

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1622 of 2018

1. Mosmat Tun Muni Kuer Wife of Late Biswnath Dubey Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
2. Bashisth Dubey @ Bashisth Diwely Son of Late Biswanath Dubey Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 3.1. Phulpati Devi wife of Late Bindhyachal Dubey, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 3.2. Ayush Anand, son of Late Bindhayachal Dubey, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 3.3. Sandeep Dubey, son of Late Bindhayachal Dubey, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 3.4. Purnima Devi, daughter of Late Bindhayachal Dubey, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 3.5. Punam Devi, daughter of Late Bindhayachal Dubey, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
4. Umashankar Dubey Son of Late Biswanath Dubey Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
5. Dev Shankar Dubey Son of Late Biswanath Dubey Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
6. Sudarshan Dubey Son of Late Biswanath Dubey Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 7.1. Kima Devi, wife of Late Ashok Dubey @ Ashok Kumar Dubey, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 7.2. Aditya Dubey, son of Late Ashok Dubey @ Ashok Kumar Dubey, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 7.3. Sonali Kumari, daughter of Late Ashok Dubey @ Ashok Kumar Dubey, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
8. Mosmat Shaile Kuer Wife of Late Shivshankar Dubey Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
9. Ankit Dubey Son of Late Shivshankar Dubey Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
10. Mukund Dubey Minor Son of Late Shivshankar Dubey under natural guardian ship of Mother Most. Shaile Kuer, Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
11. Hiramuni Devi Wife of Umesh Dubey, Daughter of Late Biswnath Dubey resident of Mohalla- Bank Colony, Fazalganj, P.O.- Sasaram, District- Rohtas.
12. Gita Devi Wife of Sunil Tiwary, Daughter of Late Biswanath Dubey Resident of Village- Naraina, P.O.- Chandrakothi, P.S. Chenari, District- Rohtas.
13. Ramjee Dubey Son of Late Bashudeo Dubey Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.



14. Banarsi Dubey Son of Late Bashudeo Dubey Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
15. Dinesh Dubey Son of Late Bashudeo Dubey Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Rohtas, Sasaram.
2. The Anchaladhikari, Chenari, P.O.- Chenari, District- Rohtas, Sasaram.
3. The Mukhiya Dihariya, Gram Panchayat, P.O.- Dumari, Chenari, District- Rohtas.
4. Gopal Tiwary Son of Late Deoraj Tiwary Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 5.1. Mosmat Lacho Kuer, wife of Late Ramashish Tiwari, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 5.2. Surendra Tiwari, son of Late Ramashish Tiwari, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 5.3. Birendra Tiwari, son of Late Ramashish Tiwari, resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
- 5.4. Laljari Devi, daughter of Late Ramashish Tiwari, wife of Ramashray Tiwari, resident of Village- Golakshiri, Ward No. 03, P.O.- Sasaram, P.S.- Sasaram Nagar, District- Rohtas.
- 5.5. Roshnawati Devi, daughter of Late Ramashish Tiwari, wife of Jharkhandi Tiwari, resident of Village- Dev Khaira, P.O.- Dev Khaira, P.S. Karhargar, District- Rohtas.
- 5.6. Nirmala Devi, daughter of Late Ramashish Tiwari, wife of Navratan Pandey, resident of Village- Kudhari, P.O.- Kudhari, P.S.- Durgawati, District- Kaimur.
- 5.7. Urmila Devi, daughter of Late Ramashish Tiwari, wife of Arvind Pandey, resident of Village- Sarodiha, P.O.- Ghordiha, P.S.- Karahgar, District- Rohtas.
- 5.8. Saroj Devi, daughter of Late Ramashish Tiwari, wife of Mukesh Pandey, resident of Village- Sikraur, P.O.- Sikraur, P.S.- Shivsagar, District- Rohtas.
6. Sri Ram Tiwary Son of Satya Narayan Tiwary Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
7. Ram Awdhesh Tiwary Son of Late Jit Narayan Tiwary Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
8. Umanath Tiwary Son of Late Rajbansh Tiwary Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
9. Jagnarayan Tiwary Son of Late Kuber Tiwary Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.
10. Ajay Kumar Tiwary Son of Ramayan Tiwary Resident of Village- Khaira, P.O.- Dumari, P.S.- Chenari, District- Rohtas.



... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dronacharye Mr. Rajnish Kumar Dubey Mr. Rakesh Kumar
For the Respondent/s	:	Mr. A.B. Ojha Mr. Subash Chandra Yadav
For the State	:	Mr. Dhurjati Kumar Prasad, GP 14

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT**Date : 09-10-2023**

Heard the parties.

2. This application has been filed for setting aside the order dated 10.08.2018 passed in Title Suit No. 239 of 2003, by which the Court below has rejected the petition dated 03.09.2003 which has been filed for exhibiting the certified copy of Compensation Case No.157/56-57 as secondary evidence.

3. Title Suit No. 239 of 2003 was filed by the plaintiff before the Sub-Judge, Sasaram stating that Schedule I land of the plaint situated in Mauja Khaira, C.S. Khata No. 112, C.S. Plot No. 486 corresponding to R.S. Khata No.12, R.S. Plot No. 433, 441 measuring an area of 39 decimal and 16 decimal respectively, recorded in C.S. record as Gair Mazarua Aam land. The case of the respondent second set/plaintiffs is that the petitioners/defendants have forcibly filled up the land in question and have constructed brick wall and when the



respondent second set/plaintiffs enquired the matter, it was found that R.S. Khatyan has been prepared in the name of the petitioners/defendants. The land mentioned in the plaint was settled by the ex-landlord Most. Parwanti Kuer in favour of Basudeo Dubey and Biswanath Dubey **in the fasli year 1339** and since then the petitioners are in peaceful possession over the land in question.

4. It has been submitted that the petitioner that the respondent second set/plaintiffs have challenged the survey entry through case No.29 under Section 103 A of Bihar Tenancy Act, which was dismissed on 23.07.1960. It has further been submitted that the said document was earlier considered as secondary evidence by the order dated 19.07.2010 passed by Sub-Judge, V, Sasaram in Title Suit No. 239 of 2003 and thereafter the petitioners filed a petition for exhibiting the document of Compensation Case No. 157/56-57 in Title Suit No. 239 of 2003 which was allowed by the learned Court below by order dated 19.07.2010. The said order dated 19.07.2010 was challenged by the plaintiff second set in C.W.J.C. No.14419 of 2010 which was disposed of vide order dated 17.07.2012 with a direction that the order dated 19.07.2010 shall not be given effect.



5. The order dated 17.07.2012 passed in C.W.J.C. No. 14419 of 2010 reads as follows:-

Mr. A. B. Ojha, learned senior counsel appears on behalf of the petitioners and Mr Raghunandan Kumar Singh appears for the respondents.

2. The petitioners pray for quashing order dated 19.07.2010 passed by Sub-Judge-V, Sasaram in Title Suit no. 239 of 2003, whereby the court below has allowed the certified copy of a certified copy to be taken as secondary evidence.

3. Before I take up the issue, the facts of the case requires to be noticed in brief:-

The petitioners filed Title Suit No. 239 of 2003 in the court of Sub-Judge-I, Sasaram for adjudging the suit land as a public land which defendants-respondents 1st set illegally encroached and constructed "Bailghara" which be removed.

4. On 29.03.2007, the respondents 1st set appeared and filed certified copy of Jamabandi entry of the plot. The said certified copy was obtained from certified copy available in the office of Circle officer trying Compensation case no.157 of 1956-57. The respondents state that the certified copy filed in the compensation case was prepared from the original Jamabandi register. The respondents 1st set on 16.10.2009 filed a petition to accept the certified copy as secondary evidence. The petitioner objected to the same. The learned Sub-Judge-V, Sasaram allowed the petition of the defendant and marked the document as Ext.

5. The issue is whether certified copy prepared from a certified copy could be taken as secondary evidence. The provision regarding secondary evidence is detailed in Section 65 of the Evidence Act.

6. It is perceptible from the provisions



that secondary evidence can be given of a document when the original is a public document within the meaning of Section 74 of the Evidence Act. In the present case it is not in dispute that the records of Compensation case maintained in appropriate department of the government is a public document. The only distinguish feature in the present case is that the defendants have filed certified copy of the said records, which itself has been prepared from the certified copy of the original. It is not the case of the petitioners that any fraud or forgery has been committed by the defendants in the certified copy, which has been produced. Evidently, the certified copy filed in compensation case has been obtained by the defendants 1st set from the Circle Office, which maintains Jamabandi record.

7. In the circumstances, it would be suffice in the interest of justice that parties be given liberty to make prayer for calling for the original records of compensation case to establish their cases. Till then the certified copy of certified copy as secondary evidence would be kept in abeyance and order dated 19.07.2010 passed in Title Suit no. 239 of 2003 would not be given any effect.”

6. It has further been submitted by the learned counsel for the petitioners that the petitioners filed an application dated 26.11.2012 in the Court below demanding the Original records from Circle Officer, Chenari with regard to the Compensation Case No.157/56-57. The Court below vide order dated 21.01.2013 directed the Circle Officer, Chenari to produce the original records. The Circle Officer, Chenari sent a report



dated 26.02.2013 and has submitted that the records of the compensation case could not be found in the office despite search. Thereafter the petitioner moved an application dated 03.09.2013 in the Court below for exhibiting the certified copy of Compensation Case No.157/56-57 as secondary evidence. The respondents second set filed their reply on 21.10.2013 and they prayed that the matter may not be disposed of till final report of the Circle Officer, Chenari. However, the Court below without considering the provisions of the Civil Procedure Code and without considering the findings of the Circle Officer, Chenari rejected the claim of the petitioners by order dated 10.08.2018.

7. It has been submitted by the learned counsel for the petitioner that when the original records were directed to be called for by the Court and when the same were not traced out, the petitioners filed an application for exhibiting the documents as secondary evidence but the same has been rejected illegally without considering the case of the petitioner.

8. Learned senior counsel for the petitioner has relied upon a judgment of this Court in the case of ***Ganga Sagar Gond and Others Vs. Ganesh Gond and Others*** reported in ***2002 (2) PLJR 772*** and has submitted that the application of



the petitioners could have been allowed by the Court below.

10. Mr. A.B. Ojha, learned senior counsel for the respondents has opposed the application and has submitted that the Court below has rightly rejected the prayer of the petitioner to exhibit the certified copy of the compensation case in absence of the original document.

11. I have considered the submission of the parties and perused the materials on record. This Court in the case of ***Ganga Sagar Gond and Others Vs. Ganesh Gond and Others (supra)*** has held that admission of a document does not mean that the document has to be treated as genuine. The genuineness and relevance of the document has to be considered along with other evidence at an appropriate stage.

12. Earlier, the original plaintiffs 2nd set has challenged the order dated 19.07.2010 passed by Sub-Judge-V, Sasaram in Title Suit no. 239 of 2003, whereby the court below has allowed the certified copy of a certified copy to be taken as secondary evidence by filing C.W.J.C. No.14419 of 2010 and this Court vide order dated 17.07.2012 had remitted the matter back for further consideration keeping in view Section 65 of the Evidence Act as in absence of the records in the office of the Circle Officer, Chenari, the application has been filed for exhibiting the certified copy of compensation case.



13. In view of the above discussions and also in view of the law laid down by this Court in the case of ***Ganga Sagar Gond and Others Vs. Ganesh Gond and Others (supra)***, this application stands allowed.

14. Accordingly, the order dated 10.08.2018 passed by Sub-Judge XV, Rohtas at Sasaram in Title Suit No. 239 of 2003 is hereby set aside. However, it is made clear that the question as to whether the said document is genuine or not will be taken into account at the time of final disposal of the suit and its genuineness and relevancy will be considered along with other evidence in the Suit.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2023
Transmission Date	NA

