

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.705 of 2018
In
Civil Writ Jurisdiction Case No.10226 of 2008

1. Ramchandra Mahto, Son of Late Nankhu Mahto
2. Nirmala Devi, wife of Sri Shankar Mahto Both residents of village - Madhopur Roshan, P.S. - Dumra, District - Sitamarhi.
3. Madhuri Kumari, wife of Sanjeev Kumar Resident of Village - Mirjapur, P.S. - Patahi, District - East Champaran.
4. Randhir Kumar son of Ramchandra Mahto
5. Vibha Kumari Daughter of Ramchandra Mahto Both residents of village - Madhopur Roshan @ Bhisra, P.S. - Dumra, District - Sitamarhi.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Director of Consolidation at Patna.
3. The Deputy Director of Consolidation, Sitamarhi.
4. The Consolidation Officer, Dumra, P.S. - Dumra, District - Sitamarhi.
5. Hardeo Rai
6. Bisundeo Rai Both sons of Late Shiv Saran Rai
7. Yogendra Mahto son of Late Narayan Mahto
8. Smt. Ram Pari Devi wife of Yogendra Mahto
9. Ram Prakash Mahto S/o Late Narayan Mahto All residents of village - Madhopur Roshan, P.S. - Dumra, District - Sitamarhi.
10. Panchy Mahto, son of Late Fudena Mahto, resident of village - Bhup Bhairo, P.S. and District - Sitamarhi.
11. Smt. Dulari Devi wife of Late Bhagat Mahto
12. Ram Pukar Mahto
13. Ram Sanchi Mahto Respondent No. 12 and 13 sons of Late Lakshmi Mahto
14. Ram Ekwil son of Late Ramdhari Rai Respondent No. 11 to 14, resident of village - Madhopur Roshan, P.S. - Dumra, District - Sitamarhi.
15. Bhubneshwar Mahto son of Late Ram Ashish Mahto
16. Dinesh Mahto son of Surendra Mahto Both respondent nos. 15 and 16 resident of village - Bhup-Bhaira, P.S. and District - Sitamarhi.
17. Krishna Kumar Gupta S/o Late Sukhdeo Narayan Gupta resident of Mohalla - Bhavadapur Main Road Sitamarhi, Ward No. 14, P.S. - Sitamarhi, District - Sitamarhi.



... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Rikesh Sinha, Advocate.

For the Respondent/s : Mr.Md.Khurshid Alam, AAG-12.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 10-12-2019

Delay caused in filing the appeal is condoned.

Accordingly, I.A. No. 4035 of 2018 stands allowed.

2. Defects pointed out by the Stamp Reporter are ignored.

3. Heard learned counsel for the appellants.

4. This appeal under Clause 10 of the Letters Patent has been filed by the appellants for setting aside the order dated 12.02.2018 passed in C.W.J.C. No. 10226 of 2008 by which the order dated 18.06.2008 passed in Consolidation Revision Case No. 5 of 2000 by the Director of Consolidation has been set aside.

5. The respondent no.17 had filed the writ petition for quashing the order dated 18.06.2008 passed by the Director of Consolidation, Bihar at Patna in connection with Revision Case



No. 5 of 2000 whereby he had set aside the order dated 29.11.1999 passed by the Deputy Director of Consolidation, Sitamarhi in Consolidation Appeal No. 19 of 1998 and affirmed the order of Consolidation Officer passed in Consolidation Case No. 618 of 1991.

6. It is not in dispute that the lands of RS Khata No. 214 and 488, area 3 acres and 8 decimals were recorded in the name of respondent no.17 and others in the revisional survey. It is also not in dispute that the land was recorded in the cadastral survey in the name of Chatru Raut. Said Chatru Raut had three sons, namely, Prayag Raut, Abhilekh Raut and Dhajju Raut.

7. The case of respondent no.17 in the writ petition was that Abhilekh Raut, son of Chatru Raut had executed a deed of mortgage with regard to the entire lands of Khata (old) No. 223, Plot No. 1751-52 and 69. A suit was filed and the respondent no.17 got the lands by virtue of the judgment and decree passed in the mortgage suit. The name of the respondent no.17 and others were recorded during the revisional survey records of rights.

8. However, respondent nos. 5, 6 and 7 filed a petition before the Consolidation Officer for correction of records of rights on the ground that Chatru Raut had got three sons namely



Prayag Raut, Abhilekh Raut and Dhajju Raut. There was partition in the year 1930 and 3.08 acres land fell in the share of Prayag Raut. Respondent nos. 5, 6 and 7 inherited property from Prayag Raut and they are his descendents.

9. Having heard the parties, the Consolidation Officer ordered for correction in the revisional survey of records of rights in the consolidation proceeding on 05.03.1992. The respondent no. 17 filed Consolidation Appeal No. 19 of 1998. In appeal, the Deputy Director taking into consideration the judgment passed in the Civil Suit allowed the appeal and set aside the order passed by the Consolidation Officer.

10. Being aggrieved, respondent nos.5 to 7 preferred a revision application vide Consolidation Revision Case No. 5 of 2000 which was allowed vide order dated 18.06.2008. Accordingly the order dated 29.11.1999 passed by the Deputy Director of Consolidation, Sitamarhi in Appeal No. 19 of 1998 was set aside and order dated 05.03.1992 passed by the Consolidation Officer, Dumra in Case No. 618 of 1991 was affirmed.

11. A plea was advanced on behalf of respondent no.17 in the writ petition that the Consolidation Court had got no jurisdiction to hold that the judgment and decree passed by



the Civil Court in mortgage suit was inoperative and the respondent nos. 5 and 6 have preferred their title by virtue of adverse possession.

12. The respondent nos. 9 and 10 contested the writ petition. They contended that the learned Director, Consolidation, Bihar, Patna had discussed all the facts and documents and rightly held that before execution of mortgage deed in the year 1916 by Abhilekh Raut, there was partition among three brothers in whose name the lands were recorded in cadastral survey of records of rights. Hence, Abhilekh Raut played fraud and included the lands of Prayag Raut, the ancestor of respondent nos. 5 to 7 in the mortgage deed but in spite of the judgement of the Civil Court and delivery of possession by the Civil Court in pursuance of the decree, the land remained in the possession of respondent no. 5 to 7. Respondent nos. 9 and 10 are purchasers from respondent nos. 5 to 7.

13. Considering the claim of the parties, learned Single Judge allowed the writ petition observing as under:

“Having considered the submission of both the sides, the sole question arises for consideration arises 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 Chatru Raut. Abhilekh Raut, son of Chatru Raut executed a deed of 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.”

14. Upon appreciation of facts and circumstances of the case, we find no error in the judgment passed by the learned Single Judge. Learned Single Judge has rightly held that the Director Consolidation has got no jurisdiction under the Consolidation Act to hold a judgment and decree of the Civil Court inoperative and declare the right and title of a person by virtue of adverse possession. The order passed by the Director



Consolidation has rightly been set aside by the learned Single Judge and the writ petition has been allowed.

15. The appeal, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

(Prakash Chandra Jaiswal, J.)

mantreshwar/-

AFR/NAFR	N.A.F.R.
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