

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2078 of 1993

- 1(i). Masoom Raza son of heirs 1(a) Hassan Raza S/o Abdur Rahim and Amna Khatoon (deceased), R/o Village Shahpur Baghauni, P.S. Tajpur Pusha, District-Samastipur.
- 1(ii). Sakir Raza, son of heirs 1(a) Hassan Raza S/o Abdur Rahim and Amna Khatoon (deceased), R/o Village Shahpur Baghauni, P.S. Tajpur Pusha, District-Samastipur.
- 1(iii). Shakana Khatoon, son of heirs 1(a) Hassan Raza S/o Abdur Rahim and Amna Khatoon (deceased), R/o Village Shahpur Baghauni, P.S. Tajpur Pusha, District-Samastipur.
- 1(iv). Shabnam Khatoon, son of heirs 1(a) Hassan Raza S/o Abdur Rahim and Amna Khatoon (deceased), R/o Village Shahpur Baghauni, P.S. Tajpur Pusha, District-Samastipur.
- 1(v). Rukhsana Khatoon, son of heirs 1(a) Hassan Raza S/o Abdur Rahim and Amna Khatoon (deceased), R/o Village Shahpur Baghauni, P.S. Tajpur Pusha, District-Samastipur.
- 1(vi). Shalima Khatoon, son of heirs 1(a) Hassan Raza S/o Abdur Rahim and Amna Khatoon (deceased), R/o Village Shahpur Baghauni, P.S. Tajpur Pusha, District-Samastipur.
- 1(b). Md. Firoz, son of Abdur Rahim and Amna Khatoon (deceased) R/o Village Shahpur Baghauni, P.S. Tajpur Pusha, District-Samastipur.
- 1(c). Akhari Khatoon, daughter of Abdur Rahim and Amna Khatoon (deceased) R/o Village Shahpur Baghauni, P.S. Tajpur Pusha, District-Samastipur.
- 1(d). Asghari Khatoon, daughter of Abdur Rahim and Amna Khatoon (deceased) R/o Village Shahpur Baghauni, P.S. Tajpur Pusha, District-Samastipur.
- 1(e). Sultan Begam, daughter of Abdur Rahim and Amna Khatoon (deceased) R/o Village Shahpur Baghauni, P.S.- Tajpur Pusha, District-Samastipur.
- 1(f). Azhari Khatoon, daughter of Abdur Rahim and Amna Khatoon (deceased) R/o Village Shahpur Baghauni, P.S.- Tajpur Pusha, District-Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Joint Director of Consolidation, Muzaffarpur.
3. The Deputy Director of Consolidation, Samastipur.
4. The Assistant Consolidation Officer, Pusha.
5. Md. Zubair, S/o Abdul Hafeez, deceased, R/o Village Chaklewaini, P.S. Pusha, District-Samastipur.
- 6(a) Md. Ozair son of Md. Zubair and Jaitunnisa deceased, resident of Village-Chaklewaini, P.S.-Pusha and District-Samastipur.
- 6(b) Md. Osaid, son of Md. Zubair and Jaitunnisa deceased, resident of Village-Chaklewaini, P.S.-Pusha and District-Samastipur.



- 6(c) Tammanne, son of Md. Zubair and Jaitunnisa deceased, resident of Village-Chaklewaini, P.S.-Pusha and District-Samastipur.
6(d) Md. Umar alias Kulandi, son of Md. Zubair and Jaitunnisa deceased, resident of Village-Chaklewaini, P.S.-Pusha and District-Samastipur.
6(e) Raushan Ara, son of Md. Zubair and Jaitunnisa deceased, resident of Village-Chaklewaini, P.S.-Pusha and District-Samastipur.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Abu Haider, Advocate Mr. Sunil Tiwary, Advocate Mr. Md. Abu Shejar, Advocate
For the Pvt. Resp.	:	Mr. Jai Shankar Pathak, Advocate
For the State	:	Mr. Rohitabh Das, AC to AAG-13 Mr. Sushil Kr. Singh, AC to AAG-13

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 04-09-2023

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the private respondent nos. 5 and 6(a) to 6(e).

2. The present writ petition has been filed against the order passed by Joint Director of Consolidation, Muzaffarpur in Appeal No. 1843 of 1986 and Appeal No. 1844 of 1986 dated 18.02.1992.

3. Learned counsel for the petitioners submits that both the Appeal Nos. 1843 of 1986 and 1844 of 1986 filed under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act 22 of 1956). Counsel further submits that original case has arisen by case No.1569 of 1980 filed under Section 10(2) of the Consolidation



Act, 1956 filed by the deceased petitioner against defendant Abdul Hafeez Son of Quamruddin. In the said case it was claimed by the deceased petitioner that she is daughter of Abdul Hafeez and it is due to this reason she claimed her right being the daughter of Abdul Hafeez in the said land which was recorded in the name of her father namely, Abdul Hafeez. Vide order dated 19.01.1981 the said case No.1569 of 1980 has been decided in her favour by which Md. Zubair became entitled for 58% share, the deceased petitioner became found entitled for 29% of share and the wife of Abdul Hafeez became entitled for 13% share.

4. Against the said order dated 19.01.1981 passed in Case No. 1569 of 1980 an appeal was preferred by Md. Zubair (present respondent) bearing Consolidation Appeal No. 63 of 1981 against the deceased petitioner. The said Appeal No.63 of 1981 has been decided on 18.11.1982 by which the appeal was rejected, thereafter the said Md. Zubair (present respondent) has preferred Revision No.1736 of 1982 & Revision Case No. 1119 of 1982 against the orders dated 22.06.1982 & 18.11.1982 passed in Appeal No. 63 of 1981, since both the revisions have arisen from different dates of same Appeal No. 63 of 1981, therefore, the Court of Joint Director of



Consolidation had decided both the civil revisions by common order dated 26.04.1984 and both the revisions were remanded back before the Assistant Director, Consolidation, Samastipur. The Assistant Director, Consolidation, Samastipur has passed order on 22.05.1986 by which two ansh of property was decided in favour of Md. Zubair (present respondent) and one ansh of property was decided in favour of Amna Khatoon (deceased petitioner).

5. Being aggrieved and dissatisfied with the order dated 22.05.1986 Md. Zubair has filed two revisions bearing Revision Case Nos.1843 of 1986 and 1844 of 1986 which was decided on 18.02.1992 in favour of Md. Zubair and thereafter the present writ petition has been filed by Amna Khatoon (deceased petitioner) challenging the common order dated 18.02.1992 passed in both the Revisions Case Nos. 1843 of 1986 and 1844 of 1986.

6. During pendency of the writ petition the said Amna Khatoon died and after substitution 1(i) to 1(vi), 1(b), 1(c), 1(d), 1(e) and 1(f) all sons and daughters of Amna Khatoon were substituted as heirs and legal representatives of Amna Khatoon.

7. After hearing both the parties, this Court has



instructed to both the counsels i.e. counsel for the petitioners and counsel for the private respondents to discuss with their clients that whether they are interested to settle their issues forever or want to continue and persist the litigation for future. Today both the counsels fairly submits that they are not interested to pursue this litigation further. They are agreed not to contest further in this matter and their counsels fairly submits that the deceased petitioner, namely, Amna Khatoon and private respondent No.5, namely, Md. Zubair are brother & sister. Under the Muslim Law, sister is entitled for 1 अंश whereas brother is entitled for 2 अंश.

8. In the light of the joint submissions made by the counsel of the parties and independent from the pleadings made in the writ petition and its reply, this Court decides that the petitioner Nos. 1(i) to 1 (f) shall be entitled for 1/3rd share and the respondent nos.5 and 6(a) to 6(e) shall be entitled for 2/3rd share in the entire property.

9. Counsel for the petitioners has raised one legal issue before this Court that what shall happen to the properties which have been sold by the parties during pendency of this case.

10. In this regard, all the counsels submit that the



position of law is very clear that any transaction made during pendency of litigation shall be binding by the result of the present writ petition and on principle share is decided i.e. deceased petitioner (and now present petitioners) shall be entitled for 1/3rd share in the property of her father and respondent no.5 shall be entitled for 2/3rd share in the property of his father. In case of any future dispute relating to division of share, parties shall free to move before the competent Civil Court or may take any recourse of law as available to them.

11. With this direction, this writ petition is disposed off on the basis of joint submissions made by their counsel.

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

