

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 1627 OF 2016****RAM BALAK SINGH****.....APPELLANT(S)****VERSUS****STATE OF BIHAR AND ANR.****.....RESPONDENT(S)****J U D G M E N T**

Bihar Consolidation of Upholdings and Prevention of Fragmentation Act, 1956--Section 10(B), 37—Declaration of right and title over suit land--the Consolidation Authority confirmed the title and possession of the plaintiff-appellant over the suit land and directed for recording his name in the record of rights under Section 10(B) of Consolidation Act—subsequently, the State Authorities started claiming the suit land and allegedly started interfering in the possession of the plaintiff-appellant—Appellant’s suit for declaring his title over the suit land was decreed in his favour but was reversed by the first appellate court and its decision was upheld by the High Court-- *Held*; the scheme of the Consolidation Act provides that all rights in the land under consolidation, if any, would be determined by the consolidation authorities and the publication of the register of rights thereunder would be final and conclusive and cannot be disputed at any subsequent stage-- the consolidation authorities have the status of the deemed courts and have the powers akin to the Civil Courts to decide the rights and title of the parties over the land under consolidation and, at the same time, oust the jurisdiction of the Civil Court—although revenue entries are not documents of title and do not ordinarily confer or extinguish title in the land but, nonetheless, where the revenue authorities or the consolidation authorities are competent to determine the rights of the parties by exercising powers akin to the Civil Courts, any order or entry made by such authorities which attains finality has to be respected and given effect to-- Civil suit for declaration of rights in respect of land where the Consolidation Court has already passed an order recognizing the rights of one of the parties is not barred by Section 37 of the Consolidation Act and that the Civil Court is not competent to either ignore or reverse the order passed by the Consolidation Officer once it has attained finality—impugned judgments and orders set aside--appeal allowed.



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RAM BALAK SINGH**...APPELLANT(S)****VERSUS****STATE OF BIHAR AND ANR.****...RESPONDENT(S)****J U D G M E N T****PANKAJ MITHAL, J.**

1. This is plaintiff's appeal arising out of a suit for possession and confirmation of his possession over the suit land which was decreed in his favour by the court of first instance but the decree was set aside in First Appeal and was affirmed by the High Court.
2. The dispute in the suit is regarding 0.32 decimal of land of R.S.P. No.821 situate in village Kishanpur, district Sitamarhi, Bihar. This area of land was carved out from C.S.P.

No.332 of *Khata* No.196 which belonged to Rambati Kuwer, the ex-landlord.

- 3.** The aforesaid ex-landlord Rambati Kuwer settled the above area of the suit land in favour of Makhan Singh, son of late Ram Govind Singh vide lease deed (*patta*) of 1341 *fasli* whereupon the said Makhan Singh continued in possession of it during his lifetime. The said Makhan Singh had no issue. It is alleged that he adopted plaintiff-appellant who inherited the suit land after Makhan Singh. Accordingly, plaintiff-appellant is presently in possession of the suit land which had been in his family's possession ever since it was settled by ex-landlord Rambati Kuwer in favour of Makhan Singh.
- 4.** It so happened that the village was brought under consolidation in accordance with the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956¹.
- 5.** Since the aforesaid land was incorrectly recorded in the name of the State, the plaintiff-appellant in accordance with

¹ Hereinafter referred to as 'the Consolidation Act'

Section 10(B) of the Consolidation Act applied for the correction of revenue/consolidation records. The Consolidation Officer, Bathnaha upon following the due process of law vide its order dated 12.11.1979, directed for the correction of the record-of-rights. The name of the plaintiff-appellant was directed to be recorded in respect of 0.32 decimal area of land of R.S.P. No.821. The aforesaid order was duly implemented and the name of the plaintiff-appellant was entered into the record-of-rights. The aforesaid order is final and conclusive. It was not challenged by any party, not even by the State of Bihar in any higher forum.

- 6.** Subsequently, the State Authorities started claiming the entire land of 4 acre 58 decimal of C.S.P. No.332 as *jalkar* (pond land) which included the suit land also and thus allegedly started interfering in the possession of the plaintiff-appellant. The plaintiff-appellant having no other option after service of notice dated 09.09.2004 as contemplated by Section 80 of Code of Civil Procedure, instituted the Suit No.103/2004 '*Ram Balak Singh, s/o late Makhan Singh vs.*

State of Bihar and Anr.' for declaring his title over the suit land as described in Schedule-A to the plaint and to confirm his possession over it.

- 7.** The aforesaid suit was instituted on the allegations as narrated above that the suit land belonged to Rambati Kuwer, the ex-landlord, who settled it in favour of Makhan Singh in 1341 *fasli*. The plaintiff-appellant is the adopted son of the said Makhan Singh and as such succeeded to the said land. During the consolidation proceedings on petitions/objections under Section 10(B) of the Consolidation Act, the Consolidation Officer vide judgment and order dated 12.11.1979 ruled in favour of the plaintiff-appellant and directed his name to be recorded in the record-of-rights which order attained finality and has been implemented. Therefore, the State has no right, title or jurisdiction over the suit land which is in possession of the plaintiff-appellant.
- 8.** The summons of the suit were received by the officers of the State but on their behalf no written statement was filed to controvert the plaint allegations despite several opportunit-

ies. Lastly on 04.02.2006, the right of the State to file written statement was closed and the suit was fixed for hearing under Order VIII Rule X of Code of Civil Procedure. Since the plaint allegations were not controverted, no issue actually arose between the parties for determination, nonetheless, the trial court after formulating the point of determination i.e. whether the plaintiff-appellant has been able to establish his case over the suit land by any cogent and reliable evidence proceeded to decide the suit on merits. The suit was decreed but the decree, as stated earlier, was reversed by the first appellate court and its decision was upheld by the High Court.

- 9.** The plaintiff-appellant has now come up before this Court by filing Special Leave Petition, which on leave being granted has been registered as Civil Appeal. We have heard Ms. Nandadevi Deka, learned counsel for the appellant and Mr. Suyash Vyash, learned counsel for the respondents.
- 10.** The primary argument advanced on behalf of the plaintiff-appellant is that he or his predecessor-in-interest is in pos-

session of the suit land ever since it was settled in favour of Makhan Singh by the ex-landlord Rambati Kuwer. During the consolidation proceedings, the rights of the plaintiff-appellant over the said land were accepted and vide order dated 12.11.1979, his name was directed to be recorded in the record-of-rights. In this way, the right and title of the plaintiff-appellant over the suit land stood crystalized. Therefore, the State of Bihar cannot in any way claim the said land and disturb his possession without following any procedure of law and payment of compensation. The appellate courts below have manifestly erred in law in reversing the decree of the court of first instance as the judgment and order of the Consolidation Officer is final and conclusive and cannot be overruled or brushed aside to record any findings contrary to it, more particularly when the plaintiff-appellant has adduced sufficient evidence to establish his right and possession over the suit land.

- 11.** Learned Counsel for the State of Bihar set up the defence that the entire land of C.S.P. No. 332 is the pond land and it

cannot be settled in favour of the plaintiff-appellant. He does not have any possession over the same. Secondly, in view of the bar imposed by Section 37 of the Consolidation Act, the civil suit as filed by the plaintiff-appellant itself was not maintainable and therefore the appellate courts below have not erred in reversing the order of the trial court and dismissing the suit.

- 12.** On the submissions advanced by the parties and under the facts and circumstances of the case as narrated above, the moot question which arises for our consideration is: whether in view of the bar imposed under Section 37 of the Consolidation Act, the order of the Consolidation Authority confirming the title of the plaintiff-appellant over the suit land and directing for recording his name in the record of rights under Section 10(B) of Consolidation Act, is liable to be reversed or ignored by the Civil Court.
- 13.** A bare reading of the provisions of the Consolidation Act would reveal that upon declaration of the State Government of its intention to bring about a scheme of Consolidation in

the village(s) and till the close of the consolidation operation, the duty of preparing and maintaining the record of rights and the village maps of each village shall be performed by the Director of Consolidation and no suit or legal proceeding in respect of any land in such area(s) shall be entertained by any court. The Consolidation Act even prohibits the transfer by any person of land falling within the notified area without the previous sanction of the Consolidation Officer during the consolidation operation. It further provides that no question in respect of any entry made in the map or register prepared in relation to the consolidation area, which might or ought to have been raised before the consolidation authorities shall be permitted to be raised or heard at any subsequent stage of the consolidation proceeding. The Consolidation Act specifically provides that all matters relating to changes and transfers affecting any rights or interests recorded in the register of land may be raised before the Consolidation Officer within the time prescribed

and the disputes in this regard once decided cannot be re-opened on the publication of the register.

- 14.** Section 37 of the Consolidation Act bars the jurisdiction of the Civil Courts and it reads as under:

“No Civil Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.”

- 15.** In short, the scheme of the Consolidation Act provides that all rights in the land under consolidation, if any, would be determined by the consolidation authorities and the publication of the register of rights thereunder would be final and conclusive and it cannot be disputed at any subsequent stage. The aforesaid adjudication of the rights over the land under consolidation has not been specifically subjected to the rights of parties, if any, determined by the Civil Court. It is to be noted that the Legislature in its wisdom has provided for a separate forum to deal with any matter for which a proceeding could or ought to have been taken un-

der the Consolidation Act in the course of consolidation and bars the jurisdiction of the Civil Court.

- 16.** Under the scheme of the Consolidation Act, the consolidation authorities are fully competent to deal with the issue of title over the land under consolidation except under certain contingencies. Thus, the consolidation authorities have the powers of the Civil Court to decide the question of the title subject to the judicial review by the High Court under Articles 32, 226 and 227 of the Constitution of India. In other words, the consolidation authorities have the status of the deemed courts and have the powers akin to the Civil Courts to decide the rights and title of the parties over the land under consolidation and, at the same time, oust the jurisdiction of the Civil Court.
- 17.** We are conscious of the fact that revenue entries are not documents of title and do not ordinarily confer or extinguish title in the land but, nonetheless, where the revenue authorities or the consolidation authorities are competent to determine the rights of the parties by exercising powers

akin to the Civil Courts, any order or entry made by such authorities which attains finality has to be respected and given effect to.

- 18.** Here in the case at hand, there is no dispute to the fact that 0.32 decimal of R.S.P. No. 821 situate in village Kishanpur, Distt. Sitamarhi, Bihar, was settled by the ex-landlord Ram-bati Kuwer in favour of Makhan Singh through *patta* (lease deed), the execution of which is not in dispute. The said Makhan Singh adopted the plaintiff-appellant vide deed dated 27.05.1957 (*Exh-2*). The order of the Chakbandi Officer, Bathnaha (*Exh -7*) demonstrates that the plaintiff-appellant had filed Case No.11 of 1979 under Section 10(B) of the Consolidation Act for the correction of the entry in respect of the suit land and that the Consolidation Officer vide order dated 12.11.1979 on the basis of the documents and the oral evidence adduced before him ruled that plaintiff-appellant is the adopted son of Makhan Singh; that he is in possession of the suit land and no villager or any other party has any objection if the same is recorded in his

name. The Consolidation Officer further referring to the *patta* by which the said land was settled in favour of Makhan Singh and the adoption deed directed the name of the plaintiff-appellant to be recorded in the record of rights.

- 19.** It is an admitted fact that after the closure of the consolidation proceedings when the possession of the plaintiff-appellant came to be interfered with by the State, he was forced to file a suit for declaration of his rights over the said land irrespective of the finality of the order of the Consolidation Officer. The cause of action in the said suit was a fresh cause of action arising after the closure of consolidation proceedings. In the said suit no contest was made by the State of U.P., neither any written statement was filed nor any evidence was adduced on its behalf. The court of first instance on the basis of the evidence both documentary and oral adduced by the plaintiff-appellant decreed the suit and held him to be the owner in possession of the suit land.
- 20.** In view of the aforesaid facts and circumstances, the rights of the parties over the suit land stood crystalised with the

passing of the order dated 12.11.1979 by the Consolidation Officer which became final and conclusive. The State of Bihar never challenged the said order. It is not its case that the aforesaid order has been obtained by concealment of facts or by playing fraud upon the consolidation authorities. The State of Bihar at no point of time came forward to claim the right, title or interest of disputed land before any forum either the consolidation authorities or the Civil Court, rather forced the plaintiff-appellant to institute the civil suit despite recognition of his rights by the consolidation authorities.

- 21.** In view of the above, when the rights of the plaintiff-appellant have been determined and recognised by the consolidation authorities, the order of the Consolidation Officer to that effect in favour of the plaintiff-appellant could not have been ignored by the Civil Court. The jurisdiction of the Civil Court in respect of the rights determined by the Consolidation Officer stands impliedly excluded by the very scheme of the Consolidation Act. The appellate courts below completely

fell in error in holding otherwise discarding the order of the Consolidation Officer which was sacrosanct as to the rights in respect to the suit land.

22. Insofar as, the bar of Civil Court imposed by Section 37 of the Consolidation Act is concerned, a plain reading of the said provision would reveal that the Civil Court is prohibited from entertaining any suit to vary or set aside any decision or order of the Consolidation Court passed under the Act in respect of the matter for which the proceedings could have or ought to have been taken under the Consolidation Act.

23. In the instant case, the plaintiff-appellant has not instituted any suit either to vary or set aside any decision or order passed by the Consolidation Court under the Consolidation Act. The plaintiff-appellant had simply filed a suit for recognising the rights which have been conferred upon him by the Consolidation Court and has not filed a suit challenging any order passed by the Consolidation Court under the Act. Therefore, the bar of jurisdiction of Civil Court imposed by

Section 37 is not applicable to the present suit which is a simpliciter for declaration of his rights over the suit land on the basis of the order of the Consolidation Court.

24. In view of the facts and circumstances, even though there was no necessity on the part of the plaintiff-appellant to have instituted any civil suit for declaration of his rights over the suit land inasmuch as his rights over the same stood determined by the Consolidation Court vide order dated 12.11.1979, nonetheless, a suit as filed by him is not barred by Section 37 of the Consolidation Act, as it does not propose to challenge any order passed by the Consolidation Court under the Consolidation Act.

25. Thus, our answer to the question framed in paragraph 12 above is that a civil suit for declaration of rights in respect of land where the Consolidation Court has already passed an order recognizing the rights of one of the parties is not barred by Section 37 of the Consolidation Act and that the Civil Court is not competent to either ignore or reverse the

order passed by the Consolidation Officer once it has attained finality.

26. In the above facts and circumstances, the impugned judgment and orders of the appellate courts dated 20.10.2011 and 14.07.2008 are set aside and that of the court of the first instance dated 04.07.2006 is restored. Consequently, the suit of the plaintiff-appellant stands decreed.

27. The appeal is allowed with no order as to cost.

..... **J.**
(PANKAJ MITHAL)

..... **J.**
(PRASANNA BHALACHANDRA VARALE)

NEW DELHI;
01 MAY, 2024.