

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.70 of 2010

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1. Radha Kishun Singh S/O Late Ramjagi Singh.
 2. Lal Muni Devi W/O Late Ramjagi Singh all R/O Vill- Uttampur, P.S. Rajpur, Distt. Buxar.

.... Petitioner/s

Versus

1. Ghughali Singh son of late Sheo Pujan Singh.
2. Laxmi Narain Singh @ Ramji Singh son of Sri Ghughali Singh, both residents of village-Parasi, P.S. Itarhi, District-Buxar.
3. Mithilesh Devi W/O Late Santosh Kumar Singh R/O Vill- Uttampur, P.S. Rajpur, Distt. Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.S.S.Dwivedi, Sr.Adv.
Mr.Mahesh Prasad No.2, Adv.
Mr. Rewti Knat Raman, Adv.

For the Respondent/s : Mr. Rajesh Kumar, Adv.
Mr.Arvind Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

15 17-09-2015

Heard Mr.S.S.Dwivedi, the learned senior counsel appearing for the petitioners and the learned counsel for the opposite parties.

Questioning the legal acceptability of the impugned order dated 04.01.2010 passed in T.A.No.23/2009 rejecting the petition filed by the defendant-appellant in the appeal praying for abatement of the suit and appeal under the provisions of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, the present revision application has been filed.



The Title Suit No. 123 of 2001 was filed by the plaintiff-opposite party no. 1 praying for partition of his ½ share of the suit property. The said suit was decreed on contest and thereafter the T.A. No. 23 of 2009 has been filed by the defendant-appellant-petitioners against the judgment and decree passed in the suit. During the pendency of the appeal, the defendant-appellant-petitioners filed a petition dated 14.09.2009 (Annexure-2) praying for abatement of the appeal as well as the judgment and decree under appeal under Section 4 (1) (b) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the 'Act'). By the impugned order, the learned court below has declined the prayer and rejected the petition filed by the defendant-appellant-petitioners.

At the out set, Mr. Dwivedi, the learned senior counsel appearing on behalf of the petitioners has submitted that the prayer made in the court below by the petitioners should be construed as prayer for abatement of the suit and appeal under section 4 (1) (c) of the Act which is the only provision attracted in the facts and circumstances of the case and the provision of Section 4 (1) (b) is not attracted and has been inadvertently mentioned in the petition. It has been further canvassed that the prayer of the petitioners for abatement of the suit and appeal in



view of the provision as contained in Section 4 (1) (c) of the Act is maintainable as the revival of the notification under Section 3 of the Act has occurred during the pendency of the appeal as will appear from the statement made in paragraph- 5, 6 and 7 of the supplementary affidavit filed on behalf of the petitioners in this revision application on 20.07.2015. Elaborating his submission further, it has been argued by the learned senior counsel that the issue of right, title, interest and status of the parties are involved in the suit and such issues are covered by the provisions of Section 4 (1) (c) of the Act. It has also been submitted that since the consolidation authorities under the provisions of the Act have been conferred the jurisdiction to effect partition and as such also after the notification, the suit and appeal would abate. The strong reliance has been placed on the decision of the Apex Court in the case of **Paras Nath Rai Vs. State of Bihar 2013(1) PLJR SC 1** in support of the contention that the suit involving questions of right, title, interest and status would be covered under Section 4 (1) (c) of the Act.

Per contra, the learned counsel for the plaintiff opposite parties has supported the impugned order and has submitted that the issues arising in the suit are beyond the purview of the jurisdiction of the consolidation authorities and therefore the



provision of abatement under Section 4(1) (c) would not be attracted. It has been canvassed that the main issue in the suit relates to the determination of the fact as to whether the plaintiff is daughter of Nishan Singh and Lalmuni Devi and the remaining issues are in the nature of consequential relief. It has been propounded that the determination of the above main issue is beyond the jurisdiction of the consolidation courts as it is not a question of right and title in the land subject to consolidation proceeding. The learned counsel has placed reliance upon the decision of the apex court in the case of ***Ram Sakal Singh Vs Most. Monako Devi*** , 1997 (2) PLJR (S.C.) 63 and the decision of this Court in the case of ***Raj Kumar Choubey Vs Dulhin Janki Devi***, 2009 (3) PLJR 475 and also on the decision in the case of ***Chankalia Devi Vs. Brij Nandan Sharma*** in ***S.A.No.220/2013*** decided on 20.07.2015.

After consideration of the facts, materials on record and submissions on behalf of the parties, it is manifest that the plaintiff has filed the suit for partition of half share in the suit property claiming herself to be daughter of Nishan Singh and Lalmuni Devi and further claiming that her father Nishan Singh died in the year 1957. The contesting defendants in the written statement have denied the said facts and have asserted that the



plaintiff is not the daughter of Nishan Singh who died in the year 1950 leaving behind his brother Ram Jagi Singh who inherited his estate. From the judgment passed in the suit (Annexure-7 of the supplementary affidavit) it is apparent that the issue no.4 in the suit related to the determination of the question as to whether the plaintiff was daughter of Nishan Singh and Lalmuni Devi. Demonstrably, this was the spinal issue in the suit and the grant of relief for partition as claimed by the plaintiff was directly dependent upon the determination of this issue. As laid down by the apex court in ***Ram Sakal Singh (Supra)*** it is the substratum of the lis which has to be considered for the purpose of application of Section 4(1) (c) of the Act and “the trick of the pleading and camouflage of the relief cannot conclusively confer jurisdiction on the civil court or the consolidation authorities to decide a particular dispute in question.”

In the present case, as said above, the main issue is the status and right of inheritance of the plaintiff over the property of Nishan Singh and Lalmuni Devi as their daughter. This issue is definitely not an issue in respect of declaration of right or interest in any land lying in the area under consolidation proceeding or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the



Act as stipulated in under Section 4(1)(c) of the Act. The intention of the legislature underlying Section 4(1)(c) of the Act is explicit from the wordings of the provision, and the inference is inescapable therefrom that only the suit where the issue is in respect of declaration of rights or interest lying in the area subject of consolidation proceeding or for adjudication or declaration of any other right within the jurisdiction of the consolidation authorities as envisaged in the Act, would come within the sweep of Section 4(1) (c) of the Act. It would be profitable here to take into notice the observation by the Full Bench of this Court *in Hari Mohan Thakur Vs Mahendra Narain Chand , 1987 PLJR 88* as follows:

8. “.....What deserves highlighting herein is that clause (c) of section 4 does not talk of every suit and every proceeding in a vacuum. It does not declare that every suit or every proceeding shall stand abated consequent to a notification under section 3(1) of the Act. The crucial and the meaningful qualification is that such suit or such proceeding must be for the “declaration of rights or interest in the land” lying in the area under

consolidation. This would also take its hue from the subsequent clause of “declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act”. I may reiterate that the crucial language herein is that clause (c) visualizes the determination or adjudication of rights and interest of the parties in the land and their declaration. It is only such suits and proceedings which are mandated for abatement and not others.....”

(emphasis supplied)

The Apex Court also in the case of ***Suba Singh Vs. Mahendra Singh A.I.R. 1974 S.C. 1657*** while considering the similar provision under Section 49 of the U.P. Consolidation of Holdings Act has laid down as follows:-

“.....The whole question in the present appeal turns on the ambit and limit of the Civil Courts’ jurisdiction in the light of Section 49. It is well settled that the exclusion of the jurisdiction of the civil court cannot be



easily inferred and any provision which takes it away must be construed strictly. We must have this principle in mind when interpreting Section 49. Analytically examined, it is clear that the two inhibitory clauses of Section 49, are not identical in their scope and effect. The first clause is confined to matters “arising out of consolidation proceedings” under the Act, while the second clause is limited to matters “in regard to which a suit or application could be filed under the provisions of this Act.”.

In the present case, the question that had arisen was as to who were the heirs of Jagram. This question was not covered by the first clause, for two reasons. Firstly, it was not a matter arising out of consolidation proceedings but one arising from a vis major i.e. the death of Jagram. The words “out of” in cause 1, must be given their full restrictive effect. They cannot be loosely interpreted and equated with “during”. The Legislature

appears to have advisedly used these words to restrict the operation of this clause to those matters which are directly connected with the consolidation proceedings and which, but for such proceedings would not have arisen. Secondly, the question of inheritance to the estate of Jagram arose after the consolidation operations had been substantively completed.

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.....It was thus abundantly clear that an application for mutation on the basis of inheritance when the cause of action arose, after the finalization and publication of the scheme under Section 23, is not a matter in regard to which an application could be filed “under the provisions of this Act” within the meaning of clause 2 of section 49. Thus, the other limb of Section 49, also is not attracted. The result is that the plea of bar of the civil courts’ jurisdiction to investigate and adjudicate upon the title to the land or the sonship of the plaintiff has no substance.

Nothing done in consolidation proceedings is undone by that suit. To urge that the formal notification under Section 52 not having been published the court had no jurisdiction is to misread Section 49 and to exalt a ritual into a legal reality”.

From the conspectus of the dictums authoritatively laid down as above, it is clear that in a suit where adjudication of any issue is to be decided before deciding right, title and interest in the land under the consolidation proceeding such suit evidently will not be covered by the provision of Section 4 (1) (c) of the Consolidation Act. Almost on similar facts, the question of abatement of a suit for partition under Section 4 (c) of the Act came up for decision in ***Raj Kumar Choubey vs. Dulhin Janki Devi, 2009 (3) P.L.J.R. 475***. In this case also the defendants resisted the relief for partition as prayed by the plaintiff contesting the very status of the plaintiff and her right of inheritance as class-1 heir. It has been held as follows:-

“.....The suit in question is not one merely for partition rather in the light of the serious contentions raised by the parties on the issue of declaration sought by the plaintiff to be

daughter of Khedaru Choubey, it is out and out a complicated civil suit for determining right of succession and inheritance to the property of their father Khedaru Choubey. The moment the defendant-petitioners have contested the very status of the plaintiffs by questioning not only their line of succession by calling upon to prove them to be the daughter of Khedaru Choubey but also had questioned the year of death of Khedaru Choubey, it is no longer remained a plain and simple suit for partition. All the rights of the plaintiffs in fact would squarely depend on the main relief relating to declaration that they are the daughter of Khedaru Choubey and further whether they had inherited the property of Khedaru Choubey as a Class-1 heir.....

the suit on account of the stand taken by the defendant-petitioners definitely is not a simple suit for partition rather the same is only an incidental or consequential relief to

the main relief of the plaintiff seeking declaration of being daughters of Khedaru Choubey and inheriting their property as a Class-1 heir to the exclusion of any right of the defendant-petitioners.....”

As mentioned above, the issue no. 4 in the present suit relates to adjudication of the status of the plaintiff as daughter of Nishan Singh and Lalmuni Devi and her right of inheritance over their property to the exclusion of others. This Court is therefore of the considered opinion that such a suit or the appeal arising therefrom would not abate under Section 4 (1) (c) of the Consolidation Act.

The decision in *Paras Nath Rai (Supra)*, relied upon on behalf of the petitioners, has been rendered in different setting of facts where the spinal issue was the effect of abatement under Section 4(1)(c) of the Act and also the scope of application of this provision after passing of the preliminary decree as well as to a proceeding for preparation of final decree. The ambit and scope of applicability of Section 4(1)(c) of the Act to different kinds of suits and reliefs prayed therein have not come for consideration in the said case. The emphasis on certain words used in the said judgment, to derive mileage, as done on behalf of the

petitioners, is clearly misconceived in view of the principle enunciated in paragraph-21 by their lordships in the case of *Mumbai International Airport Pvt.Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd, 2010 (7) SCC 417.*

The learned court below, after applying the correct principle of law to the facts and circumstances of the case, has rightly come to the conclusion that the appeal would not abate under Section 4 (1) (c) of the Act.

This Court does not find any error or illegality in the impugned order. The revision application is, accordingly, dismissed.

(V. Nath, J)

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