

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.182 of 2017

In

Civil Writ Jurisdiction Case No. 5859 of 1987

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Ramadhar Chaudhary & Ors

.... Petitioner/s

Versus

Hari Ram Choudhary & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyanendra Kumar Shukla

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

7 14-08-2018 Heard Mr. Ashok Kumar Choudhary, learned counsel
for the petitioners.

The petitioners have filed this civil review petition to review the order dated 14.08.2013 passed in CWJC No.5859 of 1987 by which the order passed by the Joint Director, Consolidation and the order passed by the Consolidation Officer as contained in Annexure 1 and 7 of the writ petition were set aside and the writ petition was allowed.

Learned counsel for the petitioner submits that admittedly Ramlal Chaudhary had four sons namely Mewa Chaudhary, Mohit Chaudhary, Thakur Chaudhary and Swamvar Choudhary and the lands of Khata No.15 and 16 were recorded in the name of the sons of Ramlal but after passage of time, the descendants of Mewa became extinct as their descendants, Churan



and Rajpati died issueless on such, the descendants of Thakur and Swamvar filed Title Suit No.115 of 1968 that the branch of Mewa Choudhary became extinct and Hariram Choudhary and others, opposite party Nos.1 to 3 are not the descendants of Mewa Choudhary but the suit was dismissed. Thereafter, the Consolidation Officer deleted the name of opposite parties from the record of rights. The O.P. Nos.1 to 3 filed consolidation appeal and the appellate authority set aside the order of the consolidation authority and allowed the appeal holding that O.P. Nos.1 to 3 are the descendants of branch of Mewa Choudhary on the basis of the judgment and decree passed in Title Suit No.115 of 1968. It is further submitted that the petitioners preferred consolidation revision before the Director, Consolidation and the Director, Consolidation vide order as contained in Annexure 1 of the writ petition set aside the order of the appellate court and restored the record of rights in the name of the petitioners primarily on the ground that the judgment and decree passed in Title Suit No.115 of 1968 is under challenge in First Appeal No.378 of 1982. CWJC No.5859 of 1987 was ordered to be heard after disposal of First Appeal No.378 of 1982 but First Appeal No.378 of 1982 was dismissed for non-prosecution and thereafter CWJC No.5859 of 1987 was heard on 14.08.2013 and the same was allowed.



Consequently, the order as contained in Annexure 1 and 7 of the writ petition were set aside holding that the finding of the Civil Court has got finality in view of the fact that First Appeal No.378 of 1982 has been dismissed for non-prosecution but now First Appeal No.378 of 1982 has been restored to its original file and, therefore, the findings made in CWJC No.5859 of 1987 on 14.08.2013 is required to be reviewed.

Admittedly, the dispute is that the descendants of Swamvar and Thakur, two sons of Ramlal, filed suit and prayed for declaration that the opposite party Nos.1 and 3 are not descendants of Mewa, the first son of Ramlal and, therefore, the lands of Khata No.15 and 16 be exclusively recorded in the name of the descendants of Thakur and Swamvar and not in the name of opposite party Nos. 1 to 3 but the aforesaid suit was dismissed and the learned Judge found that O.P. Nos.1 to 3 are the descendants of the branch of Mewa, first son of Ramlal. Accordingly, the record of rights prepared in the name of descendants of Thaur and Swamvar were ordered to be corrected and the names of O.P. Nos.1 to 3 were also directed to be included in the record of rights in view of the judgment passed in Title Suit No.115 of 1968. The Joint Director, Consolidation set aside the order entering the name of O.P. Nos.1 to 3 in the record of rights with regard to the lands



of Khata No.15 and 16 along with the descendants of Thakur and Swamvar primarily on the ground that the judgment of the Sub Judge is challenged under appeal vide First Appeal No.378 of 1982 and the same has got no finality. After dismissal of First Appeal on account of non-prosecution, this writ petition bearing CWJC No.5859 of 1987 came up for hearing before Hon'ble Mr. Justice V.Nath and his Lordship, the then, set aside the order as contained in Annexure 1 and 7 of the writ petition on merit that the Consolidation Officer as well as Joint Director, Consolidation illegally ordered for expunging the name of O.P. Nos.1 and 3 from the record of rights of the Consolidation, even though there is a finding of the competent Civil Court that the O.P. Nos.1 to 3 are the descendants of Mewa, first son of Ramlal and the descendants of Mewa did not become extinct learned Judge has set aside the order aforesaid on merit and also recorded finding in para 9 that since the judgment of the competent Civil Court got finality on account of dismissal of First Appeal for non-prosecution but the findings does not require to be reviewed because the same was recorded on merit after considering all the facts and not solely on the ground that the First Appeal has been dismissed for non-prosecution.

Therefore, I do not find any reason to interfere and



review the order dated 14.08.2013 passed in CWJC No.5859 of 1987. Accordingly, this civil review petition is dismissed.

However, it is made clear that if the First Appeal preferred by the petitioners is allowed, the petitioners are entitled to get the record of rights corrected in accordance with judgment passed by the First Appellate Court in the First Appeal.

(Prabhat Kumar Jha, J)

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