

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.606 of 2010

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Mohd. Abbas Ali, son of late Nabab Ali, resident of village and P.O.
Ekwari, P.S.-Sahar, District-Bhojpur.

.... Appellant/s

Versus

1. Md. Alamgir.
2. Md. Jiyaar Rahman, both sons of late Gulam Gaus and all residents of village and P.O.-Ekwari, P.S. Sahar, District-Bhojpur.
3. Isarat Khatoon, wife of Late Gulam Dastgir.
4. Md. Abadul Salam.
5. Md. Abadul Rahman.
6. Md. Fajalum Rahman.
7. Md. Motiur Rahman.
8. Md. Jibu Rahman.
9. Md. Jaffar Akbal, all sons of late Gulam Dastgir and all residents of Aliganj Near Karimganj, P.O.-Via Karimganj, P.S. Chandauli, District-Gaya.
10. Abadul Hafij son of Narul Hoda, resident of village and P.O. Ekwari, P.S., Sahar, District-Bhojpur.
11. Akrarul Haque son of late Jamirul Haque.
12. Md. Masuad son of late Mahmud Alam.
13. Md. Musatak son of late Noor Muhamad.
14. Md. Kamru Jama, son of Md. Majharul Hak, all residents of village and P.O.-Ekwari, P.S. Sahar, District-Bhojpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binod Kumar Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

10 24-07-2015

Heard Mr. Binod Kumar Singh, the learned counsel
appearing on behalf of the appellant.

At the out set, the learned counsel for the appellant has submitted that his entire submission on the merits of this appeal is based upon the interlocutory application (I.A. No. 4942 of 2015) filed on behalf of the appellant on 26.6.2015 praying for amendment in the plaint. The learned counsel thereafter extensively made his submission praying for allowing the amendment in the plaint, as prayed.

The plaintiff is the appellant in this appeal against the judgment and decree of affirmance dismissing the suit filed by the plaintiff as not maintainable. The plaintiff has filed the title suit for declaration that the recent survey entries for the suit land is not correct and accordingly be set aside.

As the disputed factual matrix would unfurl, the father of the plaintiff earlier filed T.S. No. 24 of 1977 against the present defendants praying for the same relief as presently made in this suit with regard to the survey entry for the suit land. The said suit by order dated 08.07.1978 was held to be not maintainable under the provision of Section 4 (b) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the 'Consolidation Act) and was accordingly dismissed as not maintainable. Subsequently, the plaintiff filed the present T.S. No. 2 of 2005 for the same relief with regard to the



same suit land against the same defendants. The defendant no. 1 filed the petition questioning the maintainability of the suit on the ground that the consolidation proceeding in the concerned village was still going on and the suit was therefore not maintainable under the provision of Section 4 (b) and 4 (c) of the Consolidation Act. The learned court below heard the parties on the issue of maintainability as preliminary issue, upheld the assertions of the defendants and dismissed the suit as not maintainable. The plaintiff, thereafter, filed appeal and the appellate court below by the impugned judgment and decree, after reappraisal of the materials on record, has concurred with the finding of the trial court and dismissed the appeal.

From the perusal of the judgments of both the courts below, it is manifest that the courts have taken into notice the dismissal of the earlier suit i.e. T.S. No. 24 of 1977 as not maintainable in view of the provision of Section 4 (b) of the Consolidation Act and have recorded the conclusion that in view of the said order having attained finality between the same parties for the same land, the present suit is also not maintainable. The learned courts below have also taken into notice the averment of the plaintiff that the suit property is house and firni (land out of consolidation proceeding) but have declined to accept the said

averment in view of the finding in the earlier suit that the suit land was covered by the provisions of the Consolidation Act.

The learned counsel for the appellant has submitted that the plaintiff, after the dismissal of the earlier T.S. No. 24 of 1977, filed petition before the Consolidation Court which was registered as Case No. 39 of 1978 for the same relief but the Consolidation Officer by order dated 09.08.1978 declined to entertain the said case on the ground that the prayer was not maintainable under Section 10 (b) of the Consolidation Act. It has further been pointed out that the Consolidation Officer in his order dated 09.08.1978 also recorded the finding that the sale deed in favour of the defendants for the suit land was void document as no sanction was obtained prior to such transfer as required under the Consolidation Act and further also found that the disputed land was the firni land. The learned counsel, however, has accepted that these facts regarding the consolidation case have not been stated in the plaint by the plaintiff but has simultaneously submitted the defendants in their written statement have made mention of the order passed by the Consolidation Officer in case no. 39 of 1978. In this back drop, the learned counsel has canvassed that the amendment in the plaint as prayed in the interlocutory application (I.A. No. 4942 of 2015) should be allowed for insertion of the

facts and findings by the Consolidation Officer in case no. 39 of 1978 and to accept the order of the Consolidation Officer in evidence. It has been propounded that in case the amendment, as prayed in the plaint, is allowed, the suit filed by the plaintiff would become maintainable.

In order to appreciate the submission on behalf of the appellant, it is seemly here to take into notice the provision of Section 4 (b) of the Consolidation Act which is as follows:-

“4. Effect of notification under section 3 (1) of the Act.- Upon the publication of the notification under sub-section (1) of section 3 in the official gazette the consequences, as hereinafter set forth, shall, subject to the provisions of this Act, from the date specified in the notification till the close of the consolidation operation, ensue in the area to which the notification relates, namely-

(a) XXXXXXXXXXXXXXXXXXXX

(b) No suit or other legal proceeding in respect of any land in such areas shall be entertained in any court, and in calculating period of limitation applicable to such suits and proceedings such period shall not be counted:

Provided that nothing in this clause shall apply to any proceeding under section 48 (E) of the Tenancy Act 1885 (Act 8, 1885) and to

the proceedings relating to recording the titles of Bataidars;

(c) X

It is apparent that the aforesaid provision unambiguously bars the maintainability of the suit in respect of any land in the areas covered by the notification under Section 3 (1) of the Act till the close of the consolidation operation in the area. The close of the consolidation operation, as provided in Section 26 (A) of the Consolidation Act, occurs only with the notification by the State Government in the official gazette stating that the consolidation operation in the area has been closed. The learned counsel for the appellant has accepted that no such notification relating to closure of the consolidation operation in the area concerned has been notified upto now.

The issue whether the suit land comes within the purview of the consolidation operation or not has already been decided between the parties in the earlier T.S. No. 24 of 1977 where it was held that the suit was not maintainable in view of the bar stipulated under Section 4 (b) of the Consolidation Act. The decision on this issue has undisputedly attained finality between the parties. The simple fact that the plaintiff after the dismissal of his earlier suit as not maintainable approached the Consolidation



Officer for redressal of his grievances but the same was not entertained would not be sufficient for the plaintiff to escape the bar as provided in Section 4 (b) of the Consolidation Act. It is not the case of the plaintiff that after the dismissal of his case by the Consolidation Officer by order dated 09.08.1978 he filed any appeal or revision challenging the said order. There is also no explanation on behalf of the plaintiff for filing the present suit in the year 2005 when the dismissal by the Consolidation Officer had been done in the year 1978 itself. There is also no averment in the interlocutory application (I.A. No. 4942 of 2015) establishing exercise of due diligence by the plaintiff for not mentioning the facts relating to the dismissal of his case by the Consolidation Officer in the plaint even when these facts, proposed to be brought by amendment in the plaint at this stage, were in his knowledge.

In addition, the perusal of the averments made in the interlocutory application (I.A. No. 4942 of 2015) along with the order dated 09.08.1978 passed by the Consolidation Officer annexed thereto also reveals that the case no. 39 of 1978 filed by the plaintiff was not dismissed only on the ground of maintainability as submitted rather the Consolidation Officer also came to the conclusion that prima facie the case of the plaintiff had no merit. However, in any view of the matter, even if the fact

regarding the dismissal of the case by the Consolidation Officer is introduced in the plaint, the same would not remove the bar as envisaged under Section 4 (b) of the Consolidation Act as manifestly the fresh suit would have been maintainable, only after the close of the consolidation operation in the area.

The learned counsel for the appellant has strenuously relied upon the decision of the Apex Court in the case of North Eastern Railway Administration Vs. Bhagwan Das 2008 (8) SCC 511 for the proposition that the amendment of the plaint and permission to adduce additional evidence can be granted even at the second appellate stage. In the aforesaid case, the appellant's prayer for amendment and for adducing additional evidence at the second appellate stage came up for consideration before the Apex Court. It has been held by their Lordships that the judgment or decree by any court obtained by playing fraud on the court is a nullity and in case the facts, sought to be brought by amendment and supported by document, are found to be correct then they would have material bearing on the issue. Their Lordships in this back drop have held that the prayer for amendment of pleading and adducing additional evidence can be allowed even at the second appellate stage. However, the factual set up in the present case is entirely distinct and distinguishable inasmuch as the

insertion of the fact regarding the dismissal of the consolidation case of the plaintiff in the plaint would not be sufficient to take away the suit from the purview of Section 4 (b) of the Consolidation Act.

For the aforesaid reasons and discussions, this Court does not find it a fit case where by the prayer for amendment as prayed by the plaintiff-appellant at the second appellate stage be allowed. The interlocutory application (I.A. No. 4942 of 2015) is, therefore, rejected. No other submission has been made on behalf of the appellants.

Ex consequenti, this Court finds that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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