
(1988) 05 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3637 of 1984

Phula Devi and another

APPELLANT

Vs

Hazari Singh and others

RESPONDENT

Date of Decision : 27-05-1988

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10(2), 5, 6, 6(4)

Citation : (1989) PLJR 398

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Murli Manohar Prasad and Anjani Kumar Sinha, for the Appellant; Kesho Srivastava and Dhiranjan Kumar Sinha for Respondents 1 to 3, Mr. G.C.P. Sinha, J.C. to S.C.I for Respondents 4 to 7, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This writ petition is directed against an order dated the 29th January, 1982, passed by the Deputy Director of Consolidation as contained in Annexure-3 to the writ petition whereby and whereunder he allowed the appeal preferred before him in terms of section 6(4) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act as also an order dated the 15th June, 1984, passed by the Joint Director, Consolidation as contained in Annexure-4 to the writ petition whereby and whereunder he dismissed the revision application filed on behalf of the petitioners on the ground that the revision application was not maintainable. The facts of the case lie in a very narrow compass.

2. According to the petitioners, the properties which are the subject matter of the dispute were the self acquired properties of late Paras Nath Singh with which respondents 1 to 3 had no concern. The petitioners are daughter-in-law and grand-daughter-in-law of the said late Paras Nath Singh, who executed two deeds of gift dated the 2nd August, 1980, in favour of the petitioners. According

to the petitioners, prior to the execution of the aforementioned deeds, late Paras Nath Singh applied before the respondent no. 7 for permission in terms of section 6 of the said Act and the respondent no. 7 granted permission therefor on the 30th July, 1980. The aforementioned deeds of gift dated the 2nd August, 1980, are contained in Annexures-2 and 2A to the writ petition.

3. After the execution of the aforesaid deeds, the respondents nos. 1 to 3 preferred an appeal before the respondent no. 6 on the 6th September, 1980, which was numbered as Appeal No 51 of 1980-81, praying therein to set aside the order passed by the respondent no. 7 dated the 30th July, 1980, whereby and whereunder, as stated hereinbefore, the permission to execute deeds of gift was granted to late Paras Nath Singh. According to the petitioners, the said respondents 1 to 3 are not aggrieved persons within the meaning of section 6(4) of the said Act and, as such, no appeal was Maintainable on their behalf

4. It has further been submitted on behalf of the petitioners that, in any event, the said appeal having been filed on the 6th September, 1980, was barred under the law of Limitation and, as such, was not maintainable as the permission had already been granted.

5. By the impugned order as contained in Annexure-3 to the writ petition, the appellate authority allowed the said appeal. The petitioners thereafter preferred a revision application before the Director of Consolidation. The Joint Director, Consolidation, by order dated the 15th June, 1984, held that no revision lies in respect of the matter covered u/s 6 of the said Act.

6. Section 6 of the aforementioned Act reads as follows :--

5. (1) A person intending to transfer or partition any land shall make an application for sanction u/s 5 in the prescribed form and containing the prescribed particulars together with notices of the intended transfer or partition in the prescribed form and the process fees prescribed for the service therefore on the parties named in the application as well as for affixing copies therefor on the land, in the office of the Consolidation Officer and in such other places as may be prescribed.

(2) The Consolidation Officer shall fix a date for hearing and cause the notices specifying the date so fixed to be served on the parties named in the petition by registered post or in such other manner as may be prescribed and shall also cause copies of the notice to be affixed on the land and other places referred to in sub-section (1).

(3) On the date fixed for hearing or on any adjourned date the Consolidation Officer shall, after hearing the parties and after such enquiry as may be necessary, pass such orders as he thinks fit :

Provided that the Consolidation Officer shall not refuse sanction for transfer or partition of any land, except on any one or more of the following grounds, namely : --

- (a) the prescribed particulars have not been furnished;
- (b) the transfer or partition is likely to interfere with the consolidation proceedings or to create a fragment; and
- (c) the transfer or partition will be against any provision of this Act or any provision of the tenancy law for the time being in force in the notified area :

Provided further that sanction shall not be granted for the transfer of any land to any person, if after such transfer the total area of land held by him will exceed the maximum area that may be held by such person under any law for the time being in force in the notified area.

(4) Any person aggrieved by an order of the Consolidation Officer, under subsection (3), may within thirty days of such order, prefer an appeal to the Assistant Director of Consolidation and such appeal shall be heard and disposed of in the prescribed manner and the decision of the Assistant Director of Consolidation, therein, shall be final.

7. Learned counsel appearing on behalf of the petitioners submitted that the impugned orders as contained in Annexures-3 and 4 are absolutely bad in law, inasmuch as the Assistant Director of Consolidation had no jurisdiction whatsoever to entertain the appeal after the deeds of gift were executed by late Paras Nath Singh in favour of the petitioners.

8. Learned counsel for the respondents, however, submitted that the properties in question belonged to the joint family and, in this view of the matter, late Paras Nath Singh had absolutely no jurisdiction to execute the said purported deeds of gift. According to the learned counsel, the said deeds to gift were void and, as such, the Assistant Director of Consolidation in exercise of his power conferred u/s 6(4) of the said Act had the jurisdiction to cancel the said order. The learned counsel has placed strong reliance upon a decision of this Court in the case of Ram Dahin Singh vs. State of Bihar and others (1986 PLJR 888) wherein it has been held that for the purpose of grant of sanction in terms of section 6 of the said Act, no enquiry with regard to the right, title and interest of the party seeking permission to transfer is required to be held.

9. According to the learned counsel, if no enquiry is required to be held, in such circumstance, it was not open to the respondent 1 to 3 to contend that the properties in question were joint family properties and were not separate properties of late Paras Nath Singh. The learned counsel further submitted that in this view of the matter, respondents 1 to 3 cannot be said to be the persons aggrieved.

10. However, on the facts and in the circumstances of this case, in my opinion, it is not necessary to decide the aforementioned point.

11. Learned counsel for the respondents on the other hand submitted that regard being had to the scheme and object of the Act an enquiry, even at the time of

grant of permission appears to be imperative. He, therefore, submitted that the decision in Ram Dahin Singh's case (supra) does not lay down the correct law.

12. However, in the circumstances of this case, in my opinion, it is not necessary to decide this question in this writ application. From the facts stated hereinbefore, it is evident that the two deeds of gift have already been executed. In such a situation, it will be incongruous to hold that the permission granted for execution of the said deeds can be cancelled with retrospective effect so as to invalidate the said documents. Such a situation, in my opinion, is not contemplated under the provisions of Act.

13. From the scheme and the object of the Act, it is manifest that, if any entry is made in the Register of lands in the name of one person sufficient opportunity is given to all the parties who claim any right, title and interest therein to file an objection before the Consolidation Officer u/s 10(2) of the said Act. In this view of the matter, in my opinion, respondents 1 to 3 will have an opportunity to put forward their contention that the subject matter of the deeds of gift was not separate properties of the donor but were really joint family properties and, as such, the donor had absolutely no right to execute deeds of gift in favour of the female member. In this view of the matter, in my opinion, the orders as contained in Annexures-3 and 4 cannot be sustained. In the result, this writ petition is allowed and the impugned orders are quashed with the observation that the respondents 1 to 3 shall be at liberty to question the authority of the donor to execute deeds of gift before the appropriate authorities at a proper stage of the consolidation proceeding. However, in the circumstances of this case, there shall be no order as to costs.