

(2013) 12 PAT CK 0089

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6377 of 1992

Lal Badan Kuer

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 2 BBCJ 199 : (2014) 1 BLJud 147

Hon'ble Judges : Mr. Jyoti Saran, J.

Bench : Single Bench

Advocate : Mr. Mrigendra Kumar, Advocate, for the Petitioners; Mr. Shailendra Kumar Sinha and Mr. Raj Kumar, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Jyoti Saran, J.(Oral)—The petitioners have questioned the order dated 24.6.1992 passed by the Joint Director of Consolidation, Gaya whereby the Consolidation Revision Case No.125 of 1990 filed by the private respondents has been allowed and while setting aside the orders of the Consolidation Officer and the Assistant Director of Consolidation a direction has been issued to enter the names of the two parties over the plots in question in equal half.

2. A family genealogy has been placed at paragraph 7 of the writ petition and a perusal whereof manifests that the contesting parties are descendants from a common ancestor Pitamber Singh who was survived by two sons, namely, Mukhlal Singh and Sheogulam Singh. While the petitioners are descendants from Mukhlal Singh, the respondents are coming from the branch of Sheogulam Singh. It is further the case of the petitioners that both the brothers were married in the same family of Kamaljeet Singh.

3. Whereas the parties herein inherited the ancestral properties coming from their father, they also got certain properties from the maternal side situated at Village- Belaur within the district of Patna.

4. According to the petitioners, an oral partition took place between the parties

as back as in the 1920 when it was mutually agreed that the properties coming from the paternal side would fall in the branch of Mukhlal Singh and the properties which devolved from the maternal side would fall in the share of the branch of Sheogulam Singh. It is further the case of the petitioners that the matter rested at that stage and after more than 30 years that the private respondents sought to disturb their possession by raising claim for partition over the property at Usari Chakia which devolved from the paternal side. While their claim was rejected by the Consolidation Officer as well as the Assistant Director of Consolidation, it was upheld by the Joint Director of Consolidation by the impugned order and hence this writ petition.

5. Mr. Mrigendra Kumar, learned counsel has appeared for the petitioners while Mr. Shailendra Kumar Sinha has appeared for the private respondents. The State is not represented.

6. It has been contended by Mr. Kumar while contesting the order impugned that an issue which had attained finality under the oral partition between the parties, is sought to be disturbed at the instance of the private respondents and has found its support in the impugned order. It is stated that the very fact that following an oral partition in the year 1920, whereas the petitioners were allotted the property at Usari Chakia which devolved from the paternal side, the private respondents were allotted the property at Belaurl coming from the maternal side and the parties are in possession of the respective properties, itself is sufficient to prove the contention of the petitioners. It is argued that the Joint Director of Consolidation has not appreciated this fact and has mechanically set aside the order passed by his subordinate authorities while allowing the partition. It is the submission of Mr. Kumar that the petitioners are admittedly holding the possession over the property in question and by virtue of the impugned order they apprehend disturbance in their peaceful possession thereof. It is further the contention of Mr. Kumar that a suit in this direction was filed by the private respondents bearing Title Suit No.53 of 1970/15 of 1976 and which stands abated vide order passed on 21.9.1977.

7. The arguments of Mr. Kumar has been contested by Mr. Sinha, learned counsel appearing for the private respondents who submits that the petitioners have unnecessarily tried to confuse the two issues inasmuch as whereas the lands situated at Belaurl have devolved on the private respondents from their maternal side, they are rightful claimants to the property belonging to their ancestor from the paternal side. He thus submits that whereas the Consolidation Officer and the Assistant Director of Consolidation failed to appreciate this relevant aspect it has found its answer in the order impugned.

8. I have heard learned counsel for the parties and have perused the materials on record. There is no contest on facts. There is also no contest that the property at Belaurl which belongs to the maternal side of the contesting parties, is in possession of the private respondents. The issue is whether the property which is the subject-matter of present contest coming from the common ancestor of the

contesting parties from their paternal side could be merged with that of the maternal side and whether the property at Belaur could have been considered by the Joint Director of Consolidation while passing the impugned order. As per the submission made by Mr. Kumar, raising similar issue, a title suit has been instituted by the private respondents and which stands abated by virtue of the consolidation proceedings. An abatement does not dispose of the suit altogether and the same would stand revived no sooner a notification is issued under section 26A of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

9. Whether the submissions of Mr. Kumar, learned counsel appearing for the petitioners holds substance and whether there has been an oral partition between the parties which also includes the maternal property at Belaur, is an issue which requires adjudication. In the opinion of this Court the consolidation authorities are not appropriately trained and judicially accomplished to enter into intricate matters which requires appreciation and interpretation of evidence.

10. In so far as the issue in hand is concerned, it is noted that the property in dispute admittedly belongs to the ancestor of the contesting parties. It is perhaps taking this aspect into consideration that the order impugned has been passed without expressing any opinion as regarding the oral partition or the effect of the possession of the property at Belaur by the private respondents.

11. Be that as it may, since admittedly a suit is pending before the trial court on the same issue, as admitted by learned counsel for the petitioners, this Court without interfering with the order impugned and taking into consideration the facts available on record, disposes of the writ petition affording liberty to the petitioners to take recourse to such remedy as may be available to them in law for enforcing their right.

12. The writ petition is disposed of.