

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Second Appeal No.174 of 2014

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1. Jay Prakash Prasad  
2. Mahamaya Prasad  
3. Ram Kripal Prasad All the three are sons of Late Jagarnath Prasad  
4. Lalita Devi alias Lalita Kuar wife of Late Jagarnath Prasad All are resident of village - Gadar, P.S. - Andar, District - Siwan. .... Appellants  
Versus

1. Md. Hasanain  
2. Kamar Jama  
3. Hasan Deen alias Husainee Deen all are sons of Rasul Miyan resident of village - Gadar, P.S. - Andar, District - Siwan.  
4. Samaida Khatoon alias Saida Khatoon wife of Abid Hussain resident of village - Atarswa, P.S. - Pachrukhi, District - Siwan.  
5. Haseena Khatoon wife of Alam Miyan resident of village - Pakari, P.S. - Siwan Muffasil, District - Siwan.  
6. Noorjahan Khatoon wife of Md. Tariq Husain resident of village - Ramapali, P.S. Siwan Muffasil, District - Siwan.  
7. Khushboo Jahan wife of Khush Mohammad resident of village - Alarpur, P.S. Tarawara, District - Siwan.  
8. Najama Khatoon daughter of Ishaque Miyan  
9. Kayum Ansari son of Ishaque Miyan  
10. Md. Ansari son of Ishaque Miyan  
11. Khaliban Miyan daughter of Hasanain  
12. Md. Ashakh Mian, Son of Late Sadam Mian, R/o Village-Garar, P.O.- Hussainganj, P.S.-Ander, District-Siwan.  
13. Rehana Begum daughter of Ishaque Miyan  
14. Sultana Begum daughter of Ishaque Miyan  
15. Haddim Hussain son of Md. Mohammad Miyan  
16. Baby Fatima alias Bibi Fatima wife of Sahabuddin Miyan  
17. Badaruddin Ahmad son of Sahabuddin Miyan  
18. Noor Saheli daughter of Shahbuddin Miyan  
19. Kutubuddin son of Rudal Miyan  
20. Hedadtad Tulha alias Hiyatullah Miyan son of Sohabad Miyan,  
20.(a) Ladala Miyan alias Ladale Miyan son of Sohabad Miyan.  
(b)Madina Khatoon wife of Sohabat Miyan All from 8 to 20 are resident of village - Gadar, P.S. - Andar, District - Siwan.  
21. Vijay Laxmi Devi wife of Vrinda Nand Sah resident of village - Chitragupta Nagar, Siwan.  
22. Indu Devi wife of Rama Shah resident of village - Dareli Mathiya, P.O. - Done, P.S. - Darauli, District - Siwan.  
23. Anshu Devi wife of Dilip Kumar resident of village - Pachlakhi P.O. - Pachlakhi, P.S. - Siwan Muffasil, District - Siwan.  
24. Nayantara alias Nanyantara Devi wife of Suresh Prasad resident of village - Goparpur, P.O. - Bakarganj, P.S. - Husainganj, District - Siwan.  
25. Vimal Shah son of Rajendra Shah  
26. Guddu Shah daughter of Rajendra Shah  
27. Anita Devi daughter of Rajendra Shah  
28. Nitu Devi daughter of Rajendra Shah  
29. Sanju Devi daughter of Rajendra Shah  
30. Shanti Devi wife of Rajendra Shah



31. Harendra Shah son of Sakichand Shah
32. Yogendra Shah son of Sakhichand Shah from 25 to 32 are residents of village - Gadar, P.S. - Andar, District - Siwan.
33. Sumitra Devi wife of Raghuveer Shah resident of village - Hasanpurwa, P.S. - Andar, District - Siwan.
34. Lalmuni Devi wife of Tarkeshwar Shah resident of village - Rajpur, P.S. - Raghunathpur, District - Siwan.
35. Chandi Devi wife of Janardan Shah
36. Jamadar Shahi son of Ramji Shahi
37. Swaminath Shah son of Thakur Mallah
38. Jaychand Shah son of Bhagirath Shah
39. Sudarshan Shah son of Bhagirath Shah from 35 to 39 are resident of village - Gadar, P.S. - Andar, District - Siwan.
40. Chandrawati Devi, D/o Jagarnath Prasad, w/o Daya Shankar Prasad Vill Hasanpura, P.S. - Ander, Distt. Siwan.
41. Urmila Devi wife of Dhruv Shah
42. Usha Devi wife of Jay Prakash Sah Both are resident of Village - Chatara, Soonsari, District - Nepal. .... Respondents

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**Appearance :**

For the Appellant/s : Mr. Udit Narayan Singh  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 01-05-2017**

Heard Mr.Uday Narayan Singh, learned  
counsel appearing for the appellants.

The plaintiffs are the appellants in this appeal  
against the judgment and decree of affirmance dismissing the suit.

The appellants filed the suit in the  
representative capacity as representatives of the villagers for  
declaration that the suit land was in the use of the villagers and had  
been recorded as “Gadha” in the survey khatin and the defendants had  
acquired no title over the said land on the basis of the settlement.

The plaintiffs filed the suit purportedly under  
Order 1 Rule 8 C.P.C. in the representative capacity of the villagers.



However, from the judgments of both the courts below, it does not appear that the procedure prescribed under Order 1 Rule 8 C.P.C. for maintaining such a suit was followed. The trial court recorded the finding that since the suit was admitted for hearing therefore it would be presumed that the permission under Order 1 Rule 8 C.P.C. was allowed. However, the appellate court below in paragraph-9 of the impugned judgment has come to the categorical finding that the suit was admitted without following the procedure prescribed under Order 1 Rule 8 C.P.C granting permission to the plaintiffs for instituting the suit.

Both the courts below have also come to the concurrent finding of fact that the plaintiffs have failed to establish by cogent and convincing evidence that the suit property is a public land in use of the public at large. It also transpires from the judgments of both the courts below that though the plaintiff's case was that the Hukumnama in favour of the defendants for the suit land was a forged and fabricated document, no evidence has been adduced on behalf of the plaintiffs to establish the said fact.

Mr. Singh, learned counsel appearing for the appellants has submitted that even after accepting the said Hukumnama to be genuine document, the fact is accepted that no return was filed by the ex-landlord in the name of the defendants and the fact of non-filing of the return therefore reflects upon the



genuineness of Hukumnama. The learned counsel has relied upon the decision in the case of *Basudeo Yadav Vs.The State of Bihar, 2013 (3)PLJR 298* and also in the case of *Nagina Devi Vs.The State of Bihar , 2002 (2) PLJR 733* in support of the said submission. The perusal of these decisions however demonstrates that the same have been rendered in different setting of facts and it has no where been laid down therein that non-filing of the return by the ex-landlord in the name of the settlee would by itself invalidate the settlement. The learned counsel for the appellants has further placed the portions of the impugned judgment to persuade the Court to take the view that the findings of fact have been erroneously recorded ignoring the material evidence. This Court, however, comes to the conclusion that the findings by both the courts below have been recorded on the basis of evidence which were acceptable and could have been relied upon.

In the ultimate eventuate, this Court holds that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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