

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No. 34 of 2000

2. Radhe Shyam Hajjam Son of Ram Kishore Hajjam Resident of village-Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
3. Satyendra Hajjam Son of Ram Kishore Hajjam Resident of village-Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
4. Rajendra Hajjam Son of Ram Kishore Hajjam Resident of village-Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
5. Jitendra Hajjam(Minor) Minor son of Ram Kishore Hajjam Under the guardianship of his father Ram Kishore Hajjam Resident of village-Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
6. Pappu Hajjam(Minor) Minor son of Ram Kishore Hajjam Under the guardianship of his father Ram Kishore Hajjam Resident of village-Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
7. Rakesh Hajjam(Minor) Minor son of Radhey Shyam Hajjam Under the guardianship of his father Radhey Shyam Hajjam Resident of village-Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
8. Bikesh Hajjam(Minor) Minor son of Radhey Shyam Hajjam Under the guardianship of his father Radhey Shyam Hajjam Resident of village-Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
9. Sher Bahadur Hajjam(Minor) Minor son of Radhey Shyam Hajjam Under the guardianship of his father Radhey Shyam Hajjam Resident of village-Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
10. Bir Bahadur Hajjam Minor son of Rajendra Hajjam Under the guardianship of his father Rajendra Hajjam Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).

... .. Appellant/s

Versus

1. Bechu Pal Son of Dhora Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
2. Sechu Pal Son of Dhora Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
3. Nathuni Pal Son of Bechu Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
4. Munna Pal(Major) Son of Sechu Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
5. Manoj Pal(Major) Son of Sechu Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
6. Dew Chand Pal Son of late Chhedi Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
8. Raj Keshwar Pal Son of Dew Chand Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
9. Bagedu Pal Son of Dew Chand Pal Resident of village- Dewhalia, P.O.



- Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
10. Baleshwar Pal (Major) Son of Dewchand Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
 11. Sheo Jee Pal Son of Mulchand Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
 12. Teja Pal Son of Mulchand Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
 13. Mus Pal Son of Mulchand Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
 14. Satendra Pd.(Major) Son of Sheojee Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
 15. Majuman Pal Son of Balkishun Pal Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
 17. Bihari Hajjam Son of Awadhesh Hajjam Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
 18. Raj Kumar(Minor) Minor Son of Awadhesh Hajjam Under the guardianship of G.A.L. Sri A. Kamal Advocate Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).
 19. Bikau Hajjam Minor Son of Awadhesh Hajjam Under the guardianship of G.A.L. Sri A. Kamal Advocate Resident of village- Dewhalia, P.O. Dewhalia, P.S. Ramgarh, District- Kaimur(Bhabua).

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Pd.Singh,Adv.
For the Respondent/s : Mr. Ganpati Trivedi, Sr. Adv. With
Mr.Ambika Bhagat, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

Date : 04-01-2024

Heard Mr Jitendra Prasad Singh, learned counsel appearing on behalf of the appellants and Mr Ganpati Trivedi learned Senior counsel appearing on behalf of the respondents.

2. The plaintiffs/appellants have filed this Second Appeal against the judgment and decree dated 15/12/1999, passed by the Second Additional District Judge, Kaimur, (Bhabua)



whereby the learned Lower Appellate Court dismissed the appeal and confirmed the judgment and decree dated 19-01-1994, passed by the learned Munsif, (Bhabua), in Title Suit No. 47/91. The plaintiffs had filed the Title Suit for declaration of title and confirmation of possession over the suit land admeasuring 3 decimals towards North East, bearing Khata No. 76, Revisional Survey Plot No. 1271, Schedule- 'ka' and also for injunction. The learned Trial Court held that the suit is not barred by limitation, but on facts, it has been held that as there was entry in the revisional survey in the name of defendants, then the plaintiffs have no title over the suit land.

3. Being aggrieved by the aforesaid judgment and decree passed by the learned Trial Court, the plaintiffs have filed Title Appeal bearing T.A. No. 12/94/47/96 before the Court of learned Second Additional District Judge, Kaimur, (Bhabua).

4. The learned Lower Appellate Court, after hearing the parties, has found and held that the plaintiffs have title over the suit land and thereby reversing the findings of the learned Trial Court, dismissed the suit on the ground of Limitation alone as because the plaintiffs have not come up within 12 years from the date of entry in the revisional survey. Against the said judgment and decree passed by the learned Lower Appellate Court, the



plaintiffs-appellants have preferred the present Second Appeal.

5. On 24-09-2003, the following substantial question of law was formulated at the time of admission of the appeal:-

“(i) Whether the trial court committed error in denying the plaintiffs' title on basis of the entry in the revenue records?

(ii) Whether the appellate court committed error in holding that the suit of the plaintiff is barred by limitation?

(iii) Any other substantial questions of law may be raised at the time of hearing the appeal.”

6. The case of the plaintiffs/appellants, in nutshell, is that the plaintiffs and defendants are the members of joint Hindu family governed by Mitakshara School of law. The land bearing C.S. Plot No.688, area 10 decimals belongs to ancestor of the plaintiffs and defendants 2nd set having house and *Sahan*. The '*Khatiyani*' of the aforesaid land was recorded as '*Gairmajarua Malik*', but in the remarks column, possession was recorded in the name of grand father of plaintiffs and defendant no. 17. It is further case of the plaintiffs that adjacent western to Plot No.688, C. S. Plot No.689 is situated having an area of 9 decimal, over which house of Mangru Lohar was built up. Mangru Lohar died issueless, and as such, Plot No.689 came in the possession of Ex-landlord. It is further pleaded that 40-45 years ago, father of plaintiff no.1 and defendant no.17, namely, Ram Surat Hazam obtained five decimal of land in Plot No. 689



from the Ex-landlord after payment of Rs.25/- as '*Nazrana*' and thereafter constructed the house after amalgamation of the plot nos. 688 and 689 and came in possession over the same. After amalgamation of Plot Nos.688 and 689, the plaintiffs came in peaceful possession over total 15 decimals of land having house and *Sahan* over it. It is further pleaded that adjacent to the Plot No.688, the defendant 1st set has his house over plot no.687 having an area of 8 decimal. At the time of Revisional Survey the C.S. plot nos. 688 and 689 is renumbered as Revisional Survey Plot No.1272 and C.S.Plot No.687 is renumbered as Plot No.1271, but due to mistake of Revisional survey Authority, the map and Khatiyān has wrongly been prepared to the effect that three decimals of land of the plaintiffs has wrongly been included in the defendants' Plot bearing R. S. Plot No. 1271, although despite wrong survey entry plaintiffs were in peaceful possession over the total area of 15 decimals of R. S. Plot No.1272, which was wrongly prepared as 12 decimals, in place of 15 decimals. It is further contended that R. S.Plot No.1271 (defendants' plot) should be 8 decimal, but wrongly prepared as 11 decimals in favour of defendants 1st set. The defendants threatened the plaintiffs for dispossession. However, the plaintiffs requested the defendants not to claim their title over



the land in-question, but lastly they refused on 20.03.1991. The suit has been filed stating that the cause of action has arisen to the effect that their possession is being threatened by the defendants.

7. The case of the defendant 1st set in brief is that there was partition between the parties and Plot No.688, area 10 decimals was not the land of the plaintiffs rather the same was '*Gairmajarua Malik*' land and possession, recorded in favour of ancestor of the plaintiffs in the remark column, is wrong. They have pleaded that revisional survey record has rightly been prepared as the defendants are in possession over the land in-question. It is further contended that Plot No.688, area 10 decimals is the '*Gairmajarua Malik*' land and the same was settled by the ex-landlord, namely, Babu Sita Ram Singh in favour of ancestor of the defendants in the year 1940 on payment of Rs.30/- as '*Nazrana*'.

8. The defendant nos.17 to 20 (defendant 2nd set) have also filed their separate written statement and supporting the claim of the plaintiffs.

9. The learned counsel for the appellants submits that plot no.688 has been recorded as '*Gairmajarua Malik*' in the entry of cadastral survey record of right (Ext.2), but in the



remark column, possession of the ancestor of the plaintiffs was recorded with *Makan may Sahan* (house with vacant land). Therefore, it appears that prior to the cadastral survey, the ancestor of the plaintiffs was in possession over the land in question. It is further submitted that the rent was fixed in the year 1965 in favour of father of the plaintiff No.1, and as such, prior to the revisional survey, plaintiffs were in possession over the land in- question. Entry in the revisional survey '*Khatiyani*' in favour of defendant 1st set, does not create or extinguish title of the parties when possession of the plaintiffs was found prior to the cadastral survey.

10. The learned Lower Appellate Court, after considering the oral and documentary evidences, found and held that the plaintiffs have title and possession over the suit land. The learned Lower Appellate Court has further held that defendants have not produced any cogent evidence in order to disbelieve the case of the plaintiffs and, ultimately, the Lower Appellate Court reversed the finding of the Trial Court. So far Title and possession of the plaintiff is concerned, to buttress his submission, the learned counsel for the appellants has relied upon a decision reported in *(2014) 2 SCC 269 (Union of India & Ors. V. Vasavi Cooperative Housing Society Limited &*



Ors.), wherein the Hon'ble Apex Court has held that *the revenue records do not confer title*. It is further contended that plaintiffs' possession is being threatened by the defendants and on this score, the cause of action arose on 20-03-1991, not from the date of publication of revisional survey '*Khatiyani*'. It is further submitted that plaintiffs have not challenged the revisional survey entry by filing suit against the State because even after wrong survey entry, they have absolute title and possession over the suit land, and as such, Lower Appellate Court has committed jurisdictional error by holding that the suit is barred by limitation. It is further submitted that so far power exercised by the Lower Appellate Court Under Order 41 Rule 33 Code of Civil Procedure is concerned, the relief can not be granted in favour of the person, who has not preferred the appeal/ cross-objection although the Appellate Court has power to mould the relief under the aforesaid provisions, but the same is subject to at least three limitations; firstly, the power can not be exercised to the prejudice or advantage of the person not a party before the court, secondly, a claim given up or lost can not be revived and thirdly, such party of the decree which essentially ought to have been appealed against or objected to by a party and which that parties have permitted to achieve a



finality can not be reversed to the advantage of such party. Reliance has been placed in the case of ***Banarsi & Ors. V. Ram Phal reported in (2003)9 SCC 606***. The learned counsel for the appellants has vehemently submitted that the question of limitation has been decided in favour of the plaintiffs by the learned Trial Court against which, no cross appeal has been filed by the defendants and secondly, finding of Title and possession has been decided by the learned Lower Appellate Court in favour of the plaintiffs, against which cross appeal filed by the defendants has been rejected. Therefore, the relief cannot be granted to the defendants and finding of title and possession of the plaintiffs became final which cannot be reversed by the learned Lower Appellate Court by holding that the suit is barred by law of limitation even plaintiffs have title and possession over the suit land.

11. Mr. Ganpati Trivedi, learned Senior Counsel representing the respondents has vehemently argued on the point of limitation. It is submitted that plaintiffs have admitted in their evidence that they have knowledge about the final publication of revisional survey *Khatiyan* after four years of its publication. As per Articles 58 and 59 of the Indian Limitation Act, 1963, the period of limitation is three years, which comes



from the date when the right to sue first accrues. It is further submitted that the period of limitation will begin to run from the date, when the right to sue first accrues. If there are successful violation of 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 accrues. The learned Senior counsel further argued that Order 41 Rule 33 gives very wide power to the learned Lower Appellate Court to do complete justice between the parties and enables it to pass such decree or order as ought to have been passed or as the nature of the case may require notwithstanding that the party in whose favour the power is sought to be exercised has not filed appeal or cross-objection.

12. Considering the rival submissions 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 plaintiffs have not challenged the revisional survey entry nor any relief for correction of the entry in the revisional survey *Khatiyani* 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** wherein 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*. Reliance has been placed in the case of ***Suraj Bhan v. Financial Commissioner*** reported in **(2007) 6 SCC 186** wherein 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. 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. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court*. Similar view has been expressed in the cases of ***Suman Verma v. Union of India***, **(2004) 12 SCC 58**; ***Faqrudin v. Tajuddin*** **(2008) 8 SCC 12**; ***Rajinder Singh v. State of J&K***, **(2008) 9 SCC 368**; ***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**.

13. The learned Trial Court has wrongly denied the title



on the basis of entry made in the revenue records in the name of defendants whereas, the learned Lower Appellate Court has declared that the plaintiffs have right, title and possession over the suit land. The learned Lower Appellate Court has further held that the plaintiffs have right, title and possession over the suit land and only dismissed the suit on the ground of limitation and held that the suit is time barred as they failed to challenge the entry made in the revisional survey for correction.

14. In the light of the narrative and discussions above, in my opinion, the title of the plaintiff is clear from the fact that the name of the ancestor of the plaintiffs was recorded in the cadastral survey and were in continue possession. The appellate court found title and possession of the plaintiff but as the correction in the revisional survey was not sought by the plaintiff in the suit and thereafter held that the suit was filed after three years of final publication of the revisional survey and therefore the suit was time barred in view of Article 58 of the Limitation Act.

15. In my opinion, the appellate court erred in holding that the suit is time barred in view of entry in revisional survey having been not challenged within three years of publication of the revisional survey *Khatiyani*. While the suit is for declaration



of title and confirmation of possession and the plaintiffs have succeeded in establishing their title very much before publication of revisional survey. The title of plaintiffs was threatened when the cause of action arose for the first time and the suit has been 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 limitation. The entry in this revisional survey cannot create 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 title, moreover, revisional survey khatian is not an instruments of title. However, the title of the plaintiff is evident from the rent fixation document of 1965. In view of the long possession i.e. possessory title of the plaintiff is evident from the material on records. There is material to show that the plaintiffs were in actual possession much less continue possession of the property for a long period which may be called settled possession or established possession. In the case of *Rame Gowda (dead) by Lrs. vs. M. Varadappa Naidu (dead) by Lrs. and Another* reported in *(2004) 1 SCC 769*, the Hon'ble Apex Court has held that while discussing the Indian Law on the subject observed as follows in paragraph 8:-



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

16. Considering the facts and circumstances, the possessory title is a good title as against everybody other than the lawful owner. A person having possessory title can get a declaration that he was the owner of the land in suit. In the case of ***Somnath Burman Vs. Dr. S.P. Raju & Anr*** reported in ***(1969) 3 SCC 129*** wherein the Hon'ble Apex Court has held that the possession of the plaintiff was a sufficient evidence of title as owner against the defendant.

17. In view of the aforesaid facts, the plaintiffs are entitled to get their title and possession declared with respect to the suit property especially when there is presumption of continuity of possession before vesting or after vesting of Zamindari coupled with the settled law that possession was deemed to follow title.

18. This appeal is, for the reasons indicated above, allowed. The decision of the lower appellate court dated



15/12/1999, passed by the Second Additional District Judge, Kaimur, (Bhabua) in Title Appeal No. 12/94/47/96 is set aside with regard to suit is time barred and affirm the finding of title and possession of the plaintiffs. The substantial questions of law formulated are, therefore, answered in favour of the appellants.

19. This Second Appeal is got merit and accordingly, it is allowed.

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

(Khatim Reza, J)

shyambihari/-

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