

(1985) 02 PAT CK 0021

In the Patna High Court

Case No : Civil Revision No. 1563 of 1978

Chaturbhuj Prasad Singh

APPELLANT

Vs

Saryu Prasad Singh and Others

RESPONDENT

Date of Decision : 14-02-1985

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 3(1), 4, 4(3)

Citation : AIR 1985 Patna 255

Hon'ble Judges : S.S. Sandhawalia, C.J.;Birendra Prasad Sinha, J

Bench : Division Bench

Advocate : Rameshwar Prasad, for the Appellant; Ram Janam Ojha, Abhimanyu Sharma and Gopaljee, for the Respondent

Final Decision : Partly Allowed

Judgement

Birendra Prasad Sinha, J.—Whether or not a suit and a proceeding in respect of declaration of rights or interest in any land shall partially abate u/s 4(c) of the Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the "Act") is the question which has come up for consideration in this case.

2. The Act provides for consolidation of holdings and prevention of fragmentation of land. Section 3 of the Act provides that with the object of effecting consolidation of holding for the purpose of better cultivation of land in any area, the State Government may, declare its intention to make a scheme for consolidation of holdings in that area by a notification in the official Gazette. Section 4 enumerates the consequences that may ensue in the area to which the notification u/s 3(1) of the Act relates from "the date specified in the notification till the close of consolidation operations. The consolidation operation closes by issue of a notification envisaged in Section 26 of the Act. One of the consequences is enumerated in Section 4(c) of the Act which reads as under : --

"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 or 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 of authority before whom such suit or proceeding is pending stand abated."

Section 4(c) came up for consideration before a Special Bench of this Court in *Ramkrit Singh and Others Vs. The State of Bihar and Others*. It was held that upon the publication of the notification u/s 3(1) of the Act a suit and a proceeding in respect of declaration of rights or interest in any land lying in the area, pending before any court or authority shall stand abated. However, there may be a composite suit in which a prayer is made for the grant of a relief relating to title to land and other quite independent of it regarding which proceedings cannot be taken under this Act. In the case of *Ram Krit Singh (supra)* it was observed that this type of a composite suit will not abate as a whole. In other words the suit relating to the relief or reliefs unconnected with the declaration and determination of title to land shall not abate. In the case of *Manji Ram v. State of Bihar 1979 (1) BLJR 493* a learned single Judge of this Court passed an order of partial abatement of the suit and held that the partition suit shall proceed in respect of houses, cash money and orchard etc. The suit was for partition of properties including agricultural land, houses, orchard, money etc.

3. A plain reading of Section 4 of the Act itself provides the answer to the question posed in this case. The words "any land lying in the area" occurring in Section 4 of the Act are significant. Reading it along with Section 3(1) of the Act the consequences that follows is that upon publication of a notification u/s 3(1) of the Act, a suit in respect of declaration of right; or interest in "any land lying in the area" for which the Government has declared its intention to make a scheme for consolidation of holdings shall not proceed and shall abate. It follows that there shall be no abatement of any suit in respect of any land lying outside the area of consolidation operations. If in a composite suit, the suit relating to reliefs unconnected with the declaration and determination of title to a land does not abate in relation to such controversy, there is no reason why a suit of this nature, the suit in relation to the properties in respect of which there is no notification u/s 3(1) of the Act, shall abate. In my opinion, therefore, a suit or a proceeding can partially abate. It will abate in respect of the lands lying in the area in respect of which the Government has declared its intention to make a scheme for a consolidation of holdings by a notification in official Gazette u/s 3(1) of the Act. It will not abate in respect of any land for which there is no such notification.

4. So far the present case is concerned the plaintiff-opposite party has filed a Title Partition Suit No. 30 of 1973 in the court of Subordinate Judge 2nd Court, Muzaffarpur. The properties sought to be partitioned, as described in various

schedules of the plaint, are situate in the districts of Muzaffarpur, Vaishali and Patna. The plaintiff has claimed 2/3rd share in the properties. A notification u/s 3(1) of the Act seems to have been published in respect of the agricultural lands situate in villages Bhagwanpur Ratti and Salempur in the district of Vaishali. There is no such notification in respect of 51/2 kathas of Land situate in Muzaffarpur town and 3 kathas and odd land situate in Mohalla Dhakanpura Anisabad in the district of Patna. The petitioner, a defendant in the suit, filed an application u/s 4(c) of the Act in the court below that upon publication of the notification u/s 3(1) of the Act the suit had abated and an order to that effect may be passed. The learned court below has held that since there was no notification u/s 3(1) of the Act in respect of the lands situate in the towns of Muzaffarpur and Patna, the suit cannot abate, as in his view no order for partial abatement could be recorded u/s 4(c) of the Act. The petitioner's application was, accordingly, dismissed. The learned court below, in my opinion, is not correct. As discussed above the suit pending in the court below shall partially abate. It shall stand abated in respect of the lands situate in the district of Vaishali in respect of which there is a notification u/s 3(1) of the Act and the consolidation operation are going on. The suit as regards the lands situate in the districts of Muzaffarpur and Patna which are not covered by any consolidation scheme shall not abate and shall proceed.

5. The result is that this civil revision application succeeds in part as indicated above but without costs. The trial Court shall now proceed with the suit in relation to the properties situate in the district of Muzaffarpur and Patna,

S.S. Sandhawalia, C.J.

6. I agree.