

(2010) 11 PAT CK 0125

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7058 of 1991

Girjanandan Pathak and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-11-2010

Acts Referred:

Citation : (2010) 11 PAT CK 0125

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—Nobody appears for the Petitioners or the Respondents.

2. Petitioners are aggrieved by the order contained in Annexure-3, passed by the Assistant Consolidation Officer and the order contained in Annexure-5, passed by the Joint Director, Consolidation. The facts of the case are as follows:

3. Ghanshyam Pathak and Ayodhya Pathak were full brothers. Ghanshyam Pathak had a son Parmeshwar Pathak who died in 1933. Parmeshwar Pathak's son Basudeo Pathak predeceased him and died in the year 1930 leaving behind his wife Rampati Kuer as his sole heir. Ayodhya Pathak had a son Raghunandan Pathak who died in the year 1944 and his son Bhagwan Pathak predeceased him and died in the year 1936. One Monaka Kuer filed a title suit claiming the title to the lands appertaining to Khata No. 43, Plot No. 40, measuring 19 decimals. The Plaintiff's case is that Raghunandan Pathak and Parmeshwar Pathak were separated although some of the lands remained in their joint possession. It is also said that Parmeshwar Pathak died in the year 1933 leaving behind Rampati Kuer as the sole heir. The claim is that Rampati Kuer sold the land in dispute to Defendant No. 2 in the year 1947 and, therefore, it became necessary to file suit. The Defendant i.e. Rampati Kuer's case is that the Plaintiff is not the daughter of Raghunandan Pathak and, therefore, cannot claim any right in the property. The title suit was dismissed. While dismissing the title suit it was held that the

Plaintiff was not the daughter of Raghunandan Pathak. The matter was finally decided by the judgment passed in second appeal in this High Court affirming the judgment and order passed in the title appeal. Therefore, conclusion is that Rampati Kuer had title and had validly executed the sale deed in favour of the Defendant No. 2 and there was also a finding that Monaka Kuer was not the daughter of Raghunandan Pathak.

4. A second round of litigation was instituted by Monaka Kuer when she filed an application for mutation of her name with respect to certain lands belonging to Rampati Kuer by filing Mutation Case No. 6 of 1969-70 which was dismissed on 7.1.1971. Appeal No. 36 of 1970-71 was also dismissed on 26.5.1971.

5. After notification under the Consolidation Act, Monaka Kuer again filed an application before the Consolidation Officer/Assistant Consolidation Officer to record her name in the consolidation proceedings which was allowed. The Petitioner being aggrieved with the order filed consolidation appeal which was decided in his favour. The Joint Director set aside the appellate order.

6. The case of the Petitioner is that after the death of her father-in-law, she came in joint possession with Raghunandan Pathak. Later when Raghunandan Pathak died in 1944, she became the sole heir of the lands belonging to Ghanshyam Pathak and Ayodhya Pathak. By virtue of the title, she derived through inheritance, she executed several sale deeds, redeemed several deed of mortgages executed by Raghunandan Pathak which have been mentioned at paragraph 4 of the writ application.

7. I shall refer to the order of the Joint Director. It appears that the Joint Director has not considered the judgments of the Civil Court, the findings in the mutation case and without applying his mind, has passed the impugned order, reversing the finding of the Civil Court. The Joint Director has come to a finding that after the death of Raghunandan Pathak the two daughters of Raghunandan Pathak Monaka Kuer, Ramsakhi Kuer and the daughter-in-law Rampati Kuer were alive. The Joint Director also came to the conclusion that the daughter-in-law could not have been granted any rights in the property after the death of her father-in-law Parmeshwar Pathak in 1933, only Monaka Kuer had the right to inherit the entire property. This finding is in contravention to the judgment passed in the Civil Suit wherein it has been stated that Monaka Kuer was not the daughter of Raghunandan Pathak.

8. Considering these aspects, I find that the orders impugned cannot be sustained and, therefore, I quash Annexures 3 and 5. This application is allowed.