

Awadh Rai and Others

Vs

Mewalal Rai and Others

Civil Appeal No. 2930 of 1987

(Ranganath Misra, S. Natarajan, M.N. Venkatachaliah JJ)

10.02.1988

ORDER

1. Special leave was granted confined to one question, namely, as to whether on the issuance of notification under the Bihar Consolidation of Holding and Preventive of Fragmentation Act, 1956, pending suits are to abate. We have heard learned counsel for the parties. Mr. Misra appearing for the appellant, relying upon the ratio of the decision in *Munshi Muqbool Raza v. Hasan Raza*, contends in view of the notification made under Section 3 of the Bihar Act, the suit pending in the civil court had to abate and nothing survived to be continued up to the stage of second appeal. Learned counsel appearing for the respondents maintains that the provision which this Court construed in *Munshi Muqbool* case was of the Uttar Pradesh Consolidation of Holding Act and Section 5(2) is very different from the provision contained in Section 4(1) (c) of the Bihar Act provides :

Every proceeding for the correction of records and every suit and proceeding in respect of declaration of right or interest in any land lying in the area or for declaration 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 proceedings is pending stand abated.

2. The provision apparently seems to be very different but Mr. Misra contends that the effect is the same. We think it appropriate that the matter should go back to the High Court where the question as to whether under Section 4(c) there is automatic abatement of the suit should be considered. Costs shall abide the event. Appeal is disposed of accordingly.

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