

Bidyanand Singh. Vs.

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Court : Patna

Decided On : Dec-03-2010

Judge : S. A. Khan, J.

Acts : Consolidation Act - Section 35; Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 - Section 34(2)

Appeal No. : CIVIL WRIT JURISDICTION CASE No.9122 OF 2006

Appellant : Bidyanand Singh.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. N.K. Singh; Mr. Jay Prakash Sharma, Adv.

Advocate for Pet/Ap. : Mr. Girijanand Prasad, Adv.

Judgement :

1. In this writ petition, the petitioner has prayed for quashing of the orders contained in Annexures 1 and 3 passed by the Deputy Director Consolidation, Head Quarter, Patna and the Consolidation Officer, Guraul respectively.

2. The short facts are that respondent no. 5 had filed an application before respondent no. 2 for correction of the entry made in the revisional survey. The case of respondent no.5 is that C. S. Khesra No. 1860 and 1861 measuring 9 decimals was purchased by a registered sale deed, dated 28.3.1955. After the execution of the sale deed, respondent no. 5 has been living on the said plots of

land which contains a house and the court yard. In the revisional survey plot nos. 1860 and 1861 were numbered as plot no. 4802 and was entered in the name of ancestor of respondent no.5. However, instead of entering 9 decimals in the revisional survey khatiyān, it was shown to measure 8 decimals only. It is the case of respondent no. 5, that 1 (one) decimal of land was included on the east side of plot no. 4803 which belongs to the petitioner.

3. On the basis of the aforesaid facts the Assistant Consolidation Officer passed an order on 28.9.1997 based on the consent application filed on behalf of the parties in which it was stated by the petitioner that he is ready to give up 1 (one) decimal of land in favour of respondent no. 5.

4. The case of the petitioner is that no such application was filed by him and that his signature on the said consent application is forged and fabricated. The petitioner, thus, filed Appeal No. 109/1988-89 before the Deputy Director Consolidation, Hajipur. The Deputy Director without considering the merits of the case or the report of spot verification, along with the measurement report which was available on the record, quashed the order of the Assistant Consolidation Officer on the ground that there was insufficient evidence to show that a consent application had been filed on behalf of the petitioner.

5. In my opinion, even if the court had come to the conclusion that there was insufficient evidence to show that the order was passed with consent of the parties, the Deputy Director Consolidation ought to have considered the respective case of the parties on merits. The Deputy Director Consolidation sent the matter to the Consolidation Officer, Goraul for appropriate action. The respondents being aggrieved by the order of the Dy. Director filed an application under section 35 of the Consolidation Act before the Director Consolidation.

6. The Director Consolidation has relied on the verification and spot inspection made in this case which would indicate that in fact 1 (one) decimal of land has been amalgamated in plot no. 4803. The petitioner's case is that he has acquired 3 decimals of land through a registered sale deed executed by Faguni Mallik on 28.11.1970. The measurement and the spot verification of the land indicates that 1 decimal of land has been amalgamated with plot no. 4803. I, therefore, find no

illegality in the order impugned.

7. The petitioner has challenged the order on the ground that the Deputy Director Consolidation had no power to entertain the revision application on the basis of the judgment in the case of Ramotar Yadav vs. Azaz Haider, 2001 (1) PLJR 226. A Division Bench of this court in the case of Krishna Singh vs. Deputy Director Consolidation, 2008 (4) PLJR 63 has interpreted section 34(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 and held that if there is proper authorization to the Deputy Collector to exercise the powers of revision by the Director Consolidation, after obtaining sanction of the State Government, there can be no scope of setting aside the order, on the ground that it is without jurisdiction. The Division Bench has taken into consideration the case of Ramotar Yadav and Jhori Bind vs. State of Bihar, 2007 (3) PLJR 648.

8. In the present case a counter affidavit has been filed stating that the Deputy Director Consolidation, Head Quarter, Bihar, Patna was vested with the power to dispose of the case under section 35 of the Act by Director Consolidation after obtaining the consent of the State Government, on 4.9.1997 (Annexure B).

9. This court may refer to the case of Bihar State Text Book Publication Corporation vs. Dilip Kumar Mishra, 2008 (4) PLJR 64 (DB), wherein the court in similar facts, has held that if there is a delegation of powers to the Deputy Director Consolidation with the sanction of the State Government, the Deputy Director Consolidation may exercise the powers of the Director Consolidation by virtue of the provisions of section 34(2) of the Bihar Consolidation of Holdings & Prevention of Fragmentation Act.

10. It has also been argued that during the pendency of this application the villages in the Consolidation Proceedings were de-notified, and as such it is submitted, that the consolidation authorities did not have the power to hear the revision application. The submissions made on behalf of the petitioner has to be rejected as the orders passed in appeal and revision are a continuation of the original proceeding and as the original order by the Consolidation Officer / Appellate Authority were passed before de-notification of the consolidation proceedings, the party aggrieved would have the right to file an appeal / revision.

11. I have already held on merits that there is no illegality in the order impugned. This writ petition is dismissed.

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