

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.179 of 2018

1. The State Of Bihar through Collector, Gaya.
2. Anchal Adhikari, Dobhi Anchal, District Gaya.

... .. Appellant/s

Versus

- 1.1. Geeta Devi Widow of Late Sheo Nath Prasad Gupta Resident of Mohalla Shivam Market, Badi Masjid, in the town of Ara Chowk, P.S. Ara Town, District- Bhojpur.
- 1.2. Sanjay Kumar Son of Late Sheo Nath Prasad Gupta Resident of Mohalla Shivam Market, Badi Masjid, in the town of Ara Chowk, P.S. Ara Town, District- Bhojpur.
- 1.3. Rajeev Kumar Son of Late Sheo Nath Prasad Gupta Resident of Mohalla Shivam Market, Badi Masjid, in the town of Ara Chowk, P.S. Ara Town, District- Bhojpur.
2. Mukhiya, Nawadih, Karmauni Panchayat, P.O. Bajora, P.S. Dobhi, District Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Uday Shankar Sharan Singh, GP. 19
For Respondent nos.1.1-1.3:		Mr. P.N. Shahi, Sr. Advocate
		Mr. Pankaj Kumar Jha, Advocate
		Mr. Sanjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 15-05-2025

Heard Mr. Uday Sharan Singh, learned G.P. 19 for the
appellants and Mr. P.N. Shahi, learned senior counsel for the
respondent nos. 1.1, 1.2 & 1.3.



2. This Second Appeal has been filed against the judgment and decree dated 31.03.2017 passed by the learned District Judge, Gaya in Title Appeal No. 24 of 2011 whereby, the learned lower Appellate Court has reversed the judgment and decree dated 05.02.2011 passed by the learned Sub Judge- III, Gaya, in Title Suit No. 161 of 2009/ 383 of 2004.

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

(i) Whether the finding recorded by the learned appellate court is based on completely wrong reading of document namely, Ext. 10 (regarding purchased deed of the respondents as well as Ext.12 (regarding its nature) making the finding perverse?

(ii) Whether the learned appellate court has failed to consider that the suit filed before the learned trial court was barred by limitation?

(iii) Whether while reversing judgment and decree of the learned trial court, the finding of the learned appellate court suffers from perversity for not meeting the reasons given by the learned trial court and thus not following the provisions under Order 41 Rule 31 of the Code of Civil Procedure?



4. In order to gauge the matter in its correct perspective, it is necessary to briefly re-state what the suit entails. Originally, the suit was filed by Sanjay Kumar who was Power of Attorney holder of Shivnath Prasad Gupta @ Bhola Prasad son of Kedarnath Prasad filed Suit No. 161 of 2009/383 of 2004 for declaration of right, title, interest and possession over the Schedule III lands and also for confirmation of possession. The plaintiffs-respondents has also sought relief for permanent injunction restraining the defendants not to interfere with the peaceful possession of the plaintiffs over the suit land. Further, in the alternative, the plaintiff sought relief that if the plaintiff is found dispossessed during the pendency of the suit, the possession be restored through the process of Court.

5. The case of the plaintiff, in brief, is that the land of Khata No. 49 bearing Cadestral Survey Plot Nos. 570, 752, 780, 784, 858, 859 and 861 measuring 42 acres 97 decimals and Khata No. 751, 753, 781, 782, 783 and 857 measuring 15 acres 91 decimals, situated at village- Karmani, Tauzi No. 4548, Thana No. 793 was recorded in the cadestral record of rights as “*Gairmazarua Mokararidar*” with respect to C.S. Khata No. 49 whereas the land of C.S. Khata No. 50 was recorded as “*Gairmazarua Aam*”. The ex-landlords namely, Abdul Aziz, and



others made land of C.S. Khata No. 50 as culturable and Bakasht land. Further case of the plaintiff is that, Babu Kamta Prasad, one of the ex-landlord of the said village brought a partition suit bearing Partition Suit No. 22 of 1933 before the court of Sub-Judge -III, Gaya against the Abdul Wahid Khan and others son of late Abdul Aziz and Mostt. Mujibul Nissa (widow of late Abdul Aziz) for partition of land for allotment of separate takhta to the plaintiffs with respect to C.S. Khata No. 49 and 50. On contest, suit was decreed in favour of said Babu Kamta Prasad and on the basis of the report of Pleader Commissioner, final decree was prepared whereby lands under C.S. Khata No. 49, Plot Nos. 752, 784, 780 and 782 measuring 13 acres 4 decimals and under C.S. Khata No. 50, Plot No. 782 measuring 84 decimals was allotted to Babu Kamta Prasad accordingly, they came in exclusive possession over the same. It is further contended that the final decree was prepared and attached with map in which land allotted to Babu Kamta Prasad is shown in red colour and the land of Md. Abdul Wahid is shown in blue colour. After passing of the final decree, separate *takhta* in the name of Babu Kamta Prasad was recorded under Tauzi No. 12427 of the village instead of Tauzi No. 454. Further case of the plaintiff is that Kamta Prasad recognized one Makbul Khan son of Maulvi Jahangir Khan, as Raiyat. When



he failed to pay rent to the landlord, a rent suit bearing Rent Suit No. 619 of 1946 was filed by the said ex-landlord namely, Babu Kamta Prasad against the said Raiyat in the Court of Munsif Ist, Gaya, which was decreed on contest in favour of Kamta Prasad on 19.12.1947. Subsequently, in the year 1955, Makbul Ahmad Khan transferred his raiyati interest in favour of Kedarnath Gupta and executed a registered sale deed dated 18.08.1955 with regard to C.S. Khata No. 49 Plot nos. 780/916, 780/917, 780/918, 780/919 and 780, total area 11 Bigha 2 katha 10½ dhur and accordingly, the said Kedarnath Gupta came in possession of the purchased land. The said Kedarnath Gupta was an employee of ex-landlord namely, Kamta Prasad and he rendered his services as a servant and the said ex-landlord namely Babu Kamta Prasad was very much pleased with his service and settled the area of 8 bighas 1 katha 11 dhurs in respect of land of C.S. Khata No. 49 and 50 and delivered possession to Kedarnath Gupta and accordingly, a written Hukumnama of the said settlement has been issued on 30.06.1944 in favour of Kedarnath Gupta as settle. The said Hukumnama was followed by Zamindari rent receipts as settled Raiyat in favour of Kedarnath Gupta.

6. The further case of the plaintiff is that at the time of vesting of Zamindari, the ex-landlord orally allotted different



Tauzi to his seven sons and as such Tauzi No. 12427 was allotted to Krishna Murari Prasad and Ravindra Murari Prasad (both sons of Kamta Prasad) and at the time of vesting, said Kamta Prasad and Krishna Murari Prasad filed return for Zamindari Estate vide Compensation No. 191/92/73-72/32798/54-55 in which the name of Makbul Ahmad Khan and Kedarnath Gupta were shown as Raiyat and the name of Kedarnath Gupta was entered in the said demand register and he got rent receipts. Kedarnath Gupta died in the year 1961 leaving behind his son namely, Sheonath Prasad @ Bhola Prasad Gupta, who inherited and succeeded the entire property left by his father. The said Sheonath Gupta @ Bhola executed a registered Power of Attorney on 17.02.1993 in favour of Sanjay Kumar and also orally entrusted to Devendra Prasad @ Udit Prasad (father of Sanjay Kumar) to look after the management of the suit land and the said Devendra Prasad @ Udit Prasad had an opportunity for irrigation over the land of C.S. Khata No. 50, C.S. Plot No. 782 (old) 1291 (new) under a Government scheme on the subsidy facility and by availing the said facility he got a boring installed over the said lands which is being used for the purpose of irrigation, the same is still being used by the plaintiff.



7. It is further pleaded that during the Revisional Survey operation, the C.S. Khata No. 49 Plot No. 780, 784, 752, 782 carved out into Revisional Survey Plot No. 1280, 1271, 1276, 1277, 1285 and 1294 measuring 12 acres 4 decimals, the Khata was opened in the name of State of Bihar and in its remarks column, it is mentioned “illegal possession of Kamta Prasad”. The detail description of the land is given in Schedule III of the plaint. It is further case of the plaintiff that C.S. Khata No. 49, C.S. Plot No. 1273 measuring 85 decimals was opened in the name of Bhola Prasad. The rent receipts is being issued in the name of Bhola Prasad. The details of the said land is given in Schedule- IV of the plaint. Revisional survey records of rights with respect to the Schedule III land was prepared and is running illegally without proper inquiry and verification. It is further contended that the Schedule III land of the plaint never remained parti or Sarvasadharn, rather, the same has been in cultivating possession of the plaintiff and the State of Bihar has no right, title and possession over the suit land. The plaintiff has/had been in possession since the date of written settlement (Hukumnama) and purchased over the Schedule III land. When the plaintiff went to Karamchari for paying rent of the said land, he refused to accept the rent with respect to the suit land from the plaintiff on the



ground that the Khata has been opened in the name of State of Bihar 'Sarvasadharn' and gave threatening to dispossess the plaintiff from the suit land. After service of notice under Section 80 of the CPC, the present suit was filed.

8. On summons, defendant nos. 1 & 2 (appellants) appeared but did not file any written statement and defendant no. 3 has not made any case against the plaintiffs in his written statement. The case was proceeded against them under Order VIII Rule 10 CPC on the basis of pleadings made by the plaintiffs. However, defendant nos. 1 & 2 neither adduced any evidence nor filed any oral and documentary evidence. Defendant no. 3 was examined as D.W. 1. The learned Trial Court prepared only one issue which is as follows:-

(I) Whether the plaintiff has brought this case on its merit or not?

9. After hearing, the learned Trial Court dismissed the suit on contest without cost.

10. Aggrieved by the judgment and decree of the learned trial court, the plaintiff assailed the said judgment and decree of the learned Trial Court in Title Appeal No. 24 of 2011 before the learned Appellate Court.



11. After hearing the parties, the learned lower Court formulated points for consideration in Title Appeal. The learned Appellate Court on analyzing the evidence and materials on record has held that the learned Trial Court in its judgment has mentioned that plaintiff has not produced Cadestral Survey Khatiyan and also did not produce judgment of Partition Suit No. 22 of 1933 but from perusal of record, it appears that Ext. 12(B) is certified copy of Cadestral Survey Khatiyan. The appellants (plaintiffs) have also filed final decree of Partition Suit No. 22 of 1933 (Ext. 14) and survey knowing Pleader Commissioner's report, which is the part of the final decree which contains separate *Takhta* and it was allotted to the concerned party with respect to C.S. Khata No. 49, Plot No. 752, 784, 780, 782 and the lands of C.S. Khata No. 50, Plot No. 782 and on the basis of Partition Suit No. 22 of 1933, Kedarnath Prasad came in exclusive possession over the land in suit. It is also mentioned that the Pleader Commissioner report is also attached with the map which is part of the final decree.

12. Learned Appellate Court further held that learned Court in its judgment has also mentioned that Power of Attorney dated 17.02.1993/04.04.2007 executed by Shivnath Prasad Gupta @ Bhola Prasad in favour of Sanjay Kumar in which no signature of Sanjay Kumar was put thereon. The learned Trial Court has



observed that Revisional Survey Khatian (Ext. 12 & 12A) was finally prepared in the year 1980 and the suit was brought after 24 years challenging the factum of Revisional Survey Khatian and no action was taken for about 20 years either by the Shivnath Prasad @ Bhola Prasad or his authorized agent therefore, the suit is barred by law of limitation. The learned Appellate Court agreed with the submissions made by the appellants (plaintiff) with regard to objection of the Trial Court in respect of Power of Attorney. Learned counsel for the appellant submitted that Power of Attorney is a unilateral contract and not a bilateral contract so signature of Sanjay Kumar is not needed for Power of Attorney. Moreover, Shivnath Prasad @ Bhola Prasad (Principal) has been examined in this case and he has not made objection regarding Power of Attorney. So far filing of the suit after 24 years of publication of Revisional Survey Khatian is concerned, it is admitted possession that plaintiff is in possession of the suit land. Adverse interest in the revenue record will not give rise to cause of action, right to sue accrues when there is a clear and unequivocal threat to infringe a right. Moreover, since the prayer has been made for declaration of title therefore, the relief sought for by the plaintiff cannot be said to be barred by law of limitation. The plea of the plaintiff that when the authority gave threat to dispossess



him, he filed the suit and cause of action arose on the date of threat.

13. Learned Appellate Court further held that from perusal of certified copy of judgment (Ext. 19 and 19 (a)) of Rent Suit No. 619 of 1946 and its decree signed on 10.01.1948 shows that Kamta Prasad was ex-landlord who filed rent suit against one of the Raiyats namely, Md. Makbul Khan for payment of due rent of the land in cultivation of Plot No. 780/916, 780/918, 780/917, 780/919 and the suit was decreed in favour of the said Kamta Prasad. The Appellate Court further referred witness P.W. 15, Shivnath Prasad Gupta @ Bhola Prasad, Devendra Prasad @ Udit Prasad and 6 P.Ws. have supported the contents of the plaint and also proved the documents filed by the plaintiffs-respondents. P.Ws. 6, 7, 18 have also supported continuous possession of the plaintiffs-respondents by virtue of Hukumnama (Ext. 17) dated 30.06.1944. Zamindari return (Ext. 10) filed in the name of Babu Kamta Prasad and ancestor of Shivnath Prasad son of late Kedarnath Gupta and registered sale deed executed by Makbul Khan in favour of Kedarnath Gupta proved the possession of the plaintiffs-respondents. It is further held that the law is well settled that the entry made in Khatiyani neither creates nor extinguishes the rightful title of the person. The presumption of correctness



attach with it can be rebutted. On that basis and considering the materials on record, it is held that plaintiff has succeeded in rebutting the presumption of correctness and proved his title over the suit land. The fact of the case is denied by the defendants-appellants in their submission and challenge of the documents and evidence of the plaintiff-respondent in absence of written statement by the State cannot be accepted. Lastly, it is held that plaintiff-respondent has got right, title, interest and possession over the suit land and the plaintiff is also entitled for decree for permanent injunction restraining the defendants not to interfere with the peaceful possession of the plaintiffs in respect of the suit land. Both the points are answered in favour of plaintiffs-respondents.

14. Learned counsel for the appellants submits that the learned Appellate Court below has failed to consider that Makbul Khan had executed the sale deed with regard to 11 Bighas 2 kathas 10 ½ dhurs (Ext. 9) while he was Raiyat of only 4.78 acres i.e. about 6 bighas of land. The said Makbul Khan executed sale deed in respect of an area of 11 bigha 2 katha 10 ½ dhurs but from Zamindari return (Ext. 10), it appears that Makbul Khan was Raiyat of about 6 bighas of land but in the suit, plaintiff is claiming title over about 14 bighas of Schedule III land.



15. Learned counsel for the appellants further submitted that the Appellate Court has not recorded any reason about the afore-mentioned discrepancy in the area of land and further not recorded any reason as to how the plaintiff is the title holder of the Schedule III land.

16. It is vehemently submitted by the appellants that the Revisional Survey Khatian was published in the year 1976 and the land, in question, is recorded as 'Anabad Sarva Sadharan'. It is further contended that from perusal of R.S. Khatian (Ext. 12), it appears that the original plaintiff had knowledge about R.S. Khatian in the year 1995 and the present suit was filed in the year 2004 as such, the suit is barred by law of limitation. Learned counsel for the appellants further submitted that the lower Appellate Court while reversing the findings of the Trial Court has not recorded its own reasoning that how the rent receipts proved the title of plaintiff when these receipts are not in the name of plaintiffs. So far Hukumnama and Zamindari rent receipts are concerned, ex-landlord of Tauzi No. 12427 has not filed Return in the name of Makbul Khan with regard to land mentioned in Hukumnama. After vesting of Zamindari, the Jamabandi was never created in the name of said Makbul Khan with respect to the land mentioned in Hukumnama. Plaintiff has not filed any rent receipts



with regard to the suit land issued by the State of Bihar. It is further contended that from perusal of the lower Appellate Court judgment, it appears that the Appellate Court has not followed the provisions envisaged in Order 41 Rule 31 of the Code of Civil Procedure and as such it is fit to be set aside.

17. On the other hand, learned counsel for the plaintiffs-respondents submitted that neither written statement nor any evidence (orally as well as documentary) has been adduced by the defendant in support of his submissions made by the defendants-appellants. The learned Trial Court has erred by giving its finding that plaintiff has not brought the Cadestral Survey Khatiyani on record but has failed to consider that certified copy of Cadestral Survey Khatiyani was filed on 25.03.2010 and the same was admitted on record on payment of cost on 18.01.2011 and thereafter marked as Ext. 12. Ext. 10, which is Zamindari return, has been brought on record. Prayer of the plaintiffs as per the requisition of the learned lower Court which has been complied by the Officer in-charge of District Revenue Department, Gaya, who has sent the original along with Hindi copy of the said Return of Compensation Case No. 32798 of 1954-55 standing in the name of Makbul Ahmad Khan given by the then landlord Sri. Krishna Murari Prasad but the learned Trial Court has failed to appreciate



that Ext. 10 and 11, both are on record. It is further submitted that original plaintiff filed suit for declaration of right, title, interest and confirmation of possession over the suit land and permanent injunction.

18. It is further argued that an entry in the record of rights neither creates nor extinguishes the right, it is merely rebuttable piece of evidence. The record of right is not a document of title at all and the entries in such document do not prove exclusive title of a person so recorded therein. It is further submitted that the suit was filed within the statutory period of limitation as there could be no occasion to file suit until there is an accrual of the right asserted in the plaint and its infringement or at least a clear and unequivocal threat to infringe that right by the defendants against whom the suit is instituted. In the present suit, the defendants-appellants threatened to dispossess the plaintiffs-respondents from the suit land in the year 2004, then only the present suit was filed.

19. Learned counsel for the plaintiffs-respondents contended that Kamta Prasad was ex-landlord, who filed Partition Suit against Wahid Khan and others which was decreed and a separate Takhta was allotted to the concerned parties with respect to Cadestral Khata No. 49 and 50. On the basis of partition suit,



the land under C.S. Khata No. 50 measuring 84 decimals allotted to the said Kamta Prasad. The said Kamta Prasad recognized Makbul Ahmad Khan as Raiyat who failed to pay rent to the landlord hence, Rent Suit No. 619 of 1946 was filed by Kamta Prasad against Makbul Ahmad Khan which was decreed in favour of Kamta Prasad. The said Makbul Ahmad Khan, who was the Raiyat of the said land, transferred his interest in favour of Kedarnath Gupta and executed sale deed dated 18.04.1955. Kedarnath Gupta purchased the land of C.S. Khata No. 49 having an area of 11 bigha 2 kathas 10.5 dhurs. The ex-landlord Kamta Prasad also settle an area 8 bigha 1 katha 11 dhur in respect of land of C.S. Khata No. 49 and 50 in favour of Kedarnath Gupta. Heirs of ex-landlord Kamta Prasad filed Return i.e Return Compensation case No. 32798 of 1954-55 in which the name of Makbul Ahmad Khan and others are shown as Raiyat. They were Raiyat with respect to C.S. Khata No. 49 and 50 and the name of Kedarnath Gupta entered in the Estate Demand register, who died in 1961, his son Shivnath Prasad Gupta @ Bhola Prasad inherited and succeeded Raiyati right of his father. Since then, he is in cultivating possession of the suit land and the Revisional Survey entry prepared in the name of Bihar Sarkar but in remarks column it is mentioned that illegal possession of Shivnath Prasad Gupta @



Bhola Prasad which is wrongly made without any verification. Learned Appellate Court rightly discussed all the issues and gave a definite finding against the finding of Trial Court. The Trial Court apparently failed to exercise its jurisdiction and wrongly held that the plaintiff has not filed original Return and Cadestral Survey Khatiyan, which is apparently error of record. The finding of the appellate court is just and proper and did not require any interference.

20. Considering the rival submissions of the parties and materials on record, it is apparent that the suit has been filed only for declaration of title and confirmation of possession and injunction, as regards, restraining the defendants from interfering with the peaceful possession of the plaintiffs. It transpires from the plaint that the plaintiff has not challenged order of the revisional survey authority nor any relief for correction of the entry in the revisional survey Khatiyan was sought. It is trite law that the entry in record of rights do not confer title. In the case of **State of H. P. v. Keshav Ram** reported in (1996) 11 SCC 257 the Hon'ble Supreme Court has held that *an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title*. In the case of **Suraj Bhan v. Financial Commissioner** reported in (2007) 6 SCC 186 the Hon'ble Apex Court has held that *an entry*



in revenue records does not confer title on a person whose name appears in record-of rights. It is settled law that entries in the revenue records or jamabandi have only “fiscal purpose”, i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. So far as the title to the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of **Municipal Corporation, Aurangabad v. State of Maharashtra**, [(2015) 16 SCC 689]; **T. Ravi v. B. Chinna Narasimha**, [(2017) 7 SCC 342]; **Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co.**, [(2019) 3 SCC 191]; **Prahlad Pradhan v. Sonu Kumhar**, [(2019) 10 SCC 259]; and **Ajit Kaur v. Darshan Singh**, [(2019) 13 SCC 70].

21. So far substantial question of law no. II i.e. Whether the learned appellate court has failed to consider that the suit filed before the learned trial court was barred by limitation? is concerned, the plaintiff has not challenged the entry in Revisional Survey Khatian while suit is only for declaration of title, confirmation of possession and for grant of injunction.

22. Articles 58 and 59 of the Schedule to the Act of 1963 prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or



rescission of a contract. The period of limitation prescribed in 58 and 59 of Act of 1963 is three years, which commences from the date when the right to sue first accrues. In the case of **Khatri Hotels Private Limited and Another vs. Union of India and Another** reported in (2011)9 SCC 126, the Hon'ble Apex Court has held that the use of word 'first' between the words "sue" and "accrued" would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the date when the right to sue first accrued. Thus, the right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed. The present suit was filed in the year 2004 and the cause of action for the suit arose on 01.06.2004 when the plaintiff went to Karamchari for payment of ground rent who refused to accept the rent with respect to the suit land from the plaintiff on the ground that the Khata has been opened in the name of State of Bihar as *Sarva Sadharan* and gave threatening to dispossess the plaintiff from the suit land. Therefore, the title of the plaintiff was threatened when the cause of action arose for the



first time and the suit was filed within the statutory period of limitation from the cause of action arising for the first time and therefore, the suit is not barred by law of limitation. The entry in the revisional survey cannot correct any title, therefore, the limitation could not take place from the entry in the revisional survey. It is well settled law that revenue record neither creates nor extinguishes the title, moreover, revisional survey Khatiyan is not an instrument of title.

23. So far substantial question of law no. I is concerned, Ext. 10 (Zamindari return lagit) as well as Ext.12 (registered sale deed dated 18.08.1955) was executed by Makbul Ahmad Khan in favour of Kedarnath Gupta (ancestor of plaintiff).

24. The specific case of the plaintiff, is that sale deed was executed by Makbul Ahmad Khan in favour of Kedarnath Gupta measuring an area 11 bigha 2 katha 10.5 dhurs of Khata No. 49. The details of the land has been mentioned in the Schedule I of the plaint which is as follows:-

S. No	Khata No.	Plot No.	Bigha	Katha	Dhur
1	49 Tauzi No. 12427 Thana No. 793	780/916	2	3	0
2.		780/917	0	12	3.5
3.		780/918	5	14	7
4.		780/919	0	6	10
5.		780	2	6	10
		Total	11	2	10.5



25. It is specific case of the plaintiff that he also acquired land through settlement, Hukumnama dated 30.05.1944 with regard to 8 bigha 11 katha 11 dhurs in respect of C.S. Khata No. 49 and 50 followed by Zamindari rent receipts whose details are mentioned in Schedule II. From perusal of Return Compensation Case No. 32798/1954-55 (Ext. 17) and Zamindari Return laggit (ext. 10) it appears that only the name of Makbul Ahmad Khan was mentioned in the Return with regard to 4 acres 78 decimals land of Khata no. 49. No where mentioned the land settled with Kedarnath Gupta through Hukumnama dated 30.06.1944 in the Return Compensation or Zamindari laggit (Ext. 17 & Ext. 10), while the specific claim of the plaintiff is that the ex-landlord filed Return in favour of Kedarnath Gupta. However, only the details of Raiyati interest of Makbul Ahmad Khan was mentioned in Return Compensation Case No. 32798/1954-55 and laggit which is as follows:-

S. No.	Tauzi no.	C.S. Khata No.	C.S. Plot No.	Area
1	Tauzi no. 12427	49	780/918	2 acres 98 decimals
2.	Tauzi no. 12427	49	780/916	1 acres 60 decimals
3.	Tauzi no. 12427	49	780	0.20 decimals
			Total Area	4 Acres, 78 decimals

26. It is apparent from the judgment of the lower Appellate court, which is final court of facts, that it did not consider the right, title of Makbul Ahmad Khan. He was only



entitled to 4 acres 78 decimals land of Khata No. 49, Plot No. 780/917, 780/919 and less area of Plot No. 780 i.e. 20 decimals in place of 2 bigha 6 katha 10 dhurs. The Return has been filed under Section 5, 6, 7 of the Bihar Land Reforms Act. The said Return has been accepted by the State. There is no documents on record to show that any appeal against the said acceptance of Return was filed by any concerned person including the ex-landlord. Therefore, the said Makbul Ahmad Khan was only a Raiyat in respect of Khata No. 49, Tauzi No. 12427, Thana No. 793 admeasuring an area 4 acres 78 decimals of land. He was only entitled to transfer the aforesaid land. The sale deed dated 18.08.1955 executed by the said Makbul Ahmad Khan is in excess of his right. The learned Appellate Court has not considered this aspect of the matter and claim of the plaintiff in respect of land mentioned in sale deed dated 18.08.1955 is apparently wrong. Plaintiff is only entitled through registered sale deed dated 18.08.1955 an area of 4 Acres 78 decimals as mentioned in Return Compensation Case No. Case No. 32798/1954-55 (ext. 17) and Zamindari Return laggit (ext. 10).

27. In the light of the narrative and discussion supra, there can be no doubt that the learned Lower Appellate Court erred and was not justified in decreeing the suit of the plaintiff with



regard to entire suit land. However, the plaintiff has come with a case of proving his title over Schedule III land of the plaint (Area 12 acres 4 decimals). In his effort, he could not succeed because the documents brought by him are mainly sale deed dated 18.04.1955 executed by Makbul Ahmad Khan, Hukumnama dated 30.06.1944 issued by ex-landlord namely, Kamta Prasad, Return Compensation Case No. Case No. 32798/1954-55 and Zamindari Return laggit. These documents do not fully support the case of the plaintiff for entire land of Schedule III of the plaint. It does not unequivocally indicates the entire claim of the plaintiff. Since the case was filed by the plaintiff it was the bounden duty of the plaintiff and the onus was squarely upon the plaintiff to prove his case. From the record, it is unambiguously clear that there is inherent weakness and the plaintiff has miserably failed to establish his right with regard to entire lands of Schedule III. However, he succeeds only to prove his title with respect to lands of C.S. Khata No. 49 Plot Nos. 780/919, 780/916 and 780 measuring an area 4 acres 78 decimals. Description of the said property has been mentioned in preceding paragraphs.

28. Accordingly, the judgment and decree passed by the lower Appellate Court is modified to the extent of C.S. Khata No. 49 whose details are mentioned in paragraph 25 of this judgment.



29. So far as substantial question of law no. (iii) is concerned, it is apparent from the judgment of the lower Appellate Court, who has set out points for determination and cited reasons for recording decision, that mere wrong interpretation of documents will not violate the provisions of Order 41 Rule 31 CPC. It is apparent from the judgment of the learned Appellate Court that the substantial compliance with regard to the provision of Order 41 Rule 31 CPC is sufficient. In the case of **G. Amalorpavam vs. R.C. Diocese of Madurai** reported in **(2006) 3 SCC 224**, the Apex court has held ‘9. *The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate court is in a position to ascertain the findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has*



considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination.

30. This Court does not find merit in the contention that the impugned judgment is liable to be set aside on this preliminary ground.

31. This appeal is for the reasons, indicated above, is allowed in part. The decision of the lower Appellate Court dated 31.03.2017 passed by the learned District Judge, Gaya in Title Appeal No. 24 of 2011 is modified and the plaintiff is held to be entitled to 4 acres 78 decimals land in C.S. Khata No. 49, C.S. Plot Nos. 780/918, 780/916 and 780 in Schedule III of the plaint which was accepted by the State in Return compensation (Ext. 17) and Return Zamabandi laggit (Ext. 10).

32. The 1st substantial question of law formulated is answered in favour of appellants and 2nd and 3rd substantial questions of law formulated is answered against the appellants.

33. In the result, the instant Second Appeal is allowed in part.



34. Learned Trial Court is directed to prepare the decree.
35. Pending interlocutory application(s), if any, stand
disposed of.

(Khatim Reza, J)

Sankalp/-

AFR/NAFR	AFR
CAV DATE	15.05.2025
Uploading Date	19.05.2025
Transmission Date	NA

