
(1977) 09 PAT CK 0015
In the Patna High Court
Case No : Civil Revision No. 41 of 1977

Mst. Gulzaria and Others

APPELLANT

Vs

Lal Mohar Pandey and Others

RESPONDENT

Date of Decision : 01-09-1977

Acts Referred:

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

Citation : (1977) 25 BLJR 326

Hon'ble Judges : S.K. Choudhuri, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Choudhuri, J.—This revision by the defendants is directed against the order passed by the Additional District Judge, Arrah, dated the 24th November, 1976 passed in title appeal No. 7 of 1974 holding that the appeal has not abated and thereby rejecting the petition filed u/s 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Bihar Act 22 of 1956)(hereinafter to be called as "the Act").

2. The suit was filed by the opposite party for declaration that the deed of gift, dated 13.2.1966 alleged to have been executed by defendant No. 1 in favour of defendant No. 2 is null and void, illegal and not binding upon the plaintiffs and that it did not affect their title in the disputed land. It is not necessary to give in detail the plaintiffs' case as the short point involved for decision in this revision is as to whether the Court below was justified in rejecting the application filed u/s 4(c) of the Act. Suffice it to say that the plaintiffs brought a suit on the allegation that the defendant first party (defendant No. 1) was entitled only to maintenance as her husband, Suraj Nath Pandey had predeceased his father Satya Narain Pandey before 1937. It is further said that defendant No. 1 thus got maintenance who never had any share in the property nor entered into possession of any property of the aforesaid Satya Narain Pandey which ultimately

came in the hands of the plaintiffs who were in possession and occupation of all those properties. It has further been stated that the properties in Schedule I of the plaint are the disputed properties and the aforesaid entire properties are ancestral properties inherited by the plaintiffs who are coming in possession and have got every right and title in those properties and the defendant first party has got no connection or concern within the said properties nor did the defendant first party ever got any right, title and possession therein. It has been further averred in the plaint that only about a month ago the plaintiffs came to know that one Birkua Pandey and others by persuading, instigating and winning over defendant first party got a deed of gift, dated 13.2.1966 manufactured in respect of the disputed lands in favour of defendant second party by wrongly describing her as the daughter of defendant first party. The plaintiffs, therefore, filed the aforesaid suit for the relief mentioned above.

3. The suit was contested before the trial court which was dismissed on merits. Thereafter, the plaintiffs preferred an appeal before the District Judge, Arrah, which was numbered as title appeal No. 7 of 1974 and was pending before the Additional District Judge, Arrah. It appears from the record of the lower appellate court that the aforesaid title appeal was filed on 3.1.1974 against the judgment and decree, dated 30.11.1973. During the pendency of this appeal defendant respondents filed an application u/s 4(c) of the Act alleging that the notification u/s 3 of the Act has been published and the consolidation proceeding with respect to the property involved in the appeal is going on and as such the appeal has abated. The facts that the notification u/s 3 of the Act has been published for the area in which the properties described in Schedule 1 of the plaint are situate and that the consolidation proceeding is going on are not disputed. The lower Appellate Court after hearing the parties held that the relief prayed for in the suit could not be entertained under the Act nor can it be decided by the Consolidation Officer. As such it held that the appeal has not abated. Hence the present revision application.

4. Mr. Shyam Sundar Sinha "Shyam" learned Counsel appearing in support of this application contended that the lower appellate court has taken an erroneous view of the law by putting a wrong interpretation upon the language used in Section 4(c) of the Act. According to the learned Counsel the relief prayed for in the present suit can be granted by the Consolidation Officer and therefore, the appeals also that suit have abated, Mr. A.B. Ojha, learned Counsel appearing on behalf of the opposite party on the other hand contended that the lower appellate court was perfectly justified in holding that the appeal has not abated and it was correct in holding that the relief prayed for in the suit cannot be adjudicated by the Consolidation Officer.

5. In order to appreciate the points raised by the respective parties it is necessary to quote Section 4(c) of the Act. The proviso (sic) are not necessary to quote:

4. Effect of notification u/s 3(1) of the Act.-Upon the publication of the

notification under Sub-section (1) of Section 3 in the official Gazette the consequences as hereinafter set forth, shall, subject to the provisions of this Act, from the date specified in the notification till the close of the consolidation operation, ensue in the area to which the notification related namely:

(c) 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 of appeal, reference or revision, shall on an order being passed in that behalf by the court or authority before whom such suit or proceedings is pending stand abated.

Much stress was made by learned Counsel for the petitioners upon the words underlined by me in Clause (c) above. Learned Counsel contended that the adjudication for the grant of the relief for declaration that deed of gift executed by defendant No. 1 in favour of defendant No. 2 is void, inoperation and not binding upon the plaintiffs and that it has not affected the right title and interest of the plaintiffs in the suit land as claim will come under by the aforesaid Clause (c) of Section 4 and, therefore the Consolidation Officer has jurisdiction to decide such question. In support of this contention reliance has been placed upon the case of Gorakh Nath Dube Vs. Hari Narain Singh and Others, . In that case the plaintiff claimed that the sale-deed executed by his uncle dated 12.4.1932 to the extent of the half share claimed by the plaintiff is invalid, inoperative and void for possession of the plaintiffs' share. The trial Court dismissed the suit on merits, The lower appellate Court allowed the plaintiff's appeal and decreed the suit. The matter went up in second appeal to the High Court of Allahabad. During the pendency of the second appeal a notification u/s 4 of the U.P. Consolidation of Holdings Act of 1954 (hereinafter called the U.P. Consolidation Act) was published declaring that the village in which the disputed lands were situated had come under consolidation operation. According to the defendant filed an application u/s 5 in the second appeal which was rejected and thereafter the appeal was decided on merits accepting the second appeal. The Supreme Court has quoted in extenso Section 5(2) of the U.P. Consolidation Act. It has referred to a previous decision of the Supreme Court in Ram Adhar Singh Vs. Ramroop Singh and Others, , which decided that a suit for possession of agricultural lands u/s 209 of U.P. Zamindari and Land Reform Act would abate though Section 5 of the U.P. Consolidation Act did not include expressly the suits for possession. It has been further held that the language of Section 5 after the amendment was wide enough to cover the suits for possession involving declaration of right and interest of any land which can be the subject matter of decision in the Consolidation proceedings. In paragraph 5 their Lordships of the Supreme Court relied upon a Bench decision of Allahabad High Court in Jagarnath Shukla v. Sita Ram Pande 1969 A.L.J. 768 which dealing with the question as to whether a suit for cancellation of a sale deed which was pending on the date of notification u/s 4 of U.P. Consolidation Act abates u/s 5(2) of the said Act. The learned Judges of

the Supreme Court fully approved the aforesaid Bench decision of the Allahabad High Court and held that it is the substance of the claim and not its form which is decisive." While discussing the Bench decision of the Allahabad High Court their Lordships of the Supreme Court have stated inter alia as follows:

Here we find a fairly comprehensive discussion of the relevant authorities of the Allahabad High Court the preponderating weight of which is cast in favour of the view that questions relating to the validity of sale deeds, gift deeds, and wills could be gone into in proceedings before the consolidation authorities, because such questions naturally and necessarily arose and had to be decided in the course of adjudications on rights or interest in land which are the subject-matter of consolidation proceedings. We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any Court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of if dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceeding. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land to declare such documents effective or ineffective but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation it could be urged that the consolidation authorities have no power to cancel the deed, and therefore, it must be held to be binding on them so long as it is not cancelled by a Court having the power to cancel it. In the case before us, the plaintiff's claim is that the sale of his half share by his uncle was invalid, inoperative, and void, such a claim could be adjudicated upon by consolidation Courts.

The Supreme Court, therefore allowed the appeal and held that the appeal as also the suit had abated.

6. In the present, I have already indicated above that the plaintiff-opposite party has brought a suit for declaration that deed of gift executed by defendant No. 1 in favour of defendant No. 2 is inoperative, void and not binding on the plaintiffs. Such claim could be adjudicated by a consolidation Court as it is not such a document the legal effect of which can be taken away by setting it aside or the cancellation.

7. Reliance was placed on behalf of the petitioners on an unreported Bench decision of this Court in Bijali Thakur and Ors. v. Rameshwar Thakur and Ors. First Appeal No. 3 of 1973 disposed of on 16th May, 1977. In that case the suit was filed for declaration of title and recovery of possession with regard to Schedule 4 land. In the alternative a decree for partition of Schedule 5 land and allotment of separate takht as were claimed. The suit was decreed and an appeal

was filed in the High Court. During the pendency of the appeal there was a notification u/s 3(1) of the Act and consequently it was argued before the High Court that in view of the provision of Section 4(c) of the Act the appeal stood abated. This argument was attempted to be repelled on behalf of the plaintiff respondents by contending that Section 4(c) did not envisage inclusion of a suit for recovery of possession and mines profits. Their Lordships while discussing the contention of the respective parties referred to the Supreme Court decision in Ramadhar Singh's case (supra) and after discussion of the relevant Sections of the Act accepted the contention put forward on behalf of the appellants and held that the dispute involved in that suit under appeal could be raised before the authorities under the Act and the appeal, therefore, was hit by the provision of Section 4(c) of the Act and both the suit and the appeal abated as a result of the publication of the notification u/s 3(1) of the Act.

8. For all the reasons discussed above by me. I am of the opinion that the present title appeal as well as the suit abated u/s 4(c) of the Act on the issuance of the notification u/s 3(1) of the Act.

9. Before I conclude the judgment I must point out that it was stated on behalf of the plaintiff-opposite party that in case it is held that the appeal and the suit have abated then the judgment of trial Court by which the suit was dismissed should also be set aside otherwise the said judgment may influence the consolidation authorities. I have already held above in express words that both the appeal and the suit have abated u/s 4(c). Therefore the effect in law is that there is no decision by any Court on merits of the claim which would now be decided by consolidation Courts and the said judgment of the trial Court cannot be referred by the consolidation Officer.

10. In the result, the application is allowed and the impugned order is set aside. In the circumstances of the case there will be no order as to costs.