

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.667 of 2011

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1. Bilo Mahto Son of Late Nepali Mahto Resident Of Village- Mor, P.S. Mokama, District- Patna
2. Murari Mahto Son of Late Raj Kumar Mahto Resident Of Village- Mor, P.S. Mokama, District- Patna
3. Chandan Mahto @ Chandan Kumar Son of Late Raj Kumar Mahto Resident Of Village- Mor, P.S. Mokama, District- Patna
4. Bittu Mahto Son of Late Shrawan Mahto Resident Of Village- Mor, P.S. Mokama, District- Patna
5. Pinto Mahto Son of Late Shrawan Mahto Resident Of Village- Mor, P.S. Mokama, District- Patna
6. Mantu Mahto Son of Late Shrawan Mahto Resident Of Village- Mor, P.S. Mokama, District- Patna **-Defendants/Appellants-Appellants.**

Versus

1. Sri Narayan Thakur Son of Late Sheetal Thakur Resident Of Village- Mor, P.S. Mokama, District- Patna
2. Ashok Thakur Son of Sri Narayan Thakur Resident Of Village- Mor, P.S. Mokama, District- Patna **-Plaintiffs/Respondents/Respondents 1st set.**
3. Circle Officer, Mokama, Post And P.S.- Mokama, District- Patna.
4. Banti Mahto Son of Late Lalu Mahto Resident Of Village- Mor, P.S. Mokama, District- Patna
5. a. Rekha Devi, Wife of Late Balaram Mahto.
b. Manisha Kumar Minor daughter.
c. Amisha Kumari Minor daughter.
d. Khusbu kumari Minor daughter.
e. Sachin Kumar Minor son.

All minors son and daughters under the guardianship of the mother being natural guardian, Smt Rekha Devi.

All residents of village –Mor, P.S.- Mokama, District-Patna.

6. Madan Mahto Son of Bonit Mahto Resident Of Village- Mor, P.S. Mokama, District- Patna
7. Dharo Mahto Son of Bonit Mahto Resident Of Village- Mor, P.S. Mokama, District- Patna **-Defendants/Respondents/Respondents 2nd set.**
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Appearance :

For the Appellant/s : Mr. Ajay Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

15 19-02-2015

Heard Mr J.S.Arora, the learned counsel
appearing on behalf of the appellants.

The defendants are the appellants in this appeal
against the judgment and decree of affirmance. The suit was filed
by the plaintiff for declaration of title over the suit land and for
further declaration that the defendants had no concern with the suit
land. Both the courts below have decreed the suit after recording
concurrent finding of fact that the plaintiff has got title over the
suit land.

Mr Arora, the learned counsel appearing for the
appellants has submitted that both the courts below have erred in
law in discarding the Basgit Purcha given to the defendant-
appellant for the suit land when there was no relief sought in that
regard. It has also been argued that Section 18 of the Bihar
Privileged Persons Homestead Tenancy Act, 1947 bars the
jurisdiction of the court to entertain a suit with regard to the orders
passed under the Act except on ground of fraud or want of
jurisdiction. Elaborating his submissions the learned counsel has
pointed out that the fact regarding grant of Purcha to the defendant
for a part of the suit land has been brought on record and the



certified copy of the Purcha has also been adduced in evidence as Exts.C and C/1 and the rent receipts granted in pursuance thereto as Ext.A. It has also been further submitted by the learned counsel that both the courts below have wrongly recorded the findings of title and possession over the suit land in favour of the plaintiff ignoring the material evidence and misconstruing the depositions. The learned counsel for the appellants has also pointed out that the plaintiff has accepted that the house standing over the suit land had fallen down and the land was Parti but some of the witnesses of the plaintiff have deposed that there is a Pucca house standing over the suit land. The learned counsel, therefore, has submitted that both the courts below have committed jurisdictional error in invalidating the Purcha granted to the defendant even when there was no issue in that regard and the further findings on title and possession are also vitiated for non-consideration of material evidence.

After perusal of the impugned judgments and considering the submissions, it is limpid that the plaintiff has filed the suit in the year 2004 claiming the suit land by inheritance. In the survey khatian, the suit land has been recorded in possession of the predecessor of the plaintiff. The Purcha under the provisions of Bihar Privileged Persons Homestead Tenancy Act, 1947 has admittedly been granted during the pendency of the suit. The trial

court has also noticed that the defendant has accepted to have applied for the Purga during the pendency of the suit. In view of this fact the submission on behalf of the appellants that the jurisdiction of the court stands ousted because of grant of Purga is clearly misconceived. Admittedly the Purga has been granted during the pendency of the suit and even when the plaintiff has not amended the plaint, the well settled principle is that the rights of the parties stand crystallized on the date of filing of the suit. Besides the courts below have also taken into notice the orders passed in rent fixation case and grant of rent receipt by the State of Bihar in favour of the plaintiff with regard to the suit land. The claim of the defendant that the suit land was settled with them by the ex-landlord also stand belied when the defendant has claimed to have obtained Purga. From the perusal of the findings of both the courts below, it is manifest that the findings have been recorded on appreciation of evidence of the parties. This Court has not been persuaded to find perversity in any manner in the findings by the courts below.

In this view of the matter, I do not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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