
(1988) 05 PAT CK 0022
In the Patna High Court
Case No : A.F.A.D. No. 521 of 1986

Awadh Rai and Others

APPELLANT

Vs

Mewalal Rai and Others

RESPONDENT

Date of Decision : 25-05-1988

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 3

Citation : AIR 1989 Patna 94 : (1989) 37 BLJR 79 : (1989) PLJR 38

Hon'ble Judges : S. Ali Ahmad, J

Bench : Single Bench

Advocate : S.C. Ghose and K.K. Ghose, for the Appellant; B.P. Samaiyar and A.K. Samiyar, for the Respondent

Final Decision : Dismissed

Judgement

S. Ali Ahmad, J.—This litigation has a long history. The plaintiff-respondents filed the suit giving rise to this appeal in the year 1962 for declaration of title and recovery of possession with mesne profits. It was contested by defendant-appellants. The trial Court dismissed the suit by ics judgment and decree dt. 30th May, 1970. The plaintiffs preferred an appeal before the District Judge, Vaishali at Hajipur. While the appeal was pending, a notification u/s 3 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 was issued but this fact was not brought to the notice of the Court. The appeal was heard on merit and it was allowed on 4-5-1976. Against that judgment second appeal No. 436 of 1976 was filed in this Court which was allowed on 25-8-1981. The case was sent back to the lower appellate Court for a fresh decision in accordance with law. I may mention that in the second appeal also the question of abatement u/s 4(c) of the Act was not raised. The lower appellate Court after remand again allowed the appeal. The defendants thereafter preferred second appeal No. 521 of 1986 which was dismissed under Order 41, Rule 11 of the CPC on 3rd of April, 1987. The appellants took the matter to the Supreme Court in Civil Appeal No. 2930 of 1987 which was disposed of on 10-2-1988. The special

leave granted by the learned Judges of the Supreme Court was confined to one question, namely, as to whether on the issuance of notification under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, pending suits are to abate. It was argued before the Supreme Court that the effect of issuance of notification u/s 3 of the Act is automatic abatement of all proceedings, including appeals, suits, etc. u/s 4(c) of the Act. Their Lordships did not decide this matter rather the case was sent back to the High Court to decide as to whether u/s 4(c) there is automatic abatement of the suit. That is how the case has now again come to this Court. It was argued before the Supreme Court that the effect of issuance of notification u/s 3 of the Act is automatic abatement of suits u/s 4(c) of the Act. The same argument has been advanced before me by Mr. Ghosh. This argument is based on the decision of the case of Munshi Muqbool Raza Vs. Hasan Raza, in which it has been held that u/s 5 of the U.P. Consolidation of Holdings and Prevention of Fragmentation Act every suit in respect of any right or interest in any land in the area in regard to which proceedings can or ought to be taken under the Act, pending before any Court or Authority shall stand abated. But the position referred to above in the case was with respect to U.P. Act. Our Act is somewhat different. Section 4(c) of the Act under which suits and proceedings abate reads as follows : --

"Every proceeding for the 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 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."

A perusal of sub-section which I have quoted above makes it abundantly clear that suits, appeals, references and revisions stand abated on an order being passed in that behalf by the Court or authority before whom such suit or proceeding was pending. There is no provision in the U.P. Act prescribing for recording an order of abatement by the Court or the authority. Mr. Ghosh says that the recording of an order of abatement is merely a consequential Act. The essence of the matter, he says, is that the suit, appeal, etc. abate as and when a notification u/s 3 of the Act is issued. I find it difficult to accept this position firstly because what Mr. Ghose says is correct then the word "on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending" will become redundant and superfluous. Secondly because the second proviso to Section 4(c) prescribes that no such order, namely, the order regarding abatement shall be passed without giving notice to the parties. That means the Court or authority before recording an order of abatement has to apply its mind as to whether the suit is of a nature which is governed by this sub-section, namely, Section 4(c). Mr. Ghose in that connection has drawn my attention to the case of Deo Chandra Jha v. Markandey Mishra 1985 BBCJ (HC) 362, wherein Mr. Justice Sanyal said as follows: --

"It is well settled that on the making of a notification bringing the land involved in a dispute in a civil proceeding under the scheme of consolidation proceedings pending in the civil Court either in the trial Courts, appeal or revision shall abate as a consequence ensuing upon the issue of notification."

Here the learned Judge has not said that the abatement will take effect on an order being passed in that behalf rather it has been said that this abatement is the consequence of the notification. This observation no doubt, helps Mr. Ghose but those observations were in a different context altogether. The learned Judge was not considering as to whether the abatement is automatic or is pursuant to an order drawn in that behalf. Mr. Ghose and Mr. Samaiyar both have fairly stated that there is no decision either of this Court or of the Supreme Court on the point. Be that as it may, I have considered the matter and for reasons which I have indicated earlier, I am positively of the view that abatement u/s 4(c) of the Act is not automatic rather it is dependent on an order made in this behalf by the Court or the authority concerned.

2. An application was filed on 12-5-1988 when the case was taken up for hearing from which it appears that notification u/s 3 of the Act was issued on 26-11-1970 with respect to lands covered by the suit. It is said that the legal effect of this notification was not known, therefore the application was not filed to record the order of abatement. This is hardly an explanation. After having fought the litigation tooth and nail for good 26 years the appellants want to bring everything to a knots that certainly is not the purport of Section 4(c). Reference in this connection may also be made to the decision in the case of Jai Prakash Prasad and Others Vs. Rameshwar Prasad and Others, . That apart the Supreme Court did not send the case back to this Court to consider any application for abatement that may be filed in future. The only limited purpose to remand this case was to find out as to whether the abatement u/s 4(c) of the Act is automatic or not. I have held that against the appellant.

3. For these reasons I do not see any merit in this appeal which is dismissed but without costs.