

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.464 of 2016

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Kripa Shankar Tiwary Son of Late Kalika Tiwary R/o Village+Post- Mokar, P.S.- Agrer, District- Rohtas.

.... Petitioner

Versus

1. Most. Indrasan Kuer, Wife of Late Kanhaiya Tiwary, R/o Village- Mokar, P.S.- Agrer, P.O.- Mokar, District- Rohtas.
2. Uma Tiwary, Son of Late Kalika Tiwary, R/o Village+Post- Mokar, P.S.- Agrer, District- Rohtas.
3. Manu Tiwary, Son of Late Manoj Tiwary, R/o Village+Post- Mokar, P.S.- Agrer, District- Rohtas.
4. Navneet Tiwary, Son of Late Gopal Tiwary, R/o Village+Post- Mokar, P.S.- Agrer, District- Rohtas.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Siddharth Harsh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 07-03-2017

Heard Mr.Siddharth Harsh, learned counsel for the
petitioners.

Earlier the notice was issued in the admission
matter to the plaintiff-respondent no.1. From the office report, it
transpires that the notice has been validly served upon the respondent
no.1.

No body however is present on behalf of the
respondent no.1 when this matter has been taken up.

The legal sustainability of the impugned order, by
which the learned court below has rejected the petition dated



11.07.2014 filed by the defendant- petitioners praying for abatement of the suit under the provisions of Bihar Consolidation of Holding and Prevention of Fragmentation Act 1956 has been rejected is under question in this application under Article 227 of the Constitution of India has been filed.

The learned counsel for the petitioners has submitted that the impugned order has been passed by the learned court below solely on the ground that the defendant-petitioners did not produce any documentary evidence to show that the consolidation proceeding in the concerned area was going on and there was no de-notification under Section 26A of the said Act. It has been canvassed that the said finding by the learned court below was actually incorrect and by referring to the earlier order dated 04.04.2015 as well as the list of documents filed on behalf of the defendant-petitioners (Annexure-3), it has been shown that the necessary document with regard to the on-going consolidation proceeding was already filed on behalf of the defendant-petitioners.

After considering the submissions and perusal of the impugned order as well as the materials on record, it is evident that the prayer of the defendant-petitioners as made in the petition dated 11.07.2014 has been rejected solely on the ground that there was no documentary evidence in support of the fact that the



consolidation proceeding in the area was going on and there was no de-notification. However, from the order dated 04.04.2015 passed in the suit as well as from the perusal of the Annexure-3(List of documents), it appears that the documentary evidence was already there which the learned court below has failed to take into notice. As such, this Court is inclined to quash the impugned order and remit the matter back for fresh consideration of the petition dated 11.07.2014 as filed by the defendant-petitioners.

Accordingly, this application is allowed and the impugned order is quashed and the matter is remitted back to the court below to consider the petition dated 11.07.2014 filed by the defendant-petitioners in accordance with law.

(V. Nath, J)

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