

(1988) 05 PAT CK 0046

In the Patna High Court

Case No : Civil Revision No. 1482 of 1984

Smt. Jai Kala Devi and Others

APPELLANT

Vs

Nalini Rajan Prasad Singh and Others

RESPONDENT

Date of Decision : 10-05-1988

Acts Referred:

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

Citation : (1989) 37 BLJR 156 : (1989) PLJR 536

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Judgement

S.B. Sinha, J.—This civil revision petition is directed against an order dated 27-7-1984 passed by Shri Abinasi Saran Lal. Additional District Judge. Sitamarhi in Title Appeal No. 71 of 1972 26 of 1983 whereby and whereunder the said learned Court held that the appeal and consequently the suit have abated in terms of Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act in respect of Schedule II land. The lands are described in Schedule II of the plaint measuring 7 dhurs bearing plot Nos. 4120 and 4122.

2. According to the learned Court below in terms of the provision of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act the word "land" has a wide meaning, which includes horticulture land, Kharhaur land with bamboo clumps, pasture land, cultivable land, waste land, homestead, tank, wells and water channels.

3. It is admitted that the aforementioned suit was filed against the defendants on the basis that the defendants encroached upon Schedule II land as described in Schedule II of the plaint in the month of Kartik 1958 and this land includes two jack fruit trees and one mango tree It has further been admitted that the defendants amalgamated the Schedule II land with their compound by constructing compound wall.

4. Learned Court below has further purported to have held that the appellant has

impliedly admitted that a consolidation proceeding is going on. Learned Counsel for the petitioner submitted that the learned Court below has committed an error of record in respect of both his findings, as mentioned hereinbefore.

5. From a perusal of the plaint and the written statement it appears that the land in question consists of various structures. According to the learned Court below himself the land in question has been amalgamated by the defendants With their bari land and they have constructed a compound wall thereon. According to the petitioners the said land was a part and parcel of dwelling house and in that view of the matter the same does not come within the purview of Section 2(9) of the said Act.

6. Learned Court below without taking into consideration the pleadings of the parties purported to have held that the land in question come within the purview of Section 2(9) of the aforementioned Act simply on the ground that two jack fruit trees and one mango tree grown thereon.

7. The order of the learned Court below, in my opinion, is not correct.

8. It is now well-known that the provision of the said Act will have no application in respect of the homestead land in which their exists dwelling house of the parties.

9. Further the learned Court below appears to have misdirected himself in passing the impugned order on the basis that the appellant and the respondents have impliedly admitted that a consolidation proceeding is going on. Before this Court a certificate granted by the Mukhia has been filed with the civil revision application wherefrom it appears that no notification has been issued in respect of the plot, in question, in terms of Section 3(1) of the said Act.

10. In this view of the matter the impugned order cannot be sustained.

11. In the result this civil revision petition is allowed and the impugned order is set aside.

12. However, the learned Court below is directed to apply his mind afresh to the application filed on behalf of the opposite party and may pass a fresh order keeping in view of the pleadings of the parties and their evidences on record.

13. As there is no appearance on behalf of the opposite party there will be no order as to costs.

14. However, if the learned Court below comes to the conclusion that in fact no notification u/s 3(1) of the Act has been issued it is elementary that in such an event the question of applying the provision of Section 4(c) of the said Act will not arise at all.