

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.103 of 2013

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1. Ramdhyan Bhagat @ Ramdhyan Kushwaha.
 2. Ram Awadh Bhagat & Ram Awadh Kushwaha.
Both sons of Chikhuri Bhagat.
 3. Dujia Devi Wife of Bachan Sharma.
 4. Rukhmina Devi Wife of Fulesar Sharma.
All resident of Village- Suksenwa Mishra , Post Office-Bhagi Patti Samaur,
P.S.-Kateya,District-Gopalganj. –Defendants/Petitioners.

Versus

Ram Prasad Sharma, Son of Chokat Sharma, R/o Village- Suksenwa Mishra , Post
Office-Bhagi Patti Samaur, P.S.-Kateya, District-Gopalganj.
.....Plaintiff/Opposite Party.

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Appearance :

For the Petitioner/s : Miss.Vagisha Pragya Vacaknavi, Adv.
For the Respondent/s : Mr. Dhananjay Kumar Tiwari, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 25-04-2016

V.Nath, J. Heard the learned counsel for the petitioners and the
learned counsel for the opposite party. With the consent of the parties,
this revision application has been heard and is being disposed of at
this stage.

The present revision application has been filed
against the order dated 19.01.2013 passed in T.S.No.61/2008 by
which the learned court below has dismissed the prayer of the
defendants for abatement of the suit under the provisions of Section
4(c) of the Bihar Consolidation of Holdings and Prevention of

Fragmentation Act (in short 'Act') and has accordingly rejected their petition dated 16.03.2012.

There is no dispute between the parties that the suit has been filed for declaration of title and for declaration that the sale deeds executed by defendant no.1 in favour of the remaining defendants are void documents. During the course of submissions also the learned counsel for both the parties have agreed that the substance of the pleading of the plaintiff demonstrates that the legality and validity of the sale deeds executed by defendant no.1 have been assailed questioning the entitlement of the defendant no.1 to alienate the properties subject matter of suit.

During the pendency of the suit the petition was filed on behalf of the defendants praying for abatement of the suit under Section 4(c) of the Act. The learned court below has come to the conclusion that as the issue regarding legality of the documents is involved which cannot be decided by the consolidation court, the suit cannot abate.

After considering the submissions and the materials on record, it is apparent that the main issue in the suit is the validity of the sale deeds executed by the defendant no.1 in favour of the remaining defendants on the ground that the defendant no.1 has got no transferable title over the property subject matter of the suit. If the

pleading of the plaintiff is accepted in toto the same would only make the said sale deeds void ab initio. The principle in this regard has been well settled by the apex court in the case of *Gorakh Nath Dube Vs. Hari Narain Singh, A.I.R.1973 SC 2451*. The principle regarding abatement has also been laid down in a recent decision in the case of *Paras Nath Rai Vs. State of Bihar, A.I.R.2013 SC 101*. Only because the issue in a suit pertains to the legality and validity of a document the same would not per se exclude the applicability of Section 4(c) of the Act. The court is required to go into the pleadings of the parties in that regard and discover the basis of the relief sought for in the suit. In the present case the learned court below has passed the order in a mechanical manner after only taking into notice that the validity of the sale deeds is in question and holding, for the said reason, that the suit would not be hit by Section 4(c) of the Act.

This revision application is, accordingly, allowed and the impugned order is set aside. The petition dated 16.03.2012 filed by the defendant-petitioners in the suit is allowed and the T.S.No.61/2008 is held to have abated under Section 4(c) of the Act.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.05.2016
Transmission Date	NA