

1. Sater
2. Deve
3. Kavi
4. Rav
Village

1. Chan
2. May
Both R
Present
Uttar P
3. Gaja

Versus

3. Gajadhar Pathak Son Of Late Hari Pathak

5. Sanjay Pathak

Appearance :

For the Respondent/s : Mr. Sushant Kumar Das, Adv.

Heard Mr.Dronacharya, the learned counsel appearing for the petitioners. Mr.Sushant Kumar Das, the learned counsel has appeared for the respondents.

The fact is not in dispute that the suit was filed for partition by the respondents and during the pendency of the

suit the prayer for amendment was made by the plaintiffs and the matter ultimately reached this Court in CWJC No.13908/2010. This writ application was disposed of by order dated 11.09.2012 holding as follows:

“...There is no issue between the Counsel for the parties that in the aforesaid background, the trial court has framed Issue No. 6 whether the petitioners are wife and the daughter respectively of Late Ram Shiwala Pathak . If an issue has been framed quite naturally it has to be decided on basis of the evidence that may be led in support of the same and evidence in rebuttal. What shall follow is the finding of the Court on the issue. The nature of the amendment sought appears futile after framing of the issue...”

Thereafter the petitioner filed a petition on 27.05.2013 stating therein that the earlier suit for partition no.86/1984 had abated under Section 4(c) of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 (hereinafter referred to as Act) by order dated 13.03.1985 and therefore the present suit also cannot proceed. The prayer was,

therefore, made to dismiss the suit. The learned court below has turned down the said prayer, taking into notice the order dated 11.09.2012 passed in CWJC No.13908/2010.

Mr. Dronacharya, the learned counsel for the petitioners has not disputed the fact that the core issue in the suit between the parties is issue no.6 relating to the status of the plaintiffs as the widow and the daughter of Late Ram Shiwala Pathak. The learned counsel, however, has submitted that as the earlier partition suit no.86/1984 had abated under Section 4(c) of the Act, the learned court below ought to have held that the present suit has also abated.

The learned counsel for the respondents, however, has supported the impugned order.

After considering the submissions and perusal of the records, it is manifest that the crucial issue in the suit as is evident from the order dated 11.09.2012 passed in CWJC No.13908/2010 (Annexure-2) is as to whether the plaintiffs are the wife and the daughter respectively of Late Ram Shiwala Pathak. This issue is definitely not covered by provision of Section 4(C) of the Act. The learned court below, therefore, has committed no illegality or error of jurisdiction in passing the impugned order, rejecting the petition dated 27.05.2013 filed by the petitioners.

The writ application is, accordingly, dismissed.

(V. Nath, J)

