

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.74 of 2016

1. The State Of Bihar And Anr
2. Collector Gaya
3. Anchal Adhikari

... .. Appellant/s

Versus

1. Arun Kumar Jain and Ors
2. Anup Kumar Jain null null
3. Manoj Kumar Jain
4. Deepak Kumar Jain, All sons of Late Fool Chand Jain.
5. Abha Jain, wife of Late Ajit Kumar Jain.
6. Rahul
7. Rohit Both sons of Late Ajit Kumar Jain.
8. Arvind Kumar Jain,
9. Ashok Kumar Jain, Both sons of Late Tarachand Jain. null
10. Promod Kumar Jain
11. Subodh Kumar Jain
12. Naresh Kumar Jain
13. Suresh Kumar Jain
14. Ramesh Kumar Jain All Sons of Late Dharamchand Jain
15. Vinod Kumar Jain, son of Late Kapoorchand Jain All resident of Mohalla-
Durgashankar Road, Chauk, Police Station- Kotwali, District- Gaya.
16. D.I.G. Magadh Range
17. Commissioner Magadh Range
18. S.P. Gaya
19. Officer-in-Charge, Buniadganj Police Station
20. Smt. Shankuntala Devi, wife of Prasad Sao, resident of Village-
Sahdevkhap, Police Station- Magadh University, Bodh Gaya, District Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. K.P. Gupta, GP-10 Mr. Virendra Kuar Ac to GR-10
For the Respondent/s	:	Mr.Bishwa Nath Chaudhary, Adv

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

8 02-07-2024 Heard learned counsel for the appellants and



learned counsel for the respondents.

2. This Second Appeal has been filed by the defendants/ appellants against the judgment and decree of affirmance dated 24.06.2015 passed by the Additional District Judge-V, Gaya in Title appeal no.13/14/89/12 whereby has affirmed the judgment and decree dated 11.09.2012 passed by the Sub- Judge-IV, Gaya in Title Suit no. 43 of 1999/ Title suit no. 128 of 1999/

3. Both the courts have held that the plaintiffs has title over the suit land. However, defendants have not filed any W.S in the said title suit, despite repeated adjournments. The case proceeded under Order 8 Rule 10 of the C.P.C.

4. The case of the plaintiffs is that the land in question appertaining to old Khata No. 114, 4,3,16 is recorded as *Gairmazarua Malik* land in cadastral survey khatian. The said land was under the Zamindari of ex- landlady Rani Bhuneswari Kuer. The land in question was settled to one Rajeswar Prasad Mishra by oral settlement coupled with delivery of possession on 15.02.1952 who came in possession of the same and his name was mutated in Anchal Shirista after vesting of zamindari. The said land was sold by Rajeswar Prasad Mishra through four registered sale deed dated



22.06.1970 to Kapoor Chand Jain, Phoolchand Jain, Dharamchand Jain and Tarachand Jain. During the pendency of the suit, all the four original plaintiffs, namely, Kapoor Chand Jain, Phoolchand Jain, Tarachand Jain and Dharamchand Jain had died, and their heirs and legal representatives were duly substituted in their place.

5. After purchase, the name of the original plaintiffs were inserted in place of Rajeshwar Mishra in demand register of the State and accordingly, rent receipts were issued by the State Authority in the name of Phoolchand Jain, Tarachand Jain, Dharamchand Jain, Vinodchand Jain. Further case of the plaintiffs is that during revisional survey operation, the land in dispute was recorded in the name of State of Bihar. Against the wrong entry, the plaintiffs filed objection under Section 9 of Bihar and Orissa Municipal Survey Act which was rejected. Thereafter, the original plaintiff filed an appeal under Section 15 of the said Act before the learned Superintendent of Survey. After hearing the plaintiffs and State of Bihar, the learned Superintendent of Survey allowed the appeal on 29.03.1991 and accordingly, the name of the original plaintiffs were entered as Raiyat of the land in question.

6. It is further case of the plaintiffs that the State of



Bihar forcefully started construction over the disputed land for the purpose of a construction of Buniadganj Police Station over the land given in Schedule-II of the plaint without being acquired which was protested by the plaintiffs, but the State of Bihar did not care to look into the documents of the plaintiffs. The plaintiffs were constrained to send notice under Section 80 of the Code of Civil Procedure to the State Authority and after elapse of statutory period, the plaintiffs filed the present suit under appeal for the relief of declaration of Title over the suit land and also for ejecting the principal defendants from Schedule-II land and restoration of possession and permanent injunction against the principal defendants.

7. On the other hand, principal defendants/ appellants, State of Bihar on summon, appeared chose not to file written statement, and therefore, the learned trial court proceeded with the case under Order 8 Rule 10 of the Code of Civil Procedure against them. The performa defendant filed her written statement in support of the claim of the plaintiffs.

8. The trial court on the basis of evidence adduced by the party, decreed the suit. On appeal being filed by the principal defendants, the appellate court also affirmed the judgment and decree of trial court. The learned appellate court



has held that the property described in Schedule-I of the plaint are not disputed one; the State of Bihar also concedes this fact. The property of the Schedule-II land of the plaint are part of Schedule- I land which is in dispute. The learned lower appellate court has held that the State of Bihar has not filed any chit of paper in support of their title and possession over the suit land. The defendants/ appellants have examined two witnesses; DW-I, who is the circle inspector, Manpur. The said defendant witness no. 1 in his cross- examination stated that he has not seen any paper of plaintiffs/ respondents and admits rent receipts granted to the plaintiffs/ respondents. DW-2, is the Karmchari, who also could not support the case of the appellants/ defendants and admitted that the land mentioned in Cadestral Survey khatian in the name of Gopal Sharan and Rani Bhuneswari Kuer as Mokraridar and at that time Mokraridar had power to settle the land. The appellate court has affirmed the finding of the learned trial court regarding title and possession of the suit land, and also held that learned trial court has rightly and legally appreciated the facts and evidence produced by both the parties and passed judgment accordingly and no illegality is found in the judgment passed by the learned trial court. Accordingly, the appellate court dismissed the



appeal.

9. Upon considering 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 court of appeal below which is the final court of facts, after considering the pleadings of the parties and the evidence adduced by them, came to clear finding that the defendants could not demolish the case of the plaintiffs, rather, the plaintiffs/ respondents have proved their case by adducing evidence oral as well as registered documents of four sale deeds which was executed by Rajeshwar Mishra in favour of Kapoorchand Jain and others (Ext. 6 to 6 (c)), which is the basis of the claim of the plaintiffs. Ext-6 dated 22.06.1970 is in favour of Kapoorchand Jain, Ext-6 (a) dated 22.06.1970 is in favour of Phoolchand Jain Ext. 6/B dated 22.06.1970 is in favour of Dharmchand Jain 6 (c) dated 22.06.1970 is in favour of Tarachand Jain and have been purchased as Schedule -I of the plaint. The disputed land is described in Schedule-II of the plaint. The plaintiffs are in possession of other land except the disputed land. After purchase of the said land, plaintiffs got their names entered into mutation registered in place of Rajeshwar Mishra vide case no. 423 of 1978-79 (Ext-12). The plaintiffs



were granted receipt of payment of rent separately (Ext-1 to 1/z) Ext-10 is a certified copy of order passed in Section 15 of Bihar and Orissa Municipal Survey Act in favour of the plaintiffs. Ext- 12 is a correction slip which shows the mutation of the disputed land in the name of the plaintiffs/ respondents.

10. Learned lower courts have held that the plaintiffs acquired valid title and possession over the suit land. Moreover, defendants/State of Bihar has not challenged the order of learned Superintendent of Survey dated 29.03.1991, which was passed in favour of the plaintiffs and name of the plaintiffs were recorded in Municipal Survey Khatiyon. The defendants have not filed any documents with regard to acquisition of land for construction of police station over plot nos, 1164 and 1166 measuring 59 and ½ Kattha.

11. For the reasons recorded herein above, I find no merit in the instant second appeal. Both the courts below have taken proper view of the evidence on record. The concurrent finding by the courts below does not suffer from any illegality or perversity. No question of law, much less substantial question of law, arises for determination in the instant second appeal.

12. Accordingly, this appeal is dismissed at this stage of hearing in Order 41 Rule 11 of the C.P.C.



13. Pending interlocutory application, if any, shall stand disposed of.

N.K/-

(Khatim Reza, J)

U			
---	--	--	--

