

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.34 of 2023

In
CIVIL MISCELLANEOUS JURISDICTION No.1773 of 2018

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1. Most. Meera Rani Mehta @ Mira Rani Mehta, wife of Late Basudev Mahto (Deceased)
 2. Abhay Kumar Mehta @ Abhay Kumar, Son of Late Basudev Mahto, Resident of 1number Colony, Durga Asthan, P.O. and P.S. Katihar, District- Katihar.
 3. Sampa Kumari @ Pinki @ Alka Kumari D/o Late Basudev Mahto, Wife of Manoj Kumar Modi, Resident of Bhusna Mohalla, Kakalimore Asarganj, P.O. and P.S. Asarganj, District- Munger.
 4. Meenu Kumari @ Rakhi Kumari D/o Late Basudev Mahto, Resident of Mohalla- 1number Colony, Durga Asthan, P.O. and P.S. Katihar, District- Katihar.

... .. Petitioner/s

Versus

1. Krityanand Mahto, Son of Late Bulaki Mahto, Resident of Mohalla- Kumhar Tola, Tinpania, Kasba, P.O. and P.S. Kasba, District- Purnia.
2. Rani Devi Wife of Late Hira Lal Mahto, Resident of Barmasia, P.S. Katihar, District- Katihar.
3. Ritu Manglam, Son of Late Hira Lal Mahto, Resident of Barmasia, P.S. Katihar, District- Katihar.
4. Ruby Priya D/o Late Hira Lal Mahto, W/o Gopal Pariyar, Resident of Barmasia, P.S. Katihar, District- Katihar.
5. Shikha Sundram D/o Late Hira Lal Mahto, W/o Nitish Kumar Pandey, Resident of Vivekanand Colony, Purnea, Police Station- Khat Sahayak, District- Purnea.
6. Jagdish Prasad Mahto, Son of Late Bulaki Mahto, Resident of Mohalla- Kumhar Tola, Tinpania, Kasba, P.O. and P.S. Kasba, District- Purnia.
7. Ashok Kumar Mahto, Son of Late Bulaki Mahto, Resident of Mohalla- Kumhar Tola, Tinpania, Kasba, P.O. and P.S. Kasba, District- Purnia.
8. Sushila Devi D/o Late Bulaki Mahto, Wife of Nityanand Nayak, Resident of Kalsar Mohamadia, P.O. and P.S. Hasanganj, District- Katihar.
9. Kishor Mahto, Son of Late Parmeshwar Mahto, Resident of Pirganj, P.O. Pavai, P.S. Korha, District- Katihar.
10. The State of Bihar through the Collector, Purnia, P.O. Purnia, P.S. K. Hat, District- Purnia.
11. Circle Officer, Kasba, P.O. and P.S. Kasba, District- Purnia.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Syed Firoz Raza, Senior Advocate with



For the Opposite Party/s: Mr. Narendra Kumar, Advocate
Mr. Ashok Kumar Garg, Advocate
Mr. Sanjeev Kumar, Advocate
Mr. Priya Ranjan, Advocate
For the State : Mr. Mukesh Kumar, Advocate
Mr. Dhurjati Kumar Prasad, GP 14
Ms. Jahan Ara, AC to GP 14

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

11 21-08-2025 Heard Mr. Syed Firoz Raza, learned senior counsel assisted by Mr. Narendra Kumar, learned advocate for the defendant 2nd set/petitioners and Mr. Sanjeev Kumar, learned counsel for the plaintiff/opposite parties.

2. This Civil Revision application has been filed against the order dated 21.08.2018 passed in Title Suit No. 163 of 2015 by the learned Sub-Judge-1, Purnea whereby the learned Sub-Judge has rejected the petition filed on behalf of the defendant 2nd set/petitioners under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (hereinafter referred as 'the C.P.C.')

3. The plaintiffs/opposite parties 1st set filed Title Suit No. 163 of 2015 for the following reliefs:-

A) Let it be decreed and declared that the land in suit belong to the ancestor of the plaintiffs and defendant 2nd party.

B) Let it be decreed and declare that Basudev Mahto s/o Late Bulaki Mahto illegally and fraudulently for dishonestly misappropriating the share of the land of the other heirs of late Bulaki



Mahto got initiated Ceiling Case No. 33/81-82 by suppressing the facts to the plaintiffs and other heirs of Late Bulaki Mahto.

C) Let it be decreed and declared that the order of the ceiling case initiated and passed by defendant no. 1 is ab-initio illegal, void, fraudulent, without jurisdiction and not binding on the plaintiffs and defendant no. 7 and 8.

D) Let it be decreed and declared that all the heirs of Late Bulaki Mahto are entitled to their proportionate share in the suit land as per provisions of Hindu law of inheritance and any order passed by defendant no. 1 in Ceiling Case No. 33/81-82 is accordingly illegal, unlawful inoperative and fraudulent and without jurisdiction and not binding on the plaintiffs and defendant no. 7 and 8.

E) Let it be decreed and declared that the order passed by the defendant no. 2 in Mutation Case No. 146/13-14 is equally based on Ceiling Case No. 33/81-82 is illegal, void, inoperative fraudulent and without jurisdiction and not binding on the plaintiffs and defendant no. 7 and 8 and the same is fit to be cancelled accordingly.

F) Let it be decreed and declared that the entire procedure adopted by the defendant 1st party without inviting any objection and without noticing the necessary and proper party of the heirs of Late Bulaki Mahto is illegal, void, fraudulent and without jurisdiction and fit to be cancelled.



G) For that let it be decreed and declared that the plaintiffs have got every manner of right, title, interest over the land in suit being the heirs of Late Bulaki Mahto.

H) Let it be decreed and declared that Basudev Mahto is not the sole heir of land in the suit and accordingly order obtained in Ceiling Case No. 33/81-82 is fraudulent and in the same way order obtained in Mutation Case No. 146/13-14 by Meera Rani Mehta is fraudulent and illegal.

4. On summon, the defendants appeared and filed a petition under Order VII Rule 11 of the C.P.C. for rejection of the plaint under Order VII Rule 11 (d) of the C.P.C. on the ground that the suit is barred under Section 43 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred as 'the Ceiling Act') which clearly expresses that no order of Revenue Board or appellate authority under the Ceiling Act shall be questioned in any court. It is apparent from plaint that the plaintiffs prayed for 3 major prayers; firstly- Let it be declared that the order of the Ceiling Case No. 20 of 1974-75 / 33 of 1981-82 passed by the defendant no. 1 is *ab initio* illegal, void, fraudulent without jurisdiction and not binding on the plaintiffs and defendant nos. 7 & 8, secondly- Let it be declared that Basudev Mahto (ancestor of defendant 2nd set) son of Late Bulaki Mahto is not



the sole heir and order obtained in the Ceiling Case No. 33 of 1981-82 is fraudulent and in the same way, the order contained in Mutation Case No. 146 of 2013-14 in favour of Meera Rani Mahto is fraudulent and illegal, and thirdly- Let it be declared that all the heirs of Late Bulaki Mahto are entitled to their proportionate share in the suit land as per the provisions of Hindu Law of Inheritance.

5. Learned senior counsel for the petitioners submitted that from the perusal of the plaint especially paragraph nos. 3, 5, 6, 8, 10 and 13 will show that a ceiling proceeding was initiated against Basudev Mahto, who was the land holder by which a Unit was granted/allotted to the said Late Basudev Mahto and rest land was declared as surplus of the land holders. The prayer for declaration of initiation of proceeding passed in Ceiling Case No. 20 of 1974-75 / 33 of 1981-82 is *ab initio* illegal, void, fraudulent without jurisdiction. The petitioners' claim is against the order passed in ceiling proceeding and gazette notification passed under Section 15(1) of the Ceiling Act which required to be scrutinized before passing of the impugned order and also other documents which were filed at the time of filing of the plaint also has to be seen by the learned trial court. All those documents show that the ceiling proceeding initiated against



Basudev Mahto was with regard to his self-acquired property which was purchased by him and some of the landed properties was his share upon final family partition during lifetime of his father and later on, these properties were recorded in his name in revisional survey whereupon a ceiling proceeding commenced against him vide Ceiling Case No. 20 of 1974-75 on 22.08.1974 (later on, it was renumbered as Ceiling Case No. 33 of 1981-82 which was concluded vide order dated 10.08.1983) and final gazette notification under the Ceiling Act was published vide Gazette No. 2272 dated 06.06.1984 under Section 15(1) of the Ceiling Act whereby Basudev Mahto was allotted 18.42 acres of land only and remaining land measuring about 36.38 acres was acquired by the Government being surplus land. In the present suit, the entire aforesaid proceeding sought to be declared as *ab initio* void, illegal and without jurisdiction. It is also submitted that defendant 2nd set/petitioners after appearance filed their written statement and pleaded their case being title holder on the basis of Unit granted by the State of Bihar in Ceiling Case No. 33 of 1981-82. It is further pleaded that plaintiff nos. 1 to 3 in their written statement of Title Suit No. 173 of 2005, which was filed by plaintiff no. 4 against all the plaintiffs and defendant no. 1 of the present suit, had



admitted that the lands of the ceiling proceeding was exclusively acquired by father of the original defendant no. 1 (in Title Suit No. 173 of 2005) out of his own income. Learned senior counsel further submitted that the plaintiffs also filed a writ application bearing C.W.J.C. No. 7538 of 2017 on 03.05.2017 for quashing the order dated 10.08.1983 passed in Ceiling Case No. 33 of 1981-82 and further prayed to award separate Unit to the petitioners plaintiffs with respect to the suit land. On perusal of the plaint of title suit and writ application, it appears that in both the cases, the facts are quite similar and prayers are also same merely with clever drafting they have made an attempt to show different facts, but upon close reading, it appears both are the same.

6. Learned senior counsel for the petitioners further submitted that the learned lower court failed to appreciate that there is specific bar of jurisdiction of Civil Court under Section 43(1) of the Ceiling Act. The provision of law and judicial pronouncement of this Court as well as Apex Court is based on different footing. Hence, the said interpretation will not be applied to the present case. It is also submitted that the learned court below has not appreciated the facts that the order passed by the learned Collector under the Ceiling Act has not been



challenged before any higher court before by filing of the suit. During the pendency of the suit, O.P. Nos. 1 to 6 and 7 have filed C.W.J.C. No. 7538 of 2017 with following reliefs:-

(i) To quash the order dated 10.08.1983 passed by the respondent no. 4 in Land Ceiling Case No. 20 of 1974-75 / 33 of 1981-82 to the extent the same relates to the petitioners. (Annexure-6 series)

(ii) to award separate units with respect to the petitioners as claimed in the writ petition or alternatively, to Exclude the land held and possessed by the petitioners and their family from the land ceiling proceedings in question.

(iii) For any other relief/s to which the petitioners are found entitled to.

7. The said writ application was withdrawn with a liberty to raise all the points before the appropriate forum. Accordingly, the said writ application was disposed of on 15.04.2025.

8. Learned senior counsel for the petitioners submitted that on perusal of the plaint of the title suit, it appears that the suit is barred under Section 43 of the Ceiling Act.

9. On the other hand, learned counsel for the plaintiff/opposite party 1st set vehemently submitted that the plaintiffs have brought this suit for their share in the suit property which was originally belonging to their father Late



Bulaki Mahto who died leaving behind his four sons and two daughters. Basudev Mahto, who is the elder son of Bulaki Mahto, illegally and fraudulently misappropriated the share of these plaintiffs and got an order in their favour in Ceiling Case No. 20 of 1974-75 / 33 of 1981-82. The suit has been filed in accordance with the provision of Hindu Law of Inheritance and the main reliefs of the plaintiffs are based on Hindu Succession Act. The plaintiffs have sought reliefs for declaration of right, title and interest over the suit land being the heirs of Late Bulaki Mahto. They have also sought declaration that the entire procedure adopted by defendant nos. 1 & 2 without any notice is illegal and they have also sought declaration that Basudev Mahto is not the sole heir of the Bulaki Mahto. Reliance has been placed in the case of *Nand Kishore Singh Vs. Satya Narain Singh and Ors.* reported in *AIR 1978 Pat 315*. A Division Bench of this Court has held that the application under Section 16(3) of the Ceiling Act claiming presumption before registration of Sale Deed is not maintainable. Even if the sale deed registered later, the entire proceeding commenced on such application was void and without jurisdiction and such an application had to fail on that ground alone. Therefore, it has been held that the bar raised by Section 43 of the Ceiling Act



does not operate against the maintainability of the suit. Hence, the impugned order passed by the lower trial court is just and proper and no interference is required.

10. Having considered the rival submissions of the parties and the averments made in the plaint and objections raised by the defendant/petitioners, it is pertinent to mention the legal position arises for consideration in the instant revision application which is “Whether an application under Order VII Rule 11(d) of the Code of Civil Procedure ought to be decided on the allegation in the plaint”.

11. The suit from the statement in the plaint appears to be barred by law of limitation under Section 43 of the Ceiling Act. There is specific pleadings in the plaint that the entire proceeding in Ceiling Case No. 20 of 1974-75 / 33 of 1981-82 is *ab initio*, void, illegal without jurisdiction. In that proceeding, the plaintiffs were party to the ceiling proceeding. The said ceiling proceeding was initiated by the State against Basudev Mahto alone as land holder vide Gazette notification under Section 15(1) of the Ceiling Act and a part of the suit land was allotted in favour of Late Basudev Mahto. The present suit relates to 54.80 acres of land i.e. total land of the Ceiling Proceeding bearing Ceiling Case No. 20 of 1974-75 / 33 of



1981-82 which amounts to reopening of the ceiling proceedings and the same is not permissible under Section 45D of the Ceiling Act. Late Basudev Mahto was allotted 18.42 acres of land and about 36.38 acres land was declared as surplus land which was acquired by the State Government. However, the suit has been filed for declaration of right, title and interest in the suit property, including 36.38 acres of land acquired by the State of Bihar.

12. No doubt, the rejection of plaint under Order VII Rule 11 of the C.P.C. is a drastic power conferred in the court to terminate a civil action at the threshold. This view has been taken in the case of ***P. V. Guru Raj Reddy and Anr. Vs. P. Neeradha Reddy and Ors.*** reported in ***(2015) 8 SCC 331.***

13. The plain reading of Order VII Rule 11 of the C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments made in the plaint and the documents relied upon. The averments made in the plaint are germane; the pleas taken by the defendant in the written statement or the application under Order VII Rule 11 of the C.P.C. would be wholly irrelevant at this stage. This view has been expressed by the Hon'ble Supreme Court in the case of ***Saleem Bhai & Ors. Vs.***



State of Maharashtra & Ors. reported in ***(2003) 1 SCC 557.***

14. It is well settled that the documents filed at the time of filing of the plaint upon which the plaintiffs assert claim, after admission of the plaint, are made part of the plaint. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. The aforesaid proposition of law has been decided in the case of ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali*** reported in ***(2020) SCC Online SC 562.***

15. In the present case, the defendant/petitioners filed their written statements in the present suit and discussed the details of the ceiling proceeding initiated against the father of the petitioner and in support of their pleadings, certain documents have been filed.

16. On analysis of the pleadings and averments made in the plaint, it is clear that the entire proceedings of Ceiling Case No. 20 of 1974-75 / 33 of 1981-82 has been claimed to be void, *ab initio*, illegal and without jurisdiction, wherein a unit was granted in favour of Late Basudev Mahto and remaining land was declared as surplus which was acquired by the State of Bihar. The claim of the defendants could be looked into by



adverting to Order X of the C.P.C. especially with regard to the statement made in the plaint read with the documents relied upon could further be decided in view of order XIV Rule 1(5) of the C.P.C. in the light of the principle laid down by the Hon'ble Supreme Court in the case of ***T. Arivandandam Vs. T. V. Satyapal and Anr.*** reported in ***(1977) 4 SCC 467***, wherein the Hon'ble Supreme Court has held that *“if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, C.P.C”*.

17. As per the provision of Order X Rule 1 of the C.P.C., admission made by a party under this rule is conclusive against him. Such a statement is in the same position as written pleadings of the parties. A statement under Rule 2 of Order 10 would certainly be of a great value and has to be considered in the decision of the case. But, there is a clear difference between the statement under Order X Rule 1 and 2. A statement under Order 10 Rule 1 is recorded by court in order to clarify the pleadings with regard to such allegation of facts which are not expressly or by necessary implication admitted or denied by the party against whom they are made. The said statement can be either of the party himself or of his pleader who represents him,



whereas a statement under Order X Rule 2 is recorded in order to elucidate matters in controversy. In the suit, it can be either the statement of the party in person or of any other person, who is accompanying the party. The substance of the said statement is to be reduced into writing and it shall form a part of the record. Once a statement under Order X Rule 2 of the Code of Civil Procedure is recorded, it becomes part of the record and can be looked into and relied upon by the court.

18. Moreover, the question of jurisdiction of the court or a bar to the suit created by any law can be disposed of as an issue of law being preliminary issue under Order XIV Rule 2 of the C.P.C.

19. From perusal of the plaint, it is manifest that the plaintiffs have claimed their right on the basis of heirs of Late Bulaki Mahto. In paragraph no. 3, 5, 6, 8, 10 and 13 of the plaint, it is stated that the land allotted to Late Basudev Mahto in Ceiling Case No. 33 of 1981-82 is *ab initio*, void, illegal and without jurisdiction could be considered at the first hearing by examining the party and searchingly under Order X of the C.P.C. The claim of the defendant could be looked into by adverting to Order X of the C.P.C. and further be decided in view of the Order XIV Rule 1(5) of the C.P.C. in the light of the



principle laid down by the Hon'ble Supreme Court in the case of *T. Arivandandam (Supra)* wherein the order deals in two parts. The first part deals with order VII Rule 11 of the C.P.C. and the second part deals with Order X of the C.P.C., if illusion is created.

20. The instant matter requires consideration invoking Order X of the C.P.C. by recording oral statement wherein if need arises then recourse of Order XIV Rule 1(5) of the C.P.C. has to be adverted to decide it as a preliminary issue.

21. In the light of the discussions and observation made hereinabove, the order dated 21.08.2018 passed in Title Suit No. 163 of 2015 by the learned Sub-Judge-1, Purnea is set aside and the learned trial court is directed to decide the matter in accordance with law.

22. Accordingly, this Civil Revision Application is allowed.

(Khatim Reza, J)

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