

(1984) 12 PAT CK 0002
In the Patna High Court
Case No : C.R. No. 1937 of 1981

Dharmnath Pandey and Others

APPELLANT

Vs

Dhumun Manjhi and Others

RESPONDENT

Date of Decision : 10-12-1984

Acts Referred:

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

Citation : (1985) 33 BLJR 110 : (1985) PLJR 345

Hon'ble Judges : S.S. Sandhawalia, C.J;B.P. Jha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Jha, J.—This civil revision-petition arises out of an order dated 29th September, 1981.

2. By the impugned order, the lower appellate court held that the appeal abated u/s 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Act").

3. The plaintiffs-petitioners have prayed for a declaration of title and recovery of possession in respect of the suit lands purchased by means of a sale deed which was executed by Lakhan Manjhi, ancestor of the defendants, dated 30th January, 1923. The defence of the defendants first party was that the impugned sale deed was a fraudulent one and without any consideration.

4. On these facts, the trial court held that there was no element of fraud and, as such, decreed the suit. The defendants preferred an appeal before the District Judge. The Additional District Judge, Bettiah, while hearing the appeal was of opinion that the appeal abated u/s 4(c) of the Act.

5. learned Counsel for the petitioners relied on a decision of a learned Single Judge In which the learned Single Judge has held that in a case where the effect of a document can be taken away only by the civil court, then the suit will not

abate. It has further been held that if the document is voidable and the parties are required to lead evidence to that effect, then also the suit will proceed before the civil court. In a case of this type, the consolidation authority has no jurisdiction to decide that a document is voidable, see the case of Dhanbir Singh v. Chandra Shekhar Tiwary and Ors. Civil Revision No. 1149 of 1981 disposed of on 11th April 1983.

6. It is well settled that if the plaintiff challenges a document as voidable, then such a suit will not abate, see the case of Gorakh Nath Dube Vs. Hari Narain Singh and Others, . and the Full Bench decision in Sheoratan Chamar and Ors. v. Ram Murat Singh alias Kishore Raman Singh and Ors. F. A. No. 84 of 1972 disposed of on 18th August, 1984. In the present case, the plaintiffs have not challenged the validity of the sale deed on the ground that it is a voidable document. The defendants had challenged the validity of the document on the ground that it is a fraudulent one. If any of the parties challenges that the document is a voidable one, then the suit will not abate u/s 4(c) of the Act for the simple reason that the parties will be required to lead evidence in respect of the fact that the document is a voidable one. In other words, where a document is challenged as a voidable one by any of the parties, the suit will not abate u/s 4(c) of the Act for the simple reason that the consolidation authority has no jurisdiction to decide the fact as to whether a document is a voidable one or not.

7. In this circumstance, I hold that the suit or the appeal will not abate as the defendants had challenged the sale deed on the ground of fraud. In this view of the matter, I allow the revision petition and set aside the order dated 29th September, 1981 and direct the lower appellate court to decide the appeal in accordance with law. The parties shall bear their own costs.