

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.312 of 2025

1. The State of Bihar through the Collector, Bhagalpur.
2. The Deputy Director of Health, Bhagalpur.

... .. Appellant/s

Versus

1. Asha Devi, wife of Baijnath Gupta,
2. Baijnath Gupta, son of Late Kedar Sah,
Both resident of Mohalla- Bhokanpur, Kotwali, within Municipal
Corporation, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sajid Salim Khan, Senior Advocate (SC 25) Ms. Saobiya Mushtaque, Advocate Mr. Yasir Ashraf, Advocate
For the Respondent/s	:	Mr. Pushkar Narayan Shahi, Senior Advocate Mr. Samir Kumar, Advocate Mr. Ankur Gond, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

6 02-02-2026 Heard Mr. Sajid Salim Khan, learned senior counsel

(SC 25) for the appellants-State and Mr. Pushkar Narayan

Shahi, learned senior counsel assisted by Mr. Samir Kumar,

learned counsel for the respondents.

Interlocutory Application No.01 of 2025

2. This interlocutory application has been filed by the

appellants under Section 5 of the Limitation Act for condoning

the delay in filing the present appeal.

3. Heard learned senior counsel for both the sides.

4. Having regard to the facts and circumstances of the



case and ground mentioned therein, the delay in filing the appeal is condoned.

5. Interlocutory Application No.01 of 2025 stands allowed.

Second Appeal No.312 of 2025

6. This second appeal has been filed against the judgment and decree of affirmance dated 16.11.2024 passed by the District Judge, X, Bhagalpur, in Title Appeal No.33 of 2011 whereby judgment and decree dated 28.02.2011 passed by the Sub Judge, VII, Bhagalpur, in Title Suit No.208 of 1998 has been upheld.

7. From the submissions of learned counsel for the parties and the materials on record as well as the judgments and decree of the Courts below, it is quite clear that the appellate Court, which is the final Court of facts, after considering the pleadings of the parties and the evidence adduced by them, came to a clear finding that the plaintiffs have established and proved their right, title and interest on the basis of the documentary evidence as well as oral evidence. It is further held that Ext.5 (Return) filed by the ex-landlord shows that the father of the plaintiff no.2 was the *raiyat* of the aforesaid disputed land under Bihar Land Reforms Act, 1950, and, accordingly, rent was



fixed in favour of the father of the plaintiff no. 2, namely, Kedar Sah in the year 1955, just after vesting of *zamindari* and the government had accepted him as *raiyat* of the said land, and, accordingly, the government issued rent receipt on 13.04.1955 which continued till the year 1994. Before vesting of *zamindari*, the ex-landlord settled the suit land through *Hukumnama* (Ext.-4) in favour of father of plaintiff no.2, followed by the rent receipts (Ext.-2/A and 2/B) issued by the ex-intermediary and at the time of vesting of the Estate, the ex-landlord submitted Return (Ext.-5) in favour of Kedar Sah (father of plaintiff no. 2) and the Return was accepted by the State. However, an encroachment proceeding was initiated by the *Anchal Adhikari* in the year 1994-95, which also reveals that the plaintiffs were in possession of the suit land.

8. On the application of the father of plaintiff no. 2, the information report (Ext.1/A) was supplied by the Circle Officer, Jagdishpur, to the father of plaintiff no. 2 on 05.08.1995 with regard to the suit land which shows that the information was given by the Circle Officer, Jagdishpur, that the rent receipt was issued on 09.02.1960 and 15.08.1963 and the landlord of the suit land was J. M. Kanti. The said report was compared by the then Clerk of the Office of *Anchal Adhikari*, Jagdishpur.



Thus, the claim of the plaintiffs over the said land clearly proves by Ext.-1/A, which was issued by the Circle Officer, Jagdishpur.

9. The learned Appellate Court also perused Exhibit 1, which is the report of the Pleader Commissioner dated 09.07.1996, which shows that an old building was found on the suit land situated in Bikhanpur, Plot No. 783, Area 27 decimals. The witnesses such as P.Ws. 2 3, 4 as well as other witnesses have supported the claim of the plaintiffs and it proves that the plaintiffs were in continuance possession of the suit land since 1946 to 1994-95. The plaintiffs have acquired the title as *Kaymi Raiyat* over the suit land. Since, the ex-landlord i.e., J. M. Kanti accepted the rent vide Exts. 2/A and 2/B and the rent was fixed by the State of Bihar hence, they are the settled *raiya*t over the suit land by virtue of Return (Ext.-5). The learned Appellate Court affirmed the findings of the Trial Court that the plaintiffs have got the aforesaid land in the capacity of *raiya*t from the ex-landlord J. M. Kanti in 1946 through settlement by *Hukumnama* (Ext.-4) followed by rent receipts. The entries made in the R.S. *Khatiyan* in the name of State of Bihar is wrong in respect of the suit land and declared that the plaintiffs have perfected their right, title and possession over the suit land and the defendants have no concern over the suit land.



10. The learned first Appellate Court also discussed the pleadings and the evidence adduced by them and observed that the defendants have adduced only one witness in support of their pleadings, namely, Kapil Deo Mahto (DW 1), who is a formal witness. He identified Register-II which was marked as Exts. A, A/1 and A/2. This witness has admitted in the cross-examination that it doesn't clear from Register-II that the said suit land belongs to the Health Department or not and there is no any other documentary evidence on the record except Register-II in support of the defendants case. Hence, the learned trial Court held that there is no any evidence on record to prove the title of the defendants over the suit land. On the basis of above findings, the learned Appellate Court held that the plaintiffs have right, title and interest over the suit land and the defendants have no authority to dispossess the plaintiffs from the suit land. Accordingly, the appeal filed by the State of Bihar was dismissed.

11. Both the courts below after considering the pleadings and evidence of the parties came to a definite conclusion that the right, title and earlier possession of the plaintiffs was proved by the valid documents such as *Hukumnama* (Ext.-4) issued by the ex-landlord, *zamindari* rent



receipts (Exts. 2/A and 2/B), Return (Ext.-5) issued by the ex-landlord in favour of the father of plaintiff no. 2, Kedar Sah, with regard to the suit land and the government rent receipt for the year 1955 (Ext.-2). Both the courts also relied upon Ext. 1/A, which is the information report of Circle Officer which shows that an information was sought for by the plaintiff's father, namely, Kedar Sah from the then Circle Officer in the year 1995 regarding the suit land. Thereafter, the concerned Circle Officer has given information on 05.08.1995 with regard to the suit land which is in the name of Kedar Sah, son of Ram Ekbal Sah, Area 9 *kattha* that rent receipt was issued on 09.02.1960 and 15.08.1963. The ex-landlord was J. M. Kanti; this document also proves the case of the plaintiffs.

12. The case of the defendants is that the *Hukumnama* is forged and manufactured document and no Return was filed by the ex-landlord with regard to the alleged *Jamabandi* No. 37, which is also forged and fabricated.

13. It is a settled position of law that in a suit for declaration of title and possession, once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus. This principle has been decided in the case of *R.V.E.*



Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple [R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752].

14. The defendants have failed to prove that the Return filed by the plaintiffs (Ext.-5) is forged and fabricated and without any supporting evidence. The Collector of the District is the custodian of all the revenue receipts including the Return filed by the ex-landlord. It is admitted by the defendants that J. M. Kanti was the ex-landlord. No any other Return was filed by the State of Bihar to prove that the plaintiffs father, namely, Kedar Sah was not the *raiyyat* of the ex-landlord J. M. Kanti.

15. Both the courts below disbelieved the bald plea of the defendants/appellants that the exhibits of the plaintiffs are forged. The concurrent finding of the facts on the genuineness of the exhibits cannot be permitted to be assailed in second appeal as the view taken by the courts below was one of the possible view and is not open to substitute by re-appreciation of evidence. Except Register-II, the defendants have not filed any other document to demolish the case of the plaintiffs. Moreover, the suit land was settled by the ex-landlord by a *Hukumnama* followed by rent receipts and at the time of vesting of



zamindari, the ex-landlord J. M. Kanti filed Return (Ext.-5) in favour of father of plaintiff no. 2 and the said Return was accepted by the State of Bihar and rent was fixed under Bihar Land Reforms Act, 1950, rent receipt was issued on 13.04.1955 and *Jamabandi* was created in favour of the father of plaintiff no. 2. The State of Bihar issued rent receipt till 1994 i.e., before filing of encroachment proceeding, which the defendant also failed to prove. There is no material on record to disprove the Return (Ext.-5) and rent issued by the State of Bihar (Ext.-2) dated 13.04.1955. Further, there is no material on record to show that any appeal was filed by the State Government against the acceptance of Return filed by the ex-landlord under the Bihar Land Reforms Act, 1950.

16. Having regard to the facts and circumstances of the case and the submissions made by learned senior counsel for the parties, this Court does not find any irregularity in the concurrent findings of both the courts below and no question of law, much less, substantial question of law is involved in this second appeal.

17. Accordingly, this second appeal is dismissed at the stage of admission under Order XLI Rule 11 of the Code of Civil Procedure.



18. Pending interlocutory application(s), if any, shall stand disposed of.

(Khatim Reza, J)

J. Alam/-
prabhat/-

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