

(2009) 07 PAT CK 0070

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17444 of 2008

Murlidhar Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 35

Citation : (2009) 57 BLJR 2821

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Chandra Shekhar Pd. Singh, for the Appellant; K.N. Choubey Sandeep Singh and Bijoy Kumar Sinha, AC to GP VI, for the Respondent

Judgement

Sheema Ali Khan, J.—This writ application is directed against the order dated 29.09.2008 passed by the Director, Consolidation in Revision Case No. 56 of 2008 u/s 35 of the Bihar Consolidation by Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the Act) filed by respondent No. 5 Awadhesh Kumar Singh, son of Ram Naresh Rai @ Ram Naresh Singh.

2. The case of the petitioners is that the petitioners and the respondent No. 5 are all Co-sharers of four equal shares of land appertaining to Cadastral Survey Khata No. 32 of 1974-75, corresponding to Revisional Survey Khata No. 130 of 1985 and were in peaceful possession over the lands. The lands came to be incorrectly recorded during the Revisional Survey Khatiyan as ANABAAD SARVASADHARAN, although they were GAIR MAZRUA MALIK land. It is further stated that the father of respondent No. 5 Ram Naresh Singh filed an objection before the Consolidation officer, Rajpur against the State of Bihar for correction of the name mentioned in Revisional Survey Khatiyan appertaining to Khata No. 130, plot No. 38, measuring area 0.7 decimals, plot No. 138, measuring area 0.70 decimals, plot No. 181, measuring area 0.26 decimals (actually 0.29 decimals) and plot No. 184 measuring area 0.27 decimals, the total lands were

1.22 acres. The Consolidation Officer after considering the objection filed by Ram Naresh Singh and the Khatiyani held that plot No. 38 measuring 0.70 decimals should be recorded in the name of Ram Naresh Singh, whereas plot No. 181 measuring 0.26 decimals and plot No. 184 also measuring 0.27 decimals should be recorded in the name of the other co-shares (petitioner).

3. Aggrieved with the aforesaid order of the Consolidation Officer passed on 14.08.2005, respondent No. 5 Awadhesh Kumar Singh filed the appeal before the Deputy Director of Consolidation which came to be numbered as Appeal No. 81 of 1984-85. During the pendency of the appeal, the four branches of the family entered into compromise by which each of the four branches were given 0.13 acres of land in Khata No. 130, plot Nos. 181 and 184 whereas in plot No. 38 of Khata No. 130, 0.20 decimals remained in the name of the appellant Awadhesh Kumar Singh. The compromise petition was filed in the Court of the Deputy Director of Consolidation on 06.06.1985. After the filing of the compromise petition, the parties in the appeal did not appear and accordingly, the appeal was dismissed for default. The entire matter was kept in abeyance as the State Government had issued several letters not to proceed with the consolidation work which was finally revoked by a notification of the State Government dated 02.11.1993. The appeal of the respondent No. 5 came up for fresh hearing and notices were issued to the parties on 13.12.2005. The order sheet of Appeal No. 81 of 1984-85 is annexed with this application.

4. During the pendency of the appeal, the father of respondent No. 5, namely, Ram Naresh Singh died and, therefore, it is submitted by the learned Counsel for the respondent No. 5 that the entire order passed in the appeal is without notice or substitution of respondent No. 5 and has been passed behind the back of respondent No. 5 and as such being aggrieved by the said order he has filed the revision application. It would also be proper to mention that the main contention of respondent No. 5 is that 0.2 decimals of land of Khata No. 85 have illegally been included in the compromise petition. The respondent No. 5 alleges that he ought to have been noticed and heard at the stage of the appeal. It has been alleged that the compromise petition is a forged document and as such not binding upon the respondent No. 5.

5. Learned Counsel appearing on behalf of the petitioners, on the other hand, submits that the appeal was filed by Awadhesh Kumar Singh and the compromise petition was filed in the Court during the lifetime of Ram Naresh Singh which bears his signature and as such there is no question that the compromise petition is forged. It is further contended that the order sheet of the Appellate Court would show that Ram Naresh Singh appeared before the Court of Deputy Director of Consolidation and, therefore, he cannot be heard to say that he was not made party in the appeal. Having appeared before the Court of the Deputy Director of Consolidation, the respondent No. 5 could not have challenged the order dated 20.01.2006 after the expiry of the limitation application and merely because no formal substitution petition was filed, as it cannot be said that any

prejudice was caused to the appellant. It is further submitted that notices were issued to all the parties and it was incumbent upon respondent No. 5 to appear and file substitution petition as the appeal was on behalf of his father and it was not the duty of the respondents to file a substitution petition.

6. Respondent No. 5 Ram Naresh Singh challenged the order dated 20.01.2006 after the period of limitation had expired, the Joint Director of Consolidation set aside the order dated 20.01.2006 holding that the appellate order has been passed against a dead person. The explanation given by respondent No. 5 is that he came to know about the compromise and the order passed in the appeal when Murlidhar began to construct on 0.2 decimals of land appertaining to Khata No. 85. During the proceedings, he was able to examine the document produced before the local police regarding the compromise petition. Thereafter, he verified the records and filed the revision application.

7. Learned Counsel for the petitioners submits that the order of the Joint Director, Consolidation is defective inasmuch as the Joint Director ought to have called for the records of the appeal and examined the fact as to whether Ram Naresh Singh had appeared in the appeal and had filed his haziri as indicated in the appellate order, dated 20.01.2006.

8. In this case, after going through the order of the Joint Director, Consolidation, I find that infact the Joint Director had not examined the Appellate Court's record before holding that the appeal had abated as a result of the death of Ram Naresh Singh, father of respondent No. 5. In my opinion, the appeal was filed by Ram Naresh Singh before the Deputy Director of Consolidation who had issued notices to all the parties to re-start the case. It was the duty of the parties and specially the appellant to appear in the case and file a substitution petition. However, all these facts can only be determined by examining the records of the case to find out whether infact respondent No. 5 had filed his haziri and appeared in the case. After respondent No. 5 had filed his haziri and appeared in the case, no Court can hold that the respondent No. 5 has been prejudiced and that the order of the Appellate Court is defective as it has been passed against a dead person because the onus of filing the substitution petition would lie squarely on the shoulder of respondent No. 5. This Court also notices that although the Joint Director has allowed the revision application and set aside the order dated 20.01.2006, he has not passed any consequential order remanding the matter for rehearing. A proceeding under the Act has to come to its logical conclusion. The order of the revision would not help the respondent No. 5 as it would mean that the order of the Consolidation Officer would hold the field.

9. Learned Counsel appearing on behalf of the respondents also submits that the compromise is a forged document as his father had not put his signature on the said compromise petition and also states several other circumstances to show that it is forged. One of the circumstances is that 0.2 decimals of land appertaining to Khata No. 85 has been included in the compromise petition and this Khata was not otherwise included in the compromise petition filed before the

Appellate Court.

10. It is difficult for this Court to say that 0.2 decimals of land was wrongly included as that would require that the Court should examine whether the share of the parties to whom 0.2 decimals of land was allocated was more than 0.13 decimals of land each, the question of interpolation perhaps then would be the issue to be decided. Another aspect of this matter is that if the respondent No. 5 had appeared at the appellate stage, it was incumbent upon him to raise this issue before the Appellate Court. Nevertheless this Court is not giving any finding regarding this aspect of the matter at this stage of the proceedings.

11. In the circumstances, I remand the matter to the Joint Director, Consolidation to reconsider the entire case after calling for the records of Appeal No. 81 of 1984-85 in order to examine whether notices were duly served on respondent No. 5 and also whether respondent No. 5 has filed the haziri in the appeal on 10.01.2006. In case, the findings are in the affirmative, in favour of respondent No. 5, then the Director/Joint Director, Consolidation should pass appropriate orders in view of the findings aforesaid.

12. In the result, this application is disposed of with the aforesaid observations and directions.