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Ram N
Ghogra

1. Lalit
Pragana
2. Muk
Pragana
3. Bacc
Pragana
4. Neel

.... Petitioner.

1. Lalita Devi W/O Late Lakshman Singh R/O Village - Sign Parwana, Pragana - Visara, P.S. Vaishali, District - Vaishali
2. Mukesh Singh S/O Late Lakshman Singh R/O Village - Sign Parwana, Pragana - Visara, P.S. Vaishali, District - Vaishali
3. Bacchi Devi D/O Late Lakshman Singh R/O Village - Sign Parwana, Pragana - Visara, P.S. Vaishali, District - Vaishali
4. Neelam Devi D/O Late Lakshman Singh R/O Village - Sign Parwana, Pragana - Visara, P.S. Vaishali, District - Vaishali
5. Neelu Devi D/O Late Lakshman Devi R/O Village - Sign Parwana, Pragana - Visara, P.S. Vaishali, District - Vaishali
6. Laliteshwar Prasad Singh S/O Late Kishori Singh R/O Village - Sign Parwana, Pragana - Visara, P.S. Vaishali, District - Vaishali
7. Lalan Prasad Singh S/O Laliteshwar Prasad R/O Village - Sign Parwana, Pragana - Visara, P.S. Vaishali, District - Vaishali
8. Amod Prasad Singh S/O Laliteshwar Prasad R/O Village - Sign Parwana, Pragana - Visara, P.S. Vaishali, District - Vaishali
9. Pramod Prasad Singh S/O Laliteshwar Prasad R/O Village - Sign Parwana, Pragana - Visara, P.S. Vaishali, District - Vaishali

.... Respondents.

For the Petitioner/s : Mr. Madhuresh Prasad ,Adv.
Mr Shyameshwar Kumar Singh, Adv.
For the Respondent/s : Mr. N.C.Verma, Adv.
Mr Lakshmi Kant Tiwary, Adv.

Heard Mr Madhuresh Prasad, the learned
counsel for the petitioner and Mr Lakshmi Kant Tiwary, the
learned counsel for the plaintiff-opposite party.

The matter was earlier repeatedly adjourned on the prayer on behalf of the parties to furnish information regarding the stage of the consolidation proceeding in the concerned case.

Today the learned counsel for the petitioner on the basis of his instruction has submitted that the consolidation proceeding was going on till 2014. Mr. Tiwary, the learned counsel for the plaintiff-opposite party, however, has taken a definite stand that according to his instruction de-notification under Section 26 (A) of the Bihar Consolidation of Holding and Prevention of Fragmentation Act (hereinafter referred to as Bihar Consolidation Act) has not yet been done in the concerned case. Thereafter, the present revision application has been heard on merits and is being disposed of with the consent of the parties at this stage.

Calling in question, the order dated 27.09.2012 passed in T.S.No.109/81 by learned Sub Judge-VI, Vaishali at Hajipur, the defendant-petitioner has filed this revision application, praying for setting aside the said order by which the earlier order abating the suit under Section 4(c) of the Bihar Consolidation Act has been recalled and the suit has been posted for hearing. The facts are not in dispute that by order dated 09.03.1989 passed in T.S.No.109/1981, the order was passed for abatement of the suit. This order has been brought on record as Annexure-3 and its operative part reads as follows:-

*“So considering the fact that the area
under which suit land situate is going*

*under consolidation operation per Govt.
notification and this suit is for
declaration of title, this suit stands
abated.*

Thereafter it appears that a petition was filed on 01.07.2003 on behalf of the plaintiff for recall of the said order stating therein that the consolidation proceeding has come to an end. The learned court below has allowed the said petition, recalled the earlier order of abatement and directed the plaintiff to produce his witnesses, in order to proceed with the hearing of the suit. It is also apparent from this order dated 27.09.2012 that no definite finding has been recorded by the courts below that there has been de-notification under Section 26 (A) of the Bihar Consolidation Act. The only reason which has been assigned is that since 22 years have expired and de-notification has not been done, the suit cannot remain abated for the said reason.

In view of the aforesaid facts alongwith the fact that the learned counsel for the plaintiff-opposite party has accepted that there has been no de-notification under Section 26 (A) of the Bihar Consolidation Act, this Court finds substance in the submission by Mr Prasad, the learned counsel for the petitioner that the impugned order passed by the learned court below is

without jurisdiction. It has been well settled by now that the abatement under Section 4(c) is to remain in operation till the de-notification under Section 26 (A) of the Bihar Consolidation Act whereafter alone the suit can revive.

For the aforesaid reasons and discussions, it is held that the learned court below has acted in excess of jurisdiction in passing the impugned order. The revision application is, accordingly, allowed and the impugned order is set aside.

(V. Nath, J)

Nitesh/-

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