

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.368 of 1989

1. Baidyanath Mishra (Deceased)
- 1.1. Sushil Kumar Mishra @ Sushil Mishra s/o deceased Baidyanat Mishra
- 1.2. Prabhash Kumar Mishra @ Prabhash Mishra s/o deceased Baidyanat Mishra
- 1.3. Punam Kumari d/o deceased Baidyanat Mishra
- 1.4. Premwala Devi w/o deceased Baidyanat Mishra
- 1.5. Suchita Kumari d/o deceased Baidyanat Mishra
2. Mahendra Mishra s/o Jainarain Mishra
3. Rajendra Mishra s/o Jainarain Mishra
4. Govind Mishra s/o Jainarain Mishra
5. Markandey Mishra (Expunge) s/o Jainarain Mishra
6. Uma Kant Mishra s/o Markandey Mishra
7. Nageshwar @ Nagendra Mishra s/o Markandey Mishra
8. Suresh @ Surendra Mishra s/o Markandey Mishra
9. Sitaram Mishra (Expunge) s/o Janardan Mishra
10. Hirakant Mishra s/o Sitaram Mishra
11. Mithilesh Mishra s/o Sitaram Mishra
12. Shyam Sunder Mishra (Deceased) s/o Janardan Mishra
- 12.1 Phool Devi w/o deceased Shyam Sunder Mishra r/o Village Chandail P.S. Supaul at present r/o Village Bakour, P.S. Supaul Pargana ,Malharigopal Distt. Saharsa.
13. Mohan Mishra s/o Shyam Sunder Mishra
14. Shambhunath Mishra s/o Shyam Sunder Mishra
15. Narain @ Jitendra Mishra s/o Shyam Sunder Mishra
16. Lal Mishra s/o Shyam Sunder Mishra
17. Shib Shankar Mishra (expung) s/o Madhusudan Mishra
18. Kameshwar Mishra s/o Shivshankar Mishra
19. Nilamber Mishra s/o Shiv Shankar Mishra
20. Digambar Mishra s/o Shiv Shankar Mishra
21. Biswanath Mishra s/o Madhusudan Mishra
22. Pitamber Mishra s/o Biswanath Mishra

... .. Appellants

Versus

1. The State of Bihar
2. The Collector, Saharsa



3. The D.R.D.O. Dupaul, P.S. Supaul, District- Saharsa
4. The Anchal Adhikari Supaul, Supaul Block, P.S. Supaul, District-Saharsa
... .. Respondents

Appearance :

For the Appellants	:	Mr. Shashi Shekar Dwivedi, Sr. Advocate
	:	Mr. Parth Gaurav, Advocate
	:	Mr. Ashutosh Kr. Pandey, Advocate
	:	Ms. Ritu Raj Shukla, Advocate
For the Respondents	:	Mr. Khurshid Alam, AAG-12
	:	Mr. Shailendra Kumar Dwivedi, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 20-06-2023

This Second Appeal has been filed by the plaintiffs against the judgment and decree dated 31.05.1989 passed by Second Additional District Judge, Saharsa in Title Appeal no. 01 of 1977 dismissing the appeal and confirming the judgment and decree dated 29.11.1976 passed by Subordinate Judge, Saharsa in Title Suit no. 34 of 1973.

2. On 21.11.1989, following substantial questions of law were formulated while admitting this Appeal:-

(I) Whether the findings of the court below that the entire area of Plot Nos. 1281, 1282 and 1158 has vested in the State of Bihar by virtue of the proceeding under Section 4(h) of the Bihar Land Reforms Act is sustainable even if the entire order passed in the proceeding under Section 4(h) of the B.L.R. Act is accepted to be correct?



(II) Whether the courts below has misdirected itself in holding that even though the plaitinffs were not a party to the proceeding u/s 4(h) of the B.L.R. Act the same is still binding upon them?

(III) Whether the findings of the court below is based on the errors of record and non-consideration of the material evidence both oral and documentary?

(IV) Whether the finding of the court below that the entire land of Plot Nos. 1281, 1282 and 1158 has vested in the State of Bihar is sustainable and admittedly the major portion of the aforesaid plots are horticulture or cultivable land being in possession of the landlord ever since vested and has remained in possession all through of the plaintiffs since 1958?

(V) Whether the courts below should have drawn adverse inference for non-production of material documents which was in exclusive possession of the defendants and had a direct



bearing in the case and on that count the finding of the courts below is erroneous, perverse and illegal?

3. The plaintiff/appellants filed the aforesaid suit praying for declaration of title and possession of the plaintiffs over the suit land measuring 6 *Bigha* 7 *Katha* 19 *Dhur*, and further prayed for confirmation of possession and declaration that they are the occupancy *Raiyats* of these lands and the State of Bihar be directed to fix fare rent for the same, and further the State of Bihar is sought to be restrained permanently from the disturbing the possession of the plaintiffs.

4. Plaintiffs' case is that they are the original resident of village Chandail, P.S. Supaul, District Saharasa, but they shifted to village Bakaur where the suit lands are situated. It is further claimed that there was a Kosi river devastation at village Chandail in July-August 1954, and on account of Kosi devastation, the ancestral land and residential house of the plaintiffs at village Chandail had washed away, damaged and submerged under the flood water, as a result of which, the plaintiffs shifted to village Bakaur in September, 1954, which was east to the original place of residence. They have rehabilitated themselves temporarily by constructing thatched house and sheds on Plot Nos. 1281 and 1282 appertaining to



Khata no. 149. They set up their orchard, cattle-shed in those plots and also on Plot no. 1158 of the same *Khata*. Subsequently, the plaintiffs constructed their pucca building with tiled roofs in place of thatched house and sheds.

5. In the beginning paragraphs of the plaint, the plaintiffs claimed to have settled *Gairmajarua Malik* lands without any permission from anybody. In the subsequent paragraphs, it is stated that those lands along with Bakasht lands bearing Plot Nos. 1152, 1153, 1154, 1155, 1156, 1157 and 1159 of *Khata* no. 1 were settled with one Sri Harbansh Narain Singh orally as early as 14.09.1944 as *Raiyat* by Sri Chetmani Singh, ex-landlord. It is said that the landlord submitted his Return under Jamabandi no. 249 with regard to the said plots in the name of Sri Harbansh Narain Singh. It is claimed by the plaintiffs that the plaintiffs began to cultivate the Bakasht Land and also portion of *Gairmajarua* land bearing Plot Nos. 1281, 1282 and 1158, and they were in possession over the total area of 6 *Bigha* 7 *Katha* and 10 *Dhur* by constructing residential house and by cultivating the remaining land since September 1954 to December 1954. The plaintiffs took settlement of all these plots except the portion of Plot Nos. 1281 and 1282 measuring 1 *Bigha* and 10 *Dhur* on which *Hat* was being held



from the said Harbansh Narain Singh. Thus, they claimed to be the settlees of 5 *Bigha* and one *Dhur* land in *Gairmajarua Khata* no. 159 and 1 *Bigha* 9 *Katha* and 7 and $\frac{1}{2}$ *Dhur* in *Bakasht Khata* no. 1 in spite of fact that the plaintiffs got settlement from Harbansh Narain Singh. It is stated that subsequently plaintiff no. 1 to 18 purchased 4 *Bigha* 18 *Katha* 2 and $\frac{1}{2}$ *Dhur* by virtue of sale deeds dated 31.07.1958 and one sale deed dated 20.12.1965 on payment of consideration money to avoid any future litigation and to secure their possession as *Raiyats*. Plaintiffs no. 19 to 24 also purchased 1 *Bigha* 9 *Katha* 7 $\frac{1}{2}$ *Dhur* by virtue of sale deed dated 31.07.1958 for valuable consideration. In this way, the plaintiffs at first claim their right on the basis of occupancy *Raiyat* then by settlement through Harbansh Narain Singh (who himself is said to be a settlee from the ex-land lord Sri Chetmani Singh) and also subsequently has purchased through the above mentioned four sale deeds.

6. Further case of the plaintiffs is that the State of Bihar has been settling the portion of Plot no. 1281 and 1282 which covers the *Hat*, but the rest portion of these plots and Plot no. 1158 remained in peaceful possession of the plaintiffs, who had constructed their house and were enjoying the usufruct of the old mango orchard and were cultivating the culturable lands.



The Cause of action to the plaintiffs arose when they applied for fixing fare rent in the year 1968, but the revenue authorities refused to fix the fair rent on the ground that the alleged settlement by the ex-landlord, namely, Chetmani Singh to Sri Harbansh Narain Singh was annulled under Section 4(h) of the Bihar Land Reforms Act, 1950. The annulment order was confirmed by the State Government. It is submitted that the order was wrong as the plaintiffs were in possession over the lands as *Raiyats* and also because they were not made parties to that proceeding. Further circumstances giving rise to the cause of action is the settlement of usufructs of the disputed land by the State of Bihar with one Sri Shilakant Jha in spite of the protest made by the plaintiffs. The plaintiffs filed revision against the order of authorities refusing their prayer for fixing for rent but this was rejected on the same ground that the settlement made by ex-landlord in favour of Sri Harbansh Narain Singh has been annulled. Against the said order, the plaintiffs moved the Hon'ble High Court, but it was withdrawn on 19.02.1973 and then they have instituted the suit for the aforementioned reliefs after serving notice under Section 80 of the Civil Procedure Code.



7. On the other hand, the defendants, State of Bihar contested the suit by filing written statement. The defendants have not challenged the claim of the plaintiffs with regard to plots appertaining to the *Bakasht Khata* no. 1 as it had not vested in the State of Bihar and the ex-landlord was at liberty to transfer it to anybody. The dispute is only regarding the settlement of Plot Nos. 1281, 1282 and 1158 which appertains to *Gairmajarua Khata* no. 159. The defendant further denied the claim of the plaintiffs with regard to oral settlement on 14.09.1944 by ex-landlord Chetmani Singh to Harbansh Narain Singh. It has been further pleaded that the said Harbansh Narain Singh, the father-in-law of Sri Chetmani Singh, later made some *Farzi* and *Benami* settlement in the name of his father-in-law after the estate vested in State of Bihar on 26.01.1955 to defeat the provisions of Bihar Land Reforms Act. It is also submitted that it did not only affect the real interest of the State but it affected also the general public as the lands were covered also by grave-yard and Mahadev Asthan. The State of Bihar under the provisions of Section 4(h) of the Bihar Land Reforms Act initiated a proceeding against Sri Chetmani Singh (settler ex-landlord) and Sri Harbansh Narain Singh (Settlee) for annulment of *Farzi* settlement in respect of Plot Nos. 1281, 1282, 1158, 850



which was after notice annulled by the Additional Collector and confirmed by the State Government only to aforesaid settlement in favour of Harbansh Narain Singh. About the claim of possession over the *Gairmajarua* disputed lands, it is said that the plaintiffs made some illegal encroachment over some portion of these lands in the year 1958, and defendants were taking legal steps for removing the encroachment when the plaintiffs filed a writ case and subsequently the present suit. Further case of the defendants is that during pendency of the proceeding under Section 4(h) of the Bihar Land Reforms Act, the said Harbansh Narain Singh executed sale deeds in favour of plaintiffs. The said Harbansh Narain Singh executed sale deeds after annulment order under Section 4(h) of the Bihar Land Reforms Act. The claim of the plaintiffs with regard to peaceful possession of the plaintiffs of the aforesaid land has been denied by the defendants and it is said that encroachment over those portion of the *Gairmajarua* lands were seriously objected by the State of Bihar and a proceeding under Section 107 and 144 of the Criminal Procedure Code were started. The enquiry under the provisions of the Bihar Lands Reform Act was initiated in the year 1958 and finally decided in the year 1967. The *Anchal Adhikari* took



possession in the year 1969 and settled the mango fruits for the year 1970-71.

8. Learned appellate court after scrutinizing the pleadings and evidence as well as judgment of the trial court found that proceeding for annulment of the alleged settlement under Section 4(h) of the Bihar Land reforms Act was already started and after the notice to the ex-landlord, as well as settlee, the settlement of Plot Nos. 1281, 1282, 1283 and 850 of *Khata* no. 159 has already been annulled. The order of annulment has been marked as Exhibit-G. It will appear from the order (Exhibit-G) that due enquiry was made and it was found that the alleged settlement dated 04.09.1944 was found *malafide* and *Benami* and *Jamabani* no. 249 in favour of Harbansh Narayan Singh, who was the father-in-law of the ex-landlord, namely, Chintamani Singh, was created fraudulently after 26.01.1955, only with a view to defeat the provisions of Bihar Land Reforms Act. So far notice to the appellants is concerned, the said annulment proceeding was initiated by the State Government against ex-landlord and settlee Harbansh Narayan Singh and the said settlement was not in respect of the appellants. The question of being noticed to the appellants does not arise. The order of annulment by Additional Collector was confirmed by the State



Government *vide* letter no. 8698 dated 18.11.1967. It is further held that the said settlement by ex-landlord in favour of his father-in-law in respect of *Gairmajarua* land is fraudulent and *Benami* with view to defeat the provision of Bihar Land Reforms Act. The order of annulment after being confirmed by the State Government became final and the said settlement in respect of the said land becomes illegal and, as such, the appellants are bound by the said order. Learned appellate court further held that admittedly there are *Hat*, *Kabristan* and *Mahabir Sthan* situated over the said lands and *Hat* is also being settled by the Government every year, since 1969. The settlement of 1944, as claimed by the plaintiffs becomes falsified. The plaintiffs have failed to prove about the alleged settlement made by the ex-landlord with Harbansh Narayan Singh is valid, legal and genuine and the plaintiffs have never been in cultivating possession over the suit land being *Gairmajarua* lands in the manner as well and held that plaintiffs have got no right, title and possession over the suit land of *Khata* no. 159.

9. Learned senior counsel, Mr. Shashi Shekhar Dwivedi, appearing on behalf of the appellants submitted that the settlement was made with respect to 7 plots of *Khata* no. 1



Bakasht land of Chetmani Singh and 4 plots of *Khata* no. 159 which was in *Khas* possession of the ex-landlord and was recorded as *Gairmajarua* Khas containing orchards in two of the plots and two plots were *parti* (out of four plots of *Khata* no. 159). The order as contained in Exhibit-G shows that the Additional Collector has annulled only the settlement with respect to *Khata* no. 159 and has impliedly held that the settlement of *Khata* no. 1 of lands made on 14.09.1944 were legal and had no infirmity. The settlement of lands of two *Khata* made simultaneously by one proceeding by same land lord could not have been bifurcated by the Additional Collector, and held that half of the settlement was perfectly legal and valid, which was settled on 14.09.1944 and the other half was invalid having been made on 26.01.1955. The trial court as well as the appellate court have dismissed the suit and appeal respectively and have held that the settlement with respect to *Khata* no. 159 has been annulled by the Additional Collector, therefor, it was vested with the State of Bihar.

10. Learned senior counsel for the appellants submits that substantial questions of law are with regard to annulment of a settlement under Section 4(h) of Bihar Land Reforms Act, the properties vested in the State of Bihar and whether vesting is in



accordance with provisions of Bihar Land Reforms Act. He also questioned that the proceeding under Section 4(h) of the Bihar Land Reforms Act can be initiated at any time at the will of the authorities and what is ultimate period till when proceeding under Section 4(h) of the Bihar Land Reforms Act can be initiated.

11. Learned senior counsel submitted that Bihar Land Reform Act, 1950 talks only about the vesting of the interest of the ex-landlord namely the tenure holder or the intermediary and no part of it relates to vesting of any land of *Raiyat*. Section 3 of the B.L.R. Act provides for issuance of a notification declaring that the estate of tenure of a proprietor of tenure holder, specified in notification to have passed to and become vested in the State. Section 3A talks about the power of the State Government to declare that the intermediary interest of all intermediaries in whole of the estate have passed to and become vested in the State. Section 3B(3) of the Act provides that on the publication of the proclamation of the State every intermediary shall at any time before the expiration of the said period, make to the Collector an application (Return) in the form set out in the schedule to this Act, which shall be verified and signed as provided under Section 4 along with the required documents.



Learned senior counsel further submits that Section 3(B)(6) is very important which provides that when such application (Return) has been made in accordance with the provision of Section, the Collector shall transfer it with all the materials and documents and accompany it to the Compensation Officer for determination of the compensation payable to be the intermediary or the tenure holder. If Collector is not satisfied to any settlement/transfer made after 01.01.1946, he can initiate a proceeding under Section 4(h) of the B.L.R. Act. It is submitted that if an enquiry in respect of such tenure under Clause (h) of Section 4 is pending, Compensation Officer shall not prepare any compensation assessment roll for only the expiry of three months from the date of receipt of such report or only the receipt of such enquiry from the Collector, which is earlier, and if the said period unless the tenure has been annulled under Section (h) of the Act, the Compensation Officer shall proceed to prepare compensation assessment roll in respect of the land. It is also contended that on receipt of Returns from the landlord, the Collector shall examine the Return and initiate a proceeding under Section 4(h) of the Act with respect to any doubtful settlement or transfer made after first date of January, 1946. The said provision provides obligation of the Compensation Officer



not to prepare any compensation assessment roll until the expiry of three months from the date of receipt of such reports. Learned senior counsel further submits that if a proceeding under Section 4(h) of the Act has been initiated on receipt of the Return, and before sending record to the compensation assessment officer, a maximum period of three months has been provided for determination of the said proceeding under Section 4(h) of the Act and not thereafter. It is submitted that the proceeding under Section 4(h) for determination of compensation shall be completed prior to determination of the compensation is being paid to the ex-landlord. Section 27 of the Act provides for an appeal against the preliminary compensation assessment roll on a conclusion of final publication of the compensation assessment roll is made under Section 28 of the Act when all such applications and appeal have been disposed of. It is submitted that when a compensation assessment roll has been finally published under Section 28 of the Act, the Compensation Officer shall make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe with his name and officer designation. Such certificate is conclusive proof of final publication. Learned senior counsel further submits that the aforesaid provisions clearly states that once a compensation for



the tenure is determined, there is no jurisdiction left in the Collector for initiating Section 4(h) proceeding. It is further submitted that the State Government has not provided the dates of such final publication under Section 28 of the B.L.R. Act nor has produced the said finally published compensation assessment roll. For the aforesaid reason, the purported Section 4(h) for proceeding *vide* Case no. 10 of 1958-59 Exhibit-G is much beyond final publication under Section 28 of the Act, and hence it is absolutely without jurisdiction and unwarranted. The Learned senior counsel further submitted that the entire judgment of the trial court as well as the appellate court is based upon Exhibit-G, which is order passed under Section 4(h) of the B.L.R. Act and annulled the settlement in favour of a vendor of the appellants, namely, Harbansh Narayan Singh who is claimed to be settlee of the ex-landlord Chetmani Singh.

12. Learned senior counsel for the appellants vehemently submitted that disputed *Khata* no. 159, Plot no. 1158 measuring an area of 14 *Katha* 13 *Dhur* is an orchard containing 16 mango trees and land in possession of *Malik* i.e. Chetmani Singh is recorded. Similarly, Plot no. 1281 having an area of 16 *Bigha* 17 *Katha* 5 *Dhur* which is also a mango orchard containing 100 mango trees and the possession of Malik



is recorded in the survey record of right Exhibit- 16A, and as such, the character of the disputed land of these two plots 1158 and 1281 being horticulture did not vest in the State of Bihar. Learned courts below have wrongly held that these plots being *Gairmajarua Khas* land vested in the State without considering the legal aspect of the case that horticulture land and agricultural land which is in possession of the ex-landlord did not vest in the State. It is submitted that the ex-landlord was holding *Hat* over a portion of Plot Nos. 1282 and 1281 and for which the ex-landlord had submitted Return and rest of portion of 1281 and 1282 was settled to Harbansh Narayan Singh. It is also admitted case of the defendants that *Hat* is on the western portion of Plot no. 1282 (*Partikadim*) and 1281(*Mango orchard*). Further the order of Additional Collector Exhibit-G shows that the *Hat* occupies an area of 1 *Bigha* 2 *Katha* 5 *Dhur* in Plot no. 1281 and 7 *Katha* 15 *Dhur* in Plot no. 1282 which clearly proved that the suit land of the entire plots is not used in the *Hat*. Learned courts below have wrongly held that the disputed land of Plot Nos. 1281, 1282 and 1158 vested in the State without considering the legal aspect that even if the said plot is deemed not to be settled with Harbansh Narayan Singh, these plots did not vest in the State. It is further submitted that it has been admitted by the



defendant-State that Return of the aforesaid lands has been filed by the landlord but the defendant has not produced the Return which could have shown to what extent Plot Nos. 1281, 1282 had been used as *Hat, Kabristan and Mahadev Sthan*. It is also submitted that non-production of the Return clearly proved that portion of Plot Nos. 1281, 1282 and 1158 settled with Harbansh Narayan Singh did not contain the *Hat* and only the portion which is left out of the settlement in Plot Nos. 1281 and 1282 contained the *Hat* and the land being cultivated as Horticulture has also been found by the learned Additional Collector during his enquiry in 4(h) proceeding.

13. Now, coming to the merits of the case and the provisions of Bihar Land Reforms Act, 1950, attended in the matter. It manifests that Exhibit 16A (*Khatiyani*) categorically shows the character of the lands of Plot Nos. 1158 and 1281 being horticulture and 844 (Parti Kadim an area 5 *Bigha*, 15 *Katha*, 19 *Dhur*) and 1282 (Parti Kadim an area 13 *Katha*, 10 *Dhur*) and that a portion of Plot Nos. 1281 & 1282 were used as *Hat* and rest of Plot no. 1281 and 1282 were not being used as *Hat* as is evident from the report of the *Anchal Adhikari*, which is mentioned in the order of Additional Collector passed under Section 4(h) of the Bihar Land Reforms Act (Exhibit-G).



However, it is evident that only a portion of Plot Nos. 1281 & 1282 was used as *Hat*. The *Hat* occupied an area of 1 *Bigha*, 2 *Katha*, 5 *Dhur* in Plot no. 1281 and 7 *Katha* 15 *Dhur* in Plot no. 1282. The total area admeasuring 6 *Bigha* 17 *Katha* 5 *Dhur* (nature of land bagh standing over 100 mango trees) is in Plot no. 1281 and a total area admeasuring 13 *Katha* 10 *Dhur* (nature of land parti kadim) is in plot no. 1282. These lands were settled to the vendors of the plaintiffs before 01.01.1946, i.e., on 17.09.1944, orally as these lands were *Gairmajarua Malik*. The authority was required to give findings that the original settlor could not have settled these lands as it would defeat the purpose of Bihar Land Reforms Act. The authority has failed to come to such conclusion and therefore as Plot no. 1158 (area 14 *Katha* 13 *Dhur*) is horticulture, the same cannot vest in the State and that barring of a portion of land used as *Hat* on Plot Nos. 1281 & 1282, the rest being *Gairmajarua Malik* and the ex-landlord were within his right to settle these lands to the settlee (Harivansh Narain Singh) before 01.01.1946 i.e., on 17.09.1944, who later on in the year 1958 and 1968 transferred to the plaintiffs. It is, therefore, apparent that the transfer is legal and valid and order passed by the authority under Section 4(h) of the Bihar Land Reforms Act is unsustainable in law with regard to



portion of Plot No. 1281 and Plot no. 1158, which were used as orchard in possession of *Malik* and settled in favour of vendor of the plaintiffs-appellants. It is, therefore, clear that the portion on which *Hat* is running in Plot Nos. 1281 & 1282 bearing area of 1 *Bigha 2 Katha 5 Dhur* and 7 *Katha 15 Dhur* respectively shall remain valid in the order passed under Section 4(h) of the Bihar Land Reforms Act. So far *Kabristan* and *Mahadeo Asthan* are concerned whose details are mentioned in *Bhujarat* entries recorded by the Additional Collector in its order dated 06.10.1959 (Ext. G), as per Ext. G, the *kabristan* occupies an area of 6 *Katha 15 dhur*; *Khata* no. 159, Plot no. 1281 and *Mahadeo Asthan* having an area of 10 *Katha*, *Khata* no. 159, Plot no. 1281 and on local inspection by the Additional Collector held on 24.09.1959, he has found the existence of *Kabristan* in the north-eastern corner of Plot no. 1281. There is no case of the appellants that ex-landlord or settlee have filed any appeal or revision against enquiry concluded in clause (g) or (h) of Section 4 of the BLR Act. Therefore, the area being used as *Qabristan* and *Mahadeo Asthan* could not be claimed by settlement. Hence, appellants are not entitled to aforesaid area of *Qabristan* and *Mahadeo Asthan*. The area of land appertaining to *Khata* no. 159, Plot no. 1158 area 14 *Katha 13 Dhur* the same



being horticulture (bagh in possession of *Malik*) shall not vest in the State and the plaintiffs-appellants are entitled for right, title and possession of the same.

14. On perusing the orders and findings of the learned lower Courts it is apparent that the Courts have erred in holding that the plaintiffs/appellants were not entitled to right, title and interest of the schedule properties as they have leaned to accept the order passed under Section 4(h) of the Bihar Land Reforms Act, 1950 by the learned Additional Collector without analyzing the order of Section 4(h), passed under the Act. The order under Section 4(h) is cryptic and has not considered under Sections 3, 4 and 6 in the light of the provision of Bihar Land Reforms Act and the learned Courts have failed to go through the provisions and purport of Bihar Land Reforms Act. This Court on analyzing the provisions of the Bihar Land Reforms Act find faults with the order passed under Section 4(h) of the Act by the Additional Collector as well as the findings of the Courts below in the light of the observation and findings referred above.

15. As a result, the appeal is partly allowed excluding the portion of Plot no. 1281 of *Khata* no. 159, admeasuring area of 1 *Bigha* 2 *Katha* 5 *Dhur* and Plot no. 1282, admeasuring area of 7 *Katha* 15 *Dhur* of *Khata* no. 159 (used as '*Hat*') and an area



of 6 *Katha* 15 *Dhur* (used as *Qabristan*) and an area of 10 *Katha* (used as *Mahadeo Asthan*) appertaining to *Khata* no. 159, Plot no. 1281, as these portions of the aforesaid lands cannot be settled and to that extent the appellants are not entitled to the possessions as *Raiyat*. The appellants are entitled to the rest of the lands of Plot nos. 1281, 1282 and *khata* no. 159 and also area of Plot no. 1158 to the extent of which the plaintiffs-appellants have sought reliefs.

16. In the facts and circumstances of the case, the substantial question of law formulated is, therefore, substantially answered in favour of the appellants. Thus, this Second Appeal has got merit and, accordingly, it is being partly allowed and, therefore, suit is partly decreed to the extent as observed above.

(Khatim Reza, J)

*Premchand,
Shanu/-*

AFR/NAFR	AFR
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