

(2012) 12 PAT CK 0060
In the Patna High Court
Case No : First Appeal No. 874 of 1977

Kripa Shankar Rai Ors.

APPELLANT

Vs

Kamla Rai and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

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

Citation : (2013) 2 PLJR 450

Hon'ble Judges : V. Nath, J

Bench : Single Bench

Advocate : Rama Kant Sharma and Rajesh Kumar, for the Appellant; Shiv Nandan Rai, Shambhu Sharan Kumar and Ms. Pravina Kumari, for the Respondent

Final Decision : Dismissed

Judgement

V. Nath, J.—The learned Senior Counsel for the appellants in this appeal has been heard on merits on 29.11.2012. When the learned Senior Counsel appearing for the plaintiff-respondent no. 1 was called upon to make his submission, he pointed out that a petition (I.A. No. 7819 of 2012) had been filed on that date i.e. 29.11.2012 praying therein that the entire appeal had abated u/s 4(1)(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Act"). The matter was adjourned on the prayer of the learned Senior Counsel for the appellants who sought adjournment to seek instruction in the matter and file reply, if so advised. This appeal has been, thus, placed today alongwith I.A. No. 7819 of 2012. Mr. Shivnandan Rai, the learned senior counsel appearing on behalf of the plaintiff-respondent, no. 1 has pressed the prayer made in I.A. No. 7819 of 2012 that the suit and the appeal be held to have abated u/s 4(1)(c) of the Act. Mr. Sharma, the learned senior counsel appearing on behalf of the appellants has no objection to the prayer made on behalf of the respondent no. 1 in the said interlocutory application and has only submitted that the order should be passed in consonance with the Apex Court judgment in the case of Bibi Rahmani Khatoon and Others Vs. Harkoo Gope and

Others, .

2. In the aforesaid judgment, the Apex Court has considered the ambit and scope of the provision of Sections 3 and 4 of the Act and has held in paragraph-12 as follows:--

.....Accordingly, both on principle and precedent it is crystal clear that where a notification is issued bringing the land involved in a dispute in the civil proceeding under a scheme of consolidation, the proceedings pending in the civil court either in the trial court, appeal or revision, shall abate as a consequence ensuing upon the issue of a notification and the effect of abatement would be that the civil proceeding as a whole would come to a naught....

3. Mr. Sharma, has pointed out that the similar view has earlier been also expressed in the case of Satyanarayan Prasad Sah and Others Vs. State of Bihar and Another, .

4. In view of the stand taken by the learned Senior Counsel for both the parties, the prayer made in that interlocutory application is allowed and it is held that the suit as well as this appeal has abated under the provision of Section 4(1)(c) of the Act.

5. It is made clear that this order has been made with the consent of the parties and there is no adjudication on merits of any assertion made in the interlocutory application. In the result, this appeal is dismissed as abated.