

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.933 of 2016

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1. Narendra Kumar Singh son of Late Ambika Singh, Resident of Village
Maksudpur Karariya Tole Lalgah, Jogiya, P.S. Shyampur Bataha, Post Muksudpur
Karariya, Dist. Sheohar. Appellant/s

Versus

1. Harendra Kumar Singh,
2. Jitendra Kumar Singh,
3. Satendra Kumar Singh, All sons of Chuman Prasad Singh, Resident of Village
Maksudpur Karariya Tole- Talgarh, Jogiya, Post+P.S. Shyampur Bataha, Dist.
Sheohar.
4. Birendra Kumar Singh,
5. Sushil Kumar Singh, Both sons of Late Ambika Singh, Resident of Village
Maksudpur Karariya Tole- Lalgah, Jogiya, P.S. Shyampur Bataha, Post
Maksudpur Karariya, Dist. Sheohar. Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Jha, advocate

For the Respondent/s : Mr. Yogendra Mishra, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 12-12-2017

Heard both sides.

2. The petitioner has filed this Civil Misc. petition against
the order dated 05.08.2016 passed by Sub-Judge-I, Sheohar in Title Suit
No. 76 of 2014.

3. The petitioner is plaintiff of title suit No. 76 of 2014. The
petitioner filed the suit for declaration of title and confirmation of
possession after setting aside the order passed in Chakbandi case No.
252/77-78, which is wrong and illegal. The case of the plaintiff is that RSP
2498 of Khata No. 231 area seven decimal of village Muksudpur, Karakia
Tole, Lalgah, Gogia was khatiyani land of Roja Baitha, son of Asami
Baitha. Roja Baitha died leaving behind his two sons, namely, Rahiman
Baitha and Mirjan Baitha, who sold the land through registered sale deed in
favour of plaintiff No. 2 and 3 on 19.03.1979. The plaintiff filed petition for



mutating his name with regard to seven decimal of land of RSP No. 2498 but only five decimals of land was mutated as respondent/ defendant No.1, Harendra Singh, had earlier got his name mutated with regard to two decimal of land vide Mutation case No. 340/82-83 on the basis of order passed in Chakbandi Case No. 252/77-78. The plaintiff filed mutation appeal but the same was dismissed. The plaintiff preferred Mutation Revision case No. 2/2011-12, which is still pending. During the pendency of the suit the defendants raised the question of maintainability of suit in view of Section 4(b) and 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. On such petition, the learned Sub-Judge held that the suit is barred under Section 4(b) and 4(c) of the Consolidation Act and abated the suit vide order dated 05.08.2016.

4. Mr. Alok Kumar Jha, the learned counsel for the petitioner submits that the petitioner/ plaintiff has stated in the plaint that the suit land is homestead land appertaining to the house of plaintiff. It is submitted that the suit land is unconnected with any agricultural operation and, therefore, in terms of Section 3 of the Consolidation Act, such homestead land is not covered under the Consolidation Act. The learned counsel for the petitioner has placed reliance on the division bench judgement of this court reported in **AIR 1983 Patna 232 (Bibi Magboolam & Ors v. Sk. Hanif & anr)**. It is further submitted that prayer of the petitioner/ plaintiff is for declaration of title and confirmation of possession that too with regard to homestead land. He placed reliance on another division bench judgement of this court reported in **1979 BBCJ 738 (Ram Pratap Mahto. v. Diplal Mahto)** wherein it has been held that homestead



got the same meaning as in the respective tenancy laws depending on where the land is situate. Under tenancy law homestead has an accepted connotation which means that the expression is connected with cultivation. Language being ambiguous, specific it is not permissible to omit or obliterate the expression. Building or structure not connected with agriculture is not covered under the Act. In case of controversy whether a house is a homestead or not the court should first decide the question before applying the provision of Section 4 (i) (c) and it is submitted that the order is fit to be set aside.

5. Shri Yogendra Mishra, the learned counsel for the respondents 1st set, submits that the plaintiff sought relief in his suit for declaration of title and confirmation of possession after setting aside the order passed by the Consolidation Officer in Consolidation case No. 252/77-78 and during the pendency of the Consolidation proceeding the suit is not maintainable. The two full benches of this court have held that once the notification under Section 3 of Consolidation Act is issued, the Consolidation proceeding initiates and any suit in respect of agricultural land with regard to entries in the records of right shall abate till the notification published under Section 26A of the Consolidation act. In the case of **Ram Krit Singh & Ors. v. the State of Bihar & Ors. (1979 BBCJ 259)** a full bench of this court has held that after issuance of notification under Section 3 of the Consolidation Act any proceeding so far as the right or interest in any land covered by consolidation proceeding and certain other dependent reliefs shall abate. It has also been held in the same judgement that the suit involving right and title in the land and independent



or unconnected reliefs are concerned where suits are based on voidable documents the same shall not abate. The same view has been re-iterated in another full bench judgement of this court reported in **2000 (2) PLJR (Seikh Haider Zan v. Md. Yusuf Ansari)**.

6. The learned counsel for the respondents 1st set further submits that the plaintiff in the plaint has sought relief for declaration of title and conformation of possession and also for setting aside the order passed in Consolidation case No. 252/77-78. The Consolidation Act is self contained Code and there is provision of appeal and revision against the order of Consolidation officer, therefore, during the pendency of the consolidation process the suit shall abate and the order does not require any interference.

7. The petitioner has contended that the suit shall not abate as it relates to homestead land. From the perusal of the plaint, it appears that the plaintiff has stated that he purchased the land of RSP No. 2498 area seven decimal from the sons of Roja Baitha. Thereafter, the plaintiff amalgamated the lands in his homestead land. It has nowhere stated that land purchased by him is unconnected with agricultural activities. Therefore, the submission of the learned counsel for the petitioner has no substance that the suit is for homestead land unconnected with agriculture activities.

8. The plaintiff sought relief for declaration of title, confirmation of possession over schedule-II land which is part of schedule-I land after declaration that the order passed in Consolidation Case No. 252/77-78 as illegal and not in accordance with law. The plaintiff further



prayed for permanent injunction against the defendants.

9. It appears that the plaintiff has admitted this fact in his plaint that prior to purchase of the land by the plaintiff two decimal of land of RSP No. 2498 had already been mutated in the name of Harendra Singh, the defendant, by virtue of order passed in Consolidation case No. 252/77-78 Harendra Singh got his name mutated through forged and fabricated deed. From the relief portion, it appears that plaintiff is aggrieved by entry in the records of right by the Consolidation Officer in order to establish his right and title over the land. It has been held by two full bench judgements of this court reported in the case of *Ram Krit v. State of Bihar* (supra) and in the case of *Seikh Haidar Zan v. Md. Yusuf* (supra) that during the consolidation proceeding the suit with regard to declaration of title and interest in the land shall abate if the suit is not based on any void document. Therefore, I find that the learned Sub-Judge has rightly held that the suit on the facts of the case is barred under Section 4 (b) and 4 (c) of the Consolidation Act and shall abate. Accordingly, I do not find any jurisdictional error in the order impugned.

This Civil Misc. petition is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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