

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.508 of 2017

1. Most. Jaymanti Devi, wife of Late Ramdeo Mandal
2. Sri Shyam Kishore Mandal
3. Subhash Kumar Mandal
4. Mithun Kumar Mandal @ Mithun Mandal All Sons of Late Ramdeo Mandal
All residents of Village - Parbatta Siwan Tola, Police Station and Anchal -
Ismilpur Naugachia Old Post Office - Sahu Parbatta, at present Post Office -
Jote Govind, District - Bhagalpur.
5. Lalita Devi Wife of Prakash Mandal Resident of Village - Amarpur
Trimuhani, Post Office and Police Station - Kahalgaon, Bhagalpur.
6. Smt. Renu Devi @ Smt. Renu Devi Wife of Ajay Mandal Resident of
Village - Nawada, Post Office and Police Station - Kharik, District -
Bhagalpur.
7. Smt. Bimla Devi @ Bimli Devi Widow of Bhairo Mandal
8. Nutan Devi Wife of Sri Sanoj Mandal, Daughter of Late Bhairo Mandal
9. Sri Rajesh Mandal
10. Sri Ranjit Mandal
11. Sri Niraj Mandal @ Niraj Kumar All sons of Late Bhairo Mandal
12. Rohit Mandal Son of Late Bhairo Mandal
13. Puja Kumari daughter of Late Bhairo Mandal All residents of Village -
Parbatta, Sundar Tola, Police Station and Anchal - Ismailpur, Naugachia
Old, Post Office - Sahu Parbatta, at present Jute Govind, District -
Bhagalpur.

... .. Appellants

Versus

1. Baijnath Sahu, son of Late Bishun Prasad Sahu
2. Smt. Mira Devi Wife of Late Mahesh Prasad Sahu
3. Mantu Kumar
4. Santu Kumar
5. Subash Kumar All Sons of Late Mahesh Prasad Sahu
6. Miss. Pinki Kumari Daughter of Late Mahesh Prasad Sahu
7. Dinesh Prasad Sahu Son of Late Bishnu Prasad Sahu
8. Ranjit Kumar
9. Ajit Kumar
10. Ashok Kumar
11. Anuj Kumar All Sons of Baijnath Sahu
12. Smt. Indu Chaurasia Wife of Dinesh Prasad Sahu



13. Nayan Kumar
14. Chayan Kumar All residents of Sahu Parbatta, Police Station - Naugachiya,
District - Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shashi Shekhar Dwivedi, Sr. Advocate
Mr. Rakesh Chandra, Advocate

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 10-10-2022

This Second Appeal is directed against the judgment and decree dated 31.07.2017 and 18.08.2017 respectively passed by Additional District Judge 7, Bhagalpur in Title Appeal No. 90 of 1994 whereby he has affirmed the judgment and decree dated 03.10.1994 in Title Suit No. 167 of 1989 / 17 of 1993 passed by learned Additional Munsif, Naugachhiya, Bhagalpur whereby the suit was decreed.

The appellants are defendants in the Trial Court. The plaintiffs filed Title Suit No. 167 of 1989 in the Court of Munsif, Naugachhiya for a decree of recovery of possession of the suit lands from the appellants / defendants and to declare the survey entry showing Sikmi Dakhalkar in the name of defendants against the suit plots in survey Khatian as well as Sikmi Khata No. 5 & 6 in respect of suit land in the name of defendants are wrong, null and void and not binding upon the



plaintiffs as they did not acquire occupancy right.

In brief, the case of the plaintiffs is that Jagpat Sah and Vishnu Prasad Sah were full brothers and Jagpat Sah died issueless in the jointness with his brothers who succeeded the property left by Vishnu Prasad Sah. Parties are governed by Mitakshara School of Hindu Law. The plaintiffs are the descendants of the said ancestor Vishnu Prasad Sah and plaintiffs are inter se separate in mess and residence but joint in properties. The lands in the name of joint family in toto comes to 80.63 acres unirrigated in both the villages Parbatta and Ismailpur and each of the plaintiffs being a member of undivided Hindu Mitakshara families are entitled to equal share in the joint family property measuring 80.63 acres left by father of plaintiff Nos. 1 to 3. Thus each of the plaintiffs owned and possessed less than 6 acres of unirrigated land and defendants being under raiyats of plaintiffs cannot acquire any right of occupancy. The further case of the plaintiffs is that in Baisakh 1973 the plaintiff nos. 1 to 3 orally gave 7.59 acres of cultivable lands to the defendants for batayi cultivation for ten years which was extended for further 5 years i.e. upto 1988 but despite promise by defendants to vacate the land and handover back to the plaintiffs as detailed in schedule A of the plaint failed to give



any legal produce rent and also not vacated the same.

During revisional survey of village Parbatta the defendants illegally got their names entered as Sikmi Dhakhalkar in the remark column of the survey Khatiyani against plots detailed in the plaint which is null and void and not binding upon the plaintiffs.

The case of the defendants as per the written statement is that the plaintiffs are being land holders and they have more than 300 acres of land in different villages and they are not protected tenants under the provision of Section 48C of B.T. Act. They are in cultivating possession right from the time of their ancestors and they are bataiyidars from more than 50 years and dividing the produce to the ancestors of the plaintiffs and after death of their grand father and father the defendants continued cultivation over the lands for more than 12 years along with their brothers and getting the division of produce to the plaintiffs and their father without any hindrance, hence acquired the occupancy right. It has been stated that the entry of their name in the survey record during revisional survey of village Parbatta were made rightly in the remark column of survey khatiyani as Sikmi Dakhalkar under Khata No. 760 recorded in the name of plaintiff Nos. 1 to 3 and Sikmi Khata



No. 5 and 6 correctly opened in the name of defendants.

On the basis of pleadings and evidence on record the Trial Court held that plaintiffs have got only 80.63 acres of unirrigated lands and not 300 acres of lands as alleged by defendants. It was further held that the plaintiffs constitute a Joint Hindu Coparcenary family under Hindu Law and they are entitled to equal share in the coparcenary property and each plaintiffs share in 80.63 acres of unirrigated land comes to less than 6 acres.

The plaintiffs case rightly falls within the ambit of Section 48E of B.T. Act and defendants have not got the occupancy right in the suit land.

It was also held that defendant in his testimony admitted that he had taken the suit land on Batai to grow crops and not for other purpose but they changed the nature of suit land by planting trees and constructing buildings and made it practically incapable of growing crop and thus defendants have committed the breach of agreement through these events.

In appeal the Court of first appeal affirmed the judgment and decree of the Trial Court and dismissed the same on contest.

Learned Senior counsel for the appellants submits



that the judgment of the first appellate court is perverse as it has not fulfilled the requirement of Order 41 Rule 31 of the Code of Civil Procedure. He has submitted that the infringement in the right of the plaintiffs 1 to 3 having accrued in 1975 during survey proceeding and the plaintiffs not having brought the suit within the period of 3 years of the final publication of Khatiyan in year 1978, the instant suit is hopelessly barred by law of limitation. It is next submitted that the courts below were legally not justified in treating plaintiff nos. 4, 9 and 13 as coparceners and holding that each of the coparceners holding less than 6 acres of unirrigated land for the purpose of Section 48C of the BT Act.

Lastly, it is submitted that the defendants being settled raiyats of the village and having acquired occupancy right by operation of law automatically such right can diminish or vanish by subsequent birth in the family of the landlord subsequent to the acquisition of such right of occupancy in favour of the defendants.

The law is well settled that mere existence of adverse entry in revenue records does not give rise to cause of action. Cause of action to sue accrues only when right asserted in suit is infringed or there is threat to infringe that right. The



plea of limitation raised by the appellants has been negated by both the courts below and held that plaintiffs suit is within limitation.

Both the courts below have given concurrent finding of facts and a concurrent finding of facts based on evidence having no perversity, it cannot be disputed in an appeal under Section 100 of Civil Procedure Code. There is no substantial question of law arise in this appeal and, accordingly, this Second Appeal is dismissed at the admission stage itself.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	NAFR
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