

(1991) 01 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 4840 of 1984

Ayodhya Sah and Another

APPELLANT

Vs

The Joint Director of Consolidation and Others

RESPONDENT

Date of Decision : 28-01-1991

Acts Referred:

Citation : (1991) 01 PAT CK 0007

Final Decision : Allowed

Judgement

Ram Nandan Prasad, J.—The writ jurisdiction of this Court has been invoked for issuance of a writ of certioari for quashing the order Dt. 13-8-1984/17-8-1984 passed by the Joint Director of Consolidation Bihar, respondent No. 1, in Consolidation Revision Case No. 19/1984 whereby he dismissed the revision application u/s 35 of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 (thereafter referred to as the Act) and also for quashing the order dt. 19-12-1983 passed by the Assistant Director of Consolidation, respondent No. 2, in Consolidation Appeal No. 101/1983 whereby he set aside the order of the consolidation officer, respondent No. 3 dt. 27-8-1983 in case No. 60/1983 by which he had rejected the objection of respondents Nos. 1 and 5 u/s 10B of the Act. The proceedings in the Consolidation courts relate to lands of Khata Nos. 421 and 422 in village Kothia P.S. Tajpur District Samastipur.

2. Briefly the facts; Raj Narayan Giri was admittedly the owner of the lands of Khata Nos, 421 and 422 and it is not disputed that he died in 1969 leaving behind his wife Kalavati Devi (respondent No. 5) and three sons Ram Udgar Giri, Ram Pukar Giri and Ram Kumar Giri (respondent No. 4). Ram Udgar and Ram Pukar were not parties in the aforesaid consolidation proceedings and as such they are not also parties in this application. The case of the two petitioners, who are brothers, is that after the death of the father, the eldest son Ram Udgar became the Karta and on 16-2-1972 Ram Udgar, acting for self and guardian of his minor brother Ram Kumar Giri, and Ram Pukar Giri executed three registered sale deeds bearing Nos. 3096 and 3093 and 3099 in favour of the petitioners in

respect of 0.37 acres of land of R.S. plot Nos. 153 and 155 appertaining to khata No. 422 for consideration and put the vendees in possession. Later on, Ram Udgar separated from his two brothers but Ram Pukar and Ram Kumar remained joint with each other, and on 30-6-1975 Ram Pukar, acting as Karta of the family for self and as guardian of his minor brother Ram Kumar, executed a registered sale deed in respect of 11 kathas 8 dhurs of R.S. plot Nos. 30 and 31 appertaining to khata No. 421 for a consideration of Rs. 9,000/- in favour of the petitioners and put the vendees in possession. The remaining area of 5 khatas and 14 dhurs of plot Nos. 30 and 31 was also sold by Ram Pukar acting for self and as guardian of Ram Kumar by two registered sale deeds dt. 6-10-1975 in favour of the petitioners and the vendees were put in possession. Thus the petitioners came in possession as owners of the entire area of plot Nos. 30 and 31 and plot Nos. 153 and 155 of Khata Nos. 421 and 422. Their further case is that in course of the consolidation proceedings, the petitioners filed a petition u/s 10(2) of the Act on 10-9-1978 before the consolidation officer for recording their names in respect of the purchased lands of khata Nos. 421 and 422 as well as also in respect of other lands purchased from other parties and this was numbered as objection case No. 100/1978 and after the enquiry and considering the relevant facts the consolidation officer allowed the objection of the petitioners by order dt. 12-9-1978 and directed that the register be prepared in the name of the petitioners in respect of the lands which they have purchased. The petitioners' vendors who had sold the lands under the various sale deeds as well as Ram Kumar (respondent No. 4 here) were parties in case No. 100/1978 but none of them filed any appeal or revision against the order dt. 12-9-1978 of the consolidation officer and thus this order became final. However, after about five years in 1983 Ram Kumar (respondent No. 4) along with Ram Pukar filed an application u/s 10(B) of the Act against these petitioners praying for correction of the area of survey plot Nos. 30 and 31 and this was numbered as objection case No. 41/83. In the said application it was admitted that 75 acres of plot Nos. 30 and 31 had been sold to the petitioners but it was said that by mistake 0.77 acres had been recorded in the consolidation register and hence the area be corrected. The consolidation officer, after holding due legal enquiry and after considering the relevant-facts, by order dt. 18-5-83 dismissed objection case No. 41/83 thereby rejecting the prayer of Ram Pukar and Ram Kumar for correction of the area of plot Nos. 30 and 31. This order also became final as no appeal or revision was filed against the same.

3. The fact that the first application u/s 10(B) of the Act, filed by Ram Pukar and Ram Kumar which gave rise to case No. 41 of 1983, was dismissed is not disputed, and admittedly no appeal and revision was filed against this order. After this order of dismissal Ram Kumar Giri along with his mother Kalawati Devi filed another application u/s 10(B) of the Act which was numbered as case No. 60 of 1983. In this application they put forward the plea that as Kalawati was the wife and Ram Kumar was one of the three sons of Raj Narayan Giri, each of them was entitled to 1/4th share in the properties of deceased Raj Narayan Giri and

Ram Kumar had been living under the guardianship of his mother and as such 1/2 share of Kalawati and Ram Kumar could not have been disposed of by Ram Udgar Giri and Ram Kumar through the sale deeds executed by them in favour of the petitioners. On the basis of this plea prayer was made to correct the entry in the register in which the names of the petitioners on the basis of the sale deeds had been recorded. The consolidation officer by his order dt. 27-8-1983 dismissed the second petition of objection u/s 10(B) observing that this plea should have been put forward in the proceeding u/s 10(2) of the Act which had been registered as case No. 100/78 and further if there was any grievance against the order passed in the aforesaid case an appeal could have been preferred against the same. The consolidation officer, held that this petition u/s 10(B) of the Act was not maintainable. Kalawati and Ram Kumar thereafter filed an appeal (appeal No. 101/83) which was heard by the Assistant Director of Consolidation and he by his order dated 19-12-83 allowed the appeal on the ground that since at the time sale deeds were executed in favour of the petitioners Ram Pukar was minor, his brothers could not have acted as his guardian since his mother Kalawati was alive and the shares of Ram Kumar as also of Kalawati could not have been transferred by the sale deeds in question. The appellate Court further observed that since Kalawati Devi and Ram Kumar were not parties in case No. 100/83 they could not be bound by the order passed therein. The appellate Court however, did not make any mention of the orders passed in case No. 41 of 1983 u/s 10(B) of the Act which had been filed by Ram Pukar and Ram Kumar. Further, it did not also consider whether a second application u/s 10(B) could be legally maintainable. Against the order of the Assistant Director Consolidation these petitioners preferred revision before the Joint Director which was numbered as revision case No. 19/84 raising inter alia the question of maintainability of the second application u/s 10(B) of the Act and in course of hearing they filed several documents including the sale deeds of the lands in question as well as several other sale deeds executed by Ram Udgar and Ram Pukar forself and guardian of their minor brother Ram Kuraar Giri in favour of several persons other than the petitioners and also the orders passed in case No. 100/78 and case No. 60/83. They also submitted a written argument (Annexure 7) before the Revisional Court. The Joint Director however, upheld the order of the Assistant Director on the same reasoning that Ram Kumar and Kalawati together were entitled to 1/2 share of the joint family property and in the presence of the mother the elder brother could not have acted as guardian of Ram Kumar and dispose of his share in the property. He also observed in his order that at the time the objection cases were heard Kalawati and Ram Kumar did not have any proof in their possession nor were they heard in the competent Court. It also observed that when Ram Kumar attained majority and when he and his natural guardian Kalawati came to know about the fraud committed in disposing of their lands then they filed the objection u/s 10(B) of the Act. However, like the appellate authority the revisional Court also failed to consider that earlier application u/s 10(B) had been filed by Ram Kumar along with his brother Ram Pukar and the same had been dismissed and as to whether in such

a situation the second application u/s 10(B) was maintainable.

4. The hearing of this application commenced on 13-8-90 in course of which petitioners put forward their contentions and then 17-8-90 was fixed for further hearing. However, on 16-8-90 respondents Nos. 4 and 5 filed a counter affidavit and when the case was taken up on 17-8-90 they prayed that the same may be accepted as according to them some relevant facts had not been brought to the notice of the Court by the petitioners. Though the filing of the counter affidavit was quite belated, the Court allowed the same to be filed and thereafter the petitioners filed reply to the same.

5. In the counter affidavit respondents Nos. 4 and 5 have put forward their case that Kalawati was a natural guardian of Ram Kumar during his minority and as such the share of Ram Kumar and Kalawati could not legally and validly be transferred by Ram Udgar and Ram Pukar under the sale deeds executed by them in favour of the petitioners and that the order passed in objection case No. 100/78 is not binding on these respondents as they are not parties in that proceedings. It is also stated in the counter affidavit that in objection case No. 100/78, the writ petitioners were petitioners while some others were the opposite party and no member of the family of these respondents was party in that proceeding and according to these respondents the copy filed by the writ petitioners of the order passed in 100/78 does not show the correct position. It is also stated in the counter affidavit that the application u/s 10(B) of the Act giving rise to case No. 41/83 was the result of connivance between Ram Pukar Giri and the writ petitioners and respondent No. 4 Ram Pukar had no knowledge of the same and as such he could not have filed any appeal or revision against that order. As regards the contention of the writ petitioners that the application filed by the respondents 4 and 5 u/s 10(B) of the Act praying for partition of their 1 / 2 share in the lands of khata Nos. 421 and 422 was not maintainable as Ram Udgar and Ram Pukar had not been made party in the application and secondly all the joint family lands had not been included for partition, it is stated in the counter affidavit that it is not necessary to make the other two brothers party as these respondents are making claim of only their share in the property which had been sold to the writ petitioners and the question of partition is not involved. In paragraphs 24 and 25 of the writ petition it has been stated that in fact Ram Udgar Giri had been acting as karta of the family and guardian of respondent No. 4 Ram Pukar and also executed sale deeds in this capacity even prior to the death of Raj Narayan Giri and further that after the death of his father Ram Udgar and Ram Pukar acting for self and as guardian of Ram Kumar executed several sale deeds and thereby vended the lands of several other khata which belonged to the joint family but none of those sale deeds are being challenged on the ground that Ram Udgar and Ram Pukar could not have acted as guardian of Ram Kumar. In reply to the aforesaid assertion, it is merely stated in the counter affidavit that in the lifetime of father and mother, brother cannot act as guardian and even if a brother has acted in that manner it cannot be justified in law and further that merely because respondents Nos. 4 and 5 have not made any

objection in respect of other sale deeds, this will not affect their claim in respect of sale deeds in favour of the writ petitioners.

6. Along with the counter affidavit, respondents Nos. 4 and 5 filed a photostat copy (Annexure 4) of a certified copy of the order dt. 12-9-78, passed in case No. 100/78. In this copy Annexure A while Ayodhya Sah and Mahabir Sah (writ petitioner here) have been shown as petitioners, one Shivji Sah has been shown as the opposite party and on this basis the argument was advanced on behalf of respondents Nos. 4 and 5 that Ram Udgar Giri and Ram Pukar Giri were not parties in this case and in fact nothing has been decided in respect of the sale deeds executed by them in favour of the writ petitioners. In the reply counter affidavit filed by the writ petitioners it has been stated that respondents Nos. 4 and 5 have filed Annexure A by manipulating interpolation and forgery in the consolidation record in order to mislead this Court. They have further stated that in fact these petitioners had filed eight objection cases u/s 10(2) of the Act before the consolidation officer against different persons and these cases were numbered differently. The objection case No. 100/ 78 was the one filed by the petitioners against Ram Udgar Giri and Ram Kumar Giri but all the eight objection petitions were heard together and the consolidation officers passed a common order in all the cases and the substantive order was recorded by him in objection case No. 100/78 (which has been made Annexure 1) and in the other objection cases it was merely endorsed "V. S. Case No. 11/78". The petitioners have attached certified copies of the orders passed in those other objection cases which show that the orders were to the effect "V. S. Case No. 100/78". It is also noteworthy that even Annexure A mentions the various sale deeds on the basis of which the objection cases had been filed and these include all the sale deeds executed by Ram Pukar Giri and Ram Udgar Giri in favour of the petitioners. Obviously, therefore, the contention of respondents Nos. 4 and 5 that objection case No. 100/78 did not relate to the lands conveyed by the sale deeds executed by Ram Udgar and Ram Pukar in favour of the petitioners is not correct. It has not been denied that eight objection cases had been heard together and that the substantive order was passed only in case No. 100/78. From the above facts and circumstances the allegations of the petitioners that respondents Nos. 4 and 5 have obtained a certified copy by manipulating the name of opposite party may not be incorrect but in view of what has been stated above there is no need to go into this matter further because even Annexure A clearly shows that the objection was on the basis of the various sale deeds executed by Ram Udgar and Ram Pukar in favour of the writ petitioners and the order was passed in that context. In the reply it has been also alleged that the respondents Nos. 4 and 5 in collusion with the staff of the consolidation office, Pusa, have tried to make interpolation and changes in the records and even removed several documents which would demolish their case and discredit their claim. With the reply the writ petitioners have also filed photostat copy of the first application u/s 10(B) of the Act filed jointly by Ram Pukar and Ram Kumar and also photostat copy of khata Nos. 151 and 152 of the village showing that only the three brothers Ram Udgar,

Ram Pukar and Ram Kumar are recorded in the khata and there is no mention of Kalawati Devi.

7. In the context of the facts stated above the petitioners have assailed the orders passed by the Joint Director and the Assistant Director on the ground that the application u/s 10(B) filed by Kalawati Devi and Ram Kumar Giri, respondent Nos. 4 and 5 is not maintainable on the ground that it is barred by res judicata, limitation and estoppel and as such the orders passed by the Assistant Director and Joint Director of Consolidation are not sustainable. Another ground of attack is that the consolidation authorities were not competent to ignore the registered sate deeds executed in favour of the petitioners and held that respondents 4 and 5 have title to a portion of the vended properties.

8. Before I take up consideration of the points indicated above, it is pertinent to state that the plea of respondents Nos. 4 and 5 before the consolidation authorities and the basis on which the orders have been passed by the Assistant Director of Consolidation and the Joint Director, namely, that after the death of the father Raj Nr. Gin the mother Kalawati in natural course became the guardian of the minor Ram Kumar Giri and as such the eldest brother Ram Udgar Giri could not have made alienation of the joint family property on behalf of his minor brother Ram Kumar Giri, is fallacious and contrary to the settled legal position. Under the Hindu Law there is a distinction between the custody and guardianship of the person of a minor on his father's death and the custody and management of the minor's interest in the coparcenary property. Though a widow may be entitled to a share equal to the son in the joint family property. She is not a member of the coparcenary. On the father's death, she may be entitled to the custody of the person of her minor son and even of his separate property but she is not entitled to act as guardian of undivided interest of the minor in the coparcenary. The guardianship of the entire coparcenary property including the minor's share as well as that of the widowed mother vests in the eldest son, and he on the father's death becomes the karta of the joint family estate. In this connection, the following passage from Clause 519 of the Mulla's Hindu Law may be usefully quoted :--

"Guardianship of property where family is joint. If the minor is a member of a joint family governed by the Mitakshara Law, the father as karta (manager) is entitled to the management of the whole coparcenary property including the minor's interest. After the father's death, the management of the property including the minor's interest therein, passes to the oldest son as karta. The mother is not entitled to the custody of the undivided interest of her minor son in the joint family property because such property is not separate property, though she is entitled to the custody of his person and to his separate property, if any."

In Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Seth Govindram Sugar Mills, , it has been held by the apex Court that only a coparcener can be karta manager of a joint family and since the widow or the mother is not a coparcener she cannot be the manager of the joint family

property. This being the legal position, the whole basis of the claim of respondents Nos. 4 and 5 that after the death of Raj Nr. Giri the mother became the karta and guardian of the property of the minor son Ram Kumar Giri and that Ram Udgar Giri, the eldest son could not have acted as karta of the joint family property vanishes and since it is on this presumption that the orders have been passed by the appellate and revisional authority, these orders on the face of it become unsustainable. Since under law Ram Udgar Giri, on the death of Raj Nr. Giri, became the karta of the entire coparcenary property including the minor's interest, there was no legal impediment for him to act as guardian and in that capacity execute the sale deeds dt. 30-6-75 in favour of the petitioners. Likewise, when Ram Udgar became separate and Ram Pukar and Ram Kumar remained joint, Ram Pukar being the elder brother become the karta and in that capacity was fully competent to execute the sale deed dt. 6-10-75 in favour of the two petitioners. The fact that Ram Udgar Giri and Ram Pukar Giri duly executed the sale deeds has not been disputed or questioned by respondents Nos. 4 and 5 and as already indicated above Ram Udgar and Ram Pukar were not parties in the petition u/s 10(B) filed by Kalawati and Ram Pukar and they have not come forward at any stage to question the genuineness and validity of the aforesaid sale deeds. The orders of the appellate and revisional consolidation courts to the effect that the sale deeds are not binding on respondents Nos. 4 and 5 on the only ground that Kalawati on the death of Raj Nr. Giri would under law be deemed to be the guardian of the minor Ram Kumar Giri and as such Ram Udgar and Ram Pukar were not competent to execute the sale deeds for the coparcenary property, has no legal basis. Hence, there is no valid basis for saying that the sale deeds in question should be discarded or not be held to be binding and operative.

9. It was argued that since Kalawati was not a party to the sale deeds, either Ram Udgar or Ram Pukar could not alienate her interest in the coparcenary property. This argument is untenable for the simple reason that they become the karta of the entire coparcenary property and in that capacity were legally entitled and competent to alienate the coparcenary property affecting the interest of all persons who are entitled to a share in the same. This argument, therefore, lacks substance.

10. I now take up the consideration of the point regarding the maintainability of the application, u/s 10(B) filed by respondents Nos. 4 and 5 giving rise to -- Consolidation case No. 60/83.

11. The fact that the writ petitioners had filed their objection u/s 10(2) of the Act praying for correction of the entries in the land register on the basis of the sale deeds is not disputed. Respondents No. 4 and 5 however, have put forward the plea that Ram Udgar and Ram Pukar were not parties in that proceeding and as such the orders passed in that case could not in any view of the matter be binding on Ram Kumar and Kalawati. It is to be noted that the respondents did not put forward any such plea even up to the date when the hearing commenced

and it was only after the hearing was taken up and the petitioners had indicated the contention they are going to raise in this application that respondents Nos. 4 and 5 in the midst of the hearing came forward with a counter affidavit and with it filed Annexure A. The petitioners here stated in the reply to the counter affidavit that the petitioner had filed several petitions of objections u/s 10(2) and all these petitions were made analogous and disposed of by a common substantive order passed in case No. 100/78 and in the other case it was merely endorsed that the order passed in case No. 100/78 may be referred to along with the reply to the counter affidavit. They have filed copies of the orders passed in those other objection cases u/s 10(2) of the Act which had been made analogous to case No. 100/78. These are Annexures 10 to 10/2 and Annexure 11. The fact that several petitions u/s 10(2) were heard together and the substantive order was passed only in case No. 100/78 has not been disputed. In fact, Annexure A shows that all the sale deeds which had been executed by Ram Udgar and Ram Pukar Giri in favour of the petitioners were the subject matter of consideration in the objection petition and further in Annexure 10 Ram Pukar Giri is mentioned as the opposite party and in Annexures 10/1 and 10/2 Ram Udgar Giri is mentioned as the opposite party. There is, therefore, no substance in the contention of the respondents Nos. 4 and 5 that Ram Udgar and Ram Pukar were not parties in the objection case u/s 10(2) filed by these petitioners in 1978. It is not disputed that the objection of these writ petitioners was allowed and no appeal or revision was filed against the same. Thus by allowing this objection the validity of the sale deeds in question was accepted by the consolidation authority and this order became final and was not set aside by any competent authority. About five years later Ram Kumar Giri, respondent No. 4 along with his brother Ram Pukar filed an application u/s 10(B) of the Act making the writ petitioners the opposite parties therein. It was numbered as case No. 41/83 and in this petition it was stated by them that six decimals of plot Nos. 30 and 31 still remained with them but the opposite parties (i.e. the writ petitioners) had fraudulently amalgamated this area of land also with their own land and have got the khata prepared in their name and the prayer therein was that the khata may be corrected to that extent and 6 decimals land of plot Nos. 30 and 31 may be recorded in their names. Thus, while filing this petition u/s 10(B) of the Act Ram Kumar and Ram Pukar Giri did not question the validity and genuineness of the sale deeds which had been earlier executed in the names of the writ petitioners and there was no plea that any correction in the names entered in the register be made in respect of the lands of plot Nos. 30 and 31 and their prayer was merely to correct the alleged mistake in respect of 6 decimals area. In fact by alleging amalgamation they even admitted the possession of the writ petitioners on the vended lands. It is also noteworthy that no grievance of any kind was put forward by them in respect of the lands of plot Nos. 153 and 155. This objection u/s 10(B) was, however, dismissed and admittedly there was no appeal or revision against the said order. A little later, Ram Kumar Giri came forward with another strategy and filed another objection petition u/s 10(B) along with his mother alleging therein that his brothers Ram Udgar and Ram Pukar were not competent to execute the

sale deeds in respect of his share and that of his mother as they could not be regarded as his guardian during his minority or as karta of the joint family property. The consolidation officer dismissed this application holding that it was not maintainable as no appeal or revision had been preferred against the order passed in case No. 100/78. In my opinion, the consolidation officer rightly took this view that the petition of respondents Nos. 4 and 5 u/s 10(B) (case No. 60/83) was not maintainable.

12. It has been shown above that both Ram Udgar and Ram Pukar were parties in the objection case u/s 10(2) of the Act, i.e. case No. 100/78 and analogous cases and since Ram Pukar was the legal karta of the coparcenary property at that time it would bind all members of the family. Further, in 1983 Ram Pukar and Ram Kumar jointly filed the petition u/s 10(B) (case No.41/83). They fully know about the alienations made earlier in respect of the joint family property. It is not the case of respondents Nos. 4 and 5 that even at this stage they were unaware of the alienations made under the various sale deeds executed in favour of the writ petitioners but at that time no challenge of the validity and genuineness of the sale deed was made. There was nothing to prevent Kalawati Devi joining her sons in the earlier petition u/s 10(B) and there was nothing to prevent Ram Kumar and Kalawati from putting forward the plea that the sale deeds were not binding upon them on the ground that its executants Ram Udgar and Ram Pukar were not competent to do so. That objection u/s 10(B) was dismissed and the order became final. In this context the petitioners contended that the second application u/s 10(B) filed by Ram Kumar and Kalawati is barred by res judicata. In my opinion, this contention is valid.

13. True it is that Section 11, C.P.C. which embodies the principle of res judicata is not specifically applicable to cases under the Consolidation Act, but it is well settled that this principle will be applicable as a rule of public policy for giving finality to orders passed by judicial authorities and for avoiding frivolous and multifarious litigations. In this connection reference may be made to AIR 1961 SC 1437 Daryao v. State of U.P. In that case the apex Court was considering whether the general principle of res judicata would apply to writ petitions under Article 32 of the Constitution and it held in the affirmative. The Supreme Court referred to the relevant passage in Halsbury's Laws of England that "the doctrine of res judicata is not a technical doctrine applicable only to records; it is the fundamental doctrine of all courts that there must be an end of litigation. "The apex Court itself enunciated the principle as follows (at p. 1462 of AIR):--

"It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32".

There can be no doubt, therefore, that the general principle of res judicata is also

applicable to all proceedings in which decisions are given by the competent authorities under the Consolidation Act.

14. In the present case, admittedly the order passed in case No. 100/78 has become final and both Ram Udgar and Ram Pukar who had executed the sale deeds in question were parties in that proceeding. Again Ram Kumar himself was party in the earlier proceeding u/s 10(B) case No. 41/83 and that too became final. Thus, the contention of the petitioners that the second petition u/s 10(B) (case No. 60/83) is barred by res-judicata and is not maintainable must be upheld.

15. The application made by Ram Kumar and Kalawati u/s 10(B) (case No. 60/83) appears to be incompetent and not maintainable on other grounds also. According to their own petition Ram Kumar Giri was under the care and guardianship of his mother Kalawati Devi. The first petition u/s 10(B) was filed on the ground that having come to know about the alteration made in the land register on basis of the sale deeds in favour of the writ petitioners, a prayer was being made for making some correction in respect of six decimals of area. Thus prior to the filing of this petition Ram Kumar had become fully aware of what was recorded in the register of lands after the objection u/s 10(2) of the writ petitioners had been allowed. Since Ram Kumar's own case is that he was with his mother it must be presumed and there is no assertion to the contrary, that when Ram Kumar came to know of it Kalawati also would come to know of it. Thus even prior to the filing of the first petition u/s 10(B) Ram Kumar and Kalawati had information about the changes made in the land register on the basis of the order passed in case No. 100/78. Section 10(B) provides that any objection in respect of the matter relating to the register of lands should be made within thirty days of the cause of action and obviously the cause of action for making such objection arose when Ram Kumar and Kalawati got the information about entries in the land register prior to the filing of the first petition u/s 10(B). Thus if they had to file any petition independently of Ram Pukar they should have done so within thirty days of having got the information regarding the entries in the land register in favour of the writ petitioners but this, was done after several months of getting the information i.e. several months after the cause of action arose and obviously, therefore, the petition filed by them u/s 10(B) is barred by limitation. It is, therefore, not maintainable on this ground also.

16. The writ petitioners have stated that Ram Udgar and Ram Pukar executed not only the sale deeds in their favour but also several other sale deeds in favour of other persons, acting for self and as guardian of Ram Kumar. Those other sale deeds have not been challenged either by Ram Kumar or by Kalawati. The contention of the writ petitioners is that by not challenging those other sale deeds the respondent Nos. 4 and 5 are impliedly accepting that Ram Pukar and Ram Udgar had validly acted as guardian of the coparcenary property and in that capacity made the alienations of the coparcenary property. In reply, it has been

urged on behalf of respondent Nos. 4 and 5 that merely because they have not challenged the other deeds, it does not follow that they cannot challenge the sale deeds in favour of the writ petitioners if law permits them to do so. This may be quite correct but nevertheless respondents Nos. 4 and 5 have not shown any reason why the guardianship of Ram Udgar and Ram Pukar has not been questioned in respect of the other sale deeds. Be that as it may, since the execution of the sale deeds is not disputed, Ram Udgar and Ram Pukar should have been made parties in the proceeding u/s 10(B). There appears to be force in the contention of the petitioners that respondents Nos. 4 and 5 deliberately omitted to make Ram Udgar and Ram Pukar parties in the proceeding u/s 10(B) because Ram Kumar and Kalawati knew that the hollowness of their claim would be exposed. From the above discussions, it is clear that the petition u/s 10(B) filed by respondents Nos. 4 and 5 before the consolidation officer had, therefore, rightly been dismissed. The appellate authority, namely, the Assistant Director of Consolidation committed error in holding that the petition was maintainable and in allowing the prayer of respondents Nos. 4 and 5 and further the Joint Director acting as the revisional Court committed the same error.

17. The last plank of the argument of respondents Nos. 4 and 5 in support of the impugned orders is that in any view of the matter Kalawati Devi was neither a party in the proceeding u/s 10(2) nor in the earlier proceeding u/s 10(B) and hence there is no reason why she should be debarred from challenging the entries in the land register. As I have already indicated above, the petition u/s 10(B) filed by Ram Kumar and Kalawati Devi suffers from bar of limitation. Further, there is nothing to show that indeed Kalawati Devi had subsisting interest in the land covered by the sale deeds executed in favour of the writ petitioners. On the contrary it has been asserted by the writ petitioners that after the death of Raj Nr. Giri there was a partition in the family and lands were recorded in the khatian on that basis and that name of Kalawati Devi does not find place in some of the khatians. In support of this contention annexures 13 and 13/1, have been filed which are copies of the khatian of khata Nos. 151 and 152. Both these khata stand in the names of the three brothers Ram Udgar Giri, Ram Pukar Giri and Ram Kumar Giri. This is a clear indication of the fact that the situation regarding the ancestral lands underwent a change after the death of Raj Nr. Giri. Hence this lends full support to the contention of the writ petitioners that since partition took place it cannot be presumed that Kalawati Devi continued to hold interest in all the ancestral lands. That being the position, the contention of respondent Nos. 4 and 5 that Kalawati Devi had interest in the lands covered by the sale deeds executed in favour of the writ petitioners cannot be accepted merely on the basis of the presumption that she would be entitled to a share in the ancestral lands after the death of her husband. Annexures 13 and 13/1 clearly show that the situation underwent a change and respondents Nos. 4 and 5 have not been able to show that under the changed situation Kalawati continued to have an interest in the lands of Khata Nos. 421 and 422. Hence it is doubtful if she even has any locus standi to file the application u/s 10(B) of the

Act. In fact, by filing the petition u/s 10(B) she has made an effort to get a declaration that the sale deeds executed in favour, of the writ petitioners are void and inoperative. This she cannot do because the consolidation courts have no jurisdiction to give such a declaration. The Full Bench decision of this court in Kalika Kuar @ Kalika Singh Vs. The State of Bihar and others, also makes the consolidation authorities incompetent to give such a relief under a petition u/s 10(B) of the Act.

18. In view of the discussion above, I find that the impugned order passed by the Joint Director in revision as also the order passed by the Assistant Director of consolidation acting as the appellate authority are illegal, invalid and unsustainable and I here quash the same. The application is accordingly allowed with costs. Hearing fee Rs. 64.