

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.49 of 2011

1. Salim Hazam, son of Late Jhuri Hazam, resident of Village Chainpur, P.S. Chainpur, District Kaimur Bhabua.
2. Ajimu Hazam, son of Late Jhuri Hazam, resident of Village Chainpur, P.S. Chainpur, District Kaimur Bhabua.
3. Nasimu Hazam, son of Late Jhuri Hazam, resident of Village Chainpur, P.S. Chainpur, District Kaimur Bhabua.
4. Moho Hazam, son of Late Jhuri Hazam, resident of Village Chainpur, P.S. Chainpur, District Kaimur Bhabua.
5. Saud Hazam, son of Late Jhuri Hazam, resident of Village Chainpur, P.S. Chainpur, District Kaimur Bhabua.
6. Madina Hazam, son of Late Jhuri Hazam, resident of Village Chainpur, P.S. Chainpur, District Kaimur Bhabua.
7. Jalau Mian, son of Late Jhuri Hazam, resident of Village Chainpur, P.S. Chainpur, District Kaimur Bhabua.
8. Safiruddin Hazam, son of Late Takauddin Hazam, resident of Village Chainpur, P.S. Chainpur, District Kaimur Bhabua.

... .. Appellant/s

Versus

- 2.1. Raphiu Jama Kha, son of Late Masihi Jama Kha, resident of Village and P.O. and P.S.-Chainpur, District-Kaimur at Bhabua.
- 2.2. Shamim Jama Kha, son of Late Masihi Jama Kha, resident of Village and P.O. and P.S.-Chainpur, District-Kaimur at Bhabua.
- 2.3. Tawalat @ Muni Begum daughter of Late Masihi Jama Kha and wife of Diwan Azad, resident of Village Nawghara, P.S.-Chanpur, District-Kaimur at Bhabua.
3. Waki Jama Khan, son of Late Badiujama Khan, resident of Village Chainpur, P.S. Chainpur, District Kaimur (Bhabua).
4. Jareena Khatoon, son of Late Badiujama Khan, resident of Village Chainpur, P.S. Chainpur, District Kaimur (Bhabua).
5. Gunna Khatoon, son of Late Badiujama Khan, resident of Village Chainpur, P.S. Chainpur, District Kaimur (Bhabua).
6. Sanno Bibi, wife of Madujama Hazam, resident of Village Chainpur, P.S. Chainpur, District Kaimur (Bhabua).
7. State of Bihar through Collector, Kaimur. At Bhabua, District-Kaimur (Bhabua).
8. Sharfaraz Ahmad Khan, S/o Late Gulam Mohammad Khan, resident of Village and P.P. and P.S.-Chainpur, District-Kaimur.
9. Wahazul Khan, S/o Diwan Klamuddin Khan, resident of Village-Nwaghara, P.O. and P.S.-Chainpur, District-Kaimur.

... .. Respondent/s



Appearance :

For the Appellant/s : Mr. Waliur Rahman, Advocate
Mr. Shailendra Kumar Tiwary, Advocate
For the Respondent/s : Mr. Binod Kumar Singh, Advocate
Ms. Vagisha Pragya Vacaknavi, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

Date : 18-06-2026

Heard Mr. Waliur Rahman, learned counsel for the appellants and Mr. Binod Kumar Singh, learned counsel for the respondents.

2. This Second Appeal has been preferred against the judgment and decree of affirmance dated 06.12.2010 passed in Title Appeal No. 29 of 2003 / 41 of 2009 by the learned Additional District Judge, F.T.C.-I, Kaimur at Bhabua, whereby the judgment and decree dated 28.05.2003 passed by the learned Sub-Judge-II, Bhabua in Title Suit No. 133 of 1992 has been affirmed.

3. The plaintiffs are the appellants and the defendants are the respondents in the instant Second Appeal.

4. The present appeal was admitted on 11.02.2016 and following substantial questions of law was formulated while admitting the appeal.

(i) Whether the appellate court below in not considering and scrutinizing the evidence adduced on behalf of the plaintiffs has abdicated its



jurisdiction as appellate court and the impugned judgment and decree passed by it is vulnerable?

5. In order to gauge the matter in its correct perspective, it is necessary to briefly re-state what the suit entails.

6. The plaintiffs/appellants filed Title Suit No. 133 of 1992 for declaration of their title over the suit land described fully in the Schedule of the plaint.

7. The case of the plaintiffs is that C.S. Khata No. 118, C.S. Plot No. 864, 865, 867 & 868 belong to Maharaj Banaras. The plaintiffs further contended that C.S. Plot No. 867 area 31 decimals under Khata No. 118 is recorded as Gairmajarua Malik and in the remarks column, the Makan (house) of the Kiju and Niju is recorded. After the death of Kiju and Niju, the house came in possession of the plaintiffs as descendants of the said Kiju and Niju who are in possession till date. In revisional Survey, Plot No. 1136 under R.S. Khata No. 817 wrongly recorded in the name of State of Bihar but in the remarks column, the name of the plaintiffs were recorded. The nature of the land was also wrongly recorded as *Parti Kadim*.

8. Further case of the plaintiffs is that C.S. Plot No. 864 having an area of 53 decimal is *Parti Kadim* over which the ancestor of the plaintiffs had planted trees which is mentioned in C.S. Khatian in the remarks column. Such trees are still in



existence, over which the plaintiffs are in possession. It is further pleaded that C.S. Plot No. 865 is recorded as Gadha (ditch) which was filled up by the ancestor of the plaintiffs and amalgamated with C.S. Plot No. 864. The said C.S. Plots are numbered as 1134 having area 60 decimal in revisional khatian. It is further case of the plaintiffs that there is Mazar of the ancestor of the plaintiffs over Plot No. 1137/1901 and plaintiffs have provided pathway over Plot No. 1134 to Plot No. 1137/1901. The plaintiffs had house over C.S. Plot No. 867 area 31 decimal out of which R.S. Plot No. 1132 and 1133/1902 was recorded in the name of plaintiffs but Plot No. 1133/1902 area 10 decimal got wrongly recorded in the name of State of Bihar.

9. It is further case of the plaintiffs that the plaintiffs heard rumour in the month of December, 1990, that original defendant no. 1, namely, Badiuzzama Khan (who died during the pendency of the suit and his heirs were substituted by the order of learned trial court) got his name recorded in R.S. Plot No. 1901 area 60 decimal in collusion with consolidation authorities. Thereafter, the plaintiffs filed application for obtaining certified copy on 05.12.1990 which was received by them on 17.12.1990. The plaintiffs filed Consolidation Appeal No. 869 of 1990-91 against the order of Consolidation Officer before the Deputy



Director, Consolidation, Sasaram, Bhabua, but since the operation of consolidation proceeding was stayed and no further proceeding was taken on such appeal, the plaintiffs had neither any knowledge of the consolidation proceedings nor any notice was issued to them. The area is chak out land and the matter related to the title. The Consolidation Officer has no power to look into the matter with regard to the suit land. Therefore, the Consolidation Officer had no jurisdiction to pass order with regard to the suit land. Therefore, the order of Consolidation Officer is null and void. So far R.S. Plot No. 1134 is concerned, which is *Kaymi* land of the plaintiffs, without knowledge of the plaintiffs, the original defendant no. 1 got fraudulently his name entered in the revisional survey khatian, which was not known to the plaintiffs. Hence, the necessity of the suit arose and further contended that there is no time for giving notice under Section 80(1) of the Code of Civil Procedure (in short 'CPC'). Therefore, the suit was instituted under Section 80(2) of CPC and a separate application for grant of permission was filed.

10. On Summon, defendant no. 1 appeared and filed his written statement. He died on 18.08.1993 during the pendency of the suit and his heirs were substituted. It is further contended that the heirs of original defendant also filed their written statement



stating therein that the suit is not maintainable and also barred by law of limitation and the suit is fit to be dismissed under section 4(b) and 4(c) of the The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (In short 'the Consolidation Act) being barred by resjudicata. The heirs of original defendant no. 1 adopted the written statement of defendant no. 1 and also denied the claim of the plaintiffs. It is further contended that Maharaj Banaras was not the landlord of the suit land rather Kishori Raman Prasad and Radha Raman Prasad were the ex-landlord of the the suit land of Mauza Chainpur till the vesting of Zamindari. The name of Kiju and Nizu were not mentioned in the remarks column nor the plaintiffs' ancestor had planted any tree over the suit land. It is pleaded that ancestor of these defendants has filled up the ditch and made the suit land cultivable. Survey Khatiyan has been correctly prepared and recorded and there is Mazar of ancestor of the defendant over plot no. 1137/1901. These defendants are using the pathway over the suit plot and the plaintiffs have no concern with it.

11. Further case of the defendant no. 1 is that he had filed consolidation appeal before the Deputy Director Consolidation against the order of Consolidation Officer which was dismissed vide order dated 23.08.1993. Against which the



plaintiffs did not file any revision against the said order. Revisional Survey Khatiyan has been prepared in the name of Badiuzzama Khan with respect to Plot No. 1134 and Case No. 490/1990-91 filed by the plaintiffs' father was also dismissed (wrongly noted in the trial court judgment, Ext. 4/a) against which no appeal was filed by the plaintiffs against the said order. The claim of settlement or gift by the ex-landlord in favour of plaintiffs is wrong and concocted. It is further case of the defendant no. 1 that Plot No. 864 and 865 are settled land of Badiuzzama for which he had paid rent to the ex-landlord and rent receipts and Return has also been submitted by the ex-landlord under the Bihar Land Reforms Act in the name of Badiuzzama Khan and accordingly, after enquiry, Register-II was prepared in the name of Badiuzzama Khan and getting rent receipts for the same from the State of Bihar. It is further contended that in the same revisional survey and consolidation, Khatiyan of Plot No. 864 and 865 were prepared in the name of Badiuzzama Khan. The heirs of defendant no. 1 have got title and possession over the suit since more than 12 years. It is also pleaded that Mannu Bibi was grand mother of Badiuzzama Khan, and the ancestor of substituted defendants, had filled up the ditch over plot no. 864 & 865 and made it culturable and are continuing in possession of the same since long. The



plaintiffs are not entitled to any relief and the suit is fit to be dismissed.

12. The State of Bihar (defendant no. 2) has also filed written statement stating therein that the State of Bihar is in possession of the suit land, hence the plaintiffs have no right to file this suit and the suit as framed is not maintainable. It is further pleaded that the suit land is recorded as Anabad Bihar Sarkar Parti Kadim and is in possession of the State of Bihar. Ex-landlord was Maharaj Banaras and there was partition amongst their co-sharers. The plaintiffs had no concern with the said land. The survey authorities have rightly prepared and recorded survey khatian. The other defendants have also no concern with the suit land rather the plaintiffs and defendants 1st set have brought this suit in collusion.

13. On consideration of pleadings of the parties, issues were framed by the trial court.

14. The plaintiffs have examined 6 witnesses and also filed documentary evidence in support of their case. However, defendant no. 1 also filed certified copy of Survey Khatian (Ext.-A), certified copy of order of Consolidation Officer (Ext.-B) and Ext.-C is the Register of land prepared under Section 9 of the Consolidation Act. No oral evidence has been adduced by him or



by his heirs. Both the defendants did not adduce any evidence nor cross-examined any plaintiffs' witnesses.

15. On analyzing the evidence and materials on record, the learned trial court dismissed the suit holding that Ext-3 (compromise petition) filed in the instant suit shows the collusion of plaintiffs and defendant 1st set. Ext-5 is the Khatian in respect of Khata No. 817 and 316 prepared in the name of Salim Hajam, Azim Hajam and Nasim Hajam, son of Jhuri Hajam. Ext.- 5/a is the revisional survey Khatian and Ext-6 and 6/a are the survey map of the respective khatian which are not the documents of title. The plaintiffs have not exhibited any document with regard to title. It is further held that the name of the ancestor of the defendant 1st set has been shown as illegal possession of the Khata No. 817 in the revisional survey Khatian which has been prepared as Anabad Bihar Sarkar. This exhibit does not prove even legal/valid possession of the defendant 1st set. After vesting of Zamindari, the State of Bihar has become full owner of the suit land. After vesting of Zamindari to the State, the right of defendant 1st set got ceased. The defendant did not acquire any right title from defendant no. 2 (State of Bihar). Therefore, the revisional Survey Khatian has been rightly prepared in the name of State of Bihar as Anabad Bihar Sarkar. The defendant 1st set has not



produced any document of settlement or any letter of the State of Bihar or any evidence in respect of his legal possession and title over the suit land. The plaintiffs' document Ext.-3 (compromise Petition) filed in the instant case on behalf of the plaintiffs as well as defendant 1st set proves the fact and the plaintiffs and defendant 1st set are in collusion as it was without the consent of defendant no. 2 and after examining the evidence and pleadings, the learned trial court held that the plaintiffs have failed to prove their title and legal possession over the suit land. Hence, the plaintiffs have no title and legal possession over the suit land. Defendant 1st set had no concern with the suit land and have no title over the land in question. The suit land belongs to the State of Bihar. Accordingly, the suit has been dismissed without cost.

16. Aggrieved thereof, the plaintiffs assailed the judgment and decree of the learned trial court in Title Appeal No. 29 of 2003 / 41 of 2009 before the learned first appellate court.

17. The learned first appellate court on analyzing the evidence and materials on record, has held that the plaintiffs' claim is on the basis of settlement/gift by Maharaj Banaras but no document of settlement/gift has been exhibited before the trial court. In paragraph 8 of the plaint, the plaintiffs pleaded that old Plot No. 865 (C.S. Plot) recorded as Gadha (ditch) in the C.S.



Khatiyan, but it was filled by ancestor of the plaintiffs and amalgamated with the C.S. Plot No. 864 which has been numbered as R.S. Plot No. 1134 area 60 decimal in the revisional survey Khatiyan while R.S. Plot No. 1134 having area 60 decimal recorded in the name of defendant no. 1 (Ext.-A). It appears from Ext.-A that R.S. Plot No. 1134 belongs to defendant no. 1. It is further held that in paragraph no. 11 of the plaint, the plaintiffs stated that their father filed Consolidation Appeal No. 869 of 1990-91, however the proceeding of consolidation was dropped and no order was passed in the said appeal, but from Ext.-B (order of the Deputy Director Consolidation, Rohtas), it reveals that Consolidation Appeal (Appeal No. 859 of 1990-91) filed by the father of plaintiffs/appellants) was dismissed. Therefore, the plaintiffs did not come before the court with fair hands and concealed the truth of the actual fact. The register of the land bearing Khata No. 346, Plot No. 1134 was prepared in the name of Budiuzzama Khan (defendant no. 1). Hence, defendant no. 1 is the Khatiyani raiyat of Plot Nos. 1134 and 1137 and rest land belonged to the State of Bihar, and further held that there is no merit in the title appeal and affirmed the judgment and decree dated 28.05.2003.



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

19. Learned counsel for the appellants has submitted that the learned courts below have not properly considered the evidence of the plaintiffs. It is apparent from the record that the defendant no. 1 filed his written statement but he did not adduce any evidence or cross-examine the witnesses of the plaintiffs. The learned trial court dismissed the suit and held that the plaintiffs have failed to prove their title and legal possession over the suit land and further held that the respondents 1st set had no title and possession over the suit land. The suit land belongs to the State of Bihar. The defendants did not choose to file any appeal or cross appeal against the aforesaid findings. Despite that, the learned first appellate court declared the title of the defendant 1st set over the part of the suit land, which has been subsequently sold, to respondent no. 8 & 9, who has been made party/respondent in the present appeal at the instance of the appellants. Such findings of the learned appellate court is against the provision of law. The appellate court below has committed error of jurisdiction in declaring the title of the defendant 1st set / respondents over a part of the suit land.



20. The learned counsel for the appellants has placed reliance upon the decision of the Hon'ble Apex Court in the case of *Chaudhary Sahu (dead) by Lrs. vs. State of Bihar* reported in *(1982) 1 SCC 232* and in the case of *Banarasi Vs. Ramphal* reported in *(2003) 9 SCC 606* in support of his further contention that the provision of Order XLI Rule 33 of the Code of Civil Procedure could not have been invoked in the facts and circumstances of the present case, by the learned first appellate court to grant the relief to the defendant 1st set.

21. The defendant 1st set /respondents failed to challenge the findings of the trial court. The said findings attained finality against the defendant/ respondent 1st set. Once the findings of the trial court becomes absolute against the defendant 1st set /respondents, then they have no locus to interfere with the findings in the Second Appeal rather the present Second Appeal remained between the plaintiffs/appellants and defendant no. 2 (State of Bihar). Therefore, the defendant 1st set/respondents have no locus in the present proceeding to contest the same even their purchasers too in view of the fact that the findings of trial court with regard to the title and possession has not been challenged in any appeal or in a cross objection, so any act thereafter is nullity in the eyes of law. Defendant no. 2 having knowing the aforesaid findings had



transferred the suit property during the pendency of the title appeal. The defendant no. 2 (State of Bihar) has neither proved his case nor cross-examined all the witnesses of the plaintiffs. In the present appeal, the State has not even appeared before this Court to support its claim.

22. Learned counsel for the appellants further submitted that the learned First Appellate Court had decided the appeal contrary to the provision Order XLI Rule 31 CPC and failed to exercise the mandate in true spirit and passed the judgment which is completely perverse and contrary to the evidence adduced by the plaintiffs. It is vehemently submitted that both the courts below failed to appreciate Ext.-4 and Ext.- 4/a (order of the Consolidation Officer in Case No. 491 of 1990-91 and Case No. 490 of 1990-91 filed under Section 10B of the Consolidation Act) whereby 10 decimal of Plot Nos. 1133, 1136, 1137/1902 of Khata No. 817 and Plot No. 864, 865/1134 area 60 decimal of Plot No. 1118 ordered to be corrected in favour of father of plaintiffs from Khata of State of Bihar and from Khata of Khatiyani raiyat i.e. the original defendant no. 1. Neither the State of Bihar nor original defendant challenged the said order of the consolidation authority. All the aspects have not been considered or discussed by the learned First Appellate Court. Moreover, the learned First Appellate Court



passed the judgment and decree contrary to the provision of Order XLI Rule 31 CPC. Hence, the appeal is to be allowed by setting aside the judgment and decree passed by the learned First Appellate Court.

23. Per contra, learned counsel for the respondent nos. 8 & 9, who are purchasers from original defendant no. 1, has submitted that the learned trial court firstly decided the issue nos. (ii) & (iii) and came to conclusion that the plaintiffs have failed to prove their title and legal possession on the suit land. The plaintiffs have no title and possession over the suit land. Defendant 1st set have no concern with the suit land and also no title and possession over the suit land. The suit land belongs to the State of Bihar. Accordingly, the suit was dismissed without cost by the learned trial court. Learned counsel further submitted that the suit filed by the plaintiffs was only for declaration of title and the plaintiffs did not seek relief for confirmation of possession or recovery of possession. Therefore, the plaintiffs cannot maintain the title suit in view of Order II Rule 2(2) and 3 of CPC as well as the proviso of Section 34 of the Specific Relief Act as framed by the trial court and the suit is not maintainable in the eye of law. The Hon'ble Apex Court decided the legal effect of proviso of Section 34 of the Specific Relief Act, 1963 as well as Order II Rule 2 CPC in the



case of *Venkataraja v. Vidyane Doureradjaperumal* reported in (2014) 14 SCC 502. The proviso of Section 34 of the Specific Relief Act takes away the discretion of the Court with regard to the grant of declaratory decree as prayed. It is submitted that during the pendency of the suit, the plaintiffs and defendant 1st set has entered into the compromise and it was agreed between them that the defendant 1st set has no concern with the land situated in Mauza Chainpur bearing R.S. Khata No. 817/C.S. Khata No. 118, R.S. Plot No. 1136 / C.S. Plot No. 868 area 3 decimal R.S. Khata No. 817 C.S. Khata No. 118, R.S. Plot No. 1133 area 3 decimal and R.S. Plot Nos. 1133, 1902/C.S. Plot No. 867 area 7 decimal. The aforesaid lands are in possession of the plaintiffs from the time of their ancestor and the claim of Government of Bihar is wrong. It is also agreed between the aforesaid plaintiffs and defendants that the plaintiffs have no concern with the land situated in Chainpur Mauza R.S. Khata No. 817 (C.S. Khata No. 118) R.S. Plot No. 1134, C.S. Plot No. 864 & 865 area 60 decimal land. The description of the aforesaid land given in paragraph no. 2 of the compromise petition dated 13.05.1997 belongs to the defendant 1st set. There is further recital also with respect to R.S. Plot No. 1901. The plaintiffs have admitted the title of defendant Baddiuzzama over R.S. Plot No. 1134 of R.S. Khata No. 346.



Therefore, there is no occasion to sought relief by the plaintiffs with respect to the declaration of title over Plot No. 1134 that too in Second Appeal where neither the plaintiffs nor the defendant 1st set have denied the execution of the said compromise petition on 13.05.1997. In fact, after the said compromise, the defendants did not adduce their evidence and left the pairvi from 25.01.2002. They also did not cross-examine any of the plaintiffs' witnesses. Therefore, the compromise arrived at between the parties is binding on the plaintiffs and defendant 1st set. The purchaser respondent nos. 8 & 9 are the transferee from the heirs of original defendant no. 1. When the plaintiffs admitted title of the vendor of the respondent, then they have relinquished their right. It is further submitted that once the plaintiffs deliberately and knowingly did not seek for consequential relief based on declaration of title, then the suit is not maintainable in the eyes of law. The record of right was finally prepared in the name of Badiuzzama Khan in respect of Plot No. 1134 area 60 decimal and Plot No. 1137 area 1.73 acres apart from other lands. So far as defendant no. 2 /respondent (State of Bihar) is concerned, the State of Bihar has not challenged the entry of the said Khatiyani prepared in favour of Badiuzzama Khan. It is further submitted that from perusal of evidence adduced by the plaintiffs/appellants, it is clear that they failed to



prove his title on the basis of settlement/gift made by Maharaj Banaras. Therefore, the learned courts below rightly rejected the claim of the plaintiffs. In any view of the matter, the plaintiffs/appellants and the heirs of Badiuzzama (original defendant) have settled their dispute in the suit and handed over Plot No. 1134 to them as per the compromise dated 13.05.1995 filed in the instant suit which was duly executed by both the parties (plaintiffs and respondents). Respondent nos. 8 & 9 are purchasers from Badiuzzama Khan and his heirs had entered into the compromise. Therefore, the Second Appeal is fit to be dismissed as no substantial question of law is involved in it.

24. Having considered the submissions made on behalf of the parties and upon perusal of the impugned judgments as well as substantial questions of law having been framed by this Court in this appeal, which is 'Whether the appellate court below in not considering and scrutinizing the evidence adduced on behalf of the plaintiffs has abdicated its jurisdiction as appellate court and the impugned judgment and decree passed by it is vulnerable?', this Court finds that the First Appellate Court has not framed any point for consideration and not discussed the evidence adduced by the plaintiffs. The learned First Appellate Court has only mentioned the name of the witness as well as description of exhibits. The



learned First Appellate Court failed to comply the mandatory provisions of Order 41 Rule 31 CPC. The court of first appeal must record its findings only after dealing with all issues of law as well as facts and evidence oral as well as documentary laid by the parties. In the present case, no evidence either oral or documentary was adduced by the defendant 1st set and 2nd set, the learned First Appellate Court should have displayed conscious application of mind and record findings supported by the reasons on issues and contentions in view of the scope and power conferred on it under Section 96 read with Order 41 Rule 31 CPC. It is apparent from the judgment of learned first appellate court that the appellate court has not discussed any issues thereby causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them from hearing in the appeal in accordance with law. Therefore, non-compliance of requirement of Order 41 Rule 31 CPC leads to infirmity in the judgment of the learned First Appellate Court.

25. On analysing the materials on records as well as judgment of learned First Appellate Court, this Court finds that the learned First Appellate Court has discussed the name of the witnesses of the plaintiffs in paragraph no. 8 of the impugned judgment only, whereas in paragraph no. 9 of the impugned



judgment of the learned First Appellate Court, it mentions only details of exhibits filed by the plaintiffs and in paragraph no. 10 mentions the exhibits filed by defendant no. 1 (which were not formally proved) whereas in paragraph no. 11 of the learned First Appellate Court's judgment, the learned appellate court only discussed the pleadings mentioned in paragraph no. 4 & 8 of the plaint and discarded the pleadings only on the basis of Ext.-A filed by defendant no. 1 which has not been proved by defendant no. 1 during trial. The defendant no. 1 neither adduced any witness nor filed any counter claim or cross appeal during the proceedings. In paragraph 12 of the judgment of learned First Appellate Court, the learned appellate court rejected the claim only on the basis of the Ext.-B said to be filed by defendant no. 1, which was not formally proved by him and declared the title of the defendant 1st set/respondent over the part of the suit land and rest land of the suit has been declared as land of Government of Bihar without discussing the evidence oral or documentary adduced by the plaintiffs. The learned First Appellate Court had to set out points for determination, record the decision thereon and give it own reasons. Even when the learned First Appellate Court affirms the judgment of trial court, it is required to comply with the requirement of Order 41 Rule 31 CPC and non-observance of



requirement leads to infirmity in the judgment of learned First Appellate Court. This view has been taken by the Hon'ble Apex Court in the case of ***B.V. Nagesh & Anr. Vs. H. V. Sreenivasa Murthy*** reported in ***(2010) 13 SCC 530***. The appeal before the lower appellate court involved both the disputed question of law and facts and the learned First Appellate Court without examining any of these aspects, has dismissed the appeal by a cryptic judgment. The learned lower appellate court below has neither re-appreciated the evidence of the plaintiffs nor it has passed a reasoned judgment. The court of appeal below has failed to follow the provision of order 41 Rule 31 CPC while deciding the appeal. Further, this Court finds that Ext.-A and Ext.-B has been mentioned in Paragraph nos. 10,11 & 12 in the appellate court judgment but the said exhibits have not been discussed in the judgment of the trial court rather the learned trial court mentioned that there is no evidence adduced on behalf of the defendants.

26. In the light of the narrative and discussions (Supra) , there can be no doubt that the learned lower appellate court erred and was not justified in dismissing the appeal of the plaintiffs.

27. In the aforesaid facts and circumstances of the case, the substantial questions of law formulated is answered in favour of the appellants.



28. Consequently, the judgment of the first appellate court dated 06.12.2010 passed in Title Appeal No. 29 of 2003 /41 of 2009 by the learned Additional District Judge, F.T.C.-1, Kaimur, Bhabhua, is hereby set aside and the title appeal is remanded to the First Appellate Court to decide the appeal afresh in accordance with law.

29. The learned First Appellate Court is directed to dispose of the appeal, preferably within a period of 6 months from the date of receipt/production of copy of this judgment after due notice to the parties and affording opportunity of hearing.

30. In the result, the appeal succeeds and is, accordingly, allowed.

31. All the contentions of the parties are left open.

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

33. Office is directed to return the lower court records to the concerned court.

34. There will be no order as to cost.

(Khatim Reza, J)

premchand/-

AFR/NAFR	AFR
CAV DATE	30.01.2026
Uploading Date	19.06.2026
Transmission Date	N/A

