

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4984 of 1983

- 1.1. Most Nirmala Devi, Wife of Hari Bans, D/o of late Most. Indrasna Kuer, R/o Village and P.O. Mathila Via P.S. Koransaraiya, Distt. Buxar.
- 1.2. Sheoji Singh, Son of late Dadan Singh, and late Smt. Ramala Devi, who was D/o of late Most. Indrasna Kuer Resident of Village and P.O. Kopwa, P.S. Koransaraiya, District- Buxar, Presently residing in Village- Niranjapur, P.S. Diwan Ke Barka Gaon, P.S. Koransaraiya, District- Buxar.
- 1.3. Satya Narain Singh, Son of late Dadan Singh and late Smt. Ramala Devi, Who was d/o of late Most. Indrasna Kuer, Resident of Village and P.O. Kopwa, P.S. Koransaraiya, District- Buxar, Presently residing in Village- Niranjapur, P.S. Diwan Ke Barka Gaon, P.S. Koransaraiya, District- Buxar.
- 1.4. Sanjay Kumar Singh, Son of late Dadan Singh, and late Smt. Ramala Devi, Who was D/o late Most. Indrasana Kuer, Resident of Village and P.O. Kopwa, P.S. Koransaraiya, District- Buxar, Presently residing in Village- Niranjapur, P.S. Diwan Ke Barka Gaon, P.S. Koransaraiya, District- Buxar.
- 1.5. Renu Devi, D/o of late Dadan Singh and late Smt. Ramala Devi and Who was D/o of late Indrasna Kuer, Resident of Village and P.O. Kopwa, P.S. Koransaraiya, District- Buxar, Presently residing in Village- Niranjapur, P.S. Diwan Ke Barka Gaon, P.S. Koransaraiya, District- Buxar.
- 1.6. Sadhana Devi, D/o late Dadan Singh, and late Smt. Ramala Devi who was D/o of late Indrasna Kuer, Resident of Village and P.O. Kopwa, P.S. Koransaraiya, District- Buxar, Presently residing in Village- Niranjapur, P.S. Diwan Ke Barka Gaon, P.S. Koransaraiya, District- Buxar.

... .. Petitioner/s

Versus

1. The Joint Director of Consolidation, Muzaffarpur
2. The Deputy Director of Consolidation, Bhojpur at Arrah.
3. The Consolidation officer, Dumraon,

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Anand Kr.Verma, Advocate
For the Respondent/s : Mr.Rajendra Pd, SC-1

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 17-10-2019

An order dated 22.09.1983, passed by the Joint Director of Consolidation in Case No. 461 of 1979 under Section 35 of



Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act') is under challenge in the present writ application.

2. I have heard learned counsel for the parties.

3. This is to be noted that this writ application was earlier allowed by a judgment and order of this Court dated 23.08.1994. Against the said judgment and order dated 23.08.1994, a Letters Patent Appeal was preferred by respondent No. 4 giving rise to LPA No. 117 of 1994. A Division Bench of this Court allowed the appeal and remanded the matter back for the Single Bench for decision in the matter afresh on merits. Relevant part of the order dated 06.08.1996, passed in LPA No. 117 of 1994 reads as under :

“Learned counsel for the Appellant has brought to the notice of this Court that the aforesaid judgment of this Court in the case of R.S.Pathak (supra) has been over-ruled by a Division Bench of this Court in the case of Junaid Khan Versus The State of Bihar and others reported in 1995(2) PLJR, 301, wherein it has been held that the provisions of the Indian Evidence Act are not strictly to be followed in the matter of consolidation proceedings.

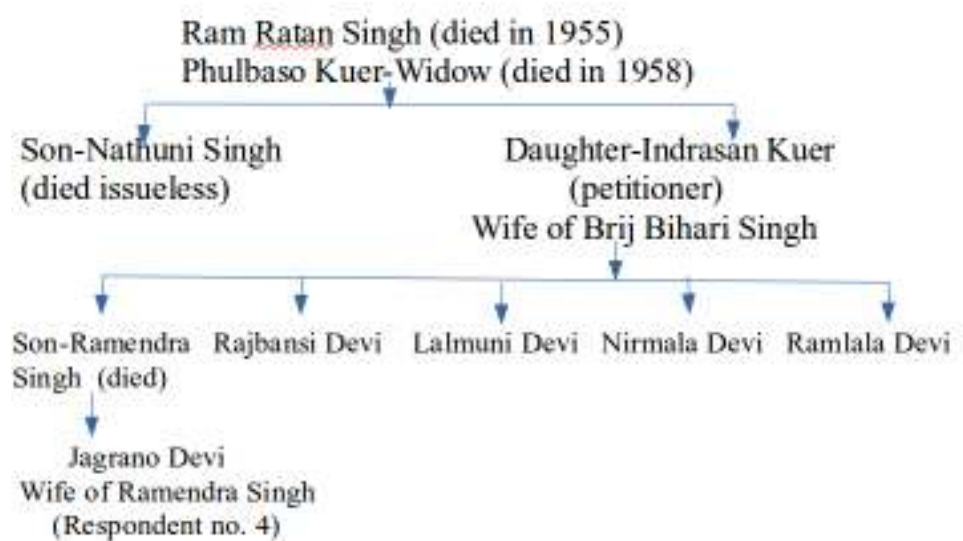
This fact has also been accepted by the learned counsel for the Respondent. In this background, the impugned judgment dated 23rd August, 1994, passed by learned Single Judge in C.W.J.C. No. 4984 of 1983 is set aside.



The matter is remitted back to the learned Single Judge to decide the matter on merits.

This Letters Patent Appeal is, accordingly, allowed.”

4. In order to appreciate the issue involved in the present writ application certain facts and a genealogical table needs to be taken note of. The genealogical table runs as under :-



5. It is evident from the above noted genealogical table that the common ancestor Ram Ratan Singh had one son, Nathuni Singh and a daughter Indrasan Kuer. Indrasan Kuer was the original petitioner, who died during pendency of this writ application and has been substituted by her legal heirs under the orders of this Court. Indrasan Kuer, according to the writ petition, was married to one Brij Bihari Singh, before Ram Ratan Singh had died. Ram Ratan Singh died in 1955 leaving behind his widow Phulbaso Kuer, his son Nathuni Singh and daughter



Indrasan Kuer (the deceased petitioner). Phusbaso Kuer died in 1958. She, as asserted on behalf of the petitioner, had executed two deeds of gift in her favour and in favour of one of her sons Ramendra Kishore Singh, jointly in respect of two villages. Phulbaso Kuer died in 1958 and Nathuni Singh also died subsequent thereto. It is the case of the substituted petitioners that Indrasan Kuer was thus the nearest heir to succeed the properties of her father, mother and brother.

6. It is the petitioners' case that during the revisional survey settlement, the lands, which belonged to Ram Ratan Singh, were recorded in the name of Indrasan Kuer alone. The survey records of right were published in the year 1970. According to the original petitioner, she paid rent to the State of Bihar as *raiyat*, against which rent receipts were granted in her favour.

7. A consolidation proceeding was started subsequently and the register of disputed lands was prepared in the name of the original petitioner. Certificate of transfer was also granted to her alone, by the Consolidation Officer, Dumraon.

8. It is evident from the genealogical table that Indrasan Kuer had one son Ramendra Kishore Singh and four daughters. Widow of Ramendra Kishore Singh, namely, Jagrano Devi



(original respondent no. 4, who died during pendency of this application and her name has been expunged in the absence of any heir/ legal representative to represent her state) filed an application before the consolidation officer in the year 1978-79 leading to Registration Case No. 111 of 1978-79 claiming her share, being widow of Ramendra Kishore Singh. The consolidation officer had rejected her application by an order dated 06.01.1979 but had made an observation that she would be at liberty to approach the appropriate authority under Section 35 of the Act, if she wanted any correction in the entry made in the register. Subsequent to passing of the said order dated 06.01.1979, the Consolidation Officer passed yet another order dated 29.01.1979 directing recording of the name of the original petitioner Indrasan Kuer as well as original respondent no. 4 (Jagrano Devi) by correcting the *khatiyani*. The subsequent order dated 29.01.1979 was challenged by the petitioner before the Deputy Director of Consolidation, who, by his order dated 28.03.1979, allowed the appeal and set aside the order as contained in Annexure-2. While setting aside the order, the Deputy Director, Consolidation held that after the consolidation scheme having already been confirmed in respect of the villages concerned, the Consolidation Officer had no jurisdiction to make



any correction. He observed that respondent no. 4 shall be at liberty to make an application under Section 35 of the Act. It is in this background that respondent no. 4 filed an application before the Joint Director, Consolidation under Section 35 of the Act which has been allowed by the impugned order holding that names of the petitioner and respondent no. 4 be recorded in the register with half and half each of the land and *Chakpanji* be recorded accordingly.

9. It is the case of the petitioners that as no objection was raised by respondent no. 4 about the entries made in the register of land prepared under Section 9 of the Act, at the stage of Section 10 of the Act, there being bar under Section 10-A of the Act, she could not have raised her objection at a subsequent stage, not even by invoking Section 35 of the Act.

10. The order has been assailed in the present writ application on the basis that the respondent no. 4 had miserably failed to establish the genuineness and effectiveness of the deed of gift dated 27.01.1955 said to have been executed by Phulbaso Kuer in favour of husband of Jagrano Devi. It is also the petitioner's case that, in any event, the Joint Director, Consolidation ought not to have held the deceased respondent entitled to half of the share in the property of Ram



Ratan Singh.

11. As has been noticed above, this writ petition was allowed by the judgment and order dated 23.08.1994 with following observations :-

“12. From consideration of the facts stated above, it is clear that respondent no. 1 has not at all taken into consideration the provision of the Indian Evidence Act as observed earlier. He neither examined any witness for determining the issues in question nor the document relied upon by the parties are legally brought on record. In such view of the matter there cannot be any doubt that in passing the impugned order respondent no. 1 has committed an illegality by not following any procedure required under the Act and the Rules and as such the order impugned cannot be sustained in law and as such liable to be set aside.

13. In the result, this writ application is allowed and the order dated 22.09.1983 as contained in Annexure-4 is set aside. There will be no order as to costs.”

12. The Division Bench of this Court while considering the correctness of the judgment and order dated 23.08.1994 passed in the present case, taking note of a Full Bench decision in case of ***Junaid Khan vs. The State of Bihar and others*** reported in ***1995 (2) PLJR 301*** held that provisions of the Indian Evidence Act were not to be strictly followed in the matters of



consolidation proceedings. On this reasoning, the order earlier, passed in the present case allowing the writ application, was set aside and the matter was remanded back.

13. Respondent no. 4 is reported to be dead and for expunction of her name I.A. No. 03 of 2019 was filed making specific statement in paragraph 2 which is as under :-

“2. That it is humbly stated that Deceased Respondent No. 4-Jagrano Devi died on 13.06.2018 during pendency of the present case. Her husband pre-deceased her. There is no surviving heir to the aforesaid deceased Respondent No. 4 to the knowledge of the deponent.”

14. Since the objection was raised by respondent no. 4 against the entry in the register prepared under the provisions of the Act, the dispute has become academic, as according to the learned counsel for the petitioners consequent upon death of respondent no. 4, the order of the Joint Director, Consolidation dated 22.09.1983 has become inoperative and ineffective.

15. Considering the aforesaid stand on behalf of the petitioners, this application stands disposed of.

Rajesh/-

(Chakradhari Sharan Singh, J)

AFR/NAFR	NAFR
CAV DATE	19.07.2019
Uploading Date	17.10.2019
Transmission Date	NA

