

of 2003/18 of 2010 against the defendants-respondents for declaration of their right and title and also for restraining the defendants-respondents from interfering their possession in respect of suit land which has been described in Schedule I of the plaint.

3. The case of the plaintiffs is that husband of the plaintiff-appellant no.1 and father of the plaintiff-appellant no.2 along with remaining plaintiffs-appellants jointly purchased an area of 3.19 acres corresponding area 5 bighas out of 4.87 acres of rayati land bearing plot no. 1798 appertaining to khata no. 231 of village Pahleja through a registered sale deed dated 05.12.1961 executed by Babu Griendra Deo Naraian @ Jhanna Babu, Kumar Vijay Sinha and Kumar Shashi Shekhar Sinha for consideration of Rs.1300/-. The aforesaid land has been described in Schedule I of the plaint. The plaintiffs came in possession of the aforesaid land as settled raiyats. Subsequently, 18 decimal and 24 decimal of the aforesaid plots were purchased by the plaintiff-appellant nos. 3 and 4 through registered sale deed executed by Sri Ram Bilas Sinha and Sri Janardan Sinha on 14.10.1977 and came in possession of the aforesaid land as settled raiyats. The aforesaid 18



decimal and 24 decimal lands were earlier purchased by vendors of the above stated plaintiffs through a registered sale deed dated 26.09.1962 from Griendra Deo Naraian, Kumar Vijay Kumar Sinha, Surendra Narain and Sri Shashi Shekhar Sinha. Further case of the plaintiffs is that an area of 88 decimals of plot no. 1798 was taken in oral settlement accompanied by delivery of possession by one Nageshwar Mali and Hukumnama was granted by the then ex-landlord on 26 Baisakha 1347 Fasli. The ex-landlord issued receipts for payment of rent with respect to the above stated settled land after the said settlement. However, in course of chakbandi operation, the plaintiffs filed petition under section 10(2) of the Consolidation Act for get recording their names in the relevant documents and Chakbandi Officer being satisfied with the actual physical possession of the plaintiffs recorded the name of the plaintiffs in equal share by order dated 08.01.1983 but the demand with respect to the portion of the suit land taken in settlement could not be opened earlier and subsequently, the plaintiff-appellant no.2 filed application for opening of demand before defendant respondent no.3 which was numbered as Demand Opening case no. 78/79-80 and learned LRDC,



Jehanabad was pleased to pass order on 16.9.1985 for opening a demand considering the factum of settlement as well as grant of Hukumnama receipt and since then the plaintiffs have been paying rent of the land taken in settlement. Further case of the plaintiffs is that the then ex-landlords after vesting of their estate applied for fixation of fair and equitable rent with respect to the some portion of suit plot which was in **Khash** cultivating possession of the ex-landlords and rent was fixed on 26.5.1957 vide case no. 228/55-57 but by mistake rent was fixed for the entire area of plot no. 1798 instead of an area of 3.19 acre. The defendants-respondents never challenged the said order dated 26.5.1957 and the defendants-respondents admitted that plot no. 1798 did not vest in the State under the Bihar Land Reforms Act (hereinafter referred to as 'the Act'). Further case of the plaintiffs is that at the instance of some mischievous persons defendant respondent no.2 initiated a proceeding under section 4(H) of the Act with respect to the suit land and illegally cancelled jamabandi of the plaintiffs and furthermore, the defendants-respondents are trying to dispossess the plaintiffs through unauthorized and illegal means by settling disputed lands to other persons.



Accordingly, plaintiffs sought relief for deceleration of their right and title in respect of suit lands and also that the order passed by defendant respondent nos.1 and 2 on 17.1.1997 in Case no. 1/1996 and on 4.12.2000 in Appeal no. 42/1996-97 illegal and without jurisdiction.

4. The defendants-respondents appeared before the court below and filed their written statement mentioning therein that khata no. 231 plot no. 1798 area 22.23 acre was recorded as Gairmajarua Malik and nature of the land was shown as “Partikadim” and in cadastral survey record, the ex-landlord did not possess any portion of plot no. 1798 nor ex-landlords settled the aforesaid land to plaintiffs. Plaintiffs never came in possession of any portion of plot no. 1798. The defendants-respondents further pleaded that the plaintiffs and some other persons surreptitiously got their demand opened in Anchal office and thereafter, one Ram Bilash Ram and several other persons filed application to initiate a proceeding under section 4(H) of the Act and prayed for cancellation of jamabandi of the plaintiffs. On the basis of the aforesaid petition, Case no. 1/1996 under section 4(H) of the Act was registered and notices were issued and after completion of proceeding, order dated



17.11.1997 was passed against which plaintiffs filed three appeals before the Collector, Jehanabad. The aforesaid appeals were dismissed and order of cancellation of jamabandi was upheld. Plaintiffs filed revision before the Commissioner, Magadh division, Gaya but the revision petition also stood dismissed. The defendants-respondents further pleaded that the ex-landlords never filed any Zamindari return in proof of alleged settlement and, as a matter of fact, story of settlement is absolutely false and got up. The defendants-respondents further stated that after coming into force of the Bihar Land Reforms Act, 1950, suit land vested in the State of Bihar and the step for settlement of the suit land to landless persons has already been taken up.

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

- i) Is the suit of plaintiffs-appellants, as framed maintainable?
- ii) Have plaintiffs-appellants any valid cause of action?
- iii) Is the suit of the plaintiffs-appellants barred by law of limitation?
- iv) Is the suit of the plaintiffs-appellants barred by section 34 of the Specific Relief Act?



v) Is the suit of the plaintiffs-appellants barred by section 35 of the Bihar Land Reforms Act, 1950?

vi) Is the suit of the plaintiffs-appellants barred by section 80 of the Code of Civil Procedure?

vii) Have plaintiffs-appellants got ownership over the suit land?

viii) Are order dated 17.1.1997 passed in Case no. 1/1996 and order dated 4.2.2000 passed in Appeal no. 42/1996-97 illegal and without jurisdiction?

ix) Are the plaintiffs-appellants entitled to get any other relief?

6. In support of their case, plaintiffs examined, altogether, 13 witnesses and also got exhibited certain documents.

7. The defendants-respondents examined only one witness.

8. The learned trial court, took issue nos. vii and viii together and after analyzing and scrutinizing the evidences available on record, decided the aforesaid issues against plaintiffs. Furthermore, learned court below while deciding issue no. i came to the conclusion that the suit of the plaintiffs is hit by non-joinder of necessary party. Furthermore, learned court below decided issue nos. ii, iii and vi in favour of the plaintiffs but decided issue nos. iv and v against the plaintiffs.



9. Learned counsel appearing for the plaintiffs challenged the impugned judgment arguing that admittedly, the suit land was recorded in cadastral survey khatian as Gairmajarua Malik and possession of the landlord over the aforesaid land was shown. He, further, submitted that after abolition of zamindari, since the ex-landlords were in possession of the suit land, suit land was deemed to be settled with ex-landlords and they became raiyats of the aforesaid land. He, further, submitted that subsequently, ex-landlords applied for fixation of rent of the suit land as well as other lands and the prayer of the ex-landlords was allowed in the year 1957 and accordingly, rent of the suit land was fixed. He, further, submitted that the aforesaid fact goes to show that ex-landlords were in possession of plot no. 1798 in the year 1957 and the State fixed rent of the aforesaid plot no. 1798 and, therefore, State can not say that plot no. 1798 was vested in the State after abolition of zamindari. He, further, submitted that the plaintiffs have brought sada Hukumnama as exhibit 4 to show that 88 decimal land of plot no. 1798 was settled by the ex-landlord and the defendants-respondents could not succeed to prove that the aforesaid Hukumnama was forged and fabricated



document rather the plaintiffs have brought document on record to show that on the basis of the aforesaid Hukumnama, their names were entered in the revenue record by the revenue official as well as consolidation official and furthermore, after settlement, ex-landlords had issued rent receipts in favour of the plaintiffs. He, further, submitted that the learned court below failed to take notice of this fact that the proceeding under section 4(H) of the Act could not have been initiated in respect of land transferred prior to 01.01.1946. He, further, submitted that no doubt, the plaintiffs could not succeed to bring zamindari return filed by ex-landlord on record but the defendants-respondents claimed that ex-landlords had not shown the above stated settlement in their zamindari return and, therefore, burden was upon the defendants-respondents to prove the aforesaid fact but the defendants-respondents failed to discharge their burden. He, further, submitted that neither SDO nor District Magistrate had right to cancel jamabandi of the plaintiffs by illegally initiating proceeding under section 4(H) of the Act. He, further, submitted that the plaintiffs have brought sale deed as well as Hukumnama on record to show that the ex-landlords had transferred



portion of plot no. 1798 and the plaintiffs came in possession of the aforesaid suit land. He, further, submitted that the plaintiffs have been paying rent since long and several rent receipts were brought before the court below but in spite of that learned court below dismissed the suit of the plaintiffs only on the ground that zamindari return was not brought on record by the plaintiffs. He, further, submitted that admittedly, zamindari return filed by the ex-landlord was not brought on record either by the plaintiffs or by the defendants-respondents but even then learned trial court observed at para 11 of the impugned judgment that ex-landlords had not disclosed about settlement in the return filed by them and, as a matter of fact, the aforesaid finding of the learned court below is based only on the presumption as well as on the pleadings of the defendants-respondents which is not legal in the eye of law.

10. On the other hand, the defendants-respondents refuted the above stated submissions of learned counsel for the plaintiffs arguing that admittedly, the plaintiffs did not bring return filed by the ex-landlord on record and, as a matter of fact, the plaintiffs failed to prove their right and title as well as possession. He, further, submitted that after



due enquiry, revenue official found that the plaintiffs are not in possession of the suit land. He, further, submitted that admittedly, the suit land was recorded as Gairmajarua “Partikadim” in cadastral survey of khatiyani and, therefore, the aforesaid fact goes to show that ex-landlords were not in possession of the suit land at the time of vesting of the suit land and, therefore, it is obvious that after coming into force of Bihar Land Reforms Act, 1950, suit land vested in the State of Bihar and, therefore, ex-landlords had no right to transfer the suit land by executing sale deed. He, further, submitted that so far as so-called Hukumnama (exhibit 4) is concerned, the same is forged and fabricated document and moreover, District Magistrate has every right to enquire into the transfer made after 01st July, 1946 and admittedly, in the present case, the plaintiffs claimed to purchase portion of the suit land after 01st July, 1946 and, therefore, proceeding under section 4(H) of the Act was rightly initiated by the revenue officials. He, further, submitted that so far as opening of jamabandi and fixation of rent are concerned, the plaintiffs got jamabandi opened by taking the government officials in collusion and, therefore, revenue officials have every right to cancel jamabandi which had not



been opened in accordance with law.

11. Having heard rival contentions of both parties, I went through the record along with lower court record.

12. Claim of the plaintiffs is that ex-landlords were in possession of plot no. 1798 at the time of vesting of the suit land and after vesting of suit land, ex-landlords became raiyats of the suit land and accordingly, they applied for fixation of rent of the suit land as well as other lands and their prayer was allowed and accordingly, rent of area of 4.67 acres of plot no. 1798 was fixed in the year 1957. Further claim of the plaintiffs is that subsequently, ex-landlords transferred some portion of the aforesaid land in favour of the plaintiffs as well as others by executing sale deeds. However, it is also case of the plaintiffs that in the year 1942, 88 decimals of plot no. 1798 was settled by ex-landlords in favour of the plaintiffs but when the ex-landlords applied for fixation of rent of plot no. 1798, by mistake, the aforesaid 88 decimal was also included and although notice of fixation of rent of 3.19 decimal was issued but the order regarding fixation of rent of 4.67 decimal was passed.

13. On the other hand, claim of the defendants-



respondents is that ex-landlords were not in possession of plot no. 1798 at the time of vesting and the entire area of plot no. 1798 was vested in the State and furthermore, ex-landlord had not settled portion of plot no. 1798 with the ancestor of the plaintiffs but the plaintiffs got opened jamabandi in their names taking government officials in their collusion.

14. Now, first question arises for determination as to whether plot no. 1798 was vested in the State of Bihar after coming into force of Bihar Land Reforms Act, 1950 or not.

15. It is admitted position that plot no. 1798 area 22 acre 35 decimals was recorded Gairmajarua Malik in cadastral survey khatian and nature of the aforesaid land was shown as "Partikadim". Furthermore, remark column of cadastral survey khatian goes to show that there was one Neem tree and possession of 'Malik' has been shown. Therefore, it is obvious that at the time of preparation of cadastral survey khatian, nature of plot no. 1798 was "Partikadim" and there was one neem tree on the aforesaid land which was in possession of the landlord. The aforesaid fact is evident from perusal of exhibit 6/A. Exhibit 9



certified copy of order dated 2.8.1956 passed by the Collector goes to show that ex-landlords had applied for fixation of rent of plot no. 1798 and on their prayer, rent of plot no. 1798 was fixed. Combined perusal of exhibit 6/A and exhibit 9 goes to show that at the time of preparation of cadastral survey khatian as well as at the time of fixation of rent of plot no. 1798, ex-landlords were in possession of plot no. 1798 and, therefore, at the time of vesting of the aforesaid land, it is obvious that the ex-landlords were in possession of plot no. 1798 and they became raiyas of plot no. 1798 after vesting of the suit land.

16. No doubt, in exhibit 9 area of plot no. 1798 has been shown as 4.87 decimal but it is the specific case of the plaintiffs that the aforesaid area was wrongly mentioned. Exhibit 1 original sale deed dated 5.12.1961 goes to show that Babu Griendra Deo Naraian and others had transferred 3 acres 19 decimal of land of plot no. 1798 in favour of the plaintiffs and similarly, exhibit 1/A goes to show that one Ram Bilash Singh and others transferred 18 decimal and 24 decimal total 42 decimal of land of plot no. 1798 in favour of the plaintiffs on 14.10.1977. Exhibit 1/A further goes to show that the aforesaid 42 decimal land of plot no. 1798 had



been purchased by Ram Bilash Singh and others vide registered sale deed dated 26.12.1962 from Babu Griendra Deo Naraian and others. The aforesaid exhibits go to show that the plaintiffs had purchased 3 acres 19 decimal as well as 42 decimal land of plot no. 1798. Furthermore, exhibit 4 is a sada Hukumnama which goes to show that 88 decimal of land of plot no. 1798 was settled by ex-landlords to ancestors of the plaintiffs in the year 1942.

17. Although defendants-respondents claimed that exhibit 4 is a forged and fabricated document but they failed to bring any evidence to prove this fact that exhibit 4 is a forged and fabricated document. Moreover, exhibit 5 goes to show that in the year 1979, the plaintiffs filed petition for fixation of rent of 88 decimal land of plot no. 1798 and vide order dated 15.6.1979 rent of 88 decimal of plot no. 1798 was fixed. It is pertinent to note here that the aforesaid order dated 15.6.1979 passed in Case no. 18/79-80 goes to show that at the time of passing of the aforesaid order, the plaintiffs had shown receipt issued by the ex-landlords in respect of the aforesaid land. However, the order dated 17.5.1979 passed in Case no. 18/79-80 was confirmed by DCLR, Jehanabad vide his order dated 16.9.1985 passed in



Demand Case no. 18/79-80 which is evident from perusal of exhibit 5/A. Furthermore, exhibit 5/B goes to show that during consolidation operation, the plaintiffs filed objection under section 10(2) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 and the Consolidation officer vide his order dated 8.1.1983 accepted the claim of the plaintiffs and a separate khatyan was ordered to be prepared in the name of the plaintiffs in respect of suit land. Therefore, the above stated exhibits clearly prove this fact that at the time of vesting, ex-landlords were in possession of suit lands and they became raiyats of the said lands and subsequently, they transferred the suit lands to the plaintiffs and furthermore, it has been proved by the plaintiffs that in the year 1942, 88 decimal land of plot no. 1798 was settled to their ancestors.

18. Admittedly, the defendants-respondents had initiated proceeding under section 4(H) of the Act in respect of suit land. Section 4(H) of the Act gives power to the Collector to make enquiry in respect of any transfer including settlement or lease of any land, if the Collector is satisfied that the said transfer was made at any time, after 01.01.1946 with object of defeating any provision of Bihar



Land Reforms Act, 1950 or causing loss to the State or obtaining higher compensation there, the Collector may 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. Therefore, it is obvious that the Collector can initiate enquiry under section 4(H) of the Act, if transfer in question is made after 01.01.1946. The aforesaid section 4(H) of the Act makes it clear that the Collector does not have any power to make enquiry in respect of transfer which has been made prior to 01.01.1946.

19. In the present case, claim of the plaintiffs is that the settlement was made by Sada Hukumnama in the year 1942 and the defendants-respondents have not brought any enquiry report on the record to show that the Collector came to the conclusion that the aforesaid settlement was made after 01.01.1946 and, therefore, in my view, the Collector had got no jurisdiction to initiate proceeding under section 4(H) of the Act in respect of 88 decimal of land of plot no. 1798. So far as remaining area of suit land is concerned, I have already stated that the plaintiffs purchased the aforesaid land through valid sale deeds and, therefore,



initiation of proceeding under section 4(H) of the Act in respect of those lands was illegal.

20. No doubt, zamindari return has not been brought on the record by the plaintiffs but admittedly, the aforesaid document was in possession of the defendants-respondents and if the defendants-respondents came with specific case that the ex-landlords had not shown settlement in their zamindari return, it was incumbent duty of the defendants-respondents to bring the aforesaid document before the court but they failed to do so.

21. However, mere non-mentioning of the settlement of the plaintiffs in zamindari return by the ex-landlords is not sufficient to show that the ex-landlords had not settled 88 decimal of plot no. 1798 in favour of ancestors of the plaintiffs and in my view, for the fault and omission of the ex-landlords, the plaintiffs can not be made responsible.

22. On the basis of the aforesaid discussions, I am of the opinion that learned trial court committed error in deciding the issue nos. vii and viii against the plaintiffs and also committed error in deciding issue nos. i, iv, v and ix against the plaintiffs. Furthermore, on the basis of the



aforesaid discussions, I am of the opinion that the impugned judgment and decree can not sustain in the eye of law and accordingly, this appeal is allowed and the impugned judgment and decree is, hereby, set aside. In the result, suit of the plaintiffs-appellants is decreed and accordingly, their title in respect of suit land is declared and it is also declared that the orders passed by defendant respondent nos.1 and 2 are ab initio void and without jurisdiction. Parties shall bear their own cost.

Shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	01.12.2017
Uploading Date	07.09.2018
Transmission Date	07.09.2018

