

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2527 of 2016

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1. Md. Ilyas
 2. Md. Usman @ Md. Usman Ghani
 3. Md. Hasibur Rahman
 4. Md. Habibur Rahman All Sons of Late Kalimuddin All Resident of village - Sadipur, Police Station - Baisi, District - Purnea

.... Petitioner/s

Versus

1. Bibi Sabra Khatoon Wife of Late Md. Soyad Daughter of Late Kalimuddin resident of village - Gurihal, Police Station - Baisi, District - Purnea
2. Mot. Khatoon Wife Late Md. Idris
3. Md. Mujibur Rahman Son of Late Md. Idris
4. Md. Noman Son of Late Md. Idris
5. Ruhul Amin Son of Late Md. Idris All Resident of village - Sadipur, Police Station - Baisi, District - Purnea
6. Sitara Begum Wife Azimuddin Resident of village and P.O. Marwa, Police Station - Baisi, District - Purnea
7. Bibi Nargis Wife of Abdul Rahman Resident of village - Chapra, P.O. Sadipur, Police Station - Baisi, District - Purnea
8. Bibi Rukhsana Wife of Mahboob Resident of village - Mohana, P.O. Chokiharipur, Police Station - Kadwa, District - Katihar
9. Bibi Husni Wife of Abdul Satin Daughter of Late Md. Idris Resident of village - Kumbarwa, Police Station - Baisi, District - Purnea
10. Md. Imteyaz Alam Son of Late Md. Sharif
11. Bibi Magni Wife of Md. Matiur Rahman Both Resident of village - Chakla, Police Station - Baisi, District - Purnea
12. Bibi Sahadi Wife of Md. Islam Resident of village - Chapra, Police Station - Baisi, District - Purnea
13. Bibi Barjis Wife of Md. Mushtaque Alam Resident of village - Haripur, Police Station Amour, District - Purnea
14. Bibi Nazam Wife Jamil Akhtar
15. Bibi Rubana Wife of Md. Minhayat Both resident of Azamubaya, Police Station Baisi, District - Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Shahab Khalil
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 14-03-2016

Heard Mr. Ragiv Hasan, learned Senior counsel appearing for the petitioners and Mr. D.K. Jha, learned counsel appearing for the plaintiffs-respondents.

2. Since the writ application under Article 226 is not maintainable, the learned Senior counsel appearing for the petitioners submitted that the application may be heard treating the application as an application under Article 227 of the Constitution of India. Accordingly, I heard this writ application as an application under Article 227 of the Constitution of India.

3. This application under Article 226 of the Constitution of India has been filed by the petitioners for setting aside the order dated 30.11.2015 passed by the Sub-Judge, Baisi in T.S. No. 03 of 2009, whereby the court below rejected the application under Section 4(b) and 4(c) of the Bihar Consolidation of Holdings, Prevention and Fragmentation Act, 1956.

4. It appears that the plaintiffs-respondents filed the aforesaid suit for partition of the suit property. The defendant filed contesting written statement and thereafter an application under Section 4(B) and 4(C) of the Bihar Consolidation of Holdings, Prevention and Fragmentation Act, 1956 was filed by the



defendants-petitioners for passing the order to the effect that the partition suit has abated. The plaintiffs-respondents filed rejoinder to the said application alleging that, in fact, no notification under Section 3 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 was ever issued. Only notification under Section 1 of the said Act was issued in the year 1975, Therefore, there is no question of abatement of partition suit arises. By the impugned order, the court below has considered the information supplied by the concerned authority to the defendant-petitioner under the provision of Right to Information Act, 2005 and also the notification issued under Section 1 of the Consolidation Act. Thereafter, the court below recorded finding that, in fact, the notification has been issued under Section 1 in the year 1975 and, therefore, it appears, *prima facie*, that information supplied by the concerned authority is wrong and then had that the suit will not abate. Secondly, the court below also held that the suit has been filed for partition after declaring that the partition deed is not binding on the petitioner.

5. The learned Senior counsel appearing on behalf of the petitioners submitted that in fact notification under Section 3 was



issued in the year 1970 and so far, the notification of the year 1975 is concerned, it is only amendment notification but the court below wrongly construed the same. Secondly, the learned Senior counsel submitted that there is no relief in the plaint to the effect that the compromise decree passed in earlier partition sui is either void or voidable rather, in fact, plaintiff is claiming share according to the said compromise decree.

6 On the contrary, the learned counsel for the respondents submitted that, in fact, the court below has considered the information supplied to the petitioners and also the notification, which is being relied upon by the petitioners before this Court. The suit will not abate automatically unless an order under Section 4/4(b) of the Consolidation Act is passed. In the present case, no notification under Section 3 was ever produced before the court below by the petitioners and, in fact, no notification was ever issued. Therefore, there is no question of production of the notification under Section 3 arises. Accordingly, the court below has rightly rejected the application by the impugned order.

7 Perused the order passed by the court below. It



appears that the court below has passed the reasoned order and also considered the notification, which is being relied upon by the petitioners before this Court and also the information supplied to the petitioners under the provision of right to information act and recorded clear finding that there is no notification under Section 3 of the Bihar Consolidation Act.

8. The Hon'ble Supreme Court in the case of ***Jai Singh And Another Versus Municipal Corporation of Delhi And Another*** reported in ***2010 (9) SCC 385*** at paragraph-16 has held that the High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it can not substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. As stated above, both the relevant documents, which is being relied upon by the petitioners have already been discussed by the court below and thereafter concluded that no notification under Section 3 has been issued and the information given to the petitioners to the effect that there had already been notification in the year 1970 was found to be suspicious.

9. In such circumstances, this Court in exercise of

supervisory jurisdiction cannot re-appreciate the same materials and for the purpose of supervising the order, cannot substitute its own finding. In the aforesaid decision, it has also been held that this discretionary jurisdiction under Article 227 of the Constitution of India is not available to correct all errors of judgment of a court or tribunal coming within the limits of its jurisdiction. The correctional jurisdiction can be exercised in cases where the orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law and justice.

10. In view of the above, I am not inclined to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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