SUPREME COURT OF INDIA

Paras Nath Rai

Vs.

State of Bihar

C.A.No.7234 of 2012

(K. S. Radhakrishnan and Dipak Misra,JJ.)

05.10.2012

JUDGMENT

Dipak Misra,J.

1. Leave granted.

2. Calling in question the legal acceptability of the order dated 2nd May, 2011 passed by the Division Bench of the High Court of Judicature at Patna in LPA No. 947 of 2002 whereby stamp of approval has been given to the order dated 9th August, 2002 passed by the learned single Judge in CWJC No. 1851 of 2000 wherein the learned single Judge affirmed the order dated 17th December, 1999 passed by the Director of Consolidation, Bihar, Patna in Revision Suit Nos. 151/75, 152/75 and 624/77 respectively, the present appeal by special leave has been preferred.

3. The facts which are essential to be stated for the adjudication of the present appeal are that Partition suit No. 123 of 1963 was filed by Sesh Nath Rai, father of the appellant No. 1 and others against Kanta Rai and others. The claim in the suit for partition pertained to the house and “Sahan” standing over plot Nos. 593 and 595 under Khata No. 18. The learned Munsif by judgment and decree dated 4th April, 1968 dismissed the suit observing that the plaintiffs’ stand that one Umraoti Devi was the daughter of Ananta Rai did not appear to be correct. The learned Munsif further opined that there had been a previous partition and the suit was defective for non-joinder of parties. However, on the determined status, he carved out the shares and concluded that the plaintiffs were not entitled to any relief claimed and accordingly dismissed the suit.

4. Being dissatisfied with the aforesaid judgment and decree the appellants preferred Title Appeal Nos. 30/41 of 1968/71. It is worthy to note that the State Government had issued notification No. 1168 dated 26th November, 1970 under Section 3 of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for short ‘the Act’) bringing the area under consolidation scheme. Before the appellate court a petition was filed under

Section 4 (c) of the Act to the effect that the appeal and the suit had abated by statutory operation of law. The appellate court failed to consider the application and decided that the appeal could not be allowed to proceed as one of the respondents had died during the pendency of the appeal and the application for substitution had been rejected. However, he allowed the appeal to be withdrawn observing as follows:-

> "In the present appeal I find that the suit of the plaintiffs-appellants was dismissed by the learned lower Court and a decree was prepared accordingly. Again by the non- substitution of the heirs of Panna Devi the whole appeal has become incompetent and it has abated against those respondents. As such I have no doubt that a vested right has come into existence in favor of the respondents before the petition for withdrawal was made. Relying on the authorities quoted above I find that the appellants cannot be allowed permission to file a fresh suit. However, they are allowed to withdraw the appeal as prayed for."

5. Grieved by the aforesaid order a Civil Revision No. 559 of 1975 was filed whereby the learned single Judge returned a finding that the appellant had not made any prayer for withdrawal of the appeal and, therefore, the order passed by the lower appellate court was without jurisdiction and accordingly he remitted the matter to the lower appellate court for disposal of the appeal in accordance with law. It was further observed that any defect with regard to the competency of the appeal shall be decided by the appellate court at the time of hearing of the appeal itself.

6. After the remit the Title Appeal was revived and eventually on 26th November, 1980 the learned sub-Judge, Bhaubhua took note of the fact that the appellant was not represented and the respondent Nos. 1 and 2 had filed cross objection and had also filed an application for abatement of the appeal. The learned sub-Judge noted that the appellant was not interested to contest the appeal and, accordingly, opined that the Title Appeal No. 30/68 and Title Appeal No. 123/63 stood abated.

7. At this juncture, it is necessary to refer to the consolidation proceedings. The Consolidation Officer vide order dated 23rd March, 1974 arrived at the conclusion that the applicant Umraoti Devi is the daughter of Anant Rai and hence, claim of the applicant therein deserved to be rejected. Being of this view he directed entry in Khata No. 142 of recent revisional survey of village Lakhanpatti Thana No. 407 which was in the name of the Shesh Nath Rai, the respondent therein, would remain in operation. The appeals preferred from the said order did not render any success to the appellants.

8. Be it noted, there were two revision petitions, namely, Revision Petition Nos. 151/1975 and 152/1975 which were decided ex-parte. The revisional authority by order dated 1.09.1978 confirmed the orders passed by the Consolidation Officer and the Deputy Director, Consolidation.

9. The two orders passed by the Revisional Authority were challenged before the High Court in CWJC Nos. 1638 and 1640 of 1981. The learned single Judge by order dated 15.11.1985 quashed the order impugned and directed the Additional Director to decide the revision petitions along with other pending revisions if mentioned.

10. After the remand, three revisions, namely, Revision Suit Nos. 151/1975, 152/1975 and 624/1977 were disposed of vide order dated 8.10.1987 by the Deputy Director, Consolidation holding that Umraoti Devi was not the daughter of Dhyani Rai and she had no right in the disputed land.

11. The aforesaid common order was assailed in CWJC No. 5610/1987 and the learned single Judge by order dated 14.05.1998 expressed the view that the Deputy Director, Consolidation could not have decided the revisions while in-charge of Director and hence, the order had been passed by an authority who did not have jurisdiction and, accordingly, remanded the matter to be heard afresh and disposed of by the revisional authority.

12. After the remand, the Director, Consolidation dismissed the three revisions by expressing the view that Umraoti Devi was the daughter of Dhyani Rai and not of Anant Rai. The said conclusion was arrived on the base of findings recorded by the civil court. The said order came to be challenged in C.W.J.C. No. 1851 of 2000. The learned single Judge by order dated 9.08.2002 concurred with view of the appellate authority and the revisional authority and, accordingly, dismissed the writ petition.

13. The decision of the learned single Judge was called in question in LPA No. 947 of 2002 and the Division Bench opined that as the appeal had abated for the non¬prosecution by the appellants and as the consolidation authorities had taken note of the findings recorded by the civil court, the same had been rightly not been interfered with by the learned single Judge. Being of this view, the Division Bench dismissed the appeal. The said orders are the subject matters of assail in the present appeal.

14. We have heard Mr. Nagendra Rai, learned senior counsel for the appellants and Mr. S.B. Sanyal, learned senior counsel for the respondents.

15. It is urged by Mr. Nagendra Rai that the High Court has fallen into error by concurring with the view expressed by the revisional authority and the forums below that Umraoti Devi was the daughter of Dhyani Rai as recorded by the civil court without taking note of the fact that an application for abatement was filed under Section 4 (c) of the Act to the effect that the title appeal had abated after issue of the notification under Section 3 of the Act. It is urged by him that the High Court has committed a grave factual error by expressing the view that the appeal had abated because of the non-substitution of legal representative. It is canvassed by him that once appeal as well as the suit stood abated the findings recorded in the suit could not have formed the base of the decision. To

buttress the said submission he has commended us to the decisions in Ram Adhar Singh v. Ramroop Singh and Others[1]; Chattar Singh and others. v. Thakur Prasad Singh[2].

16. Mr. Sanyal, learned senior counsel appearing for respondents, per contra, would contend that after the suit was decreed and a preliminary decree had been passed, the same would not come within the purview of the suit or appeal or reference or revision and hence, would not abate. It is also urged by him that the decree passed by the civil court could not be nullified and therefore, the findings recorded in the suit could be relied upon. To bolster his proponement, he has placed reliance on Section 4 (c) of the Act and drawn inspiration from Raja Mahto and Another v. Mangal Mahto and others[3], Satyanarayan Prasad Sah and others v. State of Bihar[4] and Mst. Bibi Rahmani Khatoon and others v. Harkoo Gope and others[5].

17. To appreciate the rivalised submission raised at the bar, it is relevant to state here that during the pendency of the appeal a notification under Section 3 of the Act had come into existence. An application under Section 4 (c) was filed for abatement of the appeal. It was misconstrued and treated as an application for abatement of appeal due to non-substitution of the legal representative of the respondents. It is also necessitous to state here that at one point of time it was raised by Mr. Sanyal that the notification was withdrawn but the same was controverted by Mr. Rai that such withdrawal of notification was challenged before the High Court and it was quashed. The said position was accepted by Mr. Sanyal as a matter of fact. This being the factual position we are required to address what would be the effect on issue of notification under Section 3 of the Act.

18. Section 4 of the Act provides the consequences of issuance of notification under sub-Section 1 of Section 3. One significant consequence as set out in Section 4(c) reads as under:-

> 4(c)- “Every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights 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 proceeding is pending, stand abated”.
>
> Be it noted, there are as many as five provisos to Clause (c) of Section 4 of the Act. The proviso relevant for the present purpose reads as follows:-
>
> “Provided further that such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in

accordance with the provisions of this Act and the rules made thereunder.”

19. A Division Bench of the Patna High Court in the case of Dr. Jagdish Prasad @ Jagdish Prasad Gupta v. Sardar Satya Narain Singh Ors.[6], after referring to the decisions in Nathuni Ram ors. v. Smt. Khira Devi ors.[7], Srinibas Jena ors. v. Janardan Jena ors.[8], Ram Adhar Singh (supra), Satyanarayan Prasad Sah (supra), Mst. Bibi Rahmani Khatoon (supra) came to hold as follows :-

> “In my opinion, the Supreme Court did not differ with the principle laid down in the former case of Satyanarayan Prasad Sah. Hence we are of the opinion that under section 4 (c) a suit, an appeal a reference or a revision will abate and neither a preliminary decree nor a final decree will abate. Hence, we dismiss the petition filed by the appellant under section 4 (c) of the Act. Even if it is held that the appeal abates under section 4 (c) of theAct, the effect will be that it will not help the party inasmuch as even if the appeal abates, the final decree remains alive. The suit comes to an end when a preliminary decree is passed for the purpose of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act.”

20. In Raja Mahto and Another (supra) the learned Judges referred to Section 3 of the Act, scanned the anatomy of Section 4(c), distinguished the decisions in Ram Adhar Singh (supra), Gorakh Nath Dube v. Hari Nath Singh[9] and placing reliance on Satyanaryan Prasad Sah (supra), opined as follows :-

> “I am, therefore, of the opinion that under Section 4 (c) of the Act, the suit, appeal, reference or revision abates and not the decree or preliminary or final decree abates.”

21. In Ram Adhar Singh (supra) a three-Judge Bench of this Court, while dealing with a controversy that had arisen under amended Section 5 of Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as ‘1953 Act’) which provided that after publication of the notification under Section 4 of the 1953 Act all proceedings for correction of the records and all suits for declaration of rights and interests over land, or for possession of land, or for partition, pending before any authority or court, whether of first instance, appeal, or reference or revision, shall stand abated.

22. After scrutinizing the scheme of the Act this Court ruled thus:- “We have referred only to some of the salient provisions of the Act; and they will clearly show that the subject-matter of the dispute, between the parties in this litigation, are all matters falling for adjudication, within the purview of the authorities, constituted under the Act. In fact, clause (b), of sub-section (2) of Section 5 of the Act, as it now stands, also lays down that the abatement of the proceedings, under clause (a), shall be without prejudice to the rights of persons affected, to agitate the right or interest in dispute in the said suits or

proceedings, before the appropriate consolidation authorities under the Act and in accordance with the provisions of the Act and the Rules made, thereunder."

23. In Chattar Singh (supra) while the appeal was pending before this Court a notification had been issued under Section 4 of the 1953 Act. By virtue of the operation of Section 5(2)(a) of the said Act, there was a statutory abatement of the suit and other proceedings pending therefrom. The three-Judge Bench referred to the decision in Ram Adhar Singh (supra) and opined that even appeals pending before this Court would abate consequent upon statutory provision. This Court ruled that the suit and the appeal stood abated and it was open to the parties to work out their rights before the appropriate consolidation authorities.

24. At this juncture, it is relevant to refer to the pronouncement of this Court in Satyanarayan Prasad Sah (supra). This Court, while upholding the constitutional validity of Section 4(c) of the 1956 Act, held that the High Court should not have "nullified" the decree of the trial court but should have merely declared that the proceedings stood abated, which of course, means that the civil proceedings came to naught.

25. In Mst. Bibi Rahmani Khatoon (supra) a title suit was filed before the learned Additional Subordinate Judge I, Gaya, for declaration of title and for recovery of possession of certain agricultural land. The trial court decreed the suit declaring that the plaintiffs were the owners of certain khatas and were entitled to recover possession of the same. On appeal being preferred the learned District Judge, Gaya, dismissed the appeal and affirmed the decree of the trial court. In Second Appeal the High Court took note of the fact that one of the defendants had died during pendency of the appeal before the District Court and his legal representatives were neither impleaded nor any one claiming under him came to be substituted in the appeal pending in the District Court. During the pendency of the Second Appeal before the High Court an affidavit was filed stating that a notification under Section 3 of the 1956 Act, had been issued and in view of the language employed in Section 4 of the said Act the suit and the appeals stood abated. The High Court accepted the submission and disposed of the appeal by stating that the proceedings stood abated and resultantly the judgments and decrees of the courts below deserved to be set aside. This Court referred to Section 4 as amended in 1973 and thereafter referred to the material part of the proviso to Clause (c) of Section 4 of the Act.

26. A contention was raised that the High Court had erred in setting aside the judgments and decrees of the trial court as well as of the first appellate court which were in favour of the appellants before this Court on the ground that those proceedings had stood abated. In that context, this Court adverted to the scheme of consolidation and opined thus: -

> "When a scheme of consolidation is undertaken, the Act provides for adjudication of various claims to land involved in consolidation by the authorities set up under

> the Act. In order to permit the authorities to pursue adjudication of rival claims to land unhampered by any proceedings in civil courts, a wholesome provision was made that the pending proceedings involving claims to land in the hierarchy of civil courts, may be in the trial court, appeal or revision, should abate. This provision was made with a view to ensuring unhampered adjudication of claims to land before the authorities under the Consolidation Act without being obstructed by proceedings in civil courts or without being hampered or impeded by decisions of the civil courts in the course of consolidation of holdings. In order to avoid conflict consequent upon rival jurisdictions the legislature provided that the proceedings involving the claims to land put in consolidation should be exclusively examined by the authorities under the Consolidation Act and all rival jurisdiction would be closed. Simultaneously it was necessary to deal with the pending proceedings and that is why the provision for abatement of such proceedings."

27. It is worthy to note that this Court noticed the conceptual difference of abatement in civil law and in the scheme of the 1956 Act, and observed that if the abatement as conceptually understood in the Code of Civil Procedure is imported to Section 4 of the 1956 Act, it would cause irreparable harm and the party whose appeal is pending would lose the chance of convincing the appellate court which, if successful, would turn the tables against the other party in whose favour the judgment, decree or order would become final on abatement of the appeal. The Bench further proceeded to state that regard being had to the same, the legislature intended that not only the appeal or revision would abate but the judgment, order or decree against which the appeal is pending would also become non est as they would also abate and that would leave consolidation authorities free to adjudicate the claims of title or other rights or interest in land involved in consolidation.

28. At this juncture, it is seemly to note that a reference was made to the decisions in Ram Adhar Singh (supra) and Chattar Singh (supra). After analyzing the ratio laid down therein, this court adverted to the pronouncement in Satyanarayan Prasad Sah (supra) and proceeded to state as follows: -

> "Both the aforementioned decisions were noticed in Satyanarayan Prasad Sah v. State of Bihar(supra). In that case upon the issue of a notification under Section 3 of the Act at a time when the matter was pending in the High Court an order was made under Section 4(c) abating the proceeding as also the suit from which the proceeding arose. Writ petitions were filed in this Court under Article 32 of the Constitution questioning the constitutional validity of Section 4 of the Act as being violative of Articles 14 and 19 of the Constitution. After repelling the challenge to the vires of Section 4, this Court affirming the decisions in Ram Adhar Singh (supra) and Chattar Singh (supra) cases, held that may be that the High Court

should not have nullified the decree of the trial court but should have merely declared that the proceeding stood abated which this Court understood to mean that the civil proceeding comes to a naught. In other words, the proceedings from its commencement abate and no decision in the proceeding at any stage would have any impact on the adjudication of claims by the parties under the Act."[Emphasis supplied]

After so holding, the Bench ruled thus: -

"Both on principle and precedent it is crystal clear that where a notification is issued bringing the land involved in a dispute in the civil proceeding under a scheme of consolidation, the proceedings pending in the civil court either in the trial Court, appeal or revision, shall abate as a consequence ensuing upon the issue of a notification and the effect of abatement would be that the civil proceeding as a whole would come to a naught. Therefore, the order of the High Court impugned in this appeal is legal and valid so far as it not only directed abatement of the appeal pending before the High Court but also abating the judgments and decrees of the trial Court and the first appellate Court because the entire civil proceeding came to naught."

29. At this juncture, we may hasten to clarify that we have reproduced the aforesaid passages in extenso as this Court has succinctly stated that not only there is abatement of appeal pending before the High Court, but also of the proceedings before trial court and of the first appellate court because the entire civil proceeding comes to a naught as that is the effect of Section 4(c) which deals with the effect of the notification under Section 3(1) of the Act.At this juncture, we think it profitable to refer to a three-Judge Bench decision in Mahendra Saree Emporium (II) v. G.V. Srinivasa Murthy[10]. The Court was dealing with the effect and impact of Sections 69 and 70 of the Karnataka Rent Act, 1999 which had come into force with effect from 31.12.1999 after repeal of the Karnataka Rent Control Act, 1961. This Court addressed to the legislative scheme under Sections 69 and 70 and the applicability of Clauses (b) and (c) of sub-section (2) of Section 70 of the 1999 Act to the proceedings pending before this Court in exercise of the jurisdiction conferred by Article 136 of the Constitution. It was treated to be a plenary power and eventually held that in spite of old 1961 Act having been repealed by the new Act, i.e., 1999 Act, the appeal preferred by special leave under Article 136 of the Constitution does not abate and survives for adjudication on merits. It is apposite to note that as regards the plea of abatement of the appeal certain decisions under the 1956 Act and 1953 Act were placed reliance upon. The Bench referred to the concept of statutory abatement and upon perusal of the decisions in Ram Adhar (supra), Chattar Singh (supra), Satyanarayan Prasad Sah (supra) and Mst. Bibi Rahmani Khatoon (supra) opined that the said authorities

dealt with statutory abatement consequent upon a notification under the State consolidation of holding legislation having been issued. It was ruled that in the said decisions the provisions of the State legislation which came up for consideration of the Court provided for the original case, wherefrom the subsequent proceedings had originated, itself to stand abated on the commencement of such legislation and/or on the issuance of the requisite notification thereunder, without regard to the stage at which the proceedings were pending. It was held that appeal was a continuation of the suit and inasmuch as the local law made provision for an effective alternative remedy to be pursued before an exclusive forum to redeem the grievance raised before the court, the local law had the effect of terminating and nullifying the initiation of the proceedings itself and, therefore, nothing remained for the court to adjudicate upon in the appeal which was rendered infructuous.

30. From the aforesaid enunciation of law it is crystal clear that once a notification has been published under Section 3 of the Act, every suit and proceeding in respect of declaration of rights or interest in any land lying in areas or for declaration or adjudication of any other rights in regard to which proceeding can or ought to be taken under the Act pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on order being passed in that behalf by the court or authority before whom such suit or proceeding is pending shall stand abated with a view to ensure the jurisdiction of the authorities under the Consolidation Act remains unhampered and the said authorities are not obstructed by the proceedings in civil courts and their decisions are not impeded by the decisions of the civil courts. It is also vivid that the purpose of the scheme of consolidation is to avoid conflict of jurisdiction in order to confer jurisdiction on the consolidation authorities who are required to exclusively examine the rival claims of the parties. Apart from that there is conceptual difference between statutory abatement and abatement under the Code of Civil Procedure. On the basis of a statutory abatement, the whole proceeding from its inception stands abated because the local law has provided an effective alternative remedy to be perused before an exclusive forum to remedy the grievance raised before the court. It has been further pronounced by this Court that nothing remains to be adjudicated before the civil court and it is apt to note in the case of Satyanarayan Prasad Sah (supra) this Court had held that the High Court should not have nullified the decree of the trial court but should have declared that the proceedings stood abated which meant that civil proceedings came to a naught, that is to say, the proceedings from its commencement stood abated.

31. It is interesting to note that though the decision in Raja Mahto and Another (supra) referred to the decision in Satyanarayan Prasad Sah (supra) yet wrongly applied the ratio by giving an opinion that the second appeal pending before the court had abated but the preliminary decree passed in suits and both the appeals had not abated. In Dr. Jagdish

Prasad (supra) the learned Judge who authored the judgment in Raja Mahto and Another (supra) sitting in the Division Bench in a Miscellaneous Appeal which was an appeal under Order XLIII of the Code of Civil Procedure again opined that a suit, appeal, reference or revision would abate neither a preliminary decree nor a final decree would abate. Be it noted, in the said case the Division Bench expressed the view that this Court in Mst. Bibi Rahmani Khatoon (supra) had not adverted with the view expressed in Satyanaryan Prasad Sah (supra) and on that foundation reiterated that the suit comes to an end when a preliminary decree is passed for the purpose of 1956 Act. It is also stated therein neither a preliminary decree nor a final decree would abate under Section 4 (c). For the said purpose reliance was placed on a Full Bench decision of Orissa High Court in Srinibas Jena Ors. (supra).

32. At this stage, it is condign to clarify that the High Court of Patna in Dr. Jagdish Prasad (supra) and Raja Mahto and Another(supra) had read the judgment of this Court absolutely erroneously. It has been held by this Court that the entire civil proceeding from its commencement stands abated and it comes to a naught. In Satynaryan Prasad Sah (supra) this Court had found an error in the decision of the High Court in nullifying the decree. It was explained in Mst. Bibi Rahmani Khatoon's (supra) case that what is the impact when a scheme of a consolidation is undertaken. This Court had referred to the pronouncement in Satynaryan Prasad Sah (supra) and stated both in principle and precedent it is clear that where a notification is issued bringing the land involved in a dispute in the civil proceeding under a scheme of consolidation, the proceeding pending before the civil court either in trial court, appeal or revision shall abate as a consequence ensuing upon the issue of notification and the effect of abatement would be that the civil proceeding as a whole come to a naught. To elaborate not only the judgment and decrees would become extinct but the entire civil proceeding would come to a naught.

33. Thus, the view expressed by the High Court in the aforesaid judgments that appeal may abate but the decree would not abate is not correct, more so, when the preliminary decree is under challenge in appeal. In the case at hand, judgment and decree passed by the trial court was assailed in the title appeal. Though a petition was filed under Section 4(c) of the Act no order was passed thereon, yet the appeal was permitted to be withdrawn. Challenge being made in the civil revision the High Court had remanded the matter directing the appeal to be restored to file with a further direction that the matter would be dealt with on merits including the competence of the court to hear the appeal. Despite the remit the trial court did not take note of the petition filed by the appellant under Section 4(c) of the Act, but observed that they are not interested to contest the appeal and accordingly directed the appeal stood abated because of non-substitution. This order shows total non application of mind and in a way paving the path of travesty of justice. As is evincible the consolidation proceedings had continued and at one stage the authorities were relying on the findings of civil court and at some other ignoring the same.

Eventually, as is manifest, the matter travelled to the High Court in a writ petition. The learned single Judge ruled that the consolidation authorities were justified in relying on the findings of civil court.

34. We may hasten to add that some evidence was adduced and some documents were filed before the consolidation authorities to substitute their respective claims as regards status and their respective shares but the whole issue, as is demonstrable, has turned on reliance on the findings recorded by the civil court.

35. The question that emanates for consideration if the appeal which is a continuation of suit had abated whether findings recorded therein could have been relied upon. We have noted that in the cases of Raja Mahto and Another(supra) and Dr. Jagdish Prasad (supra) the High Court of Patna had taken a view that on issuance of notification under Section 3 of the Act the suit or appeal would abate but neither the preliminary decree nor the final decree would abate. For the said purpose inspiration had been drawn from Srinibas Jena Ors. (supra) a decision rendered by the Full Bench of the High Court of Orissa. In the Full Bench decision of the High Court of Orissa, the preliminary decree was allowed to attain finality and nothing remained to be adjudicated. There is a distinction between preliminary decree and the final decree. Recently in Bimal Kumar Another v. Shakuntala Debi Others[11] this Court after referring to the decisions inRachakonda Venkat Rao And Others v. R. Satya Bai (D) by L.R. And Another[12], Muzaffar Husain v. Sharafat Hussain[13], Raghubir Sahu v. Ajodhya Sahu[14], Renu Devi v. Mahendra Singh and others[15], has ruled thus:-

> “A preliminary decree is one which declares the rights and liabilities of theparties leaving the actual result to be worked out in further proceedings.Then, as a result of the further inquiries conducted pursuant to the preliminary decree, the rights of the parties are finally determined and a decree is passed in accordance with such determination, which is the final decree. Thus, fundamentally, the distinction between preliminary and final decree is that: a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in the preliminary decree which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree.”

36. The Full Bench was dealing with an appeal directed against the final decree for partition. The question before the Full Bench was whether under Section 4(4) of the Orissa Consolidation of Holdings and Prevention of Administration of Land Act, 1972 (for short 'the 1972 Act’) a final decree stood abated. The Full Bench referred to the notification issued under Section 3(1) of the 1972 Act, scanned the language employed in sub-section (4) of Section 4 and came to hold that a final decree proceeding cannot be

characterized as a suit or a proceeding for right, title or interest in respect of any land. It has been opined there that Section 4(4) does not include an appeal arising out of a final decree as the same would not declare any right, title or interest of the parties but deal with certain matters pertaining to what has already been declared. Pendency of an appeal against the final decree cannot take away the finality of the preliminary decree which has already declared the rights, title and interest of the parties. We may repeat for clarity that in the said case, the preliminary decree passed in the suit had become final as it was not challenged by way of an appeal. Thus, the factual matrix was quite different. Suffice it to say that in the present case the title appeal was pending against the preliminary decree and an application under Section 4(c) had been preferred. It would have been advisable on the part of the appellate court to record a finding that the entire proceeding of the civil suit stood abated. Unfortunately, the appellate court directed abatement because of non-substitution of the legal heirs of one of the respondents. We are conscious that an order is to be passed on an application filed under Section 4 (c) of the Act, but we do not intend to relegate the matter to that stage as it is obvious that in the suit, right, title and interest and status were involved which do come within the scheme of consolidation. Hence, the suit as well as the appeal abated and resultantly the very commencement of the civil proceeding came to a naught and, therefore, findings recorded in the said proceeding became extinct. The learned Judge dealing with the writ petition as well as the learned Judges deciding the intra-court appeal did not appreciate the lis in proper perspective and opined that the reliance on the findings recorded by thecivil court by the revisional authority under the 1956 Act could not be faulted. The said conclusion is wholly erroneous and deserves to be overturned and we do so.

37.Consequently, the appeal is allowed, the orders passed by the learned single Judge as well as of the Division Bench are set aside and the matter is remanded to the file of the learned single Judge to decide the matter on merits on the basis of the material brought before the Consolidation Authorities. We repeat at the cost of repetition that none of the findings recorded by the civil court shall be taken aid of. There shall be no order as to costs.

Referred

[1] AIR 1968 SC 714

[2] (1975) 4 SCC 457

[3] 1982 PLJR 392

[4] (1980) Supp SCC 474

[5] (1981) 3 SCC 173

[6] 1982 BBCJ-1

[7] 1981 BBCJ 413

[8] AIR 1981 Orissa 1 (F.B.)

[9] AIR 1973 SC 2451

[10] (2005) 1 SCC 481

[11] (2012) 3 SCC 548

[12] AIR 2003 SC 3322

[13] AIR 1933 Oudh 562

[14] AIR 1945 Pat 482

[15] AIR 2003 SC 1608