

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.486 of 2016

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1. Niraj Kumar Sharma.
 2. Dhiraj Kumar, both are sons of late Sachidanand Singh, resident of Village-Dariyapur Kafen, P.S. Kurhani, District-Muzaffarpur.

.... Appellant/s

Versus

1. Madho Singh son of late Baldeo Singh.
2. Murari Singh.
3. Gopal Singh, both are sons of Madho Singh.
4. Madan Singh, son of late Narayan Singh.
5. Ghanshyam Singh.
6. Madhusudan Singh Shastri.
7. Manmohan Singh.
8. Bhushan Singh, all four are sons of late Sadhu Singh, all are resident of village Dariyapur Kafen, P.S. Kurhani, District-Muzaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anish Kumar, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-07-2017

Heard Mr. Verma, learned counsel for the petitioners and
the learned counsel for the respondents.

By the impugned order, the learned court below has
turned down the prayer of the plaintiff for revival of the suit which
had abated under Section 4 (1) (C) of the Bihar Consolidation of
Holdings and Prevention of Fragmentation Act, 1956 by an earlier
order dated 06.09.1977 passed in the suit.



The fact has been accepted that the said order of abatement had been challenged by the petitioners by filing a revision application before this Court but the said revision application was also dismissed for want of prosecution and thereafter no step was taken by the petitioners for restoration of the said revision application.

During the course of submissions, it has been accepted that the position with regard to the existence of the notification under Section 3 of the aforesaid Act which was existing on the date of passing of the order of abatement has still not changed and the only change which occurred was temporary between the period from 1993 upto 2004 when such notification under Section 3 of the said Act, all over the State of Bihar, was cancelled but subsequently after the order passed by a Bench of this Court such notifications have revived.

In this view of the matter, in absence of any prayer on the part of the petitioners for review or recall of the order of abatement on the ground set forth in the petition for revival of the suit that the area/land subject matter of the suit does not come within the purview of the definition of the land under the aforesaid Act the prayer for revival could not have been granted. Though, learned counsel for the petitioners has placed before this Court the order passed in another revision application by this Court with regard to the land of the same village but that will also not persuade this Court to exercise its jurisdiction under Article 227 of



the Constitution of India for interdicting the impugned order as in the said revision application, the abatement order itself was under question.

After considering the facts and circumstances of the case, this Court declines to exercise its jurisdiction under Article 227 of the Constitution of India. The application is, accordingly, dismissed.

However, the dismissal of this application shall not prejudice the right of the petitioners to avail the available legal remedies in accordance with law.

(V. Nath, J)

Devendra/-

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