

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.687 of 2018

- 1.1. Smt. Srimanti Devi W/o Late Sukhdeo Mahto Resident of village- Kajur, Tola - Damodar, P.S. - Atri, Anchal - Atri, District - Gaya.
- 1.2. Ashish Kumar Sinha, S/o Late Sukhdeo Mahto, Resident of village- Kajur, Tola - Damodar, P.S. - Atri, Anchal - Atri, District - Gaya.
- 1.3. Sudha Sinha, W/o Late Manish Kumar, Resident of village - Kajur, Tola-Damodar, P.S. - Atri, Anchal - Atri, District - Gaya.
- 1.4. Kumari Sarita, D/o Late Sukhdeo Mahto and W/o Shiv Kumar Prasad, Resident of village - Kajur, Tola- Damodar, P.S. - Atri, Anchal - Atri, District - Gaya.
- 1.5. Sushma Kumari, D/o Late Sukhdeo Mahto and W/o Sudhir Kumar Prasad Resident of village - Kajur, Tola- Damodar, P.S. - Atri, Anchal - Atri, District - Gaya.
- 1.6. Pratyush Raj, minor son of Late Manish Kumar under the guardianship of his mother namely Sudha Sinha, Resident of village - Kajur, Tola- Damodar, P.S. - Atri, Anchal - Atri, District - Gaya.
2. Govind Mahto, Son of Late Fakira Mahto.
3. Rajendra Mahto, Son of Late Fakira Mahto.
4. Upendra Nath Verma @ Upendra Verma, Son of Vishun Mahto.
5. Ramshringar Mahto, Son of Late Budhan Mahto. All Resident of Village-Kajur, Tola-Damodar, P.S.-Atri, Anchal-Atri, District-Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Gaya.
3. The Circle Officer, Atri, District-Gaya.
4. Gorelal Choudhary @ Chamari Choudhary, Son of late Khewan Choudhary, Resident of Village-Kajur, P.S.-Atri, District-Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Saurabh Singh, Advocate Mr. Samir Kumar, Advocate Mr. Ajit Kumar, Advocate
For the Respondent/s	:	Mr. W. Rahman, Advocate.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

13 15-12-2022 Petitioners are plaintiff/appellants and have
approached this Court against the impugned order dated



07.03.2018 passed in Title Appeal No. 78 of 2016 by which application of petitioners under Order 41 Rule 27 read with Section 151 CPC for admitting '*Khewat*' by way of additional evidence has been rejected.

2. Petitioners filed Title Suit bearing T.S. No. 28/14/207/99 for declaration of title over the suit property detailed in Schedule-5 of the plaint. The case of the petitioners is that in Cadastral Survey Khatian regarding Tauzi No. 3534, name of ex-landlord has been recorded as 'Nath Sahay WO Mundarja' which means Nath Sahay and others. According to the petitioners "WO" mentioned in Cadastral Survey Khatian is clarified in the '*Khewat*' which is prepared under Rule 249 of the Technical Rule of Settlement Department and based upon the '*Khewat*' entries the Cadastral Survey Khatian was made. Rule 249 of Technical Rule of Settlement Department is quoted hereinbelow:-

"As the entire division and arrangement of the record depend upon the entries in the Khewat, this paper is in some respects the most important in the record, and the attestation officer will understand that a mistake in an entry in the Khewat may involve an error in every Khatian of the estate or patti affected by that entry".

3. In the year 1916, Khewat was prepared by the



Government and entries were made regarding portion of the properties which was inherited by the then Zameendaars/Ex-landlords. After preparation of Khewat and Cadastral Survey Khatian some dispute arose between the landlord and the Raiyats which came to settle in Title Suit No. 88/1950 by entering into compromise between the landlords who were plaintiff and the defendants who were Raiyats in the suit. A copy of the decree is annexed at Annexure-3 to this petition. Thereafter, the then landlord, Chhote Narayan Singh son of Baldeo Narayan Singh executed the sale deed in favour of petitioner's father in the year 1954 for a portion of the property upon which the petitioners are in continuous possession. A copy of the sale-deed has been annexed as Annexure-4 to this petition.

4. The Title Suit filed by the petitioners came to be dismissed on the ground that the plaintiffs have failed to prove that Baldeo Narayan Singh was Ex-landlord of the suit land and his sons, Chhote Narayan Singh and Rajeshwar Prasad became landlords after his death inasmuch as the name of the vendor of the land, ie. Chhote Narayan Singh did not find mention in the Cadastral Survey Khatian. As such, the title did not pass in favour of plaintiffs and the plaintiffs are not entitled for



declaration of title over the suit land.

5. Learned senior counsel for the petitioners submits that the suit was dismissed merely on the ground that the learned trial court could not find a link between the CSK and the sale-deed for the reasons that in the Cadastral Survey name of holder of the land is mentioned as 'Nath Sahay WO Mundarja' and the name of Chhote Narayan Singh and Rajeshwar Prasad was not mentioned in the CSK. He next submits that the word 'WO Mundarja' mentioned in the Cadastral Survey Khatian means 'Nath Sahay and Others' as holders of the land. According to him "WO" means 'Nath Sahay & Others' i.e., his heirs are holders of the land which could be clarified from the documents called 'Khewat' and the same is prepared by the Government as per Rule 249 of Technical Rule of Settlement Department. The 'Khewat' was registered under Section 103(A) of Bihar Tenancy Act also. In the 'Khewat', the name of Nath Sahay, Chhote Narayan Singh (vendor of the petitioners' father) 'WO' Rajeshwar Prasad are mentioned as would be evident from Annexure-1 to this petition. The Cadastral Survey Khatian is prepared based upon the entries made in the 'Khewat' and in the CSK, it has specifically mentioned in the column of the holder of the land 'Nath Sahay & WO' means Nath Sahay and



others which includes Chhote Narayan Singh and Rajeshwar Prasad also.

6. Learned senior counsel further submits that after the decision of the title suit the petitioners came to know about the 'Khewat' which is a public document. Accordingly, the petitioner filed a petition under order 41 Rule 27 for admitting the 'Khewat' as an additional piece of evidence in order to pronounce an effective judgment in appeal. The said petition has been rejected by the learned District Appellate Court merely on the ground that nothing has been stated by the appellant that as to why this document was not produced earlier in the court below and no reason has been assigned for non production of the document earlier. It has also been rejected on the ground that the petitioners want to fill lacuna at the appellate state which is not permissible under the law.

7. Learned counsel for the petitioner relied upon judgment of Hon'ble Apex Court in the case of *Union of India v. Ibrahim Uddin* reported in *2012 (8)PLJR 148 (SC)* and also in the case of *Sanjay Kumar Singh v. The State of Jharkhand* reported in *2022(2) PLJR 336 (SC)*.

8. *Per contra*, learned counsel appearing for the respondents argued that the petitioners have not made out a case



of due diligence in his petition under Order 41 Rule 27 of the CPC that after exercise of due diligence, they could not produce this document at the time when the decree appealed against was passed. He vehemently, argued that the learned lower appellate court has come to the finding that the appellants have not whispered at all in their petition that the said document was not within their knowledge or could not after the exercise of due diligence be produced at the time of passing of the decree. The Old Survey Katian of the land in question was marked as Exhibit 'D' by the trial court and now the appellants/petitioners want to bring 'Khewat' on the record to show that who were the actual land owners of village, Kajoor and now by bringing this document the petitioners want to patch up the weak point at the appellate stage. In support of his argument , he relies upon the judgment of Hon'ble Supreme Court in the case of ***Satish Kumar Gupta v. State of Haryana*** reported in ***(2017) 4 SCC 760***.

9. I have heard learned counsel for the parties and have perused the material on record including the impugned order. Petitioners have claimed that the landlord, namely, Chhote Narayan Singh son of Baldeo Narayan Singh executed a registered sale-deed of the lands mentioned therein in favour of



the petitioners in the year 1954 and petitioners on the basis of registered sale-deed executed by the landlord have claimed their title and possession over the suit land. The Cadastral Survey Khatian has been marked as Ext- 'D' in the suit pertaining to Tauji No. 3534 and the name of landlord has been mentioned as 'Nath Sahay WO Mundarja'. The case of the petitioners is that after the decision of the title suit the petitioners came to know about entries made in the 'Khewat' in which the name of ex-landlords are mentioned including the name of vendor of the petitioners, Chhote Narayan Singh. The respondents/defendants have filed the CSK having name of ex-landlords as 'Nath Sahay WO' which according to the petitioners can be read as Nath Sahay and Others and the word 'Others' can be clarified from the entries made in the 'Khewat'. Accordingly, the petitioners filed petition to admit the 'Khewat' which is a public document as additional piece of evidence to clarify the word 'Nath Sahay WO' mentioned in the CSK i.e., Ext- 'D' which is already on record.

10. The trial court based upon the entries made in CSK has arrived at the finding that name of vendors of the petitioners is not mentioned in the CSK whereas the petitioners wants to clear the cloud and in order to explain that 'Nath Sahay



WO ' mentioned in the CSK includes the name of heirs of 'Nath Sahay' who are vendor of the petitioners i.e., Chhote Narayan Singh and Rajeshwar Prasad which would be evident from the 'Khewat' and accordingly, the petitioners wanted to adduce 'Khewat' as additional piece of evidence.

11. The Hon'ble Supreme Court in the case of ***Ibrahim Uddin (Supra)*** has held that *"where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed."*

12. Hon'ble Supreme Court in the case of ***Sanjay Kumar (Supra)*** has held that *it is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative*



that it may be allowed to be permitted on record, such application may be allowed”.

13. Quoting the judgment passed in the case of **A. Andisamy Chettiar v. A Subburaj Chettiar** reported in **2015(17) SCC 713**, it has been observed by the Hon’ble Supreme Court *that the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore, is whether the appellate court is able to pronounce judgment on the material before it without taking into consideration the additional evidence sought to be adduced.*

14. The entire case hinges around the fact that whether the vendor of the petitioners was owner of the lands which was transferred by him in the year 1954 in favour of the petitioners by way of registered sale-deed. By adducing the additional evidence the petitioners intend to clarify and explain the entries made in CSK regarding the name of landlord by adducing the additional evidence which is ‘Khewat’ prepared by



the Government of Bihar.

15. In view of the aforesaid, I am of the considered opinion that the additional evidence sought to be adduced will remove the cloud of doubt regarding the name of holder of the land recorded in Khatian and 'Khewat' adduced by the petitioners by way of additional evidence has a direct and important bearing on the main issue involved in the suit. I am also of the opinion that the 'Khewat'/additional evidence sought to be adduced by the petitioners/appellant would enable the court to pronounce the effective judgment. The judgments relied upon by the respondents, in the facts of the case, is not applicable.

16. In view of the above discussions and for the reasons stated above, the present application is allowed. The impugned order dated 07.03.2018 passed in Title Appeal No. 78 of 2016 by District Judge, Gaya is hereby quashed and set aside.

17. The petitioners/appellants are permitted to adduce the 'Khewat' by way of additional evidence which will be accepted by the District Appellate Court in accordance with law.

(Anil Kumar Sinha, J)

perwez

U			
---	--	--	--

