

**(1992) 07 PAT CK 0023**

**In the Patna High Court**

**Case No :** Civil Revision Nos. 963 and 1619 of 1983

Sheonath Sah @ Sheo Nath

APPELLANT

Vs

Bharat Sah and Others <BR> Shivaji Rai Vs Rajendra Rai  
and Another

RESPONDENT

---

**Date of Decision :** 03-07-1992

**Acts Referred:**

**Citation :** (1992) 07 PAT CK 0023

---

## **Judgement**

B.N. Agrawal, J.—These two revision applications have been heard together and are being disposed of this order as common questions of law are involved therein. These applications have been filed against orders passed in two suits by different courts whereby the petitions filed in this suits u/s 4(c) of the Bihar Consolidation of Holdings and Prevention of Fargmentation Act, 1956(hereinafter referred to as the Act) have been rejected.

2. In C. R. No. 963 of 1983, the suit was filed for a declaration that the deed of gift dated 11-8-1978 purported to have been executed by defendant No. 1 in favour of defendant No. 3 was null and void. The plaintiff's case, short, is that one Nathuni Rai had four sons namely, Awadh, Lakshtni, Janak and Ramlagan, The plaintiff is one of the sons of Ramlagan Rai, defendant No. 1. Defendant No. 2 is another son of Ramlagan Rai and defendant No. 3 is the wife of defendant No. 2, Nathuni Rai died in a state of jointnes; with his aforesid four sons, having interest in Mitakshara coparcenary. Janak Rai was in service and from his personal earnings, he acquired 1 bigha 1 katha land, which was his self-acquisition. He died in a state of jointness with his brothers and upon his death, his widows Most. Gulzaria and Most. Gazia came in possession of the said properties and after the death of Most. Gazia, the other widow Most. Gulzaria alone remained in possession thereof. Most-Gulzaria out of the aforesaid 1 bigha 8 kathas gifted same land in favour of the plaintiff and the donee was put in possession thereof. Subsequently, there was separation amongst the four branches of Nathuni Rai. The plaintiff and defendants coming from the branch of Ramlagan Rai remained joint. Awadh and Lakshmi died issueless, without leaving

any widow. It is said that defendant No. 2 fraudulently created a deed of gift purported to have been executed by defendant No. 1, in the name of his wife, defendant No. 3. Defendant No. 1 was very old and he was not in a position to understand the recitals and the effect of the deed. In this deed, the land which had been gifted to the wife of defendant No. 2 has also been included. It has been alleged that defendant No. 1 neither put his left thumb impression on the deed of gift nor he ever executed the same and the attestation thereon was forged and fabricated. According to the plaintiff, it was falsely stated in the deed of gift that the plaintiff was separate from his father, defendant No. 1 though they continued to be joint and defendant No. 1 had no right to execute the deed of gift relating to joint family property of the parties.

3. In the suit on 23-2-1981 a petition u/s 4(c) of the Act was filed by the defendant (petitioner). Thereafter on 28-4-1981 a petition for making amendment in the plaint was filed by the plaintiff to the effect that wherever the expression "null and void" has been used, the same should be amended illegl". It was prayed that at the end of the relief portion, prayer should be inserted for settig aside deed of gift. The trial court allowed the prayer for amendment of the plaint and thereafter by a subsequent order the petition u/s 4(c) of the Act has been rejected. Hence, C. R., No. 963 of 1983 has been filed before this Court.

4. In C. R. No. 1619 of 1983, the suit has been filed for a declaration that the two sale deeds dated 19-5-1981 purported to have been executed by defendant No. 4 in favour of defendant Nos. 1 to 3 are forged, fraudulent, illegal and null and void. The case of the plaintiffs, in short, is that one Phulchand Sah died in a state of jointness with his two sons Brahamdeo Sah and Sahdeo Sah (defendant No. 4) leaving behind interest in the Mitakshra coparcenary. After his death, there was a partition amongst the two brothers by metes and bounds. The suit property which was joint family property of the parties fell to the share of defendant No. 4 by virtue of partition. Plaintiff No. 1 is the son of defendant No. 4 and plaintiff No. 2 is wife of plaintiff No. 1. It is said that defendant No. 4 and his son, plaintiff No. 1, are members of Mitakshara coparcenary and all the properties are joint family properties. Plaintiff No. 1 used to reside outside the village as he was in service at Calcutta. Defendant No. 4 had become sufficiently old and because of his old age, he was not in sound state of health and mind. Defendant Nos. 2 and 3 are sons of defendant No. 1 and defendant No. 1 taking advantagae of physical and mental conditions of defendant No. 4 took him at various places including registration office and fraudulently took his signatures and left thumb impressions places stamped papers and the same were converted into sale deeds. According to the plaintiffs, defendant No. 4 never executed the deeds in question and no consideration was ever paid to him. Defendant No. 4 had no right to execute the sale deeds in respect of the suit properties and there was no legal necessity for execution of the deed. Defendant Nos. 1 to 3 never came in possession of the suit property. It has been further stated that defendant No. 4 neither executed any of the two deeds nor put neither his signature or left thmb impression on the same.

In the said suit, a petition u/s 4(c) of the Act was filed by defendant Nos. 1 to 3. Thereafter the plaintiffs filed a petition for making amendment in the plaint to the effect that from the relief portion, the expression "null and void" be deleted and it be added that defendant Nos. 1 to 3 did not acquire any right, title and interest in the property by virtue of the sale deeds and the same is not binding upon the plaintiffs. Further amendment sought for was that at different places in the plaint, wherever the expression "void" has been used, the same should be read as "illegal".

The trial court disposed of the aforesaid two petitions by the impugned order. So far as the petition for amendment is concerned, the same allowed, but the petition u/s 4(c) of the Act has been rejected. The petitioners moved this Court against the order allowing amendment by filing a revision application bearing C. R. No. 1889 of 1983 which was dismissed in limine on 6-1-1984. So far as that portion of the order by which the petition u/s 4(c) of the Act has been rejected, is concerned, the present revision application, namely, C. R. No. 1619 of 1983 has been filed.

5. When C. R. No. 963 of 1983 was placed for hearing before a learned single Judge of this Court, he doubted correctness of the Division Bench decision in the case of Pt. Rudranand Mishra and Ors. v. Pt. Sheo Shankar Missir and Ors. (1983 Bihar Bar Council Journal 26) and, as such, referred the matter to a Division Bench. When C. R. No. 1619 of 1983 was placed for hearing, it was felt that since the point involved in this case is similar to the point involved in C. R. No. 963 of 1983, which had already been referred to a Division Bench, this civil revision should also be heard along with the said case. Hence, these two applications have been placed before us for hearing.

6. The first question to be considered is that according to the averments in the plaint, if the nature of the dispute is such which can be adjudicated upon by consolidation authority, a suit will abate u/s 4(c) of the Act and an amendment can be allowed in the plaint in order to take away the suit from the jurisdiction of the consolidation authority and bring it within the jurisdiction of civil court. In this connection, it will be necessary to refer to the provisions of Section 4(c) of the Act, relevant portions of which are quoted hereunder:

Effects 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, namely.

**\*\* \*\* \*** (b) no suit or other legal proceedings, in respect of any land in such areas shall be entertained by any court and in calculating period of limitation applicable to such suits and proceedings such period shall not be counted :

**\*\* \*\* \*** (c) every proceeding for the correction of records and every suit and

proceedings in respect of declaration of rights or interest 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 or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending stand abated:

\*\* \*\* \*

In this regard, the question to be considered is whether abatement u/s 4(c) of the Act is automatic or not upon issuance of a notification u/s 3 of the Act. The language of Section 4(c) of the Act is very clear which lays down that after issuance of a notification u/s 3 of the Act, if the court after giving an opportunity of hearing to the parties, passes an order of abatement only then a suit or proceeding shall abate and not otherwise. Recently, in the case of Hari Narain Singh and Ors. v. Jahit Singh and Ors. (Civil Revision No. 1812 of 1986 and Civil Revision No. 1906 of 1986, both disposed of on 23-4-1992 we have decided that in a case where controversy raised is such which can be adjudicated upon by consolidation authority, a suit or proceeding will not abate ipso facto upon issuance of notification, but the same will abate u/s 4(c) of the Act only upon an order being passed. This question is also concluded by a Full Bench decision of this Court in the case of Kalika Kuar @ Kalika Singh Vs. The State of Bihar and others, wherein it has been laid down :

Pending suits shall not abate unless specific order of abatement is made by the Civil Court of competent jurisdiction.

So long as an order allowing a petition u/s 4(c) of the Act is not passed, the suit or proceeding, as the case may be, is quite competent to pass an order upon the petition for making amendment in the plaint and thereafter dispose of the petition u/s 4(c) of the Act. In a case which is covered by Section 4(c) of the Act, institution of the suit cannot be said to be invalid. If the suit has been validly instituted, so long as order of abatement is not passed, a court can pass an order about amendment also and amendment may have the effect of taking away the suit from the jurisdiction of the consolidation authority and making the petition u/s 4(c) of the Act incompetent. Therefore, an order rejecting petition u/s 4(c) of the Act cannot be attacked on the ground that the court could not have allowed the prayer for making amendment in the plaint.

7. In the case of Pt. Rudranand Mishra (supra), the Division Bench was considering correctness of the order allowing amendment of the plaint in a suit which was beyond the territorial jurisdiction of the trial court. In that case, according to the original plaint, the suit was beyond the territorial jurisdiction of the learned Subordinate Judge and, as such, the same was fit to be dismissed as not maintainable. By making amendment in the plaint, the suit was brought within the jurisdiction of the trial court. The Division Bench after referring to decisions of different High Courts held that such an amendment is not

permissible and laid down the law as follows;--

The granting of an amendment postulates an authority of the court to entertain the suit. But where there is inherent lack of jurisdiction in the court to entertain the suit itself, it cannot make any order for amendment of the plaint to bring the suit within its jurisdiction. In such a case the court would be exercising its jurisdiction which is not vested in it and, therefore, passing of any order would amount to usurping a jurisdiction not vested in it.

The question has been also considered by a learned single Judge of this Court in the case of *Ratan Lai Pachisia v. Ranchhor Das Ramji* (1982) BLJ 109, wherein, according to the original plaint, the suit was beyond the pecuniary jurisdiction of the learned Munsif, but a prayer was made for making amendment in the plaint to delete one of the reliefs so as to bring the suit within the pecuniary jurisdiction of the learned Munsif. The trial court granted the prayer for amendment, but this Court set said the order on the ground that once the suit is not maintainable, the court had no jurisdiction to pass an order allowing amendment therein and bringing the same within its jurisdiction. The learned single Judge has taken great pains in examining the matter and after taking into consideration the pronouncements of various High Courts on this point has laid down the law as follows :

The consistent view of all the High Courts, therefore, is that where the Court inherently lacks jurisdiction to entertain the suit, it has no jurisdiction to bring the suit within its jurisdiction either by allowing the amendment of the plaint under Order VI, Rule 17 or Order XXIII Rule 1 of the C.P.C. Only that court can allow the amendment of the plaint by allowing the plaintiff to abandon a part of the claim which has jurisdiction to entertain the suit. I find no reason to differ with the consistent view of all the High Courts.

I am in respectful agreement with the law laid down by the learned single Judge in the case of *Ratan Lai Pachisia* (supra) and the Division Bench in the case of *Pt. Rudranand Misra* (supra).

8. So far as the case covered by Section 4(b) of the Act is concerned, the principle laid down in the aforesaid decisions does apply to such a case. A suit may not be maintainable for various reasons, namely, lack of pecuniary jurisdiction or territorial jurisdiction in the trial court or non-maintainability of the suit may be on the ground that civil court had no jurisdiction to entertain the same, as has been provided in various, statutes. A suit, controversy in which is such which can be adjudicated by consolidation authority and in which notification u/s 3 of the Act has been already published, cannot be entertained by a civil court and if after issuance of such a notification the same has been filed, the suit will be barred u/s 4(b) of the Act on the ground that it is not maintainable. If the suit is barred u/s 4(b) of the Act according to the original plaint, by amendment the same cannot be brought within the jurisdiction of the Court by bringing such facts by way of amendment which may take out the suit

from the jurisdiction of the consolidation authority. Therefore, I am clearly of the view that the prayer for amendment in a suit which is covered by Section 4(b) of the Act so as to bring the suit within the jurisdiction of the civil court cannot be allowed. So far as the prayer for making amendment in the plaint in relation to cases covered by Section 4(c) is concerned, in my view a court is not debarred from entertaining and allowing the amendment petition and thereby bringing the suit within the jurisdiction of the civil court.

9. learned Counsel appearing on behalf of the opposite party in C.R. No. 963 of 1983 contended that amendment in the plaint was allowed by earlier order and the said order has attained finality, as correctness thereof has not been challenged before this Court by filing a revision application. It has been submitted that since the order allowing amendment has attained finality, the order rejecting the petition u/s 4(c) of the Act cannot be attacked on the ground that the order allowing amendment is bad. It has been settled by decisions of various High Courts that if during the course of hearing of a revision application against an order, an illegality in another order passed in the suit, has been brought to the notice of the revisional court, it can interfere with the same in exercise of suo motu power and not only on an application filed by a party. Reference in this connection may be made to decision of a Division Bench of this Court in the case of Chowdhury Ram Prasad Rai and Others Vs. Mahesh Kant Chowdhury, wherein the Court had occasion to consider this question while dealing with the powers of a revisional court exercisable under the CPC (hereinafter referred to as the Code). There when a revision was brought to this Court, an illegality in another order had come to the notice of the Court and this Court set aside the same suo motu, though no revision had been preferred against the said order. The language of Section 115 of the Code is very wide and revisional powers can be exercised not only upon the application by a party but suo motu also, if the jurisdictional error in another order comes to the notice of the Court while considering the correctness of another order. In the case of Pancham Singh Vs. The State, while considering the scope of revisional powers under the Code of Criminal Procedure, the same view has been taken by a Division Bench of this Court. In the case in hand, the question of exercising suo motu power does not arise as the order allowiag amendment, in my view, cannot be said to be without jurisdiction, in view of the fact that the present case is covered by Section 4(c) of the Act.

10. learned Counsel for the petitions in C. R. No. 1619 of 1983 contended that this case is covered by Section 4(b) of the Act, as the notification u/s 4(b) of the Act was published before the filing of the suit. It was contended that in effect and substance the prayer made before the trial court was not u/s 4(c) but u/s 4(b) of the Act. In my view, there is no foundation for making this argument. Neither in the trial court nor in the revision application, it has been stated that notification u/s 3 of the Act was published before filing of the suit. The defendants in this case have alleged that the case is covered u/s 4(c) of the Act. learned Counsel has referred to a private publication of the Act wherein notification u/s 3 of the

Act relating to the village in question has been printed, which shows that the notification was issued before the filing of the suit. learned Counsel for the opposite party objected to the prayer and submitted that the petitioners should not be allowed to refer to the notification as they were not given notice earlier because of which they may be prejudiced. It was contended that it may be that the same very notification might have been withdrawn before filing the suit and after its filing another notification u/s 3 might have been issued. In view of these facts, it is not possible to permit the petitioners to refer to the notification and consequently it is held that the suit out of which C. R. No. 1619 of 1963 has arisen will not be covered by Section 4(b) of the Act.

Apart from this, even if it is assumed that such suit will be covered by the provision of Section 4(b) of the Act, the petitioners have no case, as against the order allowing amendment of the plaint, a revision was brought to this Court bearing Civil Revision No. 1889 of 1983 which was dismissed in limine on 6-1-1984 and thereby order allowing amendment of the plaint passed by the trial court has been affirmed by this Court. Once an order has been approved by this Court, the question of exercising suo motu powers does not arise.

11. In C. R. No. 1619 of 1983, learned Counsel for the petitioners next contended that in cases covered by Section 4(b) of the Act, entertainment of all suits and proceedings is barred. It has been submitted that all types of suit relating to immovable property will be covered u/s 4(b) of the Act where notification under 3 of the Act has been published before filing of the suit. learned Counsel contended that Section 4(b) is different from Section 4(c), It is said that Section 4(c) will apply to those suits, question raised wherein can be adjudicated upon by a consolidation authority, but in relation to a case u/s 4(b), there is no such requirement. From bare perusal of the language of Sections 4(b) and 4(c), it would appear that the language has not been very happily worded. But if it is held that consideration for the two provisions will be different, the same would defeat the object of the legislature. The legislature intended that in relation to disputes which can be adjudicated upon by consolidation authority if a notification has been published u/s 3 of the Act, a person should be debarred from filing a suit and the only remedy to the party should be to raise all matters before the consolidation authority, which is a Special Tribunal constituted under the provisions of the Act. It further intended that even such suits which are pending should abate so that disputes in all such suits can be adjudicated upon by the consolidation authority. If the interpretation put forward by the learned Counsel for the petitioners is accepted, then that would frustrate the intention of the legislature and would make Section 4(b) and 4(c) discriminatory without any rational basis. There does not seem to be any rationale for making different provisions of the Act unworkable also. If it is held that Section 4(b) shall apply to all suits, then what would be the resultant effect of the same. If a party files a suit for specific performance of contract in relation to a land after publication of notification u/s 3, the same being barred by Section 4(b) of the Act cannot be entertained by a civil court Then what will be the remedy of such a party, if he

goes to the consolidation authority it will say that it has no jurisdiction to adjudicate upon this question. On the other hand, if a suit for specific performance of a contract in relation to a land has been filed and during its pendency, notification under Sections has been published, the suit will not abate. There would be discrimination between suitor who has filed a suit for specific performance of contract before the notification u/s 3 and who proposes to file the same after such a notification. Such a suit filed before the notification has to be decided by the civil court alone and a suitor has an effective remedy. In case the argument canvassed is accepted then a person who proposes to file such suit after the notification, though cause of action to file the same had accrued before the notification, shall be precluded from filing a suit and he will be remediless, as consolidation authority cannot decide such a dispute. Therefore, I am clearly of the view that Section 4(b) would not apply to all types of suit, but would apply to such a suit the dispute raised wherein is such which can be adjudicated upon by a consolidation authority.

12. In the case of Smt. Dularia Devi Vs. Janardan Singh and others, , the apex Court was considering the application of the provision of Section 49 of the Uttar Pradesh Consolidation of Holdings Act, 1953, which is equivalent to Section 4(b) of the Act. In that case the Allahabad High Court held that the suit was barred u/s 49 of the said Act. There the suit was filed for cancellation of a sale deed on the allegation that there was fraudulent misrepresentation as to character of document executed by a party. It was held that since it was a case of fraudulent misrepresentation regarding nature of the document, the transaction would be void and not voidable, as such the question can be agitated before a consolidation authority. It was further held that since the transaction was void one, the suit was not maintainable. If entertainment of all suits was barred u/s 49 of the said Act, then there was no occasion for the Supreme Court to consider whether the transaction was void or voidable. This shows that consideration u/s 49 of the said Act, which is equivalent to Section 4(b) of the Act, is the same as the consideration in relation to cases covered by Section 5 of the said Act, which is equivalent to Section 4(c) of the Act. Therefore, I hold that Section 4(b) would not apply to all types of suits but would apply to such suits, the disputes involved wherein can be adjudicated upon by a consolidation authority.

13. Now I proceed to consider the question as to whether the courts below in the impugned orders, which have been challenged in these two revision applications, have committed error of jurisdiction in rejecting the petitions on merit. The question is whether in view of the averments made in the plaint, the disputes raised in these two cases can be adjudicated upon by a Consolidation Authority or not. In this connection, I may observe that this question has been raised times without number before this Court as well as the Supreme Court as to which suit can be tried by civil court and which one will abate. The earliest decision on this point is the case of Gorakh Nath Dube Vs. Hari Narain Singh and Others, wherein a suit was filed for cancellation of the sale deed to the extent of half of the plaintiff. Further prayer was made for recovery of possession of that share. It

was held that such a claim could be adjudicated upon by a Consolidation Authority and, therefore, the suit did not abate. Their Lordships laid down the law as follows:

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 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 a dispute involving conflicting claims to rights or interest in land which are the subject-matter of consolidation proceedings. 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 interest 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 and void, such a claim could be adjudicated upon by consolidation courts.

14. A Full Bench of this Court in the case of Ramkrit Singh and Others Vs. The State of Bihar and Others, had occasion to consider this question in relation to a suit in which a declaration was sought that certain alienations made by defendant first party in favour of defendant party were not binding upon the plaintiff. It was held that such a suit would abate u/s (c) of the Act as the deed is not required to be set aside before it can cease to have legal effect. In the case of Sheoratan Chamar and Others Vs. Ram Murat Singh and Others, another Full Bench of this Court was considering whether the suit was filed for setting aside a sale deed by a person who was not a party to the suit in favour of one of the persons who is a party to the suit on the ground that consideration was not paid, there was no legal necessity for execution of the deed and the deed was obtained by practising fraud upon the executant. It was held that the sale deed was a voidable document and not void and, therefore, the suit will not abate u/s 4(c) of the Act. A Division Bench of this Court in Jiawan Pandey and Another Vs. Mahendra Rai, was considering a case where the suit was filed for a declaration that the deed of gift purported to have been executed by the plaintiff was illegal, null and void, fraudulent, fabricated, collusive and without consideration. In this case, the plaintiffs besides challenging the document on other ground disputed its genuineness also meaning thereby he denied the execution of document. Their Lordship after placing reliance on a Full Bench decision of this Court in the case of Mt. Rupia Vs. Bhatu Mahton and Others, , which was a case relating to payment of court-fee, came to the conclusion that if there are recitals in the

document and the facts alleged are contradictory to it, in that event, it would be plain that the sale deed on its face value has been duly executed and properly registered. Therefore, the legal effect of the document cannot be taken away unless it is set aside. In those circumstances, it was held that ad valorem court-fee was required to be paid. Following the Full Bench decisions of this Court in Mt. Rupia (supra) and the decision of the Supreme Court in Gorakh Nath Dubey (supra), it was held that the transaction was voidable one and, as such, the suit will not abate. The same view has been reiterated by another Division Bench of this Court in the case of Jaleshwar Tiwary and Ors. v. Suresh Tiwary and Ors. 1986 BLJR 378 where in a suit for setting aside a deed of gift executed by a person who was not party to the suit in favour of a person who was party to the suit was challenged on the ground that the same was forged fraudulent and a fabricated document and this Court held that the same will not abate u/s 4(c) of the Act.

15. learned Counsel appearing on behalf of the petitioners contended that in the present case, the transaction cannot be said to be voidable, but void. In support of this contention, reliance has been placed upon the decision of the Supreme Court in the case of Smt. Dularia Devi (supra) in which the suit filed to set aside a sale deed on the ground that the thumb-impression was obtained on the sale deed by making the executant to believe that she was executing a deed of gift. It was held that the allegation in that case was misrepresentation as to the character of document executed by a party and there was no misrepresentation in relation to its contents. Their Lordships reiterated the law laid down in the case of Ningawwa Vs. Byrappa and Others, and held that if misrepresentation is in relation to character of a document, then it will be void transaction, but if the misrepresentation is regarding its contents, then the transaction will be voidable. In these circumstances, it was held that such a suit was not maintainable u/s 49 of the UP Act which is equivalent to Section 4(b) of the Act, as the transaction has been held to be void and not voidable. In my view, this decision is not applicable to the facts of the present case, as here there is no case of misrepresentation regarding character of the document.

16. In view of the foregoing discussions, I am of the view that where prayer is made before a civil court to dismiss a suit on the ground that the same is not maintainable u/s 4(b) or to hold that the suit has abated u/s 4(c) of the Act, the court is required to go into the substance of the plaint and not its form. It should not only see the relief but the facts on the basis of which the relief is founded. The deciding factor would be if there is a document the legal effect of which can be taken away by setting it aside or its cancellation, the suit will go beyond the jurisdiction of the consolidation officer as he is not empowered to accuse or set aside the document, as the power of cancellation lies exclusively in the civil court. The Court has to see whether setting aside or cancellation of a document is necessary or not. Merely because facts have been stated in the plaint that a document should be set aside or in the relief portion it has been prayed that document should be set aside and/or cancelled cannot be said that setting aside

is necessary. On the other hand where there is relief for a declaration that the document is not binding upon the plaintiff, there may be a case that document will be required to be set aside. If the plaintiff comes with a case that he has never executed any such document and the same is forged and fabricated, but the prayer is made for a declaration that the deed is not binding upon him, it can be safely said that the suit has been filed for setting, aside the document. Likewise, if it is alleged in the plaint that a deed is void or voidable, in either event, the same will not make the transaction void or voidable. The Court has to see whether necessary facts making the transaction void or voidable have been pleaded or not. The application of the provision of Section 4(b) or 4(c) of the Act would not depend upon the use of the expression "void or "voidable" in the plaint. Therefore, I hold that if from the pleading, the court comes to the conclusion that transaction is void, then the suit will be abated u/s 4(c) of the Act and if it is a case covered by Section 4(b) of the Act, the same would not be maintainable. Rather, on the other hand, if the court comes to the conclusion that transaction is voidable, then it has no option but to hold that the suit is not barred u/s 4(b) and will not abate u/s 4(c) of the Act.

17. I may state that I have perused the plaints of these two 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 case, where both types of allegations are there, some of which would make a particular document void and some voidable, it cannot be said that civil court's jurisdiction is ousted, as both the 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 questions, that is, void and voidable have to be decided with regard to a particular document, the civil court, in my view, 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.

18. In the result, these two revision applications fail and are accordingly dismissed. In the circumstances of the case, I direct that parties shall bear their own costs.