

Narmedeshwar Upadhya and ors. Vs. the State of Bihar and anr.

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Court : Patna

Decided On : Apr-09-2005

Judge : S.N. Hussain, J.

Acts : Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 - Sections 4 and 35; Code of Criminal Procedure (CrPC) - Sections 145

Appeal No. : CWJC No. 8891 of 2000 and Civil Revision No. 1849 of 2000

Appellant : Narmedeshwar Upadhya and ors.

Respondent : The State of Bihar and anr.

Advocate for Def. : Dilip Kumar, J.C. to G.P. VII in CWJC No. 8891 of 2000 and Ashutosh Ranjan Pandey, Adv. in C.R. No. 1849 of 2000

Advocate for Pet/Ap. : Madan Mohan-I, Adv.

Judgement :

S.N. Hussain, J.

1. Both the aforesaid cases are being heard together and they are being disposed of by a common order with the consent of the parties.

2. The petitioner claims the lands in dispute on the basis of two registered deeds of gift dated 1.11.1965 executed in his favour by the original owner, namely,

Bhago Kuer and Dhaneshwar Kuer. Thereafter, a proceeding under Section 145, Cr PC was initiated in which possession of respondents was decided whereafter Cr. Revision No. 590 of 1968 filed by the petitioner was dismissed by this Court on 20.12.1968. Subsequently, the petitioner filed Title Suit No. 51 of 1969 for declaration of his title over the lands on the basis of the aforesaid gifts and for recovery of possession. The said suit abated under Section 4(c) of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Act' for the sake of brevity) and Civil Revision No. 836 of 1974 challenging the same was dismissed by this Court.

3. In the meantime, the Consolidation proceeding had started in the area and the Consolidation authorities decided the said proceeding in favour of the respondents as per the decision in the proceeding under Section 145, Cr PC. Finally, CWJC No. 710 of 1979 was filed by the petitioner and the said writ petition was allowed on 17.1.1983, quashing the orders of the Consolidation authorities and remanding the matter to the Consolidation Officer to decide it afresh as per the observations made in that order. Thereafter, Consolidation Case No. 1 of 1983 started and the Instructor, Consolidation Training Institute, Patna, passed his order on 11.8.1987 directing the authorities to prepare the records of right in the name of the petitioners Ram Kewal Upadhaya and Mushan Upadhaya and also to record the name of Doodhnath Pandey as Shikmidar.

4. The second part of the said order was challenged by the petitioner in Consolidation Appeal No. 1840 of 1987-88 which was allowed on 16.10.1995 by the Assistant Director, Consolidation, Bhojpur, who set aside that part of the order in Consolidation Appeal, by which respondent Doodhnath Pandey was directed to be recorded as Shikmidar. Against the said order Respondent Nos. 3 to 9 filed Consolidation Revision No. 337 of 1995 before Director, Consolidation, Bihar, Patna, who allowed the said Revision on 9.7.1997 setting aside the Appellate Order. This order was challenged by the petitioners in CWJC No. 6700 of 1997 and this Court vide order dated 15.5.1998 disposed of the said writ petition with a direction to revive the aforesaid Title Suit No. 51 of 1969.

5. On the basis of the aforesaid order of this Court, Title Suit No. 51 of 1969 was revived on 14.9.1998 and several witnesses were examined therein. But in the meantime a petition was filed by the respondents for recall of the order of revival of the suit and the said petition was rejected by the learned trial Court on 12.4.1999 against which the respondents filed Civil Revision No. 712 of 1999 which was disposed of by this Court on 10.3.2000 remanding the matter to the trial Court for fresh decision on the matter under Section 4(c) of the Act. It was thereafter that the learned Subordinate Judge-I, Bhabhua, passed his order dated 28.7.2000 holding that the suit has abated under Section 4(c) of the Act.

6. Against the said order Civil Revision No. 1849 of 2000 has been filed by the petitioner. The contention of the learned counsel for the petitioner is that when this Court had specifically directed, while disposing of CWJC No. 6700 of 1997 on 15.5.1998, revival of the Title Suit and its disposal on merits knowing fully well about its earlier abatement, there was no occasion for the learned trial Court to pass the impugned order dated 28.7.2000 abating the suit.

7. Furthermore, since the purpose for which the earlier Writ Case bearing CWJC No. 6700 of 1997 was disposed of had been frittered away by the abatement of the Title Suit, the petitioner filed CWJC No. 8891 of 2000 against the order dated 9.7.1997 passed by the Director, Consolidation, Bihar, in Consolidation Revision No. 337 of 1995. In this connection, the contention of the learned counsel for the petitioner is that the said order of the learned Director of Consolidation was violative of the decision of this Court in the case of Jagu Mallah and Ors. v. The State of Bihar and Ors., reported in 1996 (2) PLJR 924, in which it was held that under the provision of Section 35 of the Act Director of Consolidation has no power to set aside the Appellate Court and substitute his own finding de novo assessing the evidence. This decision was based on the decision of the Hon'ble Apex Court in the case of Ram Dular v. Dy. Director of Consolidation, Jaunpur and Ors., reported in 1994 (Supp-2) SCC 198.

8. It appears that after all these long drawn litigations good sense has prevailed upon the parties and they are taking positive steps for amicable settlement of their aforesaid disputes and they jointly pray that, without going into the merit, both the

said cases be disposed of with a direction to the learned trial Court to decide the Title Suit in accordance with the wishes of both the parties.

9. In the aforesaid circumstances, the impugned order dated 28.7.2000 passed by the learned Subordinate Judge-I, Bhabhua in Title Suit No. 51 of 1969, against which Civil Revision No. 1849 of 2000 has been filed, is set aside and both the aforesaid cases, namely, CWJC No. 8891 of 2000 and Civil Revision No. 1849 of 2000 are disposed of with a direction to the learned trial Court to decide Title Suit No. 51 of 1969, as the parties are trying for amicable settlement.

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