

(1988) 12 PAT CK 0009
In the Patna High Court
Case No : Civil Revision No. 1241 of 1985

Mst. Siya Kuer and Others

APPELLANT

Vs

Mst. Keshar Kuer and Others

RESPONDENT

Date of Decision : 21-12-1988

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 2(9), 4(c)

Citation : (1990) 1 BLJR 25 : (1990) 1 PLJR 90

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—This is plaintiffs' revision application against an order holding that the suit in question is hit by provisions of Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Act").

2. The facts are short and simple.

3. The suit in question was filed for partition in 1961 by the petitioners (and one Mostt. Siya Kuer original plaintiff No. 1 who died during the pendency of the suit and her name was expugned vide order, dated 16.9.1985) for their two annas and odd share and also for a direction to an Advocate-Commissioner to allot the lands sold out and mortgaged by co-sharers to the patti of that co-sharer, etc.

4. The defendants filed a petition u/s 4(c) of the Act for passing an order of abatement of the suit on the ground that the plaintiffs have filed a case before the Consolidation Officer, Riga, after commencement of consolidation operations for similar reliefs. It was further stated that in Second Appeal No. 228 of 1975 arising out of the same suit, this Court has held that the suit and the appeals, all abated under the aforementioned Act.

5. The plaintiff's disputed the claims of the defendants stating that due to their

deliberate mischief the suit could not be disposed of, that before High Court a question of abatement under Order XXII of the CPC had arisen and not that the question of provisions of Section 4(c) of the Act had arisen and that suit in question was well within the purview of the Act because in it matters relating to geneology etc., are involved.

6. The court below heard the parties and by the impugned order held that since the suit in question is purely partition suit and thus is hit by the provisions of Section 4(c) of the Act. It also has taken into account non-filing of any order passed by this Court in the second appeal holding that the suit and connected appeal stood abated.

7. Mr. Mahendra Prasad Sinha, learned Counsel appearing for the petitioners argued that the entire lands which are subject-matter of the suit, were not subject-matter of the consolidation proceedings. In this context he relied upon two documents the first one purports to be an application filed by the petitioners before the Consolidation Officer seeking information about the nature of the lands and the second one is an information supplied to them by the Consolidation Officer, (copies of which were attached as Annexures 1 and 2 to the Civil Revision Application) and argued that the entire suit lands were not lands defined u/s 2(9) of the Act and hence, the order needs interference in revision.

8. From perusal of the plaint of the suit, it appears that the nature of the lands has not been mentioned therein and that the questions raised by the plaintiffs are squarely covered u/s 8(A) of the Act which provides partition of joint holdings as also u/s 10 of the Act which permit filing of an objection disputing correctness of entry in the record or rights as well as in the map or registered prepared u/s 9 of the Act. The documents (Annexures 1 and 2) to the Civil Revision Application are undated. Further, it does not appear from the perusal of Annexure-1 as to what was the stand of petitioners in regard to the lands mentioned therein before the Consolidation Officer. To me, it appears that the petitioners simply wanted an information from the Consolidation Officer, Riga as to which lands mentioned by them are Firni, Dhannar, Gaachh, Boans, Gharari and Kharor. From Annexure-2, it appears that the Consolidation Officer had certified on the basis of certain reports submitted by the Incharge Amin and the Assistant Consolidation Officer that survey plot No. 1841 is Firni, plot No. 2900 is Baans Gachh and Kharor, plot No. 2970 is Gharari, etc. It does not appear from Annexure-2 that any notice was given to the opposite parties herein. It also does not appear from the certificate that the aforementioned plots have been put out of the consolidation proceedings. Sitting in revision, it is difficult for me to place reliance on Annexure-2. From the impugned order, it does not appear that the aforesaid documents were filed before the Court below. In that view of the matter, I am not in a position to rely upon them to record any finding one way or the other. The word "land" stands defined u/s 2(9) of the Act which runs as follows:

"Land" means agricultural land, and includes horticultural land, Kharaur land, land with bamboo clumps, pasture land, cultivable waste land, homesteads,

tanks, wells and water channels.

From bare perusal of the said definition, it is clear that land as defined under the Act includes homesteads lands, bamboo clumps and Kharaur lands also.

9. The word "Consolidation" stands defined u/s 2(3) of the Act which runs as follows:

"Consolidation" includes re-arrangement of parcels of land comprised in a holding or in different holding for the purpose of rendering such holdings more compact.

From bare perusal of the aforementioned provision, it is clear that a holding shall not include such lands, orchard or grove in the agricultural year immediately preceding in the year in which the notification u/s 3 of the Act was issued. The necessary facts in this regard have not been pleaded by the petitioners and in that view of the matter, also it is difficult for me to consider Annexures 1 and 2. The Director of Consolidation has been conferred powers to declare such areas as unsuitable for the purpose of consolidation.

10. Sri Chunni Lal, learned Counsel was good enough to assist me when I call upon to act amicus curie and drew my attention to two letters, dated 26th of November, 1981 and 20th of October, 1986 issued by the Director, Consolidation, Bihar to all the Deputy Directors/Consolidation Officers/Principal of Consolidation Training Institute, Patna/Consolidation Directorate (Confidential Section). In the first letter, it has been stated to the effect that while preparing consolidation scheme of the village some land is left in Firni and of that no consolidation is being done in regard to these lands. By the second letter, the Director had noted irregularities committed while leaving Firni lands and its bad affect on consolidation operations. He also pointed out that the word "Firni" has not been mentioned either in the Act or the Rules framed thereunder and that the aim of consolidation is being nullified by putting a confused meaning to the word. The Director further clarified that Firni land is such land which is situate adjacent of the lands of raiyats in which they keep their cattle and put their Khaliha etc. apart from using that land in connection with cultivation. He accordingly issued a direction that it is (sic) wholly illegal to leave lands situated near the village in the name of Firni.

11. In view of the fact that the petitioners' stand is not clear, it is difficult for me to record any finding sitting in revision for the first time.

12. In the facts and circumstances, I do not find any substance in the contentions raised by the petitioners and reject them hereby.

13. In the result, this civil revision application is dismissed but without costs