

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.2180 of 2006

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Narendra Pratap Singh & Ors

.... Petitioner/s

Versus

Ram Naresh Sharma & Ors

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. NARESH CHANDRA VERMA
Mr. Sujeet Kumar Gupta

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL JUDGMENT

Date: 28-03-2017

1. Heard the learned counsel for the petitioners and the learned counsel for the opposite parties.

2. This civil revision application has been filed by the plaintiffs-petitioners against the order dated 02.11.2006 passed by the learned Sub Judge VII, Hajipur, Vaishali in Title Suit No.107 of 2001 whereby the learned court below passed the order to the effect that the suit has abated under Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956(hereinafter referred to as the Consolidation Act).

3. From perusal of the impugned order, it appears that the suit was filed by the plaintiffs-petitioners for declaration of title with respect to the suit property which is agricultural land. The defendants appeared and filed application to the effect that notification under



Section 3 of the Consolidation Act which has not yet been denotified under Section 26A of the Consolidation Act. The consolidation proceeding is still going on. It further appears that the court below on the basis of the notification produced by the defendant, showing the notification has been issued under Section 3 of the Consolidation Act, came to the conclusion that nothing has been brought on record to show that there has already been notification issued under Section 26A of the Consolidation Act and accordingly, passed order abating the plaintiff's suit.

4. The only argument advanced by the petitioners is that earlier the petitioners have filed writ application before the High Court and High Court granted liberty to the petitioners to file suit. The order of the High Court dated 08.07.1998, passed in CWJC No.17 of 1988, has been annexed as Annexure 1. The High Court considering the case of the parties that the plaintiff is praying for declaration that the sale deed is void and is praying for declaration of title granted liberty to the petitioner to file appropriate proceeding before competent authority. Therefore, the petitioners filed the suit but the court below while passing the order, without considering the liberty granted by the High Court, abated the suit filed by the plaintiffs-petitioners.

5. So far the liberty granted by the High Court is concerned,



it may be stated that the liberty, if any, is granted by the High Court that will always be subject to the provision of any law and any bar created under any law and jurisdiction of the authority where the proceeding is initiated. Only because High Court has granted the liberty, no argument can be advanced that no provision of any law will be applicable and the matter is bound to be decided on merit by the authority.

6. Here, in the present case, there is no dispute raised by the petitioners that notification under Section 3 has been issued. It is admitted fact that nothing has been produced before the trial court nor before this court that till date, the notification under Section 26A, denotifying the consolidation proceeding, has been issued by the State Government. In other words, still the petitioners admit that consolidation proceeding is going on.

7. The Hon'ble Supreme Court in the case of **Paras Nath Rai & Ors. v. State of Bihar & Ors., AIR 2013 Supreme Court 1010 = (2012) 12 Supreme Court Cases 642** has held that "concept of statutory abatement under Section 4(c) is distinct from the abatement under the Code of Civil Procedure. Purpose of scheme of consolidation is to avoid conflict of jurisdiction with consolidation authorities who are required to exclusively examine rival claims of parties. On the basis of a statutory abatement, whole proceedings from



their inception stand abated because local law has provided an effective alternative remedy before an exclusive forum to remedy grievance raised before court.”

8. In the present case, as stated above, except the ground that the liberty was granted to the petitioners to file suit, no other ground has been raised.

9. In view of the above facts and circumstances of the case, I find no reason to interfere with the impugned order in exercise of jurisdiction under Section 115 of the Code of Civil Procedure. Thus, this Civil Revision application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

AFR/NAFR	NAFR
Uploading Date	28.03.2017
Transmission Date	28.03.2017

