

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.306 of 2021

Anil Kumar Sinha @ Anil Prasad, S/o Late Tulsi Prasad, Resident of Village-Khairma, P.O. and P.S.-Jamui, District-Jamui, Bihar, Pin Code-811307.

... .. /Appellant/s

Versus

1. Renu Devi, W/o Gangadhar Prasad, D/o Late Ramanand Prasad, Resident of Village-Kalyanpur, P.O. Kalyanpur, P.S. Bibiya, District-Bhojpur (Arah), Pin Code-802154.
2. Indu Devi, W/o Ajoy Kumar Bharati, D/o Late Ramanand Prasad, Resident of Village-Kalyanpur, P.O. Kalyanpur, P.S. Bibiya, District-Bhojpur (Arah), Pin Code-802154.
3. Madhu Rani, W/o Shailendra Kumar Sinha, D/o Late Ramanand Prasad, Resident of Village-Pakri, P.O. P. Basantpur B.O. P.S. Basatpur Pakari, District-Sitamarhi, Pin Code-843327.
4. Ashok Kumar Sinha, S/o Late Ramanand Prasad, Resident of Village-Khairma, P.O. and P.S. Jamui, District-Jamui, Bihar, Pin Code-811307.
5. Lalan Kumar Sinha, S/o Late Ramanand Prasad, Resident of Village-Khairma, P.O. and P.S. Jamui, District-Jamui, Bihar, Pin Code-811307.
6. Awadhesh Kumar Sinha, S/o Late Ramanand Prasad, Resident of Village-Khairma, P.O. and P.S. Jamui, District-Jamui, Bihar, Pin Code-811307.
7. Arun Kumar Sinha, S/o Late Ramanand Prasad, Resident of Village-Khairma, P.O. and P.S. Jamui, District-Jamui, Bihar, Pin Code-811307.
8. Binod Kumar Sinha, S/o Late Ramanand Prasad, Resident of Village-Khairma, P.O. and P.S. Jamui, District-Jamui, Bihar, Pin Code-811307.
9. Manoj Kumar Sinha, S/o Late Ramanand Prasad, Resident of Village-Khairma, P.O. and P.S. Jamui, District-Jamui, Bihar, Pin Code-811307.

... .. /Respondent/s

Appearance :

For the Appellant/s : Mr. Dineshwar Prasad Singh
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 30-09-2022

This Second Appeal has been preferred against the
judgment dated 31.03.2021 and decree dated 03.04.2021 passed
by Additional District Judge -IV, Jamui in Title Appeal No. 15



of 2017, affirming the judgment and decree dated 31.07.2017 and decree dated 17.08.2017 passed by Munsif, Jamui in Title Suit No. 15 of 2017.

2. The defendant is the appellant herein and the plaintiffs who are respondents herein brought Title Suit No. 15 of 2007 for declaration of their title and confirmation of possession over the lands described in schedule (1) of the plaint as well as for the direction to the defendant appellant to remove the encroachment over the land described in Schedule (2) of the plaint.

3. The case of the plaintiffs is that suit land (Khesra No. 779 area .5 decimal as mentioned in schedule 1 of the plaint) recorded in khatiyon as gairmazarua Malik, Kishmagarhi (ditch). Late Kishun Lal who was the father of plaintiff no. 1 and grand-father of plaintiff no. 2 to 7 filled up the said garhi (ditch) and started to tie his cattle over it by putting boundary towards south to west side of suit land and putting naad, khunta etc. over it. The ex-landlord gave the said land to Kishun Lal by issuing Khatiyan slip in his name who came in possession over the same and remained in possession over it till his death and after his death the plaintiffs have come in peaceful possession over the same with perfect right and title as the suit land was



rent free land, so the plaintiff no. 1 applied for fixation of rent before the Anchal Adhikari of Jamui and rent of the same has been fixed by the Revenue Authority in the name of plaintiff no. 1. He started paying rent of the suit land to the State of Bihar for that rent receipts issued by the State of Bihar in favour of plaintiffs with Jamabandi No. 738. Further case of the plaintiffs is that defendants started creating trouble in peaceful possession of the plaintiffs over the suit land and started breaking the southern boundary of wall of suit land. The plaintiffs got measure the suit land by private Amin and found that the defendants have encroached illegally upon area of 58 cubits from north to south side and 13 cubits from east to west side towards western portion of the suit land as detailed in schedule 2 of the plaint at the time of construction of his house over Khesra No. 778.

4. The defendant case is that he had constructed his house just after purchasing of plot no. 778 in the year 1994 in the name of his wife. It is stated that the suit is barred by non-joinder of necessary party. According to him the wife of defendant and Government of Bihar are necessary parties. Suit land is mentioned as Gair Majorua Malik land in survey Khatiyani and all Gair Majorua Malik land has been vested to



the State, so presence of State in suit is necessary.

5. Further case of the defendant is that neither the plaintiffs nor their ancestors came in possession over suit land and so called Khatiyani slip is forged and fabricated paper as the Anchal Adhikari or D.C.L.R. have no jurisdiction to fix rent rate about Gair Majarua Malik land in favour of any particular individual hence creating of Zamabandi No. 738 in favour of plaintiffs is without jurisdiction and creating no right or title in favour of plaintiffs. Defendants are coming in possession over suit land for more than 12 years by constructing their house. The defendants denied that plaintiffs or their ancestors came in possession over the suit property as claimed and no measurement made by any Amin on behalf of plaintiffs in presence of defendant.

6. The learned Trial Court after considering the evidence on record and hearing arguments decreed the suit of plaintiffs by judgments dated 31.07.2017 and decree dated 17.08.2017. In appeal preferred by defendant/appellant being Title Appeal No. 15 of 2017 First Appellate Court vide judgment dated 31.03.2021, formulated four points for determination which were decided in favour of the plaintiffs and found that there was no illegality in the Trial Court Judgment



and accordingly, dismissed the appeal by confirming the judgment and decree of the Trial Court.

7. Both the courts below have on scrutiny of the pleadings and evidence of the parties, recorded the concurrent finding of the fact that the plaintiffs have title over the land detailed in Schedule (1) of the plaint and confirmed the possession of the plaintiffs and directed the defendant to remove the structure and to hand over the vacant possession of the land detailed in the Schedule (2) of the plaint.

8. Learned counsel for the appellant has submitted that both the courts below are not correctly appreciated the evidence of the parties and the impugned judgments are liable to be set aside. He has further submitted that both the courts have neither framed the issue at the point of non-joinder of the necessary party nor given any finding on that point. He has further submitted that there was specific plea raised by the defendant in his written statement that the said house belongs to Smt. Nirmala Devi, the wife of defendant who had purchased the Plot No. 778 and constructed the house and thus she is a necessary party.

9. He has next submitted that both the courts below have not considered the material facts on record and perversely



arrived at the finding that order of rent fixation, creating zamabandi in the name of plaintiffs by Anchal Adhikari and D.C.L.R. on the basis of Karamchari report who found the house of plaintiffs situated over the suit land which was contrary to the statement and report of the Pleader Commissioner (P.W.-4). It is further submitted that the First Appellate Court has not discharged his duty as contained under Section 96 read with Order 41 Rule 31 C.P.C dealing independently with all the evidences led by the parties and record his finding both on question of law and on fact by giving his own independent findings on all issues.

10. Having heard the learned counsel for the appellants and on perusal of judgments of both the courts below it appears that ex-landlord executed a Khatiyani slip in favour of late Kishun Lal (ancestor of plaintiffs) on 05.04.1934 as rent free land. Later on considering the application by the plaintiffs for fixation of the rent for suit land the rent has been fixed by the Revenue Authority in his name who started paying rent of the suit land to the State of Bihar under Zamabandi No. 738.

11. The Court below relied on the said documents on the basis of Section 35 of Indian Evidence Act which states that “an entry in any public or official book, register or record,



stating a fact in issue or relevant fact and made by a public servant in discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact”.

12. Ext. 12 is register (2) of the said land and it was observed that from perusal of the same, it appears that it has been opened in the name of Ramanand Prasad, who is plaintiff of the suit (now deceased). The learned Court below also found that it is the case of the defendant that after purchase of the land bearing Khata No. 87, Plot No. 778, Area 2 decimal in favour of Smt. Nirmala Devi, dated 08.08.1994, constructed his house then what they had concerned with land of Plot No. 779 of Khata No. 138 and their possession over suit property found to be an encroachment.

13. It was further observed that learned court below rightly reached to the opinion that the Pleader Commissioner's report was correct, and D.W.-3 Anil Kumar Sinha, himself admitted that he has no any document related to Plot No. 779, and accordingly, he has no right to say that the land belongs to any third party and State should be brought as a party.

14. After considering the oral and documentary



evidence of the parties the court below have found a preponderance of probability in favour of the plaintiffs, and accordingly, granted the decree, as prayed.

15. The entire submissions on behalf of the appellant, in fact center around re-appreciation of evidence in order to upset the concurrent finding of facts which cannot be done at the Second Appeal stage.

16. In this view of the matter, I do not find any substantial question of law arising for consideration in this appeal, which is, accordingly dismissed.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
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