

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.223 of 2017

Ram Yash Tiwari Son of Late Sankatha Tiwari, Resident of village - Bishunpura, Post office - Dangari, P.S. Kudra, District - Kaimur at Bhabua.

... .. Petitioner

Versus

1. Neelam Devi Wife of Harendra Chaubey, Resident of Bhabua Ward No. 2, Azad Nagar, P.S. Bhabua, District - Kaimur Presently residing at village - Siyapokhar, Post officer - Bamhaur, P.S. Mohania, District - Kaimur
2. Ghurahu Pandey,
3. Yaduvansh Pandey,
4. Lal Bahadur Pandey @ Lalji Pandey, All Sons of Late Mukhan Pandey,
5. Rama Shanker Pandey, Son of Late Haribansh Pandey,
6. Sanjay Pandey, Son of Yaduvansh Pandey,
7. Dhananjay Pandey, Son of Yaduvansh Pandey, Respondent No. 2 to 7 all resident of village - Siyapokhar, Post Office - Bamhaur, P.S. Mohania, District - Kaimur
8. Jhhunna Devi, Wife of Ganesh Pandey, daughter of Late Haribansh Pandey, resident of village and Post - Bhatija, P.S. Saiyadraja, District - Chandauli Uttar Pradesh
9. Tunna Devi, Wife of Neeraj Pandey, Daughter of Haribansh Pandey, Resident of village - Siyaruwa, Post Office - Darawan, Police Station - Ramgarh, District - Kaimur
10. Manju Devi, Wife of Ram Pyare Upadhyay, Daughter of Yaduvansh Pandey, resident of village - Rueyan, Post office - Darauli, Police Station Bhabua, District - Kaimur
11. Anju Devi, Wife of Sri Raghvendra Tiwari, Daughter of Yaduvansh Pandey, resident of village and Post office - Sogain Police Station Saiyadraja, District - Chandauli U.P.
12. Prema Devi, Wife of Ram Yash Tiwari, daughter of Lal Bahadur Pandey @ Lalji Pandey,
13. Manish Tiwari,
14. Piyush Tiwari @ Ravikant Tiwari,
15. Panish Tiwari @ Shashikant Tiwari, Respondent No. 13 to 15 all sons of Ram Yash Tiwari. Respondent No. 12 to 16 all Resident of village - Bishunpura, Post office - Dangari, P.S. Kudra, District - Kaimur Bhabua
16. Neetu Devi, Wife of Shailesh Mishra, Daughter of Lal Bahadur Pandey, resident of village - Sawajkundi, Police Station - Bhagwanpur, District - Kaimur presently residing At Bhabua Ward No. 12, Khadi Bandar Gali Ke Pichhe, Post Officer and P.S. Bhabua, District - Kaimur
17. Indrawati Devi, Wife of Ghurahu Pandey, Resident of village - Siyapokhar, Post Officer - Bamhaur, Police Station Mohania, District - Kaimur
18. Shyama Devi, Wife of Yaduvansh Pandey, Resident of village - Siyapokhar,



Post officer - Bamhaur, Police Station - Mohania, District - Kaimur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Garg, Advocate Mr. Sanjiv Kumar Pathak, Advocate Mr. Mohit Kumar, Advocate
For the Respondent/s	:	Mr. J. S. Arora, Sr. Advocate Mr. Rakesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 31-07-2025

The instant petition has been filed by the petitioner for quashing the order dated 17.11.2016 passed by the learned Sub Judge-VII, Kaimur at Bhabua in Title Suit No. 1074 of 2015 whereby and whereunder the learned trial court rejected the application dated 16.09.2016 filed by the petitioner/defendant no. 15 under Section 4(B) {sic.} of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short 'Consolidation Act') read with Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short 'the Code').

02. Briefly stated, the facts which emerge from the record, are that the respondent no. 1 is the plaintiff before the learned trial court and she has filed a suit for partition claiming 1/16th share in the Schedule-A property of the plaint and also for declaring the sale deed dated 16.07.2012 executed by one Ghurahu Pandey in favour of Manish Tiwari and sale deed dated 29.05.2015 executed by Indrawati Devi W/o Ghurahu Pandey in



faovur of Ravi Kant Tiwary and Manish Tiwari as void documents because no permission has been taken from the Consolidation Authority prior to the execution of sale deeds. The plaintiff claimed that the family property was joint and no partition took place. The suit property originally belonged to one Makhan Pandey who had four sons namely Ghurahu Pandey, Haribansh Pandey, Yadubansh Pandey and Lalji Pandey @ Lal Bahadur Pandey. Indrawati Devi is the wife of Ghurahu Pandey. The petitioner claims that an oral partition took place in 1996 between four brothers by metes and bounds. The brothers and their descendants sold the land falling in their shares from time to time by executing sale deeds in the name of different persons. After issuance of notice, the defendant no. 15, the present petitioner, defendant nos. 1, 11 and 17 put their appearance and filed their common written statement on 29.03.2016 contesting the claim of the plaintiff. During the pendency of the suit, the petitioner/defendant no. 15, defendant nos. 1, 11 and 17 filed an application dated 16.09.2016 under Section 4(B) {sic.} of the Consolidation Act read with Order 7 Rule 11 of the Code praying for rejection of the plaint. The plaintiff/respondent no. 1 has filed a reply dated 22.09.2016 to the application dated 16.09.2016 and opposed the prayer of the



defendants. The learned trial court vide order dated 17.11.2016, rejected the petition dated 16.09.2016 filed by the petitioner and others. This order is under challenge before this Court.

03. Learned counsel appearing on behalf of the petitioners submitted that the impugned order dated 17.11.2016 is not proper or legal and is based on decision in the case of *Kalika Kuer alias Kalika Singh v. The State of Bihar and others*, reported in *AIR 1989 PLJR 1203* which is not considered to be good law in the light of the subsequent decision of Full Bench of this Court in the case of *Seikh Haider Zan Vs. Md. Yusuf Ansari*, reported in *2000 (2) PLJR 338* and also Special Bench decision (Five Judges Bench) of this Court in the case of *Most. Prabhawati Kumari & Ramkrit Singh and Ors Vs. The State of Bihar and Ors.*, reported in *2019 (4) PLJR 430*. Learned counsel further submitted that from the plaint itself, it is evident that the consolidation proceeding has been continuing in the area in which the suit land lies and no notification under Section 26A of the Consolidation Act has been issued. If the consolidation proceeding is still continuing, neither the suit for partition nor the suit seeking declaration of sale deeds dated 16.07.2012 and 29.05.2015 to be void are maintainable. Learned counsel further referred to the decision of



Hon'ble Supreme Court in the case of ***Gorakh Nath Dube Vs. Hari Narain Singh & Ors.***, reported in ***AIR 1973 SC 2451*** wherein the Hon'ble Supreme Court differentiated between void and voidable document vis-a-vis the power of the Civil Court and the Consolidation Officer. The Hon'ble Supreme Court held that where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it. At the same time, it has also been observed that an alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. Considering the case before it, the Hon'ble Supreme Court observed that the plaintiffs' claim was that the sale of his half share by his uncle was invalid, inoperative, and void. Such a claim could be adjudicated upon by consolidation courts. The learned counsel further submitted that, though, the learned trial court also relied on the ***Gorakh***



Nath Dube (supra) but passed an order which is contrary to the ratio in the case of *Gorakh Nath Dube (supra)*. Thus, the learned counsel submitted that in the present case similar claim is being made by the plaintiff. If the property in the sale deeds has been joint, vendors have no right to alienate the suit property.

Learned counsel also relied on the decision of Hon'ble Supreme Court in the case of *Ram Sakal Singh Vs. Mosamat Monako Devi (Dead) & Ors.*, reported in *AIR 1998 SC 277* wherein the Hon'ble Supreme Court held that if the suit is based on document relating to land, the suit would abate if the document is void but would not abate if document is voidable and required to be so declared by the Court. The Hon'ble Supreme Court further observed that the substratum of the *lis* has to be considered and decided on the basis of the pleadings and evidence on record and went on to hold that the the relief of declaration of title was only consequential to the declaration of the voidability of the gift deed executed in favour of the appellant. Unless the said document was avoided, the donee could not get any title to alienate the property by a sale deed to the respondent. Therefore, the declaration of the voidability would be the main relief and the declaration of the title on the



basis of the sale deed is consequential to the primary relief. The reliefs in the suit, as a whole, are to be granted by the civil court only.

04. Learned counsel for the petitioner next referred to the decision of Hon'ble Supreme Court in the case of *Paras Nath Rai & Ors. Vs. State of Bihar & Ors.*, reported in *2013(10 PLJR 1 SC* wherein the Hon'ble Supreme Court 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 the 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. The Hon'ble Supreme Court further held that 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. Learned counsel further submitted that the plaintiff/respondent no. 1 has herself stated in para-5 of her reply that the answering defendants have stated in their written statement that the suit would abate under the provisions of Consolidation Act and, therefore, suit is not maintainable and the learned trial court has wrongly rejected the application filed by the petitioner under Section 4(c) of the Consolidation Act read with Order 7 Rule 11 of the Code.

05. Learned senior counsel appearing on behalf of respondent no. 1 vehemently contended that there is no infirmity in the impugned order and the learned trial court has rightly passed the order. Learned senior counsel further submitted that the plaintiff/respondent no. 1 has filed the suit for partition, and in the said suit, some registered sale deeds are also under challenge and declaration has been sought against the sale deeds on the ground that they are illegal and void. Learned senior counsel further submitted that the complex question of title is involved in the present suit and therefore, is not merely a suit for partition. The complex question of title could be decided by the civil court and not by the Consolidation Officer. Learned



senior counsel further submitted that in the case of ***Ram Sakal Singh*** (supra), the Hon'ble Supreme Court held that the suit would abate only if document is void and if it is voidable, the same requires to be so declared by the Court and the suit would not abate. Learned senior counsel also submitted that rejection of plaint under Order 7 Rule 11 of the Code, the same should be decided only on the basis of averment made in the plaint and written statement of the defendants could not be taken into consideration. Moreover, the plaint is to be read in its entirety and one or two paragraphs cannot be relied on for claiming rejection. Learned senior counsel further submitted that this Court under its supervisory jurisdiction cannot order for rejection of the plaint and referred to the decision of Hon'ble Supreme Court in the case of ***K. Valarmathi & Ors. Vs. Kumaresan***, reported in ***2025 SCC OnLine SC 985*** wherein while approving the decision in the case of ***Jacky v. Tiny @ Antony***, reported in ***AIR 2014 SC 1615***, Hon'ble Supreme Court deprecated invocation of constitutional powers in a landlord-tenant dispute and observed that if a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceeding but in no case power under Articles 226 and 227 of the Constitution of



India can be exercised to question a plaint. Thus, the learned senior counsel submitted that there is no merit in the instant petition and the same deserves to be dismissed.

06. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

07. At the outset, I must make it clear that the petitioner approached this Court challenging the maintainability of the suit before the learned trial court on the ground that the suit was hit by Section 4(c) of the Consolidation Act and hence, it should be rejected under Order 7 Rule 11 of the Code. Under Section 115 of the Code, normally a revision petition would lie against the impugned order, for the reason that if the present petition is allowed, the same would result in the end of the matter before the learned trial court. But, considering the fact that the civil miscellaneous petition has been filed in the year 2017 and thereafter, it has remained pending for about eight years and after passage of time, I find it very harsh to ask the petitioner to withdraw the petition and file a civil revision after so many years. In the case of ***Raj Shri Agarwal @ Ram Shri Agarwal and another vs. Sudheer Mohan and Ors.***, reported in ***2022 SCC OnLine SC 1775***, difference and distinction between the entertainability and maintainability of a petition under



Article 227 of the Constitution was considered by the Hon'ble Supreme Court wherein it was held that the remedy under Article 227 of the Constitution of India is a constitutional remedy and in a given case the Court may not exercise the power under Article 227 of the Constitution of India, if in its opinion, the aggrieved party has another efficacious remedy available under the CPC. But to say that the writ petition under Article 227 of the Constitution of India shall not be maintainable at all is not tenable. Once the matter came up before this Court and the same was heard, relegating the petitioners/JDs for filing another petition under Section 115 of the Code is simply unwarranted and would result in wastage of time if this Court could entertain the petition under Article 227 of the Constitution of India. Therefore, relegating the petitioner to seek remedy of civil revision after passage of so much time does not appear to be proper. Under these circumstances, the matter has been heard.

08. Section 4(c) of the Consolidation Act provides as under:

“4....(c). every proceeding for the correction of records and every suit and proceeding 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 this Act, pending before any court or authority whether of the first instance or of appeal, reference 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.”

09. Now, in paragraph 8(ढ) of the plaint, the plaintiff has claimed that a consolidation proceeding has been going on in the area of suit land and no notification under Section 26-A of the Consolidation Act has been made. The plaintiff has also claimed that the sale deeds have been executed without any sanction from the consolidation authority and for this reason, the sale deeds are void documents. The plaintiff has filed the suit for partition claiming 1/16th share in the suit property and also sought relief of declaration against sale deeds dated 16.07.2012 and 29.05.2015 as it illegal and void documents. Now, any declaration against sale deed would be consequential to the primary relief of partition claimed by the plaintiff. Only when claim of the plaintiff about her share in the suit property is upheld, then only she can challenge the sale deeds executed by the defendants. In other words, the declaration against the sale deed is contingent upon declaration of share in joint family property of the plaintiff, which means allowing the first relief of having her share in the joint family property, thus meaning



thereby upholding the right and title of the plaintiff over the suit property, then only consequential decree of declaration against the sale deeds could be granted. If consolidation proceedings have been going in the area of the plaintiff where the suit property lies, a suit for partition could not be maintained and statutory abatement would take place notwithstanding the fact that the sale deeds are also under challenge and declaration has been sought against the sale deeds. In this regard, reliance could be placed on the decision in the case of ***Ram Sakal Singh (supra)***. Moreover, any alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid and this is precisely the contention of the plaintiff. So, the plaintiff can not approbate and reprobate at the same time.

10. For the aforesaid reasons, the authorities cited by the learned senior counsel for the respondents are quite distinguishable in the facts of the present case.

11. In the light of aforesaid discussion, I am of the considered opinion that the proceeding before the learned trial court in Title Suit No. 1074 of 2015 has abated by operation of law and the learned trial court exercised its jurisdiction erroneously and passed an order which cannot be sustained. Hence, the order dated 17.11.2016 passed by the learned trial



court is set aside.

12. Accordingly, the present petition stands allowed.

13. Pending application, if any, also stands disposed
of.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	07.07.2025
Uploading Date	31.07.2025
Transmission Date	NA

