident of village- Kurwa, P.S.
Radhaganj, P.S. Mirganj, District Gopalganj.

..... Respondent 4th Set.

9(i) Baliram Bhagat
9(ii) Amerjit Bhagat
9(iii) Surya Nath Singh, all son of Late Dhanraj Bhagat, resident of village-
Kuaridih, P.O. Bhorey, P.S. Bhorey, District Gopalganj.

..... Respondent 5th Set.

Appearance :

For the Petitioners : Mr. Nagendra Rai, Adv
Mr. Navin Nikunj, Adv.



For Respondent No. 3 & 4 : Mr. Rajendra Prasad, Adv.
For the State Mr. Kumar Alok, SC-7
Mr. Neeraj Kumar, AC to SC-7

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**
ORAL JUDGMENT
Date: 28-03-2017

1. Heard learned counsel for the petitioners, learned counsel appearing for private respondents as well as learned S.C.-7, appearing for the State.

2. This petition has been preferred for quashing the order dated 09.01.2008 passed by the Joint Director, Consolidation, Muzaffarpur under Section 35 of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 in Revision Case No. 292/92 by which and whereunder he set aside the order dated 22.10.1990 passed by the Consolidation Officer, Bhorey as well as order dated 21.04.1992 passed by the Deputy Director, Consolidation, Siwan in Consolidation Appeal No. 248/1991.

3. The petitioners claimed that R.S. Plot No. 7, 66 and 112 situated in village Kuaridih, P.S. Bhorey District Gopalganj were originally recorded in the name of Mangaru Koeri, who had one son, namely, Ram Lagan. The only son of Mangaru Koeri, namely, Ram Lagan had one wife, namely, Smt. Daudi and two daughters, namely, Marachhiya Devi and Ugami Devi @ Udiya Devi. The said Ugami Devi @ Udiya Devi died issueless. Ram Lagan as well as his wife



Daudi also died leaving behind only legal heir, namely, Marachhiya Devi, who, on 10.06.1946, transferred the above stated plots to Dhanraj Bhagat by executing a registered sale deed. The aforesaid Dhanraj Bhagat was father of original petitioners. After purchasing the aforesaid plots, Dhanraj Bhagat came in possession of the aforesaid land, got mutated his name and started paying rent to the State. At the time of abolition of the Zamindari, the Zamindar filed return in the name of aforesaid Dhanraj Bhagat. During consolidation proceeding, Takseem chak was also prepared in the name of said Dhanraj Bhagat. However, the respondents no. 3 and 4 filed objection under Section 10(2) of the Consolidation Act claiming that aforesaid Ram Lagan had two wives namely, Daudi and Dhaneshwari Devi. Daudi had two daughters, namely, Marachhiya Devi and Ugami Devi @ Udiya Devi out of whom, Ugami Devi @ Udiya Devi died issueless. Likewise, second wife Dhaneshwari Devi had one daughter, namely, Sundari Devi @ Sunari Devi. The aforesaid Sundari Devi @ Sunari Devi executed gift deed in respect of the disputed plots in favour of respondent no. 3 and 4 in the year 1982 and after execution of the aforesaid gift deed, respondent no. 3 and 4 came in possession of the aforesaid plots. The Consolidation Officer enquired into the claim of both the parties and rejected the objection of respondent no. 3 and 4 passing order dated 22.10.1990 against which respondents no. 3



and 4 filed Appeal No. 248/1991 in the court of Deputy Director of Consolidation, Siwan but their appeal was, too, dismissed vide order dated 21.04.1992. Thereafter, respondent no. 3 and 4 preferred Revision No. 292/ 1992 before the Joint Director, Consolidation, Muzaffarpur, who vide order dated 09.01.2008 allowed the aforesaid revision.

4. Learned counsel appearing for the petitioners challenged the impugned order on the ground that the Joint Director, Consolidation while exercising of power vested into him under Section 35 of the Consolidation Act assumed the power of original jurisdiction though he had got no right to assume and exercise the power of original court. He further submitted that Joint Director, Consolidation passed a non speaking order and failed to take note of this fact that two subordinate courts rejected the claim of respondents no. 3 and 4. Learned counsel appearing for the petitioners cited a decision reported in **1996(2) PLJR 924 (Jagu Mallah & others v. State of Bihar and others)** in which it has been held by a co-ordinate Bench of this Court that *“the Joint Director has no power while exercising revisional jurisdiction, to set aside the findings of fact recorded by the Deputy Director after considering the entire materials on record and substitute his own finding de novo assessing the evidence on record.”*

5. On the other hand, learned counsel appearing for the



respondents no. 3 and 4 supported the impugned order arguing that petitioners failed to produce their sale deed before the Joint Director, Consolidation, Muzaffarpur at the time of hearing of Revision Case No. 292/92 and moreover, the Joint Director, Consolidation, Muzaffarpur found that Ram Lagan had two wives and the daughter of second wife executed gift deed in favour of respondents no. 3 and 4 and, therefore, finding of the learned Joint Director, Consolidation, Muzaffarpur is proper and, so, there is no need to interfere in the finding of Joint Director, Consolidation by this Court under the jurisdiction of Article 226 of the Constitution.

6. It is an admitted position that not only Assistant Consolidation Officer but the Deputy Director of Consolidation also rejected the objection of respondents no. 3 and 4 after analyzing the materials available before them and, therefore, it is apparent that there was concurrent findings of two courts on the facts. The Joint Director, Consolidation was exercising the power vested in him under Section 35 of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 which says that “*The Director of Consolidation may of his own motion or on the application of any party or on reference being made by any subordinate authority, call for and examine the record of any case decided or proceedings taken by such authority for the purpose of satisfying himself as to the regularity of the proceeding; or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings,*



and may after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.”

7. The aforesaid provision goes to show that revisional court can only interfere into the finding of the subordinate courts when the aforesaid finding appears to be perverse and illegal but it does not mean that the revisional court can substitute his finding upon the findings of subordinate courts, if the findings of subordinate courts is not perverse or illegal.

8. In the case of **Jagu Mallah & others v. State of Bihar and others** (Supra), a co-ordinate Bench of this court has already held that the Joint Director has no power while exercising revisional jurisdiction, to set aside the findings of fact recorded by the Deputy Director after considering the entire materials on record and substitute his own finding de novo assessing the evidence on record.

9. In the present case, admittedly, the Assistant Consolidation Officer as well as Deputy Director of Consolidation found that the petitioners were in possession of the disputed plots and the materials placed before them were sufficient to show that Ram Lagan had only one wife but when the matter came before the Joint Director, Consolidation in revision, the Joint Director, Consolidation, Muzaffarpur started collecting the evidence himself and did not take any pain to peruse the lower court record. Therefore, in my view, the



Joint Director, Consolidation, Muzaffarpur committed an error in passing the impugned order and, hence, the impugned order cannot sustain in the eye of law.

10. On the basis of aforesaid discussions, this petition is allowed and the impugned order dated 09.01.2008 passed in Revision Case No. 292/ 92 stands quashed.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.04.2017
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