

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.239 of 2022

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1. Mosmat Girija Kuar @ Girija Devi W/o Late Krishna Sao, Resident of Village and P.S. Naubatpur, District- Patna.
 2. Vijay Kumar, Son of Late Mauji Lal Sao, Resident of Village and P.S. Naubatpur, District- Patna.
 3. Raj Kumar, Son of Late Malu Sao @ Late Mallu Sao, Resident of Village and P.S. Naubatpur, District- Patna.

... .. Appellant/s

Versus

1. Deo Nandan Prasad Son of Late Babu Dwarika Sao, Resident of Village and P.S. Naubatpur, District- Patna.
2. Subodh Kumar, Son of Sidhnath Prasad, Resident of Village and P.S. Naubatpur, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. K.N. Choubey, Sr. Adv. With Mr. Ashok Kumar Garg, Adv.
For the Respondent/s	:	Mr. Rajiv Verma, Sr. Adv. Mr. Rohan Verma

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

10 29-04-2025 Heard Mr. K.N. Choubey, learned senior counsel

for the appellants and Mr. Rajiv Verma, learned senior

counsel for the respondents.

2. This Second Appeal has been filed by the
defendants/respondents/appellants against the judgment and
decree dated 21.06.2022 of the learned court below passed
by the Additional District Judge-III, Danapur in Title
Appeal No. 62 of 2017. The matter arises out of Title Suit
No. 90 of 2004 which was filed by the



plaintiffs/respondents for declaration of right, title and interest over the suit property and the defendant-Ist set has no right, title and interest in the suit property and further declare that the defendants were tenant of the plaintiffs and now they are in possession of the suit property as trespassers. It was further prayed that after granting the above said relief, a decree of recovery of possession of the suit property with damages be passed in favour of the plaintiffs and defendant-2nd set be directed to vacate the disputed property and deliver the possession of the same to the plaintiffs and also for decree for Rs. 43, 200/- as arrears of rent be passed in favour of the plaintiffs as well as temporary injunction and cost.

3. The case of the plaintiffs, in brief, is that Plot No. 654 Area 3 decimals under Khata No. 120 is recorded as *Gairmazarua Malik* land having *Khaparposh Makan* (thatched house) in possession of Bhagwat Sao, son of Aganu Sao, Vill-Naubatpur, Mahal-Govindpur, Thana No. 155 P.S.-Naubatpur, Dist.-Patna. The said Bagwat Sao was recorded tenant in Cadastral Survey Khatian, who died leaving behind his wife Sundari Devi and a daughter Dulari



Devi. The said Dulari Devi was married with Jhaboo Sao. Sundari Devi wife of Bhagwat Sao surrendered her interest in favour of her daughter, namely, Dulari Devi by executing a registered deed of surrendernama dated. 30.12.1942 with respect to the suit property along with other properties and put her in possession of the same. Thereafter, Dulari Devi constructed a *pucca* house on the disputed Plot No. 654 after demolishing the old *Khaparposh* house. Later on, Dulari Devi sold the disputed Plot no. 654 with house to one Chandrika Prasad through registered sale deed dated 08.05.1985 and put him in possession of the disputed property. The said Chandrika Prasad @ Chandrika Pd. Gupta sold the disputed land and house to the plaintiffs by four registered sale deeds on 09.12.2002 for a consideration of Rs. 1,42,000/-(one lakh forty two thousand) and put the plaintiffs in possession of the suit properties. Further, the case of the plaintiffs is that the names of the plaintiffs were mutated. It is further contended that the defendant-Ist set and 2nd set are tenants in the disputed house since the time of Chandrika Prasad and are doing their respective business in the disputed house. Further case of the plaintiffs is that



Badri Sao was the father-in-law of Mosst. Girija Devi defendant no. 1 and defendant no. 2, namely, Vijay Kumar is son-in-law of defendant no. 1. It is further contended that Badri Saw, father-in-law of Girija Devi, resident of village Sadisopur, Dist.-Patna, purchased 3 decimals land of Khata No. 120 Plot No. 655. The recorded tenant of the said land, namely, Bajrangi Sao and Naurangi Sao both sons of Ram Gopal, sold the said land to Raghunandan Sao. The said Raghunandan Sao sold this 3 decimals land of Plot No. 655 Khata No. 120 in favour of Badri Sao, father-in-law of Girija Devi. It is pleaded that house of Badri Sao is standing over Plot No. 655. It is further contended that in due course of time the family member of Badri Sao increased. Badri Sao had two sons Bhagwan Sao and Krishna Sao. The said Krishna Sao died during the lifetime of his father Badri Sao leaving behind his wife Girija Devi and daughter Shila Devi, who was married to the defendant no. 2 Vijay Kumar. The defendant no. 1 Girija Devi for expanding her business and accommodation took two shops at a monthly rental of Rs. 600/- per month and the house at a rental of Rs. 1400/- per month total Rs. 2000/- per month from Chandrika



Prasad (vendor of the plaintiffs) since 02.05.1985. It is further pleaded that defendant no. 3 Raj Kumar also took a shop on a monthly rental of Rs. 400/- on 01.10.2002 from the said Chandrika Prasad. After purchase of the said house by the plaintiffs, the said defendants became tenants of the plaintiffs. The defendant nos. 1 to 3 assured the plaintiffs for making payment of rent of the said house and shop. But thereafter, the defendants did not paid the rent. When the plaintiffs requested the defendants on 09.10.2005 to vacate the house and shops situated in Plot No. 654, the defendant no. 2 son-in-law of the defendant no. 1 disclosed that the house in question was ancestral house of Girija Devi and her father-in-law Badri Sao had gifted the house and land of Plot No. 654 Area 3 decimals. It is further pleaded that the plaintiffs filed a complaint before the police and on report of the police, the Sub Divisional Magistrate, Danapur was pleased to start a proceeding under Section 144 Cr.P.C.. Girija Devi filed her show cause and alleged that her father-in-law had executed a registered deed of gift in her favour on 28.10.1983 with respect to the disputed properties and defendant no. 3 Raj Kumar is her tenant. Hence, the



necessity of suit arose.

4. On summon, the defendant nos. 1, 2 and 3 appeared and filed two sets of written statement. One set on behalf of defendant nos. 1 and 2 and another set of written statement on behalf of defendant no. 3. The defendant no. 3 supported the case of the defendant nos. 1 and 2. Apart from ornamental objection, the defendants admitted that the Cadastral Survey Khatiyan bearing Plot No. 654 was recorded as *Gairmazarua Malik* land having house thereon in possession of Bhagwat Sao son of Aganu Sao. The area in possession of the Bhagwat Sao is recorded only 3 decimals but actual area of Plot No. 654 is 5 decimals as per the survey map. It is further pleaded that Aganu Sao had two sons Dumari Sao and Bhagwat Sao and a daughter Deolagani Kuar. The said Deolagani Kuar was married to one Sohrai Sao. Aganu Sao had kept his daughter and son-in-law as *ghar jamai* and had given the house situated on Plot No. 654 with land and since then said Deolagani Kuar and her husband was living in the said house as absolute owner. It is further contended that by mistake of the survey authority, the name of Bhagwat Sao son of Aganu Sao was



recorded in the said *khatian* and denied the right, title and interest of Bhagwat Sao in Plot No. 654. It is further contended that Deolagni Kuar and her husband died leaving their only son Badri Sao, who inherited the same and came in possession over the said land and house over Plot No. 654. The said Badri Sao gifted the said property to her widow daughter Girija Devi wife of late Krishna Prasad by registered deed of gift dated 28.10.1983 and put her in possession. The name of Mosst. Girija Devi was mutated in the revenue record and rent receipt is being issued in her name. The said Badri Sao had also acquired the land and house on plot no. 655 which is in boundary of Plot No. 654 and both the plots were amalgamated as such the defendant nos. 1 and 2 are in possession of the suit land and house since more than twelve years continuously, openly, exclusively in assertion of their own right and title and to the knowledge and ouster of the plaintiffs and as such they have perfected their title in the suit land and house even by adverse possession. The alleged surrendernama dated 30.12.1942 alleged to have been executed by Mosst. Sundari Devi in favour of her daughter Dulari Devi was



quite illegal, null and void, collusive and inoperative document. Neither Bhagwat Sao nor his widow Mosst. Sundari Devi nor his daughter Dulari Devi had any right, title and interest in the suit land and house nor they ever came in possession of the same. It is further pleaded that Sundari Devi had no legal right to execute the said deed of of surrendernama in favour of her daughter with respect to the suit property. The house in suit was constructed by defendant no. 1 and Dulari Devi, who had no right to sell the suit house. The sale deed dated 09.05.1985 is quite collusive, null and void and inoperative document without consideration. Chandrika Prasad had not acquired any right, title and interest in the suit land. The sale deed dated 09.12.2002 alleged to have been executed by Chandrika Prasad in favour of plaintiffs is illegal, null and void, collusive and inoperative document for without consideration. Neither Chandrika Prasad nor the plaintiffs had any right, title and interest in the suit land and the house.

5. Upon completion of submissions and consideration of rival contentions of the parties, the Trial



Court framed issues and decided the suit on the basis of evidence and materials on record. The learned Trial Court dismissed the suit on contest without costs by its judgment and decree dated 27.04.2017 passed in Title Suit No. 90 of 2004 holding that on perusal of evidence of PW-3 Bhagwan Prasad admitted that he knew Damari Sao and Bhagwan Sao, sons of Aganu Sao.

6. Upon considering the evidence and pleadings of both the sides, it was further held that no doubt it is the admitted fact that the original owner of the land in dispute i.e. *Gairmazarua Malik* Bhagwat Sao is the recoded tenant and the property in dispute was mentioned in his name in the Cadastral Survey Khatiyani (Ext.-4 and Ext.-G). It was further held that with regard to inheritance of the property by the heirs of Bhagwat Sao, the plaintiffs have not filed any document such as any title or revenue documents. The plaintiffs have only produced surrendernama in favour of Dulari Devi executed by her mother Sundari Devi as Ext.-3 which is proved only by formal witnesses.

7. In view of the pleadings and evidence that the plaintiffs have rented two shops to the defendant nos. 1 and



3 at the cost of Rs. 2000/- per month and Rs. 400/- per month of the property in dispute for running his business, there is no cogent evidence or any rent agreement produced on behalf of the plaintiffs to prove or to establish the relationship of landlord and tenant, rather, at this point defendant no. 3 produced the evidence and rent agreement that he is the tenant of defendant nos. 1 and 2 and paying rent of the rented property which is in dispute to the defendant nos. 1 and 2 regularly. In support of that the defendant no. 3 has exhibited rent agreement executed in his favour as Ext. 1. Hence, plaintiffs failed to establish the relationship of the original *raiya* with her daughter Sundari Devi and without establishing the above the document executed by the said Sundri Devi in favour of her daughter is also not a substantive document and therefore, the plaintiffs have failed to prove these issue nos. 5, 6, and 7. Hence, these issues have been decided against the plaintiffs. It is further held that the main as well as other issues were also decided against the plaintiffs.

8. Being aggrieved by the aforesaid judgment and decree, the plaintiffs filed Title Appeal No. 62 of 2017. The



learned lower Appellate Court after hearing the parties allowed the appeal and decreed the suit. The learned court of appeal below considered the issue nos. 6, 7 and 8 which were the main issues of the suit and considered each issue separately and reversed the findings of the Trial Court and has held that it is admitted fact that the land in question originally belongs to Bhagwat Sao in whose name Cadastral Survey entry was made with regard to the suit land and house but the Trial Court has held that the plaintiffs have failed to prove succession from Bhagwat Sao. The property in question comes to his wife Sundari Devi and daughter Dulari Devi. The sale deed executed by Dulari Kuar in favour of Chandrika Pd. herself noted that she is the daughter of Bhagwat Sao. While plaintiffs have mentioned in their pleadings that Dulari Kuar is the daughter of Bhagwat Sao and on that basis the learned Trial Court assumed that the plaintiffs have failed to prove their case. Though in the plaint there is no mention that the Dulari Kuar was the daughter of Bhagwar Sao but in paragraph no. 2 of the plaint it is specifically stated that Bhagwat Sao died leaving behind widow Sundari Devi and daughter Dulari



Kuar. The said Bhagwat Sao was the Khatiyani Raiyat whose wife's name was Sundari Devi. Dulari Kuar is the daughter of Bhagwat Sao and Sundari Devi. It is also held that in the Cadastral Survey Khatiyan (Ext.-4 and Ext.-G) the area of land of dispute has been mentioned as 3 decimals so, the claim of 5 decimals is wrong and baseless.

9. On perusal of surrendernama (Ext.-3) it appears that the name of the husband of the Sundari Devi has been mentioned as Bhagwat Sao, which was registered in the year 1942 and it is a public document. This document also shows that the said Bhagwat Sao died leaving behind his wife Sundari Devi and daughter Dulari Kuar. It is further held that the said Ext.-3 is not only with respect to the suit land but also for the other land. In the said surrendernama (Ext.-3) it is mentioned that rent was paid to the ex-landlord. The plaintiffs are the purchaser from Chandrika Pd., (Vendee) of Dulari Devi. As per the surrendernama the rent receipt issued by the Zamindar was available to Sundari Devi and Dulari Kuar. The learned Appellate Court clearly held that the claim of the defendants is on the basis of gift deed dated 28.10.1983 by which Badri Sao executed



gift deed in favour of Girija Devi with respect to 9 kattha 12 dhurs but that does not include the suit land. In the gift deed (Ext.-D) land in question has been mentioned as Khata No. 762, Plot No. 654 situated at Vill-Ibrahimpur, while the suit land is bearing Khata No. 120, Plot No. 654 situated at Vill-Govindpur. It is apparent from the gift deed (Ext.-D) that it doesn't show as that of the suit land. The suit land is a different land from the gift deed (Ext.D), only plot number is same while the khata number and village is also different. The defendants acquired right, title and interest of Plot No. 654 under Khata No. 762 of Vill-Ibrahimpur, which is not the land in suit and further held that the plaintiffs have proved their title being successor in interest of Sundari Devi and her daughter Dulari Devi. Dulari Devi executed the sale deed in favour of Chandrika Prasad in the year 1985, who in turn, sold the same land to the plaintiffs and further declared that defendant-1st and defendant-2nd set are the tenant of the plaintiffs. In such view of the matter, the plaintiffs have right, title and interest over the Schedule-I property.

10. Having considered 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 pleading of the parties and the evidence adduced by them came to a clear finding that the land acquired by defendant no. 1 through gift deed dated 28.10.1983 is a different bearing Khata No. 762, Plot No. 654 situated in Vill-Ibrahimpur while the suit land mentioned in Schedule-I is situated at Vill-Govindpur bearing Khata No. 120, Plot No. 654. Therefore, both the lands are not the same land. The suit was filed for declaration of title and interest of Khata No. 120, Plot No. 654 situated at Vill-Govindpur. It is apparent from the record that the daughter of Bhagwat Sao executed sale deed on 08.05.1985 in favour of Chandrika Prasad which has not been challenged till date. The said Chandrika Prasad sold the land to the plaintiffs through four sale deeds and there is no counter claim of the defendants/appellants. It is also apparent from the record that father of defendant no. 1 purchased the land of Khata No. 120 Plot No. 655 Area 3 decimals adjacent to the plot in suit. There is no document to suggest that Badri Sao acquired the suit land. The



plaintiffs have proved their title and interest with regard to the suit land.

11. Considering the facts and circumstances of the case as well as materials on record, this Court doesn't find any illegality in the impugned judgment and decree of the learned first appellate court nor does it find any substantial question of law involved in the instant Second Appeal.

12. Accordingly, this Second Appeal is dismissed at the stage of hearing under "Order XLI Rule 11 C.P.C."

(Khatim Reza, J)

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