

(1989) 01 PAT CK 0020

Patna High Court

Case No: Civil Revision No. 822 of 1986.

Vyas Singh and Others

APPELLANT

Vs

Singal Mahto and Others

RESPONDENT

Date of Decision: Jan. 6, 1989

Acts Referred:

- Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 - Section 3, 4(c)
- Civil Procedure Code, 1908 (CPC) - Section 145

Citation: (1990) 2 PLJR 192

Hon'ble Judges: S. Roy, J

Bench: Single Bench

Advocate: Mathura Nath Roy, for the Appellant; Shiva Nandan Roy and Devendra Pd. Singh, for the Respondent

Final Decision: Allowed

Judgement

Satyeshwar Roy, J.

Defendants-first party are the petitioners.

Their application that the suit filed by the plaintiff opposite party No. 1 has abated u/s 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (the Act for short) has been rejected by the court below. That has been impugned in this application. Opposite party no 1 filed the suit for declaration of title and confirmation of possession and also for permanent injunction The petitioners contested the suit. They, inter alia contended that as there has been notification u/s 3of the Act declaring the intention of the State Government to make a scheme for consolidation of holdings in the areas in which the land in question is situate, the suit has abated u/s 4(c) of the Act. The opposite party No. 1 filed an application for amendment of the relief prayed in the plaint. That was allowed and the prayer for declaration of title was substituted by the prayer for declaration that

the order u/s 145 of the Criminal Procedure Code was not binding on him. After this amendment, the application of the petitioners was heard by the court below. The court below was of the opinion that as it was no longer a suit for declaration of title the civil court has jurisdiction to proceed with the suit and it has not abated u/s 4(c) of the Act.

2. Learned counsel for the petitioners submitted that notwithstanding the substitution of the original relief of declaration of title by the declaration that the order passed u/s 145 of the Criminal Procedure Code was not binding on the opposite party No. 1, section 4(c) of the Act was attracted, it must be held that the suit has abated. Learned counsel for opposite party No. 1 submitted that since it was no longer a suit for declaration of title and the prayer is for permanent injunction, the order of the court below cannot be interfered with. Reference at the Bar was made to *Ramkrit Singh v. State of Bihar*, AIR 1979 Patna 250: 1979 PLJR 161 (F.B.) and *Duruju Mallick v. Krupa Sindhu Swain*, AIR 1985 Orissa 202.

3. Some more facts which are relevant for disposal of this application are that with regard to the suit property there was a proceeding u/s 145 of Criminal Procedure Code between the petitioners on one hand and opposite party nos. 2 to 6 on the other and opposite party No. 1 was not party to that proceeding. The petitioners claimed the suit property under the sale deed dated 6.9.197 executed by the mother of opposite party No. 1. (Smt. Radhika Devi), whereas opposite party No. 1 (Singal Mahto) claimed the same on the basis of the settlement said to have been made by the ex-landlord who came in possession of the same after it was surrendered by the recorded raiyat.

4. In *Ramkrit Singh* (supra) a full Bench of this Court held that if controversy in a suit relates to right and title in land in areas for which notification u/s 3 of the Act has been made and certain reliefs depend on the determination of title, the suit shall abate. But, if in a suit relief prayed for are not connected with declaration and determination of title of such land, the suit will not abate with regard of such controversies. In *Duruju Mallick* (supra) a Full Bench of Orissa High Court held that only such relief shall abate which the consolidation authority is competent to grant. The relief for permanent injunction available in common law shall not abate as the consolidation authority has no jurisdiction to grant such relief. But if the relief of permanent injunction depends on the determination of right of interest in land; the suit shall abate. It was further held that if the plaintiff has no legal possession in the suit property, the suit for injunction was not maintainable.

5. In all cases the whole pleading shall have to be looked into to ascertain whether it was a suit to which the provisions of the Act were attracted, and the same cannot be decided by merely referring to the relief prayed for. If in a suit for declaration of title is implicit or where court shall have to go into the question of title for granting reliefs actually prayed for, the suit must be held to have abated. It is common knowledge that reliefs are drawn up in such a way so as to avoid the provisions of

the Act. Each case, therefore, shall have to be decided on the basis of the pleadings. This case shall also have to be decided on the basis of the pleadings notwithstanding the fact that no prayer for declaration of title has been made and the relief for permanent injunction may not be available before the consolidation authority.

6. As noticed above, the opposite party No. 1 claimed the property on the basis of the settlement said to have been made by the ex-landlord and the petitioners claimed on the basis of the transfer made on 6.9.1974. In other words, the opposite party No. 1 claimed through the landlord and the petitioners claimed through the recorded raiyats. Admittedly, neither there has been previous adjudication of title of opposite party No. 1 in the suit land nor there has been any adjudication with regard to his possession. In my opinion, for the purpose of giving relief of permanent injunction and confirmation of possession, the court shall be required to go into the question of title of opposite party No. 1. That being the position, on the facts of this case it must be held that although no declaration of title has been expressly prayed for by opposite party No. 1, the suit stands abated. The order impugned cannot be sustained. In the result, this application is allowed, the order of the court below is set aside and it is held that the suit stands abated under the provisions of section 4(c) of the Act. The parties shall bear their own costs.