

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.57 of 2022

1. Ram Kripal Singh, aged about 52 years, Male, S/o Late Ram Briksh Singh Resident of Village- Narsinghpur, P.S.- Mushahari Firm, District- Muzaffarpur.
2. Ram Iqbal Singh, aged about 43 years, Male, S/o Late Ram Briksh Singh Resident of Village- Narsinghpur, P.S.- Mushahari Firm, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. Gauri Shankar Singh, aged about 57 years, male, S/o Late Bidya Singh (Original Defendant No. 2 in P.S. No.36 of 1962/78 of 1996), Resident of Village- Narsinghpur, P.S.- Mushahari, District- Muzaffarpur.
3. Uday Prasad Singh, aged about 54 years, male, S/o Late Bidya Singh (Original Defendant No.2 in P.S. No.36 of 1962/78 of 1996), Resident of Village- Narsinghpur, P.S.- Mushahari, District- Muzaffarpur.
4. Rama Prasad Singh, aged about 51 years, S/o Late Bidya Singh (Original Defendant No.2 in P.S. No.36 of 1962/78 of 1996), Resident of Village- Narsinghpur, P.S.- Mushahari, District- Muzaffarpur.
5. Shiv Chandra Singh (Original Defendant No. 3 in P.S. No.36 of 1962/78 of 1996), aged about 72 years, male, S/o Late Jap Narain Singh (Original Defendant No.1 in P.S. No. 36 of 1962 / 78 of 1996), Resident of Village- Narsinghpur, P.S.- Mushahari, District- Muzaffarpur.
6. Most. Sita Sundari Devi, aged about 70 years, male, W/o Late Dasrath Singh (Original Defendant No.5 in P.S. No. 36 of 1962/78 of 1996). Resident of Village- Narsinghpur, P.S.- Mushahari, District- Muzaffarpur.
7. Rajiv Kumar @ Ashni, aged about 52 years, male, S/o Late Dasrath Singh (Original Defendant No.5 in P.S. No.36 of 1962/78 of 1996). Resident of Village- Narsinghpur, P.S.- Mushahari, District- Muzaffarpur.
8. Nagendra Singh (Original Defendant No. 6 in P.S. No.36 of 1962/78 of 1996), aged about 65 years, male, S/o Late Ram Swarath Singh @ Ram Sogarath Singh (Original Defendant No.4 in P.S. No.36 of 1962/78 of 1996). Resident of Village- Narsinghpur, P.S.- Mushahari, District- Muzaffarpur.
9. Rajdeo Singh (Original Defendant No.8 in P.S. No. 36 of 1962/78 of 1996) aged about 81 years, male, S/o Late Uttim Singh, representing Original Defendant No.9 (now dead). Resident of Village- Narsinghpur, P.S.- Mushahari, District- Muzaffarpur.
10. Most. Pawan Devi (Original Defendant No. 10 in P.S. No. 36 of 1996/78 of 1996) aged about 67 years, female, W/o late Uma Shankar Singh (Original



Defendant no. 7 in P.S. No. 36 of 1962/78 of 1996).

11. Binit Singh, aged about 53 years, male, S/o Late Uma Shankar Singh Resident of Village- Nasinghpur, P.S.- Mushahari, District- Muzaffarpur.
12. Sunita Kumari, aged about 56 years, female, D/o Late Uma Shankar Singh Resident of Village- Nasinghpur, P.S.- Mushahari, District- Muzaffarpur.
13. Surendra Kumar, aged about 46 years, male, S/o Late Raj Kishore Singh @ Bhola Singh (Original Defendant No.13 in P.S. No.36 of 1962/78 of 1996). Resident of Village- Nasinghpur, P.S.- Mushahari, District- Muzaffarpur.
14. Deepak Kumar, aged about 33 years, male, Son of Late Raj Kishore Singh @ Bhola Singh (Original Defendant No.13 in P.S. No.36 of 1962/78 of 1996). Resident of Village- Nasinghpur, P.S.- Mushahari, District- Muzaffarpur.
15. Ram Kailash Singh (Original Defendant No.14 in P.S. No.36 of 1962/78 of 1996), aged about 63 years, male, S/o Late Bindeshwar Singh @ Bindesar Singh (Original Defendant No.12 in P.S. No.36 of 1962/78 of 1996). Resident of Village- Nasinghpur, P.S.- Mushahari, District- Muzaffarpur.
16. Nirmal Devi, aged about 65 years, female, W/o Ramesh Thakur, D/o Late Ram Briksh Singh Resident of Village- Harishankar Manaeri, P.O.- Shilot, P.S.- Manaeri, District- Muzaffarpur.
17. Sita Devi, aged about 47 years, female, W/o Sunil Tiwari, D/o Late Ram Briksh Singh Resident of Village- Dwarika Nagar, P.O.- Binda, P.S.- Mushhari, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Binod Kumar Singh, Advocate Ms. Vagisha Pragya Vacaknavi, Advocate Mr. Nitin Kumar, Advocate
For the Respondent/s	:	Mr. Mahesh Prasad, Advocate Mr. Suman Kumar, Advocate Mr. Ajay Pathak, Advocate Mr. Rishi Raj Sinha, SC-19

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 26-06-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India for restoring and reviving Execution Case No. 15 of 1967 (arising out of



preliminary decree dated 25.04.1996 in Partition Suit No. 36 of 1962/78 of 1996) to its original file.

3. The brief facts of the case as per the application are that the original plaintiffs instituted Partition Suit No. 36 of 1962 on 15.06.1962 in the Court of Sub-Judge 1st, Muzaffarpur against defendants for partition of the joint family property which was decreed in part and it was ordered that partition by metes and bounds shall be effected by Survey Knowing Pleader Commissioner appointed by the Court at the instance of any party. Against the said decree, First appeal being F.A. No. 227 of 1966 was filed by Bidya Singh and others on 15.07.1966 before this Court. At the stage of hearing of the said appeal an application under Section 4 (c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short 'Bihar Consolidation Act') was filed on 23.02.1984 by the appellants on the ground that there is notification No. S.O. 1039 dated 06.09.1975 published in the Bihar Gazette Part II dated 10.09.1975 that the consolidation proceeding is going on over all the lands of four villages of Mushahari Circle and considering the same this Court abated the suit and the appeal in view of the consolidation proceedings and disposed of the appeal by order dated 23.03.1984.



4. The earlier application of the petitioner to the effect that the execution case does not abate under Section 4(c) of the said Bihar Consolidation Act was rejected by learned Sub-Judge, Muzaffarpur vide order dated 28.02.1986 and in C.R. No. 1038 of 1986 moved by the petitioner, this Court also dismissed the revision application on 16.01.1989 on the ground that once the suit and appeal abate, the judgment and decree passed in such proceeding also abates.

5. The petitioner moved before this Court in Writ Jurisdiction being CWJC No. 3791 of 2005 for revival of Execution Case No. 15 of 1967 in view of notification dated 27.07.1998 issued under Section 4A of the Bihar Consolidation Act whereby earlier notification issued under Section 3 of the Bihar Consolidation Act was cancelled and consolidation operation came to an end in the area concerned. The said writ petition was dismissed by peremptory order of dismissal. The restoration petition in the said writ petition was dismissed by this Court vide order dated 21.08.2013 observing that the said notification No. 555 dated 27.07.1998 was deleted/recalled by fresh notification No. 186 dated 15.03.2004 and, therefore, all areas including the area in question were covered by the notifications issued under Section 3 of the Consolidation Act



and consolidation proceedings are going on and the petitioner cannot get benefit of the said notification dated 27.07.1998 and the prayer for revival of Execution Case No. 15 of 1967 cannot be allowed as it has become infructuous.

6. The appeal preferred by the petitioners against that the said order dated 21.08.2013 was dismissed by Division Bench of this Court vide order dated 22.02.2017 on the ground of limitation.

7. The Hon'ble Supreme Court vide order dated 13.09.2021 in Civil Appeal No. 5671 of 2021 restored the CWJC No. 3791 of 2005 to its original number, to be decided on merit. It was observed therein that "the position of the cancellation of the consolidation proceedings is confirmed both by the State counsel and the counsel for the private respondents". In the said appeal the petitioner had filed notification issued on 19.01.2018 on record, whereby the consolidation scheme stands cancelled from the date of notification. This Court vide order dated 12.01.2022 disposed of the said writ petition with liberty to the petitioner to file Civil Miscellaneous Application under Article 227 of the Constitution of India before this Court. Accordingly, this Civil Miscellaneous Application has been filed by the petitioner.



8. Learned counsel for the petitioners has submitted that from the notification No. 54 dated 19.01.2018 of Revenue and Land Reforms Department, Government of Bihar issued under Section 4A of the Bihar Consolidation Act, it is evident that the consolidation scheme stood cancelled from the date of notification. The name of the circles in which the suit properties fell, were also mentioned in the said notification. It has been submitted that the consolidation scheme was in operation on paper only and not in fact. The provision contained in Section 4 (c) of the Act is to the effect that suit or proceedings shall abate once a notification has been issued under Section 3 of the Act. It is, therefore, follows as a matter of corollary that once notification under Section 3 is countermanded under Section 4A of the Act, the provisions of Section 4(c) cease to operate, as there is no intention of the government to make scheme for consolidation of holdings or continue it. In that view of the matter, the suit or appeal is automatically revived. Further, he has submitted that the suit is the basic remedy of the citizen with respect to the civil dispute. In view of the notification under Section 4A of the Act, the consolidation proceedings in area in question came to an end and therefore, the balance of the suit / proceeding which could not be adjudicated by the Court below,



is automatically revived as there is no notification under Section 26 A of the Act as the consolidation proceeding could not be concluded as per the provision of the Act. He has further submitted that respondents have not taken any interest in getting the matter decided by the consolidation authority after they obtained abatement order.

9. On the other hand, learned counsel for the respondents has submitted that against the judgment and decree dated 25.04.1966 passed in partition suit No. 36 of 1962, the First Appeal which had been preferred before this Court stood abated vide order dated 23.03.1984 in view of the area being notified for holding proceedings under Section 3 of the Act. It has been submitted that the duration of abatement of suit and / or appeal under Section 4(c) of the Consolidation Act, operates from the date of notification under Section 3 till the close of consolidation operation under Section 26A. The consolidation operation come to close only when a notification on that behalf is issued under Section 26A. Further, he has submitted that an I.A. has already been filed on 10.01.2022 in F.A. No. 227 of 1966 and any execution could survive or be entertained only after the revival of the original suit as well as revival of the appeal preferred against the judgment passed in the original suit.



10. The object of the Act is to effect consolidation of holding for the purpose of better cultivation of land as per the scheme of Consolidation Act, Section 3 of the Act provides with the object of effecting consolidation of holdings for the purpose of better cultivation of lands in any area. The State Government may by notification in the official gazette declare its intention to make a scheme for the consolidation of holdings in that area. Section 4 provides to the effect that the consequences of the notification under Section 3 clause (b) of Section 4 bars any suit or other legal proceedings in respect of any land within such area while clause (c) provides for abatement of every proceeding for correction of records and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision. Section 4 A provides for cancellation of the notification under Section 3 in respect of whole or part of area specified therein. It lays down that where the notification is cancelled, the concerned area shall subject to the final orders relating to the correction of land record, if any, passed on or before the date of such



cancellation, ceases to be under consolidation operations with effect from the date of cancellation. Section 26 A provides for close of consolidation operation. Section 37 provides for bar of Civil Courts jurisdiction in certain cases.

11. This Court in the case of **Dharam Nath Ojha Vs. Raghunath Ojha** reported in **2001 (2) PLJR 268** held that “Section 4 and Section 26 A of the Act contemplate different kinds of situation for exercise of powers thereunder. A notification under Section 26 A can be issued only after consolidation proceeding with respect to the area notified under Section 3 of the Act has been concluded and closed in terms of cognate provisions of the Act. On the other hand, a notification under Section 4 A of the Act can be issued at any stage of the consolidation proceeding prior to completion of the consolidation proceedings which is the situation in the present case. The provision contained in Section 4 C of the Act is to the effect that the suit or proceeding shall abate once a notification has been issued under Section 3 of the Act. It, therefore, follows as a matter of corollary that once the notification under Section 3 of the Act is countermanded under Section 4 A of the Act, the provisions of Section 4 (C) cease to operate. In that view of the matter, the suit or appeal is automatically revived.”



12. The Hon'ble Supreme Court in the case of **Paras Nath Rai Vrs. State of Bihar** reported in **2012 (12) SCC 642** considered the effect of notification under Section 3 of the Act and held in paragraph 30 as under:

“ From the aforesaid enunciation of law it is crystal clear that once a notification has been published under Section 3 of the Act, every suit and proceeding in respect of declaration of rights or interest in any land lying in areas or for declaration or adjudication of any other rights in regard to which proceeding can or ought to be taken under the Act pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on order being passed in that behalf by the court or authority before whom such suit or proceeding is pending shall stand abated with a view to ensure the jurisdiction of the authorities under the Consolidation Act remains unhampered and the said authorities are not obstructed by the proceedings in civil courts and their decisions are not impeded by the decisions of the civil courts. It is also vivid that the purpose of the scheme of consolidation is to avoid conflict of jurisdiction in order to confer jurisdiction on the consolidation authorities who are required to exclusively examine the rival claims of the parties. Apart from that there is conceptual difference between statutory abatement and abatement under the Code of Civil Procedure. On the basis of a statutory abatement, the whole proceeding from its inception stands abated because the local law has provided an effective alternative remedy to be pursued before an exclusive forum to remedy the grievance raised before the court. It has been further pronounced by this Court that nothing remains to be adjudicated before the civil court and it is apt to note that in Satyanarayan Prasad Sah [1980 Supp SCC 474] this Court had held that the High Court should not have nullified the decree of the trial court but



should have declared that the proceedings stood abated which meant that civil proceedings came to a naught, that is to say, the proceedings from its commencement stood abated.”

13. This Court in the case of **Baghewhari Devi Versus Sheo Kumar Mishra** reported in **2001 (2) PLJR 239** in paragraph Nos. 2 and 3 held as under:-

“2. The concept of abatement has come from Civil Law. In case of death of the parties in a proceeding either in the trial court, appeal or revision the heirs of deceased is required to be substituted and if not substituted such proceeding abates. In case of appeal or revision it has no effect on the judgment, decree and order against which appeal or revision is preferred. In other words, the judgment, decree or order under appeal or revision would become final. In the case of consolidation proceeding as soon as the Notification u/s 3 of the Consolidation Act is made the proceeding before the Civil Court either in trial, appeal or revision abates u/s 4 (c) of the authorities under the Consolidation Act. The Apex Court in the case of Most. Bibi Rahmani Khatoon & ors. vs. Harkoo Gope and ors., A.I.R. 1981 S.C.1451 has held that abatement as conceived u/s 4 (c) of the Consolidation Act is different from concept of abatement in the Code of Civil Procedure/and if concept of abatement under the Code of Civil Procedure is applied in the case of Consolidation proceeding it will do irreparable harm.

(3.) The effect of abatement under the Consolidation proceeding is not permanent. The abatement starts from the date of notification u/s 3 of the Consolidation Act and it goes soon after denotification u/s 26A of the Consolidation Act. The Division Bench of this Court in the case of Chandra Shekhar Singh & ors. vs. Ram Lakhan Singh & ors., 1981 BBCJ 188 and the Full Bench of this Court in the case of Seikh Haider Zan vs. Md. Yusuf Ansari and another. 2000(2) P.L.J.R. 338



have held that the proceeding including suit, appeal and revision abated after notification u/s 3 of the Consolidation Act and it remains operative till denotification u/s 26 A of the Consolidation Act. The Full Bench of this Court in the case of Ram Krit Singh & ors. vs. State of Bihar & ors., 1979 BBCJ 259: 1979 PLJR 161 has held that after denotification of the scheme u/s 26A of the Consolidation Act all abated suits will revive. Therefore, it is abundantly clear that abatement of the proceeding including suit, appeal or revision u/s 4(1)(c) of the Consolidation Act is not permanent and it revives after denotification of the scheme.

14. The various provisions of Bihar Consolidation Act had fallen for consideration before a special Bench of 5 judges of this Court in case of **Most. Prabhawati Kumari Versus State of Bihar and Ors.** reported in **2019 (4) PLJR 430** and in paragraph 93 summary of the conclusions have been detailed and the relevant conclusion stated in point Nos. (iii) to (v) and the same are as under :-

“93. On the basis of what has emerged from the foregoing discussions, in the light of statutory provisions and the authoritative pronouncements made by the Supreme Court in various cases noted above, following is the summary of my conclusions :-

(i) xxx

(ii) xxx

*(iii) On the point of abatement, under [Section 4 \(c\)](#) of the Act, in my opinion, the law stands well settled, in view of the decision of the Supreme Court, in the case of *Paras Nath Rai and Others v . State of Bihar and Others* (AIR 2013 SC 1010). The Supreme Court, upon examining the various*



provisions of the Act and the judgment rendered in the case of Satyanarayan Prasad Sah (supra), has clearly held that once a notification has been published under [Section 3](#) of the Act, every suit and proceeding in respect of declaration of rights or interest in any land lying in areas or for declaration or adjudication of any other rights in regard to which proceeding can or ought to be taken under the Act pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on order being passed in that behalf by the court or authority before whom such suit or proceeding is pending shall stand abated with a view to (i) ensure that the jurisdiction of the authorities under the Consolidation Act remains unhampered, (ii) the said authorities are not obstructed by the proceedings in civil courts and (iii) their decisions are not impeded by the decisions of the civil courts. The Supreme Court has further held that purpose of such power under the scheme of consolidation is to avoid conflict of jurisdiction in order to confer jurisdiction on the consolidation authorities who are required to exclusively examine the rival claims of the parties.

(iv) What is evident from the decision of the Supreme Court, in the case of Paras Nath Rai (supra), is that it has kept in mind the jurisdiction conferred upon the Consolidation Authorities to examine rival claims of the parties.

(v) Referring to the earlier decision in the case of Satyanarayan Prasad Sah (supra), the Supreme Court has laid down in the case of Paras Nath Rai (supra), that nothing remains to be adjudicated before the 'civil court' after discussing conceptual difference between statutory abatement and abatement under the Code of Civil Procedure. By operation of statutory abatement, the whole proceeding from its inception stands abated because the Act has provided an effective alternative remedy to be pursued before an exclusive forum to remedy the grievance which could have been raised before the court.



15. Considering the aforesaid facts and circumstances, submission of learned counsel for the parties and the statutory provisions and judgments of the Hon'ble Apex Court and this Court, it appears that proceedings including suit, appeal and revision abated after notification under Section 3 of the Consolidation Act and it remains operative till denotification under Section 26 A (on close of the consolidation operation) or under Section 4A (cancellation of notification under Section 3) of the Act. In the present case, the consolidation proceeding stand cancelled from the date of notification.

16. Execution Case No. 15 of 1967 arising out of preliminary dated 25.04.1996 in partition suit No. 36 of 1962 (78 of 1996) which had been abated during the pendency of the consolidation proceeding, now would automatically revive in view of denotification No. 54 dated 19.01.2018 under Section 4 A of the Bihar Consolidation Act.

17. Accordingly, this Civil Miscellaneous Application is allowed. The said Execution Case No. 15 of 1967 is automatically revived and the parties will appear before the Execution Court and the petitioners may file the appropriate application before the Court concerned for further proceedings



which would be disposed of in accordance with law.

18. With the aforesaid direction / observation this
Civil Miscellaneous Application is disposed of.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	AFR
CAV DATE	22.03.2023
Uploading Date	26.06.2023
Transmission Date	

