

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.290 of 2007

1. Sk.Safur
2. Sk.Safique
3. Sk. Siddique
4. SkHasib
5. Sk. Fakir, all sons of Sk. Samsul, resident of Mauja-Machela, police station, Jokiahat, District Araria.

... ..Defendants/Appellants

Versus

1. Sk. Salimuddin, son of Sk. Khantar, resident of Mauja-Machela, Police Station-Jokiahat, District Araria
2. Sk. Ajimuddin, son of Sk. Najbul, resident of Mauja-Machela, police station, Jokiahat, District Araria.
3. Sk. Ilias
4. Sk. Saiyad
5. Bibi Mamun Nisan
6. Sk. Wahab
7. Bibi Hazra, respondents 3 to 7 are the sons and daughters of Late Sk. Kaimu, Mauja-Machela, police station, Jokiahat, District Araria.
8. Md. Afique
9. Bibi Samsin, minor son and daughter of Md. Taslim, father and natural guardian, resident of Mauja-Machela, police station, Jokiahat, District Araria.

... ..Plaintiffs/ Respondents

Appearance :

For the Appellant/s : Mr. Choudhary Shyam Nandan
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 03-05-2018

This appeal has been placed for hearing under
Order XLI Rule 11 of the Code of Civil Procedure, 1908.

2. Heard Mr. Chodhary Shyam Nandan, learned
counsel for the appellants.

3. The appellants are aggrieved by judgment and
decree dated 12.09.2007, passed in Title Appeal No.66/97 by



the learned Additional District Judge, Fast Track Court No.II, Araria, whereby he has affirmed the judgment and decree dated 29.05.1997, passed in title Suit No. 91/81 in favour of the plaintiff/respondent no.1.

4. The title suit was filed by respondent no. 1 for declaring two sale deeds, both dated 30.12.1978, executed by defendant nos. 1 to 6 (vendors) in favour of defendant nos. 7 to 12 as illegal and inoperative and not binding upon the plaintiff. There does not appear to be any dispute that the plaintiff (respondent no.1) had *Raiyati* right over the suit land. One Sk. Kaimu (since deceased) was admittedly recorded as *Sikmidar* in respect of the disputed land. The defendant nos.7 to 12, through the two sale deeds dated 30.12.1978, claimed to have purchased the *Sikmi* right, in respect of the suit land from the heirs of Sk. Kaimu. Mainly on the plea that the *Sikmi* rights were neither heritable nor transferable, the said suit was filed seeking declaration that the said two sale deeds dated 10.12.1978, were illegal and inoperative, not binding on the plaintiff. The appellants/contesting defendants justifying the transfer of *Sikmi* right through the sale deeds dated 30.12.1978, pleaded that, as per the custom and usage in the locality, the *Sikmi*



right could be transferred. The learned trial court, on the basis of the pleadings on record, framed six issues including issue nos. 3 and 4 as follows:-

“3. Whether the *Sikmi* rights are transferable?

4. Whether there is any custom and usage in the said region for permitting the transfer of *Sikmi* right?”

5. The learned trial court, upon considering the evidence adduced on behalf of the parties, in the background of their pleading, concluded that the *Sikmi* right could not have been transferred by the heirs of the original *Sikmidar* Sk. Kaimu by the said two registered sale deeds, since there was no accepted custom or usage in the area, in question, which would have permitted such transfer. The trial court accordingly held the said two sale deeds to be illegal and inoperative and, thus, decreed the suit in favour of the plaintiff.

6. When the matter came up before the first appellate court, at the instance of the appellants, the first appellate court re-appreciated the evidence and considered various decisions of this Court including; **1963 BLJR 90(Munilal Mandal Vs. Babuji Mandal)**, **1981 BBCJ 466**



(Bibi Jaloosan Vs. Bhulai Baitha), ILR 1927, Patna 194 (Shrikishun Vs. Harihar) and 2002 (4) PLJR 31 (Md. Yunus Vs. Moinuddin) and concluded that the defendants/appellants failed to prove the existence of custom, even in the evidence adduced on their behalf. The appellate court below after having recorded thus, dismissed the appeal by the impugned judgment and decree dated 12.09.2007, which is being appealed in the present proceeding.

7. Assailing the impugned judgment and decree, passed by the courts below, learned counsel, appearing on behalf of the appellants, submits that the courts below have wrongly held that the *Sikmi* rights were non-transferable, overlooking the settled legal position that, as per the custom and usage prevalent in the area, *Sikmi* right could be transferred. He has submitted that it was specifically pleaded on behalf of the appellants before the courts below that there existed custom and usage in the area which acknowledged the practice of transfer of under-raiyati right/*Sikmi* right, which aspect has not been taken into account, duly by the courts below. He has placed reliance on the following three decisions of this Court:-

“1. 1963 BLJR 90 (Munilal Mandal Vs. Babuji Mandal).



2. **1995 (1) BLJ 32 (Bhola Mishra & others Vs. State of Bihar and others).**

3. **2010 (3) PLJR 27(Balbhadra Prasad Singh and others Vs. The State of Bihar and others).’’**

8. According to him, the present second appeal involves a substantial question of law as to whether the *Sikmi* rights are transferable if the custom and usage of the area permits such transfer.

9. Leaned counsel, appearing on behalf of the appellants, is absolutely correct in his submission, with the aid of the decisions of this Court, as noted above that the *sikmi* right can be transferred if the custom and usage existing in the area so permit.

10. In case of **Bhola Mishra** (supra), a Division Bench of this Court clearly held in paragraph 23 as follows:-

“It may also be mentioned that the general rule that the under-raiyati interest are not transferable or heritable is subject to the exception of existence of the custom of the country. If there exists a custom in terms whereof and under-raiyati interest also becomes transferable or heritable, the petitioners must be



deemed to have acquired availed interest.”

11. The said Division Bench decision in the case of **Bhola Mishra** (supra) has been followed in the subsequent Division Bench decision in case of **Balbhadra Prasad Singh and others vs. The State of Bihar and others**, paragraph 5 of which reads thus:-

“In writ jurisdiction we have to confine ourselves to the facts as found by the authorities under the Act unless it could be shown that their findings in respect of facts were perverse and without any material. In this case, there is no such plea that any finding of fact is perverse. Hence, we are required only to answer the issues of law raised before this Court. Learned counsel for the petitioners has raised the issue of inheritance or succession in respect of right of under-raiyat and has placed reliance upon the Division Bench judgment of this Court in the case of **B.Mishra Vs. State of Bihar 1995(1) BLJ 32** in support of his contention that under-Raiyati interest is neither transferable nor inheritable. For this he drew our attention to the observations made in para 23 of the judgment wherein it has been observed as follows:-

“It may also be mentioned that the general rule that the under-raiyati interest are not transferable or heritable



is subject to the exception of existence of the custom of the contrary. If there exists a customs in terms whereof and under-raiyati interest also becomes transferable or heritable, the petitioners must be deemed to have acquired availed interest.”

12. Upon going through the findings recorded by the courts below, I find that decisions, noted above, do not support the appellants’ case in the background of a clear finding recorded by the appellate court to the following effect:-

“Moreover, the Sikmidar, Bataidar claim for the Sikmidar fails because no any chit of receipt for division of crops has been filed for which they were legally entitled and it shows that Sikmi entry in R.S.Khatian is collusive, illegal and wrong. The defendants-appellants have failed to prove the existence of custom even in the evidences.”

13. The findings so recorded by the appellate court below cannot be said to be contrary to the evidence or without any evidence. There being a clear finding that the defendants could not establish their case of existence of any custom or usage in the area, the courts below rightly decreed



the suit in favour of the plaintiff declaring the two sale deeds dated 30.12.1978 to be illegal and inoperative.

14. The second appeal does not involve any substantial question of law which would require determination by this Court and is, therefore, dismissed.

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
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