

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL REVIEW No.80 of 2018**  
**In**  
**FIRST APPEAL No.601 of 1986**

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1. Lal Dev Yadav @ Lal Dev Prasad, S/o Late Harakh Nath Yadav, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
2. Shyam Deo Yadav, S/O Late Harakh Nath Yadav, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
3. Ramdeo Yadav, S/O Late Harakh Nath Yadav, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
4. Darbari yadav, S/O Kuldeep Yadav, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
5. Deo Nandan yadav, @ Deonandan Singh, S/O Ganga Yadav, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
6. Raghunandan Yadav, S/O Ganga Yadav, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.

... .. Petitioner/s

Versus

1. Narayan Sao, S/O Late Sri Mahadev Sao, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
2. Jagarnath Sao @ Jagnath Sao, S/O Narayan Sao, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
3. Sidh Nath Sao, S/O Narayan Sao, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
4. Surya Nath Sao, S/O Narayan Sao, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
5. Deo Nath Sao, S/O Narayan Sao, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
6. Chandeo Sao, S/O Narayan Sao, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
7. Mst. Meena Devi, W/O Late Rama Sao, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
8. Most. Deorati Devi, W/O Late Nathuni Yadav, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
9. Dasai Yadav, S/O Sri Chandradeep Yadav, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.
10. Dayali Yadav, S/O Kuldeep Yadav, Resident of village- Saidabad, P.S.- Bikram (at present Dulhin Bazar), District- Patna.



... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Kamaldeo Sharma, Advocate  
For the Opposite Party/s :

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**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**  
**ORAL ORDER**

7      10-04-2025                      Heard Mr. Kamaldeo Sharma, learned counsel for  
the petitioners.

2. At the very outset, it has been informed by the  
learned counsel for the petitioners that the petitioner nos. 1, 4  
and 5 namely **Lal Dev Yadav @ Lal Dev Prasad, Darbari  
Yadav** and **Deo nandan Yadav** died during the pendency of  
the present review petition and as such the prayer against them  
be dropped. Accordingly, the case against them stand  
dismissed.

3. The present petition has been preferred:

*for reviewing judgment dated 4.10.2016  
passed in F.A.No.601/1986 by the (Hon'ble  
Mr. Justice Mungeshwar Sahoo as his  
Lordship then was) whereby and where  
under the Hon'ble Court was pleased to  
dismiss the appeal with cost of Rs. 10,000/-  
to be paid by the appellants/petitioners to the*



*respondents/opposite parties.*

4. The plaintiffs-appellants preferred **Title Suit No. 236 of 1982** for the declaration of title and confirmation of possession over the Scheduled-II and Scheduled-III of the land mentioned in the plaint. They further wanted declaration that they be declared as settled Raiyat in respect of Scheduled-III land and for permanent injunction. The defendants on notice appeared and contested the same.

5. The Court framed the issues as follows:

- (i) is the suit, as framed maintainable ?*
- (ii) have the plaintiffs got any cause of action or right to sue;*
- (iii) is the suit barred by law of limitation?*
- (iv) is the suit be read by principles waiver, acquiescence and estoppel ?*
- (v) has the suit property been grossly under valued and the court fee paid sufficient?*
- (vi) have the plaintiffs title and possession over the suit land as*



*alleged, in the plaint;*

*(vii) are the plaintiffs entitled to relief  
sought for?*

6. The Court thereafter vide an order dated 14.08.1986 came to the conclusion that the plaintiffs had failed to prove that they are 'Bataidars' in respect of Scheduled-III land and accordingly, the suit was dismissed.

7. Aggrieved, First Appeal No. 601 of 1986 was filed.

8. Learned counsel for the appellant/petitioner appearing in the **First Appeal No. 601 of 1986** submitted that the Court failed to appreciate the evidence put forward by the plaintiffs to show that they are in exclusive possession of Scheduled-III land. The further submission was that the plaintiffs' ancestors were cultivating the Scheduled-III land as 'Bataidars' and after 12 years, they occupied the occupancy Raiyat right over the said land and also in possession of it when it was vested with the State of Bihar.

9. The respondents who were noticed submitted the though the suit has been filed for declaration of title and recovery of possession, no relief has been sought for with regard to decree and also the rent suit in the year 1934 and



unless the same is set aside, the plaintiffs are not entitled to any decree. The further case of the respondents were that the appellants cannot be permitted to object the admissibility of the said document. The further case of the respondents were that the documents (**Exhibits-H & I**) are forged and fabricated and neither they produced the original documents nor adduced any evidence in this regard.

10. The Court thereafter took up the matter and held in paragraphs **26 to 35** as follows:

*26. In view of this position, the validity or otherwise of the auction sale pursuant to the decree can not be incidentally gone into No relief has been claimed regarding the auction sale or the delivery of possession affected pursuant to the decree. The Hon'ble Supreme Court in the case of **Inderjit Singh Grewal Vs. State of Punjab & Anr. 2012 (1) BLJ 42 SC** has held that even if an order is void or voidable, same requires to be set aside by competent Court. Even if a decree is*



*void, ab initio, declaration to that effect has to be obtained from competent Court. Such declaration cannot be obtained in collateral proceedings.*

*27. As stated above, these documents have been marked exhibits without any objection. **The Hon'ble Supreme Court in the case of P.C. Purusothama Reddiar Vs. S. Perumal**, reported in AIR 1972 (2) SC 608 has held that it is not open to a party to object to the admissibility of documents, which are marked as exhibit without any objection from such party.*

*28. **The Hon'ble Supreme Court in the case of Union of India Vs. Vasavi Coop. Housing Society Ltd**, reported in 2014(2) SCC 269 has held that in a suit for declaration of title, the burden of proof is always on the plaintiff to make out and establish a clear case for granting such declaration and the*



*weaknesses, if any, of the case set up by the defendants would not be a ground to grant any relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession would succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. Even if, the title set up by the defendants is found against them, in the **absence of establishment of plaintiff's title, the plaintiff must be non-suited***

*29. In the present case, in our hand, the plaintiffs came with a specific pleading to the effect that the documents produced by the defendants claiming their title are forged documents. The defendants claimed that they purchased*



*the Schedule-II lands in auction sale and the documents showing delivery of possession and rent certificate issued by the Courts were produced. The plaintiffs admitted the existence of these documents but the plaintiffs' case is that these documents are forged documents. Except these pleadings, nothing has been brought on record in support of their pleading. No relief has been claimed regarding the decree or the auction sale or any relief for setting aside the auction sale or any with respect to exhibit-H and exhibit-I. From the trend of the argument advanced before the trial court and before this Court, it appears that the plaintiffs tried their best to demolish the case of the defendants on the grounds mentioned above that the documents are forged and fabricated. In view of the settled proposition of law by the*



*Supreme Court, quoted above, it is for the plaintiffs to prove their case. The certified copy has been produced which shows that delivery of possession was affected regarding Schedule-II property in favour of the vendor of the defendants and this delivery of possession is of the year 1935. Since there is no declaration sought for regarding the decree or the auction sale, the same became final and now after such a long period, incidentally, in the present suit, the validity otherwise of the decree or the auction sale cannot be gone into; particularly, when no relief has been claimed;*

**30.** *So far Schedule-III property is concerned, there is absolutely no evidence at all produced by the plaintiffs in support of the case that they were Botaidars and they have acquired occupancy raiyati right prior*



*to vesting of Zamindart and after vesting they became raiyat of the State of Bihar. The defendants specifically denied that the plaintiffs or plaintiffs ancestor have came in possession as Butaidars. The burden was on the plaintiffs to prove the fact that in fact they were in possession as Bataidars. The documents produced by the plaintiffs relate to Schedule: II property ie exhibit-5, 5A,7-A etc. Moreover the nature of interest with regard to Schedule-III lands is claimed under the **Bihar Tenancy Act**. If they have acquired any right under the **Bihar Tenancy Act**, the adjudication should have been made before the authority under the Bihar Tenancy Act. This Court in the case of **Awadhesh Choudhary Vs. Suryabansh Upadhyay** reported in **1999 (2) PLJR 173** has held that a person acquires occupancy right*



*by legal eviction by efflux of time on expiry of the prescribed period. However, the inquiry to the acquisition of occupancy right in terms of Section 48(c) can be made only under Section 48(d). Since such a right is not available under general law, the forum created under the tenancy Act is alone competent to declare the status of a person as an occupancy under raiyat or raiyat with in the meaning of Section 48(c) and 48(d) cannot be decided in a suit.*

***31. The Hon'ble Supreme Court in the case of Shiv Kumar Chadha Etc. vs. Municipal Corporation Of Delhi & Ors, reported in 1993 (3) SCC 161 has held that where a particular act creates a right and also provides a forum for enforcement of such right, the jurisdiction of the Civil Court is ousted.***

***32. Moreover, as discussed above,***



*except the oml statements and the rent receipts that in fact, the plaintiffs are in possession of the Schedule-III lands and are paying rent, nothing has been brought on record to substantiate their case.*

*33. In view of the above discussion, I find that the they have acquired any right under the Bihar Tenancy Act, the adjudication should have been made before the authority under the Bihar Tenancy Act. This Court in the case of Awadhesh Choudhary Vs. Suryabansh Upadhyay reported in 1999 (2) PLJR 173 has held that a person acquires occupancy right by legal eviction by efflux of time on expiry of the prescribed period. However, the inquiry to the acquisition of occupancy right in terms of Section 48(c) can be made only under Section 48(d). Since such a right is not available under general law, the*



*forum created under the tenancy Act is alone competent to declare the status of a person as an occupancy under raiyat or raiyat with in the meaning of Section 48(c) and 48(d) cannot be decided in a suit.*

***34. The Hon'ble Supreme Court in the case of Sulem Advocate Bar... vs. Union Of India reported in 2005 (6) SCC 344 and again in 2011 (8) SCC 249 has held that cost should be awarded under Section 35 in favour of successful party considering the provision under Section 35 Sub-Section 2 C.P.C. When no cost is awarded then reason must be assigned. In the present case, considering the above facts and circumstances of the case, I find that the plaintiffs approached the Court with unclean hand and dragged the respondents up to this Court. Therefore, the appellants are liable to pay cost.***



*35. In the result, this first appeal is dismissed with cost of Rs. 10,000/- to be paid by the appellants to the respondents within two months from the date of this judgment, If no cost is paid within the aforesaid period, the defendants-respondents may realize the same through the process of the Court.*

(bold by this court)

11. From the order of the Writ Court, it is clear that it came to a definite conclusion that the plaintiffs have failed to brought on record anything substantiating their possession over the Scheduled-III land. Accordingly, it confirmed the order passed by the learned Trial Court, dismissed the appeal with cost of Rs.10,000/- to be paid to the respondents within two months.

12. Aggrieved, **Special Leave to Appeal (C) No. 2214/2017 (Harak Nath Yadav (deceased) through L.R.S. & Ors. Narayan Sao & Ors.** and the short order of the Hon'ble Supreme Court read as follows:

*“The learned counsel for the petitioners states that he would file*



*the Review Petition in the High Court. We do not make any comment thereon.*

*The Special Leave Petition is dismissed as withdrawn.*

13. The order clearly shows that the petitioners withdrew the petition which was filed against the order dated 04.10.2016 passed by the writ court.

14. Instead of consigning the file, the petitioners again chose to file the Review Petition and the contention of the learned counsel for the petitioners is that the same has been filed in the light of the direction of Hon'ble the Apex Court. This Court is afraid, no such direction was issued as the learned counsel for the petitioners wanted it to believe.

15. This Court has recorded the entire facts from the order of the Title Court to the reasoned order of the Writ Court as also the order passed by the Hon'ble Supreme Court. The just and proper order passed by the Writ Court need no interference as it rightly came to the conclusion that the petitioners having failed to substantiate their claim over the Scheduled-III land cannot be extended any relief and accordingly, dismissed the same with cost. Even before the



Hon'ble the Supreme Court, the petitioners prayed for the withdrawal of the petition which was accordingly dismissed as withdrawn.

16. As recorded above, instead of consigning the file finally, once again they chose to approach the Court by filing Review Petition. The same is accordingly dismissed with a cost of Rs. 25000/- to be handed over to the respondents within two months failing which the respondents are free to take appropriate steps for the realization of the amount in accordance with law.

**(Rajiv Roy, J)**

Ravi/-

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