

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.128 of 2016

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Rajnikant Tiwari son of late Rajiv Ranjan Tiwari, R/o village-Kewadhi, P.O. Kewadhi, P.S. Kudra, District-Kaimur at Bhabhua.

.... Petitioner/s

Versus

1. Vidyawati Devi daughter of late Radhika Raman Tiwari, Wife of Alakh Narayan Mishra, village-Basini, P.O. Jansoki Madai, P.S. Ali Nagar, District-Chandauli, U.P, at present R/o village-Kewadhi, P.O. Kewadhi, P.S. Kudra, District-Kaimur at Bhabhua.
2. Shushila Devi daughter of late Radhika Raman Tiwari, wife of late Srikant Pandey, Resident of village Bakhri, P.O. Bakhri, P.S. Jamania, District-Gazipur, U.P.
3. Sunanda Devi daughter of late Radhika Raman Tiwari, wife of Abhay Narayan Upadhyay, R/o Village-Bakodi, P.O. Adsad, P.S. Kandwa, District –Chandauli, U.P.
4. Pramila Devi daughter of late Radhika Raman Tiwari wife of Kedarnath Tiwari, Resident of village bansinapur, P.O. Saidaraza, P.O. Saidaraza, District-Chandauli, U.P.
5. Ranti Deo Tiwari, son of late Rajiv Ranjan Tiwari, resident of village-Kewadhi, P.O. Kewadhi, P.S. Kudra, District-Kaimur at Bhabhua.
6. Shakuntla Devi daughter of Rajiv Ranjan Tiwari, wife of Awadhesh Tiwari, R/o village-Devradh, P.O. Kewadhi, P.S. Kudra, District-Kaimur at Bhabhua.
7. Nirmala Devi, daughter of late Rajiv Ranjan Tiwari, wife of Shrikant Tiwari, R/o village-Dumra, P.O. Badki Mahuli, P.S. Kargahar, District-Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.S. Dwivedi, Sr. Adv.

Mr. Ranjan Kumar Dubey, Adv.

For the Respondent/s : Mr. Arbind Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 10-05-2017



Heard Mr. S.S. Dwivedi, learned senior counsel for the petitioner and also learned counsel for the opposite party no. 1.

Earlier the notice was issued to the opposite parties in the admission matter by order dated 20.03.2017 and in pursuance to the said notice, the opposite party no. 1 has appeared. The opposite party no. 1 is the plaintiff in the suit.

The matrix of facts discloses that the suit has been filed for partition. The defendant-petitioner filed a petition under Section 4 (b) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 for declaration that the suit was not maintainable as there had been notification under Section 3 of the said Act and there had been no de notification under Section 26 (A) of the said Act. By the impugned order, the learned court below has come to the conclusion that as the plaintiff has been left with no option but to file the suit for redressal of his claim and therefore even if no de notification has been made under Section 26 (A) of the said Act, the suit would be maintainable.

After considering the submissions and materials on record, it is evident that the fact of notification under Section 3 of the said Consolidation Act has not been denied. The fact has also not been disputed by the plaintiff that there has been no de notification under Section 26 (A) of the said Act. However, the contention on behalf of



the plaintiff that as the khatiyani etc. has already been prepared under the provisions of the said Act, the suit would be maintainable as there is nothing left to be done under the said Act even though there has been no de notification under Section 26 (A) of the said Act. The acceptance of this plea on behalf of the plaintiff for turning down the prayer of the defendant by the trial court is clearly an error of jurisdiction. The law has been well settled by a Bench decision of this Court in the case of **Durga Devi Vs. Vijay Kumar Poddar, 2010 (2) PLJR 954** that till the de notification under Section 26 (A) of the said Act is done, the provisions of Section 4 (b) of the said Act would continue to operate. This Court, therefore, holds that the impugned order is erroneous and deserves to be overturned.

Accordingly, this revision application is allowed and the impugned order is set aside. The petition dated 04.12.2015 filed by the defendant is allowed and the suit is held to be hit by the provision of Section 4 (b) of the said Act.

(V. Nath, J)

Devendra/-

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