

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.662 of 2016

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1. Surendra Nath Ojha Son of Late Raghunath Ozha Resident of Village-
Belauna, P.S.- Bihiya, District- Bhojpur.

.... Petitioner/s

Versus

1. Phool Kumar Devi W/o Birendra Kumar Pandey R/o Village-
Panchrukha Kala, P.S.- Koilwar, District- Bhojpur.

...Respondent 1st set/plaintiff

2. Smt. Asha Devi @ Lalti Devi W/o Surendra Nath Ozha R/o Village-
Belauna, P.S.- Bihiya, District- Bhojpur, presently residing at Village-
Panchrukha Kala, P.S. Koilwar, District- Bhojpur.

...Respondent 2nd set/Defendant 2nd set

3. Rajendra Prasad Ozha S/o Late Raghunath Ozha

4. Seema Devi D/o Rajendra Prasad Ozha

5. Reena Devi D/o Rajendra Prasad Ozha

6. Preeti Kumari D/o Rajendra Prasad Ozha

7. Rakesh Ozha S/o Rajendra Prasad Ozha All resident of Village- Belauna,
P.S.- Bihiya, District- Bhojpur.

...Respondent 3rd set/Defendant 3rd set

8. Prem Chandra Mishr S/o Late Ram Chandra Mishr R/o Village- Nagada,
P.S.- Sahpur, District- Bhojpur.

...Respondent 4th set/Defendant 4th set

9. Indradeo Tiwari S/o Late Raj Govind Tiwari R/o Village Belauti, P.S.-
Sahpur, District- Bhojpur.

...Respondent 5th set/Defendant 5th set

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Appearance :

For the Appellant/s : Mr. Sushant Praveer

For the Respondent/s : Mr. Patanjali Rishi

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

4 30-11-2017

Heard Mr. Kamal Nayan Choubey, learned senior
counsel appearing on behalf of the petitioner and Mr. P.N.Shahi,
learned senior counsel for the respondents.

The petitioner has filed this civil miscellaneous
petition against the order dated 14.06.2016 by which the petition



of the defendant-petitioner for abating the suit under Section 4(b) and 4(c) of the Consolidation Act has been dismissed holding that the suit relates with the declaration of title and partition and the land is Homestead, therefore, the suit is maintainable.

Mr. K.N.Choubey, learned senior counsel for the petitioner submits that the order is erroneous in view of two Full Bench decisions of this Court in the case of Sheikh Haidar Zan v. Md. Yusuf Ansari & Anr., 2000(2) PLJR 338. It has specifically been held that even a notification under Sections 14, 15 and 16 of the Consolidation Act showing the preparation of register of lands after consolidation and issuance of such certificate under Sections 15 and 16 of the Act cannot be conclusive proof of title to a strict sense of term and the suit is not maintainable unless notification under Section 26A of the Consolidation Act is issued. The Full Bench followed another Full Bench decision rendered in Ram Krit Singh & others v. State of Bihar and others(1979 BBCJ 259).

On the other hand, Mr. P.N.Shahi, the learned senior counsel appearing on behalf of the respondents has fairly submitted that of course, there are two Full Bench judgments on this point that after the preparation of records and notification under Sections 15 and 16 of the Consolidation Act, the conciliation proceeding cannot be said to be over unless there is a



notification under Section 26A. A Division Bench of this Court in the case of Kamla Devi(deceased) Krishna Mohan Tiwary & Ors. v. State of Bihar and others reported in 1998(3) All. PLR 142 it is held in para 29 that bar of Section 5 exhausts its purpose at the stage of confirmation of the consolidation scheme under section 13 of the Act. And the extension of the bar beyond that stage could not serve any purpose of the Act and would, therefore, amount to an unreasonable and arbitrary restriction on the citizen's right.

Having considered the submissions of both sides and on perusal of the record, it appears that no notification under Section 26A of the Consolidation Act is promulgated. The suit is for declaration of title and partition of the property. Of course, the agricultural and homestead land as well as orchard are included in the suit for partition but admittedly, the consolidation proceeding is not over as yet. In view of Section 4(b) and 4(c) of the Consolidation Act, the suit for declaration of title and partition of property is barred unless the consolidation proceeding is over. In the case of Sheikh Haidar Zan v. Md. Yusuf Ansari & Anr.(supra) and Ram Krit Singh & others v. State of Bihar and others(supra) it has been held that unless the notification is issued under Section 26A of the Consolidation proceeding, the consolidation



proceeding cannot be deemed to be over after preparation of certificate under Section 15 or 16 of the Consolidation Act. In the case of Kamla Devi(supra), it appears that the case was decided on the point of grant of permission under Section 5 of the Act and in that case, it was held that if the certificate is granted under Section 13 or 14 of the Act, and thereafter for the purpose of granting permission it is held that Section 5 exhausts its purpose at the stage of confirmation of the consolidation scheme under Section 13 of the Act and the bar should not extend till the notification under Section 26A of the Consolidation Act. Therefore, the judgment of Kamla Devi is of no help to the respondents in the facts of the case.

Having considered the facts aforesaid, I find that the learned Sub Judge has committed illegality holding that the suit is maintainable. Accordingly, the order dated 14.06.2016 is set aside and the suit is abated till the issuance of notification under Section 26A of the Consolidation Act.

The Civil Miscellaneous petition is allowed accordingly.

(Prabhat Kumar Jha, J)

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