

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No. 1877 of 2009

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- 1(i) Satya Narain Singh
 - 1(ii) Bishwanath Singh, both son of Late Ramjee Ram @ Ramjee Yadav, both resident of village-Baradparra, P.S. Jagdishpur, District Bhojpur, at present residing at Jain College, Ara Purbi Gate, P.S. Nawada Ara, District Bhojpur (Bihar)
 - 2(i) Gyan Chand Singh
 - 2(ii) Ravindra Kumar Singh
 - 2(iii) Sanjay Kumar Singh
 3. Suresh Singh
 4. Ram Bachan Singh
 5. Udai Chandra Singh
 6. Thakur Deyal Singh, all sons of late Ram Ekbal Singh
 7. Wakil Singh, son of Ramadhar Singh (died)
 8. Surendra Singh
 9. Yogendra Singh, both sons of late Judge Singh, all resident of village-Digha, P.S. Jagdishpur, District Bhojpur.
 10. Shambhu Singh, son of Umesh Chandra Singh, resident of village-Masurhi, P.S. Jagdishpur, District Bhojpur.
 11. Ram Nath Singh, son of Badri Singh, resident of Ishwar Singh Tola, P.S. Jagdishpur, District Bhojpur
 - 12(i) Lal Babu
 - 12(ii) Shyam Babu
 - 13(i) Gulab Chand Singh
 - 13(ii) Birendra Singh
 14. Hira Lal Singh
 15. Sohrai Singh
 16. Godhan Singh, all sons of late Tetar Singh, all resident of village-Narayanpur, P.S. Jagdishpur, District Bhojpur.
 17. Yogendra Singh
 18. Saheb Singh, both sons of late Sheo Narain Singh
 19. Manai Singh, son of late Bachan Singh
 20. Jagdeyal Singh, son of late Subedar Singh
 21. Binod Kumar Singh, son of late Sheo Najar Singh, all resident of Narainpur, P.S. Jagdishpur, District Bhojpur
 22. Amit Kumar Srivastava, son of late Madan Pd. Srivastava, resident of Bamangawan, P.S. Barhara, District Bhojpur
 23. Smt. Bimla Devi, daughter of late Mahendra Pd. resident of Maharaj Hata Ara, P.S. Ara Nawada, District Bhojpur.

Plaintiffs-----Petitioners

Versus

1. Dr. Shyam Nandan Mishra, son of late Laxmi Kant Mishra.
 2. Smt. Malti Mishra, wife of Dr. Shyam Nandan Mishra, both resident of Mohalla Pakri, P.S. Nawada Ara, district Bhojpur.
- Defendants 1 and 2 Defendants 1st Party-Opposite Party 1st Party
3. Most. Shakuntala Devi, wife of Late Hira Shankar Lal, resident of Village-Sultanpur, P.S. Jagdishpur, District Bhojpur present posted peon S.D.O. Office, Sadar Ara.
 4. Uma Shankar Lal, son of late Mahendra Lal, resident of village Sultanpur, P.S. Jagdishpur, District Bhojpur, presently at Raushan Bihari, Bailey Road, Patna,



P.S. Danapur, District Patna.

Defendants 2nd Party-Opposite Party 2nd Party

5. Smt. Vidya Srivastava, wife of Bacchan Jee Sahay
6. Smt. Shila Nath Srivastava, wife of Rajiv Lochan Nath @ Atul Jee.
7. Smt. Mina Kumari Srivastava, wife of Kumar Ajit, all resident of Village-Sultanpur, P.S. Jagdishpur, District Bhojpur, presently at Mohalla Babu Bazar, P.S. Ara Nagar, District Bhojpur.

Defendants 3rd Party-Opposite Party 3rd Party

8. Smt. Malti Sinha, wife of Sri R.N. Sinha, D/o Late Sraswati Devi, resident of C.D. 761/11 Site (V), H.E.C. Ranchi, 4 (Jharkhand).
9. Smt. Pushpa Krishna, D/o Late Sraswati Devi, wife of Ajay Krishna, resident of Quarter No. 2300 Type B. Site 4 Sector, 2 H.E.C. Colony, Dhurwa Ranchi-4 Jharkhand.

Defendants 4th Party-Opposite Party 4th Party.

10. Jagdish Ojha, son of Ram Badan Ojha.
11. Narayan Ojha, son of Jagdishpur Ojha.
12. Salik Gram @ Salik Gram Ojha, son of Jagdish Ojha.
13. Raj Muni Devi, wife of Salik Gram Ojha, resident of Village-Semariya, P.S. Shahpur, District Bhojpur.

Defendants 5th Party-Opposite Party 5th Party

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

C.A.V. JUDGMENT

Date: 19-09-2017

1. This revision petition has been preferred under Section 115 of the C.P.C. against the order dated 26.08.2009 passed by learned Sub Judge-VII, Ara in Title Suit No. 533 of 2007 by which and whereunder he held that above stated Title Suit No 533 of 2007 was barred under Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

2. This revision petition was dismissed on 22.03.2013 due to non prosecution. However, the said revision petition was restored to its original file vide order dated 15.03.2017 passed in M.J.C. No. 3014 of 2016.



3. The brief fact, which lies to file this revision petition is that the petitioners brought Title Suit No. 533 of 2007 against the opposite parties for declaration of sale deeds dated 16.05.2006 and 28.09.2006, said to be executed by opposite 2nd party-defendant 2nd party in favour of opposite 1st party-defendant 1st party, as forged, fabricated and illegal on the ground that aforesaid sale deeds had been executed by defendant 2nd party-opposite 2nd party without having any legal right to execute the same and furthermore, for declaration of order dated 26.12.2007 passed by the Director, Consolidation, Bihar, Patna in Consolidation Revision Case No. 64 of 2007 illegal as well as without jurisdiction. They also sought relief for issuance of injunction against the opposite parties.

4. The case of the petitioners-plaintiffs before the court below was that Bashistha Narayan Lal son of Radha Balam Lal of village Sultanpur and Mahendra Prasad, son of Kailash Bihari Lal of village Baman Gaman PS. Barhara, District Bhojpur got executed settlement of 81 acre and odd lands from the then Zamindar in favour of their respective wives, namely, Fuljharo Devi and Parwati Devi and after settlement both the above stated ladies came in possession of the aforesaid land and started paying rent. Subsequently, the above stated Fuljharo Devi and Parwati Devi got partitioned the aforesaid joint property by way of family arrangement and each of them got 40



acre 78 decimal lands and came in possession of the allotted lands. They got mutated their name in respect of their respective lands. The above stated Parwati Devi sold 8 acre 93 decimal lands to original petitioner, namely, Asharfi Devi vide registered sale deed dated 25.03.1964 and accordingly, petitioner no. 1 came in possession of the aforesaid lands. The sons of aforesaid Parwati Devi transferred the remaining lands to some other persons and after that several transactions took place in respect of the aforesaid lands. The above stated lands of Parwati Devi contained in Khata no. 141 whereas three new khata i.e. khata no. 11, 178 and 162 were prepared in respect of the lands allotted to Fuljharo Devi and khata no. 178 was prepared in the name of defendants 3rd party-opposite 3rd party but wrongly, khata no. 11 was prepared in the name of Uma Shankar Lal and Hira Shankar Lal and subsequently, in chak khatian case no. 255 of 1974, all the aforesaid three khata were entered in the name of defendant 3rd party-opposite 3rd party but opposite 2nd party-defendant 2nd party fraudulently executed registered sale deed on 16.05.2006 in favour of defendant 1st party-opposite 1st party in respect of the lands mentioned in Schedule-1 and 2 of the plaint and thereafter, defendant 1st party-opposite 1st party got declared their right in consolidation record by getting the order dated 26.12.2007 passed by the Director, Consolidation, Bihar, Patna in Consolidation Revision Case No. 64 of



2007. Subsequently, they got mutated their name in revenue records and thereafter, the aforesaid suit was filed.

5. The defendant 1st party-opposite 1st party appeared in the aforesaid Title Suit No. 533 of 2007 and filed a petition under Section 4 (c) of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 raising question regarding the maintainability of aforesaid suit. The learned court below having considered the submissions and having perused the materials available on the record passed the impugned order on the ground that consolidation proceeding was still going on in the concerned village and, therefore, the aforesaid suit was not maintainable in view of Section 4 (1)(c) of Consolidation Act.

6. It is pertinent to note here that after dismissal of present civil revision petition for non prosecution, petitioners filed C.W.J.C. No. 6845 of 2014 under Article 227 of Constitution of India against the same impugned order dated 26.08.2009 and at para 14 of the aforesaid writ petition, it was specifically averred by the petitioners that prior to filing of above sated C.W.J.C. No. 6845 of 2014, they had preferred Civil Revision No. 1877 of 2009 against the impugned order but the aforesaid revision petition was dismissed for non prosecution of the case and thereafter, petitioners were advised not to proceed as the same was not maintainable in view of Division



Bench's judgment of this court. Moreover, C.W.J.C. No. 6845 of 2014 was dismissed by a co-ordinate Bench of this court vide order dated 03.03.2016 having considered the submissions and materials.

7. Learned counsel appearing for the petitioners submits that learned court below committed error in holding that Title Suit No 533 of 2007 was not maintainable in view of Section 4(1) (c) of Consolidation Act because in the aforesaid suit the relief was sought for, for cancellation of sale deeds and for declaration that the order passed by the Director, Consolidation Bihar, Patna in Consolidation Revision Case No. 64 of 2007 was not binding upon the petitioners and it is well settled principle of law that consolidation authority has got no right to cancel the documents and the order passed by the Director, Consolidation, Bihar, Patna was without jurisdiction.

8. Learned counsel appearing for the petitioners further submitted that no doubt, after dismissal of present revision petition, petitioners filed C.W.J.C. No. 6845 of 2014 but the aforesaid writ petition was dismissed by a co-ordinate Bench of this court only on the ground that Civil Revision No. 1877 of 2009 had already been dismissed and, therefore, it is obvious that the concerned Bench did not consider the merit of the case rather the aforesaid writ petition was dismissed on technical ground and, therefore, even if the C.W.J.C. No. 6845 of 2014 has been dismissed by a co-ordinate Bench of this



court, then also, the order passed in C.W.J.C. No. 6845 of 2014 will not affect the merit of the present civil revision because admittedly, the present civil revision petition has already been restored to its original file.

9. Learned counsel appearing for the petitioners further submitted that as a matter of fact, after dismissal of the civil revision, the petitioners got advice to file civil writ petition under Article 227 of the C.P.C. against the impugned order as in the case of **Durga Devi vs. Vijay Kumar Poddar** reported in 2010 (2) PLJR, 954, it has already been held by Division Bench of this court that **“Where the conditions precedent in Section 115 of the C.P.C. are not satisfied, civil revision would not be maintainable.”** He further submitted that C.W.J.C. No. 6845 of 2014 was dismissed only on the premises that Civil Revision No. 1877 of 2009 had already been dismissed but admittedly, the aforesaid Civil Revision No. 1877 of 2009 was restored. He further submitted that question of merger of order passed in C.W.J.C. No. 6845 of 2014 in the present case does not arise nor petitioners abandoned their right to challenge the impugned order.

10. On the other hand, learned counsel appearing for the opposite parties raised preliminary objection regarding the maintainability of Civil Revision No. 1877 of 2009 arguing that admittedly, after dismissal of present civil revision petition for want



of prosecution, petitioners did not take any step to get the present civil revision petition restored to its original file and number rather they chose to file C.W.J.C. No. 6845 of 2014 for challenging the impugned order and, therefore, it is obvious that they abandoned their right to challenge the impugned order by availing provision of Section 115 of the C.P.C. and now, after dismissal of C.W.J.C. No. 6845 of 2014, the petitioners cannot challenge the impugned order in this revision petition because a co-ordinate Bench of this court has already dismissed the C.W.J.C. No. 6845 of 2014 which was filed for challenging the impugned order. He further submitted that while dismissing the C.W.J.C. No. 6845 of 2014, the co-ordinate Bench of this court did not give any liberty to petitioners to challenge the impugned order in civil revision and the aforesaid fact clearly goes to show that petitioners had already abandoned their right to challenge the impugned order by filing civil revision. He also submitted that present civil revision is not maintainable under Section 115 of the C.P.C. in view of law laid down by the Division Bench of this court in Durga Devi case (Supra) and, therefore, in the aforesaid circumstance, this civil revision is liable to be dismissed being not maintainable.

11. Learned counsel appearing for the opposite parties further submitted that moreover, the learned court below passed the impugned order in accordance with law because admittedly, at the



time of passing the impugned order, the consolidation proceeding was going on in the concerned village and, therefore, the learned court below rightly held that suit filed by the petitioners was barred by Section 4(1) (c) of the Consolidation Act.

12. Having heard the contentions of both the parties, I went through the record. It is an admitted position that when this revision petition was dismissed for want of prosecution vide order dated 22.03.2013, petitioners did not take any step to get the aforesaid revision restored to its original file and number rather they chose to file C.W.J.C. No. 6845 of 2014 for challenging the impugned order. It is also an admitted position that aforesaid C.W.J.C. No. 6845 of 2014 was dismissed being not maintainable vide order dated 03.03.2016 and while dismissing the C.W.J.C. No. 6845 of 2014, the co-ordinate bench of this court noted in its order that the aforesaid C.W.J.C. No. 6845 of 2014 was not maintainable after dismissal of revision application. Therefore, it is obvious that the co-ordinate Bench of this court came to conclusion that when petitioners had already availed the opportunity to file revision petition to challenge the impugned order, they had no right to file C.W.J.C. No. 6845 of 2014, particularly, in the circumstance, when their revision petition had already been dismissed for want of prosecution.

13. In the case of **Shankar Ramchandra Abhyankar vs.**



Krishnaji Dattatraya Bapat reported in AIR 1970 SC 1, it has been held by the Apex Court of this country that *“If on its revisional jurisdiction, the High Court dismissed the revision application then after dismissal of revision application the same order cannot be challenged by invoking the jurisdiction of the court under Article 226 or 227 of the Constitution because the order under challenge has already been merged with the order passed in revision case.”*

14. In view of the aforesaid dictum of the Apex Court, it is obvious that the order under challenge has already merged in the order passed by a Bench of this court in C.W.J.C. No. 6845 of 2014 and again this court cannot examine the impugned order by exercising the revisional jurisdiction. Moreover, the present revision petition is not maintainable under Section 115 of the C.P.C and for better appreciation of the issue, I would like to refer Section 115 of the C.P.C. which runs as follows:-

115. Revision-[(1)] *The High Court may call for the record of any case which has been decided by any Court subordinate to such High court and in which no appeal lies thereto, and if such subordinate Court appears-*

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:



[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings]

[(2)] The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

[(3)] A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

15. From bare perusal of first proviso of Section 115, it is obvious that one of the conditions to entertain revision under Section 115 of the C.P.C. is that the order under challenge should be such of nature that if it had been passed in favour of the party applying for revision, would have finally disposed of the suit or other proceeding. In the instant case, admittedly, if the impugned order had been made in favour of the petitioners, the said order would have not finally disposed of the suit. Therefore, in my view, the present civil revision is not maintainable.

16. In Durga Devi Case (Supra), the Apex Court of this country has held that interlocutory order passed must be such which must fit into the compartment engrafted in the restrictive spectrum of the proviso i.e. the suit or proceeding would have been finally disposed of and furthermore, it has been held that when an order in



favour of a party applying for revision has given finality to the suit or other proceeding then the revision is maintainable and when not, revision is not maintainable. Admittedly, if the impugned order is set aside, the suit shall continue and, therefore, it is obvious that revision petition against the impugned order on behalf of the petitioners is not maintainable.

17. So far as challenge of the impugned order on the ground that consolidation court had no right to cancel a document is concerned, in my view, if the document is itself ab initio void, there is no need to set aside or cancel the aforesaid document by the civil court. In the present case, the petitioners- plaintiffs have claimed that defendants 2nd set/opposite 2nd party executed the sale deed without having any right and title and, therefore, the aforesaid pleading goes to show that plaintiffs-petitioners are claiming that sale deeds in question were ab initio void.

18. In the case of **Ram Sakal Singh vs. Most. Monako Devi & Ors.** reported in 1997 (2) PLJR (SC) 63, their Lordships at para-9 have held as follows:-

9. “Therefore, the civil court gets jurisdiction to declare the document to be voidable. In consequence, the notification under Section 3(1) does not have the effect of abatement under Section 4(1)(c) of the Act. If the document is void, there would be no



need to set aside or cancel the document/deed. Then the consolidation authorities get exclusive jurisdiction to deal with all questions relating to declaration of a right or interest in any land or for declaration or adjudication of any other right in regard to such proceedings. The court or authority before whom any suit etc. is pending should record that the suit or proceedings have abated leaving it to the parties to avail of the remedy under the Act.”

19. In view of the aforesaid law laid down by the Apex Court of this country, it is obvious that learned court below rightly passed the impugned order and I do not find any ground to interfere into the impugned order. Moreover, the present civil revision petition is not maintainable under Section 115 of the C.P.C. on the grounds stated above in this order and hence, this revision petition stands dismissed being not maintainable.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
CAV DATE	06.07.2017
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