

Yakub Khalifa @ Gauri Khalifa Vs Bibi Jaibun Nisa

Court: Jharkhand High Court

Date of Decision: Jan. 22, 2025

Acts Referred: Bihar Privileged Persons Homestead Tenancy Act, 1947 " Section 18, 21
Evidence Act, 1872 " Section 68

Hon'ble Judges: Anubha Rawat Choudhary, J

Bench: Single Bench

Advocate: S. K. Sharma, Manoj Kumar

Final Decision: Dismissed

Judgement

Anubha Rawat Choudhary, J

1. This second appeal has been filed against the judgment dated 31.03.2023 and decree dated 12.04.2023 passed by learned District Judge-II, Palamau

at Daltonganj in Civil Appeal (Title Appeal) No. 5 of 2017 whereby the appeal has been dismissed and the judgment dated 31.03.2017 (decree dated

21.04.2017) passed by learned Additional Junior Civil Judge, Palamau at Daltonganj in Title Suit No. 80 of 1995 has been affirmed.

2. The defendant is the appellant before this Court. The plaintiffs had filed suit seeking declaration of right and title of the plaintiffs in respect of the

suit property mentioned in schedule -A to the plaint and further sought a declaration that the privileged parcha granted to the defendant vide

Miscellaneous Case No. 3 of 1994-95 was fraudulent and without jurisdiction. A relief was prayed seeking eviction of the defendant from the suit

premises and a further prayer was made for a money decree of Rs. 900/-.

3. The learned counsel for the appellant has made the following submissions which have been recorded in the order dated 20.01.2025:-

A. While giving the background the learned counsel has submitted that the land originally belonged to one Jhuman Mian and after his death, his son Sk.

Md. Ismile came in possession of the property who sold the property by two registered sale deeds in favour of Sk. Ahmed Ali Ansari vide registered

sale deed dated 15.05.1961 and 16.01.1964 which is exhibit-4 and exhibit 4/A. As per the case of the plaintiff, Sk. Ahmed Ali Ansari gifted the

property by way of registered deed of gift to the daughter-in-law, who is the plaintiff no.1 before the Court. He has submitted that at no point of time,

the donor or the donee got possession of the property. Learned counsel for the appellant has submitted that the plaintiff no.1 was claiming property by

virtue of registered gift deed No. 1760 dated 16.02.1984 (Exhibit-B) but the gift was not complete in terms of the Mohammedan Law as the property

was never delivered to the plaintiff no.1.

B. He has also submitted that the defendant was in possession of the property for more than 60 years. It is submitted that the defendant had perfected

his title by way of adverse possession. He has also submitted that the suit was barred by limitation as the defendant was in possession of the property.

C. It is submitted that the suit was filed alleging that the defendant was the tenant under Sk. Ahmed Ali Ansari who was the donor with respect to the

gift and accordingly the suit itself was not maintainable.

D. The learned counsel submits that the landlord-tenant relationship has been ultimately held to be not established and as per the finding of the learned

Trial court as well as the appellate Court, the defendant was found to be in permissive possession of the property.

E. The learned counsel has also submitted that it has come on record that the defendant was issued 'Basgit Parcha' in Misc. Case No. 3 of 1994-95

by the Circle Officer but the Deputy Commissioner or the Circle Officer were not made party in the proceedings. He has submitted that the legality

and validity of the 'Basgit Parcha' has been entered into by the learned Court while denying relief to the defendant with respect to his right over the

property on the basis of 'Basgit Parcha' by observing that the necessary procedure etc. for grant of 'Basgit Parcha' were not followed. The learned

counsel submits that such a proceeding deciding the legality and validity of issuance of 'Basgit Parcha' is barred under Section 18 of the Bihar

Privileged Persons Homestead Tenancy Act.

F. The learned counsel submits that considering the fact that the defendant was in the possession of the property for a long period, the judgment

passed by both the courts have failed to consider that the suit itself was barred by limitation. He submits that the point of adverse possession has not

been properly considered by both the courts. The learned counsel submits that neither the gift was acted upon nor the courts have properly considered

the point of adverse possession and therefore the substantial question of law arises in the present case for consideration in spite of concurrent findings

by both the courts.

4. After hearing the learned counsel for the appellant, this court finds that the case of the plaintiffs was that the suit property was recorded in the

name of Jhuman Mian which devolved upon his son Sk. Md. Ismile who transferred the property to Sk. Ahmed Ali Ansari vide two sale-deeds dated

15.05.1961 and 16.01.1964 and was put in possession of the suit land. The land and the house on the suit property was mutated vide two Mutation

Cases both of the year 1962-63, the details of which were mentioned in the plaint. It was the case of the plaintiffs that they started paying rent to the

State.

5. It was the further case of the plaintiffs that the defendant was handed over the possession of the suit property on monthly rent and tenancy started

in the month of January, 1982. The plaintiff no.1 being the daughter-in-law was gifted the property by virtue of registered gift deed no. 1760 dated

16.02.1984 which was accepted by the plaintiff no.1 and the defendant started paying rent to the plaintiff no. 2 and thus, the defendant became tenant

under the plaintiffs. Plaintiff no.2 was the husband of the plaintiff no.1 who expired during the pendency of the suit and was substituted by his son.

6. The cause of action arose when the plaintiffs applied for mutation which was registered as Mutation Case No. 83 of 1985-86 and an objection was

filed on the ground of possession. The defendant had also applied for issuance of 'Basgit Parcha' of the suit premises. It was the further case of the

plaintiffs that the defendant had no right, title, interest and possession over the suit premises rather they were in permissive possession of the suit

property.

7. During the pendency of the suit and pursuant to order passed by the Deputy Commissioner, the plaint was amended by stating that the defendant

was not a privileged tenant or a privileged person and that the defendant fraudulently and without jurisdiction obtained 'Basgit Parcha' in respect of the

suit land without any notice to the plaintiffs of the suit and that no enquiry was conducted in terms of the provisions of Bihar Privileged Persons

Homestead Tenancy Act, 1947 (hereinafter referred to as the Act of 1947). Pursuant to the amendment of the plaint, a relief was sought seeking

a declaration that the privileged parcha granted vide Miscellaneous case No. 3 of 1994-95 was fraudulent and without jurisdiction.

8. The defendant in his written statement took a plea that the suit was barred in terms of the provisions of the aforesaid Act of 1947. It was the case

of the defendant that Jhuman Mian allowed the mother of the defendant to construct a house over the property and the defendant constructed a house

and they were living in the house. The land was recorded as "Belagan Raiyati". After death of Jhuman Mian, his son Sk. Md. Ismile never inherited

the suit land nor came in possession thereof and his name was never mutated in the records and the defendant was never tenant of the plaintiff and he

was residing over the suit property in his own right. It was further pleaded that the defendant was also paying rent to the State of Bihar with respect

to the suit premises. It was asserted that the deed of gift was false and baseless and the alleged donee never came in possession of the suit land and

the house. It was asserted by the defendant that he got 'Basgit Parcha' in Case No. 3 of 1994-95 by the order of the Collector which was legal and

valid and was binding upon the plaintiffs.

9. The learned trial Court framed as many as 9 issues, they were:

(1) Whether the suit filed by the plaintiff was maintainable?

(2) Whether the plaintiff had a cause of action for filing the suit?

(3) Whether the suit was barred by limitation and the defendant had acquired the right through adverse possession?

(4) Whether the suit was fit to be dismissed on account of non-joinder of necessary parties?

(5) Whether the suit was barred by estoppel, waiver and acquiescence?

(6) Whether the suit was barred under the provisions of Bihar Privileged Persons Homestead Tenancy Act, 1947 and whether the defendant had acquired the

property by virtue of Basgit Parcha in accordance with law?

(7) Whether the plaintiff has legal right, title and interest over the suit property?

(8) Whether there exists a relationship of landlord and tenant between the plaintiffs and defendant?

(9) Whether the plaintiffs are entitled for the relief as prayed?

10. The plaintiffs examined altogether 7 witnesses and numerous documents were exhibited on behalf of the plaintiffs including sale-deed dated

15.05.1961 (exhibit-4) and sale deed dated 16.01.1964 (exhibit- 4/A) by which the property was sold by Sk. Md. Ismile to Sk. Ahmed Ali Ansari. The

rent receipts were also exhibited. However, the plaintiff no.1 was not examined as witness. The gift deed was exhibited as Exhibit- 2. Various other

documents relating to mutation were also exhibited.

11. The defendant examined two witnesses namely Yakub Khalifa and Alim Alam. The 'Basgit Parcha' was exhibited as Exhibit-A, Certified copy of

order passed in Mutation Case No. 83 of 1985-86 was exhibited as Exhibit- B and certified copy of order passed in Mutation Case No. 108 of 1994-95

was exhibited as Exhibit-B/1.

12. The suit was decreed in favour of the plaintiffs but the point of land-lord tenant relationship was decided against the plaintiffs.

13. The defendant was in appeal. The learned First Appellate Court considered the materials on record and recorded concurrent finding and dismissed

the appeal. The point of determination as framed by the learned First Appellate Court were as many as 6 in number which are as under:

I. Whether Basgit Purcha granted to the defendant/appellant is lawful?

II. Whether the suit before the Ld. Court below is barred by law of limitation or not?

III. Whether the suit before the Ld. Court below suffers from non-joinder of necessary parties?

IV. Whether the gift executed in favour of the plaintiff/respondent is valid and genuine?

V. Whether the suit failed due to non-examination of the plaintiff/respondent?

VI. Whether the suit is barred by principle of adverse possession?

On the point of landlord - tenant relationship

14. The learned trial Court decided all the issues in favour of the plaintiffs except issue No. (8) and decreed the suit in favour of the plaintiffs and

directed the defendant to hand over vacant possession of the suit property. While deciding issue no. 8, the learned trial Court held that although the

plaintiffs had adduced oral evidence with regard to relationship of landlord and tenant but no documentary evidence was produced and there was no

clear evidence of relationship of landlord and tenant and accordingly, this issue was decided against the plaintiffs. The finding with regards to issue no.

8 became final as it was not under challenge at the first appellate stage.

On the point of validity of the gift of the suit property

The suit property was said to have been gifted by registered deed to the plaintiff no.1 by the owner of the property who was the father-in-law of the

plaintiff no.1 and grand father of the substituted plaintiff no.2.

Both the learned Courts have believed the factum of gift and the Appellate Court clearly recorded that there was constructive delivery of possession

to the plaintiffs. This Court finds that no substantial question of law arises for consideration with respect to the legality and validity of the gift. The fact

remains that the plaintiffs were the legal heirs and successors of the owner of the property namely Sk. Ahmed Ali Ansari.

The learned trial Court considered the gift deed dated 16.02.1984 (Exhibit -2) and recorded that an objection was raised by the defendant that the gift

was not duly proved and on the other hand the plaintiffs claimed that no objection was raised in connection with the gift deed executed by the owner

of the property namely Sk. Ahmed Ali Ansari. The plaintiffs have relied upon proviso 2 to section 68 of the Indian Evidence Act. The learned trial

Court ultimately upon considering the materials on record held that if there was no objection with regard to the execution of the gift deed, the same

can be executed as valid. The plaintiffs had exhibited the gift deed and had supported the factum of gift in their favour. The learned First Appellate

Court while considering the gift deed in the point of determination No. IV recorded that it was an admitted position that the plaintiffs were not in

possession of the suit land but admittedly the donor of the suit land was the owner of the suit property who gifted the suit property and accepted by the

donee which amounts to constructive delivery of possession. The findings of the learned First Appellate Court with respect to point of determination

No. IV is recorded in paragraph 13 which is as under:-

“13. Point No. IV:- Whether the gift executed in favour of the plaintiff/respondent is valid and genuine.

The Ld. Counsel for the appellant during course of argument submitted that the land in question is claimed by the plaintiff/respondent on the basis of the gift deed

and party to the suit are Mohammedan and is Governed by the Mohammedan Law. As per the claim of the plaintiff/respondent suit property was rented to the

appellant and the respondent/plaintiff was not in possession apart from this in the khatian illegal possession of the defendant is shown therefore no possession

has been delivered to the plaintiff/respondent and delivery of possession is must in Mohammedan law for gift, therefore, the plaintiff/respondent was not given

possession and alleged gift is not valid in the eye of law. The Ld. Court below held that the donor never denied the execution of the deed of the gift and therefore

the appellant has not right to challenge the gift. It was also argued that none of the marginal witness has been examined by the plaintiff/respondent, therefore, the

gift has not been proved, in this regard. The Ld. Court below held that no other document than will is void due to not proving by marginal witness.

The Ld. Counsel for the appellant has also relied upon 1997 (1) PLJR Page 375 wherein it has been held that the deeds of gift in respect of immovable property

can not be said to be complete when there is not factual evidence of delivery of possession either actually or constructively.

In this case it is admitted position that the plaintiff/respondent is and was not in possession of the suit land but admittedly the donor of the suit land was owner of

the suit property who gifted the suit property and accepted by the donee which amounts to constructive delivery of possession, therefore, the case law relied

upon by the Ld. Counsel for the appellant does not apply in this case and this point is decided against the appellant.

The learned Courts have recorded finding while deciding other issues that the defendant was in permissive possession of the property and the gift was

held to be valid by holding that admittedly the donor of the suit land was owner of the suit property who gifted the suit property and accepted by the

donee which amounts to constructive delivery of possession. The findings are recorded on the basis of appreciation of materials on record in the light

of the case of respective parties. Neither any error of law nor any perversity as such has been pointed out by the learned counsel for the appellant in

the matter of consideration of materials on record calling of framing any substantial question of law for consideration in this second appeal.

On the point of maintainability of the suit challenging 'Basgit Parcha'

15. The learned Trial Court considered the issue nos. 6 and 7 together. After considering the materials on record, provision of the aforesaid Act of

1947 particularly section 18 and rule 5, documentary and oral evidences in the light of the case of the respective parties including the exhibited order

sheet of Misc Case No. XV/1 of 1997-98 dated 18.11.1998 passed by the Deputy Commissioner, Palamau which led to amendment of the plaint by

the plaintiffs alleging that the 'Basgit Parcha' was issued in favour of the defendant by fraud and without jurisdiction, the learned trial court decided the

issue no. 6 and 7 in favour of the plaintiffs. The Deputy Commissioner vide order dated 18.11.1998 in Misc Case No. XV/1 of 1997-98 where the

'Basgit Parcha' was under challenge in revisional jurisdiction observed that the suit was pending in the civil court and gave liberty to the petitioner

(plaintiff herein) to amend the plaint of the suit and place full facts before the civil court relating to parcha. The Deputy Commissioner also observed in

the said order that the opposite party (defendant herein) was yet to prove that he acquired right to the land other than as a tenant and it was essential

for him to prove and establish that he was not a tenant but a privileged person fulfilling all criteria. The learned Trial court recorded that the order

dated 18.11.1998 attained finality and the said order was not challenged. The trial Court thereafter considered the materials and recorded that no

enquiry was conducted by the Circle Officer or an equivalent officer and the required natural justice was not followed by the Circle Officer and held

that the 'Basgit Parcha' was issued without following the procedure of the Act of 1947 and it was fraudulently issued in favour of the defendant and

held that the 'Basgit Parcha' was void, illegal and inoperative. The learned trial Court also considered the provisions of Section 18 of the Act of

1947 and held that the Section 18 clearly provided that if any order is obtained by fraud, the civil court shall have the jurisdiction to decide the same.

Thus, the learned trial court considered all the aspects of the matter including the power under Section 18 of the Act of 1947 and held that in case of

fraud, the jurisdiction of civil court is not ousted and ultimately held that the 'Basgit Parcha' was fraudulently obtained.

16. The learned First Appellate Court also considered the issue nos. 6 and 7 as decided by the learned trial Court under the point of determination No.

(I) i.e., whether 'Basgit Parcha' granted to the defendant/appellant is lawful and held that the required procedure for issuance of 'Basgit Parcha' was

not at all followed and further held that the finding of the trial Court that 'Basgit Parcha' issued in favour of the defendant was not valid in the eyes of

law, was based on sound principles of law. The appellate Court further while considering the point of determination No. II has referred to the order of

Deputy Commissioner in Miscellaneous Case No. XV/1 of 1997-98 by which the plaintiff was directed to approach the civil court by way of

amendment in the pending suit and pursuant to such direction the suit was amended and a prayer was made in the suit that the 'Basgit Parcha' was

obtained fraudulently and without jurisdiction. The appellate Court also recorded that the 'Basgit Parcha' was not issued in accordance with law

and was issued without enquiry. Section 18 of the aforesaid Act of 1947 is quoted as under :-

18. Orders under this Act to be final "The orders passed under this Act shall be final. Subject to the provisions of Section 21, all orders passed by the

Collector in any proceeding under this Act shall be final, and no suit shall lie in any Civil Court to vary or set aside any such order except on the ground of fraud

or want of jurisdiction.

17. This Court is of the view that on plain reading of section 18 of the Act of 1947 which has been considered by the learned Court, there is no

complete bar with respect to institution of suit and certainly in case of fraud, the suit was maintainable. There was a clear allegation of fraud in the

matter of obtaining 'Basgit Parcha' by the defendant. In view of the findings recorded by the learned Courts, no substantial question of law arises for

consideration by this Court with regards to the maintainability of the suit challenging 'Basgit Parcha' alleged to have been obtained by fraud.

On the point of non-joinder of State as a party

18. With respect to issue no. 4 regarding non-joinder of necessary parties, the learned trial Court was of the view that non-joinder of the State as a

party was not fatal to the case and no relief as such was prayed against the State. With respect to point of determination no. III, the learned First

Appellate Court also observed that the plaintiff was not seeking any relief against the State and therefore, the suit did not suffer from non-joinder of

necessary parties. Admittedly no relief was claimed against the State and the documents /orders passed by the state authorities were duly exhibited

before the Court. This court is of the considered view that no substantial question of law arises out of the findings recorded by the learned trial Court

and upheld by the learned First Appellate Court with regards to non-joinder of State as party to the suit.

On the point of adverse possession.

19. The learned trial Court while deciding issue nos.3 and 5 also rejected the claim of adverse possession of the defendant by observing that the

defendant was claiming title over the property by virtue of the 'Basgit Parcha' issued in Case No. 3 of 1994-95 and at the same time, was claiming

adverse possession and both the claims were contrary to each other. The learned trial Court also observed that otherwise also, the defendant did not

produce any evidence with regard to adverse possession with respect the suit property. The learned appellate Court considered the issue of adverse

possession vide point of determination no. VI and held that the defendant was in permissive possession and permissive possession can never be

hostile. It was also recorded that the defendant failed to prove adverse possession. The findings of the learned First Appellate Court on this point is as

under:-

15. Point No. VI:- Whether the suit is barred by principle of adverse possession.

The case of the appellant before the Ld. Court below is that he was inducted in the suit premises by the original raiyat who subsequently sold the suit

land to the donor of the plaintiff/respondent and the defendant/appellant nowhere stated when his possession on the suit land became adverse and it is

settled principle of law who seeks title on the ground of adverse possession must have to prove when his possession become adverse but the

defendant/appellant failed to prove his adverse possession, apart from this the case of the appellant is that he was inducted in the suit land by the

original raiyat thus the appellant is in permissive possession and is also settled position of law that once in permissive possession can never be hostile.

this issue is decided against the defendant/appellant.

The point regarding adverse possession has been decided on the basis of settled principles of law and no question of law much less any substantial

question of law arises for consideration on this aspect also.

On the point of limitation

20. The learned trial Court while deciding issue nos. 3 and 5 held that the suit was not barred by limitation as the fact about issuance of 'Basgit

Parcha' in favour of the defendant came to light on 25.06.1995 in Case No. 3 of 1994-95 and thereafter, the case was filed in the year 1997-98. The

learned appellate court while deciding the point of limitation under point of determination no. II also recorded similar findings and decided that the suit

was not barred by limitation. This Court is of the considered view that no substantial question of law arises out of the findings recorded by the learned

trial Court and upheld by the learned First Appellate Court with regards to point of limitation.

Plea of non- examination of the plaintiff no.1

21. The plea regarding non-examination of the plaintiff no.1 was also rejected. The son of the plaintiff no. 1 had deposed by stating that his mother

was old lady and had difficulty in hearing.

22. This Court finds that the learned Courts have meticulously gone into the case of the respective parties, framed appropriate issues and considered

material evidences, both oral and documentary which were placed on record and have examined all the points of facts and law as raised by the parties

and concurrent findings have been recorded in favour of the plaintiffs.

23. This Court finds that no substantial question of law arises for consideration in this case which is hereby dismissed.

24. Pending interlocutory application, if any, is dismissed as not pressed.