

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.239 of 2018

1. Guput Sah Son of Late Baij Nath Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).
2. Lalita Sah Son of Late Baij Nath Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).
3. Shyamsundar Sah Son of Late Baij Nath Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

Sl. Nos. 1 to 3, all are sons of Late Baij Nath Sah

4. Pintu Sah, now major Son of Guput Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).
5. Pappu Sah, now major Son of Guput Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

Both Sl. No. 4 and 5 are sons of Guput Sah

6. Yogendra Sah Son of Lalita Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).
7. Chhote Lal Sah Son of Lalita Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

Both Sl. No. 6 and 7 are sons of Lalita Sah

8. Munna Sah minor Son of Shyam Sundar Sah

Under the guardianship of Shyam Sundar Sah father and guardian, all are resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

... .. Appellant/s

Versus

1. Aftab Ahmad Son of Equabal Ahmad, resident of Frazer Road, Patna, P.S.- Kotwali, Distt. Patna, At present 133 Patliputra Colony, Patna 800013
2. Anwar Ahmad Son of Equabal Ahmad, resident of Frazer Road, Patna, P.S.- Kotwali, Distt. Patna, At present 133 Patliputra Colony, Patna 800013

Sl. No. 1 and 2 both are sons of Equabal Ahmad and are resident of Frazer Road, Patna, P.S.-Kotwali, Dist.- Patna at present 133 Patliputra Colony, Patna- 800013.

3. Asanuddin Amanullah Son of Nehaluddin Resident of Frazer Road, Patna, P.S.- Kotwali, District- Patna, at present 133- Patliputra Colony, Patna- 800013.

Defendants 1st – Respondents 1set – Respondents – 1st party

4. Jagdish Singh Son of Shri Ram Murat Singh Resident of Vishunpura, P.S.- Sonhan, District- Kaimur (Bhabhua).
5. Jagannath Singh Son of Shri Ram Murat Singh Resident of Vishunpura, P.S.- Sonhan, District- Kaimur (Bhabhua).
6. Hariday Singh Son of Shri Ram Murat Singh Resident of Vishunpura, P.S.- Sonhan, District- Kaimur (Bhabhua).



7. Gouri Shankar Singh Son of Shri Ram Murat Singh Resident of Vishunpura, P.S.- Sonhan, District- Kaimur (Bhabua).

Sl. Nos. 4 to 7 all are sons of Shri Ram Murat Singh resident of Vishunpura, P.S.-Sonhan, Dist.- Kaimur (Bhabua)

8. Fouzdar Yadav Son of Late Ram Krti Yadav Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

9. Lal Bihari Singh Son of Fouzdar Yadav Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

10. Sita Ram Yadav Son of Fouzdar Yadav Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

11. Lal Bahadur Yadav Son of Fouzdar Yadav Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

12. Girija Yadav Son of Fouzdar Yadav Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

Sl. Nos. 8 to 12 all are sons of Fouzdar Yadav

13. Tetara Devi Daughter of Fouzdar Yadav Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

14. Reshma Devi Daughter of Fouzdar Yadav Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

15. Kushuma Devi Daughter of Fouzdar Yadav Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

Sl. Nos. 13 to 15 all are daughter of Fouzdar Yadav, resident of Vill- Nati, P.S.-Sonhan, Dist.-Kaimur (Bhabua)

Sl. Nos. 8 to 15 are substituted heirs of Defendant/Respondent No. 8 vide order dated 05.02.2018

Defendants 2nd Set Respondents 2nd Set – Respondent 2nd party

16. Ghurahu Sah Son of Late Lakhu Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

17. Hira Sah Son of Late Lakhu Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

Sl. No. 16 and 17 both are sons of Late Lakhu Sah

Defendants – Respondents Proforma – Respondent 3rd party

18. Thakur Sah Son of Ghurahu Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

19. Malik Sah Son of Ghurahu Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

20. Santosh Sah (Minor) Minor Son of Ghurahu Sah under the guardianship of Ghurahu Sah from the guardian Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

21. Manoj Sah (Minor) Son of Ghurahu Sah under the guardianship of Ghurahu Sah from the guardian Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

Sons of Ghurahu Sah and minor sons of Ghurahu Sah under the guardian



ship of Ghurahu Sah, Sl. Nos. 16 to 21 all are resident of Vill-Nati, P.S.- Sonhan, Dist.-Kaimur (Bhabua)

22. Dhaneshar Sah Son of Hira Sah Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).
23. Ram Awtar Sah (Minor) Minor Son of Hira Sah father and guardian Resident of Village- Nati, P.S.- Sonhan, District- Kaimur (Bhabua).

Both are sons of Hira Sah, minor son of Hira Sah, father and guardian resident of Vill-Nati, P.S.-Sonhan, Dist.-Kaimur (Bhabua)

Defendants – Respondents Proforma - Respondents 4th party

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Binod Kumar Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

13 13-05-2024 This Second Appeal has been filed by the
plaintiffs/appellants against the judgment and decree of
affirmance.

2. Title Suit No. 120 of 1993 has been filed by the
plaintiffs/appellants for declaration of title and possession over
the suit land. The said suit was dismissed by the learned
Additional Munsif, Bhabhu (Kaimur) by judgment and decree
dated 30.08.2016 against which the plaintiffs filed Title Appeal
No. 65 of 2016 which was dismissed by the learned District
Judge, Kaimur at Bhabhua by its judgment and decree dated
26.02.2018 which is under challenge in the instant Second
Appeal.

3. The plaintiffs' case, in short, is that the suit land
was settled on Thika (Bandobast Thika) on payment of Rs. 100/-



by ex-landlord Md. Yunus in favour of Late Rupu Teli, who was ancestor of the plaintiffs/appellants. The said settlement was made on 21.07.1948 through a registered deed and Late Rupu Teli was put in possession over the suit land after executing the registered deed. After the death of Rupu Teli, the appellants have been coming in possession over the suit land. At the time of vesting of Zamindari, the possession of the plaintiffs over the suit land as Raiyat by operation of law as well as by principle of adverse possession, plaintiffs have accrued right title and interest in the suit land adverse to the defendants. It is further pleaded that the suit land was recorded in revisional survey khatian in the name of ex-landlord and Register-II was also prepared in his name. A mutation case bearing Case No. 386 of 1990-91 was filed by the plaintiffs before the Circle Officer at Bhabhua. During the said proceeding, the defendants disclosed that the Zamindari Return was filed by the Ex-landlord, ancestor of defendant nos. 1 to 6, as “Bakasht-Khudkasht” and rent was fixed under Bihar Land Reforms Act, 1950. On that basis, revisional survey was prepared and accepted the status of plaintiffs as mortgagee and in the remarks columns of revisional survey khatian, Lakhu Teli son of Rupu Teli and Baijnath Sah, son of Rupu Sah as mortgagees was mentioned, and rent was



also fixed in favour of the plaintiffs in respect of the suit land.

4. It is further pleaded that plaintiffs had no knowledge about the filing of Zamindari Return by the ex-landlord as “Bakasht-Khudkasht”, fixation of rent and preparation of revisional survey khatiyani and in this regard, no notice was served to the plaintiffs and if such proceedings were held even then it would be not binding upon the plaintiffs. It is further pleaded that at the time of vesting of zamindari, defendant 1st set lost their interest in the suit land as at that time, the suit land was in possession of the plaintiffs. Sale deed was executed by defendant 1st on 24.12.1986 and 12.07.1991 in favour of Jagdish Singh, Jagannath Singh, Hariday Singh, Gouri Shankar Singh (defendant nos. 7, 8, 9 & 10) and Bhagwati Devi (defendant no. 11) are illegal and the same have not been acted upon also.

5. In the aforesaid Title Suit, three sets of written statement were filed; one by the defendant no. 11 (Bhagwati Devi), 2nd set written statement by the defendant 1st set. The 3rd written statement was filed by defendant 3rd set who are co-sharer of the plaintiffs.

6. Case of the defendant 1st set and defendant no. 11 is that the plaintiffs have already admitted before the revenue



authorities including D.C.L.R. and Additional Collector in Revenue Appeal No. 147 of 1993-94 that the lands in question were “Bakasht-Khudbaksht” lands of Late Md. Younus and others, who were the forefathers of the defendant nos. 1 to 6. It is further contended that Late Md. Younus and others had executed registered deed of mortgage in the names of forefathers of the plaintiffs in the year 1948 which have already been redeemed long back. It is further pleaded that the plaintiffs’ forefathers were in possession over the land in dispute as mortgagees with a limited possession for a limited period without any title thereon.

7. Further case of the defendant 1st set and defendant 2nd set is that in the recent revisional survey, the land, in question, have been recorded in the names of defendant nos. 1 to 6 and no objection whatsoever was ever made by the plaintiffs at any stage of survey operation which continued for 10 years from 1959 to 1970. The plaintiffs have already admitted the title of the defendant nos. 1 to 6 over the land in question. Rupu Sah was given temporary possession over the land in question as mortgagee only for a limited period which came to an end after the mortgage was redeemed long back. It is pleaded that long silence of the plaintiffs during survey



operation for more than 10 years is ample proof of the facts that the defendants nos. 1 to 6 had been coming in possession over the land and legally the land have been recorded in the name of the defendant nos. 1 to 6 during revisional survey. Defendant no. 7 to 19 purchased the land from the recorded tenants, who had absolute title and possession over the land and absolute title was transferred by defendant nos. 1 to 5 to the rest of the defendants. It is further pleaded that the Return also showed the land as “Bakasht-Khudbakasht” lands at the time of vesting of zamindari and the plaintiffs made no objection there against the Return filed by the outgoing landlord. The plaintiffs cannot take the plea of adverse possession on the principle that once a mortgagee is always a mortgagee.

8. Further case of the defendant 1st set and 2nd set is that some of the plaintiffs filed a petition before Anchaladhikari, Bhabhua for mutation who allowed it on extraneous consideration. The defendants then preferred an appeal before the D.C.L.R., Bhabhua who had set aside the illegal and baseless orders of the Anchaladhikari, Bhabhua. The defendant nos. 1 to 6 have been paying rent fixed under Section 6 of the BLR Act, 1950. It is further contended that the plaintiffs cannot and should not be allowed to challenge the survey entry after



such a delayed stage after more than 22 years as the final publication was made as far back as in the year 1970. The plaintiffs have no right title or interest over the land in question nor thereon continued any more even as mortgagees and they have no possession. Plaintiffs have raised bogus, unfounded and illegal claim even when they know that they have no right title or interest over the suit land in question.

9. Further case of the defendant 1st set and 2nd set is that defendant nos. 1 to 6 are paying rents for the lands and rent has been fixed under Section 5, 6, 7 of the BLR Act, 1950. The plaintiffs have got no right to challenge the survey entry after lapse of a period of more than 22 years as the final publication was made as far back as in the year 1970 and the suit lands are presently in possession of defendant nos. 17 to 19 after purchase by them through registered sale deed from defendant nos. 1 to 5 on payment of full consideration money and the plaintiffs have got no right title or interest over the suit land nor they are in possession as mortgagees after its redemption and the whole case and the claim of the plaintiffs are bogus and founded on wrong facts and the suit of the plaintiffs is liable to be dismissed with cost.

10. Defendant 1st set has filed the relevant documents



with regard to the suit land which are Haque Arzi (Exhibit-A), Ordersheet dated 30.05.1957/14.06.1957 of Rent Fixation Case No. 2 of 1955-56 under BLR Act, Rent Schedule Form- M of 1955-56 (Exhibit-D), Survey Khatiyani (Exhibit-E), Mortgage redemption deed dated 13.06.1973 (Exhibit-F), order of Mutation Appeal No. 22 of 1992-93 (Exhibit-H) and rent receipts (Exhibit- I series).

11. Both the learned courts below after considering the pleadings and evidence of the parties, came to a definite conclusion that the deed dated 21.07.1948 is a mortgage deed, not a settlement deed executed in favour of forefather of plaintiffs by the ancestor (ex-landlord) of defendant 1st set. It is also held that the alleged settlement was an usufructuary mortgage. The provision of Section 58 of Transfer of Property Act clearly shows that in the mortgage, the ownership of the mortgage property cannot be transferred to the mortgagee and merely an interest or right to use the mortgage property or keep it for specific period is transferred to the mortgagee. It is further held that in usufructuary mortgage, the mortgagor can redeem the mortgage at any time after the mortgage money has been realised from the rents and profits of the mortgage property by mortgagee and in this regard, no limitation is prescribed, but it



will remain to mortgagor to repay the mortgage money to mortgagee at any time. But in all the circumstances and ownership, title does not accrue in favour of the mortgagee in such type of mortgage.

12. In the present case, according to the defendant 1st set and 2nd set, the said mortgage had been redeemed on 13.06.1973 by the heirs of ex-landlord and in this regard, a redemption deed (Exhibit-F) was also executed. The contents of redemption deed (Exhibit-F) proves that at the time of redemption, the father of the plaintiffs (heirs of original mortgagee) had received the mortgage money and the endorsement is in the writing of one Ramkrit Ram and a witness of defendant 1st set, D.W. 5 who claimed to have a special power of attorney on behalf of the defendant 1st set and was looking after all the agricultural affairs as well as the legal proceeding of the defendant 1st set has specifically stated that the Exhibit-F was in writing of one Ramkrit Ram and the witness identified his writing but D.W. 5 was not cross-examined in his cross-examination on the point of redemption and without objection of the plaintiffs, the said redemption deed was exhibited. Plaintiffs have not proved the redemption deed dated 13.06.1973 to be forged document. Moreover, the said



redemption deed is more than thirty years old document.

13. Therefore, in view of the provision of Section 90 of the Evidence Act, a presumption as to genuineness of this deed can be made and thumb impression of Late Lakhu Sah, who was ancestor of the appellants, and he accepted in the said redemption deed that he had received the mortgage amount and also accepted to have handed over the possession over the suit land to the mortgagor.

14. It is further held that the documentary evidence i.e. Exhibit G, H, C, I, I/1 to I/16 which are the rent fixation order passed in favour of defendant 1st set, and order passed in mutation case and several rent receipt issued in their favour and Exhibit- E and E/1 are the khatian which have been prepared in favour of the original defendant 1st set and these documents are sufficient to prove the fact that after the redemption, the mortgage property has been coming in possession of defendant 1st set as well as of their purchaser defendant 2nd set, and the plaintiffs failed to prove all the essential ingredients of adverse possession in their favour. The defendants' witness, namely, Sampat Singh deposed in his cross-examination that he did not see any document of possession of Guput Sah (plaintiff). P.W. 2, namely, Jitu Kumar Bind deposed in his cross-examination that



he did not know the parties of the case and also did not know the plot numbers of the suit land and he had no concern with the suit land. The plaintiffs did not succeed to prove their possession over the suit land to be continued till the date of filing of the case and also did not succeed to prove the fact that the said mortgage had not been redeemed. After redemption in the year 1973, the defendant 1st set sold the suit land to the defendant 2nd set who are in possession over the same and plaintiffs/appellants have not proved their plea of adverse possession.

15. Against the judgment and decree dated 26.02.2018 passed in Title Appeal No. 65 of 2016 by the learned District Judge, Kaimur at Bhabhua, the instant Second Appeal has been filed.

16. Learned counsel for the appellants submitted that both the courts below have failed to consider the settlement / mortgage deed dated 21.07.1948 (Exhibit-1) and finding with regard to the redemption of the disputed land on the basis of Exhibit-F dated 13.06.1973 is not sustainable in the eye of law. It is submitted that original mortgage deed is still in the possession of the plaintiffs/appellants which is sufficient to prove that mortgage has not been redeemed uptill now. The



finding on the basis of Exhibit-F dated 13.06.1973 cannot be accepted in absence of the original mortgage deed and the right, title and possession upon the disputed land by virtue of adverse possession has not been considered in its correct perspective.

17. Having considered the submissions of the appellants, it is manifest from a plain reading of the judgment of both the courts below that it has been concurrently found that ancestor of the defendants, namely, Md. Younus, who was ex-landlord of the suit land and the land, in question, were Bakasht land of the ex-landlord, had executed the registered deed of mortgage in favour of forefather of the plaintiffs on 21.07.1948. After vesting of the estate, the land, in question, and other lands of village Nati were in Khas possession of the ex-landlord, namely, Md. Younus. On the basis of Return filed under Section 4, 5, 6, 7 of the B.L.R. Act, rent was fixed in the name of ancestor of the defendant 1st set under the BLR Act vide Rent Fixation Case No. 2 of 1955-56 (Exhibit-C). Subsequent to the rent fixation, the State of Bihar had taken rents from Md. Younus, ancestor of the defendant 1st set and has accepted his Raiyati right over the suit land after vesting of Zamindari and granted rent receipts from the year 1959 to 1993. All rent receipts are exhibited as I/1 to I/16. It is also relevant to mention



that the revisional survey operation was initiated in the year 1961-62 and was finally published in the year 1970 wherein the name of ancestor of the defendant 1st set was recorded without any objection. However, the plaintiffs/appellants have not been recognized as Raiyat in respect of the suit land. The mortgage had been redeemed on 13.06.1973 by the heirs of ex-landlord and in this regard redemption deed (Exhibit-F) was also executed. Both the courts below held that the contents of deed (Exhibit-F) shows that at the time of redemption, the father of the plaintiffs (original mortgagee) had received mortgage money and the document is in the writing of one Ramkrit Ram and the said Exhibit-F is more than 30 years old document. On the said document, there is thumb impression of Late Lakhu Sah, who was ancestor of the plaintiffs/appellants, and he accepted in the said redemption deed that he had received the mortgage amount. In the case of usufructuary mortgage, the mortgagor can redeem the mortgage at any time. However, in the instant matter the heirs of mortgagor redeemed way back in the year 1973 and their remained no due which is established by Ext. F (redemption deed). After redemption and taking possession of the suit land, the defendant 1st set sold the suit land to defendant 2nd set and the defendant 2nd set since then are in possession of



the suit land.

18. Considering the aforesaid facts and circumstances as well as the materials on record, it is quite apparent that the judgment and decree of the 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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