
(1994) 08 PAT CK 0013

In the Patna High Court

Case No : Civil Revision No. 1334 of 1992

Sabha Pati Singh @ Sabha Singh and Others

APPELLANT

Vs

Girja Devi and Others

RESPONDENT

Date of Decision : 19-08-1994

Acts Referred:

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

Citation : (1994) 08 PAT CK 0013

Hon'ble Judges : K. Venkataswami, C.J

Bench : Single Bench

**Advocate : Vishweshar Nath Mishra and Dinesh Kumar Singh, for the Appellant;
Shashi Shankar Dwivedi and Panditjee Pandey, for the Respondent**

Final Decision : Dismissed

Judgement

K. Venkataswami, C.J.—This revision petition is directed against the order of the Court below holding that the suit filed by the opposite party No. 1 (Plaintiff) is maintainable and it does not abate as contended by the Petitioners.

2. Plaintiff-opposite party No. 1 had filed the said Title partition Suit No. 31 of 1988 in the Court of 1st Subordinate Judge, Chapra for a declaration that the sale deeds dated 25.6.83, 27.6.83 and 28.1.84 are fraudulent, without consideration and not binding upon the Plaintiff. By way of consequential relief a decree for partition of the half share of the Plaintiff, namely opposite party No. 1 herein, was also prayed. By way of preliminary objection the Petitioners herein objected to the maintainability of the suit by invoking Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as "the Act") as according to the Petitioners herein, on the basis of the documents, the validity of which was challenged in the Court below and the consequential relief being partition, a suit cannot continue in civil Court and the authorities under the Act alone can go into the matter,

3. The Court below rejecting the contention noticed catena of decisions on this

issue holding that if the documents challenged in the suit were void, then the suit would abate. As the contention of the Plaintiff-opposite party No. 1 was that those documents were fraudulent, without consideration and not binding on the Plaintiff (not void) the question of invoking Section 4(c) of the Act will not arise.

4. On that view of the matter, the Court below overruling the preliminary objection raised by the Petitioners herein, rejected that application. Aggrieved by the order, the Petitioners have filed this revision petition.

5. Learned Counsel appearing for the Petitioners reiterated the same contention before this Court. According to learned Counsel, on the basis of the pleadings in the plaint it should have been construed by the Court below that the documents under challenge were void and, therefore, the suit cannot be continued in the Court below.

6. Learned Counsel appearing for the Plaintiff opposite party No. 1, contending contrary, submitted that understanding of the pleadings by the Petitioner was not correct, that the challenge of the documents was not on the basis that those documents were void but on the ground that they were fraudulent, without consideration and not binding on the Plaintiff. Those factors will have to be gone into in the trial and the authorities under the Act will have no authority to go into such question and only the civil Court alone can go into the question. Therefore, according to learned Counsel, the Court below was perfectly right in overruling the preliminary objection raised by the Petitioners herein. Learned Counsel for the opposite party No. 1 invited my attention to a Division Bench decision of this Court in Sheonath Sah @ Sheo Nath Vs. Bharat Sah and Others . In that case learned Judges dealt with the matter exhaustively and in conclusion observed as follows:

I may state that I have perused the plaints of these suits from which it appears that in both the cases all sorts of facts have been alleged making a document void as well as voidable. In cases where both types of allegation are there, some of which would make a particular document voidable, it cannot be said that the civil Court's jurisdiction is ousted, as both questions will be required to be decided. The Consolidation Officer can only adjudicate upon those facts which would make the transaction void and has no jurisdiction to adjudicate in relation to facts which would make the transaction voidable. A civil Court alone can decide the question whether a transaction is voidable or not. Even in cases where both the questions, that is, void and voidable, have to be decided with regard to a particular document, the civil Court, in my opinion, alone will be competent to decide this question. Therefore, I hold that the Courts below have not committed any error of jurisdiction in rejecting the petition u/s 4(c) of the Act by holding that the suit will not abate thereunder.

7. I have considered rival submissions and I am of the view that there is no substance in the argument of the learned Counsel for the Petitioners. The Court below was right in overruling the preliminary objection raised by the Petitioners

herein. As pointed out already, the suit was one for declaration, declaring the documents mentioned in the plaint as fraudulent, without consideration and not binding on the Plaintiff. That being so, it cannot be contended that the Plaintiff cannot move the Court for a declaration that those documents were voidable in nature.

8. In the result, the revision petition is dismissed, but without costs.