

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.273 of 2016**

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Nageshwar Singh & Anr

.... Appellant/s

Versus

Bimla Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anjani Kumar Sinha No-1

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

4 23-08-2016 Heard learned counsel Mr. Anjani Kumar Sinha for the

petitioners and learned counsel Mr. Parth Gaurav for the

respondents.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners against the order dated 01.04.2016 passed by Subordinate Judge-VIII, Bhabua, Kaimur in Title Suit No.722 of 2014/5277 of 2014 whereby the learned court below while rejecting the application under Order 7 Rule 11 CPC held that the fact alleged in the application shall be decided as preliminary issue under Order 14 Rule 2 CPC.

3. It appears that the partition suit was filed by the plaintiffs-petitioners. Defendant nos.1 and 2-respondents appeared and filed application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that there had already been

partition before the consolidation authority on 19.09.1980 in the consolidation proceeding and still the consolidation proceeding is going on and no denotification has been made. The court below by the impugned order held that no case under Order 7 Rule 11 (d) CPC is made out and, therefore, rejected the application but at the same time in the last portion held that the fact can be decided under Order 14 Rule 2 CPC.

4. Sections 4(b) and 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act read as follows:-

- 4(b) No suit or other legal proceeding in respect of any land in such areas shall be entertained in any court, and in calculating period of limitation applicable to such suits and proceedings such period shall not be counted.
- 4(c) Every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending, stand abated.

5. Learned counsel relied upon a decision of this Court, **2006(1) PLJR 160 (Mridula Singh @ Bulbul Vs. Brahmdeo Pd. Singh)** and submitted that unless an application is made under the provision of either 4(c) or 4(b) of the Bihar Consolidation of



Holdings and Prevention of Fragmentation Act and prayer is made for deciding this issue as preliminary issue the court has no jurisdiction to decide the same as preliminary issue. In the present case, no such prayer was made nor any application was filed by the defendants-respondents for deciding the said issue as preliminary issue prior to passing the impugned order but subsequent to the order the application has been filed by the either side for deciding the said issue as preliminary issue. Rejoinder has been filed to the said application.

6. Order 14 Rule 2 CPC reads as follows:-

2. Court to pronounce judgment on all issues.- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

7. So far the provision as contained in Order 14 Rule 2

CPC is concerned, it speaks about the jurisdiction of the Court.

The objection raised by the petitioners is that unless prayer is made the court below has no jurisdiction to decide the same, as preliminary issue is without any basis.

8. From perusal of the application filed by the defendant nos.1 and 2-respondents, which is Annexure-1, it appears that there is clear averment in the application that in the consolidation proceeding partition has been effected and still the consolidation proceeding is going on. Therefore, in view of the provision as contained in Section 4(b) or 4(c), this question is to be decided as preliminary issue as the suit will not abate automatically but as soon as it becomes admitted fact by the parties, the Court can pass order under the aforesaid provisions of the Consolidation Proceeding. Reference may be made in this respect to the decision of the Hon'ble Supreme Court, **A.I.R. 2013 Supreme Court 1010 (Paras Nath Rai Vs. State of Bihar)**. Therefore, only because separate labeling under Section 4(c) and 4(b) has not been made, it cannot be said that the Court has no jurisdiction to decide this question as preliminary issue. Moreover, the court below has not stated that it will be decided without hearing the other side. In fact the defendants disputed the fact that the consolidation proceeding is not going on and notification under Section 26A has already been issued. They are at liberty to produce the same but on the

technical grounds that separate application is required to be filed and prayer is made are no grounds for rejection of the application.

9. In my opinion, therefore, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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