

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.398 of 2016

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1. The State Of Bihar through the Collector, Kaimur at P.O. and P.S.- Bhabhua, Dist.-Kaimur
 2. Anchal Adhikari, Durgawati at P.O. and P.S. Bhabua Dist Kaimur.

... .. Appellant/s

Versus

1. Madan Kumar Pandey S/o late Mahatim Pandey
2. Ashutosh Kumar Pandey Minor
3. Shubham Kumar Pandey Minor Both Sons of Madan Kumar Pandey through madan Kumar Pandey, father and Natural Guardian and Next friend of minor sons. All R/o Village Rohuwan, PS Durgawati, Distt Kaimur Bhabhua.
4. Mukhia Grampanchayat , Chehariya PS. Durgawati Distt kaimur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sriram Krishna, AC to SC-11
For the Respondent/s	:	Mr. Shashi Shekhar Dvivedi, Sr. Adv.
		Mr. Parth Gaurav, Adv.
		Mr. Govind Raj Shahi, Adv.
		Mr. Rahul Kumar, Adv.
		Mr. Aditya Pratap, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

14 30-10-2024 Heard learned counsel for the appellants and Mr. Shashi Shekhar Dvivedi, learned senior counsel for the respondents.

2. This Second Appeal has been filed against the judgment and decree dated 22.02.2016 passed in Title Appeal No. 51 of 2011 (Tr. No. 38 of 2014) passed by the learned Additional District Judge-III, Kaimur, Bhabhua whereby the learned Appellate Court has reversed the judgment and decree dated 04.06.2022 passed in Title Suit No. 253 of 2004/20 of



2009 passed by the learned Additional Munsif-V, Kaimur, Bhabhua.

3. The defendants are the appellants whereas respondent nos. 1, 2 and 3 are the plaintiffs before the trial court.

4. The Title Suit No. 253 of 2004/20 of 2009 was filed for declaration of title and possession of the plaintiffs over the suit land of Schedule-A property measuring an Area 33 decimals (.33 Acres). It is further contended that the land in question was recorded in C.S. Khata No. 109, C.S. Plot No. 385 having an Area of 33 decimals situated at Vill-English Gopinathpur Tola Rohua was recorded as 'Gairmazura Aam land' in C.S. Khatian. The ex-landlord Rupnarayan Tiwari had settled the suit land to the ancestor of the plaintiffs through Maliki receipts in 1344 Fasli i.e. in the year 1937. The ex-landlord at the time of vesting of Zamindari submitted Return showing the ancestor of the plaintiffs as a raiyat. The said Return was filed under Sections 5, 6 and 7 of the Bihar Land Reforms Act, 1950. The Return was accepted by the State of Bihar and no appeal against the said acceptance had been filed by the State or any other person. After vesting of Zamindari, name of the ancestor of the plaintiffs was entered in the revenue records of the State and the State of Bihar



issued rent receipts on payment of the rent. It is further contended that in November, 2000 'Halka Karamchari' asked the plaintiffs to vacate the suit land and informed him that R.S. Khatiyan of the suit land has been prepared in the name of the State of Bihar as 'Anabad Sarb Sadharan', the suit land would be settled to other persons and the plaintiffs would be dispossessed. After service of notice under Section 80(1) C.P.C. upon the defendants on 19.06.2004 which was duly served, then the present suit was filed.

5. On summons, the defendants/State appeared and filed written statement raising objection with regard to the settlement and issuance of 'Maliki' receipts and Government receipts. The documents filed by the plaintiffs in support of their case have also denied. It is pertinent to mention that the State/defendants have produced only one witness Revenue Clerk, namely, Brahma Ram in support of their case and no documentary evidences were filed to support the case of the defendants.

6. After considering the pleadings of the parties and materials on record, the learned Trial Court dismissed the suit and held the evidence of PW-7 that the land in question was settled in the name of Ram Janam Pandey while P.W.-8 deposed



that the suit land is under cultivating possession of the plaintiffs. The plaintiffs 3 and 7 have deposed that the suit land is ditch (*gaddha*) filled with water. P.W.-3 has deposed in his cross-examination that government used to settle the suit land as “Sairat”. Therefore, oral evidence of the plaintiffs over the suit land is not proved. DW-1, who is Revenue Clerk has deposed that documents filed by the plaintiffs are not genuine and Register-II is not prepared in the name of Madan Pandey. Hence, the issue with regard to Issue No. 7 i.e. Whether the plaintiffs have got title and possession over the suit land is decided against the plaintiffs.

7. Being aggrieved, the plaintiffs/respondent nos. 1, 2 and 3 filed Title Appeal bearing Title Appeal No. 51 of 2011. The Appellate Court after considering the evidence adduced by the parties and materials available on record held that the land in question was settled in favour of the ancestor of the plaintiffs and Zamindari Return Exhibit-4 from which it appears that the land in question has been settled in favour of Ram Janam Pandey and the 'Maliki' receipts also proves to support the Zamindari Return.

8. The Appellate Court also held that it is settled law that ex-landlord has power to settle the 'Gairmajura Aam land.



Moreover, possession of the suit land has also been admitted by the defendant no. 3 (*Mukhia*) and after considering it, allowed the appeal and decreed the suit.

9. Considering the submissions made by the parties and materials available on record, it is quite apparent that the judgment of the lower Appellate Court which is final court of facts and the pleadings of the parties as well as the evidence adduced by them, came to a clear finding that the defendant/State did not file any appeal or cross-objection against the finding on the issue nos. 1 to 6 therefore they have no grievance against issue nos. 1 to 6 which have been held by the lower court in favour of the plaintiffs. So far issue with regard to title and possession of the suit land is concerned, the learned appellate court has held that there is no rebuttal by any cogent evidence to deny the Return (Ext.-4) filed by the plaintiffs which was submitted by the ex-landlord under the BLR Act, 1950 in favour of Ram Janam Pandey. However, the State is the custodian of the said Return. Moreover, the rent receipts (Ext-3E to 3K) of the suit land issued by the State as well as the Zamindari rent receipts issued by the ex-landlord Exts.-3, 3A, 3B and 3C have not been disproved by the appellants (State). The plaintiffs have proved his title and



possession over the suit land.

10. In view of the aforesaid facts and circumstances of the case as discussed above, it is quite apparent that the judgment and decree of the lower appellate court is covered by the finding of facts and no question of law much less substantial question of law arises for consideration in the instant appeal.

11. Accordingly, the present appeal is dismissed at the stage of hearing under “Order XLI Rule 11 C.P.C.”.

(Khatim Reza, J)

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