

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15235 of 2014

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1. Rajendra Tiwary Son of Late Krishna Tiwary
2. Bachua Tiwary
3. Tuntun Tiwary Both Sons of Rajendra Tiwary R/o Ghuredehara, P.S. - Bhabua,
District- Kaimur at Bhabua.

.... Petitioners

Versus

Lalji Tiwary Son of Late Sarju Tiwary Resident of Village - Ufarauliya, P.O. -
Kurasan, P.S. - Bhabua, District- Kaimur at Bhabua.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Tribhuwan Narayan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-10-2016

Heard Mr. Tribhuwan Narayan, learned counsel
appearing for the petitioners.

By the impugned order the learned court below has
held that the suit has abated under the provisions of Bihar
Consolidation of Holding and Prevention of Fragmentation Act.

The fact has not been disputed on behalf of the
plaintiff-petitioner that the suit has been filed simply for partition of
the suit property. The learned counsel for the petitioners, however, has
submitted that in view of the plea taken by the defendants in the
written statement that there had earlier been partition, the necessary
issue in the suit would be as to whether the partition has taken place
earlier as pleaded by the defendant. It has, therefore, been propounded



that such an issue cannot be decided by the consolidation authorities and therefore the learned court below has committed error in holding that the suit has abated under the provisions of the said Act.

After considering the submissions and perusal of the impugned order as well as materials on record, it is evident that the suit has been filed by the plaintiff for partition. The plea in the written statement that there had already been partition of the suit properties will not change the nature of the suit. Therefore this Court is not inclined to align with the submissions on behalf of the plaintiff-petitioner that such suit would not abate.

Impugned order has been passed after taking into notice the fact that there has been no denotification under Section 26(A) of the aforesaid Act. This fact has not been controverted on behalf of the petitioner.

As such, this Court does not find any merit in this application, which is , accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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