

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21340 of 2013

IN

C.R. 1138 of 2009

- =====
1. Rajendra Prasad Singh alias Guddu Singh @ Rajendra @ Guddu
 2. Sunil Kumar Singh
 3. Manoj Kumar Singh
All sons of late Sardar Singh
 4. Jay Praksh Singh son of late Sudarshan Singh
 5. Ram Bachan Singh son of Late Hargen Singh
All are residents of village-Kripalpur, PS-Durgawati, PO-Davahalia, District-Kaimur (Bhabha).

.... Petitioner/s

Versus

1. Ramjee Singh
2. Shyam Sundar Singh
Both sons of late Suganu Singh
3. Banarsi Singh
4. Brihaspat Singh
Both sons of late Ganesh Singh,
All are resident of village-Kripalpur, PS-Durgawati, PO-Davahalia, District-Kaimur (Bhabha).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RANJAN KUMAR DUBEY

For the Respondent/s : Mr. UMA SHANKAR SINGH

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 14-11-2017

This application has been filed to set aside the order dated 10.06.2009 passed by learned Sub-Judge-II, Bhabua (Kaimur) in Title Suit No. 288 of 2005 whereby and whereunder the petition dated 27.04.2009 filed under section 4 (c) of Bihar Consolidation of Holdings Act, was rejected.

2. Heard learned counsels for the petitioners and the respondents.



3. The opposite parties filed a suit for declaration of title over the land mentioned in schedule-‘Ka’ of the plaint. The plaintiffs claim the said land as their ancestral land. The plaintiffs have asserted that the sale deeds, even if executed by Hargen Singh or his descendants, are not binding on them. The defendants appeared in the suit and filed a petition under Order 7 Rule 11 of Code of Civil Procedure for rejecting the plaint on the ground that the consolidation proceeding was going on at the time of filing of the suit. The said petition was rejected on 22.03.2006 by the Court below. The defendant then filed a petition under Order 47 Rule 1 and section 151 of the Code of Civil Procedure to review the said order whereby and whereunder the petition of defendants was rejected. The Court below after hearing both sides, rejected the said petition on 13.02.2009 against which they filed C.R. No. 507 of 2009 before this Court. This Court after hearing the petitioners, rejected the said C.R. No. 507 of 2009 as per order dated 30.03.2009 observing that issue of maintainability of suit can be considered by the trial court at the time of final hearing of the suit. This Court further observed that the defendants will be at liberty to take their stand against maintainability of the suit at that stage also. The said order has not been challenged by these petitioners.

4. On going through the plaint on record, I find that the



maintainability of the suit in view of provisions of section 4 (c) of the Bihar Consolidation and Holdings Act cannot be decided without going through the cases of both the parties. The plaintiffs have challenged some of the documents said to be executed by Hargen Singh and his descendants. The defendants would raise the issue of maintainability of suit as one of the issue. The Court below is at liberty to decide the maintainability as preliminary issue also.

5. In view of above facts, I do not find any merit in this application and the same is, accordingly, dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.11.2017
Transmission Date	

