
(1983) 04 PAT CK 0006
In the Patna High Court
Case No : Civil Revision No. 1149 of 1981

Dhanbir Singh

APPELLANT

Vs

Chandra Shekhar Tiwary and Others

RESPONDENT

Date of Decision : 11-04-1983

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 4

Citation : AIR 1983 Patna 335

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Advocate : Subodh Kumar Sinha and Sunil Kumar, for the Appellant; K.N. Keshsava, Onkar Nath Sinha and Pramod Kumar, for the Respondent

Final Decision : Allowed

Judgement

B.P. Jha, J.—This civil revision petition has been filed against an order D/- 15th May, 1981.

2. This matter arises out of an appellate order. The plaintiff-petitioner filed a suit for cancellation of a sale deed and a deed of gift purported to have been executed by Ramjit Singh. It was alleged in the plaint that there was an impersonation while executing those documents. The appellate Court held that the suit abated u/s 4 (c), Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Act").

3. In this connection, learned Counsel for the opposite party has relied on a decision in Gorakh Nath Dube Vs. Hari Narain Singh and Others, . In that decision, it has been held that if a document is void ab initio, then the consolidation authorities will try such an issue. In the same judgment, it has also been held that if the effect of the document is required to be taken away only by cancellation of the deed, then the Civil j Court can only try that issue. In my view, if on the face of the document, it appears that the document is void, then the consolidation authorities are entitled to examine such an issue. But, in a case

where the parties are required to lead evidence in order to show that the document is void, then in that case the Civil Court only has the jurisdiction to cancel such a document. In the present case, the question of impersonation is involved. Such an issue cannot be tried by the consolidation authority. Such an issue can only be tried by the Civil Court. In other words, the effect of the document can only be taken away by a decision of the Civil Court. The consolidation authorities have not been vested with such power to examine such an issue. I am, therefore, of opinion that the appellate Court below has erred in law in holding that the provisions of Section 4 (c) of the Act will apply to the present case. I direct the appellate Court below to hear the appeal in accordance with law, as the provisions of Section 4 (c) of the Act do not apply to the present case.

4. It is stated by the learned Counsel for the opposite party that one Jangi Singh has not been made a party to the present petition. It is stated by the learned Counsel for the petitioner that Jagni Singh is dead. I direct the Court below to hold an enquiry as to whether the whole appeal abates on account of non-substitution of the heirs (if any) of Jangi Singh, The Court below is directed to decide this issue after allowing the parties to lead evidence in this connection and after hearing the parties in accordance with law.

5. In the result, the civil revision petition is allowed and the order dated 15th May, 1981 is set aside. The Court below is directed to decide the abatement matter in accordance with law as directed above. The parties shall bear their own costs.