

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7647 of 2011

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RAM LADU ROY S/O Late Musafir Roy, R/O Village - Agiaon, P.S. - Sahar,
District - Bhojpur, Bihar

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR , through the Chief Secretary, Bihar, Patna
2. The Director Of Consolidation H.Q., Bihar, Patna
3. The Deputy Director Of Consolidation, Bhojpur, Ara
4. The Assistant Director Of Consolidation, Bhojpur, Ara
5. The Consolidation Officer, Sahar, District - Bhojpur
6. Lakshmina Devi W/O Ramjee Rai And D/O Ram Janam Rai R/O Village -
Ekwari, P.S. - Sahar, District - Bhojpur At Present Village - Agiaon, P.S.-
Sahar, District - Bhojpur
7. Santosh Kumar Minor, S/O Ram Ashish Roy Unde The Guardianship Of
Ram Ashis Roy, Father And Guardian R/O Village - Etaur, P.S. -
Charpokhari, District - Bhojpur
8. Mira Kumari Minor, D/O Ram Ashish Roy Under Guardianship Of Ram
Ashish Roy, Father And Mother R/O Village - Etaur, P.S. - Charpokhari,
District - Bhojpur
9. Ram Ashis Roy S/O Not Known R/O Village - Etaur, P.S. - Charpokhari,
District - Bhojpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kamal Nayan Choubey, Sr.Advocate with Mr. Sachchida Nand Singh
For the Respondent/s	:	Mr.Arbind Kumar, AC to GA-9
For private Respondent 6:		Mr. Shrinandan Pd. Singh. Mr. Murari Narayan Choudhary

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date : 03-04-2019

Facts of the case have become messy not because of the
complexity of the issue involved but because of two parallel
proceedings, one taken up under Bihar Consolidation of



Holdings Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act') and the other before a Civil Court by way of suit, both involving the same dispute. The decision of the State Government to cancel notification issued under Section 3 of the Act, exercising power under Section 4A of the Act and subsequent interference by this Court in a public interest litigation in case of ***Bihar Rajya Adhivekta Sangh and another vs. State of Bihar and others*** reported in ***1995(2) PLJR 880*** with the said decision of cancellation rendered the situation *messier*. Ere, I take note of those all facts I must refer to at the outset a genealogical table over which there is no dispute to the extent it relates to the petitioner and contesting Respondent No.6, which is as under:-

Raghunandan Rai		
/		
/		
-/------/-		
Chandradeep Rai (Issueless)	Raj Keshwar Rai /	Ram Janam Rai /
	Musafir Rai /	Lakshminia Devi (Respondent No.6)
	Ram Ladu Rai (Petitioner)	

2. On close examination of the pleadings on record, it is easily discernible that main dispute between the parties revolves around two questions of facts; to wit;



(i) Whether Ram Janam Rai, father of respondent No.6 Lakshminia Devi died before coming into force of the Hindu Succession Act, 1956 and

(ii) Whether Ram Janam Rai died in jointness with his brother Ram Keshwar Rai.

3. It is in the background of the numerous developments, which have taken place in the process of adjudication on the aforesaid disputes till passing of the impugned order dated 02.02.2011, by the Director of Consolidation in Consolidation Revision Case No. 3491 of 1988 and 845 of 1979 and 3435 of 1988 under Section 35 of the Act that such developments need to be essentially taken note of before disposal of the present case. Be it mentioned here itself that by the impugned order dated 02.02.2011, learned Director, Consolidation has held that Ram Janam Rai was separate in all respect from Musafir Rai on the date of his death and that he died prior to 1954. The finding arrived at by the Director, Consolidation is against the concurrent findings recorded by the Consolidation Officer in Consolidation Case No. 242 of 1977-78 and 325 of 1977-78 and the order passed by the Assistant Director, Consolidation, Ara in Consolidation Appeal No. 29 of 1981-82 dated 29.10.1988.



4. I have heard Mr. Kamal Nayan Choubey, learned Senior counsel appearing on behalf of the petitioner, Mr. Arbind Kumar, AC to GA-9, learned counsel appearing on behalf of the State of Bihar as well as Mr. Shrinandan Pd. Singh, learned counsel appearing on behalf of private respondent No.6.

5. Respondent No.6, herein, had filed a title suit registered as Title Suit No. 91 of 1975 in the Court of learned Sub-Judge-I, Ara, against entry of the name of Musafir Rai in the entire records of right concerning such plots of her father. She pleaded that her father, Ram Janam Rai died in the year 1947-48 and before his death partition in the family had already taken place. Since Chandradeep Rai died issueless respondent No.6 was entitled for half share in the property of Raghunandan Rai, she being the only issue of Ram Janam Rai. I must notice here that there is dispute in respect of the genealogical table also on the point that father of the petitioner had a daughter also, namely, Lalita Devi, whose sons (respondent Nos. 7 and 9) and daughter (respondent No.8) are there on record. The dispute between the petitioner and respondent no.6 has nothing to do with the said aspect of the dispute. After initiation of the consolidation proceeding, the respondent no.6 filed an objection under sub-section(2) of Section 10 of the Act disputing the nature



of entry in the records of right in the register prepared under Section 9 of the Act, seeking deletion of the name of Musafir Rai from the remark column of different plots of Khata No. 201 wherever only his name was shown and for maintaining the entries in raiyati in column No.2 of the records of rights. Musafir Rai had also filed a case, giving rise to case No. 325 of 1977-78 for deletion of the name of respondent no.6 from Khata Nos. 200 and 201. The, two objections were heard together and the Consolidation Officer by a common order passed in both the cases dated 03.01.1978 held that the petitioner was entitled to half share in lands of Khata Nos. 200 and 201. An appeal was thereafter, preferred by Musafir Rai which was dismissed. He, thereafter, filed a Revision Case No. 357 of 1978-79 under Section 35 of the Act. By an order dated 31.08.1979, the said Revision Case No. 357 of 1978-79 was allowed and the matter was remanded back to the concerned Consolidation Officer, Sahar for deciding the issue afresh after taking evidence on the point of death of Ram Janam Rai and status as regards jointness of the family. The parties, thereafter, adduced their evidence. The Consolidation Officer, this time, by order dated 29.09.1981 passed in Consolidation Case No. 242 of 1977-78/325 of 1977-78 decided the case of the petitioner holding that Ram Janam Rai



died prior to 1956 in jointness and, therefore, daughter of Ram Janam Rai, respondent No.6 was not entitled to any share in the lands of Khata No. 201. Respondent No.6, thereafter, preferred appeal before the Deputy Director, Consolidation, Bhojpur at Ara, which was transferred to the Court of Assistant Deputy Director, Ara. Musafir Rai died, in the meanwhile, and in his place this petitioner, came to be substituted in the consolidation proceeding. A petition on behalf of Manoj Kumar and Meera Kumari was filed claiming themselves to be the son and daughter of the daughter (Lalita Devi) of Musafir Rai. They claimed half share in the property of Musafir Rai. It is the case of the petitioner, however, that their claim was collusive at the instance of respondent no.6. They stood substituted, however, at the appellate stage in consolidation proceeding. The Assistant Director, Consolidation by his impugned order dated 29.10.1988 upheld the finding of the Consolidation Officer and dismissed the appeal preferred by respondent No.6. The typed copy of the said order of the Assistant Director has been brought on record by way of Annexure-3 to this writ application. On perusal of the typed copy of the said order dated 29.10.1988, it can be easily noticed that there is no discussion by him on the merits of the case concerning the dispute between the petitioner and



respondent no.6, except the following conclusion:-

“निम्न न्यायालय के अभिलेख के आलोक से विदित है कि विद्वान चक्रवर्ती पदाधिकारी सहार ने विधिवत सभी मौखिक गवाहों तथा दाखिल कागजी साक्ष्यों के विश्लेषण के उपरान्त सही रूप से अपीलकर्ता का दावा अस्वीकृत कर दिया है। जिसे खंडित करने का कोई औचित्य नहीं है।”

6. This is to be noted that the Stamp Reporter had pointed out defect of the absence of the certified copy of the order dated 29.10.1988 passed in Consolidation Appeal No. 29 of 1981-82. Dealing with the said office note, the petitioner has filed a supplementary affidavit stating that though an application was made for obtaining certified copy, it was informed by the office of the Assistant Director of Consolidation that the file of the case concerned was untraceable and, therefore, certified copy could not be made available. It has been stated in paragraph 5 of the supplementary affidavit that the said order dated 29.10.1988, thus, cannot now be procured. By way of Annexure-10 to the supplementary affidavit, torn copy of the certified copy of the said order dated 29.10.1988 has been brought on record. I have carefully seen the document, which has been brought on record by way of Annexure-10. The operative portion of the order which has been quoted above from the typed copy of the order dated 29.10.1988, is missing in the certified copy, understandably



because Annexure-10 is the torn copy of the certified copy of the order dated 29.10.1988. In any view of the matter, even from the order dated 29.10.1988, brought on record by way of Annexure-3, which is typed copy, it is manifest that there had been complete non-application of mind by the Assistant Director, Consolidation.

7. A revision petition was, thereafter, filed by respondent No.6, giving rise to Consolidation Revision Case No. 3491 of 1988/ 845 of 1979 which has been allowed by the Director, Consolidation as has been noticed above, dealing with the evidence adduced by the parties in course of objection proceeding, which is impugned in the present case.

8. It seems from the pleadings on record that in Revision Case No. 845 of 1979 filed by respondent No.6 in the Court of Director of Consolidation, it was her claim that her father had purchased 2.83 decimal of land in Village- Nawadih in the District of Bhojpur of old Khata No. 52 from one Parwati Kuer which was sold by the father of the petitioner Musafir Rai to one Jamuna Thakur and, therefore, the chak was wrongly prepared in the name of Lalan Thakur and his brothers. This is also to be noted that one revision petition was filed by the petitioner also, giving rise to Revision Case No. 3435 of 1988



against the order of the Assistant Director, assailing the order dated 29.10.1988 to the extent it held Lalita Devi, daughter of Musafir Rai and Manoj Kumar and Meera Kumari, his grandson and grand daughter respectively. This is the background in which the Director, Consolidation heard the three revision application as has been stated in paragraph 20 of the writ petition and disposed them of by common judgment and order.

9. Coming now to the proceedings in the Civil Court, I have already taken note of Title Suit No. 91 of 1975 filed by respondent No.6, which admittedly abated, in view of the notification issued under Section 3 of the Act. She filed another suit, giving rise to Title Suit No. 408 of 1995 before Sub-Judge-I, Ara, seeking the same relief as was sought in Title Suit No. 91 of 1975. Learned Sub-Judge, Ara, however, dismissed the suit as not maintainable mainly on the ground that on the same subject matter a title suit between the parties had already abated, which could revive in due course. A title appeal was filed by respondent no.6 registered as Title Appeal No. 21 of 1999, which was heard and dismissed by learned 4th Additional District Judge, Bhojpur, approving the view taken by learned Sub-Judge-7, Ara, in Title Suit No. 408 of 1995. Respondent No.6, thereafter, preferred a Second appeal, giving rise to S.A. No. 136 of 2006,



which is pending before this Court after admission by order dated 03.12.2008, wherein following substantial questions of law have been framed:-

“(i) Whether a suit for declaration that the plaintiff was the daughter of Ram Janam Rai can be legally abated under the provisions of Section 4(c) of the Consolidation of Holdings and Prevention of Fragmentation Act, 1956 specially when such a declaration is not covered under the Act and can be only decided in a civil suit?

(ii) Whether that part of the suit which was with respect to chak out lands could also be legally abated under the aforesaid provisions of the Act?”

10. Mr. Kamal Nayan Choubey, learned Senior Counsel appearing on behalf of the petitioner has at the very outset, taken me to a photostat copy of the order-sheet of Consolidation Revision Case No. 3491 of 1988 with special reference to the order dated 08.03.2000 itself, which indicates that on a request made by learned counsel for respondent no.6, the revision petition was dismissed. He contends that once the revision petition of respondent no.6 was dismissed by the Deputy Director, Consolidation, there was no occasion for the Director, Consolidation to revive the same nearly seven years after



dismissal Referring to the order-sheet, it has been submitted by him that the order-sheet does not disclose any basis or reason for revival of the revision proceeding. He contends thus, that the impugned order needs interference on this ground alone. I am not able to accept this contention for the reason that the same order-sheet indicates that the petitioner as an Opposite party in the said proceeding had appeared after its revival on 24.04.2007. The order-sheet, further indicates that the petitioner did not participate in the revision proceeding before the Director, Consolidation right from 2007 till passing of the impugned order. There is no stand taken on behalf of the petitioner that he ever raised any objection questioning the maintainability of the proceedings. On the point of finding recorded by the Director, Consolidation, Mr. Choubey has referred to the plaint of Title Suit No. 408 of 1995 in paragraph 2 whereof, she herself has stated that her father Ram Janam Rai died in the year 1947-48. He has submitted that the Consolidation revisional Court ought not to have ignored this aspect which was available before him as by way of evidence. I need not comment upon this submission, in view of the nature of the order, I intend to pass in the peculiar facts and circumstances of the present case, which have been substantially taken note of.



11. Mr. Choubey has also contended that concurrent findings of fact recorded by the Courts below could not have been interfered with by the revisional Court in exercise of power under Section 35 of the Act, which is akin to the power of revision under Section 115 of the Code of Civil Procedure, 1908. The submission cannot be accepted by this Court, in view of the decision in case of **Smt. Sudama Devi vs, State of Bihar reported in 1988 PLJR (NOC) 59.**

12. His further submission is that the view of the Director, Consolidation that respondent no.6 should be treated to be full owner of the land in terms of the Hindu Women's Rights to Property Act, 1937 is completely erroneous. Mr. Choubey is absolutely correct in his submission to this extent since the Hindu Women's Rights to Property Act, 1937 deals with the rights of the widow's. However, right of a daughter to inherit father's exclusive property even before coming into force of 1956 Act is undeniable. The said right to inherit under Mitakshara law, the daughters, however, did not acquire until the widow is dead. It is no one's case that Ram Janam Rai had died leaving behind his widow. In pre 1956 era, though the daughter took a limited interest in the estate of her father and on her death, the estate passed not to her heirs, but to heirs of her father. In



view of Section 14 of the Hindu Succession Act, a family including daughter holding property in her possession whether acquired by her before or after commencement of the Act, 1956 becomes an absolute owner and not a limited owner. There cannot be any doubt over the legal proposition that by operation of Section 14 of the Hindu Succession Act, a reversion get abolished, upon the Women's estate being enlarged to full ownership where the limited owner possessed the property. In my opinion, therefore, date of death of Ram Janam Rai is not the only question which would ultimately determine the rights of the contesting parties. Status of the family as joint or otherwise is a very crucial aspect for determination of their respective rights. My observation, however, should not be treated as my finding on the point of the date or the year of death of Ram Janam Rai, in any manner.

13. As I have already noticed above, that the order of the appellate authority under the Consolidation Act suffers from the vice of complete non-application of mind, inasmuch as there is no discussion as to why the grounds set up by respondent no.6 were not acceptable and the findings recorded by the Consolidation Officer deserved to be affirmed. In my opinion, the Director, Consolidation, instead of re-appreciating the



evidence himself, should have remanded the matter back to the appellate forum for reconsideration. The revisional Court ought to have interfered with the appellate Court's order on the ground of non-application of mind and instead of re-appreciating the evidence, ought to have remanded the matter back to the appellate court for just adjudication.

14. In view of the above noted discussion, while setting aside the impugned order dated 02.02.2011, I remand the matter back to the appellate authority under the Consolidation Act to pass order on the appeal of respondent No.6 afresh, after appreciating the evidence on record within a period of six months from the date of receipt/production of a copy of this order, after giving the parties, a reasonable opportunity of being heard.

15. I am conscious about pendency of S.A. No. 136 of 2006 and the substantial questions of law, which have been framed by this Court as noted above, and consequence of adjudication in the second appeal, either way.

16. It goes without saying that the parties shall be at liberty to raise their respective claims after disposal of S.A. No. 136 of 2006.

17. It is also observed that any party aggrieved by



order of the appellate authority passed pursuant to the present order shall be at liberty to approach the revisional authority and the Bihar Land Tribunal, if so advised.

18. This application is allowed but with the directions and observations noted above.

17. There shall, however, be no order as to costs.

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(Chakradhari Sharan Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.04.2019
Transmission Date	N/A

