

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5993 of 2011

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Ram Prasad Mishra son of Kamal Nath Mishra, resident of village Kasia
P.S. Dumraon, Buxar

....Plaintiff/Petitioner

Versus

1. Ambika Prasad Mishra
2. Tapeswar Mishra, both sons of Kamal Nath Mishra, resident of village Kasia, P.S. Dumraon, Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyapal Singh

For the Respondent/s : Mr. Ashutosh Ranjan Pandey

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

5 25-08-2015 Heard counsel for the petitioner and the private respondents.

Plaintiff of T.S. No. 40 of 2009 has filed the present writ application aggrieved by the order dated 25.05.2010 whereby the trial court on an application filed by the defendant-respondent directed the entire suit to have abated under section 4 (i) (c) of the Bihar Consolidation of Holdings & Prevention of Fragmentation Act (for short 'the Act').

The suit was filed for partition of 1/3rd share of the plaintiff and to carve out the share. On 16.09.2009, the defendant filed an application under section 4(i) (c) of the Act. In support of the application the information supplied by the Consolidation Officer that section 3 notification has already been issued in



respect of Mauza Kashiya and Mathila, both falling under Dumraon Anchal was enclosed. By virtue of the notification issued under section 3 of the Act the land(s) falling in Mauza Kashiya and Mathila fall under consolidation operation and the notification under section 26(A) of the Act has not been issued. The Court is not concerned with Mauza Mathila as subject/suit land of the suit falls in Mauza Kashiya. A rejoinder thereto was filed on 16.11.2009 enclosing therewith the information which was supplied again by the Consolidation Officer, Dumaraon, Buxar that the land appertaining to plot no. 1694 (two decimal) and plot no. 1708 (04 decimals) under khata no.920 are not the subject matter of the consolidation proceeding as they are Chak out land(s). The petitioner has enclosed Khatiyan of the land(s) along with the supplementary affidavit in order to demonstrate that those two are plots recorded as Makan May Sahan(s). Another submission of the petitioner is that the trial court committed serious illegality in directing abatement of the entire suit without considering as to whether lands of these two plots would also abate. The purpose of consolidation proceeding is to consolidate the land for agricultural purposes as is evident from perusal of the diverse provisions of the Act. He has relied on **AIR Patna 255 (Chaturbhuj Prasad Singh vs. Saryu Prasad**



Singh) in support of the said proposition. On going through the judgment passed in the said case, this Court finds that a division bench of this Court having regard to the provision(s) of the Act held that the suit can partially abate if some of the lands are not the subject matter of the consolidation proceeding. Sustenance has been drawn in the said judgment from another judgment of this Court reported in **AIR 1979 Patna 250** wherein this Court held that an enquiry in this regard is required to be made by the court before passing an order on an application filed by any of the party for abating the suit under section 4(i) (c) of the Act.

The respondents have relied on **1983 BBCJ 671 (Ram Sunder Ahir vs. Sidh Nath Ahir & Anr.)** in order to submit that the homestead land which is connected with agriculture will form part of the land which would be the subject matter of the consolidation proceeding.

Be that as it may, on going through the order passed by the trial court, it does not appear that any such enquiry was made by the court before passing the order abating the suit in its entirety on the application filed by the defendant-respondent

As a result of the aforesaid discussion, in my view, the application merits to be allowed by remitting the same to the trial court for passing a fresh order in accordance with law after

affording an opportunity of hearing to both the parties to ascertain whether the suit in its entirety shall abate or will abate partially. The order dated 25.05.2010 passed by the learned Sub Judge-V, Buxar in T.S. No. 40 of 2009 is quashed and the matter is remitted to the said court for a fresh consideration and order in the light of the observation(s) made hereinabove.

(Kishore Kumar Mandal, J)

HR/-

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