

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12213 of 2022**

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- 1.1. Geeta Devi Wife of Late Pandit Upendra Nath,
- 1.2. Sagar Kumar, son of Late Pandit Upendra Nath,
- 1.3. Anshu Kumar, son of Late Pandit Upendra Nath,
- 1.4. Kiran Kumari, Minor daughter of Late Pandit Upendra Nath and under guardianship of her mother Geeta Devi,  
All are resident of Mohalla-Gola Bazar, Police Station-Sherghati, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Homes Department, Government of Bihar, Patna.
2. The Principal Secretary, Homes Department, Government of Bihar, Patna.
3. The Principal Secretary, Revenue and Land Reforms, Government of Bihar, Patna.
4. The District Magistrate, Gaya.
5. The Superintendent of Police, Gaya.
6. The Sub-Divisional Magistrate, Sherghati, Gaya.
7. The Circle Officer, Sherghati, Gaya.
8. Sh Sudhir Tiwary, presently posted as the Circle Officer, Sherghati, Gaya.
9. The S.H.O., Sherghati, Gaya.
10. Smt. Hemanti Devi W/o Yamuna Prajapati R/o Bela, P.S.- Hunterganj Hiring Chatra, District- Chatra, Jharkhand.
11. Smt. Manju Devi W/o Baiju Prajapati R/o Gosaidih Chatra, P.S.- Sahi, District- Chatra, Jharkhand.
12. Anshuman Raj S/o Phulchand Prajapati R/o Line Mohalla, P.S.- Chatra, District- Chatra.
13. Vishundev Prajapati S/o Late Lohari Prajapati R/o Mohalla- Gola Bazar Sherghati, P.S.- Sherghat, District- Gaya.
14. Manju Devi W/o Sanjay Kumar Verma R/o Mohalla- Gola Bazar, Sherghati, P.S.- Sherghati, District- Gaya.
15. Smt. Baby Devi W/o Raj Kumar Verma R/o Mohalla- Gola Bazar, Sherghati, P.S.- Sherghati, District- Gaya.
16. Vishal Kumar Sinha S/o Shyam Prasad Sinha R/o Mohalla- Chand Chaura Suryakund, P.O.- Chand Chaura, P.S.- Vishnupad, District- Gaya.
17. Ashish Kumar S/o Shambhu Prasad R/o Mohalla- Mallah Toli, P.S.- Civil Lines, District- Gaya.
18. Rajesh Kumar S/o Ram Pravesh Singh R/o Shri Krishna Nagar, P.H.E.D. Colony, Aurangabad, P.S.- Aurangabad, District- Aurangabad.

... .. Respondent/s



**Appearance :**

For the Petitioner/s : Mr. Dhananjay Kumr  
For the State : Mr.Md. Khurshid Alam (Aag12)  
For respondents 13, 16 to 18 : Mr. P. N.Shahi, Senior Advocate  
Mr. Pravin Kumar  
For respondent nos. 14 & 15 : Mr. Ashutosh Singh  
Mr. Indra Mohan Kumar

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**

**JUDGMENT AND ORDER**

**C.A.V.**

**Date : 22-08-2025**

The Petitioners have invoked the extra ordinary jurisdiction of this Court, under Article 226 of the Constitution of India, seeking issuance of writ of prohibition or any other appropriate writs/orders/directions, restraining the respondents from forcibly and illegally dispossessing the petitioner from the physical and peaceful possession of his property, having Old Khata No. 1040, Plot No. 38, Old Khata no. 1138, Plot No. 1231, Old Khata No. 1138, Plot no. 1229, ad measuring 18 decimals, situated at Mauza Sherghati, Thana No. 762, Ward No. 12, Police Station Sherghati, in the district of Gaya.

2. Shorn of all unnecessary details, the brief facts, leading to the filing of the present writ petition, are that Gardhu Kumhar had three sons, first Lohri Kumhar, second Ram Prasad Kumhar, and third Pun Kumhar. The first son of Gardhu Kumhar, Lohri Kumhar, had two sons and three daughters, namely, Bishnu Deo Kumhar @ Bishnudev Prajapati (respondent no. 13), Krishna



Prajapati, Manju Devi (respondent no.11), Hemanti Devi (respondent no.10), and Late Shakuntala Devi. Late Shakuntala Devi was survived by her only son, Anshuman Raj (respondent no. 12). The second son of Gardhu Kumhar, Ram Prasad Kumhar, had three sons, namely, Pandit Upendra Nath (the original writ petitioner, now deceased and substituted by his legal heirs), Satyendra Prajapati, and Birendra Prajapati. The third son of Gardhu Kumhar, Pun Kumhar, had three sons, namely, Niranjana Prajapati, Ashok Prajapati, and Ajay Prajapati.

3. The present dispute is between the descendants of Lohri Kumhar and Ram Prasad Kumhar and some persons, who have been arrayed as private respondents on the ground that they have purchased the disputed property in question. The descendants of Pun Kumhar are not directly involved in the subject matter of this writ petition.

4. The genesis of the present dispute can be traced back to the year 1960, when Partition Suit No. 60 of 1960 was filed by Lohri Kumhar and Bishnu Deo Kumhar (minor son of Lohri Kumhar, represented through his father, Lohri Kumhar) against Gardhu Kumhar, Ram Prasad Kumhar and Pun Kumhar, claiming 4 annas share in the suit property mentioned in Schedule A (immovable) and Schedule B (movable). The total area of



immovable property was shown to be 121.5 decimals. The said suit was subsequently withdrawn by the plaintiff, Lohri Kumhar and Bishnu Deo Kumhar, *inter alia* on the ground that the suit property was the self-acquired property of his father, Gardhu Kumhar.

5. Thereafter, the wife of Lohri Kumhar, along with Bishnu Deo Kumhar, filed another partition suit, after 9 years, bearing Partition Suit No.132 of 1970, against the same defendants and ultimately the partition suit was decreed in favour of the plaintiffs by judgment and decree dated 30.11.1976.

6. The aggrieved party, i.e. the defendants preferred First Appeal No.159 of 1977 before this Court, challenging the aforesaid judgment and decree dated 30.11.1976, passed in Partition Suit No.132 of 1970. The appeal was decided on 30.09.1996, whereby the judgment and decree of the learned District Court, passed in Partition Suit No. 132 of 1970, was set aside. Further, against the said judgment passed in First Appeal No. 159 of 1977, Lohri Kumhar and another preferred L.P.A. No. 1222 of 1996, which was dismissed on 02.02.2006.

7. Learned Counsel for the petitioners argued that the question of title and ownership of the property in question in the present proceedings stands conclusively determined in favour of



the petitioners inasmuch as the judgment and decree of the learned District Court was set aside by this Court in First Appeal No. 159 of 1997, and the decision passed in First Appeal No. 159 of 1977 attained finality upon dismissal of L.P.A. No. 1222 of 1996, filed against the judgment passed in First Appeal No. 159 of 1977.

8. In support of the claim of ownership, learned Counsel placed reliance on a registered gift deed, dated 20.08.1970, executed by Gardhu Kumhar in favour of the original writ petitioner, and the petitioners are in possession of 28 decimals of land appertaining to plot no. 1231 as an absolute owner based on the said gift deed. It is submitted that the execution of the gift deed was never challenged by Lohri Kumhar or his son, Bishnu Deo Kumhar, and the validity of the said registered gift deed has, thus, remained unassailed. This gift deed forms an additional and independent basis for claim of ownership of the petitioners over the disputed land.

9. Learned Counsel next submits that the matter remained dormant for several years and it was only in the year 2014 that three tenants of the shops of the original writ petitioner, namely, Bigan Mistry, Budhiraj Gupta, and Gulab Chand Mistry, filed CWJC No. 5288 of 2014 before this Court against the illegal action taken by the State authorities as well as certain private



respondents, namely, Raj Kumar Verma, Sanjay Verma, Lohri Kumhar, and Bishun Deo Kumhar. It was alleged in the writ petition that the private respondents had illegally put locks on the shops of the petitioners and had forcibly blocked the main entrance of the shops by storing sand and stone chips in front of the shops.

**10.** The said writ petition was disposed by this Court by order, dated 28.11.2018, observing that without going into the question of title, the Court has no hesitation in holding that once the tenant-petitioners were in possession of the shops in question, they could not have been dispossessed nor could their shops be locked without an order of a Civil Court of competent jurisdiction. Accordingly, the writ petition was disposed with a direction to the District Magistrate to ensure that possession of the shops in question is handed back to the petitioners therein, i.e., the tenants of the said shops, and they shall be entitled to remain in peaceful possession of the shops in question until and unless there is any adverse order passed by a Civil Court of competent jurisdiction.

**11.** Against the judgment passed by the learned Single Judge in CWJC No. 5288 of 2014, Raj Kumar Verma and Sanjay Verma, who were private respondents and the purchasers, preferred Letters Patent Appeal No. 1735 of 2018. The said appeal was allowed by a Division Bench of this Court, holding that the



learned Single Judge ought not have issued directions amounting to decree of possession in the manner framed in the impugned judgment. It was further observed that the respondents ought to have approached the appropriate forum for redressal of their grievances and, similarly, if the landlord had any grievance, he too ought to have claimed his rights before the proper civil forum. Accordingly, the parties were directed to seek redressal before the competent authority or court. It is submitted that although the judgment of the learned Single Judge was set aside in the *intra court* appeal, the possession of the tenants was not disturbed and the parties were merely relegated to the appropriate forum for adjudication of their respective claims.

**12.** Learned counsel for the petitioners further submits that respondent nos. 10 to 12, claiming through their mother, Late Sakuntala Devi, being descendants of Lohri Kumhar, have executed a registered sale deed on 01.07.2022 in favour of Vishal Kumar Sinha, Ashish Kumar and Rajesh Kumar. The said sale deed purports to transfer land comprised of Old Khata No. 1040, Old Plot No. 38, measuring an area of 11.4 decimals, with given boundary, Old Khata No. 1138, Old Plot No. 1231, measuring an area of 1.8 decimals, Old Khata No. 1138, Old Plot No. 1229, measuring an area of 3 decimals (total area of 13.5 decimals),



situated at Mauza Sherghati. It is submitted that the sale deed contains false and fabricated recitals, as the vendors has no legal right, title or possession over the said land and the purported transfer is contrary to the findings recorded by this Court in First Appeal No. 159 of 1977 and L.P.A. No. 1222 of 1996.

**13.** He further submits that Vishundev Prajapati, son of Late Lohri Kumhar, executed an agreement for sale on 11.07.2022 in favour of the aforesaid purchasers, namely, Vishal Kumar Sinha, Ashish Kumar, and Rajesh Kumar, in respect of the land comprised of Old Khata No. 1040, Plot No. 38 (area 3.8 decimals), Old Khata No. 1138, Old Plot No. 1231 (area 0.6 decimals), and Old Khata No. 1138, Plot No. 1229 (area 0.1 decimals), situated at Mauza Sherghati. It has been submitted that the said agreement is false and fabricated containing incorrect recitals as to the title of the executant, and the same was executed without payment of any earnest money. The petitioner asserts that the executant had no right, title or interest over the said plots and the agreement is contrary to the findings recorded by this Court in First Appeal No. 159 of 1997 as well as in L.P.A. No. 1222 of 1996.

**14.** Learned Counsel further submits that Old Plot No. 38, under Khata No. 1040, having a total area of 57 decimals is recorded in the name of Budhia Kumhain, wife of Late Gardhu



Kumhar. The entire plot is in the possession of the petitioners and was the subject matter of the previous litigation, which ultimately stood decided in favour of the petitioners. There is collusion between private respondents, including the purchasers, and the local administration; particularly, the present Circle Officer, Sherghati and the Station House Officer of Sherghati Police Station.

**15.** The purchasers, namely Vishal Kumar Sinha, Ashish Kumar and Rajesh Kumar, in collusion with the local administration; particularly, the present Circle Officer, Sherghati, and the Station House Officer, Sherghati Police Station, are attempting to grab the land of the petitioners on the strength of illegal and void sale deed and agreement for sale. The brother of the original writ petitioner submitted an application before the Station House Officer, Sherghati Police Station, stating that on 19.07.2022, certain land grabbers arrived at the disputed property along with more than 100 persons, including Bishnudev Kumhar, Ranjan Kumar, Raj Kumar Verma and Sanjay Kumar Verma, with the intention of taking forcible possession of the land. It is alleged that these persons assaulted the family members of the petitioners, abused them and thereafter forcibly began measuring the land following the assault.



**16.** The Circle Officer, Sherghati, is misusing his official position in connivance with the land grabbers to dispossess the petitioners from the lands in question, over which the petitioners are in peaceful possession. The petitioners assert that there is a genuine and imminent apprehension of their forcible dispossession from the disputed land.

**17.** On the other hand, Mr. P. N. Shahi, learned Senior Counsel for the respondents no. 13 and 16 to 18, along with Mr. Ashutosh Singh, learned Counsel for the respondent nos. 14 and 15, took a preliminary objection as to the maintainability of the present writ petition on the ground that it involves complex questions of title and disputed questions of fact, which cannot be adjudicated in writ jurisdiction under Article 226 of the Constitution of India.

**18.** In support of the submission, they relied upon the decision of the Hon'ble Supreme Court, in the cases of **Shalini Shyam Shetty and Another v. Rajendra Shankar Patil**, reported in **(2010) 8 SCC 329** and **State of Rajasthan v. Bhawani Singh and Others (AIR 1992 SC 1018)**.

**19.** It has further been submitted that so far as possession is concerned, the petitioners claim to have been unlawfully dispossessed from the land in question; whereas, the



private respondents assert that they are in continuous possession of the said land. The respondents further contend that their stand is supported by the revenue records and mutation orders standing in their favour. The mutation appeal preferred by the petitioners has also been dismissed. It is further submitted that the land under consideration is situated in two different Khatas, namely Khata No. 1040 and Khata No. 1138, having a total area of 46 decimals. Neither anyone is dispossessing the petitioners from the property in question nor are the petitioners in peaceful possession of the same. The petitioners are habitual litigant, who have developed practice of filing multiple title suits. However, instead of filing a comprehensive title or partition suit covering the entire property, they selectively target one or two plots at a time; thereby, keeping the private respondents perpetually engaged in litigation. The present writ petition is yet another attempt by the petitioners for the same matter.

**20.** With regard to the validity of the gift deed, learned Senior Counsel submits that the petitioners are relying upon a registered gift deed, dated 20.08.1970, by which Gardhu Kumhar is stated to have gifted the land to the original writ petitioner, asserting it to be his self-acquired property. The veracity of the alleged gift deed was categorically negated in paragraph 31 of the



judgment passed in Title Suit Nos. 695 of 2015 and 546 of 2008, filed by the original writ petitioner, which was decided on 22.08.2016, in which it has been held that since the petitioner has not been able to prove any attesting witnesses or any documentary evidence, adverse inference may be drawn against the petitioner. The registered gift deed is dated 20.08.1970; whereas, the date of birth of the original writ petitioner is 06.05.1973. This chronological inconsistency casts a serious doubt on the genuineness and validity of the alleged registered gift deed.

**21.** It has also been submitted that as per the family settlement, dated 25.01.1973, between Ram Prasad Kumhar and Pun Kumhar, one-third share of the entire property was given to Pun Kumhar, who, thereafter, came in possession of his share and started enjoying the same. This family arrangement is acknowledged in all suits filed by the original writ petitioner. Subsequently, Pun Kumhar passed away, leaving behind his wife, Sumitra Devi, and three sons, namely, Niranjan Prajapati, Ashok Prajapati, and Ajay Prajapati. Upon his demise, all his legal heirs came into joint possession of the property. Thereafter, on 01.09.2003, the heirs of Late Pun Kumhar jointly executed two registered sale deeds in favour of Smt. Manju Devi (respondent no. 14) and Smt. Baby Devi (respondent no. 15). 11.38 decimals of



land from Old Khata No. 1040, Plot No. 38, and 22.82 decimals of land from Old Khata No. 1138, Plot Nos. 1229, 1231, 1236, 1237, and from Old Khata No. 1040, Plot No. 38, were sold under these sale deeds. Following the purchase, respondent nos. 14 and 15 came into possession of the said property, started enjoying it and duly mutated their names in the revenue records.

**22.** Accordingly, it has been submitted that the mutation stands in favour of the respondents, which reflects the bona fide nature of their claim on the property in question. In contrast, the application for mutation filed by the original writ petitioner in the year 2013-14 was rejected by the Circle Officer, Sherghati, by order, dated 31.12.2013. Thereafter, the original writ petitioner preferred a mutation appeal, which too was rejected by order dated 24.10.2014.

**23.** With respect to the property held by Lohri Kumhar, it has been submitted that he mutated his name in the revenue records and a separate jamabandi was created in his name. He started paying rent and land revenue to the competent authority. The original writ petitioner never challenged this mutation or the creation of separate jamabandi before any competent authority.

**24.** It has further been submitted by learned Counsel that the controversy involved in respect of Khata No. 1138, Plot No.



1229, is no longer *res integra*. Reliance has been placed on the order, dated 16.07.2019, passed in LPA No. 1735 of 2018 and LPA No. 524 of 2019, by a Division Bench wherein it was held that if the landlord had any grievance with regard to the property, the same ought to have been agitated before the appropriate forum. The Division Bench, in categorical terms, directed the parties to approach the appropriate forum for redressal of their grievances. The present writ petition is nothing but an attempt to circumvent such direction and to re-agitate the matter in writ jurisdiction, which is impermissible in law.

**25.** Upon the demise of Gardhu Kumhar and mother, Budhia Kumhain, the property devolved equally upon all three sons, each being entitled to an undivided one-third share therein, as per the applicable law of succession. Consequently, Lohri Kumhar, being one of the sons, has a lawful right to one-third share of his parental property. The petitioner, under the garb of the alleged gift deed, is essentially asserting a claim to his share in the joint family property. Such a claim, involving adjudication of title, is such a matter, which cannot be decided in exercise of writ jurisdiction under Article 226 of the Constitution of India, and the proper remedy lies before the civil court of competent jurisdiction.



**26.** Learned Counsel for the State respondents submits that in compliance of the interim order, dated 01.09.2022, passed by this Hon'ble Court, the Superintendent of Police, Gaya, directed the Police Inspector -cum- SHO of Sherghati Police Station to submit a report. Pursuant thereto, the S.H.O, Sherghati Police Station, submitted a report to the Superintendent of Police, Gaya, by letter, dated 23.09.2022. From the said report, it appears that there is land dispute between both parties and mutual tension prevails between them. In view of this tension, preventive action, under Section 107 of the Code of Criminal Procedure, was initiated against both parties on the basis of police report. The report further states that regular monitoring is being done over the disputed land through patrolling and enforcement of law and order measures, and at present, no construction work is going upon the disputed property and notice has also been served upon the applicants, directing them to maintain *status quo* over the disputed land.

**27.** The respondent no. 13, namely, Bishundev Prajapati, submitted an application to the Circle Officer, Sherghati, Gaya, on 26.07.2022. The brother of the writ petitioner also submitted an application to the SHO, Sherghati Police Station, on 27.07.2022 in relation to the same dispute.



**28.** It has been further submitted that it is clear from the cadastral survey records that the land in question is the basis of discord between the original writ petitioner, Late Pandit Upendra Nath, and respondent nos. 10 to 18 of the present writ petition. The State of Bihar has no concern whatsoever with the land in question as the same is recorded as raiyati land.

**29.** I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

**30.** The petitioners have invoked writ jurisdiction of this Court seeking a writ of prohibition to restrain the respondents from forcibly dispossessing him from the property in question. The petitioners' submission is based mainly on the ground that the petitioners' ownership and possession flow from the registered gift deed, dated 20.08.1970 allegedly executed by Gardhu Kumhar in his favour. The said gift deed was never challenged by Lohri Kumhar, the brother of Ram Prasad Kumhar or his heirs, including Vishundev Prajapati in any earlier proceedings. Series of litigation took place, particularly, Partition Suit No. 132 of 1970, decreed on 30.11.1976, saying that the suit property is the ancestral property of Gardhu Kumhar. According to the petitioners, the findings recorded in First Appeal No. 159 of 1977 and L.P.A. No. 1222 of



1996 conclusively established their rights over the disputed land. The private respondents, in collusion with the local administration, are attempting to grab the land and there exists real apprehension of forcible dispossession.

**31.** On the other hand, the respondents, including the private respondents and the State officials, oppose the writ application on several grounds, contending that the writ petition is not maintainable as it involves serious and complex questions of title and possession, requiring appreciation of evidence and oral testimony. which cannot be adjudicated in writ jurisdiction under Article 226 of the Constitution of India. The respondents pointed out that the mutation entries are in their favour and asserted that separate jamabandi was created in the names of the purchasers, who have been paying rent and taxes. The ownership and possession are heavily contested before this Court, submitting that dispute of title and possession cannot be adjudicated in a writ proceeding.

**32.** This Court finds that two title suits have been filed by the original writ petitioner, bearing Title Suit Nos. 695 of 2015 and 546 of 2008, for declaration of tile and recovery of possession, which was decreed on 22.08.2016, in which it has been held that the original writ petitioner has not been able to prove any attesting



witnesses or any documentary evidence, as such adverse inference may be drawn against the petitioner and the title suits were dismissed by common judgment, dated 22.08.2016.

**33.** The Division Bench of this Court, in LPA Nos. 1735 of 2018 and 524 of 2019, vide order, dated 16.07.2019, filed by the private respondents/purchasers, has held that if the landlord had any grievance with regard to the property, the same ought to have been agitated before the appropriate forum. The Division Bench, in categorical terms, directed the parties to approach the appropriate forum for redressal of their grievances.

**34.** The Supreme Court, in the case of **Roshina T. v. Abdul Azeez K.T. and Others**, reported in **(2019) 2 SCC 329**, in paragraph 14, has stated that it has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of dispute relating to property rights between the private persons. The remedy, under Article 226 of the Constitution of India, shall not be available, except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for



which remedies under the general law, civil or criminal are available.

**35.** Paragraph 14 of **Roshina T.** (supra), is quoted herein below:-

“**14.** It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. (See *Mohan Pandey v. Usha Rani Rajgaria* [*Mohan Pandey v. Usha Rani Rajgaria*, (1992) 4 SCC 61] and *Dwarka Prasad Agarwal v. B.D. Agarwal* [*Dwarka Prasad Agarwal v. B.D. Agarwal*, (2003) 6 SCC 230] .)”

**36.** The Supreme Court, in yet another decision, in paragraph 25 of **Shubhas Jain v. Rajeshwari Shivam**, reported in



(2021) 20 SCC 454, has held that it is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts.

37. In the conspectus of facts and discussion held herein above, this Court is of the opinion that there is rival claim of title asserted by both the parties, both sides claim to be in control of the land, the private respondents are claiming possession on the basis of mutation entries done in their favour, multiple suits were filed by the original writ petitioner and dismissed, as such, this matter cannot be adjudicated by this Court sitting in the writ jurisdiction, as it involves disputed and complex question of title and possession.

38. In the result, this writ application is dismissed.

39. There shall be no order as to costs.

40. The interlocutory application(s), if any, also stands disposed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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