

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.894 of 2018

Nitya Nand Ojha Son of late Vinchyachal Ojha Resident of Village- Harpur,
P.S. Rajpur, District- Buxar, at Present Ojha Niwash, Saraswati Pustakalya
Road Buxar, P.S. BuxarTown District- Buxar.

... .. Petitioner/s

Versus

1. Ramji Pandey, Son of late Jagnath Pandey
2. Ashok Kumar Pandey Son of Ramjee Pandey
3. Abhinav Kumar Pandey Son of Ramjee Pandey All are resident of Village
Chuwad, P.O.- Ataon, P.S. Koran Sarai, District- Buxar, at Present Sugar
Mill Buxar, P.O- Gajadharganj, District- Buxar.
4. Raj Muni Devi Wife of Narendra Chaubey Resident of Village- Ahirauli,
P.O.- Mukhraon, P.S. Kuchhila, District- Kaimur.
5. Bimla Devi Wife of Gorakh Nath Choubey Resident of Village- Saithu, P.O.
Jamauli, P.S. Rajpur, District- Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Santosh Kumar
For the Respondent/s	:	Mr. Parth Gaurav
		Mr. Ashutosh Kumar Pandey

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

10 28-11-2022 Heard learned Counsel for the parties concerned.

The petitioner is the defendant in Title Suit No. 154 of 2015 and is aggrieved by order, dated 19.01.2018, passed in the suit, by which the objection raised by the defendant-petitioner regarding the abatement of the suit, in view of Section 4 (c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short, “1956 Act”), has been rejected by learned Sub Judge-VII, Buxar.

Learned Counsel for the petitioner submits that the suit has been filed by the respondents-plaintiffs for partition as



well as for setting aside the compromise decree. In this regard, he placed reliance upon the Special Bench decision of this Court, in the case of **Most. Prabhawati Kumari v. The State of Bihar and Others**, reported in **2019 (4) PLJR 430**, and submits that if the consolidation proceeding in the locality is still going on and the final notification has not been issued under Section 26-A of the 1956 Act, as such, in view of the law laid down by the Special Bench of this Court, in the case of **Most. Prabhawati Kumari** (supra), the suit has to abate. The learned Trial Court has committed material irregularity in rejecting the petition filed by the petitioner for abatement.

On the other hand, learned Counsel for the respondents-plaintiffs submits that the relief of partition is dependent upon the relief in the plaint for setting aside the compromise decree. The main relief claimed in the plaint is setting aside the compromise decree and if the main relief can be given by the civil court, the consequential relief of partition can also be granted by the civil court irrespective of continuance of consolidation proceeding in the locality. As such, according to him, if the compromise decree is set aside, then only the relief of partition can be granted in favour of the respondents-plaintiffs. He relied upon the decision of Single Bench of this



Court, in the case of **Raj Kumar Choubey and Another v. Dulhin Janki Devi and Others**, reported in **2009 (3) PLJR 475**, and submits that the Single Bench of this Court has held that if the main relief can be given by the Civil Court, the consequential relief has also to be decided by the Civil Court.

I am afraid that this submission on behalf of the respondents-plaintiffs is acceptable, particularly, with regard to the grant of main relief and consequential relief, in view of the admitted fact that the consolidation proceeding is still going on in the locality.

The Supreme Court, in the case of **Banwari Lal v. Smt. Chando Devi (through L. R.) and Another (AIR 1993 SC 1139)**, has held that the compromise decree can only be challenged before the same Court and not before any other Court. Admittedly, in the present case, the compromise decree has not been challenged in the same Court by filing a miscellaneous case, but a suit has been filed for setting aside the compromise decree and for partition, both.

The Special Bench of this Court, in the case of **Most. Prabhawati Kumari** (supra), has held that the consolidation authorities have got status of deemed court and they have also been conferred with the powers to summon witnesses, take



evidence etc. As such, in my opinion, the present suit filed by the respondents-plaintiffs seeking relief of partition stands abated in view of the fact that the consolidation proceeding is still going on in the locality.

In view of the aforesaid discussion, the impugned order, dated 19.01.2018, passed in Title Suit No. 154 of 2015, by learned Sub Judge-VII, Buxar, is set aside.

At this stage, in view of the decision of the Supreme Court, in **Banwari Lal** (supra), permission is granted to the respondents-plaintiffs to withdraw the present suit having the relief of setting aside the compromise decree with further liberty to file miscellaneous case.

With the aforesaid observation and direction, this application is allowed to the extent indicted above.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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