

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14096 of 2012

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1. Sunaina Kumari D/o Late Birendra Rai, All R/o Village- Sadapur, PO+P.S.- Mahua, Dist- Vaishali.
 2. Shatrughan Rai @ Shatrohan Rai, son of Late Birendra Rai,
 3. Phul Devi D/o Late Birendra Rai,
 4. Raj Bali Devi, wife of Birendra Rai,
 5. Jageshwari Devi, wife of Late Chaturi Rai,
 6. Gariban Devi, wife of Ayodhya Rai, All residents of Village- Sadapur Mahua, PO- Mahua, Dist- Vaishali.
 7. Prem Lal Rai,
 8. Najir Rai,
 9. Binod Rai,
 10. Manoj Rai, All sons of Sakal Rai,
 11. Champa Devi, wife of Prem Lal Rai,
 12. Punam Devi, wife of Najir Rai, All residents of Village- Goshpur Chak Majahid, P.S.- Mahua, District- Vaishali.

.... Petitioner/s

Versus

1. Hari Rai Son Of Lalu Rai Resident Of Village - Baghi, P.S. Maniyari, District - Muzaffarpur
2. Bharat Rai, son of Lalu Rai, Both resident of Village- Baghi, P.S.- Maniyari, District- Muzaffarpur.
3. Surendra Rai Son Of Chaturi Rai Resident Of Village - Sadapur, P.S. Mahua, District - Vaishali
4. Urmila Devi Daughter Of Late Chaturi Rai Resident Of Village - Sadapur, P.S. Mahua, District - Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Damodar Prasad Tiwary, Adv.
For the Respondent/s : Mr. Ram Shankar Das, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 10-02-2017

Heard Mr.Damodar Prasad Tiwary, learned
counsel appearing on behalf of the petitioners.

The legal sustainability of the order, by which the
learned court below has turned down the prayer of the defendant for



abating the suit under Section 4(c) of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956, has been questioned in this application under Article 227 of the Constitution of India..

Mr. Tiwary, learned counsel for the petitioners has emphatically submitted that in view of the provision of Section 4(c) and Section 8 of the aforesaid Act, every suit for declaration of title and every suit for partition shall abate if there is notification by the State Govt. under the aforesaid Act and till the de-notification as envisaged under Section 26 (k) of the said Act. Even on the repeated query by the Court, learned counsel has been consistent in his submission that the nature of the issues is not to be gone into while deciding the question of abatement under the aforesaid provisions as those provisions encompass every suit irrespective of the nature and the reliefs claimed therein. The learned counsel has however accepted that though the plaintiff has filed the suit for partition but the defendant in his written statement has denied the entitlement of the plaintiff for partition of the suit land on the basis that the plaintiff is total stranger to the suit property and the defendants are the only heirs of Chaturi Rai born to him out of his wedlock with Jageshwari Devi.

After considering the submissions and the materials on record, this Court is not inclined to align with the



submission on behalf of the petitioners that every suit for declaration of title and every suit for partition would be covered within the mischief of Section 4(c) and Section 8 of the aforesaid Consolidation Act. It is no more res integra that it is not only the nature of the relief but the substantial issues arising which would be the decisive factor for consideration before passing an order of abatement. It is evident from the plea raised by the defendant-petitioners themselves in the written statement that the status of the plaintiff as an heir of deceased Chaturi Devi has been questioned and that is apparently the main issue to be determined in the suit before granting the relief as prayed by the plaintiff. In that view of the matter, this Court does not find substance in the submissions on behalf of the petitioners and comes to the conclusion that the suit filed by the plaintiff in view of the facts and circumstances particularly in view of the defence raised by the defendant and issues arising therein will not be covered by the aforesaid provisions pertaining to abatement under the aforesaid fact.

This application sans merit is accordingly dismissed.

(V. Nath, J)

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