

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.93 of 2023

Manjoor Kujara, Son of Late Jalil Kujara, Resident of Ward no.-7, Village and Post-Belhbar, P.S.-Rajnagar, Distt. Madhubani (Bihar).

... .. Appellant/s

Versus

1. Prem Chand Jha @ Kanhaiya Jha Son of Late Kumar Kant Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
2. Ramesh Kumar Jha Son of Late Kumar Kant Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
3. Manoj Kumar Jha Son of Late Kumar Kant Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
4. Prakash Chandra Jha Son of Late Kumar Kant Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
5. (Name not Known) Widow of Late Kumar Kant Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
6. Chandra Devi Daughter of Late Kumar Kant Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
7. Kiran Devi Daughter of Late Kumar Kant Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
8. Padma Devi Daughter of Late Kumar Kant Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
9. Ayush Chandar Jha Son of Late Vimal Chandra Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
10. (Name not Known) Daughter of Late Vimal Chandra Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
11. (Name not Known) Widow of Late Vimal Chandra Jha Residents of Village-Belhbar, P.S.-Rajnagar, Distt.-Madhubani.
12. Nathuni Kujara, Son fo Late Jalil Kujara Resident of Ward no.07, Village-Belhbar, P.S.-Rajnagar, Distt. Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Shashi Nath Jha, Advocate
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

9 18-03-2025 Heard Mr. Shashi Nath Jha learned counsel for the appellant.

2. The defendant no.2- appellant has filed this second appeal challenging the judgment and decree of affirmance.



3. Title Suit No. 23/1985 was filed by the plaintiff-respondent 1st set for declaration of title and recovery of possession over Schedule -II land mentioned in the plaint, along with other ancillary reliefs. The said suit was decreed in favour of the plaintiffs by the learned 1st Additional Munsif, Madhubani, vide judgment and decree dated 08-03-2000. Aggrieved by the judgment, the defendant no.2-appellant filed Title Appeal No. 06 of 2000, which was dismissed by the learned Additional District Judge- VIII, vide its judgment and decree dated 27-01-2023, which is under challenge in the instant Second Appeal.

4. The case of the plaintiffs, in brief, is that the suit land comprising 9 *Katha* 8 *dhur* of plot No. 2864, *Khata* no.170, and 6 *katha* 4 *dhur* of plot no. 3255, totaling 15 *katha* 12 *dhur*, was sold by Most. Dayrani to the father of the plaintiffs on 28.04.1943 for valuable consideration. After purchase, the land came into the ownership of the father of the plaintiffs, and rent was regularly paid. Later, the mutation was done, and the payment of rent continued. Subsequently, the land vested in the Bihar Government, and the *jamabandi* return was issued in favour of the Bihar Government and on that basis, the plaintiffs' *Jamabandi* No. 180 remained as was before. The



plaintiffs continued to pay rent and received receipts. Later, the plaintiffs' landholding increased, and a new *Jamabandi* no. 221 was created, based on which the plaintiffs continued paying rent. Further case of the plaintiffs is that there was dispute regarding 18 *dhurs* out of 9 *katha* 8 *dhur* of *khesra* no. 2864 in the northwest. It was stated that some enemies of the plaintiffs initiated proceedings against them by filing Case No. 34 of 1970-71 (State of Bihar vs. Sri Kumar Kant Jha) under section 4 (h) of the Bihar Land Reforms Act, 1950, before the Deputy Collector, Land Reforms. Madhubani, who after conducting a thorough enquiry, relying on reports submitted by the *Halka Karmchari* and Circle Inspector, dropped the case and affirmed the plaintiffs' title over the disputed land vide Ext. 8/a. The plaintiffs were in possession without obstruction on the disputed plot no. 2864. The defendants constructed a house on plot no. 2863 and used to live there. The further case of the plaintiffs is that when the plaintiffs, along with family members went on a pilgrimage, the defendants, on 15.03.1985, erected a hut (*Phoos* house) on the northwest of plot no. 2864 after filling the soil and also fixed the *khunta* for cattle. After returning from the pilgrimage, the plaintiffs asked the defendants to vacate the encroached land, approximately 18



dhur of plot no. 2864, but they refused.

5. On summons, the defendants appeared, filed their written statement, and contested the suit. The main objection of the defendants is that the suit land i.e., plot no. 2864, was recorded as a pond (*Gairmazrua Aam*) in the Cadestral Survey Khatian. It is further contended that near that pond, one *Tadd* tree and one *khajoor* tree were planted by Tufani Kunjda, and rent for toddy was recorded in Cadastral Survey Khatian. The said Tufani Kunjda claimed to be the ancestor of the defendants, who came into possession of a portion of Plot no. 2864. After his death, his heirs continued to remain in possession, while the remaining area of Plot no. 2864 was used by the public. The pleading of the plaintiffs was denied by the defendants to the extent that the nature of land was changed and Most. Dayrani came into possession as a cultivator. The defendants also denied that after the death of her husband Mukund Jha, she sold the land to the father of the plaintiffs on 28.04.1943. Further, it was also pleaded that Most. Dayrani had no right to sell the land because it was '*Gairmazruwa Aam*' land. It is further pleaded that the defendants are poor person and that, with respect to the suit land, they applied for *Basgit Parcha* in the year 1984 under the provisions of Bihar



Privileged Persons Homestead Tenancy Act,1947. A report was submitted by the *Panchayat Sevak* and *Halka Karmchari*, but *Basgit Parcha* was not issued in favour of the the plaintiffs.

6. On the basis of pleadings of the parties, the trial Court framed the issues. Each party adduced evidence and submitted relevant documentary proof. The defendants, in particular, adduced the testimony of nine witnesses and submitted four documentary pieces of evidence. The trial Court specifically observed that the defendants actively participated in the proceedings by presenting evidence and cross- examining all of the plaintiffs' witnesses. However, during the stage of arguments, they withdrew from *pairvee*. Consequently, the case proceeded to the argument stage in their absence.

7. The learned trial Court, after thoroughly examining the evidence and materials on record, decreed the suit in favour of the plaintiffs and held that the plaintiffs had established their title over the suit property on the strength of a registered sale deed dated 28-04-1943, as well as the order dated 22-03-1989, passed by the Deputy Collector, Land Reforms, in Case No. 34/70-71, initiated under Section 4(h) of the Bihar Land Reforms Act at their instance. Furthermore, the court affirmed that Most. Dayrani, wife of Mukund Jha, had the legal right to



sell the suit land to the plaintiffs' father. It was also noted that Tufani Kunjda's name entered in the cadastral survey *khatiyan* only in the remarks column, indicating merely his right to use the usufruct of the toddy tree (*Tadd*). During the revisional survey operation, a revisional *purcha* was issued in favour of the plaintiffs, further confirming their possession. Notably, the defendants never challenged the sale deed dated 28-04-1943 or the revisional *purcha* issued in favour of the plaintiffs. The defendants failed to produce any material evidence to establish either the possession or title over the suit land. However, they admitted to having filed an application before the competent authority for the grant of *Basgit Purcha* under the Bihar Privileged Persons Homestead Tenancy Act and the same was rejected by the authority, which further determined that in the absence of the plaintiffs, the defendants had encroached upon the plaintiffs' land.

8. Being aggrieved by the judgment of the learned trial court, the defendant no.2- appellant filed Title Appeal, which was also dismissed. The learned Appellate Court, after framing points for determination, decided the appeal after considering the evidence and materials on record and held that the suit land, along with other lands totaling 15 *katha* 12 *dhur*,



was sold by Most. Dayrani to the father of the plaintiffs, and there is nothing contradictory against the sale deed, which is more than 30 years old. The name of the father of the plaintiffs was mutated with regard to the said land, including the suit land. As far as the change of nature of land is concerned, the proceeding under section 4(h) of the Bihar Land Reforms Act was disposed of. The defendants objected, stating that they were not a party in the said proceeding. However, the proceeding was initiated by the *Anchal Adhikari* against the father of the plaintiffs and was later dropped in favour of the plaintiffs establishing their right. The validity of the sale deed dated 28-04-1943 (Ext.6) could be considered valid under section 90 of the Evidence Act. The defendants raised concerns regarding the change in the nature of land and its settlement by the Ex-landlord. However, the Ex- landlord had the legal right to settle even '*Gairmazrua Aam*' lands. Furthermore, in Ext.8/a, which is the certified copy of the order passed in the proceeding under section 4(h) of the Bihar Land Reforms Act in Case No. 34 of 1970-71, it has been observed that the nature of the land was changed and that the Ex-landlord had transferred that suit land through a registered sale deed, which he had the right to sell and there is no reason to disbelieve the



validity of the order passed under section 4(h) of the Bihar Land Reforms Act. The defendants also claimed adverse possession over the suit land without obstruction. However, the learned trial Court has held that, on perusal of the evidence of DW-6, it appears that in para 5 of his testimony, he has stated that Tufani Kunjda resided in his mohalla. Therefore, it was concluded that Tufani Kunjda had no relation with the defendants. It is further held that the Pleader Commissioner reported that soil had been filled on the suit land. Thus, the claim of adverse possession was not proven, and it was further held that the defendants had no rightful claim over the suit land. Regarding the defendants' allegation that the court below misused its discretion under the explanation to Order 17, Rule 2 CPC, the learned appellate court found no merit in the claim and held that a bare perusal of the LCR would show that summons had been duly served, with a report regarding service recorded on order sheet. The records further indicate that the defendants filed a written statement, adduced evidence and cross-examined the plaintiffs' witnesses. However, at the argument stage, the defendants failed to appear on the scheduled date of hearing of the suit.

9. After hearing the averments made on behalf of the



appellant and on perusal of the materials on record, including the judgments of the learned courts below, it appears that the Court of appeal, which is the final court of fact, after considering the pleadings of the parties and evidence adduced by them, came to a clear finding that the plaintiffs had successfully established their title based on the registered sale deed dated 28-04-1943 and the order passed by the Deputy Collector, Land Reforms, in Case No. 34/70-71, filed under Section 4(h) of the Bihar Land Reforms Act (Ext 8/a). As far as the settlement with regard to ‘*Gairmazrua Aam land*’ is concerned, it is settled legal principle that an Ex-landlord has the right to settle such land, provided that the customary rights of the general public remain unaffected. This legal position was affirmed in the case of ***Musammat Husanbano vs. The State of Bihar & Anr*** reported in ***1959 BLJR 310***. The Division Bench of this Court has held that “*it is a well settled proposition of law that even in the case of gairmazrua-Aam land the landlord has the right to deal with it in such manner as he chooses so long as he does not interfere with the customary rights of the villagers*”.

10. It is apparent from Ext. 8/a that the nature of the land has undergone changes over time. In the case of **Maya**



Devi and others vs. The State of Bihar and Ors., reported in **2014 (3) PLJR 584**, this Court held that “*an entry in the cadastral survey over 100 years old with regard to nature of land is not an entry for all times in future. It is an entry with regard to existing state of affairs then. It does not preclude the change of nature of the land through passage of time. It is not an entry which would hold good for all times to come and would bind all parties and not subject to change either by settlement or user. This, merely because in the cadastral survey a land is shown as Gair Mazarua Aam, Gair Mazarua Khas or Qaisar-e-Hind, is not a determinative factor today. It only shows the history.*”

11. Considering the aforesaid facts and circumstances as well as materials on record, it is quite apparent that the judgments and decree of the Courts below are covered by the findings of fact, and no question of law, much less a substantial question of law, arises for consideration in this Second Appeal.

12. Accordingly, this Second Appeal is dismissed at the stage of Hearing under Order XLI Rule 11 of the CPC.

(Khatim Reza, J)

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