

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.362 of 1983

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1. Baleshwar Jha son of Bhubaneshwar Jha,
2. Mosst. Radhika Devi widow of Parmanand Jha deceased.
2A. Jitendra Jha (Major) son of late Parmanad Jha, through his legal guardian
Mother Mosst. Radhika Dev.
3. Tarni Devi.
4. Sadanad Jha.
5. Nityanand Jha.
6. Jai Prakash Jha.
7. Bhubnand Jha, all sons of late Bhubneshwar Jha residents of village Brain P.S.
Sahkund Distt. Bhgalpur.(through their legal representatives)
..... Plaintiffs/appellants.
.... Appellant/s

Versus

1. Kamla Kant Jha son of Late Jogedra Jha R/O Mohalla Sikandrapur, P.S.
Mojahidpur, Distt-Bhagalpur.
..... Defendant 1st Party....Respondent
2. Shamshul Jang Khan son of Tolowar Jang.
3. Sk. Yasin son of Sk. Nijabat alias Panchu both of village Juakhar PS Sahkund
Distt-Bhagalpur.
4. Md. Narain Singh son of Sri Tribeni Singh,
5. Narendra Kumar Singh son of Sahdeo Singh,
6. Sri Jageshwar Singh son of Sahdeo Singh all residents of Village-Bakchapper,
PS, Sahkund, Distt-Bhagalpur....Defendants.....2nd Party... Respondent.
7. Bibi Zamila Khatoon d/o Dokhtar Abdul Kalim R/O Village, Gram Jumakhar,
PS. Shahkund, Distt, Bhagalpur.
8. Jamal Jung Khan,
9. Kalim Jung Khan son of Alim Jung Khan, R/O Village, Gram Jumakhar, PS.
Shahkund, Distt, Bhagalpur.
..... Respondent/s

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Appearance :

For the Appellant/s : MR. TARA NATH JHA, ADVOCATE
MR. MAHENDRA PRATAP SINGH-1
For the Respondent/s : MR. D.P. SHARMA, ADVOCATE
MR. SATYENDRA KR. SINHA, ADVOCATE

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 14-10-2015

Plaintiffs/appellants have preferred instant appeal
against judgment dated 29.01.1983, decree dated 15.02.1983 passed

by 5th Additional Subordinate Judge, Bhagalpur in Title Suit No. 55/1981/69/1982 dismissing the suit on contest with cost.

2. Asking for declaration of plaintiffs being *Bataidar Raiyat* of the suit land having occupancy right therein, cost of the suit, any other relief or reliefs the plaintiffs are found entitled for and for that, pleaded that Most. Chulho wife of Sonu Mandal was the original owner of the land detailed under Schedule-1 of the plaint. At the instance of Matru Jha, grandfather of the plaintiffs, Rajnath Mishra entered into negotiations with aforesaid Most. Chulho and after finalization of the negotiations, 5.79 Acres of land of village, Berain were purchased by the aforesaid Rajnath Mishra who was none else than *Mausera* brother of father of the plaintiffs. That out of 5.79 Acres 3.01 Acres happened to be *Bhauri* while 2.78 Acres was *Nakadi*. Soon after purchase of land, Matru Jha was inducted as an occupancy tenant at the end Rajnath Mishra and he continued with his status till his life time succeeded by father and uncle of the plaintiffs after whose death, the plaintiffs are exercising such right without any hurdle.

3. In likewise manner, Rajnath Mishra during his life time acknowledged the same and after his death, his wife Dayawati acknowledged the same. Good relationship amongst both the parties prevailed whereupon occasionally, Rajnath Mishra, during



his life time and after his death Dayawati, his widow visited the place of the plaintiffs for the purpose of collection of half share of the yield. It has also been disclosed that on account thereof, plaintiffs' presence over the land happens to be since long by way of succession without any hitch and hindrance. During intervening period, some portions of the land were sold by Dayawati in favour of uncle of plaintiffs and for that plaintiffs have been duly compensated and excluding the same, now the plaintiffs are exercising their right over 4.77 ½ acres of land, duly detailed under schedule II of the plaint. It has also been asserted that during survey operation, plaintiffs desired to have their appearance in the Khatian as Bataidar, but on an assurance as well as considering *bona fide* in their conduct, plaintiffs did not pursue the matter.

4. In due course of time, as has been pleaded, Kamla Kant Jha, Defendant no.1 who happens to be Bhagina of Rajnath Mishra emerged and began to take care of. Subsequently, he developed mischievous activities by causing hindrance in the peaceful possession of the plaintiffs and further, there happens to be a rumour floated in and around that in order to deprive of the status of the plaintiffs, is going to sell the land and for that negotiations with different persons has been taken up. Whereupon necessitated for filing of instant suit which has been filed after fulfilling the necessary

requirement such as divulging the cause of action and court-fee etc.

5. At an initial stage only, Kamla Kant Jha was arrayed as sole defendant though later on by amendment, others have also been dragged as defendant 2nd party, however, WS is available on L.C record on behalf Kamla Kant Jha only. Apart from, raising ornamental objections, the status of the plaintiffs have been denied out-rightly. In the same breath, the inter se relationship. The assertion, the averments, claims as well as reliefs so sought for, have been controverted and further, it has been pleaded that the plaintiffs with an ulterior motive have raised such plea to grab the land which has got no basis and foundation.

6. To support such plea, it has been contented that Rajnath Mishra had taken settlement from Raj Banauli vide registered deed of *Kabuliat* dated 10.09.1911 along with other plots lying at different villages covering vast area 10 Bigha, 15 Kattha & 8 Dhurs and independently, began to look after the same. It has also been disclosed that after death of Rajnath Mishra, Dayawati began to look after and the defendant being Bhagina was invited in order to look after and further, in due course of time, Dayawati executed deed of gift on 13.08.1959 in his favour with respect to total area of 10 Acres and since then, the land is coming under exclusive peaceful possession of defendant without any hitch and hindrance from any

corner. His name has been mutated. Khatiyani has also been prepared in his name

7. It has also been disclosed that he had sold 43 decimal of land in favour of Arjun Mandal on 12.02.1972, 1 Bigha in favour of Arjun Mandal & others on 22.04.1977, 16 decimal in favour of Ram Baran on 03.05.1976 and the purchasers are enjoying their status without any sort of interference from any corner.

8. Then it has been submitted that as there happens to be complete absence of *inter se* relationship as *Raiyat* and under-*Raiyat*. Furthermore, it has been submitted that the plaintiffs at an earlier occasion looted away the standing crop from certain area of land having in his possession for which they were prosecuted however, acquitted on technical ground. It has also been pleaded that under B.T. Act, specific provision has been laid down for declaration of right of *under-raiyat*, but instead of choosing the aforesaid mandatory provision, filed the instant suit, on account thereof, there has been prayer to dismiss the suit.

9. The learned lower court after going through counter pleadings has framed the following issues:-

1. Whether the suit as framed is maintainable?
2. Whether the plaintiffs have got any cause of action for the suit?
3. Whether the suit is bad for defect of parties?

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4. Whether the suit is hit by Section 34 of the Specific Relief Act?
 5. Whether the suit is barred under Section 48E of the B.T. Act?
 6. Whether the plaintiffs are *bataidar-raiyats* of the suit land having occupancy right therein?
 7. Whether the plaintiffs are entitled to the reliefs claimed or any other reliefs?

10. The learned lower court decided the issues nos. 5 and 6 against the plaintiffs/appellants on account thereof, other issues were also decided in same way ultimately, dismissing the suit, hence this appeal.

11. Learned counsel for the plaintiffs/appellants, while assailing the judgment and decree impugned has submitted that the same has been passed in cryptic and perfunctory manner without appreciating the material available on the record, hence is fit to be set aside.

12. It has further been stated that status of occupancy *Raiyat* is not independently identifiable rather is identifiable through the *Raiyat* and the aforesaid sequence is found in accordance with Section 48 of the Bihar Tenancy Act (hereinafter referred to as 'the Act'). Section 48 has been bifurcated under different sub-heads which goes up to 'F' identifying and commanding

the stage up to maintaining the appeal, which, for the present is not relevant save and except recognition of appellant being as *under-Raiyat* and for that the only criteria in terms of Section 48C happens to be continuous possession for 12 years.

13. It has further been submitted that from the oral evidence, the plaintiffs/appellants led consistent reliable evidence with regard to their presence over the land under dispute for the last so many 12 years coupled with documentary evidence which, the learned lower court discarded only on the ground that judgment of a criminal court was not competent enough for consideration in a civil suit. On this score, it has been submitted that there happens to be wrong appreciation of law at the end of learned lower court because of the fact that criminal court certainly did not confer in order to keep a document relating to title but has got corroborative value in proving possession over the land. Defendant/Respondent No.1, had himself launched criminal proceeding with regard to theft of crops from the land under dispute by the plaintiffs/appellants which ultimately resulted acquittal in the background of the fact that possession of plaintiff/appellant was found over the land under dispute which, certainly, surfaced during cross-examination of the prosecution and so, it should have been considered by the learned lower court along with oral evidence to conclude possession of plaintiffs/appellants over

the land. That being so, presence of plaintiffs/appellants is found conclusively proved over the land under dispute and no other alternative theory is recognizable, permissible to defeat interest of plaintiffs/appellants. Therefore, the plea of plaintiffs/appellants being under-*Raiyat* should have been accepted as being duly substantiated.

14. It has also been submitted that the learned lower court under wrong notion made a threadbare scrutiny of the assertion regarding origin of land irrespective of the fact that presence of Rajnath Mishra and after his death, Dayawati Devi had not been denied and that being so, the learned lower court should have considered truthfulness in the version of the plaintiffs/appellants and further, should have considered that there was an occasion for the plaintiff/appellant to be inducted as under-*Raiyat* through their ancestor which they continued and are over the land under such capacity. As such, the learned lower court in illegal way corrode the plea of the plaintiffs/appellants and dismissed the suit.

15. While refuting the submission made on behalf of plaintiff/appellant, it has been submitted on behalf of defendant/respondent that judgment and decree passed by the learned lower court is legal, just and proper. It has further been submitted that plaintiffs/appellants had asserted that at the instance of his grandfather Matru Jha, Rajnath Mishra had purchased the land from Most. Chulho



and that happens to be the basis for induction of Matru Jha as under *Raiyat* by the aforesaid Rajnath Mishra which has been inherited by the plaintiff in due course of succession, has been found completely washed away on account of a definite case supported by exhibit, that the land under dispute along with others were taken up by Raj Banauli vide registered deed of *Kabuliat* dated 10.09.1911 and on account thereof, the source is found completely smashed. The plaintiffs/appellants, in case, would have found truthfulness in their assertion, must have taken recourse in getting the certified copy of the registered document, if any, would have confronted the defendant/respondent, prayed for production of document by Dayawati got it exhibited, contrary to it, kept mum whereupon, an adverse inference has to be drawn up in the background of the fact that nature of the suit happens to be declaratory whereunder burden lies upon the plaintiff to prove its case.

16. Apart from this, it has also been submitted that learned lower court had considered the evidence adduce on behalf of respective parties and had weighed the same in proper way, ultimately concluding dismissal of the suit. Hence, needs no interference.

17. After hearing the rival parties as well as going through the respective pleadings, the following points are formulated for just decision of appeal :-

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1. Is the suit as framed is maintainable?
 2. Whether the plaintiffs have got any valid cause of action or right to sue?
 3. Whether the suit is bad for non joinder of the necessary party?
 4. Whether the plaintiffs are entitled for relief as sought for?
 5. What other relief or reliefs the plaintiffs are entitled for?

18. Before coming to the points so formulated, from the lower court record, it is apparent that on behalf of plaintiffs/appellants altogether eight PWs have been examined out of whom PW-1, Basant Mandal, PW-2, Jharkhandi Mandal, PW-3, Shibani Rai, PW-4, Baleshwar Jha, PW-5, Nityanand Jha, PW-6, Sahdeo Mandal, PW-7, Chhatarni Mandal, PW-8, Mohan Das. Defendant/respondents have also examined altogether ten DWs out of whom DW-1, Kuldip Narayan Tiwari, DW-2, Umesh Chandra Choubey, DW-3, Jageshwar Mandal, DW-4, Arjun Mandal, DW-5, Sheikh Alauddin, DW-6, Tarni Mandal, DW-7, Sudhin Chandra Das, DW-8, Sheikh Jarif Ali, DW-9, Anirudh Rai @ Mako Rai and DW-10, Kamla Kant Jha.

19. Side by side, the respective parties have also exhibited documentary evidence. On behalf of plaintiffs/appellants, Ext-1 Notice under B.T. Act 103, Ext-1/A, Signature of V. Rai, Ext-2, Order

sheet of 103 B.T. Act, Ext-3, *Izhar* of Kamlakant Jha, Ext-4, Judgment, Ext-5 series, two Khatians, Ext-4/A, Judgment, Ext-3/A, *Izhar* of Chandu Mandal, Ext-3/B, *Izhar* of Bhola Mandal, Ext-4/B, Judgment, Ext-2A, order sheet, Ext-4C, Order.

20. On behalf of defendant/respondent Ext-A, *Dastawez*, (daan-patra), Ext-B, Malgujari Rashid, (Basuki Mishra), Ext-B/1, Malgujari Rashid, (Jageshwar Jha), Ext-B/2 to B/6, 5 Malgujari Rashid, (Arjun Singh), Ext-C to C/3, 4 Chaukidari Rashid, Ext-C-4, 1 chaukdari Rashid, Ext-D to D/1, 2 *Kewalas* of Arjun Mandal, Kamla Kant Jha, Ext-E, *Kewala* (30 years old), Ext-F to F/1, Two *Khatians*.

21. After going through the record as well as hearing the parties, the intricacies persisting compels to consider points no.1 3 and 4 conjointly and accordingly are discussed in same manner.

22. Plaintiffs/appellants have asked for declaration to the effect that they be held under tenant which is found identifiable under the Bihar Tenancy Act. When the plaintiffs/appellants have opted to exercise their rights as provided under Special Act then, in that event, the mandate, on that very score, so prescribed under the Act is to be followed in its strict sense otherwise there would be some sort of constrain in acknowledging such right.

23. Presence of under-*Raiyat* will be always under a *Raiyat*. From the plaint, it is apparent that plaintiffs/appellants had



identified Rajnath Mishra and after his death, Dayavati to be the land owner. Kamla Kant Jha, though, has been disclosed to be Bhagina and whose presence has been brought up as mischief monger but, has not been identified to be *Raiyat* with regard to the lands so detailed under the schedule. Surprisingly, neither Rajnath Mishra (since deceased) nor Dayavati nor their siblings have been made party. When *Raiyat* has not been pleaded, then in that event, it is strange enough to imagine the concept of under tenancy. Mere impleading Kamla Kant Jha is not going to serve the purpose because of the fact that neither he has been identified as a *Raiyat* nor the title holder.

24. Though, Kamla Kant Jha had specifically pleaded that by virtue of deed of gift executed in the year 1959 by Dayavati, he became absolute owner of the property so detailed under the schedule, even then, no amendment has been made in plaint to identify Kamla Kant Jha to be the *Raiyat* of the land. Furthermore, the plaint deals with presence of Rajnath Mishra as well as Dayavati and further identified the status of Dayavati to be widow, on account of death of Rajnath Mishra, as owner of the land and since thereafter, is silent which clearly indicate that at the time of filing of suit, Dayavati was there being a widow as owner of the land. As indicated above, right of the plaintiffs/appellants happens to be isagogic with Section 43 of the B.T. Act. However, Section 43 of the B.T. Act imposes certain

conditions before acknowledgment of right.

25. For better appreciation, Section 48C of the Act is incorporated hereinbelow:-

48C. Acquisition of right of occupancy by under-raiyats.— Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938), has continuously held land as an under-raiyat in any village, whether under a lease or otherwise, shall be deemed to have acquired, on the expiration of the that period a right of occupancy in the land which he has so held for the said period:

[Provided that an under-raiyat shall not, irrespective of the duration of his holding any land as an under –raiyat acquire any right of occupancy—

(i) in such area of the land to be selected and declared by his landlord in the prescribed manner as together with the area of land already held by the landlord under his cultivation does not exceed the following limits, namely:--

(a) five acres of land irrigated by flow irrigation work, lift irrigation work or tube well owned, constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law or by tube well owned or maintained by the landlord or;

(b) ten acres of other land; or

(ii) in the land within the ceiling area fixed by law of a landlord who is a widow or a person suffering from blindness, leprosy or paralysis or is a person of unsound mind or a person on the service of the Army, Navy or Air Force of the Union of India during the period the landlord remain a widow or suffers from blindness, leprosy or paralysis or remains of unsound mind or remain in the service of the Army, Navy or Air Force of the Union of India.

Explanation 1.— x x x x x

Explanation 2.— For the purpose of this section one acre of land mentioned in clause (i) (a) shall be deemed to be equivalent to two acres of land mentioned in clause (i) (b).

Explanation 3.— x x x x x

26. In the case of *Awadh Rai & Ors. v. The State of Bihar & Ors.* as reported in *1990 BBCJ 181* at para-20, it has been held:-

20. According to this provision, an under-raiyat gets a right of occupancy in the land which he has held for the prescribed period, subject to the restrictions laid down under Clauses (a) and (b) of sub-sections (i) and (ii) of the proviso to section 48 C of the B.T. Act. If the land, held by the landlord under his cultivation, does not exceed five acres of irrigated land or ten acres of other land or in certain other circumstances as mentioned in the proviso to section 48 C of the B.T. Act, an under-raiyat does not get a right of occupancy irrespective of the period, for which he holds the land in that capacity.

27. As indicated in forgoing paragraphs, it is apparent that plaintiffs/appellants have failed to frame the suit properly as well as also failed to implead necessary party who happens to be Dayavati Devi and even then, considering the status of Dayavati to be a widow on the date of institution of the suit, claim of under tenancy against her is found forbidden in accordance with Section 48C of the Act. From the conduct of plaintiffs/appellants, it is evident that they intentionally left Dayawati to be impleaded as defendant, as on that score suit would not be maintainable. Furthermore, other requirement regarding holding of land by the *raiyat* has also not been disclosed.

28. Apart from this, keeping silence with regard to status of

Kamla Kant Jha, at an initial stage of suit, even after filing of WS by Kamla Kant Jha claiming to be owner of the land, which he acquired by dint of gift executed by Dayavati. Plaintiffs/appellants failed to amend the plaint recognizing his status to be *raiyat*. It is apparent from the conduct of plaintiffs/appellants, they were very much confused on that score, and that being so, instant suit suffers from inherent lacuna making the suit defective one, and these points are accordingly, decided against the plaintiffs/appellants. The remaining points are also held so against the plaintiffs/appellants.

29. Because of the fact that the suit, on its face, did not concur its longevity, on account thereof, the present appeal is found devoid of merit. The same is, accordingly, dismissed. However, in the facts and circumstances of the case, parties will bear their own cost.

(Aditya Kumar Trivedi, J)

Patna High Court
October 14th 2015
Perwez/AFR

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