
(1996) 12 PAT CK 0003
In the Patna High Court
Case No : Civil Revision No. 233 of 1992

Rajendra Pandey

APPELLANT

Vs

Chandrika Pandey and Others

RESPONDENT

Date of Decision : 05-12-1996

Acts Referred:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 — Section 35, 4

Citation : (1997) 1 PLJR 75

Hon'ble Judges : Choudhary S.N. Mishra, J

Bench : Single Bench

Advocate : Shashi Shekhar Dwivedi, Vijay Kumar Sinha, Kumari Vandana and Ravi Shankar Dwivedi, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Choudhary S.N. Mishra, J.—The Plaintiff Petitioners has challenged the order dated 29.2.92 passed by the learned Munsif holding that the suit filed by the Plaintiff abates in view of Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act (hereinafter referred to as the "Act"). The suit property was initially the subject matter of adjudication by the consolidation authority under the provisions of the Act. Ultimately the appellate authority has decided the dispute in favour of the Plaintiff-Petitioner. Subsequently, however, the appellate court's order was set aside by the revisional authority in purposed exercise of power u/s 35 of the Act. The Petitioner, thereafter, filed a writ application being C.W.J.C. No. 7526 of 1989 challenging the order passed by the Respondent revisional authority. On a prayer made by the writ Petitioner the writ application was allowed to be withdrawn with a direction to file a civil suit for redressal of the grievances of the " Petitioner. The said order was passed in presence of the private Respondents, who are Defendants in the suit. Pursuant to the direction of this Court the Plaintiff filed the instant suit for the following reliefs:

(a) That it be held and declared that the order dated 18.7.89 passed by the Principle Consolidation Training Institute, Patna in Rev. case No. 1576/89 deciding the question of title and directing correction of Khata to be made in favour of the Defendant No. 1 to 6 father is void, illegal and without jurisdiction and the said order has not affected the title of the Plaintiff and thus the Plaintiff is entitled to have his right adjudicated and declared by a decree of this gracious court.

(b) That a decree for permanent injunction be passed restraining the Defendants from disburbing or interfering with the possession of the Plaintiff or dispossessing with from the suit land.

(c) Cost and such other relief or reliefs as the court may deem fit and proper be passed in favour of the Plaintiff.

The order passed by the Writ Court as being quoted by the Learned Munsif while passing the impugned order which reads as follows:

Perused the certified copy of the order dated 19.7.90 passed by the Hon''ble Court (only para 5 of which is contained in this certified copy) in C.W.J.C. No. 7526 of 1989 which reads as follows: "In view of the full bench decision in the case of Kalika Kuer alias Kalika Singh v. State of Bihar and Ors. 1989 P.L.J.R. 1203, learned Counsel for the Petitioner seeks permission to withdraw this writ application with liberty to file civil suit. The prayer is allowed."

2. Mr. Dwivedi learned Counsel for the Petitioner has challenged the impugned order firstly on the ground that having regard to the order passed by the Division Bench of this Court in the aforesaid writ application the learned Munsif has no jurisdiction to pass the impugned order and thereby allowed the suit to abate in terms of Section 4(c) of the Act. It is then submitted that the reliefs sought for in the suit cannot be adjudicated by the consolidation authority in terms of the provisions made under the Act and only the civil court is the competent court to decide the suit in terms of the prayer made by the Plaintiff.

3. In this civil revision application no one appears on behalf of the opposite party in spite of notice having been served upon them.

4. Having heard Mr. Dwivedi, learned Counsel for the Petitioner and after having perused the order under challenge, I am of the view that the reliefs sought for in the instant suit can only be effectively decided by the civil court and the consolidation authority has no jurisdiction in the matter at all and, accordingly, the order impugned dated 29.2.1992 is wholly illegal and without jurisdiction and is set aside. Accordingly, it is not necessary to decide the first submission of Mr. Dwivedi. This civil revision application is allowed but in the facts and circumstances there shall be no order as to cost.