

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**First Appeal No.247 of 2013**

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Smt. Shashi Kala W/O Sri Sanjay Kumar Resident Of Village - Piperpanti,  
P.S. Sherghatty, Distt. Gaya

... .. Appellant/s

Versus

1. State of Bihar through Collector, Gaya
2. The Anchal Adhikari ( Circle Officer) Sherghatty, Distt. Gaya

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Jitendra Kishore Verma  
Mr. Abhishek Anand  
Mr. Anjani Kumar

For the Respondent/s : Mr. Sriram Krishna AC to SC 11

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR  
SRIVASTAVA**

**CAV JUDGMENT**

**Date : 21-12-2018**

1. Appellant (hereinafter referred to as ‘the plaintiff’ for the sake of convenience) has preferred this first appeal against the judgment and decree dated 21.08.2013 passed by the learned Sub Judge VI, Gaya in Title suit no. 95 of 2011/ 426/2011 by which and whereunder he dismissed the plaintiff’s suit on contest against the respondents (who are hereinafter referred to as ‘the defendants’ for the sake of convenience).

2. Plaintiff filed Title suit no. 426/2011 against the defendants for declaration of her absolute title as owner and occupancy raiyat over RS plot no. 1263 appertaining to RS khata no. 411 area 11¼ decimal land and also for grant of permanent injunction against the defendants.



3. In brief, case of the plaintiff is that she purchased the suit land from one Krishna Chandra Mishra through a registered sale deed dated 06.12.2008. She, further, claimed that the land of CS khata no. 108 containing CS plot no. 412 measuring 3 acres 39 decimal was recorded as Gairmajarua Malick Thekedar land. The ex-landlord settled only 83 decimal land, out of the aforesaid 3 acres 39 decimal of CS plot no. 412 orally accompanied by delivery of possession to Kishun Hajam son of Rangu Hajam and Hukumnama was granted on 12 Asarh 1359 Fasli corresponding to the year 1952. She, further, claimed that several co-villagers also took settlement out of the aforesaid CS plot no. 412 prior to the settlement in favour of Kishun Hajam. The above stated settlee paid rent to ex-landlord and got receipts and after abolition of zamindaris, demand was open in the name of Kishun Hajam who acquired right of occupancy over 83 decimal land on CS plot no. 412 under the provision of Bihar Tenancy Act. However, subsequently, the aforesaid settlee transferred his entire 83 decimal land of CS plot no. 412 in favour of Smt. Moti Devi daughter of Lakhan Raut resident of Mohalla



Koeri Bari, Gaya through a registered sale deed dated 20.01.1968 and put Moti Devi in possession of the aforesaid land. The name of the above stated Moti Devi was duly mutated in place of her vendor and she started paying rent to the State Government and in lieu thereof, rent receipts were issued in her favour. Subsequently, Smt Moti Devi transferred only 11¼ decimal land of CS plot no. 412 to one Krishna Chandra Mishra by a registered sale deed dated 15.07.2008 and put him in possession of the aforesaid land. The name of Krishna Chandra Mishra was duly mutated with respect to his purchased land. However, the aforesaid Krishna Chandra Mishra transferred 11 ¼ decimal land of CS plot no. 412 in favour of the plaintiff by executing registered sale deed dated 06.12.2008 and put the plaintiff in possession over the said land. After purchase, the plaintiff got constructed **Packka** building over her purchased land and started running hotel. The plaintiff, further, claimed that above stated Smt Moti Devi also transferred 9 decimal land of CS plot no. 412 to Pramod Singh and Subodh Singh on 27.12.1978 through a registered sale deed. She, further, claimed that in course of revisional



survey, land belonging to Smt Moti Devi was wrongly recorded in khata no. 411 containing RS plot no. 1263 and only 64 decimal area was recorded in RS plot no. 1263 in revisional survey. She, further, claimed that above stated Pramod Singh and Subodh Singh filed Title suit no. 26/2003 in the court of Munsif, Sherghati, Gaya for declaration of their title challenging survey entry of RS plot no. 1263 and the aforesaid suit was decreed on 31.3.2010. She, further, claimed that her husband approached for mutation of her purchased land but her mutation was not entertained on the ground of wrong revisional survey entry and furthermore, the defendants initiated case no. 94/11-12 under the provision of Bihar Public Land Encroachment Act and a notice was served upon the plaintiff on 11.11.2001 which forced her to file title suit against the defendants. She, further, claimed that cause of action arose on 03.10.2011 when the notice of Bihar Public Land Encroachment Act was served upon her.

4. The defendants appeared and filed their written statement denying the claim of the plaintiff over the suit land. The defendants, specifically, pleaded that



the plaintiff has got no cause of action and her suit is barred by law of limitation as well as barred by principle of estoppel, waiver and acquicence. They, further, pleaded that the plaintiff has brought the present suit after final publication of record of right which has got statutory presumptive value of correctness and possession. They, further, pleaded that CS plot no. 411 has been recorded in the name of the State and the nature of the land has been recorded as Parti Anabad Bihar Sarkar. They, further, pleaded that the plaintiff was never in possession of the suit land and she developed story of possession with a view to create evidence of possession. The defendants denied the case of the plaintiff and pleaded that the plaintiff has brought the present suit with an object to grab the land of the State Government and, as a matter of fact, the plaintiff has got no right, title and possession over the same in any manner and construction made by the plaintiff is on the land of the State of Bihar. The defendants, further, pleaded that, as a matter of fact, the present suit is counter blast of Misc. case no. 94/2011-12 and the plaintiff is an encroacher



over the suit land and the present suit is barred under section 16 of the Bihar Land Encroachment Act, 1956.

5. On the basis of pleadings of the parties, learned trial court framed following issues:-

- i) Whether the suit is maintainable as framed?
- ii) Whether the plaintiff has got valid cause of action for the suit?
- iii) Whether the suit is barred by law of limitation?
- iv) Whether the suit is hit by the principle of estoppel, waiver and acquiescence?
- v) Whether the plaintiff has right, title and possession over the suit land?
- vi) Whether the plaintiff is entitled to get relief, as sought for?
- vii) To what other relief or reliefs, if any, the plaintiff is entitled to get?

6. The plaintiff, in course of trial, got examined seven witnesses and also got exhibited sale deeds as exhibit 1 series, letter of Sub Registrar as exhibit 2, certified copy of CS khatiyan and RS khatiyan as exhibit 3 series, certified copy of the judgment passed in Title suit no. 26/2003 as exhibit 4 and reply given by Addl. Collector-cum- Public Information Officer, Gaya under Right to Information Act as exhibit 5.



7. The defendants did not adduce any evidence either oral or documentary.

8. The learned trial court, after hearing the parties and perusing the materials available on record, decided issue nos. i, ii, iv, v, vi and vii against the plaintiff whereas issue no. iii was decided in favour of the plaintiff.

9. The learned trial court while deciding issue no. v came to the conclusion that the plaintiff had no legal right, title and possession over the suit land and furthermore, the learned trial court while deciding issue no. iv came to the conclusion that the suit of the plaintiff was hit by the principle of estoppel, waiver and acquiescence and similarly, while deciding issue nos. i and ii came to the conclusion that the suit of the plaintiff was not maintainable and she had no legal cause of action for institution of the suit and similarly, while deciding issue nos. vi and vii, the learned trial court came to the conclusion that the plaintiff was neither entitled to get relief, as sought for nor any other reliefs. Being aggrieved by the aforesaid findings as well as the



impugned judgment and decree, the plaintiff filed the present appeal.

10. Learned counsel appearing for the plaintiff challenged and assailed the impugned judgment and decree arguing that the learned court below misconstrued settled principle of law as the learned court below wrongly held that entry made in the revisional survey was conclusive proof of right, title and possession of the defendants. He, further, submitted that it is settled principle of law that entry in revenue record neither creates title nor confirms possession and the revisional survey entry only entitles the person in whose favour it is made to pay land revenue and it is relevant only for physical purpose and not for deciding the question of title or even possession. He, further, submitted that entry in revisional survey does not extinguish rightful owner by virtue of the fact that revisional survey entry has been made in favour of any other person. He also submitted that entry in revisional survey is always rebuttable. In support of his contentions, he relied upon decisions reported in AIR 1974 Patna 164 (Full Bench) as well as AIR 1996 SC 2823. In both the above stated decisions, it



has been held that entry in revenue record does not create or extinguish title nor has its presumptive value on title and it only enables the person in whose favour mutation is already made to pay land revenue. Continuing his submissions, he submitted that in revisional survey khatiyan, possession of Moti Kuer @ Moti Devi over the land in question has been shown and the defendants had admitted in their written statement that the plaintiff got constructed building over the suit land. He, further, submitted that admittedly, revisional survey khatiyan was prepared in the year 1979 and, therefore, it is admitted case of the defendants that predecessor-in-interest of the plaintiff was in possession of the land in question at the time of preparation of revisional survey khatiyan and at the time of filing of the present suit, the plaintiff was in possession of the disputed land. He, further, submitted that it is well settled principle of law that unless it is rebutted, presumption of continuing possession is not only forward but also backward. In support of his above stated contention, he relied upon decision reported in 1966 SC 605. Continuing his submissions, he submitted that it is also settled law that a person in settled



possession can not be dispossessed without decree by a competent civil court and in the present case, the learned court below, having ignored the settled possession of the plaintiff, refused to grant decree of permanent injunction in favour of the plaintiff. In support of the above stated contention, learned counsel of the plaintiff relied upon decisions reported in 2004(2) PLJR 36(SC) and AIR 1989 SC 2097. He submitted that when a suit is filed for declaration of title and also for permanent injunction, relief of permanent injunction is not consequential relief always and even the plaintiff is found to be in settled possession, he is entitled to get permanent injunction on account of his settled possession even the plaintiff fails to prove general title. He submitted that the learned trial court failed to take notice of this fact that relief of permanent injunction was an independent relief in the fact of the present case. He relied upon decision reported in AIR 1997 MP 25. He, further, submitted that after perusing the evidences available on record, it is obvious that the learned trial court wrongly dismissed the suit of the plaintiff.



11. He, next, submitted that the learned court below wrongly held that ex-landlord had no right to settle any kind of land after 01.01.1946 because the aforesaid finding of the court below is absolutely perverse finding contrary to clear statutory provision of section 4(h) of the Bihar Land Reforms Act, 1950 which does not invalidate any settlement after 01.01.1946 by ex-landlord and does not render invalid automatically. Section 4(h) of the Bihar Land Reforms Act, 1950 only authorizes the competent court to initiate a proceeding to find out as to whether any such subsequent settlement has been made with a view of defeating the provision of the Bihar Land Reforms Act, 1950 and if it is found so, only then the competent authority has power to annul the settlement after hearing all parties. He, further, submitted that section 4(h) of the Bihar Land Reforms Act has, nowhere, provides that any settlement made after 01.01.1946 is automatically bad and without jurisdiction nor it lays down that no ex-landlord has right to make settlement after 01.01.1946. He, further, submitted that the learned trial court relied upon decision reported in 2010 (1) PLJR 374 but, as a matter of fact, the aforesaid



judgment is *per incurium* and contrary to the clear statutory provision and, therefore, the learned court below committed error in treating the aforesaid decision as precedent and moreover, the aforesaid decision can not be treated as precedent and could not have been relied upon being *per incurium* and furthermore, the aforesaid decision is not binding upon this court. He referred decisions reported in 1993 (2) PLJR 466 as well as AIR 2007 SC 1211. He, further, submitted that admittedly, no proceeding under section 4(h) of the Bihar Land Reforms Act was initiated either against the plaintiff or against her predecessor-in-interest. He, further, submitted that exhibit 5 goes to show that Addl. Collector-cum- Public Information Officer, Gaya gave information that ex-landlord had submitted return showing Kishun Hajam as raiyat of plot no. 452 and, therefore, the defendants had got no authority to initiate summary proceeding under the Bihar Land Encroachment Act. He relied upon decisions reported in AIR 1982 SC 1081, 2016 (3) PLJR 237 and 2014 (2) PLJR 636. He, further, submitted that the defendants wrongly raised plea that the suit of the plaintiff was



barred by section 16 of the Bihar Public Land Encroachment Act because section 16 of the Bihar Public Land Encroachment Act bars a suit which is filed only for challenging the order passed in the Bihar Public Land Encroachment Act but in the present case, no such relief has been sought for. He, again, relied upon decisions reported in AIR 1974 Patna 164 (Full Bench) and 2000 (2) PLJR 338 (Full Bench). He, further, submitted that it is also settled principle of law that no proceeding under the provision of the Bihar Public Land Encroachment Act can be taken, if complicated question of title is involved.

12. He, further, submitted that exhibit 5 also goes to show that the name of original settlee, namely, Kishun Hajam was entered in the State record but it is surprising enough that land in dispute subsequently became land of Bihar Sarkar in course of revisional survey operation and the aforesaid fact itself indicates that a wrong entry was made in the revisional survey khatian. He, further, submitted that exhibit 4 i.e. certified copy of the judgment passed in Title suit no. 26/2003 goes to show that the aforesaid Title suit no.



26/2003 was filed by Pramod Singh and Subodh Singh in respect of part land of 83 decimal of settled land and the aforesaid suit was decreed in favour of the plaintiff of that suit and against State of Bihar.

13. Learned counsel submitted that the aforesaid judgment passed in Title suit no. 26/2003 goes to show that settlement made by the ex-landlord in favour of Kishun Hajam in respect of CS plot no. 412 area 83 decimal was found a valid settlement but the learned trial court completely ignored exhibit 4 which was admissible in evidence under section 13 of the Evidence Act. He relied upon decision reported in AIR 1998 SC 1132. He, further, submitted that State of Bihar was party to Title suit no. 26/2003 and, therefore, State of Bihar can not say that the settlement of the land in question made by ex-landlord in favour of Kishun Hajam was not valid and the State Government can not take a different stand in the present suit. He, further, submitted that the learned trial court has also relied upon decision reported in 2010 (5) SCC 203 but the learned trial court failed to distinguish the aforesaid judgment from the fact of the present case. He, further, submitted that in the case



reported in 2010 (5) SCC 203, the land in question was admittedly, belonged to the State Government but in the present case, land in question was initially recorded in cadestral survey khatian as Gairmajarua Malick land and exhibit 5 clearly establishes that ex-landlord had filed return in respect of land in question showing Kishun Hajam as settlee but subsequently, at the time of preparation of revisional survey khatian land in question was shown as Anabad Bihar Sarkar and, therefore, it is obvious that fact of the case reported in 2010 (5) SCC 203 is quite different from the present case. He, further, submitted that moreover, in the case reported in 2010 (5) SCC 203, the court has, nowhere, held that entry in revenue record is conclusive proof of title rather the court held that there is only strong presumption in favour of the State, particularly, in the circumstance, when there is no document or evidence to show the title of private individual. He, further, submitted that in view of the aforesaid fact, decision reported in 2010 (5) SCC 203 is not applicable in the fact of the present case but the learned trial court wrongly relied upon the above stated decision. He, further, submitted that in the present case,



it is stand of the plaintiff that ex-landlord had orally settled land in question in favour of Kishun Hajam and subsequently, a Hukumnama was executed as memorandum deed and, therefore, even if the said Hukumnama was not brought on record, same was not fatal to the case of the plaintiff. Moreover, admittedly, said Hukumnama was prepared only as deed of memorandum and the aforesaid Hukumnama did not create any right and title and witnesses examined on behalf of the plaintiff explained as to under which circumstance the said Hukumnama could not be filed in court.

14. Learned counsel appearing for the plaintiff submitted that the impugned judgment is perverse judgment and against the materials available on record and, therefore, the impugned judgment is liable to be set aside.

15. On the other hand, learned counsel appearing for the defendants supported the impugned judgment and decree arguing that the learned court below has properly dealt with the materials available on record and rightly came to the conclusion that the suit of the



plaintiff was liable to be dismissed. Learned counsel for the defendants, further, submitted that admittedly, no Hukumnama was brought on record by the plaintiff and non-bringing the Hukumnama in evidence was fatal to plaintiff, particularly, in the circumstance, when the plaintiff admitted in her plaint that the ex-landlord had executed a Hukumnama in respect of alleged settlement. He, further, submitted that when it is admitted case of the plaintiff that Hukumnama was executed, it was her incumbent duty to bring the aforesaid Hukumnama on record but the plaintiff failed to do so and, therefore, in the aforesaid circumstance, the learned trial court rightly relied upon decision reported in 2010(5) SCC 203. He, further, submitted that so far as Title suit no. 26/2003 is concerned, admittedly, the aforesaid suit was decreed under Order 8 rule 10 CPC as on account of laches of concerned government pleader, written statement could not be filed in the aforesaid suit and, therefore, finding given in Title suit no. 26/2003 is not binding upon the State in respect of present suit. He, further, submitted that moreover, in Title suit no. 26/2003, the court had, nowhere, given any finding in



respect of so-called settlement made by the ex-landlord to Kishun Hajam. He, further, submitted that, as a matter of fact, when the defendants initiated encroachment proceeding upon the plaintiff, she brought the present suit to derail encroachment proceeding. He, further, submitted that a coordinate bench of this court had already held in a judgment reported in 2010 (1) PLJR 374 that ex-landlord had no right to settle his land after 01.01.1946. He, further, submitted that aforesaid decision is binding upon this court not because of its conclusion but in regard to its ratio and the principle laid down therein. In support of his contentions, he referred AIR 1967 SC 1480. He also relied upon decision reported in 2010(5) SCC 203 and submitted that the Hon'ble Apex Court has laid down the guidelines for declaration of title over a property of the State Government and, therefore, the learned trial court rightly observed that the present case does not come under the ambit of guidelines as framed by the Apex Court of this country in the case reported in 2010 (5) SCC 203.



16. Having heard the rival contentions of the parties, I went through the record as well as decisions cited on behalf of the parties.

17. The learned court below while deciding issue no. v came to the conclusion that ex-landlord had no jurisdiction to settle the land of any kind after 01.01.1946 and as such the title of the vendor of the plaintiff was not legally genuine. The learned court below based the above stated findings on the judgment of learned Single Bench of this court reported in 2010 (1) PLJR 374 wherein a Single Bench of this court held that no ex-intermediary or zamindar had power to settle their land after 01.01.1946. The learned Single Judge gave the aforesaid findings while deciding the question raised in connection with Public Encroachment Act. In the above stated case, it was raised before the learned Single Bench that complicated question of title cannot be adjudicated upon in a summary proceeding under the Public Encroachment Act. The petitioner of the aforesaid case challenged the order passed in land encroachment case, claiming his title upon the land in question on the ground of settlement made in his favour some time in the year 1948



by ex-landlord and while deciding the aforesaid question, the learned Single Bench, incidentally, gave the finding that no ex-intermediary or zamindar had power to settle their land after 01.01.1946.

18. The perusal of the judgment reported in 2010 (1) PLJR 374 goes to show that above stated finding of learned Single Bench of this court was given without considering the provisions of Bihar Land Reforms Act, 1950.

19. Here, I would like to say that section 3 of the Act says that State Government, by issuing notification, may declare that the estates or tenures of a proprietor or tenure-holder have passed to and become vested in the State. Furthermore, I would like to say that section 3A (2) of the above stated Act says that on the publication of notification under sub-section (1) of section 3 as well as other sections, the estate or tenure including interest of the proprietor or tenure-holder in such estate or tenure shall have passed to and become vested in the State. Furthermore, section 4(a) of the Act says that such estate or tenure including the interests of the proprietor or tenure holder except the interests of raiytats or under



raiytas shall vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or other than interests expressly saved by or under the provisions of the aforesaid Act. Furthermore, I would like to say that section 4(f) of the Act says that the Collector shall be deemed to have taken charge of such estate or tenure and of all interests vested in the State under this section. I would also like to mention here that section 4(h) of the Act says that the collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure, if he is satisfied that such transfer was made at any time after the first day of January 1946 with an object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the party concerned to appear and be heard, annul such transfer, dispossess the person claiming under it and take decision of such property on such terms as may appear to the Collector to be fair and equitable. All the aforesaid provisions of the aforesaid



Act, 1950 go to show that the estate or tenure of ex-intermediary or tenure holder vested in the State when the State Government notified the estate or tenure of ex-intermediary or tenure-holder in accordance with section 3 of the Bihar Land Reforms Act and after vesting of the estate or tenure in the State, the Collector shall be deemed to have taken charge of the aforesaid estate or tenure. Furthermore, it is obvious that if the Collector is satisfied that any transfer has been made after 01.01.1946 with an object of defeating any provision of the Act or causing loss to the State or obtaining higher compensation thereunder he may annul the said transfer and dispossess person claiming under it and take decision of such property after due and proper inquiry. It is obvious that section 4(h) of the Act only authorizes the competent authority to initiate the proceeding to find out as to whether any transfer made on or after 01.01.1946 has been made with a view to defeat the provision of the Act or not and if after inquiry, it is found that the transfer on or after 01.01.1946 has been made with a view to defeat the provision of the Bihar Land Reforms Act, the competent authority has power to annul



the said transfer after due and proper inquiry. Section 4(h) of the Bihar Land Reforms Act, 1950, nowhere, provides that any settlement made after 01.01.1946 is automatically bad and without jurisdiction nor it lays down that no ex-landlord had right to make settlement after 01.01.1946 as held by single bench of this court in the judgment reported in 2010 (1) PLJR 374. Therefore, it appears to me that learned single bench of this court while dealing with question raised in connection with Public Encroachment Act incidentally observed that ex-landlord had no right to settle land after 01.01.1946.

20. No doubt, judicial decorum and legal propriety demand that where a Single Judge does not agree with the decision of a bench of coordinate jurisdiction, the matter shall be referred to a larger bench but there are exceptions to it and when the judgment has been rendered in ignorance of the statutory provisions then judgment is per incurium and is not binding on the bench of coordinate jurisdiction as held by a single bench of this court reported in 1993 (2) PLJR 466.

21. In AIR 2007 SC 1211, it has been held by the Hon'ble Supreme court that a decision which is contrary



to law and rule does not form precedent. A decision becomes a precedent when it decides law in accordance with Act and the rule. Apart from this in 1993 (2) PLJR 466, a learned single bench of this court also held that if a judgment has been rendered in ignorance of the statutory provision, then the judgment is per incuriam and is not binding on the bench of coordinate jurisdiction.

22. Since learned single bench of this court while deciding case reported in 2010 (1) PLJR 374 did not refer even a single provision of Bihar Land Reforms Act, 1950 and without analyzing relevant provisions of the aforesaid Act gave its finding that ex-intermediary or zamindar had no right to settle land after 01.01.1946, in my view, the aforesaid decision is against the provisions of the Bihar Land Reforms Act, 1950 and the said decision can not be made precedent and the aforesaid decision being per incuriam is not binding upon this court.

23. Admittedly, in the present case, no proceeding under section 4(h) of the Bihar Land Reforms Act, 1950 has been initiated as yet and furthermore, it is an



admitted position that the plaintiff claimed that ex-landlord had made settlement prior to vesting land in question in the State.

24. The claim of the plaintiff is that CS plot no. 412 under CS khata no. 108 was recorded in cadestral survey khatian as Gairmajarua in possession of Thekedar Malick and total area of CS plot no. 412 was 3.39 acres. Furthermore, claim of the plaintiff is that ex-landlord settled only 83 decimal land orally accompanied by delivery of possession on 12 Asarh 1359 Fasli i.e. equivalent to 1952 to Kishun Hajam and deed of Memorandum in the form of Hukumnama was prepared. The aforesaid settlee Kishun Hajam paid rent to ex-landlord and got receipts and furthermore, after vesting of Zamindari, demand was opened in the name of Kishun Hajam who acquired occupancy right over the settled land. Furthermore, case of the plaintiff is that the aforesaid Kishun Hajam and others transferred 83 decimals land of CS plot no. 412 to Smt Moti Devi by executing registered sale deed dated 20.01.1968 and accordingly, Smt Moti Devi came in possession of her purchased land and she got mutated her name in place of



her vendor. Further, claim of the plaintiff is that Smt Moti Devi transferred 11  $\frac{1}{4}$  decimal land out of above stated 83 decimal land to Krishna Chandra Mishra through a registered sale deed dated 15.07.2008 and Krishna Chandra Mishra came in possession of the aforesaid purchased land and he, too, got mutated his name in respect of his purchased land. Subsequently, Krishna Chandra Mishra transferred 11  $\frac{1}{4}$  decimal land to the plaintiff by executing registered sale deed dated 06.12.2008 and accordingly, the plaintiff came in possession of 11  $\frac{1}{4}$  decimal land of CS plot no. 412 and got constructed building over her purchased land. Therefore, it is obvious from the case of the plaintiff that the plaintiff claimed her right and title over 11  $\frac{1}{4}$  decimal land of CS plot no. 412 on the basis of settlement made by ex-landlord in favour Kishun Hajam some time in the year 1952. To prove the aforesaid pleading the plaintiff got examined witnesses including herself and the plaintiff's witnesses supported the case of the plaintiff. However, the plaintiff had got exhibited sale deed dated 06.12.2008 said to be executed by Krishna Chandra Mishra in favour of the plaintiff in respect of CS



plot no. 412 area 11  $\frac{1}{4}$  decimal land and also got exhibited sale deed executed by Smt Moti Devi in favour of Krishna Chandra Mishra in the year 1978 and furthermore, sale deed executed by sons of Kishun Hajam in favour of Smt Moti Devi in the year 1968. The aforesaid documents go to show that sons of Kishun Hajam transferred 83 decimals land of CS plot no. 412 in favour of Smt Moti Devi who later on, transferred 11  $\frac{1}{4}$  decimal land of CS plot no. 412 in favour of Krishna Chandra Mishra and the aforesaid Krishna Chandra Mishra transferred the said land in favour of the plaintiff by executing registered sale deed. The plaintiff has got exhibited cadastral survey khatian as exhibit 3 which goes to show that the aforesaid CS plot no. 412 under khata no. 108 was recorded as Gairmajarua Malick Thekedar land and nature of the aforesaid land has been shown as Parti Kadim. The plaintiff has also got exhibited reply of Addl. Collector-cum- Public Information Officer, Gaya dated 10.12.2011 as exhibit 5 and the aforesaid document goes to show that the plaintiff sought an information from Addl. Collector-cum- Public Information Officer, Gaya under the Right



to Information Act in respect of return filed by ex-landlord in connection with CS khata no. 108 CS plot no. 412 and Addl. Collector-cum- Public Information Officer, Gaya gave information to the plaintiff that the ex-landlord had shown Kishun Hajam as raiyat of CS khata no. 108 CS plot no. 412 area 82 decimal. Therefore, it is obvious from perusal of exhibit 5 that the ex-landlord had shown Kishun Hajam as raiyat of CS khata no. 108 CS plot no. 412 area 82 decimal. It is admitted position that in revisional survey operation new khata no. 411 plot no. 1263 was carved out for CS khata no. 108 CS plot no. 412 but area in revisional survey khatian was shown 64 decimal. In the revisional survey khatian, the aforesaid 64 decimal land of RS plot no. 1263 was recorded as Anabad Bihar Sarkar and illegal possession of Moti Kuer was shown. Therefore, it is obvious that at the time of preparation of Revisional Survey Khatian, Moti Kuer was in possession of the said land.

25. Admittedly, Smt Moti Kuer transferred 9 decimal land of CS plot no. 412 to Pramod Singh and Subodh Singh by executing a registered sale deed dated



27.12.1978 and the above stated Pramod Singh and Subodh Singh filed Title Suit No. 26 of 2003 in the court of Munsif, Sherghati, Gaya for declaration of their title challenging Survey Entry of RS Plot No. 1263 and the aforesaid suit was decreed on 31.03.2010. The disputed land of the present case is also part land of RS plot no. 1263. Judgment pronounced in Title Suit No. 26 of 2003 was brought on record by the plaintiff as exhibit 4. It is admitted position that part land of RS plot no. 1263 was in dispute in the aforesaid Title Suit No. 26 of 2003 and the plaintiff of the aforesaid case claimed his title and possession over the disputed land of the aforesaid case on the basis of sale deed executed by Moti Devi who had purchased 83 decimals land from Kishun Hajam, the original settlee of the land in question. Admittedly, aforesaid suit was decreed and learned Munisf found title and possession of the aforesaid Subodh Singh and others over 9 decimal land of RS plot No. 1263. It has been argued on behalf of the plaintiff that the State was party to the aforesaid suit and the finding given in the aforesaid suit is final against the State and now, the State cannot say that settlement made by ex-landlord in favour of



Kishun Hajam was not valid and aforesaid judgment (exhibit 4) is admissible in evidence under Section 13 of the Evidence Act. The perusal of exhibit 4 goes to show that in the above stated Title Suit No. 26 of 2003, the plaintiffs of that case claimed their right and title over 9 decimal land of RS Plot No. 1263 on the basis of sale deed executed by Moti Kuer and in the present case also, case of the plaintiff is that Moti Kuer had purchased 83 decimal land of CS plot no. 412 from Kishun Hajam and she, subsequently, sold 9 decimal land of CS plot no. 412 to Subodh Singh and others and she also sold 11  $\frac{1}{4}$  land to Krishna Chandra Mishra who subsequently, transferred the said land to the plaintiff. Therefore, it is obvious that in Title Suit No. 26 of 2003 settlement taken by Kishun Hajam from ex-landlord was in dispute but the learned Munsif decreed the aforesaid suit against the State.

26. Section 13 of the Evidence Act says that where the question is as to the existence of any right or custom, following facts are relevant;

(a) Any transaction by which the right or custom in question was created, claimed, modified, recognized,



asserted, or denied, or which was inconsistent with its existence ;

(b) Particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

27. The aforesaid section makes it clear that if the existence of any right or custom is in dispute, the fact on any transaction by which the right or custom in question was created, claimed or modified, asserted or denied or which was inconsistent with its existence and similarly, particular instances in which the right or custom are claimed or exercised or in which exercise was disputed, asserted or departed from are relevant for deciding the above stated question.

28. Admittedly, right and title of original settlee, namely, Kishun Hajam was also in dispute in Title Suit no. 26 of 2003 and in the present case also, claim of the plaintiff is based on the right, title and possession of the original settlee, Kishun Hajam. Therefore, it is obvious that the facts in dispute in both cases are similar and identical.

29. Now, it has already been set at rest in several decisions that the judgments, in previous cases, although not inter partes, are admissible in evidence



under Section 13 of the Evidence Act and it has been set at rest that the judgments in inter parte are in certain circumstances and for certain purposes admissible under Section 13 of the Evidence Act as transaction or instance. Therefore, by exhibit 4, at least, in Title Suit no.26 of 2003 validity of the settlement of original settlee, Kishun Hajam, was recognized by the court and, therefore, in my view, judgment delivered in Title Suit No.26 of 2003 is admissible in evidence in the present case under Section 13 of the Evidence Act and the defendants cannot question the validity of the settlement of the original settlee, Kishun Hajam, and they are stopped by the principle of estoppel.

30. No doubt, in revision survey entry in respect of disputed land has been made in favour of the State of Bihar but the said entry has got no value at all for the purpose of deciding title because the aforesaid entry neither creates any title nor possession in favour of the State of Bihar and moreover, mere entry in revisional survey Khatiyan does not distinguish title of rightful owner. However, the entry in Khatiyan is always



rebuttable in nature as held in AIR 1974 Patna 164 (Full Bench) Para 24.

31. In the present case, exhibit 3 series as well as exhibit 5 rebut the presumption of aforesaid entry and moreover, in revisional survey Khatiyan possession of Moti Kuer has been shown and, therefore, possession of Moti Kuer over the suit land at the time of preparation of revisional survey Khatiyan is, at least, admitted by the State of Bihar and its written statement State of Bihar has admitted the possession of the plaintiff over the suit property. Therefore, in my view, the learned court below committed error while holding that the plaintiff had no legal right, title and possession over the suit land and furthermore, in my view, the learned court below committed error in deciding issue no. v against the plaintiff.

32. Learned court below also committed error in deciding issue no. iv against the plaintiff holding that the suit of the plaintiff is hit by the principle of estoppel, waiver and acquiescence.

33. The learned court below has not assigned any reason for holding that the suit of the plaintiff was



hit by the principle of estoppel, waiver and acquiescence and, in my view, there is nothing on entire record to come on conclusion that the suit of the plaintiff is hit by the principle of estoppel, waiver and acquiescence.

34. Similarly, the learned court below also committed error in deciding issue nos. i, ii, vi and vii against the plaintiff. The impugned judgment goes to show that the learned court below decided issue nos. i and ii against the plaintiff on the ground that issue no. v had been decided against the plaintiff but, in my view, the aforesaid finding of the learned court below is not in accordance with law. It is an admitted case of the parties that the plaintiff brought the present suit when she got notice issued against her in encroachment proceeding and, therefore, in my view, the plaintiff has got valid cause of action for filing the present case and furthermore, her suit is maintainable. Similarly, the learned court below decided issue nos. vi and vii against the plaintiff on the ground that issue nos. i to v had been decided against her and, therefore, she did not entitle to get any relief but, in my view, when I have already discussed that the plaintiff successfully, proved her right,



title and possession over the suit land, plaintiff is entitled to get relief as sought for by her.

35. On the basis of the aforesaid discussions, this appeal is allowed and the impugned judgment and decree is set aside and accordingly, suit of the plaintiff is, hereby, decreed and it is declared that plaintiff has absolute title and possession over the suit land as occupancy raiyat and defendants are restrained from interfering upon the possession of the plaintiff in respect of the suit land by issuance of permanent injunction. The parties shall bear their own cost.

**(Hemant Kumar Srivastava, J)**

s.hassan/-

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