

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.436 of 2016

=====

1. Subodh Kumar S/o Late Rajeshwar Singh Resident of Village Bahuara Barua, P.s. Hajipur, Dist. Vaishali

.... Appellant/s

Versus

1. Sujit Kumar
2. Ajit Kumar Sons of Late Bindeshwari Prasad Singh
3. Manju Kumari
4. Saroj Kumari Daughters of Late Bindeshwari Prasad Singh
5. Sushil Kumar Singh
6. Sunil Kumar Singh S/o Late Ramdeo Singh,
7. Mostt. Ramrati Devi W/o Late Ramdeo Singh All Resident of Village Bahuara Barua, P.s. Rajapakar, Dist. Vaishali
8. Mostt. Draupadi Devi W/o Late Kamleshwari Singh
9. Vijai Kumar
10. Ajay Kumar Sons of Late Kamleshwari Singh All Resident of Village Bahuara Barua, P.s. Rajapakar, Dist. Vaishali.
11. Usha Kiran Devi W/o Ram Lakhan Singh R/o Village Kashipur Chakbibi, P.O. Bahuara Via Bidupur, P.s. Rajapakar, Dist. Vaishali
12. Sunita Devi @ Sabnam W/o Baidyanath Rai R/o Village + P.O. + P.S. Desari, Dist. Vaishali.
13. Mostt. Sumitra Devi W/o Late Nageshwar Singh
14. Indra Bhushan Singh
15. Chandra Bhushan Singh
16. Surendra Singh
17. Arvind Kumar Sons of Late Nageshwar Singh
18. Pushpa Devi
19. Mina Devi Daughters of Late Nageshwar Singh
20. Mostt. Rajkumari Devi W/o Late Rajeshwar Singh
21. Shiv Kumar Singh
22. Pramod Kumar Sons of Late Rajeshwar Singh
23. Mostt. Sripati Devi W/o Late Rajendra Singh
24. Rakesh Kumar
25. Manish Kumar Sons of Late Rajendra Singh
26. Nilam Devi
27. Rekha Devi Daughters of Late Rajendra Singh
28. Surendra Prasad Singh S/o Late Guru Prasad Singh
29. Mostt. Sarswati Devi W/o Late Sukhdeo Singh
30. Bipin Bihari Singh
31. Pramod Bhushan Singh Sons of Late Sukhdeo Singh All Resident of Village Bahuara Barua, P.s. Rajapakar, Dist. Vaishali.
32. Chandrakala Kiran D/o Late Sukhdeo Singh W/o Umesh Prasad Singh R/o Village Jirasan Tola Darveshpur, P.O. Beyapur, Distt. Patna
33. Shila Devi D/o Late Sukhdeo Singh W/o Ajit Kumar Yadav R/o Village Rahar Diyara, P.O. + P.S. Sonpur, Dist. Chhapra (Saran).

.... Respondent/s

=====

Appearance :



For the Appellant/s : Mr. Mahesh Prasad-II
For the Respondent/s : M/s Amaresh Kr. Sinha & Priyam Kumari

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

7 11-12-2017 Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 16.03.2016 passed by learned Sub-Judge-XII, Vaishali in T.S. No. 72 of 1974 by which the learned Sub-Judge allowed the petition filed by plaintiff for appointment of Pleader Commissioner.

The plaintiff filed a petition for appointment of Pleader Commissioner and vide order dated 02.01.1978 the court was pleased to appoint Pleader Commissioner. The plaintiff also deposited cost on 09.01.1978 but the suit was abated on 27.01.1979 under Section 4(c) of Bihar Consolidation of Holdings and Prevention of Fragmentation Act. After closure of consolidation proceeding the suit revived on 28.01.2003. The defendants appeared and file written statement thereafter the plaintiff again file a petition for allowing him to deposit cost for appointment of Pleader Commissioner and by the impugned order the plaintiff was permitted to deposit the cost for appointment of Pleader Commissioner. Being aggrieved by the aforesaid order, the petitioner filed this Civil Misc. petition.



Mr. Mahesh Prasad-II, the learned counsel for the petitioner, submits that earlier the petition filed by the plaintiff for appointment of Pleader Commissioner was dismissed but the plaintiff again filed a petition concealing the facts and, on such, the learned court below allowed the petition of plaintiff for appointment of Pleader Commissioner. The petitioner could not challenge that order only because the suit was abated. It is further submitted that the suit was revived in absence of the petitioner/defendant and, therefore, without completion of the consolidation proceeding the suit should not have been revived but the petitioner could not challenge the order. It is further submitted that Director, Consolidation passed order in favour of the petitioner and according to a full bench judgement of this court in the case of ***Ramkrit Singh v. the State of Bihar & Ors reported in 1979 BBCJ 259*** the order of the Consolidation Officer is binding on the civil court and the civil court has to pass order in conformity with the order of Consolidation Officer but I do not find any force in the submission of learned counsel for the petitioner. It appears that the order of appointment of Pleader Commissioner was passed on 02.01.1978 and the plaintiff deposited the cost on 09.01.1978 but subsequently the suit was bated on 27.01.1979. After completion of consolidation proceeding, as stated by the plaintiff, the suit was



revived vide order dated 28.01.2003 but the defendants did not prefer any petition against the order of revival of the suit on the ground that consolidation proceeding is not completed and no notification of completion of consolidation proceeding under Section 26A of Bihar Consolidation of Holdings and Prevention of Fragmentation Act was issued. I further find that the order is simply reiteration of the order dated 02.01.1978 by which on the petition of the plaintiff for appointment of Pleader Commissioner the plaintiff was directed to deposit the cost of Rs. 1200/-.

Accordingly, I do not find any jurisdictional error in the order of learned Sub-Judge. This Civil Misc. petition is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

BKS/-

U			
---	--	--	--

