

(2015) 07 PAT CK 0070

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9511 of 1995

Ram Bharat Dubey

APPELLANT

Vs

The Deputy Director, Consolidation, (Headquarter) and
Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 10(6), 35, 5

Citation : AIR 2015 Patna 173 : (2016) 1 PLJR 228

Hon'ble Judges : N.P. Singh, J

Bench : Single Bench

Advocate : Shashi Shekhar Dwivedi, Senior Advocate, Ranjan Kr. Dubey, Rakesh Chandra, Satyendra Shukla, Advocates and Sangeeta Sharma, for the Appellant; Choubey Jawahar, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.P. Singh, J.—By this writ petition, petitioner has challenged Annexure-3 and Annexure-4 being the appellate order under Section-35, passed by the Consolidation Authority whereby the three orders passed in three different cases by the Consolidation Officer under Section-10(6) of the Bihar Consolidations of Holdings and Prevention of Fragmentation Act, 1956 Act (hereinafter referred to as the Act) have been set aside in a singular appeal and revision. The petitioner, being the son of Satram Dubey, the younger brother of Bhagwan Dubey, had received in gift entire right, title and interest of Bhagwan Dubey in the properties inherited by him from his father Guput Dubey. This gift deed was duly registered and was executed after due permission was granted by the Consolidation Authority under Section-5 of the Act. The contesting parties to this writ petition are the two elder brothers of the petitioner namely Krishna Dubey and Baliram Dubey, three cousins being son of Kawal Dubey, who was the youngest brother of Bhagwan Dubey and Satram Dubey, and Satram Dubey and the three are Rajbanshi Dubey @ Jagdish Dubey, Rameshwar Dubey and Rambali Dubey. When

the consolidation proceeding started, petitioner filed two applications before the Consolidation Authority, giving rise to two cases being Case Nos. 54 of 1984 and 55 of 1985. The first was that the lands that the petitioner had received as gift from his uncle Bhagwan Dubey should be separately carved out. The second was that lands which the petitioner had received on partition be also separately carved out. A third application being Case No. 70 of 1984-85 was filed by Bhagwan Dubey praying that he had self acquired landed property of about 10 acres which should be separately carved out. All these three separate applications were contested by Kawal Dubey i.e. the youngest brother of Bhagwan Dubey and the uncle of the petitioner and others. After hearing the parties, by order dated 27.3.1985, the Consolidation Officer allowed all the three applications holding that a partition had taken place as between the four brothers being sons of Guput Dubey in the year 1966 and they were coming in possession of their respective shares, though there was no written document in support thereof. Consequently, he held that the gift made by Bhagwan Dubey to the petitioner Ram Bharat Dubey by registered deed after due permission was valid and separate "Chak" could be carved out in respect thereof. He then held that as a consequence of partition between the four brothers of the petitioner being the son of Satram Dubey separate "Chak" had to be carved out, so far as petitioner is concerned, and similarly there already having been partition in the family of Bhagwan Dubey, his self acquired separate property be carved out as a separate "Chak". Thus, all these three applications were allowed, though by a common order which is Annexure-2. Against the orders passed on these three applications, Kawal Dubey, the youngest brother of Bhagwan Dubey and uncle of petitioner, filed a singular appeal under Section-10(6) of the Act being Appeal No. 77 of 1985-86. That was allowed by the Deputy Director of Consolidation, Rohtas in Appeal No. 77 of 1985-86 by order dated 19.9.1988, which is Annexure-3, acting as delegate of Director, Consolidation, and petitioner's revision was dismissed. Hence, this writ petition.

2. Heard Shri Shashi Shekhar Dwivedi, learned Senior Counsel for the writ petitioner and Shri Choubey Jawahar, learned counsel for the contesting respondents.

3. On behalf of the contesting respondents, it is first urged that the gift deed, though executed with permission of the Consolidation Authority and is a registered document, as executed by Bhagwan Dubey in favour of the petitioner Ram Bharat Dubey, is void and unenforceable because it transfers the right, title and interest without there being a partition. In other words, it gifts effectively undivided share in immovable properties. The argument is noticed only to be rejected. What was not disputed is the extent of right, title and interest of Bhagwan Dubey. What was not contested is that it is only to that extent there has been a gift. Thus, it is an acceptance by the private respondent that Bhagwan Dubey gifted entire right, title and interest to the extent he had in the joint family properties. Thus, the right to gift and the extent of gift is not contested. I fail to understand on what basis it is said that undivided, if it is

undivided, cannot be gifted. I know no law that restricts such a gift, especially when it is transferring the entire right, title and interest. However, the Consolidation Authority accepted the fact that there had been a partition way back in 1966 by mutual consent. It was an oral partition. Again the contention of contesting respondent that there is no document of partition is of no avail inasmuch as under Hindu Law an oral partition of ancestral property is a valid partition. No document is required. These are so far as the merits are concerned. But, Shri Shashi Shekhar Dwivedi, learned Senior Counsel, raises a very fundamental issue. As noticed above, there were three separate applications and three separate cases registered being Case Nos. 54, 55 and 70 of 1984-85; two by the petitioner and one by Bhagwan Dubey. It may be noted that Bhagwan Dubey died on 15.8.1985 and his interest, whatever be, it devolved in the petitioner in entirety. All the three applications were allowed by order dated 27.3.1985 (Annexure-2). The contesting respondents, if at all were aggrieved by all the three orders appertaining to the three applications above said, then three separate appeals ought to have been filed because effectively there were three separate orders allowing the three separate applications. As they were dependent on common set of facts, they were disposed of by common order. Instead, the contesting respondent filed only one appeal, as is apparent from the very opening paragraph of the appellate order. Shri Dwivedi submits that this is impermissible. This appeal technically would be restricted to one application. If that be so, then against the other two applications there is no appeal. In such a situation, the finding of fact recorded in the original order, insofar as other two applications are concerned, attains finality and binds the parties and, consequently, it acts as *res judicata* in respect of the consolidation appeal that is filed. That being so, this appeal itself becomes not maintainable. Thus, the appellate authority erred in entertaining the appeal and further allowing the same. Consequently, even the revisional order cannot be sustained. Reliance has been placed in the case of *Sheodan Singh Vs. Smt. Daryao Kunwar*, AIR 1966 SC 1332 : (1966) 3 SCR 300 .

4. Having considered the matter, in my view, the submission is correct. It is a singular order dated 27.3.1985 in which for deciding all the three applications facts have been noted and determined. The determination is that there had been a partition in the family. Everyone has had his definite share. Therefore, the gift was for a well defined definite property. The petitioner had his property well defined and Bhagwan Dubey also had his separate properties as a consequence of partition already having taken place. Now when one appeal was filed, which has to be restricted to anyone of the cases, these findings being common, would bind the parties in respect of the other two disputes. If that be so and that remains unchallenged, then it would operate as *res judicata* as between the parties the issues being the same, the parties being the same and, therefore, when only a singular appeal has been filed, these findings which have attained finality cannot be challenged. If these findings cannot be challenged, then there is nothing left to challenge in the appeal.

5. Thus, the appellate and the revisional orders cannot be sustained and have to be set aside and the order passed by the Consolidation Officer, as contained in Annexure-2, has to be restored.

6. The writ petition is, accordingly, allowed.

Annexures-3 and 4 are liable to be set aside and are set aside. Annexure-2 is restored.