

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21335 of 2013

In
C.R. 767 of 2009

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Dineshwar Singh & Ors

.... Petitioner/s

Versus

Phul Sundari Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar

For the Respondent/s : Mr. Jitendra Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 05-10-2015 **1.** Heard the learned counsel for the parties on the
interlocutory application No.5089 of 2014.

2. This application has been filed by the petitioners for
substitution of the legal representatives of the petitioner No.2,
Magister Singh. In view of the submission, the application is
allowed and the name of the legal representatives of the deceased
petitioner No.2 are substituted in place of the deceased after
deleting his name. All of them have already appeared by filing
Vakalatnama.

3. Heard the learned counsel, Mr. Ashok Kumar, for the
petitioner and the learned senior counsel, Mr. Dhruv Narain on
behalf of the respondent.

4. This C.W.J.C. application has been filed under Article

227 of the Constitution of India against the order dated 20.4.2009 passed by Second Subordinate Judge, Bhojpur at Ara, in Title Suit No.211 of 2002 whereby the learned Court below has held that the suit has abated under Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

5. It appears that the plaintiff petitioners filed the aforesaid title suit No.211 of 2002 for partition of his half share in the suit property alleging that Guru Charan had three daughters, Roop Jharo, Manjharo and Sanjharo. Out of the three daughters Roopjharo and Manjharo both died issueless. The plaintiff is the son of Sanjharo Devi. The defendants appeared and filed contesting written statement denying that Sanjharo is the daughter of Guru Charan and, therefore, the plaintiff has no locustandi to maintain the partition suit. It further appears that after the written statement was filed, the defendants also filed an application under Section 4(c) of the Consolidation Act and prayed that the Notification under Section 3 of the Consolidation Act has also been issued, therefore, the suit is not maintainable in view of the provision under Section 4(c) of the Act. The plaintiff filed an application for amendment on 19.09.2008 praying therein to allow amendment inserting the further relief to the effect that the plaintiff's mothers, i.e., Sanjhhhalro Devi was the daughter of Guru

Charan Singh. A rejoinder was filed by the defendant to the amendment application.

6. The Court below by the impugned order allowed the application filed by the defendant under Section 4(c) of the Consolidation Act and held that since there has already been Notification under Section 3 which has not been de-notified under Section 26(A), the suit has already abated. The Court below did not pass any order on the amendment application.

7. The learned counsel, Mr. Ashok Kumar, appearing on behalf of the petitioner submitted that in view of the defence taken by the defendant in the written statement, the plaintiff was compelled to file the amendment application for declaration of his status and relation with Guru Charan Singh. The learned Court below without deciding this amendment application first has passed the order on the application filed by the defendant. According to the learned counsel, if the amendment application is allowed, then naturally the relief which has been sought for by the plaintiff-petitioner will be out of the jurisdiction of the consolidation authority under the Consolidation Act. So far the status is concerned, the authorities under the Consolidation Act are not competent to decide. In support of his submission, the learned

counsel relied upon the decision of the Supreme Court in the case of *Ram Sakal Singh Vs. Mostt. Monako AIR 1997 (2) PLJR 635 SC*.

8. On the other hand, the learned senior counsel, Mr. Dhruv Narain, appearing on behalf of the defendant submitted that the plaintiff filed simple suit for partition earlier. Therefore, considering the relief claimed by the plaintiff, the defendants have filed an application under Section 4(c) because at that time, Notification had already been issued under Section 3 of the Consolidation Act. The learned Court below, therefore, has rightly first decided the application filed by the defendants under Section 4(c) of the Act. After de-Notification under Section 26(A), the suit filed by the plaintiff will revive and thereafter the amendment application shall be considered. In such circumstances, there is no jurisdictional error, as such the impugned order cannot be interfered with in exercise of jurisdiction under Article 227 of the Constitution of India.

9. Perused the impugned order dated 20.4.2009. From perusal of the order, it appears that the Court below has not at all considered the amendment application filed by the petitioners on 19.09.2008. It may be mentioned here that order is dated

20.4.2009. In the amendment application, the plaintiff clearly sought for the amendment to the effect that **‘it be declared that Sanjharo Devi, wife of Saukin Singh was daughter of Guru Charan Singh.’**

10. Section 4 (c) of the Consolidation Act reads as follow :-

‘4(c) every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending stand abated :

Provided that.....

11. In view of the aforesaid provision any suit in respect of declaration of rights or interest in any land lying in the area in regard to which the proceeding ought to be taken under this Act will only abate. So far the declaration relating to the status, i.e., relationship of Sanjharo with Guru Charan Singh is concerned, it is beyond jurisdiction of the Consolidation Act. Here, the plaintiff will get the decree for partition only if he will prove that his mother, Sanjharo, was the daughter of Guru Charan Singh.

12. In the case of ***Ram Sakal Singh Vs. Mostt. Monako Devi (Supra)***, the Hon’ble Supreme Court has held that **‘if the**



document is void, there would be no need to set aside or cancel the document / deed but if there is relief for declaration that the document be declared as voidable, the Civil Court gets jurisdiction to declare it as such.’ Here so far status is concerned, there is no provision in the Consolidation Act that the status can also be declared by the authorities under the Consolidation Act.

13. The Hon’ble Supreme Court in the case of *Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf AIR 2010 SC 2897* has held that **‘the jurisdiction of the Civil Court to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by Civil Courts. Any such exception cannot be readily inferred by the Courts. The Courts would, lean in favour of a construction that would uphold the retention of jurisdiction of the Civil Courts and shifts the onus of proof to the party that asserts that Civil Court’s jurisdiction is ousted.’**

14. In the present case, therefore, the Court below has not exercised a jurisdiction vested in it by law by not deciding the amendment application first. Therefore, the impugned order

suffers from illegality and, therefore, it is set aside and the matter is remanded back to the Court below with a direction that the Court below shall hear the parties on the amendment application first and pass order according to law without being influenced by any observation made by this Court in this order. If amendment will be refused then fresh order under Section 4(c) of the Consolidation Act may be passed and if amendment is allowed then the application under Section 4(c) will not apply so no fresh order on the application will be required to be passed and consequently the application will be rejected.

15. Accordingly, this writ application is allowed and the impugned order is set aside with the aforesaid direction.

(Mungeshwar Sahoo, J)

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