

Court No. - 21

Case :- WRIT - B No. - 698 of 2021

Petitioner :- Shiv Poojan And Another

Respondent :- Deputy Director Of Consolidation And 12 Others

Counsel for Petitioner :- J.P. Singh, Dhirendra Singh

Counsel for Respondent :- C.S.C., Amit Kumar Chauhan, Santosh Kumar Tiwari, Sharad Kumar Purwar

Hon'ble Dinesh Pathak, J.

Heard Sri J.P. Singh, learned counsel for the petitioners, learned Standing Counsel representing respondent nos.1 to 3 and Sri S.K. Purwar, learned counsel for respondent nos.4 and 5.

The question raised by learned counsel for the petitioners is as to whether principle of res judicata will apply against the question of law in a subsequent proceeding for a different property though between the same parties.

It is submitted that property in question basically belonged to Late Daulat. Bajrangi (predecessor in interest of present petitioners) claimed himself as son of Daulat. Ram Narayan (predecessor in interest of respondent nos.4 and 5) has denied the genuineness of Bajrangi, who has claimed himself as real son of Daulat. With respect to the property situated in Village-Piprauna, the matter was litigated up to this Court and the same was culminated, vide order dated 18.02.1982, with a finding of fact that Bajrangi is not a legitimate child of Daulat, inasmuch as, he was born after marriage of Daulat, but before the 'Gauna Ceremony' and during this period there is no conclusive evidence to show that Daulat (father of Bajrangi) had access to his first wife (mother of Bajrangi).

Present writ petition relates to the property situated in another village namely, Moongmaan, wherein name of Bajrangi was recorded in the Basic Consolidation Record. Ram Narayan had contested the case with a plea that in a previous proceeding, dispute with respect to village Piprauna, Bajrangi was held

illegitimate child of Daulat up to the stage of Hon'ble High Court and has been denied any right and title over the property of village Piprauna, being son of Daulat. Therefore, with respect to the property in question, which is situated in village Moongmaan, principle of res judicata will apply against right and title of Bajrangi. All the three Consolidation Courts have decided the matter against Bajrangi, on the basis of the order dated 18.02.1982 passed by this Court, whereby Bajrangi has been held illegitimate child of Daulat.

Counsel for the petitioners submits that principle of res judicata would apply against Bajrangi with respect to his legal status being son of Daulat, but the same will not apply against the question of law, which relates to entitlement of his share over the property of Daulat, being his illegitimate son. In support of his case, learned counsel for the petitioners has placed reliance on the dictum of Hon'ble Supreme Court in the case of **Satyendra Kumar and others vs. Raj Nath Dubey and others**, reported in **AIR 2016 SC 2231**. In the light of aforesaid judgment, it is submitted that legal right of Bajrangi over the property in question being a successor, cannot be held to be barred under principle of res judicata.

Matter requires consideration.

Issue notices to the respondent nos.6 to 13 returnable at an early date.

List this petition in the week commencing 27.09.2021.

In the meantime, both the parties are directed to exchange their respective affidavits.

Stay application moved by the petitioners shall be considered after exchange of respective affidavits between the parties.

Order Date :- 9.8.2021
Manish Himwan