IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.122 of 2002

==========

1.1. Ram Pari Devi Wife of late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.
1.2. Arvind Prasad Son of late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.
1.3. Renu Kumari Wife of Late Jitendra Kumar, Daughter of Late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.
1.4. Prerit Kumar Son of late Jitendra Kumar Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.
1.5. Piyush Kumar Son of late Jitendra Kumar Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.
1.6. Ranju Devi Daughter of late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.
1.7. Karuna Devi Daughter of late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.
1.8. Sushila Devi Daughter of late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.

... ... Appellant/s

Versus

1. Executive Officer Notified Area Committee, Rajgir, Nalanda.
2. The Chairman, Notified Area Committee, represented through S.D.O. Biharsharif, Rajgir, Nalanda.
3. Md. Shakil Hassan Son of late Md. Aziz Hussain Resident of Mohalla Baignabad, Town Biharsharif, District Nalanda.

... ... Respondent/s

==========

with

SECOND APPEAL No. 123 of 2002

==========

1.1. Ram Pari devi Wife of late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.2. Arvind Prasad Son of late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.3. Renu Kumari Wife of late Jitendra Kumar, Daughter of Late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.4. Prerit Kumar Son of Late Jitendra Kumar Resident of Village Hassanpur,P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.5. Piyush Kumar Son of late Jitendra Kumar Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.6. Ranju Devi Daughter of Late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.7. Karuna Devi Daughter of Late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.8. Sushila Devi Daughter of Late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

... ... Appellant/s

Versus

1. Md Shakil Hassan Son of Late Md. Aziz Hussain Resident of Mohalla Baignabad Town- Biharsharif District Nalanda.

2. Executive Officer, Notified Area Committee, Rajgir, District Nalanda.

... ... Respondent/s

==========

with

SECOND APPEAL No. 139 of 2002

==========

Executive Officer, N.A.C. Rajgir, Now Special Officer, Nagar Panchayat, Rajgir, Nalanda (N.A.C. Rajgir has been declared as Nagar Panchayat Rajgir vide notification no. 2651 dated 30.08.2001

... ... Appellant/s

Versus

1.1. Ram Pari Devi, W/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.2. Arvind Prasad, S/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.3. Renu Kumari, W/o Late Jitendra Kumar S/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District-Nalanda.

1.4. Prerit Kumar, S/o Late Jitendra Kumar, Resident of Village- Hassanpur, P.O.and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.5. Piyush Kumar, S/o Late Jitendra Kumar, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.6. Ranju Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.7. Karuna Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.8. Sushila Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

2. Md. Shakil Hassan @ Shakib Hassan, S/o Late Aziz Hassan, of Mohalla- Baignabad, P.S.- Biharsharif, District- Nalanda.

3. Chairman, Nagar Panchayat, Rajgir, Nalanda.

... ... Respondent/s

==========

with

SECOND APPEAL No. 140 of 2002

==========

Executive Officer, N.A.C. Rajgir, Now Special Officer, Nagar Panchayat, Rajgir, Nalanda (N.A.C. Rajgir has been declared as Nagar Panchayat Rajgir vide notification no. 2651 dated 30.08.2001

... ... Appellant/s

Versus

1.1. Ram Pari Devi, W/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.2. Arvind Prasad, S/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.3. Renu Kumari, W/o Late Jitendra Kumar S/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District-Nalanda.

1.4. Prerit Kumar, S/o Late Jitendra Kumar, Resident of Village- Hassanpur, P.O.and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.5. Piyush Kumar, S/o Late Jitendra Kumar, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola,Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.6. Ranju Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.7. Karuna Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.8. Sushila Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

2. Md. Shakil Hassan @ Shakib Hassan, Son of Late Md. Aziz Hussain, Resident of Mohalla- Baignabad, Town Biharsharif, District- Nalanda.

3. The Chairman, N.A.C. Rajgir, Naladan, (S.D.O. Rajgir,) Nalanda.

... ... Respondent/s

==========

Code of Civil Procedure---section 100, 80, Order 41 Rule 22---Second Appeal---Bihar and Orissa Municipal Act, 1922---section 377---Bihar Land Reforms Act---section 4(h)---Requirement of notice to Municipality in Title Suit---dispute over property ad measuring 1 acre 98 decimals which was purchased by ancestors of vendors of Plaintiff from ex-landlord by registered sale deed dated 17.08.1944---nature of the land in dispute was recorded as Gairmazarua Aam Pokhar in C.S. khatian, but with the passage of time, the nature of land changed and it became raiyati ba-kasht land of the ex-land lord---State defendant contended that suit property was and is pokhar (and it vested in the State of Bihar at the time of vesting of zamindari) and the said pokhar was passed on by the State of Bihar to the Notified Area Committee, which is now Municipality and the Municipality is settling the said pokhar and the plaintiff has no title to suit property---case of the invervenor/ defendant is that he is the purchaser by virtue of sale deed executed by true owner wherein 1 acre land out of 1.98 acres in suit property has been sold to the him.

Findings: main question involved in all the four appeals is whether a notice under Section 377 of the Bihar & Orissa Municipal Act was at all essential when the Notified Area Committee and Municipality concerned fully contested the suit as parties and never pressed their objections before the learned Trial Court on this point---Section 377 of the Bihar & Orissa Municipal Act, 1922 bars only the suits filed against the Municipality for damages of a tortuous act and not a suit for declaration that certain orders was illegal and for injunction restraining the Municipality from enforcing that order--Executive Officer, Notified Area Committee is not a Public Officer and no notice is necessary for filing the suit against a Municipality. Thus, the question of sufficiency of notice under Section 80 C.P.C. does not arise at all---the sale deed executed in favor of vendor of intervenor-defendant by his grandfather with regard to one acre of land out of 1.98 acres of suit land had remained unchallenged and, therefore, the sale deed is not vitiated and that the intention of the grandfather of vendor of the intervenor -defendant was to transfer the title of the said land his grandson, wherein, in order to protect the right, title and interest of the vendor of the intervenor-defendant, his vendor (grandfather) got his other sons (vendors of plaintiff- appellant) as witness in the sale deed---appellate court rightly held that the plaintiff is only entitled to 0.98 acre of the suit land---judgment affirmed---Second Appeals stand dismissed. ***(Para- 9-11, 37, 39-44)***

1959 BLJR 121, AIR 1936 Patna 323, 2000 (1) BBCJ 488, A.I.R. 1964 SC 1300, 2016 (2) SCC 200 …….***Relied Upon.***

2014 (6) SCC 394 ……..***Differentiated.***

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.122 of 2002

==========

1.1. Ram Pari Devi Wife of late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.

1.2. Arvind Prasad Son of late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.

1.3. Renu Kumari Wife of Late Jitendra Kumar, Daughter of Late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.

1.4. Prerit Kumar Son of late Jitendra Kumar Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.

1.5. Piyush Kumar Son of late Jitendra Kumar Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.

1.6. Ranju Devi Daughter of late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.

1.7. Karuna Devi Daughter of late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.

1.8. Sushila Devi Daughter of late Rajendra Prasad Sinha Resident of Village Hassanpur P.O and PS Rajgir Dist Nalanda Present residing at Bangali Tola Makaurpur Rajgir, P.S Rajgir Dist- Nalanda.

... ... Appellant/s

Versus

1. Executive Officer Notified Area Committee, Rajgir, Nalanda.

2. The Chairman, Notified Area Committee, represented through S.D.O. Biharsharif, Rajgir, Nalanda.

3. Md. Shakil Hassan Son of late Md. Aziz Hussain Resident of Mohalla Baignabad, Town Biharsharif, District Nalanda.

... ... Respondent/s

==========

with

SECOND APPEAL No. 123 of 2002

==========

1.1. Ram Pari devi Wife of late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.2. Arvind Prasad Son of late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.3. Renu Kumari Wife of late Jitendra Kumar, Daughter of Late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.4. Prerit Kumar Son of Late Jitendra Kumar Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.5. Piyush Kumar Son of late Jitendra Kumar Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.6. Ranju Devi Daughter of Late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.7. Karuna Devi Daughter of Late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

1.8. Sushila Devi Daughter of Late Rajendra Prasad Sinha Resident of Village Hassanpur, P.O. and P.S. Rajgir, District Nalanda, Present residing at Bangali Tola Makaurpar, Rajgir, P.S. Rajgir, District Nalanda.

... ... Appellant/s

Versus

1. Md Shakil Hassan Son of Late Md. Aziz Hussain Resident of Mohalla Baignabad Town- Biharsharif District Nalanda.

2. Executive Officer, Notified Area Committee, Rajgir, District Nalanda.

... ... Respondent/s

==========

with

SECOND APPEAL No. 139 of 2002

==========

Executive Officer, N.A.C. Rajgir, Now Special Officer, Nagar Panchayat, Rajgir, Nalanda (N.A.C. Rajgir has been declared as Nagar Panchayat Rajgir vide notification no. 2651 dated 30.08.2001

... ... Appellant/s

Versus

1.1. Ram Pari Devi, W/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.2. Arvind Prasad, S/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.3. Renu Kumari, W/o Late Jitendra Kumar S/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.4. Prerit Kumar, S/o Late Jitendra Kumar, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.5. Piyush Kumar, S/o Late Jitendra Kumar, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.6. Ranju Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.7. Karuna Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.8. Sushila Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

2. Md. Shakil Hassan @ Shakib Hassan, S/o Late Aziz Hassan, of Mohalla- Baignabad, P.S.- Biharsharif, District- Nalanda.

3. Chairman, Nagar Panchayat, Rajgir, Nalanda.

... ... Respondent/s

==========

with

SECOND APPEAL No. 140 of 2002

==========

Executive Officer, N.A.C. Rajgir, Now Special Officer, Nagar Panchayat, Rajgir, Nalanda (N.A.C. Rajgir has been declared as Nagar Panchayat Rajgir vide notification no. 2651 dated 30.08.2001

... ... Appellant/s

Versus

1.1. Ram Pari Devi, W/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.2. Arvind Prasad, S/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.3. Renu Kumari, W/o Late Jitendra Kumar S/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.4. Prerit Kumar, S/o Late Jitendra Kumar, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.5. Piyush Kumar, S/o Late Jitendra Kumar, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.6. Ranju Devi, D/o Late Rajendra Prasad Sinha, Resident of Village-

Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.7. Karuna Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

1.8. Sushila Devi, D/o Late Rajendra Prasad Sinha, Resident of Village- Hassanpur, P.O. and P.S.- Rajgir, District- Nalanda. At present residing at Bangali Tola, Makaurapur Rajgir, P.S.- Rajgir, District- Nalanda.

2. Md. Shakil Hassan @ Shakib Hassan, Son of Late Md. Aziz Hussain, Resident of Mohalla- Baignabad, Town Biharsharif, District- Nalanda.

3. The Chairman, N.A.C. Rajgir, Naladan, (S.D.O. Rajgir,) Nalanda.

... ... Respondent/s

==========

Appearance :
(In SECOND APPEAL No. 122 of 2002)
For the Appellant/s : Mr. T.N. Maitin, Sr. Adv.,
Mr. S.S.Shabbar Hussain, Adv.

For respondent no. 3 : Mr. Jitendra Kishore Verma, Adv.,
Mr. Ray Saurabh Nath, Adv.,
Mr. Anjani Kumar Adv.,
Ms. Sweta Rai, Adv.

(In SECOND APPEAL No. 123 of 2002)
For the Appellant/s : Mr. T.N. Maitin, Sr. Adv.,
Mr. S.S.Shabbar Hussain, Adv.

For the Respondent no.1 : Mr. Jitendra Kishore Verma, Adv.,
Mr. Ray Saurabh Nath, Adv.,
Mr. Ravi Raj, Adv.

(In SECOND APPEAL No. 139 of 2002)
For the Appellant/s : Mr. Mahendra Prasad Bhartee, Adv.
For Respondent No. 2 : Mr. Jitendra Kishore Verma, Adv.,
Mr. Ray Saurabh Nath, Adv.,
Mr. Shreyansh Goyal, Adv.

(In SECOND APPEAL No. 140 of 2002)
For the Appellant/s : Mr. Mahendra Prasad Bhartee, Adv.
For Respondent no. 2 : Mr. Jitendra Kishore Verma, Adv.,
Mr. Ray Saurabh Nath, Adv.,
Ms. Sweta Raj, Adv.

==========

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL JUDGMENT
Date : 14-12-2023

Heard the parties.

2. These four appeals arise out of Title Suit No. 58 of 1985 filed by the plaintiff for declaration of title and non-title of defendant/Executive Officer, Notified Area Committee, Rajgir, Nalanda and further for a relief for permanent injunction restraining the defendant from interferring with the possession of the plaintiff, which has been fully described in Schedule, bearing Tauzi No. 12569, Khata No. 333, Plot No. 5205, ad measuring an area of 1 acre 98 decimals, situated at Rajgir in the District of Nalanda. Subsequently, the Chairman, Notified Area Committee represented through S.D.O., Biharsharif, Rajgir, Nalanda was added as defendant no. 2 and Md. Shakil Hassan was added as defendant no. 3, as he had filed intervention petition on 05.03.1992 for adding him as party defendant. The said intervention petition was allowed vide order dated 09.04.1992, holding the itnervenor to be necessary party, as his interest is directly involved in the suit property.

3. The Second Appeal bearing S.A. No. 122 of 2002 has been filed by the plaintiff/ appellant against the Judgment and decree dated 20.03.2002, passed in T.A. No. 23 of 1993 (filed by defendant no.1), by the learned 1st Additional District Judge, Biharsahrit, Nalanda, reversing (partly) the Judgment and decree

dated 17.03.1993, passed in T.S. No. 58 of 1985 by the learned Sub-Judge-I, Biharsharif, Nalanda.

4. The Second Appeal bearing S.A. No. 123 of 2002 has been filed by the plaintiff/appellant against the Judgment and decree dated 20.03.2002, in T.A. No. 25 of 1993 (filed by intervenor- defendant no.3), reversing (partly) the judgment and decree dated 17.03.1993, passed in T.S. No. 58 of 1985 by the learned Sub-Judge-I, Biharsharif, Nalanda.

5. The Second Appeal bearing S.A. No. 139 of 2002 has been filed by the defendant no. 1/appellant against the judgment and decree dated 20.03.2002, passed in T.A. No. 25 of 1993 (filed by intervenor- defendant no.3) by the learned 1st Additional District Judge, Nalanda at Biharsharif, affirming the findings against the appellant passed in T.S. No. 58 of 1985 by the learned Sub-Judge-I, Biharsharif, Nalanda on 17.03.1993.

6. The Second Appeal bearing S.A. No. 140 of 2022 has been filed by the defendant no. 1/appellant against the judgment and decree dated 20.03.2002, passed in T.A. No. 23 of 1993 (filed by defendant no.1) by the 1st Additional District Judge, Nalanda at Biharsharif, affirming the finding of the learned Trial Court, passed in judgment and decree dated 17.03.1993 by the learned Sub-Judge-I, Biharsharif, Nalanda.

7. The Second Appeal No. 122 of 2002 and Second Appeal No. 123 of 2002 were heard together and on 03.02.2010 the following substantial question of law was formulated while admitting the appeals:-

(i) Whether the notice under Section 377 of the Bihar and Orissa Municipal Act was at all essential when the Notified Area Committee and Municipality concern fully contested the suit as parties and never pressed their objections before the learned Trial Court on this point ?

8. In Second Appeal No. 123 of 2002, no separate substantial question of law was framed. However, the time of hearing of S.A. No. 123 of 2002, the appellant suggested additional substantial question of law, which are as follows:-

(i) Whether Appellate Court erred in law in holding that plaintiff acquired title over only 98 decimals of C.S. Plot No. 5205 by relying upon Exhibit A-1, which is not a document of sale in the eye of law.

(ii) Whether learned Lower Court erred in law in declaring title of Intervenor over 1 acre of part of the suit land without any counter-claim for making declaration of his title over the same land.

9. The case of the plaintiff is that the suit property ad measuring 1 acre 98 decimals was purchased by Syed Shah Mujtaba Hassan from the ex-land lord namely Nawab Manzoor Khan and Bibi Khurshidi Begum, by registered sale deed dated 17.08.1944 **(Exhibit 1-B)** and the purchaser came in possession and paid rent to the ex-land lord and got rent receipt from the ex-land lord. Thereafter, at the time of vesting, the Return was submitted by the ex-land lord in the name of purchaser recognizing him as a raiyat. The nature of the land in dispute was recorded as Gairmazarua Aam Pokhar in C.S. khatian, but with the passage of time, the nature of land changed and it became raiyati ba-kasht land of the ex-land lord, which is apparent from the road cess Return filed in the year 1930 by the ex-land lord, wherein the land is shown as raiyati. The purchaser Syed Shah Mujtaba Hassan had three sons namely Syed. Shah Ijtaba Hassan, Syed Shah Alam and Syed Shah Jahan. Syed Shah Ijtaba Hassan pre-deceased his father leaving behind his two sons namely Syed Shah Altaf Hassan and Syed Shah Equbal Hassan. It is further case of the plaintiff is that the two alive sons of Syed Shah Mujtaba Hassan namely Syed Shah Jahan and Syed Shah Alam and the widow namely Syed Shah Mujtaba, inherited the entire property after the death of Syed Shah Mujtaba Hassan and thereupon all the three heirs of Syed

Shah Mujtaba have transferred the entire 1 acre 98 decimals of the land by two registered sale deeds dated 26.06.1982 to the plaintiff and since then the plaintiff came in possession as owner and he is continuing in his possession. It is further case of the plaintiff that when the Intervenor/defendant filed his written statement, the plaintiff came to know that a forged document of sale by Syed Shah Mujtaba Hassan dated 05.08.1971 has been prepared in the name of Syed Shah Altaf Hassan and Syed Shah Equbal Hassan. It is further case of the plaintiff that after purchase plaintiff filed a petition before the Land Revenue Deputy Collector for mutating his name and accordingly on a verification report of L.R.D.C. the Sub Divisional Officer forwarded the petition of the plaintiff. It is contended that there was a dispute between the plaintiff and the Executive Officer, Notified Area Committee. The Notified Area Committee was illegally interferring with the suit property. The present suit was filed seeking declaration of title and injunction.

10. On summon, the defendants (defendant Nos. 1 and 2) have appeared and filed their written statement separately and denied the claim of the plaintiff. Their main defence is that the suit property was and is pokhar (and it vested in the State of Bihar at the time of vesting of zamindari) and the said pokhar was passed on by the State of Bihar to the Notified Area Committee, which is

now Municipality and the Municipality is settling the said pokhar and the plaintiff has no title to suit property. The plea is also taken that the suit is not maintainable in view of non-service of notice under Section 377 of the Bihar and Orissa Municipal Act. It is further contended that the suit is bad for non-joinder of the party namely the State of Bihar which was a necessary party and it is also bad for non-compliance of notice under Section 80 C.P.C. The permission under Section 80 (2) C.P.C. has been obtained under mis-representation and concealment of actual facts.

11. The intervenor -defendant no.3 also filed his written statement. The case of the invervenor/ defendant is that he is the purchaser by virtue of sale deed dated 13.03.1991, **Exhibit A-2** executed by Syed Shah Altaf Hassan and Syed Shah Equbal Hassan, wherein 1 acre land of the suit plot no. 5205, out of 1.98 acres in the Southern side has been sold to the intervenor. It is further contended that the vendor of the intervenor had acquired title to the aforesaid property by virtue of sale deed dated 05.08.1971, executed in their favour by their grandfather and grandmother (Syed Shah Mujtaba Hassan and his wife). The purpose of sale deed is indicated in the sale deed itself to the effect that the grandfather has executed the sale deed dated 05.08.1971 in favour of his two grandsons as they are sons of the pre deceased

son and in the absence of absolute transfer the grandsons would not inherit anything (being a Mehjob grand sons) and will be excluded from inheritance in presence of other two alive sons of the grandfather (propositus) Syed Shah Mujtaba Hassan and it is mentioned in the recital of the sale deed that the deed is being executed out of love and affection and to protect the interest of grandson and the consideration money has been forsaken (mafi Zarsaman). It is emphatically pleaded that in the said sale deed the other two sons of the grandfather are witnesses of the recital of the sale deed. Thus, the intervenor/ defendant, who are purchaser from the aforesaid grandsons filed written statement claiming 1 acre land which was acquired by their vendors from the rightful/admitted owner Syed Shah Mujtaba Hassan to the full knowledge of the other two sons, who are witnesses to the aforesaid sale deed dated 05.08.1971. Thus, the plaintiff claiming through his vendors could have acquired title to entire 1.98 acres of land from Syed Shah Mujtaba Hassan who had already sold 01 acre of land through sale deed dated 05.08.1971 and at the time of his death he was holding title of only 98 decimals of the land in plot no. 5205 only which could have been inherited by the vendors of the plaintiffs.

12. The learned Trial Court after scrutinizing the evidence and material on records decreed the suit holding plaintiffs title to the suit property and the suit property was never vested in the State of Bihar and was sold by ex-land lord to Syed Shah Mujtaba Hassan, through registered sale deed dated 17.08.1944, which was written by ex-land lord as his ba-kasht land. The said document cannot be said to be a forged document, because it is a registered document of the year 1944. The Zamindari receipts were issued to the purchaser Syed Shah Mujtaba Hassan and the Return was also filed by ex-land lord showing the purchaser to be a raiyati of the concerned land. The learned Trial Court also held that the nature of the land changed and it became raiyati land which is proved from the road cess Return of 1930, filed by the ex-land lord. The learned Trial Court in view of the certified copy of Return in the name of Syed Shah Mujtaba Hassan and the registered sale deed dated 17.08.1944, held that said land never vested in the State of Bihar. Defendant nos. 1 and 2 had not brought any such witnesses to show that the suit land is being used by public at large as gairmazarua Aam. **Exhibit-B** is the kabuliat deed. This deed is also unregistered and there is every likelihood of being forged. **Exhibits C and D** series are not authenticated documents because these should have been entered in the cash

register, which was not produced by the defendant nos. 1 and 2. The learned Trial Court further held that the intervenor/ defendant failed to establish his title and possession. The Notified Area Committee has got no right, title and interest in the suit property. It is further held that Mujtaba Hassan acquired right, title and interest over the disputed plot. The plaintiff has established that he had purchased the land from the legal heirs of Syed Mujtaba Hassan and the suit is not barred by law of limitation.

13. Being aggrieved by the Judgment and decree of Trial Court dated 17.03.1993, two Title Appeals were preferred. T.A. No. 23 of 1993 was preferred on behalf of the Executive Officer, Notified Area Committee, whereas T.A. No. 25 of 1993 was preferred by the intervenor/defendant. Both the appeals were heard together and decided by a common Judgment dated 20.03.2002, whereby the plaintiff was declared to be title holder of only 98 decimals of land. The vendor of the intervenor/ defendant has been examined to support his case, whereas the vendor of the plaintiff did not turn up to depose. It is further held that the vendors of the plaintiff had full knowledge that they had only title for 98 decimals of land in the suit plot. They sold the area of 1.98 acres of land to the plaintiff. **Exhibit C-1** is the plaint of T.S. No. 11 of 1985, **Exhibit K-1** is an Exchange Deed by one Sukhdeo Singh as one

party and Syed Shah Jahan, Syed Shah Alam, Syed Shah Altaf Hassan and Syed Equbal Hassan as the other party in this deed dated 15.08.1983, and deed of exchange all had admitted the deed of 1971 **(Exhibit A-1),** executed by Syed Shah Mujtaba Hassan and his wife in favour of Syed Altaf Alam and Syed Equbal Hassan. It is further held that the claim of plaintiff has been denied over 1 acre of the suit plot, whereas the claim of intervenor/defendant was admitted. All these exhibits are sufficient enough to show that the title with respect to 1 acre land in the suit plot passed on to the vendor of intervenor/defendant (sale deed dated 05.08.1971) and the document filed is of an unimpeachable character, which cannot be forged or manufactured. However, the claim of Municipality was rejected upholding the finding that the land never vested in the State of Bihar and the nature of land has changed as raiyati land and further that the plea regarding the documents relied upon by the plaintiff to be forged cannot be exhibited as they are certified copies. The learned Trial Court held that the suit to be not maintainable on the ground of want of notice under Section 377 of the Bihar and Orissa Municipal Act. It has further held that the Notified Area Committee had no right to settle the suit plot of anyone.

14. Other two appeals bearing S.A. No. 139 of 2002 and S.A. No. 140 of 2002 have been field on behalf of the Executive Officer, Notified Area Committee challenging the appellate Judgment and decree. The aforesaid two appeals had been heard together on 03.03.2004 and the following substantial questions of law were formulated while admitting these appeals:-

(I) Whether the learned 1st Appellate Court committed error in law in entering into the merits of the case and deciding the appeals on merits after holding that the original suit was not maintainable for want of notice under Section 377 of the Bihar and Orissa Municipal Act? The learned Appellate Court has held that one month prior notice is mandatory, which has not been complied with and so the suit of the plaintiff will fail on this score alone against the municipality as no notice under Section 377 of the Bihar and Orissa Municipal Act was served upon authority and the suit of the plaintiff was bad, which could not have been decreed.

15. Learned counsel for the appellant in S.A. No. 122 of 2002 and S.A. No. 123 of 2002 submits that the Lower Appellate Court has wrongly held that suit is barred under Section 377 of the Bihar and Orissa Municipal Act as the said finding has been given without considering oral and documentary evidence and pleadings of the parties. It has not been shown that Notified Area Committee

pleaded an oral evidence on this point. No issue was framed on this point. Plaintiff had no opportunity to lead any evidence on the point of service of notice under Section 377 of the Bihar and Orissa Municipal Act. It is submitted that no notice is required to be served under Section 377 of the Bihar and Orissa Municipal Act in view of relief sought in this suit. The plaintiff only sought declaration of title over the suit land as a cloud was caste on his title. It is further submitted that in the suits no relief has been sought against any specific order or act on the Officers of Municipality. It is further contended that in all suits against Municipality, no notice is required to be given under Section 377 of the Bihar and Orissa Municipal Act.

16. Reliance has been placed on ***A.I.R. 1936 Patna 322 (Lachminarayan Das Vrs. Chairman, Cuttak Municipality)***, in which it has been held that notice under Section 377 of the Bihar and Orissa Municipal Act is not required in all types of cases in Municipality.

17. Learned Senior Counsel has argued and submits that the Lower Appellate Court erred in law and holding that plaintiff has title only over 98 decimals of land in C.S. Plot No. 5205 by relying upon **Exhibit A-1**.

18. Learned Senior Counsel further submits that the Lower Appellate Court failed to consider **Exhibit A-1,** which is not sale in the eye of law. Section 54 of the Transfer of Properties Act provides “sale” is a transfer of ownership in exchange for a price paid or promised or part paid or part promised. For sale, there must be payment of money.

19. He relied upon a decision in the case of ***Commissioner of Income Tax, A.P. Vrs. M/s. Motors and General Stores (P) Ltd., AIR 1968 SC 200*** at paragraph-3. It has been held that for sale, there must be payment of money. Further in the case of ***Dhanbarti Koerin Vrs. Shyam Narain Mahton & Ors.*** reported in ***A.I.R. 2007 Patna 59***, paragraph-12, it has been held that sale is invalid, if there is no payment of money, so sale deed dated 05.08.1971, executed in favour of vendor of the intervenor (**Exhibit A-1)** is not sale deed in the eye of law. The vendor of the intervenor/ defendant did not acquire any title nor any defendant acquire any title over any portion of suit land.

20. So far finding with regard to title of the defendant is concerned, the Trial Court has held that intervenor/ defendant failed to prove his title, which was not considered by the Appellate Court. It is submitted that in a case of reversal of judgment, it is the duty of the Lower Appellate Court to consider the reasoning

given by the Trial Court. Reliance has been placed on a decision reported in ***A.I.R. 1995 SC 1607, S.V.R. Mudaliar (Dead) by Lrs. And Ors. Vrs. Mrs. Rajabu F. Buhari (Dead) by Lrs. & Ors.***, paragraph-5, wherein, it has been held that reasoning given by the Trial Court must be considered by the Lower Appellate Court.

21. Learned counsel for the appellant further submits that the Lower Appellate Court erred in law in holding that intervenor/defendant has title over 1 acre of disputed plot without any counter-claim by intervenor/defendant. No relief was sought in the plaint against intervenor/defendant, so without any counter-claim title of the intervenor/defendant shall not have been declared. It is further argued that concurrent finding of fact on the point of no title to Notified Area Committee have been given. It is further contended that Notified Area Committee have not been able to show that finding of Trial Court and Appellate Court is perverse, as such the finding of learned Trial Court that plaintiffs have proved their title is concluded by concurrent finding of fact. The case laws stated by the Notified Area Committee has no application in this case. It is specific case of the intervenor/ defendant that the intervenor has purchased suit property, but they failed to prove the consideration money paid in this case, so sale is void and for this issue the learned counsel for the appellant has

placed his reliance reported in ***A.I.R. 2002 SC 564 (Kewal Kishan Vrs. Rajesh Kumar & Ors.)***.

22. On the other hand, learned counsel for the appellant (S.A. No. 139 of 2002 and S.A. No. 140 of 2002) submitted that one substantial question of law was framed with regard to notice under Section 377 of the Bihar And Orissa Act, 1922 and with regard to other question it has been said that other question of law would be considered at the time of hearing. It is submitted that the appellants suggested other six substantial questions of law which has been filed in the Court and copy to the same was served on the other side which are as follows:-

(i) Whether the Lower Appellate Court was justified in overlooking the evidences available on record and exhibits K to G/2 having been admitted in evidence by the Lower Appellate Court, vide its order dated 24-11-2000 under order 41 Rule 27 C.P.C. could be completely overlooked and neglected by itself ?

(ii) Whether the finding of the Lower Appellate Court is sustainable on the point of possession and non vesting in N.AC without discussing the evidence which are available and having been admitted in evidence vide its order dated 24-11-2000 under order 41 Rule 27 C.P.C ?

(iii) Whether the Court below have not committed serious error of record and in law also ignoring the pleading of the plaintiff with regard to para 6 of its plaint with regard to road cess return filed in the year 1930 and having come to the conclusion that such an old document cannot be disbelieved ?

(iv) Whether the parties to the suit are free to lead evidence against their pleadings, and different evidence against pleading would not be fatal for the case ?

(v) Whether the ex-intermediary or the government are entitled to settle a Gair-Mazarua pond (Pokhar) to any individual ?

(vi) Whether in the facts and circumstances of the case certified copy of documents exhibited with objection be read in evidence?

23. So far as suit being not maintainable for want of notice under Section 377 of the Bihar And Orissa Act, 1922 is concerned, learned counsel for the appellant vehemently argued that without prior notice to the Municipality or the State, the suit is not maintainable with regard to declaration of title and recovery of possessions. The plaintiff has filed the suit against the Municipality asking declaration of title ignoring the compliance of Section 377 of the Bihar And Orissa Act, 1922. The defendant/appellant relied upon a case reported in ***A.I.R. 1984 SC***

1043 (Bihari Chowdhary and Anr. Vrs. State of Bihar & Ors.) as well as recent Judgment of the Hon'ble Apex Court in case of ***Nagar Palika Parishad, Mihona and Anr. Vrs. Ramnath and Anr.***, reported in ***2014 (6) SCC 94***. The Hon'ble Supreme Court has held at paragraphs 9 and 10 which are as under:-

> *"**9.** Along with the trial court and the appellate court, the High Court also failed to appreciate the aforesaid fact and also overlooked the valuable interest and right of public at large to use the suit land which is a part of public street. Further, in absence of challenge to the notice of eviction issued by the appellant, it was not open to the trial court to decide the title merely because permanent injunction coupled with declaration of title was also sought for.*
>
> ***10.** In view of our finding, we set aside the impugned judgment dated 11-4-2012 passed by the High Court in Nagar Palika Parishad, Mihona v. Ramnath [Second Appeal No. 568 of 2009, decided on 11-4-2012 (MP)] as also the judgment and decree passed by the first appellate court and the trial court. It will be open to the appellant to proceed in accordance with law. The appeal is allowed with the aforesaid observations."*

24. Learned counsel for the appellant further submitted that admittedly the, pokhar, in question is a ‘Gairmazarua Aam’ land entered in the C.S. khatian as ‘Gairmazarua’ pokhar. The ex-land lord is not entitled to settle the land to an individual. Neither the Government nor the public is empowered to settle the ‘Gairmazarua Aam’ pokhar to an individual. Reliance is placed on the case of ***Jagpal Singh & Ors. Vrs. State of Punjab and Ors.*** Reported in ***A.I.R. 2011 SC 1123***, paragraph-14 onwards.

25. Learned counsel for the appellant submits that admissibility of evidence specially documentary evidence, which is produced by the plaintiff was certified copies, which was not legally proved as per Section 63 of the Evidence Act. The appellant has relied upon a decision of Hon’ble Apex Court in the case of ***Smt. Dayamathi Bai Vrs. Sri K.N. Shaffi (Appeal (Civil) No. 2434 of 2000)***, decided on 04.08.2004. The Hon’ble Supreme Court has held that when the plaintiff submitted a certified copy of the sale deed in evidence and when the sale deed was taken on record and marked as an Exhibit, the appellant did not raise any objection, even a question of Exhibit P/2 was not challenged. In such circumstances, it was not open to the appellant to object to the mode of proof before the Lower Appellate Court. If the objection had been taken at the trial stage, the plaintiff could have

met it by calling for the original sale deed, which was on record in collateral proceedings, but there was no objection from the appellant. The sale deed dated 14.11.1944 was marked as Exhibit P/2 and it was exhibited to the record without objection. Learned counsel for the appellant submitted in this regard that some of the documents were exhibited but with the objection, but all these documents of the plaintiff were relied upon by both the Courts below. The entire Judgment of the Courts below are based upon the documents which were not proved as per the Evidence Act.

26. Learned counsel for the intervenor/defendant has argued that notice under Section 377 of the Bihar And Orissa Municipal Act, 1922 is applicable to the present suit. It is submitted that the suit filed against the Executive Officer on the ground that notice under Section 377 of the Bihar And Orissa Municipal Act, 1922 is not required on account of fact that in the present suit the relief is regarding the title to the property and not challenging anything done by any officials under the Municipal Act and further having contested this suit on merits, the objection is decided to have been waived. It is submitted that no notice at all was required for filing of the present suit seeking declaration of title to the suit property as in view of the settled law as laid down by a Division Bench of this Court reported in ***2000 (1) BBCJ 488***

(D.B.), ***(Notified Area Committee Through the Vice Chairman, Notified Area Committee & Anr. Vrs. Shri Chhatrapal Singh & Anr.)*** paragraph-11 as well as the decision of Hon'ble Single Judge in S.A. No. 6 of 2006, decided on 12.05.2009, paragraph-10, wherein their Lordships have clearly held that from the reading of Section 377 of the Bihar And Orissa Municipal Act, 1922, it is manifest that provision provided protection to the Municipality and its Officials only in a suit for damage to torturous act and not to other suit including a suit for declaration.

27. Learned counsel for the appellant further submits that Section 377 of the Bihar And Orissa Municipal Act, 1922 requires notice only when anything done by the authorities under the Act is questioned and not in other suits where title to property is being litigated and thus, the provision is not applicable. Reliance has been placed in the decision reported in ***2016 (2) SCC 200***, ***City Municipal Council Bhalki Vrs. Gurappa (Dead) by Legal Representatives & Ors.***, wherein the Hon'ble Apex Court has held in paragraphs 25 and 26, which are as follows:

> "**25.** At this stage, we also direct our attention to the contention raised by Mr Basava Prabhu S. Patil, learned Senior Counsel appearing on behalf of the appellant Municipality that the suit in OS No. 39 of 1993 was not maintainable, as the notice was issued under Section 80 CPC in suit OS No. 255 of 1984 could not be said to be sufficient notice for the

> institution of the suit in OS No. 39 of 1993. We cannot agree with the said contention. The High Court of Karnataka in the second appeal had dismissed the contention on the ground that the notice issued in the suit OS No. 255 of 1984 can be said to be constructive notice. The High Court considered that the object of the section is the advancement of justice and securing of public good.
>
> **26.** In our opinion, this issue does not arise at all, as a municipal council is not a public officer, and no notice is necessary when a suit is filed against a municipality. Thus, the question of sufficiency of notice under Section 80 CPC does not arise at all. Further, the issuance of notice under Section 284(1) of the Karnataka Municipalities Act, 1964 also does not arise for the reason that the dispute between the parties in the suit in OS No. 39 of 1993 does not attract the above provision of the Act and therefore, we need not advert to and answer the above contention.

28. It is further submitted that requirement of notice to the Municipality under Section 377 of the Bihar And Orissa Municipal Act, 1922, even though mandatory, can be waived in view of the settled law that even a mandatory provision made for benefit of parties to the suit can be waived by conduct unless such provision is in public interest and Section 80 C.P.C. and like provision can be waived. Reliance has been placed on a decision reported in ***A.I.R. 1964 SC 1300 (Subal Chandra Nath Saha & Ors. Vrs. Sudhir Chandra Ghosh & Ors.)*** as well as ***A.I.R. 1980***

Patna 212 (D.B.), ***State of Bihar & Anr. Vrs. Smt. Panchratna Devi & Anr.,*** this Court has held at paragraph-10, which is as follows:-

> "**10.** Coming to the merit of the case, the counsel for the appellant has attacked the deed of gift (Ext. 1) created in favour of the plaintiff by her husband defendant second party-respondents on the ground that it was a clever device to defraud the outstanding dues of the Government and as such it is hit by Section 53 of the Transfer of Property Act. The submission does not appeal to me. The certificate case was filed in the year 1955–56 whereas, the deed of gift was executed long before on 25-2-50. The certificate-debtor defendant second party was working as a Manager in Khalsa Motor Service. It has been pleaded on behalf of the appellants that as a Manager of Khalsa Motor Service, he had the knowledge that the Government issues might ultimately be realised from his immovable properties and he, therefore, made a farzi and sham transaction by creating such deed. By any stretch of imagination, it is hard to hold that as a Manager working in any motor concern would have thought in the year 1950 that some Government dues would fall on his head long after six years and would create a document to defeat the Government for payment of the dues. I, therefore, do not find any force in the contention.

29. It is contended that the Notified Area Committee having not pressed this objection seriously at the initial stage of the suit, the same will be deemed to have been waived and cannot

be permitted to be raised, more so, when there was no specific issue framed in the Trial Court regarding want of notice under Section 377 of the Bihar And Orissa Municipal Act, 1922, but the defendant Municipality never raised objection or tried to get the issue re-cast.

30. It is submitted that in the decision relied upon by the learned counsel for the Municipality of ***Hon'ble Chhatisgarh High Court***, the question of waiver was not considered and more particularly the requirement of notice in a Title Suit against Municipality under Section 377 of the Bihar And Orissa Municipal Act, 1922 is not considered and thus the decision is inapplicable specially when the Division Bench and Hon'ble Single Judge of this Court referred to above have considered the requirement of notice under Section 377 of the Bihar And Orissa Municipal Act, 1922.

31. So far the claim of the plaintiff to the suit property regarding 1 acre 98 decimals of the lands are concerned, learned counsel for the appellant submits that the registered sale deed dated 05.08.1971 regarding 1 acre of the land, out of the suit property, in favour of sons of the pre-deceased son of Syed Shah Mujtaba Hassan and his wife, the admitted owner as per plaintiff, remains valid and unchallenged till date as no suit or even

amendment in relief challenging the deed dated 05.08.1971, Exhibit A-1 has been made till date by the plaintiff or his predecessor in interest. The vendors of the plaintiff, who transferred 1.98 acres of suit land to the plaintiff by two sale deeds dated 26.06.1982 are themselves witness to the sale deed of vendor of intervenor/ defendant dated 05.08.1971 (Exhibit A-1). It is submitted that the vendor of the plaintiff has no title to transfer the entire 1.98 acres of land out of which owners of the land had already transferred one acre land in the year 1971. Question of sale deed of the vendor of the intervenor is without consideration. The objection that the same is not valid sale deed in the eye of law is wholly unsustainable having regard to the intention of vendors, who transferred the said property out of love and affection to compensate the “Mehjoob” (sons of predeceased son) grandsons. It is submitted that the learned Trial Court having not considered or discussed the effect of sale deed dated 05.08.1971, in presence of Exhibit A-1, entire 1.98 decimals of land transferred. Reliance has been placed on the decision reported in ***2016 (2) SCC 200***, ***City Municipal Council Bhalki Vrs. Gurappa (Dead) by Legal Representatives & Ors.,*** paragraph-31. The Hon’ble Supreme Court has held as under:-

“31. It is a settled position of law that in a suit for declaration of title and possession, the onus is

upon the plaintiff to prove his title. Further, not only is the onus on the plaintiff, he must prove his title independently, and a decree in his favour cannot be awarded for the only reason that the defendant has not been able to prove his title, as held by this Court in *Brahma Nand Puri* v. *Neki Puri* [*Brahma Nand Puri* v. *Neki Puri*, AIR 1965 SC 1506] as under: (AIR p. 1508, para 8)

"*8*. … The plaintiff's suit being one for ejectment he has to succeed or fail on the title that he establishes and if he cannot succeed on the strength of his title his suit must fail notwithstanding that the defendant in possession has no title to the property…." The same view has been reiterated by this Court in the more recent case of *R.V.E. Venkatachala Gounder* v. *Arulmigu Viswesaraswami & V.P. Temple* [*R.V.E. Venkatachala Gounder* v. *Arulmigu Viswesaraswami & V.P. Temple*, (2003) 8 SCC 752] as under: (SCC p. 768, para 29)

"*29*. In a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored to him. … In our opinion, in a suit for possession based on title 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 and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title."

32. Learned counsel for the intervenor/ defendant submitted that the intervenor/ defendant being not a party to the

suit, the Trial Court grossly erred in holding that intervenor sale deed is hit by *lis pendense*.

33. So far as the objection raised by the plaintiff appellant with regard to finding of the Appellate Court, not declaring title of the plaintiff regarding 1 acre of land as in paragraph-13 of the Appellate Court Judgment, the learned Appellate Court had considered and held that right, title and interest to 1 acre land out of 1.98 acres land had already stood transferred by the vendors (grand parents) of vendor of the intervenor and the plaintiff is entitled to declaration of title regarding only 98 decimals of land. The plaintiff/appellant did not challenge the sale deed dated 05.08.1971 and till date relief was not amended to challenge the said deed and such relief has now become barred by limitation. Reliance has been placed on the decision reported in ***A.I.R. 1996 SC 2358 (Radhika Devi Vrs. Bajrangi Singh & Ors.)***. It is submitted that there is a presumption that a registered document is validly executed and also valid in law until it is set aside. Reliance is placed on a decision reported in ***2012 (2) PLJR 190 (Sita Sharan Prasad Vrs. Manorma Devi)***, wherein this Court has also relied upon a decision reported in ***1996 (7) SCC 767 (Md. Noorul Hoda Vrs. Bibi Raifunnisa & Ors.)***. The Hon'ble Apex Court has held that when the plaintiff seeks to

establish his title to the property, which cannot be established without avoiding the decree or an instrument which stands as an unsurmountable obstacle in his way which otherwise binds him though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled, set aside or rescinded, but no such relief has been claimed.

34. Learned counsel for the intervenor/defendant submitted that the suggested substantial question on behalf of plaintiff regarding Appellate Court declaring intervenors title over 1 acre of disputed land without any counter-claim is also thoroughly mis-conceived as the Appellate Court has examined in paragraph-13 as to whether the plaintiff is entitled to declaration of his title regarding entire 1 acre 98 decimals of land or not in view of the defence based on unimpeachable registered sale deed dated 05.08.1971.

35. Learned counsel for the intervenor/ respondent in reply to the submission made by the appellant of S.A. No. 139 of 2002 and S.A. No. 140 of 2002 (Notified Area Committee of the Municipality) has submitted that the learned Appellate Court Could not have decreed the suit despite holding the suit to be not maintainable for want of notice under Section 377 of the Bihar And Orissa Municipal Act, 1922 and the same is also not

sustainable. Firstly, because of the non-requirement of notice for the reason indicated above having regard to nature of the suit and secondly on the ground that while defending a decree there is no requirement to file any cross objection, when no part of the decree is sought to be assailed by the respondent and in view of the settled law after 1976 amendment of Order 41 Rule 22 C.P.C. respondent without filing cross objection and challenging the finding recorded against him in the Judgment under appeal, there is no requirement to file any cross objection and the Court hearing the appeal can correct the wrong finding even in absence of cross objection. Reliance is placed on the decision reported in ***AIR. 2003 SC 1989 (Banarsi & Ors. Vrs. Ram Phal)*** as well as ***2013 (2) PLJR 6 SC (Hardevinder Singh Vrs. Paramjit Singh)***. Both the Courts have concurrently recorded as finding of fact holding that exhibits filed by the plaintiff are genuine and not forged, particularly when they are certified copies and some of them were in the custody of the State Government and thereby clearly disbelieved the bald plea of respondent Municipality that the Exhibits of plaintiffs are forged. The concurrent finding of the fact on the genuineness of exhibits the same cannot be permitted to be assailed in Second Appeal as the view taken by the Court below was one of the possible view and is not open to substitute by re-

appreciation of evidence. Reliance is also placed on the decision reported in ***2012 (7) SCC 288 (Vishwanath Agrawal Vrs. Sarla Vishwanath Agrawal)***, paragraph-37. So far as the nature of land alleged to be pokhar based on C.S. khatian entry cannot be held good for all time to come and nature of lands always changes with the passage of time and for proving the certified copy of road cess Return (Exhibit-4) has been filed, wherein this suit property is shown to be raiyati land in 1930. The nature of land changes with passage of time. The learned counsel for the intervenor/ defendant has relied upon a decision reported in ***2014 (3) PLJR 584***, ***Maya Devi & Ors. Vrs. The State of Bihar & Ors.***, this Court has held in paragraph-6, which reads as under:-

> "**6.** The next thing is whether the nature of land being as aforesaid does thelaw permit change? In my view, State andits officials are still harbouring a misconception that once a land is recorded as Gair Mazarua Aam or such land, no settlement can be made by anyone at any point of time. The sooner this wrong impression is erased, the better it is because on this spacious plea, lot of damage is being done. It is well settled judicially that such lands can be settled. That being so, it cannot be said that as the lands were recorded as Gair Mazarua Aam, Gair Mazarua Khas or Qaisar-e-Hind, the settlements in respect thereof and the Jamabandi in respect thereof becomes suspect, or becomes illegal. There cannot be any such presumption or assumption. Those assumptions and presumptions are clearly misplaced. I can "here

usefully refer to the judgment of this Court in the case of *Chandeshwari Prasad Narain Deo* v. *State of Bihar* since reported in 1956 BUR 24 as also to the case of *Laxman Sahai* v. *State of Bihar* since reported in 1990 (1) BLJ 457.

36. The aforesaid decision further goes on to say that it is a settled law that gairmazarua Aam, kaisere hind or gairmazarua khas land can also be settled by ex-land lord and there is no bar. Reliance is also placed on the decision reported in ***2016 (3) PLJR 237 (Yadunandan Singh Vrs. State of Bihar)***, paragraphs 14 and 15. It is submitted that the land vested in the State is no longer open in view of the zamindari Return (Exhibit-5) and also in view of the registered sale deed by the ex-land lord to the raiyat namely Syed Shah Mujtaba Hassan in the year 1944 through registered sale deed dated 17.08.1944 (Exhibit 1-B), which is prior to 01.01.1946 and in view of the same having been marked without objection and in view of Section 4(h) of the Bihar Land Reforms Act, the genuineness thereof cannot be examined being a registered document prior to 01.01.1946 and on the date of vesting the said transferred land no longer remains the lands of ex-land lord. There was no question of vesting of those land in the State of Bihar. Learned counsel for the appellant has placed reliance on the

decision reported in ***2019 (1) BLJ 597 Smt. Shashi Kala Vrs. State of Bihar through Collector, Gaya & Anr.)***.

37. After having heard learned counsel for the appellants and learned counsel for the respondents, the main question involved in all the four appeals is whether a notice under Section 377 of the Bihar & Orissa Municipal Act, 1922, was at all essential when the Notified Area Committee and Municipality concerned fully contested the suit as parties and never pressed their objections before the learned Trial Court on this point ?

38. The relevant provisions contained in Section 377 of the Bihar & Orissa Municipal Act, 1922 is extracted, which is as follows:-

> ***"377. Notice of suits against Commissioners:-***
>
> *(1) No suit shall be brought against the Commissioners of any municipality, or any of their officers of any person acting under their direction, for anything done under this Act until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners, and also (if the suit is intended to be brought against any officer of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit is threatened to be brought, stating the cause of suit and the name and place of abode of the person who intends to bring the suit; and unless such notice be proved, the court shall find for the defendant;*

> *(2) Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.*
>
> *(3) If the Commissioners or their officers, or any person to whom any such notice is given, shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover."*

39. On a plain reading of Section 377 of the Bihar & Orissa Municipal Act, 1922, for the purpose of protecting a public authority from the suits in respect of bona fide acts purporting to have been performed under the aegis of a lawful Act in which in spite of the bona fide of the public authority the law has been overstepped and a tort has been committed. The word "Act" used in Section refers to tortuous and not to any Act arising out of a contractual or quasi contractual basis. Section 377 of the Bihar & Orissa Municipal Act, 1922 is attracted only when the order in question is legally passed under the Act. In the case of ***Dwarka Prasad Marwari and Another Vrs. The Municipal Commissioners Through Chairman, Bhagalpur, Municipality*** reported in ***1959 BLJR 121***. In that decision, His Lordship with the help of other related decisions came to the conclusion that Section 377 of the Bihar & Orissa Municipal Act, 1922 bars only the suits filed against the Municipality for damages of a tortuous act and not a suit for declaration that certain orders was illegally

and for injunction restraining the Municipality from enforcing that order. In another decision of this Court reported in ***AIR 1936, Patna 323 (Kanhya Lal Missir Vrs. Mt. Hira Bibi)***, it has been held that Section 377 of the Bihar & Orissa Municipal Act, 1922 like similarly Legislation in India is for the purpose of protecting a public authority from suits in respect of the Acts bona fide purporting to have been performed under the aegis of the lawful Act, in which in spite of the bona fide of the public authority, the law has been overstepped and a tort has been committed. It was held that this Section was not intended to apply to suits for the recovery of some money other than damages for tort which are lawfully recoverable either under the restitution or at common law in the case of Notified Area Committee to the ***Notified Area Committee Through The Vice Chairman, Notified Area Commitee & Anr. Vrs. Shri Chharapal Singh & Anr.)., reported in 2000 (1) BBCJ 488***.

40. After considering the aforesaid decision, this Court has held that from a reading of Section 377 of the Bihar & Orissa Municipal Act, 1922 as well from the decision noticed above, it is manifest that this provision provides a protection to the Municipality and its officials only in a suit for damages or a tortuous act and not to other suits including a suit for declaration.

41. So far as the decision reported in ***2014 (6) SCC 394, Nagar Palika Parishad, Mihona (supra)***, the Hon'ble Supreme Court has held that suit for declaration of plaintiff's title to property and permanent injunction filed against Nagar Palika without first challenging notice already issued under Section 187 by Nagar Palika for removal of encroachment made by the plaintiff on that property, the suit is not maintainable. It is apparent from the decision in the case of ***Nagar Palika Parishad (supra)***, the suit was filed without challenging the notice issued under Section 187 of M.P. Municipalities Act, 1961 by Nagar Palika for removal of encroachment made by the plaintiff. This fact has not emerged in the present appeals. In another decision of the Hon'ble Supreme Court in the case of ***City Municipal Council (supra)***, the Hon'ble Apex Court has held that *the Municipal Council is not a Public Officer, and no notice is necessary when a suit is filed against a Municipality. Thus, the question of sufficiency of notice under Section 80 C.P.C. does not arise at all. Further, the issuance of notice under Section 284(1) of the Karnatka Municipalities Act, 1964 also does not arise for the reason that the dispute between the parties in the suit does not attract the above provision of the Act and, therefore, we need not advert to and answer the above contention.*

42. Moreover, in paragraph-18 of the plaint, it is specifically pleaded that Executive Officer, Notified Area Committee is not a Public Officer and no notice is necessary for filing the suit and seeks permission in a separate application before the learned Trial Court and the leave was granted without service of any notice under Section 80 (1) C.P.C. The same will be deemed to have been waived and cannot be permitted to be raised in view of the decision reported in ***A.I.R. 1964 SC 1300 (Subal Chandra Nath Saha & Ors. Vrs. Sudhir Chandra Ghosh & Ors.).*** However, plaintiff-appellant has also come against the finding that the notice under Section 377 of the Bihar & Orrisa Municipl Act is mandatory. As far as this aspect is concerned, the same has been dealt with above in detail and this Court has come to the finding that the same is not attracted in the instant matter.

43. In view of the above discussion, the substantial question of law formulated with regard to notice under Section 377 of the Bihar & Orissa Municipal Act, 1922 is answered against the appellant in S.A. No. 139 of 2002, S.A. No 140 of 2002. However, this question is answered in favour of appellant in S.A. No. 122 of 2002 and S.A. No. 123 of 2002.

44. Considering the rival submissions and materials available on records, it is apparent that the sale deed dated

05-08-1971 executed in favor of vendor of intervenor - defendant by his grandfather with regard to one acre of land of plot No. 5205, out of 1.98 acres had remained unchallenged and, therefore, the sale deed dated 05-08-1971, is not vitiated and that the intention of the grandfather of vendor (Mehjoob grandsons) of the intervenor -defendant was to transfer the title of the said land to "*Mehjoob* grandson", wherein, in order to protect the right, title and interest of the vendor of the intervenor -defendant, his vendor (grandfather) got his other sons (vendors of plaintiff- appellant) as witness in the sale deed dated 05-01-1971 **(Exhibit A/1).**

45. Accordingly, learned appellate court has rightly held that the plaintiff is only entitled to 0.98 acre of the suit and the said judgment in I.A. No. 23 of 1993 and I.A. No. 25 of 1993 is affirmed.

46. In view of the above discussion and findings, the judgment and decree of the Appellate Court is affirmed and, accordingly, the aforesaid four Second Appeals stand dismissed.

(Khatim Reza, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	01.12.2023
Uploading Date	
Transmission Date	