

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10226 of 2008

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Krishna Kumar Gupta

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MAHENDRA THAKUR
Mr. Ashok Kumar Sinha 10

For the Respondent/s : Mr. Lallan Prasad
Mr. Rikesh Sinha
Mr. Dilip Kumar Misra
Mr. Umesh Prasad
Mr. Shashi Bhushan Pandey
Mr. Pramod Manbansh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 12-02-2018

1. Heard the learned counsel for the petitioners, learned counsel for the State and learned counsel appearing on behalf of the respondent No.9 and 10 who were substituted by their legal heirs. Nobody appears on behalf of the respondent No.5, 6, 7 and 11 and other respondent No.12 to 18.

2. The petitioner filed this writ petition to set aside the order date 18.06.2018 passed in Consolidation Revision Case No.5 of 2000 by which the Director, Consolidation set aside the order of the Deputy Director, Consolidation dated 29.11.1999 in Consolidation Appeal No.19 of 1998 and restored the order of the Consolidation Officer



passed in Consolidation Case No.618 of 1991. The facts which are relevant for the disposal of this writ petition are that the lands of R.S. Khata No.214 and 488, Area 3 acres and 8 decimals were recorded in the name of the petitioner and others in the revisional survey. The lands was recorded in the cadastral survey in the name of Chatru Raut. Chatru Raut got three sons, namely, Prayag Raut, Abhilekh Raut and Dhajju Raut. The respondents No.5, 6 and 7 are descendent of Prayag Raut.

3. The learned counsel for the petitioner submits that Abhilakh Raut son of Chatru Raut executed a deed of mortgage with regard to the entire lands of khata No.(Old) No.223 plot No.1751-52 and 69. The suit was filed and the petitioner got the lands by virtue of the judgment and decree passed in the mortgage suit. Accordingly, the names of petitioner and others were recorded during the revisional survey records of rights. The respondent No.5, 6 and 7 filed petition before the Consolidation Officer for correction of records of rights on the ground that Chatru Raut got three sons, namely, Prayag Raut, Abhilekh Raut and Dhajju Raut. There was partition in the year 1930 and 3.08 acre lands fell in the share of Prayag Raut. Respondent No.5, 6, 7 inherited property from Prayag Raut and they are his descendents. The Consolidation Officer ordered for correction of the survey record of rights in the consolidation proceeding on 5.3.1992.



The petitioner filed Consolidation appeal No.19 of 1998 and the Deputy Director rightly held that by virtue of the judgment passed in Civil suit, names of Krishna Kumar Gupta and others were recorded in the records of rights during revisional survey. The respondent No.5 to 7 and others preferred consolidation revision but the Director has illegally held that the order passed by the Civil Court in mortgage suit is inoperative. The lands remained in possession of respondent No.5 and 7 and there was partition in the year 1930 among the three brothers of Prayag Raut. The learned counsel for the petitioner submits that the consolidation Court has got no jurisdiction to hold that the judgment and decree passed by the Civil Court in mortgage suit is inoperative and the respondent No.5 and 6 have perfected their title by virtue of adverse possession.

4. Mr. Pramod Mishra, learned counsel for the respondent No.9 and 10 submitted that the learned Director has discussed all the facts and documents and rightly held that before execution of mortgage deed in the year 1916 by Abhilakh Raut, there was partition among the three brothers, son of Chatru Raut in whose name the lands were recorded in cadastral survey of record of right. Therefore, Abhilakh played fraud and included the lands of Prayag Raut the ancestor of respondent No.5 to 7 in the mortgage deed but in spite of the judgment of the Civil Court and delivery of possession by the



Civil Court in pursuance of the decree, the lands remained in the possession of respondent No.5 to 7, respondent No.9 and 10 are purchasers from respondent No.5 to 7.

5. Having considered the submission of both the sides, the sole question arises for consideration whether the consolidation Court has got jurisdiction to declare the judgment and decree passed by Civil Court as inoperative and illegal and the Consolidating Court can declare a person to have perfected the title by virtue of adverse possession? Admittedly, the lands of khata No.233 was recorded in the name of Chatrue Raut. Abhilakh Raut, son of Chatru Raut executed a deed to mortgage in the year 1916. A suit was filed for closure of mortgage and the same was decreed. The father of the petitioner purchased the lands and got delivery of possession in execution of the decree passed by the Civil Court. Accordingly, during the course of revisional survey, the names of petitioner and his family members were recorded by virtue of the judgment and decree passed in mortgage suit. The Director, Consolidation has held that the judgment and decree passed in mortgage suit is inoperative and not binding. I find that the Director has got no jurisdiction under the Act to hold a judgment and decree of the Civil Court inoperative and declared the right and title of a person by virtue of adverse possession. Therefore, the order of the Director is illegal and not sustainable in the



eye of law. Accordingly, the order dated 18.06.2008 passed in Consolidation Revision Case No.5 of 2000 as contained in Annexure ‘A’ is set aside. This writ petition is accordingly allowed. The Finding in the writ petition shall not come in the way of any party, if any of them file suit in Civil Court.

(Prabhat Kumar Jha, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

