

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.141 of 2020

1. Chote Chaudhary @ Chhotey Chaudhary, Son of Late Govind Chaudhary, Resident of Village- Belchi Sharif, P.S.- Manpur, District- Nalanda.
2. Ashok Chaudhary, Son of Late Haro Chaudhary, Resident of Village- Belchi Sharif, P.S.- Manpur, District- Nalanda.

... .. Petitioner/s

Versus

1. Sikandar Chaudhary, Son of Shyam Chaudhary, Resident of Village and P.- Belchi Sharif, P.S.- Manpur, District- Nalanda.
2. Renu Devi, Wife of Ashok Paswan, Resident of Village and P.- Belchi Sharif, P.S.- Manpur, District- Nalanda.
3. Smt. Kunti Devi, Wife of Dharam Paswan, Resident of Village and P.- Belchi Sharif, P.S.- Manpur, District- Nalanda.
4. Naushad Miyan, Son of Late Wase Miyan, Resident of Village and P.- Belchi Sharif, P.S.- Manpur, District- Nalanda.
5. Reyaz Miyan, Son of Sahab Miyan, Resident of Village and P.- Belchi Sharif, P.S.- Manpur, District- Nalanda.
6. Annu Miyan, Son of Nasim Miyan, Resident of Village and P.- Belchi Sharif, P.S.- Manpur, District- Nalanda.
7. Safique Miyan, Son of Usman Miyan, Resident of Village and P.- Belchi Sharif, P.S.- Manpur, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Hansraj
For the Respondent/s : Mr.Anil Kumar Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 18-10-2023

Heard the parties.

2. The present application has been filed for quashing the order dated 25.08.2017 passed by the Sub Judge V, Nalanda at Bihar Sharif in Title Suit No. 298 of 2012 by which the petition of the plaintiff for accepting the photostat copy of the Purga for the year 1969-70 in the name of Gobind Choudhary issued by



the State of Bihar has been rejected.

3. Learned counsel for the petitioners submits that the petitioners herein being the plaintiffs had filed Title Suit No. 298/2012 for declaration of their right, title and possession over the Schedule-I property of the plaint by virtue of settlement made by the State of Bihar by issuance of Parcha dated 13.03.2012 passed in Land Dispute Case No. 84/11-12 by the Land Reforms Deputy Collector, Biharsharif is quite just and legal and pursuance thereto delivery of possession effected is also legal and to hold that the subsequent order dated 29.11.2012 passed by the Land Reforms Deputy Collector, Biharsharif after setting aside the order dated 13.03.2012 is beyond the jurisdiction of the Land Reforms Deputy Collector, Biharsharif.

4. The case of the petitioners, in short, is that land of Khata No. 578, Plot no.2054 area 02 decimal land has been settled by the Government of Bihar in the name of father of petitioners and issued Parcha on 03.07.1970 and possession has also been delivered.

5. It is further submitted that when the Respondent No.1 started to quarrel for the land in question, the petitioners filed Land Dispute Case No. 84/11-12 in the Court of Land Reforms



Deputy Collector, Biharsharif who by his order dated 13.03.2012 allowed the case by affirming the issuance of Parcha and directed the Anchal Office to demarcate the land and get the same blocked by erecting boundary wall.

6. After the demise of Govind Chaudhay, all his three sons are coming in actual physical possession of the disputed land.

7. It is also submitted by the learned counsel appearing on behalf of the petitioners that the respondents in connivance with the Mukhiya, Sarpanch and co-villagers, filed an objection before the Land Reforms Deputy Collector, Biharsharif and got succeeded in getting favourable order vide order dated 29.11.2012. Hence the suit was filed.

8. However, after issuance of notice, the respondents/defendants appeared and filed their respective Written Statements denying the averments of the plaint.

9. He submits that during pendency of the Suit, the plaintiffs/petitioners filed a petition dated 01.06.2017 praying therein for exhibiting the photostat copy of the Parcha of the year 1969-70 in the name of Govind Chaudhary issued by the Government of Bihar as the same is more than 30 years old document and Parcha is missing, so it may be exhibited.



10. It is further submitted that the the defendants/respondents filed their rejoinder on 29.06.2017 stating *inter alia* that the petition filed by the plaintiffs is quite misleading and against the procedure of law and has prayed to reject the same.

11. Learned counsel for the petitioner further submits that the learned Sub Judge-V, Biharsharif, Nalanda after hearing the parties and on perusal of the record, rejected the petition of the plaintiffs by his order dated 25.08.2017.

12. He also submits that it is relevant to state here that since the Parcha was missing, the plaintiffs/petitioners tried their level best to get the same through Right to Information Act, 2005, but all went in vain. However, the Anchal Adhikari-cum-Public Information Officer, Biharsharif vide his Letter No. 2988 dated 26.09.2014 submitted that the land in dispute is recorded in Register-II having Jamabandi No. 127 in the name of Govind Chaudhary vide Case no. 452/19/69/70 of area 2 decimals and receipt upto year 2013-14 has been issued. Since, the Settlement Register of the year 1969-70 is not available, the same could not be handed over.

13. The letter dated 26.09.2014 has been marked as Exhibit '2' by the Court below.



14. Learned counsel for the petitioners submits that the Court below has failed to consider that restricting the parties to produce evidence can be fatal for just and proper adjudication of the case.

15. Learned counsel for the petitioners further submits that the Court below ought to have exhibited the document, called for the relevant records and got the same verified as the same are 30 years old document and are admissible in evidence. He also submits that the Court below ought to have exhibited the document as secondary evidence, as the same is required for just and proper decision of the case.

16. The Respondents who are the defendants in the Court below have opposed the application filed by the plaintiffs-petitioners and have submitted that the Purchas in question cannot be accepted as the original document is not available and only if the original document is available then the Purcha could have been produced by way of secondary evidence.

17. I have heard the submissions of the parties.

Section 65 of the Indian Evidence Act, 1872 reads as follows:-

“65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

(a) when the original is shown or appears to be in



the possession or power—

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in Section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of Section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India], to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.”

18. From the last portion of the order, it appears that the Court below while rejecting the application of the petitioners has directed to call for the original or second copy or carbon copy or any other materials provided in this regard that such purcha has been issued or not from the issuing authority of



Purcha, i.e. Purcha issuing authority.

19. He has also called for a report as to whether any such purcha has been issued from the concerned.

20. The Court below has failed to consider Exhibit '2' that the letter No. 2988 dated 26.09.2014 issued by the Circle Officer-cum-Public Information Officer, Bihar Sharif who had written that the land in dispute is recorded in Register II in the name of Gobind Chaudhary and rent receipt till 2013 has been issued for two decimals of land. Since the settlement register of the year 2017 was not available, the same could not be produced. So from the letter dated 26.09.2014, it is clear that the land in question was settled in the name of Gobind Choudhary and, therefore, the Purcha which is more than thirty years can be considered as secondary evidence and the same can finally be considered along with the oral and documentary evidence at the time of final judgment in view of the provision of Section 65 of the Indian Evidence Act.

21. In these circumstances, this application is allowed.

22. The impugned order dated is set aside and the application dated 01.06.2017 filed by the plaintiff for accepting the photostat copy of the purcha of the year 1969-70 is allowed.

23. The suit being 298 of 2012 is directed to be disposed



of within a year without unnecessary adjournment to either party. The Court below will proceed ex parte against the non-cooperating party.

(Sandeep Kumar, J)

Saif/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	10.12.2023
Transmission Date	10.12.2023

