

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.579 of 2019

1. Raj Narain Paswan, aged about 55 years, male, Son of late Nagina Paswan, Resident of Village- Thare, P.O. and P.S. Maker, District- Saran.
2. Deep Narain Paswan @ Deepak Paswan, aged about 34 years, male, Son of late Nagina Paswan, Resident of Village- Thare, P.O. and P.S. Maker, District- Saran.
3. Bhagya Narain Paswan, aged about 34 years, male, Son of late Nagina Paswan, Resident of Village- Thare, P.O. and P.S. Maker, District- Saran.

... .. Petitioners

Versus

1. Janardan Singh @ Janu Lal Singh, Son of late Bachhu Lal Singh, Resident of Village- Thare, P.O. and P.S. Maker, District- Saran.
2. Vijay Singh, S/o Ram Nagina Singh, Resident of Village- Thare, P.O. and P.S. Maker, District- Saran.
3. Sanjay Singh, S/o Ram Nagina Singh, Resident of Village- Thare, P.O. and P.S. Maker, District- Saran.
4. Munna Singh, Son of Ram Nagina Singh, Resident of Village- Thare, P.O. and P.S. Maker, District- Saran.
5. Uma Shankar Singh Son of late Bhawani Singh, Resident of Village- Thare, P.O. and P.S. Maker, District- Saran.
6. Prem Kumar, S/o late Bhawani Singh, Resident of Village- Thare, P.O. and P.S. Maker, District- Saran.
7. Laliteshwar Prasad Singh, Son of late Ram Padarath Singh, Resident of Village- Thare, P.O. and P.S. Maker, District- Saran.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Sanjay Parasmani-Advocate
For the Respondents	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

17-10-2019

Heard learned counsel for the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 24.03.2018 passed by the learned Additional District Judge-X, Saran, Chhapra in Miscellaneous



Appeal No.34 of 2015, whereby and whereunder the appellate Court has dismissed the appeal filed by the petitioners against the order dated 23.05.2015 passed by the learned Munsif-II, Chhapra in Misc. Case No.24 of 2003 rejecting application under Order-21, Rule-97 of the Code of Civil Procedure (for short 'C.P.C.').

3. The contention of the learned counsel for the petitioners is that the order impugned has been passed on mere conjecture and surmises. According to him, the Court below failed to appreciate that the father of respondent no.1 had given land in question for cultivation on Batai to the father of the petitioners, who died on 20.10.2003 and, thereafter, the land came in possession of petitioners. The Court below also failed to appreciate that during lifetime, the father of the petitioner's used to give the usufruct to the father of respondent no.1 and, thereafter, petitioner's also used to give usufruct in same way to respondent no.1.

4. I have heard learned counsel for the petitioners and carefully perused the record.

5. It would be evident from perusal of the record that the father of respondent no.1 was the plaintiff in Title Suit No.79 of 1992 and the respective fathers of the respondent nos.2



to 7 were defendants in the suit. The suit was decreed under Order-12, Rule-6 of the C.P.C. upon admission of the defendants that they are ready to execute deed of conveyance after receiving the entire consideration of money of Rs.7,000/- and the judgment and decree in the said suit was passed on 25.08.1995 and 02.09.1995 respectively. For the execution of the aforesaid decree, the respondent no.1 filed Execution Case No.18 of 1998 with respect to the suit land situated at Village-Thahra, Tauzi-344, Thana No.226, measuring 18 Katthas. The execution proceeding was resisted by the petitioners by way of filing an application under Order-21, Rule-97 of the C.P.C. The petitioners claimed that they are Bataidars of the suit land. The trial Court adjudicated the application filed by the petitioners against them taking into consideration the entire facts and circumstances of the case as also the documentary evidences available on record vide its order dated 23.05.2015, it categorically held that there is no material to show that the petitioners were in possession of the suit land in any capacity.

6. Thereafter, the petitioners preferred an appeal vide Misc. Appeal No.34 of 2015 before the Court of Additional District Judge, who also after hearing the parties and considering the materials on record gave a concurrent finding of



fact and dismissed the appeal vide impugned order dated 24.03.2018.

7. There is concurrent finding of law that the petitioners have failed to prove that they are Bataidars. They have also failed to prove that they are in possession of the suit land. The findings of the court below are neither perverse nor without jurisdiction.

8. In that view of the matter, I am not inclined to interfere with the order impugned in supervisory jurisdiction under Article 227 of the Constitution of India.

9. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

vikash/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.10.2019
Transmission Date	21.10.2019

