

(2006) 10 PAT CK 0046
In the Patna High Court
Case No : L.P.A. No. 981 of 1996

Jagat Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Citation : (2006) 10 PAT CK 0046

Final Decision : Allowed

Judgement

Barin Ghosh and A.K. Tripathi, JJ.—In the year 1916 the then proprietor of the land in question executed a Khewat and thereby declared that three persons named in the Khewat are the raivats/tenure holders of the land in Question. Revenue records were thereupon prepared and in those the name of the first person was shown with suffix "others". The proprietor who executed the Khewat acquired the title of the land in question by reason of a family partition effected prior to the date of execution of the Khewat.

2. Subsequently when register of land was prepared under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, it was shown therein that the son of the proprietor of the land is the raiyate of the land in question, i.e. acquired right to hold the same.

3. The writ petitioners, being the heirs of the person first named in the Khewat, then filed an objection u/s 10 of the Act and having lost before the Consolidation Officer preferred an appeal and again lost. At this stage the heirs of the other two persons named in the Khewat, being the appellants before us, did not approach the Consolidation Officer. The writ petitioners having lost before the Assistant Director of Consolidation in the appeal preferred by them, filed a revision application.

4. In the revision application the respondent No. 16 in the writ petition and the appellant No. 2 in this appeal, being the heir of one of those two persons named in the Khewat, made an application for being added as a party to the said

revision application. That application was rejected with the observation that it shall be open to the said appellant to approach the revisional authority, if and when occasion therefore will arise.

5. Prior thereto both the appellants, being respondent Nos. 16 and 17 in the writ petition and the heirs of those two named in the Khewat, individually preferred revision applications before the Director of Consolidation. These three revision applications, one filed by the writ petitioners and other two by the appellants before us were heard and decided by one order, when it was held that it is not the son of the original proprietor but the writ petitioners as well as the appellants before us are entitled to the land in Question to be recorded in their names as raiyats.

6. Against this order the writ petitioners preferred the writ petition and principally contended that since no objection was filed by the appellants u/s 10 of the said Act, they were not entitled to prefer revision application straightway before the Director of Consolidation, which contention was upheld by the learned Single Judge in the order impugned before us. In addition to that it was contended that in as much as the revisional authority has already decided that the appellant No. 2 does not have titled to the land in Question, while rejecting his application for being impleaded as a party to the revision application filed by the writ petitioners, the said finding operates as *res judicata* and accordingly nothing contrary to such finding could be agitated at a subsequent stage. This contention too had been accepted by the learned Single Judge in the order Impugned before us.

7. Inasmuch as a Division Bench in the case of *Shyam Bihari Upadhyay v. The State of Bihar and Ors.* reported 1985 BBCJ 176 followed by a Full Bench in the case of *Seikh Haldar Zan v. Md. Yusuf Ansari and Anr.* reported *Seikh Haidar Zan Vs. Md. Yusuf Ansari and Another*, have declared that Section 10A of the Act does not preclude a person, who had not taken recourse to Section 10 of the Act, to approach the revisional authority with an application seeking revision of the decisions of the authorities below, the learned Counsel appearing for respondent writ petitioners fairly concedes that the learned Single Judge on that score committed an error. Learned Counsel for the writ petitioners however, drew our attention to the Judgment of the Hon''ble Supreme Court in the case of *Ram Dular Vs. Dy. Director of Consolidation, Jaunpur and Others*, for the proposition that the revisional authority was not entitled to make a *de novo* trial. It is true that Hon''ble Supreme Court was dealing with Section 48 of the U.P. Act which is identical to Section 35 of the Bihar Act, but the fact remains that the Hon''ble Supreme Court in paragraph 3 of the judgment observed that while exercising revisional power u/s 48 of the U.P. Act what was required to be seen was whether the authorities below had considered the questions raised in their proper perspective or had ignored any material evidence on record in coming to their respective conclusions. The Hon''ble Supreme Court, therefore, directed the writ court to consider whether the revisional authority found that any material

evidence on record had been ignored by the Consolidation Officers at the consolidation stage or at the appellate stage or not.

8. In the instant case the principal document upon which the writ petitioners relied to establish that they have title to the land in Question was the Khewat. A look at the Khewat would show that the owner of the land in Question had settled the same in favour of the persons named in the Khewat. Ignoring that vital document, the consolidation officer as well as the appellate authority proceeded on the basis that the son of the original proprietor is entitled to the land in question, although there was nothing on record to show that after execution of the Khewat the land in question was reverted back to the original proprietor or to his heirs. The revisional authority therefore held that the said material document was not considered by the Consolidation Officer or by the appellate authority and accordingly declared that the persons who had been named in the Khewat and their heirs are entitled to be treated as rayaits of the land in question, for they acquired right to hold the land in question, and accordingly their names should be recorded in the register of lands and not the name of the son of the original owner/proprietor of the land in question.

9. Inasmuch as while rejecting the application of the appellant No. 2 to be impleaded as party to the revision application of the writ petitioners, liberty was granted to the appellant No. 2 to take such recourse to law including preferring of a revision application, any observation made while granting such liberty is not conclusive and accordingly such observations can not be treated to operate as *res judicata* in the matter to be decided later on.

10. We, therefore, hold that the learned Single Judge erred in holding that the revision applications filed by the appellants were not entertainable and that the claim of appellant No. 2 is barred by *res judicata*.

11. However having regard the fact that the appellants did not approach the Consolidation Officer u/s 10 of the Act and there being contention of mutual partition of the land in Question which was settled in favour of the persons named in the Khewat and the family of those persons having enlarged in the last century. we accept the submission made by the learned Counsel for the writ petitioners that in the fitness of the things it was a requirement to remit back the matter to the Consolidation Officer to take proper evidence in order to find out as to whether for the last 100 years those three persons remained joint in so far as the land in Question is concerned, and nor to proceed on the basis of the suffix "others" as recorded in the revenue records to imply that the parties remained joint in respect of the land in question.

12. In those circumstances we allow the appeal and set aside the order impugned but at the same time set aside that portion of the order of the revisional authority which suggests that the writ petitioners and the appellants are jointly entitled to the land in question and the matter is remitted back to the consolidation Officer for taking evidence and thereupon to determine whether

untill the date of publication of the register of land u/s 9 of the Act, the three persons named in the Khewat and their descendents remained joint in respect of the land dealt with by the Khewat. We make it clear that we have not interfered with finding of the revisional authority to the effect that it is the persons named in the Khewat and their heirs who are entitled to be acknowledged as the persons entitled to the land in Question and not the original proprietor, who executed the Khewat, and his descendants.