

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 329 of 2007

IN

Civil Writ Jurisdiction Case No 6489 of 1988

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- 1 Ram Bali Prasad @ Ram Bali Gope
 - 2 Karu Gope @ Karu Prasad
 - 3 Kapil Gope @ Kapil Prasad
 - 4 Kishundhari Gope @ Kishundhari Prasad
 - 5 Krishna Gope @ Krishna Prasad, sons of late Bhatu Gope
 - 6 Bilash Gope @ Bilash Prasad, son of late Bishnu Gope, residents of Village – Islampur, Tola – Hurakhar, PS – Islampur, District – Nalanda
 - 7 Savita Devi, wife of Ram Chandra Yadav
 - 8 Anita Devi, wife of Raja Ram Yadav, residents of Village – Lakhabar, PS – Ghosi, District - Jehanabad

.... Appellant/s

Versus

- 1 The Principal, Consolidation Training Institute, Bihar, Patna
- 2 The Deputy Director of Consolidation, Patna
- 3 Consolidation Officer, Ekangar Sarai, Now Hilsa, District – Nalanda
- 4 Babita Kumari, daughter of late Arjun Singh, resident of Village – Bhasin Bigha, PS – Khudaganj, District – Nalanda
- 5 Surendra Prasad
- 6 Yogendra Prasad
- 7 Krishna Prasad, sons of late Bipat Gope
- 8 Mostt Sitapati Devi, wife of Ramdeo Gope
- 9 Vijoy Yadav, son of Ramdeo Gope, residents of Village – Islampur, Tola – Hurakhar, PS – Islampur, Dist – Nalanda, at present resident of Village – Bhasin Bigha (Muza – Dhobdiha), PS – Khudaganj, Dist – Nalanda
- 10 (i) Ramesh Yadav, son of Shiva Nath Yadav, Village – Islampur, Tola – Hurakhar, PS – Islampur, District – Nalanda
(ii) Rinku Devi, wife of Om Prakash, Village – Fatehpur, PS – Bela, District – Nalanda
- 11 Mungeshwari Devi
- 12 Chinta Devi, daughter of late Mahabir Gope, residents of Village – Islampur, Tola – Hurakhar, PS – Islampur, District - Nalanda

.... Respondent/s

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For the Appellant/s : Mr K N Chaubey, Sr Advocate with
Mr Rewti Kant Raman, Advocate

For the Respondent/s : Mr Rajendra Prasad, Sr Advocate with
Mr Pramod Kumar, Advocate

For the S t a t e : Mr Shailendra KR Jha, AC to AAG XIII

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE MR JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 30-06-2015

The private respondents in the writ petition are appellants in this intra-Court Appeal in relation to proceedings under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (For brevity, *the Consolidation Act*).

2 There is a short point for reconsideration. What is the effect of Section 4 (c) of the Consolidation Act on proceedings in Civil Court in relation to partition? The learned Single Judge, following apparently the Full Bench judgment of this Court in the case of *Hari Mohan Thakur & Others –Versus- Mahendra Narain Chand & Others* since reported in 1989 PLJR 88, held that partition suits and decrees passed therein do not abate. Learned Single Judge distinguished the case of the Apex Court in the case of *Most Bibi Rahmani Khatoon & Others –Versus- Harkoo Gope & Others, 1981 BBCJ 197 (SC)* and allowed the writ petition holding that the revisional authority under the Consolidation Act failed to take note of factum of partition as per the partition decree.

3 Shri K N Chaubey, learned Senior Counsel in this appeal contends that learned Single Judge was not correct. He further

relies on a recent judgment of the Apex Court in the case of *Paras Nath Rai & Others –Versus- State of Bihar & Others* since reported in 2013 (1) PLJR 1 (SC) wherein, in relation to partition suit, the Apex Court has held that except where the partition decree has attained finality, the suits would abate as a whole as if they were never filed.

4 In our view, there is no difficulty if we understand the judgments in the correct perspective. If we look to the Full Bench judgment of this Court noticed above, it is clear. In that case, the Court clearly held that where preliminary decree in a partition suit attains finality, the final decree preparation being nothing but an execution proceedings, it would not amount to a suit pending in relation to right, title or interest in land and that being so, the partition suit would not abate. From this, it does not follow as a matter of general proposition that no partition suit would abate. If in a partition suit from a preliminary decree, there is an appeal pending then the preliminary decree has not attained finality and the matter is subjudiced. In such an event, the partition suit, as a whole, would abate.

5 The two Apex Court's decisions noted above clearly predicate that the concept of abatement is not merely what is obliterated is the stage when Section 3 (1) notification is issued but the very institution of the proceedings stands obliterated. Thus, the

effect of the aforesaid judgments are that where any decree in any suit has attained finality, pursuant to their being no appeal having been preferred against it, then finality of a decree is not taken away by the provision for abatement as contained in Section 4 (c) of the Consolidation Act. In a partition suit, first there is a preliminary decree determining the rights of the parties inter se. Once that is determined then in respect of the properties in partition, the preliminary decree is put in execution. If no appeal is filed from a preliminary decree, then it has attained finality and merely because the suit is pending at the stage of final decree or there is an appeal from final decree, the provision of abatement would not effect the preliminary decree but where the preliminary decree itself is not final and is subject to an appeal when notification under Section 3 (1) of the Consolidation Act is issued then as per the Full Bench judgment of this Court and as per the judgment of the Apex Court, the partition suit would abate. This is the distinction which the learned Single Judge failed to appreciate. Mr Chaubey points out that why this is relevant that if the partition suit as a whole abates as the appellants would contend then any finding in those proceedings cannot be looked into by the consolidation authorities but if a preliminary decree had attained finality then the findings recorded in the judgment and the decree would be relevant to the consolidation authorities because

those would not abate.

6 In the present case, it is not in dispute that from the writ petitioners' side (their ancestors) had filed a partition suit in the year, 1961 which was decreed on 23.12.1967 against which Title Appeal No 9 of 1968 was filed and was pending when consolidation notification was issued. It would, thus, be seen that it was against the preliminary decree issued in the year, 1967 that the appeal was filed and was pending and if that be so then in terms of Section 4 (c), the appeal and the partition suit stood abated and no findings recorded therein could be referred to or relied upon before the consolidation authorities. The submission is not legal but correct. The learned Single Judge was clearly in error in holding that the partition decree dated 23.12.1967 passed in Title Suit No 74 of 1961 having attained finality would not abate.

7 In view of the aforesaid, we have no option but to allow the appeal and set aside the judgment and order of the learned Single Judge passed in CWJC No 6489 of 1988 being judgment and order dated 09.02.2007 and hold that the writ petition be dismissed.

(Navaniti Prasad Singh, J)

(Rajendra Kumar Mishra, J)

M.E.H./-

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