

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10819 of 2014

- =====
1. Ghuri Kunwar Wife of Lage Ganesh Upadhyay
2. Shushil Upadhyay Son of Late Ganesh Upadhyay Resident of Village
Amarahan, P.S- Bhabua, District- Kaimur at Bhabua. Petitioner/s
- Versus
1. Awadhesh Pandey Son of Triveni Pandey Resident of Village- Lahladpur, P.O.
Marhi, P.S- Chandauli, District- Chandauli (U.P)
2. Chandradhar Tiwari
3. Krishna Tiwari Both sons of Ramshankar Tiwari resident of Village
Akhlasapur, P.O- Bhabua, P.S-Bhabua, District- Kaimur at Bhabua.
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Rajani Kant Pandey, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-07-2016

Heard Mr. Rajani Kant Pandey, learned counsel for the
petitioners.

Questioning the legal sustainability of the impugned order
by which the learned appellate court below has rejected the prayer of
the appellant-petitioners to abate the suit as well as the appeal under
Section 4 (c) of the Bihar Consolidation of Holdings and Prevention
of Fragmentation Act (hereinafter referred to as 'the Act'), the present
application under Article 227 of the Constitution of India has been
filed.

From the facts as apparent from the impugned order and
the submissions on behalf of the petitioners, it is manifest that the
petitioners have filed the suit for seeking declaration that the order

passed by the Consolidation Officer is nullity. The petitioners as plaintiffs pursued the suit and thereafter the judgment was passed in the suit dismissing the same. The petitioners aggrieved by the said judgment and decree have preferred Title Appeal No. 39 of 2013. During the pendency of the appeal, the petitioners filed a petition under Section 4 (c) of the Consolidation Act praying for abatement of the suit and appeal. By the impugned order the learned court below has turned down the said prayer of the petitioners.

It is not in dispute that the notification under Section 3 of the Consolidation Act was not issued during the pendency of the appeal. It is further also apparent that the suit was filed by the petitioners themselves who took a chance of judgment going in their favour and thereafter have also filed the appeal. In this backdrop, it is not far to conclude that the petition filed by the petitioners for abatement of the suit and appeal under Section 4 (c) of the Consolidation Act was frivolous and misconceived. The learned court below has rightly dismissed the said petition. This Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the said prayer.

The present application is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

AFR/NAFR	
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