

IN THE HIGH COURT OF JUDICATURE AT PATNA

SECOND APPEAL No. 535 of 1999

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1. Ram Prasad Das Son of Late Bhauli Das, resident of Madhopura, Police Station-Khazanchi Hat, District-Purnea.
- 2.1. Mostt. Lukhia Devi, widow of Late Ram Chandra Das, resident of Madhopura, P.S. Khazanchi Hat, Distt-Purnea.
- 2.2. Dukha Das, S/o Ramchandra Das, resident of Madhopura, P.S. Khazanchi Hat, Distt-Purnea.

... ... Appellant/s

Versus

1. Deebakar Das son of Late Sukhdeo Das, resident of Tatma Toli near By Pass, Police Station-Khazanchi Hat, District-Purnea.
2. Seebakar Das son of Late Sukhdeo Das, resident of Tatma Toli near By Pass, Police Station-Khazanchi Hat, District-Purnea.
3. Bibi Sultana Khatoon W/o Md. Yunus, resident of Village Asiana Colony, P.S. K. Hat, P.O. Purnea, Distt. Purnea.
4. Md. Yunus, S/o Md. Lal Hussain, resident of Village Asiana Colony, P.S. K. Hat, P.O. Purnea, Distt. Purnea.

... ... Respondent/s

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Judicial decision—Second Appeal against Judgment of reversal in Title Appeal by Additional District Judge—Reversal of Lower Appellate Court judgment and decree of Munsif—justification for non-admission of evidence regarding Municipal Survey Parcha by first appellate court—amendment to the year of settlement in plaint—rationale behind dismissal of suit—failure of defendants to prove their right and title over the suit land.

Held: Lower Appellate Court erred and was not justified in dismissing suit of plaintiffs—entry in Municipal Survey khatian found wrong—judgment of Lower Appellate Court set aside and suit of the plaintiffs-appellants is decreed —affirmed judgment and decree of the Trial Court—substantial questions of law answered in favour of the appellants—settled law— Revisional or Municipal Survey entry neither creates nor extinguishes title—plaintiffs entitled to get their title and possession declared with respect to the suit property—presumption of continuity of possession before vesting and after vesting of Zamindari—settled law—possession must be deemed to follow title—Second Appeal allowed.

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... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Raghib Ashan, Sr. Advocate with
Md. Shahab Khalil, Advocate

For the Respondent/s : Mr. Abbas Haider, Advocate
Mr. Wasi Mohammad, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 04-01-2024

Heard learned senior counsel for the appellants and
learned counsel for the respondents.

2. The instant Second Appeal has been filed against the
Judgment of reversal dated 12.10.1999, passed in Title Appeal



No.52/1992 (Tr. No.3/1996) by the 4th Additional District Judge, Purnea, whereby the learned Lower Appellate Court reversed the judgment and decree dated 15.09.1992, passed in Title Suit No.35/1990, by the learned Munsif, Sadar, Purnea whereby the suit filed by the plaintiffs- appellants was decreed.

3. In the present Second Appeal, the following substantial questions of law have been formulated for determination:-

“(a) Whether the first appellate court was justified in not admitting the evidence regarding Municipal Survey Parcha which would have connected it with the old G.S. plots, and claimed as the suit plots as also regarding the amendment of the plaint with respect to the year of settlement ?

b) Whether the appellate court was justified in dismissing the suit of the plaintiff-respondents even after holding that the plaintiffs-respondents were found to be in possession of their names were recorded in the Municipal Survey records of right in the column of possession ?

c) Whether the appellate court was further Justified in dismissing the suit, even after holding that the defendants had failed to prove their right and title over the suit land?

d) Any other question of law that may be pointed out by the parties and which the Court may deem fit and proper for consideration in this appeal.”

4. In order to gauge the matter in its correct perspective, it is necessary to briefly restate what the suit entails. The plaintiffs- appellants filed Title Suit No. 35/1990 for declaration



of their title and confirmation of possession over the suit land on an adjudication that the entry of the name of the defendants -Respondent Nos.1 and 2, in respect of the suit land, is wrong. The details of the suit land has been mentioned in the Schedule to the plaint, which reads as under:-

Mouza- Madhopara, Thana No.108, Thana: Sadar (K. Hat), District Purnea.

MS Khata No.	MS Plot No.	Area	Remarks
144	788,	05.40 Ares	Carved out of C.S. Plot No. 819, 811 and 813.
	473	14.10	
		Total 19.50	

BOUNDARY

North- Janakdhari Das and Malhu Das
South- Road Municipality
East- Dhar
West- Plaintiffs house and lands

5. The case of the plaintiffs, in brief, is that 3 bigha land of Mouza- Madhopara of Khewat No.11 C.S. Khata 51 (Part) bearing C.S. Plot Nos. 811, 813 and 819 was acquired by Bhauli Das from the *Khewatdar*, namely, Maulvi Mohammad Hanif Sahab in the year 1953 and came in possession of the said land. The plaintiffs used to pay rent to the *Khewatdar* and after the vesting of tenures under Bihar Land Reforms Act, 1950, name of the plaintiffs were mutated and *Jamabandi* was created in the



name of the plaintiffs and rent receipts were issued in their favour. The boundary of the land settled was as under:

North- Madhu Das and Janakdhari Das

South- Municipal Road

East- Dhar

West- Dukha Das and Janak Das

6. It is the further case of the plaintiffs that immediately after settlement, they constructed their house to live with their families. The holding of the house built over part of the land was created as holding No.27 of ward No.1/19, *Mohalla-* Gwala Toli and on payment, rent receipts was issued in favour of the plaintiffs. The remaining portion of the land is being used for agriculture, *Bari-jhari* and for keeping cow to the knowledge of all concerned. The land lying towards East of the plaintiffs has not been surveyed in Municipal Survey. During recent Municipal Survey, the Survey Authorities finding the title and possession of the plaintiffs issued *Purcha* in the name of the plaintiffs showing that MS Plot No. 473 has been carved out of CS Plot No. 819 (part) with an area of 14 Ares 10 point and MS Plot No. 474(Ka) and (Kha) carved out of CS Plot nos. 811, 813 and 819 (part) measuring area of 2 Ares, 30 points and 40 Ares respectively recorded in the name of the plaintiffs.

7. The further case of the plaintiffs is that the defendants,



who have no manner of right, title, interest and possession over the above said holding of the plaintiffs or any portion thereof, filed an objection case bearing 515/646 of 1983, Ward No. 1 of the Purnea Municipality against the State of Bihar for MS Plot Nos. 644 and 472 only. In the instant case, as it appears from the petition of the defendants, they did not claim the plaintiffs' MS Plot Nos. 473 and 474(Ka) and (Kha) and did not even implead the plaintiffs as party in that suit. It is further contented that the Municipal Survey *Amin* in collusion with the defendants and other staffs of the Survey Settlement Office submitted a wrong, illegal and collusive report in favour of the defendants with respect to the plaintiffs said plots, which was not even claimed by the said defendants. The Assistant Settlement Officer, on the basis of the *Amin's* report, wrongly and illegally ordered on 25.07.1984 to record M.S. Plot No.473, measuring 14 Ares 10 points and 5 Ares 40 points of M.S. Plot No.474 in the name of the defendants. The Assistant Settlement Officer, by its order dated 25-07-1984, directed to record as "Deebakar Das etc., Dhokal Bholi Das". The order was without jurisdiction, illegal and wrong. On the strength of the illegal order, the defendants started giving threat to dispossess the plaintiffs from the suit land. The cause of action



for which arose on 25-07-1984 when wrong order to record suit land in the name of defendants was passed by the Municipal Survey Authorities and on 30-01-1990 when the *khatian* was finally published with respect to the suit land. The last date of threat of dispossession was given on 05-02-1990.

8. The defendants- respondent nos. 1 and 2 filed their written statement and contested the suit denying the claim of acquisition of the suit land, title and possession of the plaintiffs and admitted filing of objection case no. 515/646 of 83 of Ward No.1 of Purnea Municipality against the State of Bihar. It is further pleaded that Sukhdev Das, father of the defendants purchased the following land from Bibi Akhtari and other heirs of Late Md. Hanif by virtue of a registered sale deed dated 24.1.1973, bearing Khata No. 99, plot no. 815(part) area 0.15 decimals, khata no. 97 plot no. 819 (part) area 0.40 decimal, khata no. 98, plot no. 821 (part) area 0.40 decimal, khata no. 100 plot no. 817 (part), area 0.10 decimal, plot no. 820 (part) area 0.12 decimal, khata no. 34, plot no. 814 (part), 0.09 decimal situated at Mouza Madhopara, ward No. 1, Purnea Municipality. It is further case of the defendants that the defendants were all along in possession of their aforesaid purchased land with the specified boundaries and they used to



cultivate different crops thereon and planted bamboos in a portion thereof. It is submitted that the defendants' father died in the year 1976 leaving behind the defendants as his heirs who were then minors. The defendants after the death of their father used to cultivate the lands aforementioned with the help of their grandfather and all along remained in possession of the same. The plaintiffs have no concern with the above mentioned lands of the defendants. The suit lands are part and parcel of the above mentioned lands of the defendants. It is further pleaded that during the Municipal Survey operation the suit lands and other lands of the defendants which were carved out of the above mentioned lands of the defendants were wrongly recorded in the name of the plaintiffs and others respectively for which the defendants filed the objection case No. 1515/ 446 of 1983. The Municipal Survey entry of the suit lands showing the possession of the plaintiffs over the same is wrong and baseless. The defendants took steps for setting aside the wrong entries of some of the lands of the defendants in the name of some other person. The defendants have acquired valid right, title and interest over the suit land by adverse possession and also by remaining in adverse possession of the same for more than 12 years openly, adversely and to the full knowledge of the



plaintiffs and others.

9. After considering the evidence oral as well as documentary led by the parties in support of their case, the learned Trial Court decreed the suit in favour of the plaintiffs.

10. Aggrieved thereof, the defendant nos. 1 and 2/respondent nos. 1 and 2 assailed the said judgment and decree of the learned Trial Court by way of filing Title Appeal bearing T.A. No. 52 of 1992 before the learned Lower Appellate Court, which was allowed by judgment and decree dated 09-10-1999 passed by 4th Additional District Judge, Purnea. The learned Lower Appellate Court has held that the plaintiffs have failed to prove that the suit land was acquired by their father through settlement in the year 1953. The appellate Court has also held that as per plaintiffs' MS plot no. 473, 474(ka) and (kha) have been carved out of CS plot no. 819, but in the Schedule of the land as given in the plaint, MS Plot nos. 788 and 473 have been mentioned. Thus, there is a conflicting description of the suit land in the plaint and the Schedule of the plaint. Description of the suit land is vague and the suit is fit to be dismissed on this ground alone. On the basis of the evidence adduced on behalf of both the parties as well as on the basis of the Municipal Survey record of right (Ext. 4), it is apparent



that the plaintiffs are in possession over the suit land.

11. Mr. Raghib Ahsan, learned Senior counsel for the appellants, vehemently submitted that the learned Lower Appellate Court was not justified in admitting the evidence regarding Municipal Survey *Purcha*, which would have attached it with the old CS Plots claimed as the suit plot as also regarding the amendment of plaint with respect to the year of settlement. It is further submitted that the learned Lower Appellate Court wrongly dismissed the suit of the plaintiffs even after holding that plaintiffs are in possession of the suit land. It is further submitted that if Municipal Survey *Purcha* is taken into evidence, then it would lead to the conclusion that the entry of the name of the defendants in first column of Municipal Survey *Khatiyon* has been wrongly entered. The learned senior counsel further submitted that if the amendment regarding year of settlement of the suit land is allowed, then the rent receipt granted by the Ex intermediary and by State of Bihar would be accepted. The learned Trial Court has rightly found that plaintiffs acquired right, title and interest and were in possession over the suit land. The learned Lower Appellate Court had affirmed the finding of the learned Trial Court that the plaintiffs are in possession of the suit land, but has defeated the



plaintiffs on the ground that the plaintiffs have failed to establish their title. The learned Lower Appellate Court failed to consider that the plaintiffs have possessory title to the suit land, which is supported by the rent receipts. It is further submitted that the sale deed of defendant Nos. 1 and 2 did not disclose the specific possession of the land. The learned senior counsel further submits that both the Courts below declared the suit land in possession of the plaintiffs. The possessory title is a good title as against everybody other than the lawful owner. A person having possessory title can get a declaration that he was the owner of the land in suit. Reliance has been placed in case of ***Somnath Burman v. Dr. S.P. Raju & Anr.*** reported in ***(1969) 3 SCC 129*** wherein the Hon'ble Apex Court has held that *the possession of the plaintiff was a sufficient evidence of title as owner against the defendant.* It is further argued that an entry in the record of rights neither creates nor extinguishes the right, it is merely rebuttable piece of evidence. The record of right is not a document of title at all and the entries in such document do not prove exclusive title of a person so recorded therein. Moreover DW-7, who is defendant himself, in his cross-examination in paragraph nos. 14 and 15, somewhat supports the case of the plaintiffs when he says that he has seen the



residential house of Bholi Das which is standing on an area of 3 Bigha and he details the boundary of this land and he further stated that this land has *Tori* crops, which corroborated the statement of DW-5. These statements unequivocally indicates that the land which is the suit land and this witness (defendants' witness) admits the possession of the plaintiffs over the same.

12. On the other hand, learned counsel for the defendants-respondents submits that no documentary or oral evidence has been adduced by the plaintiffs in support of the alleged settlement. No return has been filed (*Zamindari* Return). The *Zamindari* receipt i.e., Exts. 1, 1A, 1B and 1C are of the year 1950 to 1952, which is prior to the alleged settlement. It is further argued that the description of the land given in para 7 of the plaint differs from Schedule given in the plaint. It is further submitted that the claim of the defendants' right, title and interest, on the basis of the registered sale deed dated 24.01.1973 (Ext. A), executed in favour of Sukhdev Das, father of Defendant nos. 1 and 2, was for 1 Bigha 8 Katha. The plaintiffs have not sought any relief for setting aside the said sale deed (Ext. A). It is further submitted that there is presumption that a registered document is validly executed. A



registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In support of his submission, learned counsel places reliance on a decision in the case of ***Jamila Begum (D) thr. Lrs. v. Shami Mohd (D) Thr. Lrs.*** reported in ***AIR 2019 SC 72***. It is further submitted that it is settled principle of law that the entry in survey khatian is not an evidence of title. The question as to what are the effects of entry of record of rights, as to whether the presumption of correctness of those entries will be conclusive proof of the title and possession or as to whether those presumptions are rebuttable or not, have been examined several times by different courts. Reliance has been placed in the case of ***Narshing Mishra vs. Rajendra Mishra*** reported in ***2009(2) PLJR 1028***.

13. On analyzing the materials on record as well as the impugned judgments, this Court finds that the learned appellate court has wrongly held that M.S. Plot No. 473, 474 (ka) and (kha) have been carved out of C.S. Plot No. 819, but in the Schedule of the land as given in the plaint M.S. Plot No. 788 and 473 have been mentioned and, therefore, it is assumed that there is a conflicting description of the suit land in the plaint and



the schedule of the plaint.

14. On perusal of Ext. 4, it shows that Plot Nos. 474/788 is mentioned in column of plot number admeasuring area 5.40 Ares was in possession of Bhauli Das, son of Rameshwar Das as well as Plot No. 473 is also mentioned in the plot number column area 14.70 Ares was in possession of Bhauli Das son of Rameshwar Das. In the aforesaid facts, there is no conflicting description of the suit land. It is admitted case of the defendants, that they filed Objection Case No. 515/646 of 1983 against the State of Bihar for entering their name only in M.S. Plot No. 644 and 472. They did not assert claim over MS Plot Nos. 473 and 474 (ka) and (kha). Moreover, the said plots were not in suit or dispute and as such, the defendant did not implead the plaintiffs as a party in the Objection Case No. 515/646 of 1983. There is no dispute with regard to C.S. Plot Nos. 811, 813 and 819 of Khata No. 51 (part) which acquired 3 Bigha land by the original plaintiff through Raiyati Settlement from the ex-landlord. The ex- landlord issued rent receipt 1 to 1(b) for the year 1360, 1361, 1362 fasli i.e. 1953, 1954 and 1955 respectively for the arrears of rent 1357 fasli 1358, 1359 fasli and State of Bihar also granted rent receipt for the same Khata No. 51 (*Kayami Khata*). Since 1958 onwards, Jamabandi No. 29 was created in



favour of Bhauli Das. Since then he is in possession of the suit land, which is apparent from concurrent findings of both the courts. There is material to show that the plaintiffs were in actual possession much less continued possession of the property for a long period which may be called settled possession or established possession. In the Case of ***Rame Gowde (dead) by LR Vs. M. Varadappa Naidu (dead) LR and others*** reported in ***(2004) 1 SCC 769***, the Hon'ble Supreme Court has held that while discussing the Indian law on the subject observed as follows in paragraph 8:-

“8. It is thus clear that so far the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser.”

15. There is no confusion at all regarding identity of property in- question and on the basis of materials on record, the trial court has correctly ruled that the appellants-plaintiffs have proved their title and possession over the suit property and there is no case of the defendants that they have purchased the same land from their vendor.

16. Learned first appellate court has held that there is no evidence on the record to show that the suit/plots have been carved out from CS Plot Nos. 811, 813 and 819. The plaintiffs



failed to establish their case.

17. This aspect could be settled through official documents likewise Municipal *Parcha* in connection with the aforesaid land which was already on record, but it was not marked as Exhibit. The plaintiffs filed application before the appellate Court for marking the survey *parcha* as Exhibit which was rejected by the appellate court.

18. In the present case, there is no dispute with regard to CS Plot. The only dispute is with regard to carving out CS Plot for making Municipal Survey Plot. The Survey *parcha* is very relevant for deciding the issue involved in the suit. The first Appellate Court is the final Court of facts. The Appellate Court requires to ascertain the real fact involved to admit the evidence regarding Municipal Survey *Parcha* which has connected it with old CS Plot column as the suit plots.

19. In the light of the discussion made above, this Court is of the view that the plaintiffs-appellants on the basis of materials on record have been able to prove that the suit property was settled by ex-landlord in favour of original plaintiffs (heirs of appellants) and on settlement they came in possession and paid rent to the ex-landlord, which was accepted and rent receipts were granted and in view of the settled law as



laid down by the Full Bench of this Court in case of *Mosst. Ugni and another Vs. Chowa Mahto and others* reported in *AIR 1968 Pat 302 (FB)*, that such actual possession and acceptance of rent by ex landlord creates *Raiyati* interest in favour of the settlee.

20. Moreover, after vesting of *Zamindari*, *Jamabandi* was created in favour of original plaintiffs and thus the plaintiffs acquired title to the property and both the courts below have concurrently found the possession of the plaintiffs over the suit property which fact is also corroborated from the remarks column of Municipal Survey *Khatiyani* (Ext. 4) showing the possession of the plaintiffs over the suit property. It is settled law that Revisional or Municipal Survey entry neither creates nor extinguishes title, and as such, they have no document of title rather they are per-dominantly based on actual physical possession. Reliance, in this connection, is placed on the decision reported in *AIR 1974 Pat 164 (FB) (Nand Kumar Rai & Ors. V. State) paragraph 14 and 1991 1 PLJR 633 (Reyasat Ali Khan and Anr. Versus Bhagalpur Municipality)*. In other view of the matter, creation of *Raiyati* interest regarding the suit property having been proved in favour of the plaintiffs and their possession regarding the suit property having been recorded



even in the municipal survey apart from the concurrent findings of both the courts below in favour of the plaintiffs regarding their possession all along, the plaintiffs are entitled to get their title and possession declared with respect to the suit property especially when there is a presumption of continuity of possession before vesting and after vesting of *Zamindari* coupled with the settled law that possession must be deemed to follow title.

21. In the light of the narrative and discussion supra, there can be no doubt that the learned Lower Appellate Court erred and was not justified in dismissing the suit of the plaintiffs.

22. Accordingly, the entry in the Municipal Survey *khatian* is found to be wrong and incorrect.

23. Consequently, the judgment of learned Lower Appellate Court dated 12-10-1999, passed in Title Appeal No. 52/1992 (Tr. No. 3/1996) is set aside and the suit of the plaintiffs-appellants is decreed and affirmed the judgment and decree of the Trial Court dated 15-09-1992 passed in Title Suit No. 35/1990.

24. In the facts and circumstances of the case, the substantial questions of law formulated are, therefore, answered in favour of the appellants.



25. Thus, this Second Appeal has got merit and accordingly it is being allowed.

26. Pending Interlocutory Application, if any, shall stand disposed off.

(Khatim Reza, J)

Shyambihari/
Prabhat-

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