

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.76 of 2013

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1. Madan Kumar Son Of Late Dudhnath Singh Resident Of Village- Pararia, P.S.- Bikramganj, District- Rohtas
 2. Prakash Kumar @ Chandra Prakash Singh Son Of Late Dudhnath Singh Resident Of Village- Pararia, P.S.- Bikramganj, District- Rohtas
 3. Rajesh Kumar Son Of Late Dudhnath Singh Resident Of Village- Pararia, P.S.- Bikramganj, District- Rohtas
 4. Dharmendra Kumar @ Dara Son Of Late Dudhnath Singh Resident Of Village- Pararia, P.S.- Bikramganj, District- Rohtas
 5. Pradeep Kumar Son Of Late Dudhnath Singh Resident Of Village- Pararia, P.S.- Bikramganj, District- Rohtas
 6. Dipu @ Deepak Kumar S/O Madan Kumar Resident Of Village- Pararia, P.S.- Bikramganj, District- Rohtas
 7. Most. Sita Kuer W/O Late Dudh Nath Singh Resident Of Village- Pararia, P.S.- Bikramganj, District- Rohtas
 8. Mamta Devi D/O Late Dudh Nath Singh, W/O Chandravijay Singh Resident Of Village And P.O.- Munj, P.S.- Karakat (Gorari), District- Rohtas
 9. Anita Devi D/O Late Dudh Nath Singh, W/O Ajay Singh Resident Of Village And P.O.- Sheopur, P.S.- Chaugai, District- Buxar
 10. Uma Devi D/O Late Dudh Nath Singh, W/O Upendra Singh Resident Of Village And P.O.- Hatt Pokhar, Jitaura, P.S.- Piro, District- Bhojpur
 11. Punam Devi D/O Late Dudh Nath Singh, W/O Kusmakar Singh @ Gun Singh Resident Of Village- Jagdishpur, P.O. And P.S.- Jagdishpur, District- Bhojpur
- Defendants.... Petitioners.**

Versus

1. Suresh Kumar S/O Late Megha Singh Resident Of Village- Pararia, P.S.- Bikramganj, District- Rohtas
 2. Sonu S/O Suresh Kumar Resident Of Village- Pararia, P.S.- Bikramganj, District- Rohtas
- Plaintiffs-.... Opposite Parties.**
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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

13 22-06-2015

Heard the learned counsel for the petitioners.

Calling in question the legal acceptability of order dated 01.02.2013 passed in Final Decree 52/1992 (Title Suit No.52 of 1992) by the learned court below whereby the petition of the petitioners filed under Section 4(c) of the Bihar Consolidation

of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as Consolidation Act), praying for abatement of the final decree proceeding has been rejected, the petitioners have preferred this revision application.

The undisputed facts are that the opposite parties filed Title Suit No. 52/1992 for partition of the suit properties mentioned therein. In the said suit, the preliminary decree for partition was passed on 02.03.2002. The decree holder-opposite parties thereafter filed the petition for preparation of final decree on the basis of which the proceeding for preparation of final decree Final Decree 52/1992 (Title Suit No.52 of 1992) has been initiated. A pleader commissioner was appointed in the proceeding under the provisions of Order 26 Rule 13 C.P.C., and the report by the said pleader commissioner was submitted on 24.08.2010. The judgment debtor-petitioners have filed their objections to the report and the same is still under consideration. It has also been admitted by the parties that the F.A.No. 158/2002 has been filed before this Court against the preliminary decree by the judgment debtor-petitioners, which is still pending.

At this stage the judgment debtor-petitioners filed the petition dated 07.10.2010 (Annexure-1) from which it transpires that the prayer has been made for passing “an order under Section



4(c) of the Consolidation Act declaring that the suit as well as preliminary decree passed in the suit has abated for the ends of justice”. It further transpires from this petition that the averments have been made that after the notification under Section 3 of the Consolidation Act, the consolidation proceeding has clearly revived in every village including the village where the suit land is situated. Further averment has been made that the suit for partition of agricultural land after Notification No.186 dated 15.03.2004 stands abated and the proceeding for preparation of final decree is continuation of suit.

The rejoinder to the aforesaid petition (Annexure-2) has been filed by the decree holder-opposite parties stating that the concerned village does not lie within the notification for the consolidation proceeding. It has been further stated that the judgment debtor-petitioners deliberately did not file petition praying for such abatement under Section 4(c) of the Act in the pending F.A.No.158/2002 as there was no notification issued under Section 3 of the Consolidation Act covering the concerned village Parariya. It has also been averred that the proceeding for preparation of final decree cannot abate under the provisions of the Consolidation Act.

The learned court below after hearing the parties and



considering the materials on record, has come to the conclusion that there cannot be abatement of the final decree proceeding under Section 4(c) of the Consolidation Act as the judgment and preliminary decree have been passed before the revival of the consolidation proceeding. It has also been found that the judgment debtor-petitioners who are appellants in the F.A.No.158/2002 before this Court, have not filed any such petition for abatement of the appeal. By the impugned order, thus, the learned court below has rejected the petition filed by the petitioners.

Mr Prasad, the learned counsel appearing for the petitioners has contended that the impugned order suffers from error of jurisdiction when the learned court below has come to the conclusion that there cannot be abatement of the final decree proceeding under the provision of Section 4(c) of the Consolidation Act, in the facts and circumstances of the case. The basic proponent of the learned counsel is that after the notification under Section 3 of the Consolidation Act the entire proceeding comes to a naught from its commencement and in sequel, the proceeding for preparation of final decree would also be covered by the said provision. To bolster his submissions, the learned counsel has placed reliance on the decision of the apex court in the case of **Paras Nath Rai Vs. State of Bihar, 2013(1)**

PLJR (SC) 1.

After careful consideration of the facts and submissions, it becomes manifest that the prayer of the petitioners as made in their petition (Annexure-1) was for declaration that the suit as well as the preliminary decree passed in the suit has stood abated under Section 4(c) of the Consolidation Act. It has, however, been accepted on behalf of the petitioners that the F.A.No.158/02 has been filed by them against the preliminary decree and it has also been further accepted that no petition for abatement of the said appeal under the provision of Section 4(c) of the Consolidation Act, has been filed. The present proceeding has been initiated for preparation of final decree in accordance with the preliminary decree. It would be fruitful to mention here that the apex court in **Paras Nath Rai (supra)** has taken into notice the distinction between preliminary decree and final decree and has observed as follows:

“....There is a distinction between preliminary and the final decree. Recently in **Bimal Kumar & Another vs. Shakuntala Debi and Others, (2012)3 SCC 548**, this Court after referring to the decisions in **Rachakonda Venkat Rao and Others vs. R.Satya Bai (D) by L.R. and**

Another, AIR 2003 SC 3322, Muzaffar Husain Vs Sharafat Hussain, AIR 1933 Oudh.562, Raghubir Sahu Vs. Ajodhya Sahu, AIR 1945 Patna 482, Renu Devi Vs.Mahendra Singh and Others, AIR 2003 SC 1608, has ruled thus:-

“A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries conducted pursuant to the preliminary decree, the rights of the parties are finally determined and a decree is passed in accordance with such determination, which is the final decree. Thus, fundamentally, the distinction between preliminary and final decree is that: a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be

held and conducted pursuant to the directions made in the preliminary decree which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree...”

In the aforesaid decision the apex court has also taken into notice the Full Bench decision in the case of **Srinibas Jena v. Janardan Jena, AIR 1981 Orissa 1 (F.B.)** which was an appeal directed against the final decree for partition and the prayer for abatement of the appeal under similar provision of Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 was turned down by the Full Bench holding that the provision for abatement could not include an appeal arising out of the final decree as the same would not involve declaration of any right, title or interests of the parties but with certain matters pertaining to what has already been declared. As the issue in **Paras Nath Rai (Supra)** pertained to abatement of appeal against the preliminary decree, their lordships have not dwelt upon any further on the decision by the Full Bench in **Srinibas Jena**



(Supra), and on the issue of abatement of the final decree proceeding under the provisions of the Consolidation Act. However, the distinction between a preliminary decree and final decree as noticed by their lordships is material and relevant for the present, for coming to the conclusion that the final decree proceeding is only to work out the rights and interest of the parties with regard to the suit land which have already been determined by the preliminary decree, and the final decree proceeding does not relate to the determination of any substantive rights of the parties as to the title to the properties in question.

Moreover, there is no explanation at all on behalf of the petitioners as to why no such step has been taken under Section 4(c) of the Consolidation Act in the pending first appeal against the preliminary decree. It is well settled that the pendency of an appeal cannot operate as stay/suspension of the decree appealed against or of the proceeding taken in pursuance to the said decree until the appellate court so directs. This Court does not find substance in the submission by the learned counsel for the petitioners that even during the subsistence of the preliminary decree, the declaration for abatement of the suit as well as the preliminary decree can be made by the court in a final decree proceeding which is exactly the prayer made by the petitioners in

their petition (Annexure-1) before the learned court below. For the aforesaid reasons and discussions, this Court, therefore, holds that there is no illegality or error of jurisdiction in the impugned order.

The revision application is, accordingly, dismissed.

(V. Nath, J)

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