

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5378 of 2013

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Urmila Devi & Ors

.... Petitioner/s

Versus

Kishori Pandit & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 08-08-2017 Heard the learned counsel, Mr. Mahesh Prasad No.2 for the petitioners and the learned counsel, Mr. Sudhir Kumar for the respondents.

This application has been filed by the defendants-petitioners for setting aside the order dated 28.01.2013 passed by Munsif, Hilsa in Title Suit No.11 of 2011 whereby the learned court below rejected the application filed by the petitioners for abating the suit under Section 4(b) and 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 and also on the ground that the civil court has no jurisdiction during the pendency of the consolidation proceeding.

The learned counsel for the petitioners submitted that the admitted position is that there has been no denotification under Section 26A of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act. Both the parties fought the case



before the consolidation authority upto the court of Director of Consolidation and the case filed by the plaintiffs-respondents has finally been adjudicated by the Director, Consolidation. The plaintiffs-respondents concealed all these facts and have filed the suit before the civil court for praying for declaration about the registered deeds of the year 1939 and 1959. These deeds were also produced before the consolidation authorities. According to the learned counsel, the court below instead of deciding this question about abatement has held that this suit be decided subsequently along with the other issues.

On the other hand, the learned counsel for the respondents submitted that during the pendency of this writ application subsequently the defendants-petitioners filed application under Order VII Rule 11 C.P.C. praying for rejection of the plaint on the ground of limitation which was rejected by the court below and then the petitioners filed civil miscellaneous application before the High Court which has also been dismissed by order dated 25.07.2016, therefore, this writ application be also dismissed and the matter be decided finally by the civil court.

It is admitted fact that there has been no denotification. It is also admitted fact that both the parties fought the case about the subject matter of the suit before the consolidation authorities and the aforesaid two registered documents of the year 1939 and



1959 were also made the subject matter of the consolidation proceeding before the authorities.

According to the learned counsel for the petitioners Section 37 bars the jurisdiction of the civil court and according to Section 4(c) of the Consolidation Act, the suit or the appeal, as the case may be, is liable to be abated in view of the pronouncement of the Supreme Court **AIR 2013 Supreme court 1010(Paras Nath Rai & Ors. v. State of Bihar & Ors.)**.

In view of the submission of the learned counsel for the parties, in my opinion, the point raised by the petitioners touches the jurisdiction of the court and, therefore, without deciding the question as to whether the civil court has the jurisdiction to decide the matter or not the court below should not proceed forward to decide the suit on merit. I, therefore, set aside the impugned order and direct the court below to decide the application filed by the present petitioner within a reasonable period after hearing the parties.

In the result, this writ application is allowed. The impugned order is set aside. The court below is directed to first hear the parties and pass the order on the application filed by the defendants-petitioners.

Saurabh/-

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(Mungeshwar Sahoo, J)

