

(1996) 09 PAT CK 0053

In the Patna High Court

Case No : C.W.J.C. No. 1314 and 1351 of 1984

Kuleshwar Singh and Another

APPELLANT

Vs

Joint Director of Consolidation and Others
 Bikrama
Singh and Another Vs State of Bihar and Others

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Hindu Succession Act, 1956 — Section 15

Citation : (1996) 2 BLJR 1563

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—As in both the writ applications the order impugned is the same, they have been heard together and are being disposed of by this common order/judgment.

2. The present writ applications one directed against the order dated 3.2.84 passed by the Joint Director in the purported exercise of revisional power u/s 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as "the Act"), whereby and thereunder he has set aside the order passed by the appellate authority namely, the Dy. Director Consolidation, Rohtas dated 15.7.87 (annexure-4 and affirmed the order passed by the Consolidation Officer, contained in annexure-2and3.

3. In short the relevant facts are that the disputed land belonged to Mostt. Dhanwant Kuer, widow of late Sheo Prasad Singh, who died less in the year 1975. The petitioners and the private respondents are of late Shiv Pd. Singh, husband of aforesaid Dhanwanti kuer. According to the case of the petitioners. are Bhup Singh was their common ancestor and the concerned respondents, who had three sons namely, Manraj Singh, Ranju Singh and Maharaj Singh Late Sheo Prasad Singh was grand son of Maharaj Singh, while the concerned respondents are branch of Maharaj Singh. The petitioners and same of the respondents are of

the branch of Ranju Singh said Mostt. Dhanwanti Kuer died issueless on 26.10.75 leaving behind about 12,91 acres of land situated in village Bhurawal within Karakat Anchal. After the death of Mostt. Dhanwanti Kuer the respondents Padum Singh filled application before the Anchal Adhikari for mutation of his name in place of Mostt. Dhanwanti Kuer. The other respondents on being noticed, filled their objections claiming mutation of their names also besides the name of said Padum Singh. The Anchal Adhikari finally, after calling a report from the Halka Karamchari, passed order on 11.1.76 for amounting the names of the petitioners and the respondents concerned, with respect to four annas share of each set of the claimants. The said order was also upheld by the commissioner in case No. 192/1977 and 185/1977. A true copy of the said order of the Commissioner has been annexed as annexures-1 to the writ petition.

4. In the meantime, it appears that a consolidation proceedings was initiated in the area and the said Padum Singh, who is respondent No. 4 in first case and respondents No. 5 in the second case had attained an ex-parte order from the Consolidation Officer for recording his name in regard to the land of Mostt. Dhanwanti Kuer, about which the petitioners learnt in course of the consolidation proceeding. It is asserted by the petitioners that they were given notice about the matter before the Consolidation Officer and as such having learnt about the aforesaid order of the Consolidation Officer, filled objections before him to record their names also in regard to one-fourth share in the properties of Mostt. Dhanwanti Kuer. By order dated 30th December, 77 the Consolidation Officer rejected the objections saying that necessary orders have already been passed in case No. 144/2229 of 74-75. The petitioners being aggrieved, filled appeal before the Dy. Director, Consolidation, Sasaram against the said order. The said appeal was finally heard by the Dy. Director, Consolidation, Rohtas, who by his judgment and order dated 15.7.78 allowed the same and set aside the order of the Consolidation Officer. The respondents Nos. 4 to 7 in the first case and 5 to 7 in the second case as well as the son of respondent No. 8 in the second case filed revision before the Dy. Director Consolidation which was registered as Revision case No. 529 and 530 of 1978. The said revision cases were heard by the Joint Director, consolidation, who by his order dated 3.2.84 allowed them and set aside the orders passed by the Dy. Director Consolidation, Sasaram saying that the appeal before the Dy. Director was time-barred and also holding that the petitioner's claim was hit by Principle of estoppel and also that the names of said respondents (petitioner herein) even in entered the recent Burvey Khatian was wrong. Further, the Director accepted the names of respondents Nos. 4 to 7 on the ground that Mostt. Dhanwanti Kuer was being looked after by them and as such they have been held to be entitled for the share of Mostt. Dhanwanti Kuer.

5. It is submitted by the learned Counsel for the petitioners that the Joint Director, Consolidation has committed serious error by omitting to consider that the limitation petition which was held along with the appeal before the Dy. Director, Consolidation, who on considering the facts and circumstances, passed the order condoning the delay, if any in preferring the appeal. Still the Joint

Director, in the impugned order has held that the appeal before the Dy-Director was time barred, without disturbs the said order of the Dy. Director.

6. Further, on merit the learned Counsel for the petitioners submitted that after the death of Mostt. Dhanwanti Kuer, who inherited the lands in question as ancestral property from her husband, the said lands, in the obsence of any child of the deceased, devolved upon the heirs of the deceased husband of Mostt. Dhanwanti Kuer. The petitioners as well as the concerned respondents in both the writ applications are the heirs of the deceased husband of Mostt. Dhanwanti Kuer. As such, according to the learned Counsel the petitioners as well as the concerned respondents in both the writ applications being the hairs of the husband of Mostt. Dhanwanti Kuer were entitled to equal share in disputed lands, as was determine in the mutation matter and the Joint Director consolidation committed error in holding that after the death of Mostt. Dhanwanti Kuer, respondents Nos. 4 to 7 in the first writ case would only inherited the lands in question. In this regard the learning Counsel referred to Section 15 of the Hindi Succession Act, 1956, which provides the general rules of succession in the case of Hindu family.

7. Although from the records, it appears that the respondents 8 to 14 and 4 to 7 entered appearance through a learned Advocate, but none has appeared today on their behalf. The learned Counsel for the state has however, appeared, but as no interest of the State is involved, I do not consider it necessary to deal with the submission made by him.

8. From the order of the Dy. Director, Consolidation in the appeal filled by the petitioners, I find that he has fully considered on the point of limitation. He held that the orders of the Consolidation Officer in case No. 144/224 of 74-75 was ex-parte order without notifying any other party on the mere petition of the respondents first set, without any local verification and without examined any witness. Accordingly it he held that the appellants had no knowledge of the said order and would not be bound by it. However, considering the peculiar facts and circumstances of the case, he condoned the delay, if any in preferring the appeal.

9. Nothing has been pointed out from the order of the Joint Director to Shaw that the said finding of the Dy. Director has been set aside by the Joint Director. On the contrary the Joint Director, in his order has mentioned that the appeal before the Dy. Director was barred by limitation and that there was no limitation petition filed by them I fail to appreciate as to how the Joint Director in his impugned order mentioned the said fact when there is specific paragraph dealing with the point of limitation in the order date 15.7.70 passed by the Dy. Director contained to annexure 4, who, on consideration of the peculiars circumstances condoned the delay if any, in preferring the appeal.

10. Further, I find substance in the submission of the learned Counsel for the petitioners on the question that after the death of Mostt. Dhanwanti Kuer, the land in question will devolve upon all the heirs of her husband as there seems to

be to dispute that Danawanti Kuer inherited the said lands from her husband. Under Clause (b) of Sub-section (2) of Section 15 of the Hindu Succession Act any property inherited by a Hindu family from her husband or from her father in law shall devolve in the absence of any son or daughter of the deceased (including children of any pre-deceased son or daughter) not upon other heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the husband. It is nobody's case that the deceased Mostt. Dhanwanti Kuer had any son or daughter, nor it is the case of the side that any child of any pre-deceased son or daughter was there to indirect the lands in question. As such, in my opinion, it has rightly been submitted by Mr. Gour learned Counsel for the petitioners that the lands in question left behind by Mostt. Dhanwanti Kuer would devolve upon all the heirs of the deceased husband, which include the petitioners of the present case also.

11. Thus, the impugned order of the Joint Director, Consolidation cannot be sustained and that same is accordingly quashed.

12. In the result, both the writ applications are allowed but without costs.