

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.881 of 2026

1. Vikash Kumar @ Vikash Kumar Choudhary @ Bikas Kr. Choudhary S/o Ravish Chandra Choudhary and late Lakshmi Devi.
2. Sanjay Kumar @ Sanjay Kumar Choudhary, S/o Ravish Chandra Choudhary and late Lakshmi Devi.
3. Sadhna Kumari, D/o Ravish Chandra Choudhary and late Lakshmi Devi,
4. Ravish Chandra Choudhary, Son of Late Bhuvaneshwar Prasad Choudhary, All are Resident of Ward No. 04 Raniganj Road, Rampur (East), P.O. Rampur, P.S. Forbesganj, District- Araria, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Divisional Commissioner, Purnea Division, Purnea, Bihar.
3. The Collector, Araria District, Araria, Bihar.
4. The Additional Collector, Araria, Bihar.
5. The Deputy Collector Land Reforms (D.C.L.R.), Forbesganj, Araria, Bihar.
6. The Circle Officer, Forbesganj, Araria, Bihar.
7. The Halka Karamchari, Forbesganj, Araria, Bihar.
8. Abhas Kumar Jha, Son of Sri Arvind Jha, Resident of Village- Mow Dhaneshpur East, P.O. and P.S. Vidyapati Nagar, District- Samastipur, Bihar, presently residing at C/o Harendra Pd. Thakur, P.O. Dhalbajja, P.S. Forbesganj, District Araria, Bihar.
9. Sumitra Devi, Wife of Late Mahendra Prasad Choudhary, daughter of late Bhuvneshwar Prasad Choudhary, Resident of Sarda Sadan, Opposite Tapasya Complex, Boring Road, P.S. Sri Krishnapuri, District- Patna- 800001.
10. Vijay Kumar @ Vijay Kumar Saurav, Son of Late Mahendra Prasad Choudhary, Resident of Sarda Sadan Opposite Tapasya Complex, Boring Road, P.S. Sri Krishnapuri, District- Patna- 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ankit Katriar, Advocate
For the Respondent/s : Mr. Krishna Kant Singh, Advocate



CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 31-01-2026

Heard Mr. Ankit Katriar, learned counsel appearing on behalf of the petitioners and Mr. Krishna Kant Singh, learned counsel for the State.

2. Petitioners have *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

“1.1 For issuance of writ in the nature of certiorari to quash the Order dated 20/06/2023 passed by the Additional Collector, Araria in Jamabandi Cancellation Case No. 264/2022 wherein and whereby the application for cancellation of jamabandi filed on behalf of Respondent No. 08 has arbitrarily and illegally been allowed.

1.2. For issuance of a writ in the nature of certiorari to quash the consequential Order dated 25/05/2024 passed by the Circle Officer, Forbesganj in Mutation Case No. 5485/2023-24.

1.3. For issuance of writ in the nature of certiorari to quash the Order dated 23/09/2025 passed by the Collector, Araria in Jamabandi Appeal Case No. 51/2023 wherein and whereby the Petitioners' appeal has arbitrarily, and illegally been dismissed.

1.4. For issuance of writ in the nature of mandamus directing the Respondent Authorities to restore Jamabandi No. 5299 in the name of the Petitioners.

1.5. For issuance of writ in the nature of mandamus staying the operation, implementation, and execution of the Order dated 23/09/2025 passed by the Collector, Araria in Jamabandi Appeal Case No. 51/2023 & Order dated 20/06/2023 passed by the Additional Collector, Araria in Jamabandi Cancellation Case No. 264/2022 during pendency of the writ application.

1.6. For any other relief or reliefs for which the Petitioners may be deemed entitled to in the facts and circumstances of the case.

3. Brief facts of the case are that the property in question bearing Khata No.1487, Khesra nos.1501, 1502, measuring an area of 58 decimals and 26 decimals, total 84



decimals, situated at Mauja Rampur, Anchal Forbesganj was originally purchased on 18.06.1973 by late Bhuvneshwar Prasad Choudhary, grandfather of petitioner Nos. 01 to 03 and father of Petitioner No. 04, *vide* Sale Deed No. 3261. Subsequently, he executed a registered Gift Deed No. 7446 dated 27.11.1995 in favour of his eldest daughter-in-law, late Laxmi Devi (mother of Petitioner Nos. 01 to 03 and wife of Petitioner No. 04), conveying 42 decimals out of the total 84 decimals. On the basis of the said Gift Deed, Jamabandi No. 5299 was opened in the name of late Laxmi Devi. Rent was fixed by the authorities and the petitioners have remained in peaceful possession for nearly three decades, having constructed a residential house, shops, and installed a mobile tower with electricity connection. Dispute arose when Respondent No. 09 (sister of Petitioner No. 04 and paternal aunt of Petitioner Nos. 01 to 03), along with Respondent No. 10, began claiming an illegal share by threatening the petitioners and thereafter filed Title Suit No. 121/2018 before the Court of Sub-Judge I, Araria, seeking partition in the said property.

4. Learned counsel appearing on behalf of the petitioners submitted that so far as jamabandi No.5299 which is standing in the name of late Lakshmi Devi, mother of



petitioners no.1, 2 and 3 and wife of petitioner no.4 is concerned, the same was gifted by father-in-law of late Lakshmi Devi, namely, late Bhuneshwar Prasad Choudhay, grand-father of petitioners no.1, 2 and 3 and father of petitioner no.4, by a registered gift deed no.7446 dated 27.11.1995, out of which title suit no.121 of 2018 was filed by respondent no.9, namely, Sumitra Devi D/o late Bhuneshwar Prasad Choudhay and sister-in-law of late Lakshmi Devi, seeking partition. However, the application filed for cancellation of jamabandi before the Additional Collector was filed by an outsider, namely Abahsh Kumar Jha, allegedly on the ground that he is caretaker of said Sumitra Devi/respondent no.9. Learned counsel further submitted that the aforesaid title suit was later on withdrawn on 19.08.2023, which finds reference in the order of the Circle officer dated 25.05.2024. Learned counsel further submitted that the order dated 20.06.2023 passed by the Additional Collector, Araria in Jamabandi Cancellation Case No.264/2022 on the basis of application made by a person, Abhas Kumar Jha, claiming himself to be the caretaker of the property of respondent no.9 is not in accordance with law. He has relied upon a judgment of the Apex Court in case of **Himalaya Vintrade Private Limited Versus Mohd. Zahid and another**



reported in **(2022) 13 SCC 649**.

5. On the above facts, learned counsel submitted that the orders passed by the Additional Collector and the Collector are required to be interfered with on the ground that though there is no interference with Jamabandi no.5019 standing in the name of late Bhuneshwar Prasad Choudhay but without considering the above fact, the jamabandi no.5299 standing in the name of late Laxmi Devi, mother of petitioners no.1, 2 and 3 is also not required to be cancelled and to that extent, the Additional Collector and the Collector have committed error of record. Learned counsel further submitted that in light of the sub-section(12) of Section 6 of Mutation Act, the Circle Officer or other revenue authorities were not competent or having jurisdiction to create jamabandi, once title Suit No.121/2018 filed by respondent no.9 was pending.

6. *Per contra*, Mr. Krishana Kant Singh, learned counsel appearing on behalf of the State submitted that any person has right to file application before the appropriate authorities, if it comes to his knowledge that on the basis of illegal information, jamabandi has been created and therefore, the same requires cancellation as per Section 9 of the Bihar Mutation Act, 2011. Referring to Section 9, he submitted that



the Additional Collector don't have jurisdiction to verify the person, whether he is actual owner or does he have any concern or interest in the said property and as such, the Additional Collector and the Collector have not committed any mistake either error of record or error of law insofar as upholding the jamabandi no.5019 which stands in the name of late Bhuneshwar Prasad Choudhay. However, the petitioners who are seeking their right from the said jamabandi to be the legal heirs of late Bhuneshwar Prasad Choudhay have challenged the said order which is without merit. So far as jamabandi no.5299 is concerned, it is admitted position that in respect of the land in question mentioned in the said jamabandi, title suit no.121 of 2018 was filed before the learned District Court, Araria by respondent no.9/Sumitra Devi and said Sumitra Devi has obtained favourable order from the office of the Circle Officer in mutation case no.5485 of 2023-24. Mr. Singh emphatically submitted that the order dated 25.05.2024 passed by the Circle Officer which affects the right of the petitioners, has been challenged straight away in the present writ petition and the petitioners have not availed the remedy before the appropriate authority and as such, the writ petition is totally misconceived and is not fit to be entertained by this Court.



7. Heard the parties.

8. The question regarding entertaining application filed by a caretaker who has no interest in the property on the basis of any possession in respect of the said property has been settled by the Apex Court in case of ***Himalaya Vintrade Private Limited Versus Mohd. Zahid and another*** reported in (2022) 13 SCC 649, which is reproduced hereinafter:

“2. The facts on record are not in dispute. The appellant-defendant initially entered into an agreement to sell of the subject property in question on 23-2-2018 and after a formal deed of conveyance finally a sale deed was executed on 30-9-2019 and his right of ownership over the subject property in question became absolute.

3. Respondent 1 plaintiff filed a suit with the following prayer:

(a) For a declaration that the plaintiff is a lawful occupier as caretaker/servant of the sole owner of the Schedule A property and occupier and adverse possessor of the Schedule B property.

(b) For the permanent injunction restraining defendant to disturb or evict the peaceful possession of the plaintiff otherwise than by the due course of law.

Schedule A of property

All that an area of land admeasuring 16 kh. 3 ch. 4 sq ft be the same and a little more or less with three storeyed residential building have each floor are 5000 sq ft more or less and some vacant possession lying and situated at Premises No. 217, Lower Circular Road and now known as 217 A.J.C. Bose Road, Kolkata-700 017 PS Beniapukur, Dist-South 24 Parganas.

Schedule B property

All that three rooms and one godown along with some vacant land at premises No. 217, Lower Circular Road and now known as 217 A.J.C. Bose Road, Kolkata-700 017 P.S. Beniapukur.

4. It was a specific case of Respondent 1 plaintiff that he



was in possession of the subject property as a caretaker/servant. Paras 2, 4 and 6 of the plaint are reproduced hereunder:

“2. That the plaintiff is a servant/caretaker of the “A” schedule property appointed by Mirza Habibullah Khaleeli and the said sole owners of the said property allow the plaintiff for use and residing all that three rooms and one godown along with some vacant land which is more fully and particularly described in the “B” schedule below lying and situated at premises No. 217, Lower Circular Road and now known as 217 A.J.C. Bose Road, Kolkata-700 017 P.S. Beniapukur is the subject-matter of the suit within the jurisdiction of this learned Court.

4. That on all of a sudden the defendants and their men and agents with other anti-social elements trying to take or enter into the plaintiff's rooms i.e. Schedule B property with an ulterior motive they trying to dispossess the plaintiff from his lawful occupation as servant/caretaker with a view to grab the occupation/residence but the defendant is not success to fulfil their ill desired, for the intervention of the local people and their strong support the defendants could not succeed there to oust and dispossess the plaintiff.

6. That the right title interested possession of the plaintiff in the suit property as well as lawful right of servant and caretaker and claiming as adverse possessor of the Schedule B property even thus been clouded for unlawful act of the defendants so the plaintiff is compelled instituted the instant suit against the defendant for declaration

that the defendant be not ousted from the Schedule B property i.e. suit property other than due process of law and for permanent injunction against the defendant not to disturb the peaceful possession of the suit property and also not disturb or the egress and ingress of the suit property.”

5. After the notice was served the application under Order 7 Rule 11CPC came to be filed at the behest of the present appellant-defendant with an objection that the suit proceedings at the instance of Respondent 1 plaintiff who had pleaded himself to be a caretaker/servant, acquires no interest in the subject property irrespective of his long possession, is not maintainable under the law and as regards the



plea of adverse possession is concerned, it lacks material particulars.

6. The trial Judge dismissed the application on the premise that these are the subject-matter of disputes which can be examined only after the written statement being filed at the behest of the present appellant-defendant and is not within the scope of Order 7 Rule 11CPC and the order of trial Judge came to be confirmed by the High Court by the impugned order [Himalaya Vintrade (P) Ltd. v. Mohd. Zahid, 2021 SCC OnLine Cal 2621] assailed in the present proceedings.

7. After we heard the counsel for the parties and taking into consideration the material on record, in our considered view, the trial court has committed a manifest error in appreciating the pleadings on record from the plaint filed at the instance of Respondent 1 plaintiff who as a caretaker/servant can never acquire interest in the property irrespective of his long possession and the caretaker/servant has to give possession forthwith on demand and so far as the plea of adverse possession is concerned as it lacks material particulars and the plaint does not disclose the cause of action for institution of the suit.

8. In our considered view, the order of the learned trial Judge which has been confirmed by the High Court impugned in the instant proceeding is not sustainable on the first principles of law.

9. Consequently, the appeal succeeds and is allowed. The order [Himalaya Vintrade (P) Ltd. v. Mohd. Zahid, 2021 SCC OnLine Cal 2621] of the High Court is, hereby, quashed and set aside. The plaint No. T.S. 150/2019, on the file of learned 2nd Civil Judge (Jr. Div) at Sealdah is, accordingly, rejected.

10. Since we have rejected the plaint in reference to the proceeding initiated, we direct Respondent 1 plaintiff to hand over, vacant and peaceful possession of the subject property in question free from all encumbrances within three months.

11. If Respondent 1 plaintiff fails to hand over possession, the appellant-defendant will be at liberty to take the recourse as known to the law.”

9. Record reveals that Respondent No. 09, through



her caretaker, Abhas Kumar Jha/Respondent No. 08, filed Jamabandi Cancellation Case No. 264/2022 without disclosing the pendency of Title Suit No. 121/2018, claiming that the land belonged to Sumitra Devi and obtained an *ex parte* order dated 20.06.2023 from the Additional Collector, Araria, who cancelled the petitioners' jamabandi on the basis of an unregistered deed of relinquishment and alleged absence of revenue records. The Additional Collector further directed the termination of Jamabandi No. 5299, with restoration to the previous Jamabandi No. 5019. Aggrieved by the said order of the Additional Collector, the petitioners filed an appeal before the Collector, Araria, bearing Mutation Appeal Case No.51/2023, however, the appeal was also rejected *vide* order dated 23.09.2025. In the meantime, respondent no.9 applied for mutation of the land in question which was finally allowed *vide* order dated 25.05.2024 by the Circle Officer, Forbesganj in Mutation Case No.5485/2023-24 in view of the aforesaid order dated 20.06.2023 of the Additional Collector. Meanwhile, Respondent No. 09 withdrew Title Suit No. 121/2018 after securing the adverse revenue order.

10. In the facts of the case, I find that judgment or decree obtained by fraud is to be treated as a nullity, non-



disclosure of the relevant and material documents with a view to obtain an undue advantage would amount to fraud.

11. Recently the Apex court taking into consideration its earlier judgments has held in paragraph no.21 in case of ***Ram Kumar vs. State of Uttar Pradesh and Ors.*** reported in ***2022 Livelaw (SC) 806***, which is *inter alia* as under:

“21. This Court, in the case of S.P. Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) by LRs and others has held that non-disclosure of the relevant and material documents with a view to obtain an undue advantage would amount to fraud. It has been held that the judgment or decree obtained by fraud is to be treated as a nullity. We find that respondent No.9 has not only suppressed a material fact but has also tried to mislead the High Court. On this ground also, the present appeal deserves to be allowed.”

12. I have perused the order passed by the Additional Collector, Araria in Jamabandi Cancellation Case No.264 of 2022 and I find that the Additional Collector has not committed any mistake in upholding the jamabandi no.5019 which was upheld by the Collector, Araria *vide* order dated 23.09.2025 passed in Jambandi Appeal Case No.51 of 2023. I don't find that the petitioners are in any way affected by the said order. However, so far as order dated 25.05.2024 passed by the Circle Officer in Mutation Case No.5485/2023-24 is concerned, the petitioners have liberty to avail appropriate remedy, also in the background that Sumitra Devi / respondent no.9 after having



filed Title Suit No.121 of 2018 has withdrawn the same after the order by which the Circle Officer in a misconceived manner has passed the order. The Circle officer could not have entertained the application or would have allowed the same when admittedly he has recorded that Title Suit No.121 of 2018 was withdrawn before passing of the order dated 25.05.2024 in view of the bar contained in sub-section(12) of Section 6 of Bihar Mutation Act. Accordingly, the order dated 25.05.2024 passed by the Circle Officer is hereby quashed and set aside.

13. The parties, if so advised, may avail appropriate remedy before the competent civil court having jurisdiction for declaration of their title in accordance with law as disputed question of title cannot be decided by this Court under Article 226 of the Constitution of India.

14. The writ petition is, accordingly, disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.02.2026
Transmission Date	NA

