

(1996) 09 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 3573 of 1985

Idan Mian and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10(2)

Citation : (1998) 3 PLJR 382

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Din Bandhu Singh and Nagendra Prasad, for the Appellant; Uma Kant Singh, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In the instant writ application, the Petitioners have prayed for quashing of the order dated 31st July 1985 passed by the Director Consolidation, in Revision Application No. 870 of 1984, the order dated 1st March, 1984 passed by the Deputy Director of Consolidation In Appeal No. 478 of 1983-84 and also the order dated 18th August 1983 passed by the Consolidation Officer, Nokha In Consolidation Case No. 478 of 1983-84. Photo copies of these orders have been annexed and marked as An-nexures-1, 2 and 3 respectively.

2. The brief facts of the case are as follows:

The dispute relates to lands recorded under Khata No. 261, Mauja Nosari P.S. Nokha measuring an area of 5 acres 52 decimals which was recorded in the Revisional Survey record of rights in the name of Manu Mian, Fattu Mian and Idan Mian, all sons of Peer Mohammad Mian, having equal share. The Petitioners further case was that in the Raitati Column, names of all the three brothers find place with respective plots according to their possession. It was further stated that this Revisional Survey Khatian of Khata No. 261 shows and establishes that the lands of this Khata are properties of three brothers, namely, Manu Mian,

Fattu Mian and Idan Mian having 1/3rd share each and they were in separate cultivating possession of the same. The further case of the Petitioners was that the lands of these Khatas were joint properties of the three brothers which were acquired out of joint family fund in the year 1936 by means of registered Patta obtained, from the then landlord Bijay Bahadur Singh. The rest lands about 25 decimals were Marausi and purchased land. The Parcha had been obtained in the name of Manu Mian because he was the elder brother and Manager of the family the settlement money was paid to the landlord out of the joint family fund. Petitioners further case was that Pir Mohammad died a few years after the cadastral survey leaving behind three brothers in jointness besides his widow and two daughters who are dead. The three brothers separated sometime in the year 1957-58 and each brother began to cultivate in separate possession 1/3rd land of this Khata in question. It was alleged further that for some time, rent was paid jointly in the name of Manu Mian but subsequently mutation took place in the year 1966-67 and since then rent began to be paid by the Petitioners separately and brothers also began to pay rent separately and out of the joint homestead plot No. 1360, Manu Mian and Fattu Mian sold on 20th May 1974 1 decimal each in which Jhagru Mahto, the purchaser in plot No. 1360 has been shown in the northern boundary. Jhagru Mahto is the purchaser from Idan Mian who sold one decimal of land of his share in plot No. 1360. The Petitioners further case was that in the revisional survey Khatian, some mistakes crept in which has to be rectified by the parties by means of execution of Ladabi deed. Plot No. 1730 was wrongly shown in possession of Respondents. Likewise plot No. 1727 which was shown in possession of Idan Mian, has been gifted by Manu Mian to Imamuddin and Lakhuddin, the two sons of predecessor of Manu Mian, namely, Sahabuddin. Hence, both Idan Mian and Respondents executed Ladawi on 11th October 1976 by common agreement. The Petitioners further alleged that the private Respondents made a frivolous claim that the entire lands in dispute were acquired by Manu Mian out of his personal fund and the Petitioners have no interest at all. Their further case was that the entry made in the Revisional Survey Khatian was wrong. The Consolidation proceeding was initiated on the basis of objection by the private Respondents being Consolidation Case No. 206 of 1976-77 u/s 10(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act. A supplementary objection was filed in 1982-83 by the said private Respondents. It is worth to mention here that in the earlier case, the private Respondents made a grievance of some excess recording of share of Idan Mian and no claim at all that the land acquired by settlement in the name of Manu Mian was taken. The Consolidation Officer, after hearing the parties, allowed the objection filed by the private Respondents holding that the case of the Respondents was true. The Petitioners then moved to the appellate authority and the revisional authority but with no result.

3. No counter affidavit has been filed in this case by the private Respondents or by the State of Bihar.

4. Mr. Din Bandhu Singh learned Counsel appearing on behalf of Petitioners

challenged the impugned orders passed by the authorities under the said Act. The Consolidation Officer came to a finding that Manu Mian had purchased the land out of his own fund. Accordingly, the Consolidation Officer ordered to enter the name of the private Respondents in place of Manu Mian and his heirs. Aggrieved by the said order, the Petitioners preferred appeal being Appeal No. 498 of 1983-84. The said appeal was disposed of by the Deputy Director of Consolidation, Rohtas, by order dated 1st March 1984. The appellate authority without discussing any evidence, gave a finding that the land in question settled in favour of Manu Mian and it was not established that the acquisition was out of the joint family fund. It was further held that under the Mohammadan Law, there is no presumption of jointness. The Director of Consolidation, affirmed the orders of both the authorities and dismissed the revision application. From the perusal of the order passed by the revisional authority it appears that the revisional authority considered the evidence of the Petitioner, namely, in 1956 the ex-landlord had filed a rent suit against all the three brothers i.e. Manu Mian, Fattu Mian and Idan Mian. It also noticed the fact that the mutation was allowed in favour of three brothers and rent receipts were issued in their names. The revisional authority further considered the case of Petitioners that in 1976, objection was filed by the private Respondents under the Consolidation Act only in respect of one plot but in 1982, they started making claim in respect of the entire land. The revisional authority held that under the Muslim law, there is no presumption of joint family. On the basis of that finding, the revisional authority allowed the objection of the Respondents.

5. From the perusal of the impugned order, I find that the authorities have not appreciated the case of the Petitioners in its right perspective. From Annexure 3 it would appear that a rent suit was initiated by the ex-landlord against the three brothers for recovery of rent. The authorities further failed to appreciate that in the year 1957-58, Parchas were issued in the name of Fattu Mian under the Bihar and Bengal Irrigation Act 1885, a copy of which is Annexure-6 to the supplementary affidavit filed by the Petitioners. From Annexure-7, photo copy of Register-II it would also appear that the names of all the three brothers were entered in respect of the land in question. Annexure-7/A is the rent receipt which will show that some receipts were granted in the name of Fattu Mian in respect of some land. It further appears from Annexure-8 to the supplementary affidavit that the Survey Khatian was prepared in the name of Manu, Fattu and Idan. All the evidence have not been considered by the Respondent authorities. Curiously enough, the Respondents never raised such objection with regard to the entry of the name of three brothers in the revisional survey record of rights or in any other revenue record, rather in 1976 the only objection raised by the private Respondents was with respect to wrong entry of name in respect of only one plot. In my opinion, the supplementary objection which was filed in 1982 before the Consolidation officer was nothing but after-thought and with malafide intention to grab the entire land, the title and possession of which was exercised by all the three brothers for so many decades.

6. In the result, the aforesaid impugned orders passed by the Consolidation Officer, the appellate authority and the revisional authority, contained in Annexures-1, 2 and 3 respectively, are quashed and this writ application is allowed. There shall be no order as to costs.