

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8213 of 2015

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1. Kishun Dayal Rai.
2. Ram Pukar Rai. Both sons of Late Chandrama Rai.
3. Jiut Rai son of Naga Rai.
4. Kaushal Rai son of Naga Rai.
5. Bali Ram Rai S/o Late Yadubansh Rai.
6. Ram Dular Rai s/o Late Yadubansh Rai.
7. Lal Babu Rai son of Late Ram Layak Rai.
8. Rajendra Rai son of Late Ekbal Rai.
9. Suraj Bali son of Late Ekbal Rai.
10. Dasrath Rai son of Late Shri Ratan Rai.
11. Ram Pravesh Rai son of Sri Ratan Rai.
12. Ram Babu Rai son of Late Sohan Rai.
13. Sambhu Rai son of Late Sohan Rai. All resident of village- Bhakura,
Police Station- Ara Muffasil, District- Bhojpur.

.... Petitioners

Versus

1. Ram Surat Rai son of Late Sri Nath Rai.
2. Ram Bihar Rai son of Late Sri Nath Rai.
3. Sri Bhagwan Rai son of Late Sri Nath Rai. Resident of village- Bhakura,
Police Station- Ara Muffasil, District- Bhojpur.

.... Respondents

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Appearance :

For the Petitioners : Mr. Satish Kumar Sinha, Advocate.
For the Respondents : Mr. Ram Chandra Sinha, Adovate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 11-04-2016 Heard learned counsel, Mr. Satish Kumar Sinha for

the petitioners and learned counsel, Mr. Ram Chandra Sinha for

the respondents.

By the order dated 12.02.2015, the learned Sub-
Judge, Ara in Title Suit No. 557 of 2004 rejected the application
filed by the defendants-petitioners under Section 4(c) and 4(b) of
the Bihar Consolidation of Holdings and Prevention of

Fragmentation Act.

From perusal of the impugned order, it appears that the Court below has held that the issue raised by the petitioners is a pure question of law and fact and that can only be decided at the time of hearing of the Suit.

The learned counsel for the petitioners, relying on decision of this Court in C.W.J.C. No. 10548 of 2011 dated 05.11.2012, submitted that unless there is de-notification under Section 26 (A) of the Consolidation Act, the Suit should have been abated by the Court below, but erroneously rejected the application.

On the other hand, the learned counsel for the respondents submitted that the consolidation proceeding is not applicable in cases of residential House, Mandir, Dalan, etc. and in paragraph 8 of the plaint, the plaintiffs have specifically stated that the plaintiffs have the house over the Suit land and there is Dalan, Mandir, etc.

Perused the order passed by the Court below. It appears that there is specific pleadings in paragraph-8 of the plaint which has been annexed as annexure to this writ application that the petitioners have got the House, Dalan and Mandir in the Suit premises measuring 49 decimals.

It appears that the defendants have admitted this fact in the written statement about the existence of house and dalan. Now, therefore, it is a question as to whether the Suit property is an agricultural land or not.

This can be decided only on the basis of the evidences. So far the decision relied upon by the learned counsel for the petitioners is concerned, it is not the finding of this Court that the Suit with respect to the residential House, Dalan or Mandir will also abate.

In view of the above facts and circumstances of the case, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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