

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.218 of 2018

1. Janki Devi @ Janaki Devi, W/o late Bikram Mandal, Resident of Village, P.O., and P.S. - Tikapatti, District- Purnea.
2. Sunita Devi @ Sarli Devi, W/o Bablu Mandal @ Babulal Mandal and D/o Late Bikram Mandal, Resident of Village, P.O. and P.S. Dholbajja, District - Bhagalpur.
3. Kalpana Devi @ Punam Devi, W/o Chunnu Mandal and D/o Late Bikram Mandal, Resident of Village and P.O. Sripur, P.S. - Bhawanipur, District - Purnea.
4. Soni Kumari, D/o Late Bikram Mandal, Resident of Village, P.O. and P.S. Tikapatti, District - Purnea, Minor
5. Yogendra Kumar, S/o Late Bikram Mandal Resident of Village, P.O. and P.S. - Tikapatti, District- Purnea, Minor
6. Bilash Kr. Mandal S/o Chinta Devi, Resident of Village, P.O. and P.S. Tikapatti, District- Purnea.
7. Manjula Devi @ Manju Devi d/o Late Jhaksu Mandal Resident of Village, P.O. and P.S. Tikapatti, District- Purnea.

... .. Appellant/s

Versus

1. Bedanand Mandal, S/o Raghunath Mandal
2. Parmanand Mandal, S/o Chunni Mandal
3. Karam Chand Mandal, S/o Radhe Shyam Mandal, All Residents of Village - Tikapatti, P.O. and P.S. - Tikapatti, District - Purnea

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anshuman Jaipuriyar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 21-09-2022

This Second Appeal has been preferred against the judgment and decree dated 16.03.2018 and 28.03.2018, respectively passed by District Judge, Purnea in Title Appeal No. 57 of 2003, affirming the judgment and decree dated



30.08.2003 and 06.09.2003 respectively, passed by Munsif Sadar, Purnea in Title Suit No. 258 of 1989.

2. The appellants were defendants before the Trial Court. The plaintiff's case is that the suit land described in Schedule "A" of the plaint are the occupancy *Raiyati* holdings of the plaintiffs and it was acquired by the plaintiff no. 1 in his own name by a registered sale deed dated 08.10.1953, in the capacity of *Karta* of joint family and since then plaintiffs are coming in *Khas* cultivating possession over the suit land and the R.S. records of Rights of the Suit Land also stands in the name of plaintiffs jointly. The defendants are trying to take possession over the suit land on the pretext of their names have recorded as *Sikmidar* in this *Khata*.

3. Defendants' case is that they are coming in possession of the suit land as *Sikmi Bataidar* and regularly dividing the crops of the suit lands to the landlord but any receipt in this regard was not granted as there is no custom for the same in the locality. The further case of defendants is that in revisional survey operations, the Survey Authorities after spot inquiry duly recorded the suit lands in the name of defendant as *Sikmidar Bataidar* and the plaintiffs never raised any objection to the said entry.



4. Both the courts below on scrutiny of pleading and evidence have hold that plaintiffs are landlord of the suit land. The Trial Court decreed the suit and in appeal the First Appellate Court confirmed the finding of the Trial Court and dismissed the appeal. Hence, this Second Appeal has been filed.

5. Heard learned counsel for the appellants.

6. Learned counsel for the appellants submits that the findings of the courts below are not in accordance with law as the same has been passed by ignoring the evidences of the defendants. It is further submitted that the First Appellate Court has failed to appreciate that the name of ancestors of the defendants was entered in the R.S. *Khatiyani* (1958) as *Sikmidar* over the suit land and the Judgments were passed without proper appreciation of the evidences on record. He has further submitted that the Trial Court framed the issue which was not asked for by the plaintiffs nor any evidence was adduced in this regard. The court below also erred in giving finding upon the claim of inheritance of defendants, upon the suit land, as *Sikmi* land described in the R.S. *Khatiyani*. He has lastly submitted that the plaintiffs filed the suit in the court after expiry of period of limitation accordingly the suit is liable



to be dismissed on this ground alone.

7. Learned Trial Court considering the evidences of the parties came to the conclusion that plaintiffs have established their case that after purchasing the suit land from Beni Sah, they came in cultivating possession and no *Batai* settlement was made either by Beni Sah or by the plaintiffs with the father of the defendants. The defendants have miserably failed to establish that his father was *Sikmidar* of Beni Sah and the plaintiffs and he used to divide the produce to the suit land with them. It is also clear that the entry of *Sikmi* in favour of the defendant's father is not correct and without any basis. Accordingly, the plaintiff's suit was decreed.

8. The First Appellate Court, in appeal, has also examined the evidence of the parties and their submission and thereby held that plaintiffs are rightful owner and they have right, title and possession over the suit land. Defendants' claim as a *Sikmidar* is not correct and confirmed the findings of the Trial Court and dismissed the appeal on contest.

9. From perusal of the Trial Court judgment and the First Appellate Court judgment, it appears that both the courts have found that plaintiffs are landlord to the suit land and they



have right, title and possession over the same and defendants claim as a *Sikmidar* is not correct.

10. It appears that issue with respect to limitation was not pressed. The Trial Court as well as the Appellate Court considered the evidence adduced on behalf of the parties and given specific finding on facts that after purchasing the suit land from Beni Sah, the plaintiffs came in cultivating possession and no *Batai* settlement was made with the father of defendants and also that father of defendants was *Sikmidar* of Beni Sah or the plaintiffs.

11. It is settled principle of law that in Second Appeal this Court is not empowered to reappreciate the evidence of the parties unless the Court finds that finding of the First Appellate Court is perverse. The existence of substantial question of law is *sine qua non* for exercise of jurisdiction.

12. Having heard the learned counsel for the appellants and on perusal of the judgment of both courts below, it is found that there is no perversity or unreasonableness and the judgments are passed on the appreciation of evidences on record and the principles of law in this regard. There is no substantial question of law arises in this Second Appeal.



13. In view of the aforesaid discussions this Second
Appeal is dismissed at the admission stage itself.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
CAV DATE	27.08.2022
Uploading Date	21.09.2022
Transmission Date	

