

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**FIRST APPEAL No.18 of 2018**

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Malti Devi wife of Yogendra Narayan alias Matru Singh Resident of Mauza  
Ailayi Patna, P.S. Chand, District Kaimur at Bhabua.

... .. Appellant/s

Versus

1. Shyam Bihari Singh
2. Vijay Bahadur Singh Both sons of Late Jagnarayan Singh Resident of  
Mauza Ailayi Patna, P.S. Chand, District Kaimur at Bhabua.
3. Most. Gayatri Kuer son of Late Paras Nath Singh resident of Mauza Sikari,  
P.S. Baburi, District Chandauli, U.P.
4. Pintu Singh
5. Dhiru Singh
6. Babloo Singh All sons of Late Paras Nath Singh resident of Mauza Sikari,  
P.S. Baburi, District Chandauli, U.P.
7. Meeru Devi D/o Late Paras Nath Singh resident of Mauza Sikari, P.S.  
Baburi, District Chandauli, U.P.

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s  | : | Mr. Shashi Shekar Dwivedi, Sr. Adv.<br>Mr. Parth Gaurav, Adv.<br>Mr. Ashutosh Kumar Pandey, Adv.<br>Mr. Rahul Kumar, Adv.<br>Mr. Manogya Singh, Adv.<br>Mrs. Shilpa, Adv.<br>Mr. Govind Raj Shahi |
| For the Respondent/s | : | None                                                                                                                                                                                              |

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**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH**  
**ORAL ORDER**

11     10-12-2024

**I.A. No. 01 of 2024**

The instant interlocutory application has been filed under Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short ‘Bihar Consolidation Act’) read with Section 151 of the Code of Civil Procedure, 1908 with a prayer to pass an order for abatement of the instant appeal as well as the entire proceeding of the suit



from the commencement of the same.

2. Mr. Shashi Shekar Dwivedi, learned senior counsel appearing for the appellant submits that the plaintiffs/respondents filed the Title Suit No. 484 of 2013 against the appellant in the court of learned Subordinate Judge-I, Bhabhua, in which the judgment and decree impugned were passed granting the relief of partition in respect of the suit property mentioned in the Schedule Ka of the plaint. As per the Schedule Ka, the suit property is situated at Mauza- Ailaye in the District of Kaimur at Bhabhua and also situated at Mauza- Patesar in the same district and the suit lands are agricultural in nature and in this regard, the copy of the plaint filed as Annexure- 'P/1' with this petition may be perused. Learned counsel further submits that during the pendency of the partition suit, the consolidation operation was going on at Mauzas- Ailaye and Patesar at where the suit lands are situated and earlier the said fact did not come in the knowledge of the present appellant who was defendant in the suit. During pendency of the instant appeal, the appellant came to know about the pendency of the consolidation proceeding in both the said Mauzas and thereafter, in order to confirm the factum of the pendency of the consolidation proceeding, the appellant filed an



application under the Right To Information Act (in short 'RTI') before the concerned authority upon which the appellant has been informed that no de-notification under section 26-A of the Bihar Consolidation Act has yet been made and accordingly, the consolidation proceeding is still running and pending in Ailaye and Patesar Mauzas, so, in view of provisions of section 4(c) of the Bihar Consolidation Act, the entire proceeding relating to the instant appeal as well as the suit are liable to be abated since the date of commencement of the suit and appeal.

3. In support of above submission, learned counsel for the appellant has placed reliance upon the Judgment of the Hon'ble Apex Court passed in the case of **Paras Nath Rai & Ors. vs. The State of Bihar and Ors.** reported in (2012) 12 SCC 642 and the relevant paragraph No. '32' upon which reliance has been placed is being reproduced as under for ready reference :

*“At this stage, it is condign to clarify that the High Court of Patna in **Jagdish Prasad** (supra) and **Raja Mahto and Another** (supra) had read the judgment of this Court absolutely erroneously. It has been held by this Court that entire civil proceeding from its commencement stands abated and it comes to a naught. In **Satynaryan Prasad Sah** (supra) this Court had found an error in the decision of the High Court in nullifying the decree. It was explained in **Mst. Bibi Rahmani Khatoon's** (supra) case that what is the impact when a scheme of a consolidation is undertaken.*



*This court had referred to the pronouncement in **Satynaryan Prasad Sah** (supra) and stated both in principle and precedent it is clear that where a notification is issued bringing the land involved in a dispute in the civil proceeding under a scheme of consolidation, the proceeding pending before the civil court either in trial court, appeal or revision shall abate as a consequence ensuing upon the issue of notification and the effect of abatement would be that the civil proceeding as a whole come to a naught. To elaborate not only the judgment and decrees would become extinct but the entire civil proceeding would come to a naught.”*

4. No one appears on behalf of the respondents and no reply has been filed on behalf of the respondents to the instant Interlocutory Application despite having given several opportunities in this regard.

5. Heard learned counsel appearing for the appellant and perused the relevant materials. As per sections 3 and 4 of the Bihar Consolidation Act, every suit and proceeding in respect of declaration of rights or interests in any land lying in the area at where the consolidation proceeding is running and in this regard, a notification has been issued under section 3 of the Bihar Consolidation Act then no suit or legal proceeding in respect of land in such area shall be entertained in any court. If such suit or proceeding is pending during the pendency of the consolidation proceeding before any court or authority whether



of the first instance or of appeal or revision shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated and the effect of abatement would be that the civil proceeding as a whole would come to naught. While examining the said issue, the Hon'ble Apex Court in the case of **Paras Nath Rai** (supra) observed that as a consequence of issue of notification under section 3(1), proceedings pending before civil court either at the stage of trial court, appeal or revision shall abate and effect of abatement would be that the pending civil proceedings as a whole come to naught, not only judgments and decrees become extinct but entire such civil proceedings come to naught.

6. The aforesaid principle laid down by the Hon'ble Apex Court was followed by the Hon'ble Full Bench of this Court in the case of **Prabhawati Kumari vs. State of Bihar and Others** reported in **(2019) 4 PLJR 430**. Though, an exception to the provisions of section 4(c) of the Bihar Consolidation Act was laid down and according to it, if on the date of notification under section (3) of the Bihar Consolidation Act, a decree passed in a suit or proceeding had attained finality then such decree passed in such suit or proceeding shall be binding in between the parties in the consolidation proceeding.



7. In the instant matter, as per the statement made by the appellant on affidavit, the consolidation operation was going on during pendency of the suit in the areas where the suit lands are situated and the said consolidation proceeding is still going on and in this regard, the information provided to the appellant under the RTI Act (Annexure -2) is relevant and supportive and the same shows that the consolidation proceeding running in the areas of the suit land has not been de-notified, hence, in view of the provisions of section 4(c) of the Bihar Consolidation Act, the entire proceeding in relation to the present appeal as well as the suit, in which the impugned judgment and decree were passed, stands abated from the beginning of the same. Accordingly, the instant interlocutory application stands allowed.

**(Shailendra Singh, J)**

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