
(2010) 11 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4505 of 1991

Ajit Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-11-2010

Acts Referred:

Consolidation Act, 1948 — Section 10(4), 35

Citation : (2010) 11 PAT CK 0026

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Judgement

Sheema Ali Khan, J.—The Petitioner has filed this writ application challenging the order dated 10.07.1987 passed by the Joint Director, Consolidation in Revision Case No. 233 of 1986, setting aside the appellate order and the order of the Consolidation Officer.

2. The Petitioner claims title by virtue of a deed of relinquishment executed by the ancestors of Respondent No. 4, appertaining to lands of Khata No. 157, Plot No. 188, measuring 20 acres 17 decimals in village Kaiayar Kala. The private Respondents, on the other hand, claim that the said deed of relinquishment does not confer any title on the Petitioner and admittedly the grandfather of Respondent No. 4 Shiv Baran Kahar @ Shiv Sharan Singh was the recorded tenant. The said deed of relinquishment executed on 23.12.1955 was by the grandfather of Respondent No. 4. The facts further reveal that at the time of preparation of the Khatiyan, the ancestors of the Petitioner were shown to be in illegal possession of the lands. It appears that during the pendency of the consolidation proceeding, the father of Respondent No. 4 has sold the lands to certain persons, who have filed an intervention application before this Court. The intervenors were not parties in the Court below and their title would accrue only if Respondent No. 4 succeeds in substantiating his claim.

3. The Petitioner, after the preparation of the Khatiyan, filed an application u/s 10(4) of the Consolidation Act for entering his name in the consolidation chak,

which was allowed by the Consolidation Officer. The Petitioner went in appeal. The Appellate Court has dismissed the appeal. This Court is of the view that the appellate order is rather perfunctory. The Respondent, thereafter filed revision u/s 35 of the Consolidation Act, which was allowed in his favour.

4. Amongst other points, the first point raised on behalf of the Petitioner is that the order u/s 35 of the Consolidation Act has been passed without any notice to the writ Petitioner. To substantiate his claim, the Petitioner has produced the order sheet of the proceedings u/s 35 of the Consolidation Act. On perusal of the order sheet, it appears that there is no indication of the fact, that the Petitioner had in fact received notices in this case and as such his claim that the order was passed behind the back of the Petitioner without valid service of notice and, therefore, is violation of principle of natural justice, is substantiated.

5. Be that as it may, the main question which has been raised and argued by both the parties is that both the parties claim title over the lands in question. The Petitioner further claims that he is in possession of the lands since 1955. The question whether the deed of relinquishment would be binding on the Respondents, by virtue of being executed by his ancestors, is a question which could only be decided in a suit. The Consolidation Authorities cannot decide the title and validity of the document such as the deed of relinquishment. The entire proceeding has been conducted in a slip shod manner, the authorities have not bothered to make a spot enquiry or inspection while conducting the proceeding. In any event, it would be proper for the party aggrieved or effected to challenge the deed of relinquishment by filing a suit for declaration of title and for recovery of possession of the lands in question.

6. In the result, this writ application is disposed of with the aforesaid observations and directions.