

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2117 of 2015

In
Civil Writ Jurisdiction Case No.14475 of 2007

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1. Rajgiri Singh S/o Late Ram Vinay Singh
 2. Ram Bachchan Singh S/o late Harnandan Singh both resident of Bishunpur Taraura, P.S. Mahua, District Vaishali.

... .. Appellants

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Old Secretariat Building, Patna.
2. The Joint Director, Consolidation, Muzaffarpur.
3. Gaya Singh S/o late Sakaldeo Singh resident of village Bishunpur, Taraura, P.S. and Anchal Mahua, District Vaishali.
4. Amarsh Singh
5. Ganesh Singh both sons of Chandrika Singh
6. Yogmaya Kuer W/o Chandrika Singh
7. Gita Kuer
8. Nirmala Devi
9. Gayatri Devi
10. Girja Devi all daughters of late Chandrika Singh
11. Ravindra Singh
12. Sachindra Singh both sons of Harnandan Singh
13. Shail Devi
14. Shanti Devi both daughters of late Harnand Singh
15. Umesh Singh
16. Takeshwar Singh both sons of late Ramnandan Singh
17. Sumitra Devi
18. Manju Devi
19. Baby Devi all daughters of late Ram Nandan Singh
20. Pashupati Kuer Widow of late Ram Nandan Singh all residents of village - Bishunpur, Tararura, P.S. and Anchal Mahua, District Vaishali.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Anand Kumar Ojha, Adv.
For the Respondent-State	:	Mr. Harun Kuraishi, AC to SC-1
For the Respondent No.3	:	Mr. Naresh Chandra Verma, Adv.



**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

Date : 29-10-2022

Heard Mr. Anand Kumar Ojha, learned counsel for the appellants and Mr. Naresh Chandra Verma, learned counsel for the respondent no.3. Mr. Harun Kuraishi, learned AC to SC-1 submitted that the State is a formal party in the present case.

2. The instant intra-court appeal has been filed by the petitioners/appellants challenging the order dated 15.09.2014 passed by the learned single Judge in C.W.J.C. No. 14475 of 2007 whereby he has dismissed the writ application. The operative part of the aforesaid order dated 15.09.2014 reads as under:-

“9. Having considered the rival contentions of the parties let us examine the first objection raised by the petitioners that it suffers from principle of res-judicata/construction res-judicata. From the submission and record of the case it appears that objection filed by the petitioners under Section 10(2) and 10(4) of the Act was rejected on the ground of limitation which was affirmed by the appellate stage but the revisional court remanded back the matter. When the revisional court has remanded back the matter then in that circumstance it cannot be said that the order passed by the Consolidation Officer rejecting the objection petition on the ground of delay has



attend finality and will have any bearing on the merit of the case. Had there been adjudication by the appellate court the petitioners would have a right to claim that proceeding suffers from res-judicata as from the record it appears that even at the Deputy Director level he has not decided the case and the case remained pending without any decision. If the appellate authority has not decided the case one way or the other and respondent rightly approached the Director under Section 35 of the Act after abatement of Section 4A of the Act. This Court is of the view that the proceeding before Director under Section 35 of the Act does not suffer from res-judicata. The judgments relied by the petitioners are not applicable to the present case. Accordingly the submission raised by the petitioners is not sustainable in the eye of law.

10. So far right-title is concerned, petitioners have not disputed the fact that they belonged to the same family and the properties in question are joint family property. Petitioners have only argued on the points of res-rejudicata/construction res-judicata and have not argued the case on merit of the case with regard to share. The construction of Section 35 of the Act provides wide power and the parties aggrieved can straight way approach to the revisional court and in a proper case, if revisional court feels that justice has not been done to the parties, he will pass the order in accordance with law.

11. In this view of the matter, this Court does not find any merit in this writ petition. It is accordingly dismissed.”

3. In the writ application, the petitioners/appellants had sought for quashing of the order dated 23.08.2007 passed by



the respondent Joint Director, Consolidation, Muzaffarpur in Revision Case No. 43 of 2006 in exercise of powers conferred under Section 35 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for short 'the Consolidation Act').

4. Mr. Anand Kumar Ojha, learned counsel appearing for the petitioners/appellants submitted that the learned single Judge committed an error in dismissing the writ application without deciding the frontal issue of lack of jurisdiction raised by the writ petitioners that the Joint Director has absolutely no jurisdiction to review the order dated 18.04.1985 passed in Consolidation Revision Case Nos. 932 of 1082 and 1403 of 1982. He contended that the Joint Director, Consolidation measurably failed to appreciate the settled principles of law regarding constructive res-judicata and limitation of review. According to him, the order impugned amounts to review of the previous order passed by the then Joint Director Consolidation two decades back. He further contended that the learned single Judge failed to appreciate that the order dated 18.04.1985 was a limited remand to examine the claim of Sakaldeo Singh that he had filed application under Section 10(2) of the Consolidation Act within time or not. He argued that after the remand order



dated 18.04.1985, the respondents were required to prove that they had filed petition under Section 10(2) of the Consolidation Act within time and no other issue was to be examined. In the absence of the proof and finding that the petition under Section 10(2) of the Consolidation Act was filed within time, the decision of the Deputy Director in Appeal No. 50/1982-83 was final and not open to collateral challenge. He further argued that the learned single Judge failed to appreciate that respondents never established the case of filing petition under Section 10(2) of the Consolidation Act within time and, as such, any subsequent proceeding on the basis of subsequent petition was barred by law of limitation and principles of res-judicata as well.

5. *Per contra*, Mr. Naresh Chandra Verma, learned counsel appearing for the respondent no.3 submitted that the respondent no.3 had fresh cause of action for filing the case under Section 35 of the Consolidation Act because in the Second Appeal No. 536 of 1988, when an Interlocutory Application No. 1302 of 2006, was filed for abatement of the appeal on the ground of continuation of consolidation proceeding in village Bishunpur Taraura and Bhagwatpur Taraura which was allowed vide order dated 07.04.2006 observing that the entire suit stood abated. He contended that earlier none of the Consolidation



Authorities had decided the case on merit. Therefore, there is no question of res-judicata or review of the order and the question of limitation would not arise as the respondent no.3 had filed the Revision Case No. 43 of 2006 immediately after the abatement of the Second Appeal on 07.04.2006. He further contended that the Joint Director of Consolidation has independently applied his mind and, after considering the evidence on record, passed the order and there is no illegality in the order. He argued that the Joint Director Consolidation has rightly held that the respondent no.3 has one half of the share in the property in question. Similarly, the learned single Judge has committed no error while passing the impugned order.

6. We have heard learned counsel for the parties and carefully perused the materials on record.

7. It is well settled by now that the principle of res-judicata applies when a litigant attempts to file a subsequent lawsuit on the same matter, after having received a judgment in a previous case involving the same parties. Res judicata includes two concepts of claim preclusion (also known as collateral estoppel) and issue preclusion (also known as issue estoppel). Parties cannot sue each other again after the final judgment on merit in civil litigation. The role of constructive res-judicata in



Section 11 of the Civil Procedure Code is an artificial form of res judicata. It states that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

8. In order to appreciate the submissions advanced on behalf of the petitioners/appellants that the learned single Judge and the Joint Director Consolidation failed to appreciate that Consolidation Revision Case No.932 of 1982 and Consolidation Revision Case No. 1403 of 1982 had attained finality and there was no question of review of the order dated 18.04.1985 as also the submissions that the Joint Director and the learned single Judge failed to appreciate the settled principles of law regarding constructive res-judicata and limitation of review, when we peruse the records, we find that against the judgment and decree in Partition Suit No. 16 of 1964, Sakal Deo Singh preferred Title Appeal No. 24 of 1972, which was allowed vide judgment dated 25.05.1976 against which Second Appeal No. 595 of 1980 was



filed. On 18.01.1980, the second appeal was allowed and the case was remanded to the lower appellate court for affording fresh opportunity to the parties to be heard and after hearing them to decide the appeal in accordance with law. During the proceeding of the Title Appeal, the consolidation proceeding was initiated in the village and by virtue of Section 4(1)(c) of the Consolidation Act, the Title Appeal and all judicial proceedings got abated vide order dated 05.07.1984. By operation of law, the appellate court passed order for abatement of the suit land in relation to land of Bhagwatpur Taraura, but ordered that the appeal will proceed with respect to the land of village Bishunpur Taraura. The petitioners/appellants preferred Second Appeal No. 536 of 1988 against the judgment and decree of the appellate court and in the second appeal, an interlocutory application vide I.A. No. 1302 of 2006 was filed for abatement of the appeal on the ground of continuance of the Consolidation Proceeding in village Bishunpur Taraura and Bhagwatpur Taraura. The said interlocutory application was allowed vide order dated 07.04.2006 by the learned single Judge, who held that the entire suit stood abated. The operative part of the order passed by the learned single Judge reads as under:-

“8. On the basis of the abovesaid order, the learned Advocate of the respondent argued that



since the learned lower appellate court has already held vide order dated 05.07.1984 that Section 4(1)(c) of the Consolidation Act will not apply with respect to the lands of plot nos. 91, 95, 907, 810 and 959 and against that order, the appellants have not preferred any appeal or revision, as such that order cannot be set aside at this stage. Against the said argument of the learned Advocate of the appellants, the learned Advocate of the respondent argued that any order passed by any court which is contrary to the statute is not a good law and cannot be followed. The learned Advocate of the appellants again placed reliance upon the decision reported in 1990 PLJR 90 in the case of Mostt. Keshar Kuer (supra) and submitted that once the notification under Section 3(1) of the Consolidation Act is published in any area, all the suits/appeals pending in any court with respect to the lands of the said area shall stand abated.

9. So far as promulgation of the notification under Section 3(1) of the Consolidation Act is concerned, there is no dispute between the parties that the notification has not been published under Section 3(1) of the Consolidation Act with respect to the lands of both the villages and it is also admitted that final notification under Section 26A of the said Act has not been issued meaning thereby that the consolidation proceeding is still going on. The statute is very clear in this regard



and as per Section 4(1)(c) of the Consolidation Act, all the suits or appeals pending in any court with respect to those lands for which promulgation under Section 3(1) of the Consolidation Act has been made, shall stand abated. Thus, on the basis of the decisions cited above and under the provisions of Section 4(1)(c) of the Consolidation Act, I have not hesitation to hold that this appeal stands abated under the provisions of Section 4(1)(c) of the Consolidation Act and consequently, the entire suit stands abated.

10. In the result, I.A. No. 1302 of 2006 is allowed and accordingly, it is hereby ordered that this appeal stands abated as per the provisions of Section 4(1)(c) of the Consolidation Act.”

9. Insofar as the argument advanced on behalf of the petitioners/appellants is concerned, it would be pertinent to note here that after the commencement of the Consolidation Proceeding, Sakal Deo Singh filed Case No. 306 of 1981 for correction of record. He mentioned the details of the land with khata number, khesra number and area and also appended the genealogical table to claim that he is entitled to 50% of the land of the joint family. The Consolidation Officer, Mahua, Vaishali while exercising the power under Section 10(4) of the Consolidation Act considered the application filed by Sakal Deo



Singh and vide order dated 05.04.1982 passed in Case No. 306 of 1981 dismissed the objection as time barred. Against the said order, no appeal or revision was preferred. Thus, the aforesaid order dated 05.04.1982 attained finality.

10. Sakal Deo Singh also filed another application under Section 10(2) of the Consolidation Act for correction of the entries in the survey record on 18.10.1981 which gave rise to Case No. 190 of 1981 which was dismissed by the Consolidation Officer. Thus, the objection under Section 10(2) of the Consolidation Act in relation to correction of record of right attained finality in between the parties. Subsequently, Sakal Deo Singh filed two revision applications under Section 35 of the Consolidation Act before the revisional authority, which were numbered as Consolidation Revision Case No. 932 of 1982 and Consolidation Revision Case No. 1403 of 1982. Both revisions were heard together and vide order dated 18.04.1985, the revisional authority set aside the order passed by the appellate authority and remanded the matter back to the appellate authority i.e. the Deputy Director, Consolidation directing him to examine the objection raised by the petitioners and after examining the witnesses and inspecting the spot either himself or through someone else take decision in accordance



with law. It would be pertinent to note here that after the aforesaid judgment dated 18.04.1985 was passed by the revisional authority, son of Sakal Deo Singh, namely, Gaya Singh filed a petition under Section 35 of the Consolidation Act for correction of the survey record on the ground that in the title appeal, the appellate court has held the appellants and respondents to be joint and entitled to the extent of half and half share each in the joint family property which was numbered as Revision Case No. 43 of 2006 in which the revisional authority heard the parties on merit and examined the documents submitted by them and vide order dated 23.08.2007 held that the parties are having one half share in the disputed land. Hence, while allowing the application, the revisional authority directed that on the entire disputed land, entry should be made in the record that the applicant is having 50% share of the disputed property.

11. The order passed by the revisional authority was challenged in a writ petition vide C.W.J.C. No. 14475 of 2007 wherein the argument was advanced on behalf of the petitioners-appellants that the revisional court did not have any jurisdiction to review its own order. It was also argued that the impugned proceedings in entertaining the Revision Case No. 43 of 2006



suffered from re-judicata/constructive res-judicata, as on earlier occasion objections filed by Sakal Deo Singh were dismissed holding the same to be time barred. It was further argued that once a quasi judicial authority had exercised its jurisdiction and passed its final order, it cannot be allowed to restart the proceeding on the strength of a fresh application and come to a different finding.

12. Respondent no. 3 had contested the matter before the learned single Judge. He contended that he had fresh cause of action for filing the case under Section 35 of the Consolidation Act because the second appeal was ordered to be abated on 07.04.2006. He further contended that there is no question of res-judicata or review of the order and the question of limitation would not arise as he had filed the Revision Case No. 43 of 2006 immediately after the abatement of the second appeal on 07.04.2006. He contended that the Joint Director of Consolidation had independently applied his mind after considering the evidence on record and passed the order in which there was no illegality whereby the respondent no. 3 has been held entitled to one half share in the disputed property.

13. After hearing the parties, the learned single Judge passed the impugned order holding therein that when the



revisional court has remanded back the matter, it cannot be said that the order passed by the Consolidation Officer rejecting the objection petition on the ground of delay has attained finality and will have any bearing on the merit of the case. Had there been adjudication by the appellate court the petitioners would have a right to claim that proceeding suffers from res-judicata as from the record it appears that even at the Deputy Director level he has not decided the case and the case remained pending without any decision.

14. We are of the opinion that the learned single Judge rightly held that if the appellate authority has not decided the case one way or the other and respondent rightly approached the Director under Section 35 of the Consolidation Act after abatement of the consolidation proceeding in terms of Section 4(c) of the Consolidation Act wherein it is provided that every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall on an order being passed in that behalf by the court or



authority before whom such suit or proceeding is pending stand abated.

15. We are of the considered opinion, that in absence of the issue having been decided directly and substantially in any former proceeding between the parties by a competent court, it cannot be said that the proceeding before Director under Section 35 of the Consolidation Act suffers from res-judicata.

16. In that view of the matter, we are of the opinion that no case for interference with the order passed by the learned single Judge is made out.

17. The intra-court appeal being devoid of any merit is dismissed.

(Ashwani Kumar Singh, J)

(Nawneet Kumar Pandey, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29-10-2022
Transmission Date	NA

