

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.241 of 2003

1. The State of Bihar, Khas Mahal through the Collector, Purnea.
2. The Circle officer, East Block, Purnea.

... .. Appellants

Versus

1. Rahul Kumar Jha, S/o Sri Mahendra Nath Jha,
2. Kunal Kumar Jha, S/o Sri Mahendra Nath Jha
by occupation cultivation, both resident of Mohalla Sri nagar Hata
Madhubani, P.S.-K.Hat, District-Purnea.

... .. Plaintiff-Respondent-Respondents

with

Second Appeal No. 242 of 2003

The State of Bihar, Khas Mahal through the Collector, Purnea.

... .. Appellant

Versus

Smt. Nandani Jha, Wife of Sri Mahendra Nath Jha by occupation cultivation-
cum-School Teacher, resident of Mohalla Srinagar Hata Madhubani, P.S.-
K.Hat, District-Purnea.

... .. Plaintiff-Respondent-Respondent

with

Second Appeal No. 248 of 2003

1. The State of Bihar.
2. The Circle officer, East Block, Purnea.

... .. Appellants

Versus

Smt. Nandani Jha, Wife of Sri Mahendra Nath Jha by occupation cultivation-
cum-School Teacher, resident of Mohalla Srinagar Hata Madhubani, P.S.-
K.Hat, District-Purnea.

... .. Plaintiff-Respondent-Respondent

Appearance :

(In all Appeals)

For the Appellant(s) : Mr. Asit Kalim, A.C. to AAG-12

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 23-08-2018

Heard learned counsel for the appellants.



2. Since these three Second Appeals arise out of common judgment and decree passed by the learned 1st Additional District Judge, Purnea, in Title Appeals No. 40/2000, 41/2000 and 42/2000, these appeals have been heard together and are being disposed of by present common judgment and decree.

3. The State of Bihar is in appeal against the judgment and decree dated 08.12.1999 passed by the learned 1st appellate court below in the aforesaid title appeals No. 40/2000, 41/2000 and 42/2000, whereby the appeals preferred on behalf of the State of Bihar have been dismissed affirming the judgment and decree passed by learned 3rd Additional Munsif, Purnea, dated 08.12.1999 passed in Title Suits No. 1097/92, 1098/92 and 1099/92.

4. The plaintiffs are the respondents herein, who filed the suits with the plea that the original owners of the suit land were Shiv Bhajan Lal, Babu Gaya Prasad and Babu Mathura Prasad of Mauza Madhubani, P.S.-K. Hat, District- Purnea, who had acquired 98 Bighas, 18 Kathas and 15 Dhurs of land through court auction purchase from the Court of learned Sub-Judge, Purnea in Rent Execution Case No.321/1925, whereupon they were put in possession. Since then Shiv Bhajan Lal and others came in possession of their purchased land and came in khas



peaceful possession of the entire area of land. They acquired occupancy rights and became raiyats and regularly paid rent to the State of Bihar.

5. The plaintiffs further asserted that the aforesaid auction purchasers had sold the said property to Smt. Rani Satya Ramajee, grand aunt of the plaintiff and wife of Raja Kamalanand Singh and; Smt. Rani Shashi Ramajee, wife of Raja Kalika Nand Singh, grandmother of the plaintiffs, through registered sale deed dated 22.06.1928, both having half and half share. They got their names mutated in the records of the estate after paying rents to Raj Banaili, the proprietor of the estate and got their names mutated in the records of Purnea Municipality. They were granted rent receipts and municipal receipts in respect of the aforesaid land. In course of time, the two purchasers from the auction purchasers, namely, Smt. Rani Satya Ramajee and Smt. Rani Shashi Ramajee, amicably partitioned their land, both taking half and half share and came in possession over their respective shares of land. Smt. Rani Shashi Ramajee executed a registered will on 14.05.1973 in favour of her three daughters-in-law and two minor sons in respect of her share of land admeasuring 49 Bighas, 9 Kathas and 7 ½ dhurs. A probate was accordingly granted and letter of administration issued in their



names vide L.A. Misc. Case No. 9/40 dated 17.12.1943 from the Court of District Judge, Purnea. The donees of the will, namely, (1) Smt. Laxmi Ramajee, wife of Kumar Abhayanand Singh, (2) Smt. Radha Ramajee, wife of Kumar Bijayanand Singh and (3) Smt. Pramila Ramajee, wife of Kumar Ghananand Singh, daughters-in-law and (1) Debayanand Singh and (2) Pramodanand Singh (sons of Raja Kalikand Singh) were put in possession of their respective shares allotted under the will, who came in possession and got their names mutated in the record of rights and started paying rent to the estate and the municipality. Pramodanand Singh, father of the plaintiff, died leaving behind two sons and one daughter and widow, who partitioned their ancestral property amongst themselves by metes and bounds in T.S. (Partition) No.108/1975 from the Court of learned Sub-Judge, Purnea, on 31.08.1980. The suit land fell in the share of Smt. Nandani Jha, who came in peaceful possession over her share of land and got her name mutated in the Sarista of the State of Bihar as well as the Sarista of Purnea Municipality, Purnea. Smt. Nandani Jha, thereafter, through a registered deed of gift transferred 8 Kathas of land in favour of Rahul Kumar Jha and Kunal Kumar Jha from the north of the said Plot No. 1689 (Part) vide deed No. 218 dated 04.04.1985. Rahul Kumar Jha and Kunal



Kumar Jha are sons of plaintiffs of Title Suit No. 1097/92 and 1099/92. The plaintiff of Title Suit No. 1098/92, namely, Smt. Nandani Jha sold major portion of her land, now Private Plot No.B/3, to several persons and the land measuring an area of 13 Kathas, 14 Dhurs only remained with her in the middle of Private Plot No. B/3, corresponding to M.S. Plot No.1689P. Claiming right, title and their exclusive possession over the suit land, the plaintiffs/respondents sought declaration by filing the aforesaid suits for their title over the suit property and questioned the entry in the final survey of records of rights, describing the land to be Khas Mahal land of the State of Bihar.

6. For the purpose of clarity, it is indicated that M.S. Plot No. 1175 and M.S. Plot No. 1689 were subject matters in Title Suit Nos. 1097/92 and 1098/92, whereas M.S. Khata No. 1175 and M.S. Plot No. 1691 was the subject matter of Title Suit No. 1099/92.

7. The suits so filed by the plaintiffs were contested by the appellant State of Bihar denying the case of the plaintiffs of purchase of the suit property in auction sale and subsequent transfers in respect of the suit property. The State of Bihar/defendant asserted that the land measuring 18 Kathas, 15 dhurs was given on temporary lease to the Government by Kumar



Kamalanand Singh and Kumar Kalika Nand Singh with the condition that the said temporary lease would be terminated as and when the necessity might arise and in that case entire part of lands given through the temporary lease would be taken back. Accordingly, in Khas Mahal Survey Khatian of 1912-13, their names were recorded as the lease-holders and thereafter names of their wives were recorded as lease-holders, subsequently. It was the plea of the defendants that the plaintiffs did not have any right, title and interest over the suit land and after expiry of the period of lease, interest of Rani Satya Ramajee and Rani Shashi Ramajee stood extinguished in the absence of its renewal. The State of Bihar denied the claim of the plaintiffs that they were raiyats of the said land. The lands, the State of Bihar pleaded in the written statement, were Khas Mahal lands and there would have been no question of transfer in the absence of permission of the Collector. Based on rival pleadings on behalf of the parties, the trial Court framed altogether 11 issues, including issues No. 7 and 9, which read thus :-

“(VII) Whether the suit land is raiyati land of the plaintiffs or Khas Mahal land of the defendant State of Bihar?”

(IX) Whether the survey entry as made in Municipal Survey Khatian for the lands in question in Khas Mahal State of Bihar is valid and correct?”



8. In the light of the issues so framed, the parties led their evidence before the learned trial Court, both oral and documentary.

9. Based on the oral and documentary evidence adduced, the trial Court recorded the finding that the plaintiffs established their own case that they were raiyats and they had got *Kaiyami* interest in the land in question and the State of Bihar had got no right, title and interest in the suit property.

10. Considering the claim of the State of Bihar that the predecessors in interest of the plaintiffs were lessees over the land in question, the Court found that the State of Bihar failed to adduce any evidence to support the plea that a lease deed was ever executed in favour of Kumar Kamalanand Singh and Kumar Kalika Nand Singh since no such lease deed was brought on record through evidence.

11. Both the findings recorded by the trial Court have been affirmed by the appellate Court below. The appellate Court below has dealt in detail the pleadings of the parties, evidence available on record and the reasonings assigned by the trial Court for dismissing the suit before affirming the findings of the trial Court as is evident from the impugned judgment and decree of the 1st appellate Court below.



12. Mr. Asit Kali, learned A.C. to AAG-12 assailing the impugned judgment and decree has attempted to persuade this Court that the findings recorded by the learned Courts below are based on incorrect appreciation of evidence available on record. He has argued that a Khas Mahal land cannot be treated to be a raiyati land which could not have been partitioned without prior permission of the Collector. He has contended that once the period of lease in respect of the Khas Mahal lands had expired, there would have been no question of transfer of the land made by the lessees.

13. According to him, following are the substantial questions of law, which have been set out in the memo of appeal also, arise in the present Second Appeals for determination :

“1. Whether the Learned Lower Appellate Court as well as Learned Trial Court has decided the Issue relating to Khas Mahal Land is correct and in accordance with law.

02. Whether the finding of Learned Lower Appellate Court while deciding the issue No. III is correct specifically holding therein that the Suit land is raiyati land of the Plaintiff.

03. Whether the Learned Court below erred in law while deciding Khas Mahal property of the State of Bihar.

04. Whether the both the Learned Court below have erred in law holding Khas Mahal land can be raiyati land.



05. Whether both the Learned Court below over looked the provisions of law and Rules for partition of Khas Mahal land holders have to seek prior permission of the Collector, for partition of the land in question.

06. Whether after expiry of the lease of the Khas Mahal land the Plaintiff had right, title, interest and possession over the land as raiyats.

07. Whether the judgment and decree passed in partition suit is binding upon the Appellants when admittedly the appellants were not party to the suit.”

14. As has already been noticed above, it is the specific case of the appellant(s) that the suit property was given in lease to Kumar Kamalanand Singh and Kumar Kalika Nand Singh and accordingly their names were entered as lessees.

15. From the judgments and decrees passed by the learned Courts below, it can be easily noticed, which fact is not in dispute, that no document in support of their case that the suit property was leased out in favour of the predecessor in interest of the plaintiffs was adduced in evidence by the defendants. As a matter of fact, there was no evidence before the learned Court below to accept the plea of the appellant/defendant that the predecessor in interest of the plaintiffs were lessees of the Khas Mahal land.



16. On the other hand, the plaintiffs adduced documentary evidence showing their right, title and interest, which the learned Courts below have found to be unimpeachable based on which the learned Courts below have concurrently held that the plaintiffs have right, title and interest over the suit property.

17. The concurrent findings recorded by the learned Courts below are based on appreciation of evidence adduced at the trial. No finding can be said to be without evidence or contrary to evidence. The substantial questions of law as suggested by the learned counsel for the appellant, in my view, cannot be termed as substantial questions of law in view of the concurrent findings of facts recorded by the learned Courts below, based on appreciation of evidence.

18. I do not find any merit in these appeals, which are accordingly dismissed.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	N.A.F.R.
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