

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.208 of 2015

- 1.1. Rumali Khatoon widow of Sardari Banjara resident of Village Semra Ghusukpur, P.O. Harnatand, P.S. Laukariya, Bagaha and District- West Champaran.
- 1.2. Mahboob Banjara son of late Sardari Banjara resident of Village Semra Ghusukpur, P.O. Harnatand, P.S. Laukariya, Bagaha and District- West Champaran.
- 1.3. Sahboob Banjara son of late Sardari Banjara resident of Village Semra Ghusukpur, P.O. Harnatand, P.S. Laukariya, Bagaha and District- West Champaran.
- 1.4. Amzad Banjara son of late Sardari Banjara resident of Village Semra Ghusukpur, P.O. Harnatand, P.S. Laukariya, Bagaha and District- West Champaran.
- 1.5. Sattar Banjara son of late Sardari Banjara resident of Village Semra Ghusukpur, P.O. Harnatand, P.S. Laukariya, Bagaha and District- West Champaran.
- 1.6. Shamshad Banjara son of late Sardari Banjara resident of Village Semra Ghusukpur, P.O. Harnatand, P.S. Laukariya, Bagaha and District- West Champaran.
- 1.7. Naushad Banjara son of late Sardari Banjara resident of Village Semra Ghusukpur, P.O. Harnatand, P.S. Laukariya, Bagaha and District- West Champaran.
- 1.8. Sakeena Khatoon, wife of Mainul Banjara, resident of Bhairahwa, P.S. Dhakdhai, District Nawal Parasi (Nepal)
- 1.9. Haseena Khatoon, wife of Aftab Banjara, resident of Maharajganj, P.S. Kotwali Maharajganj, District Maharajganj, Uttar Pradesh.
- 1.10. Nazra Khatoon wife of Sohrab Banjara, resident of Maharajganj, P.S. Kotwali Maharajganj, District Maharajganj, Uttar Pradesh.
- 1.11. Shahida Khatoon, wife of Saddam Banjara, resident of Domanpatti, P.S. Hanumanganj, District Kushinagar, Uttar Pradesh.

... .. Appellant/s

Versus

1. Shamsuddin Khan son of Imamuddin Khan resident of Village- Mirza Toli, Bagaha, P.O.- Bagaha, P.S.- Bagaha, District- West Champaran.



2. Nasiruddin Khan son of Jalaluddin Khan resident of Village- Mirza Toli, Bagaha, P.O.- Bagaha, P.S.- Bagaha, District- West Champaran.
3. Anchal Adhikari, Anchal Bagaha-2, PO and PS- Bagaha, District- West Champaran

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Ganpati Trivedi, Sr. Advocate
For the Respondents : Mr. Chandrakant, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

16 19-08-2024 Heard Mr. Ganpati Trivedi learned senior counsel for the appellants and Mr. Chandrakant, learned counsel for the respondents.

2. This Second Appeal has been filed by the defendant against the judgment and decree of affirmance. Title Suit No. 47 of 1996 has been filed by the plaintiffs 1st set and have sought relief to declare that order dated 03-02-1993 passed in *Batai* Case No. 89 of 1992-93 by the defendant No.2 is illegal without jurisdiction and not binding upon the plaintiffs and further prayed for a decree of permanent injunction in favour of the plaintiffs and lastly, the cost of the suit be awarded to the plaintiffs. The said suit was decreed by the learned Munsif, Bagha, West Champaran, by the judgment and decree dated 30-03-2010, against which the defendant No.1 filed Title Appeal No. 15 of 2010, which was dismissed by the



learned 3rd Additional District Judge, Bagha, West Champaran by its judgment and decree dated 28-07-2015, which is under challenge in the instant Second Appeal.

3. The plaintiffs-respondents have claimed title over the suit land on the basis of two gift deeds, one registered and another unregistered gift deed. The suit land previously belonged to Sk. Mohammad and Bibi Sogra and after their death, the property was divided amongst Mainuddin @ Khutai Mian and Imadadullah to the extent of half and half share. After the death of Mainuddin @ Khutai Mian, his wife Bibi Kamrun Nesa executed a gift deed in respect of 5 Katha in favour of Shamsuddin Khan and Nasiruddin Khan *vide* registered deed dated 16-04-1988. It is further pleaded that 4 Katha and 8 dhurs of the suit land was in the share of Sakiruddin Khan, who gifted the aforesaid 4 katha 8 dhurs of the land to the plaintiffs orally and they are in cultivating possession over the entire suit land as a donee. It is further pleaded that besides the agricultural land, the plaintiffs-respondents have no other cultivable land, except homestead land of 7 dhurs at Bagaha. It is further pleaded that the suit land is about 2 acres and according to Section 48 C (i) of Bihar Tenancy Act, 1885 (for short 'B.T. Act'), the plaintiffs



are exempted from the application of acquisition of right of occupancy by Under Raiyat, meaning thereby that no claim of *Batai* can be claimed against the plaintiffs. It has been further pleaded that the defendant is a litigant, who exerted pressure upon the plaintiffs to sale the land and on denial by the plaintiffs, managed an illegal order *vide* Case No. 89/92-93 declaring him *Bataidar* of the suit land without any information to the plaintiffs-respondents and without following the legal procedures. In fact, the defendant has obtained the order dated 03-02-1993 by playing fraud upon the plaintiffs, and as such, the plaintiffs have right to sue in Civil Court as per provisions of Section 49-P of B.T. Act. Hence, the suit.

4. On summon, the contesting defendant No.1 has appeared and filed his written statement. It has been pleaded that the suit is hit by Section 48E (13) of B.T. Act. It has been further pleaded that Jamila Khatoon wife of late Mohammad Aslam, was claiming to be the owner of the land by virtue of registered deed of Maintenance dated 13.10.1979 from her husband. She preferred an appeal against the order passed by *Anchal Adhikari*, *vide* *Bataidari* Appeal No.01/93, which was rejected by S.D.O. Bagaha-2 and thereafter, she preferred R.M. Case No.02/95-96 before the Collector, Bettiah and the order



was set aside and the case was remanded to *Anchal Adhikari*, Bagaha-II for disposal after spot inquiry, which is still pending for adjudication. The fact is that after the death of his father, the defendant was cultivating the land as *Bataidar* of Sk. Mohammad in whose name the *Jamabandi* was opened with regard to 9 kathas and 8 dhurs of Plot No. 261, Khata No.22 since more than 20 years. The defendant- appellant filed an application in prescribed manner in Form- C to *Anchal Adhikari*, Bagaha-II for acquiring the suit land. In view of the provisions of B. T. Act, the suit of the plaintiffs is liable to be dismissed.

5. The said suit was dismissed by the learned Munsif, Bagaha, West Champaran, holding that the defendant has admitted in paragraph No. 18 of his written statement that the *Jamabandi* of the suit land was also running in his name. The plaintiffs have proved their right, title and possession over the suit land. The plaintiffs have proved that they are heirs of Sk. Mohammad. The order of *Anchal Adhikari*, passed in *Batai* Case No. 89/92-93, was not in accordance with law. The *Anchal Adhikari* had not adopted the norms of judicial procedure to verify the legal heir of Sk. Mohammad and the same is found to be procedural infirmity committed and



proceeding was conducted. It is further held that suit is maintainable on the basis of non-compliance of the procedure for ascertaining the parties and issuance of notice to the parties regarding the suit land. It is further held that the order of *Batai* case No. 89 of 92-93 is not in existence, which is also admitted by the defendant in his written statement. Hence, the defendants are restrained from going over the suit land.

6. Being aggrieved Defendant No.1 filed Title Appeal No.15/2010 against the judgment and decree dated 30-03-2010 passed by learned Munsif, Bagaha in Title Suit No. 47 of 1996. The learned Appellate Court, after considering the materials on record as well as the impugned judgments under appeal, has held that the defendant has admitted that the suit land was standing in the name of Sk. Mohammad and *Jamabandi* was also created in his name. Ext.5 is the order of the learned Collector, West Champaran, in R. M. Case No. 2/95-96 in which, Sardari Banjara (appellant) himself has claimed to be a *Bataidar* of Sk. Mohammad. Moreover, the defendant has admitted in paragraph No. 18 of his written statement that the *Jamabandi* of the suit land was running in the name of Sk. Mohammad and the suit land originally belonged to Sk. Mohammad. Learned Appellate Court discussed about



Ext-2A, which is the gift deed, executed by Moinuddin Khan @ Khutai S/o Yusuf Khan in favour of Alaudin Khan s/o Moinuddin Khan on 28.10.1980 with regard to khata no.22, plot no.261 having an area of 10 kathas and another *Baimokasa* deed is Ext.3, which is executed by Moinuddin Khan in favour of Bibi Kamrun Nesa his wife on 28.10.1980 appertaining to khata no. 22 plot no. 261, having an area of 5 kathas. Ext.2 is the gift deed dated 16.04.88 executed by Most. Kamrun Nesa in favour of Samsuddin Khan with regard to khata no.22 plot no.261 having an area of 5 kathas. From perusal of all the deeds, stated above, it transpires that in the year 1980 Alaudin got 10 kathas of land from Moinuddin and on the same day Moinuddin gave 5 kathas of land to Bibi Kamrun Nesa. On 16.04.88 the plaintiff Samsuddin got 5 kathas of land from Most. Kamrun Nesa. Defendant's witness No. 6 has admitted that SK. Mohammad had a daughter. The learned Appellate Court has further held that from perusal of evidence adduced on behalf of both the parties, it is manifest that Sk. Mohammad had one daughter, namely, Kamrun Nesa and one sister, namely, Bibi Sogra. Samsuddin and Nasiruddin are the descendants of Bibi Sogra. The Appellate Court has further held that finding with respect to the oral gift deed by the learned



Trial Court has rightly relied upon a decision reported in **1987 PLJR 934** and further held that the plaintiffs have established their right and title coupled with possession over the suit land. With regard to the order passed by the *Anchal Adhikari* in *Batai* Case No.89/92-93, the said order has been set aside by Collector, Bettiah, on the basis of infirmities/irregularities in procedure for ascertaining the legal heir of Sk.Mohammad and apart from that no Board was constituted for the settlement of the dispute between under Raiyat and landlord. It is further observed that the mandatory provisions of Section 48E (3) of B.T. Act has been violated. The order of the *Anchal Adhikari*, is *ab initio* void and the defendant cannot derive any right and title from that order. The judgment passed by the learned Munsif, has been affirmed by the learned Appellate Court and dismissed the appeal of the defendant.

7. Having considered the averments made on behalf of the parties and after perusal of materials on record, including the judgment of the learned Courts below, it appears that the learned Courts below, after considering the pleadings of the parties and evidence adduced by them, came to a definite conclusion that the order passed by the *Anchal Adhikari* on 03-02-1993 in *Batai* Case No. 89 of 1992-93, is not passed



after following the procedure prescribed under the B.T. Act. It is well-settled that a procedure for declaration as under Raiyat, the DCLR/ *Anchal Adhikari* is required to find out a *prima facie* case of *bona fide Bataidari* dispute between the parties and thereafter, matter is required to be referred to Conciliation Board. The order passed by the *Anchal Adhikari* without following the provision of Section 48-E of the B.T. Act and the proceeding was conducted and concluded *de hors* the provisions of the B.T. Act. and, therefore, the order passed in *Batai* Case No. 89 of 1992-93 is illegal and void. It is apparent from the impugned judgments and evidence adduced by the defendant, that the suit land originally belongs to Sk. Mohammad. The defendant has admitted that the suit land stands in the name of Sk. Mohammad and *Jamabandi* was also created in his name. Both the learned Courts below have held that the plaintiffs are the descendants of Sk. Mohammad, but in a proceeding under the B.T. Act, in *Batai* case No. 89 of 1992-93, the Collector under the Act has not ascertained the heirs of Sk. Mohammad. It was the duty of the Collector/ *Anchal Adhikari* to find out and issue notice to the heirs of landlord (Sk. Mohammad). This Court is of the opinion that the proceeding initiated under the B.T. Act comes under the



procedural infirmity and the same having been committed, the order passed by the *Anchal Adhikari* under the B.T. Act is *non est* in the eyes of law.

8. Considering the aforesaid facts and circumstances as well as the materials on record, it is quite apparent that the judgment and decree of the learned Courts below are covered by the findings of facts and no question of law much less substantial question of law arises for consideration in the instant Second Appeal, which is, accordingly, dismissed at the stage of hearing under Order XLI Rule 11 CPC.

(Khatim Reza, J)

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