

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.170 of 2018

1. Fekni Devi, Wife of Kesho Tanti,
2. Tubhia Devi, D/o Surji Devi.
3. Bonia Devi, D/o Late Aklu Tanti.
4. Naresh Mahaldar, Son of Late Bhagli Mahaldar.
5. Shrawan Mahaldar, Son of Naresh Mahaldar.
- 6.1. Sheikh Laddu, S/o Md. Hushna, Resident of Jyoti Bihar Colony, Mouza-Barari Sabaur Road, P.S. - Industrial Area, District- Bhagalpur.
- 6.2. Sheikh Bablu, S/o Md. Hushna, Resident of Jyoti Bihar Colony, Mouza-Barari Sabaur Road, P.S. - Industrial Area, District- Bhagalpur.
7. Manoj Tanti, Son of Late Bharat Tanti.
8. Bimla Devi, W/o Anandi Tanti,
- 9.1. Pankaj Kumar, Son of late Bechan Tanti, Resident of Jyoti Bihar Colony, Mouza- Barari Sabaur Road, P.S. - Industrial Area, District- Bhagalpur.
- 9.2. Jugesh Tanti, Son of late Bechan Tanti, Resident of Jyoti Bihar Colony, Mouza- Barari Sabaur Road, P.S. - Industrial Area, District- Bhagalpur.
- 9.3. Puja Devi, W/o Suman Tanti, D/o Late Bechan Tanti, Resident of Lalapur, P.S. and District Bhagalpur.

... .. Appellant/s

Versus

Ramesh Kumar Rai, Son of Late Dharikshan Rai, Resident of Mohalla- Tilka Manjhi in front of Veterinary Hospital, Barari Road, P.S. Barari, under Bhagalpur Municipal Corporation Area, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Surendra Kishore Thakur, Adv.
For the Respondent/s	:	Mr. Hemendra Pd. Singh, Sr. Adv. With Mr. Tejaskar Anand, Adv. Mr. Aman Prakash, Adv. Ms. Arpana Kumari, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

14 05-05-2026 Heard Mr. Surendra Kishore Thakur, learned counsel

for the appellants as well as Mr. Hemendra Pd. Singh, learned

senior counsel assisted by Mr. Tejaskar Anand, learned counsel

for the respondent.



2. This Second Appeal has been preferred by the defendants/appellants against the judgment and decree of the learned court of appeal below.

3. The matter arises out of Title Suit No. 56 of 2011, which was filed by the sole plaintiff/appellant/respondent for declaration of title over the suit land which he had purchased on 06.09.2010 from the sons of Late Md. Soin Khan, who got the suit land in his share by way of compromise decree passed in Title Partition Suit No. 132 of 2000. The sons of Md. Soin Khan, who are the vendors of the plaintiff, have right and title over the suit land which they transferred to the plaintiff by registered sale deed dated 06.09.2010. After purchasing the said property, the plaintiff got his name mutated in the revenue records and rent receipt was also issued in his name and accordingly a separate Jamabandi No. 3285 was created in his name. The defendants have encroached the land in question measuring nearly 238 feet North to South and 39 feet East to West i.e. about 9282 feet of the land by making hut over the encroached land. Therefore, the plaintiff sought relief for recovery of vacant possession of the suit land by removing the defendants' hut from the suit land at the cost of the plaintiff.

4. On the other hand defendants have pleaded and



denied the ownership of the plaintiff. The plaintiff has no right, title or possession over the suit land. These defendants are coming in possession over the suit land by oral *Hukumnama* from the out going landlord prior to abolition of the *Zamindari*. The defendants have also denied the facts of encroachment. Lastly, they claim that defendants are coming in possession over the suit land by adversely and openly with confirmity and hostility for more than several 12 years.

5. The suit was dismissed by the learned Sub-Judge-XIII, Bhagalpur *vide* judgment and decree dated 09.06.2017 passed in Title Suit No. 56 of 2011 which was challenged by the plaintiff in Title Appeal No. 93 of 2017. After hearing the parties and considering the materials on record, the learned 2nd Additional District Judge, Bhagalpur allowed the said appeal by judgment and decree dated 21.02.2018 and set aside the judgment and decree of the Trial Court and allowed the claim of the plaintiff and decreed the suit.

6. Against the aforesaid judgment and decree of the learned court of appeal below, this instant Second Appeal has been filed.

7. Having gone through the 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 pleadings of the parties and the evidences adduced by them, came to a clear finding that the plaintiff has proved the title of the vendors from whom, the plaintiff/respondent has purchased the land by registered sale deed dated 06.09.2010. The suit land is part of the sale deed dated 06.09.2010. The father of the plaintiff's vendor purchased the land from one Smt. Padmavati Thakurain on 01.03.1974 (Exhibit-5) and other lands were partitioned between the brothers and the father of the plaintiff's vendors in Partition Suit No. 132 of 2000 and the name of the father of the vendors were entered in the revenue records and *Jamabandi* was created in favour of the father of the plaintiff's vendors. Therefore, the vendors of the plaintiff had full right to deal with the suit land and further held that it is apparent from the tress map prepared by the *Amin* of the purchased land in which Plot Nos. 32 to 37 has been mentioned in red colour which was encroached by the defendants as mentioned in the plaint. It is further held that the plaintiff purchased 24480 sq. feet land out of which the defendants/appellants encroached 9282 sq. feet land by making hut. So far the case of the defendants that the ex-landlord gave the land to their ancestor by way of oral *Hukumnama* is



concerned, this fact is totally unreliable and the defendants have not exhibited a single chit of documents related to the suit property. Their witnesses have failed to say anything about the existence of any documents with regard to the suit land. The defendants/appellants themselves have failed to disclose the name of *Zamindar*, who gave the land by way of oral *Hukumnama*. Neither they have filed any documents nor have exhibited rent receipt or *zamindari* receipt during the trial. Inconsistent plea of title on the basis of oral *Hukumnama* and adverse possession cannot be taken by the defendants as laid down in several judgments including in the case of ***Karnatka Board of Wakf Vs. Government of India & Ors.*** reported in ***2004 (3) PLJR (SC) 245.***

8. On the other hand, the plaintiff has succeeded to establish his claim through the evidences adduced by them and the suit is liable to be decreed in favour of the plaintiff. Hence, the title of the vendors of the plaintiff has been established through evidences adduced by them. The learned Appellate Court came to conclusion that the defendants have no right, title or interest in the suit property. On this fact, the learned court of appeal below set aside the judgment and decree of the Trial Court and held that the Trial Court did not consider the issue in



proper manner and according to law. The defendants have not produced single chit of documents with regard to the land in question and also claimed an adverse possession, which is contrary to law.

9. In the aforesaid facts and circumstances, this Court doesn't find any illegality in the impugned judgment and decree of the learned court of appeal below nor does it find any substantial questions of law involved in the instant Second Appeal.

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

11. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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