

# **Bibi Rahmani Khatoon & Ors vs Harkoo Gope & Ors on 22 April, 1981**

**Equivalent citations: 1981 AIR 1450, 1981 SCR (3) 553, AIR 1981 SUPREME COURT 1450, (1982) PAT LJR 59, 1981 BBCJ 197, 1981 UJ (SC) 572, 1981 (3) SCC 173, (1981) BLJ 639**

**Author: D.A. Desai**

**Bench: D.A. Desai, Baharul Islam**

PETITIONER:

BIBI RAHMANI KHATOON & ORS.

Vs.

RESPONDENT:

HARKOO GOPE & ORS.

DATE OF JUDGMENT 22/04/1981

BENCH:

DESAI, D.A.

BENCH:

DESAI, D.A.

ISLAM, BAHARUL (J)

CITATION:

1981 AIR 1450

1981 SCR (3) 553

1981 SCC (3) 172

1981 SCALE (1) 739

ACT:

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956-Section 4(1)(c)-Scope of-Section provides that, without prejudice to rights of parties all pending proceedings at any stage before any court in respect of lands taken up for consolidation shall abate-Plaintiffs' suit for declaration of title decreed-Notification issued when appeal pending before High Court-Effect of notification-Whether judgment and decree of trial court would abate.

HEADNOTE:

Section 4(1)(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 provides that upon the issue of a notification under section 3(1) of the Act

every proceeding pending before any court or authority, whether of the first instance or of appeal shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stand abated. The proviso to the section enacts that such abatement shall be without prejudice to the rights of persons affected to agitate the right in dispute before the appropriate consolidation authorities in accordance with the provisions of the Act. The State Government issued a notification under section 3(1) of the Act.

The plaintiffs' (appellants herein) suit for a declaration of their title and for recovery of possession of agricultural lands bearing khata Nos. 458 and 459 against defendants (respondents herein and three other defendants) was decreed by the trial court. Defendant No. 7 claimed interest in Khata No. 458 only while the other defendants 1 to 4 claimed interest in Khata No. 459. On appeal the Additional District Judge affirmed the decree of the trial court. Defendant No. 7 died when the first appeal was pending before the District Judge. Neither his legal representatives nor any one claiming under him were substituted nor was an appeal preferred by any of them to the High Court.

Before the High Court the defendants 1 to 4 submitted that the work of consolidation of holdings in respect of the lands in dispute having been taken up by the concerned authorities consequent on the issue of a notification under section 3 of the Act the appeal would abate by virtue of the provisions of section 4 of the Act. Accepting the contention the High Court held that the appeal abated and set aside the judgment and decree of the courts below in respect of both Khatas 458 and 459.

In appeal to this Court it was contended on behalf of the appellants-plaintiffs that (1) even if the second appeal abated in respect of Khata No. 459 the High Court could not set aside the judgment and decree of the trial court as well as of the first appellate court both of which became final and (2) in any event, on the

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death of defendant No. 7 during the pendency of the first appeal, his legal representatives having not been substituted, his appeal abated and none of the present respondents had any interest in the property. Therefore, the High Court was in error in setting aside the decree of the trial court in so far as that property was concerned.

Dismissing the appeal in part,

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The effect of a notification issued under Section 3 of the Act bringing a land in dispute in a civil proceeding under a scheme of consolidation is that the proceedings pending in the civil court either at the stage of trial, appeal or revision would come to naught. The High Court was right in holding that the second appeal abated in respect of

Khata No. 459 and that the judgment and decree of the trial court and the first appellate court stood abated along with those proceedings. [562 G-H]

When a scheme of consolidation is undertaken, the Act provides for adjudicating of claims by the authorities under the Act. In order to permit them to pursue adjudication of rival claims unhampered by any proceedings in civil courts a wholesome provision is made that pending proceedings involving claims to land at whatever stage they might be, should abate. To avoid conflict between rival jurisdictions the Act provides that such proceedings should be examined exclusively by the authorities under the Act. Provision has been made for abatement of pending proceedings as well. [558 F-G]

The concept of abatement known to civil law is that if a party to a proceeding dies either in the course of trial or appeal or revision and the right to sue survives, the heirs and legal representatives of the deceased party would have to be substituted, failure to do which would result in abatement of the proceedings. If a party to an appeal or revision dies and if the appeal or revision abates it will have no impact on the judgment, decree or order against which the appeal or revision is preferred. Such judgment, decree or order under appeal or revision would become final. [559 B-D]

But the abatement contemplated by section 4 of the Act is of a different kind. If the concept of abatement as understood in the Code of Civil Procedure is imported into this case, it would do irreparable harm to the parties. For example, if an appeal abates rendering either the judgment of the trial court or the judgment in the first appeal final and binding the consolidation authorities would also be bound by it and the party whose appeal or revision abated would lose the chance of persuading the appellate or revisional authority to accept its case which may result in interfering with or setting aside the judgment etc. in appeal. That this could not be the intention of section 4 is manifest from the proviso to clause (c) of section 4. By virtue of the proviso no one would stand to suffer on account of abatement because a special forum is carved out for adjudication of the rights of parties. [559 E-G]

Ram Adhar Singh v. Ramroop Singh and ors [1968] 2 S.C.R. 95, Chattar Singh and Ors. v. Thakur Prasad Singh, A.I.R. 1975 SC 1499, and Satyanarayan Prasad and ors. v. State of Bihar and Anr., A.I.R. 1980 SC 2051; referred to. 555

The High Court was in error in holding that the judgment and decree in respect of Khata No. 458 also abated. Defendant No. 7 claimed separate, specific and exclusive right in respect of that Khata. On his death his legal representatives having not been substituted, his appeal abated. His legal representatives did not prefer an appeal to the High Court. The appellants' title in respect of Khata

458 therefore became established under the decree of the trial court. The abatement of the second appeal will have no impact on the appellants to Khata No. 458. [562 C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1359 of 1981.

Appeal by special leave from the judgment and order dated the 18th August, 1979 of the Patna High Court in Second Appeal No. 697 of 1974.

B.P. Singh for the Appellants.

S.K. Mehta for the Respondents.

The Judgment of the Court was delivered by DESAI, J. Mst. Bibi Rahmani Khatoon and others filed Title Suit No. 3/70 in the Court of the Additional Subordinate Judge I, Gaya for declaration of their title and for recovery of possession of agricultural lands admeasuring 4 acres 29 gunthas comprised in two holdings bearing khata nos. 458 (nakdi) and 459 (Bhouli) in Touzi No. 7535 situated in village Parsain. The defendants in the suit were the present respondents and three others defendants Nos. 5, 6 and 7. One Brahmadeo was defendant 7 claiming an interest in khata no. 458 on the basis of a sale deed executed on March 31, 1959, by one Deonandan Singh who was defendant 5 in the trial court. It must be made distinctly clear that Brahmadeo claimed interest in khata no. 458 while the present respondents claimed interest in khata no. 459 only. The trial court decreed the suit declaring that the plaintiffs were the owners of both the khatas and were entitled to recover possession of the same.

Title Appeal No. 7/74 was preferred in the court of the Distt. Judge, Gaya, and it was heard by the learned Fourth Addl. District Judge as per his judgment and decree dated July 12, 1974. The learned Addl. District Judge dismissed the appeal and affirmed the decree of the trial court.

Present respondents alone preferred Second Appeal No. 697/74 in the High Court of Judicature at Patna. It must be specifically mentioned that neither defendant 7 Brahmadeo who died pending the appeal before the District Court and whose legal representatives were not impleaded, nor anyone claiming under him either came to be substituted in the appeal pending in the District Court nor any of them preferred appeal to the High Court. This has some relevance to the disposal of the appeal before us and, therefore, it has been categorically set out.

Harkoo Gope and three others who claimed interest in khata no. 459 only, preferred second appeal against the dismissal of their appeal by the learned Distt. Judge. When the Second Appeal No. 697/74 was pending in the High Court, an affidavit was filed on behalf of the appellants (respondents in this Court) on November 16, 1978, drawing attention of the Court to a notification under s.3 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 ('Act'

for short) and further intimating to the Court that the village in which the disputed khatas were situated was taken up for consolidation of holdings and, therefore, the appeal pending in the High Court would abate in view of the provision contained in s. 4 of the Act. The High Court accepted the submission and disposed of the appeal by its order dated August 18, 1979, the operative portion of which reads as under:

"The appeal abates and the judgments and decrees of both the courts below are hereby set aside as having abated".

Original plaintiffs having been dissatisfied by the order of the High Court not only abating the second appeal preferred by the respondents but also setting aside the judgments and decrees of the trial court and the first appellate court as having abated, have preferred this appeal by special leave.

Shri B.P. Singh, learned counsel who appeared for the appellants contended that even if the Second Appeal abates by virtue of the provision contained in s. 4, on issue of a notification under s. 3 of the Act, the High Court cannot set aside the judgments and decrees of the trial court and the first appellate court as according to him when an appeal abates the judgment and decree of the court against which the appeal is preferred becomes final. The second contention of the learned counsel is that in any view of the matter as the present respondents had no interest in khata no. 458 and as Brahmadeo on sale to him by Deonandan Singh alone claimed interest in khata no. 458 and since the death of Brahmadeo when the first appeal was pending and his heirs and legal representatives having not been substituted, the appeal qua him in respect of khata no. 458 had abated and the present respondents could not have preferred appeal in respect of khata no. 458 and, therefore, the High Court could not have set aside the decree in respect of khata no. 458.

Section 3 of the Act confers power on the State Government to make a declaration of its intention to frame a scheme for consolidation of holdings. When the State Government entertains an intention to make a scheme for consolidation of holdings in a given village, it has to issue a notification declaring its intention to make a scheme for the consolidation of holdings in the specified area. Section 4 provides that upon the publication of a notification under sub-s. (1) of s. 3, the consequences enumerated in s. 4 shall ensue. One such consequence is as set out in sub-clause (c) which reads as under:-

"4. Effect of notification under section 3(1) of the Act-

Upon the publication of the notification under subsection (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 operations ensue in the area to which the notification relates, namely:-

(c) every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights of 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".

There are as many as 5 provisos to clause (c) of s. 4 but only one is material which reads as under:

"Provided further that such abatement shall be with out 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".

Present appeal arises out of a suit filed by the present appellants, who were plaintiffs, for a declaration of their title and consequential relief of possession meaning that it was a suit concerning agricultural land to which title was claimed and disputed. This suit was pending in Second Appeal at the instance of the respondents when the notification under s. 3 (1) came to be issued. Accordingly, s. 4 (c) would be attracted and the necessary consequence statutorily prescribed, must ensue. Therefore, it is incontrovertible that the second appeal would abate. Shri Singh, learned counsel for the appellants does not dispute this legal consequence.

The grievance of Shri Singh is that the High Court while making an order declaring that the second appeal has abated, was in error 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 present appellants on the ground that those proceedings have also abated. At first blush this argument is very attractive but if accepted it has a potentiality of doing irreparable harm.

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 so 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.

The concept of abatement is known to civil law. If a party to a proceeding either in the trial court or any appeal or revision dies and the right to sue survives or a claim has to be answered, the heirs and legal representatives of the deceased party would have to be substituted and failure to do so would result in abatement of proceedings. Now, if the party to a suit dies and the abatement takes place, the suit would abate. If a party to an appeal or revision dies and either the appeal or revision abates,

it will have no impact on the judgment, decree or order against which the appeal or revision is preferred. In fact, such judgment, decree or order under appeal or revision would become final. Such is not the scheme of abatement as conceived by s. 4 of the Act. Here, if the abatement as is conceptually understood in the Code of Civil Procedure is imported, it will do irreparable harm. To illustrate, if an appeal abates rendering either the trial court judgment or the judgment in first appeal final and binding, the consolidation authorities would also be bound by it and the party whose appeal or revision abated would lose its chance of persuading the appellate or revisional authority to accept its case which may result in interfering with or setting aside the judgment, order or decree in appeal. Such was not and could not be the intention of s. 4. This becomes manifestly clear from the proviso to clause (c) of s. 4 extracted hereinabove which shows that such abatement shall be without prejudice to the rights of the person affected to agitate the rights or interest in dispute in the suit or proceeding before the appropriate consolidation authorities under and in accordance with the provisions of the Act. No one would, therefore, stand to suffer on account of the abatement because there is a special forum carved out for adjudication of the rights which were involved in proceedings which would abate as a consequence of the notification under s. 3. If the construction as canvassed for were to be adopted it would result in irreparable harm and would be counter-productive. The consolidation work would be wholly hampered and a 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. Therefore, 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 honest as they would also abate and this would leave consolidation authority free to adjudicate the claims of title or other rights or interest in land involved in consolidation. In our opinion, therefore, the High Court was right in not only holding that the second appeal pending before it abated but also the judgment and decree of the trial court and first appellate court would stand abated along with those proceedings. We reach this conclusion on the language of ss. 3 and 4 and the scheme of the Act but the view which we are taking is also borne out by some decisions though in none of them this position was directly canvassed.

In *Ram Adhar Singh v. Ramroop Singh & Ors.*, this Court examined the effect of a provision in pari materia in a parallel statute, namely, s. 5 of the Uttar Pradesh Consolidation of Holdings Act, 1953 ('U. P. Act' for short). Section 5 provided for the consequences of a declaration of intention to prepare a scheme for consolidation of holdings made under s. 4. As the section stood prior to its amendment in 1966, it did not provide for abatement of proceedings pending in civil courts at the commencement of consolidation proceedings. By the Amending Act 21 of 1966, s. 5 was amended introducing sub-s. (2)(a) to provide for abatement of pending proceedings. This section is in pari materia with s. 4 (c) of Act. At the time of the issue of the notification an appeal by special leave was pending in this Court and a notice of motion was taken out requesting the Court to pass an order abating the appeal after taking note of sub-s. (2)(a) introduced by the Amending Act of 1966. After negating the contention challenging the constitutional validity of the Amending Act, this Court held that the suit out of which the appeal came to the Court would stand abated in view of sub-s. (2) (a) introduced in s. 5. The emphasis is that not only would the appeal pending in this Court abate but the suit as a whole abated. True it is that no contention was taken whether only the appeal would abate keeping the judgment under appeal intact or the suit as a whole would abate, but the

observation of this Court will clearly indicate that in the opinion of this Court the suit as such would abate rendering the appeal pending before this Court infructuous. This decision in Ram Adhar Singh's case supra was in terms followed in Chattar Singh & Ors. v. Thakur Prasad Singh. The appeal in Chattar Singh's case related to a suit which had a reference to a claim to the land in respect of which a notification was issued under the U.P. Act as amended by Act 21 of 1966. The notification was issued when the appeal was pending before this Court. The appellants moved for passing an order of abatement. Granting the motion, this Court held that the suit and the appeals stood abated, leaving it open to the parties to work out the rights before the appropriate authorities under the U. P. Act. Both the aforementioned decisions were noticed in Satyanarayan Prasad Sah and others v. State of Bihar and another. In that case upon the issue of a notification under s. 3 of the Act at a time when the matter was pending in the High Court an order was made under s. 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 s. 4 of the Act as being violative of Arts. 14 and 19 of the Constitution. After repelling the challenge to the vires of s. 4 this Court affirming the decisions in Ram Adhar Singh and Chattar Singh's case (supra) held that maybe 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.

Accordingly, 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.

The next contention of Shri Singh was that the High Court ought not to have nullified the decree with regard to khata no. 458 in which Brahmadeo and Deonandan Singh, defendants 7 and 5 respectively, alone were interested and the present respondents had no interest in khata no. 458. Learned counsel who appeared for the respondents conceded that the present respondents have no interest in khata no.

458. It also transpires that Brahmadeo claimed interest in khata no. 458 alleging that he had purchased the land involved in the khata from Deonandan Singh, defendant 5. The suit proceeded ex-parte against defendants 5 and 6 and Brahmadeo, defendant 7 contested the suit in respect of khata no. 458. The trial court negatived the contention of defendant 7 Brahmadeo and accepted plaintiff's title. Defendant 7 Brahmadeo along with other defendants preferred an appeal to the District Court. When the appeal was pending in the District Court, Brahmadeo, the appellant died. His legal representatives were not substituted. Since defendant 7 Brahmadeo as appellant claimed separate, specific and exclusive right to khata no. 458, on his death his legal representatives ought to



have been substituted. He was the appellant. No one was substituted on his behalf. Obviously, therefore, the appeal preferred by Brahmadeo abated. It may also be made clear that legal representatives of Brahmadeo have not preferred second appeal. Second Appeal was preferred by the present respondents who claimed interest in khata no. 459 only. Accordingly, when the appeal preferred by the present respondents abated, it only abated with reference to khata no. 459 and in no case it would have any impact on the title of present appellants which became established under a decree of the trial court which became final on the appeal of Brahmadeo having abated before the notification under s. 3, and it could not at all be dealt with by the High Court. To that extent this appeal will have to be allowed and an appropriate modification would have to be made.

Accordingly, this appeal succeeds in part. Proceedings with regard to khata no. 459 (Bhouli) in Touzi 7535, village Parsain were rightly abated by the High Court and the civil proceeding with regard to khata no. 459 as a whole would abate leaving the parties to get their rights adjudicated before the authorities under the Act. The title of the appellants declared by the trial court in respect of khata no. 458 (nakdi) has become unchallengeable at the hands of Brahmadeo or anyone claiming through him and the abatement of the second appeal will have no impact on the title of the appellants to khata no. 458. The declaration made by the trial court in respect of khata no. 458 is restored. In the circumstances of the case there will be no order as to costs.

P.B.R.

Appeals allowed in part.