

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.402 of 2016

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Ram Binay Sharma son of late Nathuni Singh resident of village Sohsa, Post
Office - Kinjar, Police Station Kinjar, District Arwal.

... .. Appellant

Versus

1. The State Of Bihar and Ors
2. The Sub Divisional Officer, Jehanabad, Subdivision, District Jehanabad.
3. The Deputy Collector, Land Reforms, Jehanabad, District Jehanabad.
4. The Circle Officer, Jehanabad Anchal, District Jehanabad.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Ambuj Nayan Chaubey, Advocate
	:	Mr. Dinu Kumar, Sr. Advocate
For the Respondents	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

12 20-02-2023 Heard learned counsel for the appellant.

This Second Appeal has been filed against the judgment and decree dated 25.07.2016, passed in Title Appeal No. 36/2012/02/2014 by the learned Additional District Judge-IInd, Jehanabad, who affirmed the judgment and decree dated 30.07.2012, passed in Title Suit No. 23 of 2009 by the learned Sub-Judge, Ist, Jehanabad.

The case of the plaintiff-appellant is that father of the appellant and his uncle namely Chandeshwar Singh purchased the suit land from one Quaresha Khatoon on 16.10.1973 and put them in possession of suit land and, thereafter, purchasers names were mutated in the demand register *vide* Mutation Case No.



26/1974-75. In recent municipal survey Plot No. 1880 under *Khata* No. 162 in the name of Chandeshwar Singh and Nathuni Singh. Learned counsel for the appellant further submitted that Chandeshwar Singh gifted his share of three decimals land in favour of plaintiff-appellant, who is son of Nathuni Singh. Nathuni Singh has two sons, the plaintiff and the Chitranjan Sharma. After death of his father, Chitranjan Sharma sold his share to plaintiff-appellant. As such, the plaintiff-appellant became the owner of six decimals land, which was settled in favour of Quaresha Khatoon. It is further alleged that some portion of Plot No. 821 under *Khata* No. 174 was settled in favour of one Dharmendra Kumar and the appellant filed a land demarcation case bearing No. 05 of 2003 for fixing intervening ridge between Schedule 1 property and property settled in favour of Dharmendra Kumar. The said property was demarcated at the spot by the Advocate Commissioner. Further, it is contended that when plaintiff-appellant started his foundation work over the Schedule 1 property, then, *Anchal Adhikari*, Jehanabad initiated a proceedings *vide* Misc. Case No. 01 of 2003, before S.D.O. Jehanabad. After enquiry it was dropped in favour of plaintiff. On the basis of gift deed and sale deed, the plaintiff-appellant filed petition before *Anchal*



Adhikari, Jehanabad for mutation of his name and opening demand in his name, which was rejected by the *Anchal Adhikari* and also Deputy Collector Land Reforms, Jehanabad and thereafter, *Anchal Adhikari* initiated a proceeding for cancellation of *Jamabandi* opened in favour of Chandeshwar Singh and Nathuni Singh, thereafter, the present suit was filed against the State authority. It is further contended that plaintiff filed this instant suit with the permission of the Court under Section 80(2) of the Civil Procedure Code without service of notice under Section 80 Code of Civil Procedure against the defendant-State.

After summons defendant appeared and filed their written statement and contested the suit and it is stated in his written statement that Schedule 1 property was settled in favour of Quaresha Khatoon under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947. As such Quaresha Khatoon had got no right to sell it to other persons. Sale deed of suit property executed by Quaresha Khatoon does not create any right, title and interest over the settled land. Hence, subsequent sales and gifts are void against the provisions of Bihar Privileged Persons Homestead Tenancy Act, 1947.

Both the Courts concurrently held that the suit land



was settled with Quaresha Khatoon under Bihar Privileged Persons Homestead Tenancy Act, 1947 and not under general law. The said Quaresha Khatoon had got no right to transfer settled land in contravention of the said Act and held that the suit land earlier was settled with Quaresha Khatoon under the provision of Bihar Privileged Persons Homestead Tenancy Act, 1947 and later on she sold this same to the father and uncle of the plaintiff-appellant against the provision of law.

Considering the facts and circumstances and material available on record, the said land is settled under Section 8 of the Bihar Privileged Persons Homestead Tenancy Act, 1947. There is imborgo under Section 9 of the said Act with regard to restriction of transfer of privileged tenancy right. It is specifically mentioned that no transfer made by a privileged tenant of his right in his/her holding or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement shall be valid to any extent except as provided in Sections 10 to 17.

Section 14 of the ***Bihar Privileged Persons Homestead Tenancy Act, 1947*** states as follows:-

“No transfer by a privileged tenant in contravention of the provisions of Section 9 shall be registered or in any way recognised as valid by any Court, Civil Criminal or Revenue.”



It is manifestly clear that the privileged persons have no right to sell the settled land without the permission of the Collector.

Considering the aforesaid facts and circumstances as well as materials on record, it is quite apparent that the judgments and decree of the courts below are covered by the finding of fact and no question of law, much less substantial question of law arises for consideration in the instant Second Appeal, which is, accordingly, dismissed.

(Khatim Reza, J)

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