

**IN THE COURT OF MUNSIF, TEGHRA, BEGUSARAI,
BIHAR**

Title Suit No. 19/1978

Presided over by:-

**Shri Shailendra Kumar
Munsif, Teghra, Begusarai**

Mahesh Singh & Ors.

V.

Mushaharu Barhi & Ors.

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Judgment Pronounced By:-

**Shailendra Kumar
Munsif
Teghra, Begusarai, Bihar.**

**IN THE COURT OF MUNSIF, TEGHRA, BEGUSARAI,
BIHAR**

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Title Suit No. 19/1978

Presided over by:-

**Shri Shailendra Kumar
Munsif, Teghra, Begusarai**

IN THE MATTER OF:

1. Mahesh Singh

2. Kedar Singh

Both S/O- Ram Raksha Singh

3. Arun Singh (Minor)

S/O- Mahesh Singh (under the guardianship)

4. Awnish Singh (Minor)

S/O- Kedar Singh (under the guardianship)

All R/O- Village- Damodarpur,
Pergana- Naipur, P.S.- Bhagwanpur,
Distt. Begusarai.

..... PLAINTIFFS

VERSUS

1. Mushaharu Barhi

2. Kailu Barhi

3. Bachcha Barhi

4. Baudhu Barhi

5. Ramdeo Barhi

6. Dodhai Barhi

All S/O- Late Dwarika Barhi

7. Bishundev Barhi (Minor)

S/O- Ramdeo Barhi (under the guardianship)

8. Babua Barhi (Minor)

S/O- Bachcha Barhi (under the guardianship)

9. Nunu Barhi (Minor)

S/O- Baudhu Barhi (under the guardianship)

All R/O- Village- Damodarpur,
Pergana- Naipur, P.S.- Bhagwanpur,
Distt. Begusarai.

..... Defendant 1st Party

10. Ram Nandan Singh

S/O- Raghu Nath Singh

R/O- Village- Damodarpur,
Pergana- Naipur, P.S.- Bhagwanpur,
Distt. Begusarai.

..... Defendant 2nd Party

11. Ram Rijhan Singh

Mahesh Singh & Ors. v. Mushaharu Barhi & Ors.

Title Suit No.- 19/1978

Date of Judgment: 25.03.2026

Presided over by:-

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Munsif, Teghra, Begusarai

S/O- Ram Raksha Singh

R/O- Village- Deodha, Pergana- Parri

Block- Hasanpur,

Distt.- Samastipur.

..... **Defendant 3rd Party**

12. Janardan Chaudhary

S/O- Sakaldhari Chaudhary

Village- Rasalpur, Pergana- Naipur

P.S.- Bhagwanpur

Distt.- Begusarai.

..... **Defendant 4th Party**

Ld. Counsel for the Plaintiffs : *Shri Pramod Singh*, Advocate.

Ld. Counsel for the Defendants: *Mazhar ul Haq*, Advocate.

J U D G E M E N T

[This judgement be read as part and partial of judgement dated 10.12.1984 pronounced by the then Ld. Addl. Sub. Judge-I, *Begusarai*.]

I. BACKGROUND IN BRIEF

The instant suit was originally decided and judgment was delivered, in favour of Plaintiffs, vide Judgement dated 10.12.1984 pronounced by the then Ld. Addl. Sub. Judge-I, *Begusarai*. Against the judgement, the Defendants preferred an appeal bearing no. S.J.T.A. – 4/85, which was heard and decided by the Additional District Judge-I, *Begusarai*. And vide judgement dated 04.10.2002, it has been remanded back by the Additional District Judge-I, *Begusarai* in S.J.T.A. – 4/85, for adjudicating following issues:-

1. Whether *Ramki Barhi* was the *Bhaulidar* of the suit land under ex-landlord *Ayodhya Chaudhary* or whether the suit land was the *Bakast* land of the ex-landlord?
2. Whether *Ramki Barhi* surrendered the land and ceased interest?

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3. Whether the suit is barred u/s. 34 of the Specific Relief Act?
4. Whether the suit is barred u/s. 40 of the B. T. Act?

Heard at length to both the counsels, issue-wise. Upon hearing the rival submissions, perusal of record, material placed before the Court and referring the concerned provisions, certain findings surfaced before the Court, which are as follows:

II. FINDINGS OF THE COURT

This Court, after perusal of record and considering the oral and documentary evidences of both the Plaintiffs and Defendants, and hearing the rival submissions of both the counsels, on behalf their respective parties, for better appreciation of evidences, shall now take up the issues one by one.

[Issue No.1]

1. Ld. Counsel for the Plaintiffs, in regards to the issue no. 1, submits that *Ramki Barhi* was not a *Bhaulidar* of ex-land lord. He elaborates, with the help of glossary that the word *Bhauri* and *Nakadi* both words relates to mode of payment of rent to the then *malik* of the land, whereas, the word *Bhauri* connotes that the *raiyyat* pays rent in kind to landlord, *Nakdi* connotes the rent paid in cash fixed in Rupee/ Aana as mentioned in survey *khatiyān*.
2. It was submitted that, herein, *Ramki Barhi* was not *Bhaulidar* of ex-land lord rather he was *Bataidar*, which means a person who cultivates land of other land owner on *batai* and deliver ½ half produce/ usufruct of the land to land owners.
3. It was further submitted that perusal of *khatiyān* (**Ext.C**) reveals that

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the nature of land has been recorded as “*Batai Nisf*.” Whereas, ‘*Batai*’ means *Bant*/partition and *Nisf* is *urdu/farsi* word which means half.

4. Further, *khatiyani* records the land as “*Bhith*” which means cultivable and productive land. Again, in Column 10, which records *Lagan* (rent), neither Rupee/*Aana* is mentioned nor fixed quantity of grain is mentioned, rather “*Batai nisf*” is written, which clearly shows that *Ramki Barhi* was in permissive possession and cultivating land of *Ayodhya Choudhary* as *Bataidar*. Which is manifest from perusal of Column 12 of *khatiyani* entry in which name of *Ayodhya Choudhary* is mentioned as owner of land.
5. It was also argued that from perusal of Form ‘M’ which is a rent roll of the year 1960-61 and marked as **Ext.10** produced on behalf of Plaintiffs, it is apparent that land was *Bakast* land of *Ayodhya Choudhary*, subsequently, inherited by his son *Sakaldhari Choudhary*. Whereas, *Bakast* land means a land which has been retained in possession by *Malik* and got cultivated by any means either by himself or labour. *Ayodhya Choudhary* was landlord of land in question which was cultivated by *Ramki Barhi* as *Bataidar*. This fact is clearly evident from perusal of entry of *khatiyani*, and fixation of rent roll and fixation of rent and creation of *zamabandi* after vesting *zamindari* in the year 1960-61 by form “M” under Rule 7. I of Bihar Land Reforms Act, 1950 (**Ext.10**). In the abovesaid documents, it has been described that *Sakaldhari Choudhary* was recognized as *bona fide* raiyat and owner of land.
6. Ld. Counsel for the Plaintiff submits that in the light of above facts, fixation of rent with respect to the same land in favour of Defendant *Ramki Barhi* after lapse of a period of more than 20 years of vesting of *zamindari* interest neither was nor is legal and just with respect to the same land.
7. It was also submitted that it is an admitted fact that from getting rent fixed u/s. 40 B. T. Act, *Mushaharu Barhi* did not get status of a raiyat. After getting fixed rent and preparation of *zamabandi* in his name

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Sakaldhari Choudhary paid rent amount to Govt. of Bihar, regularly, from the year 1954-55 till before the execution of deeds of gift in favour of his *Bhagina*, namely, *Ram Rijhan Singh*.

8. *Mahesh Singh @ Maheshwar Singh*, the donee and Plaintiff and *Ram Rijhan* too got mutated their names and two separate *zamabandi* nos. 99 and 100 was created in their names on the basis of said deeds of gift. They too paid rent amount and got rent receipts. Which are marked as **Exts.-1 to 1E**.
9. Rent receipts delivered in name of *Sakaldhari Choudhary* too are being produced for perusal of Ld. Court. Hence, it is undoubtedly proved that land in question was *Bakast* land of Malik ex-land lord *Ayodhya Choudhary* otherwise *Sakaldhari Choudhary* could not be recognised as raiyat in Register-II of Government of Bihar. Form "M" rent roll is prepared under signature of Collector and such rent roll forms a part of case record to which it relates.
10. *Per contra*, in response to the above submissions, Ld. Counsel for the Defendants places his reliance on *khatiyani*, where under column-2 records the name of raiyat, as *Ramki Barai*. The *khatiyani* has been marked as **Ext. C**.
11. It was further submitted that ex Landlord was entitled only for rent in kind, had it been a case of *bataidar* under-raiyat would have been mentioned under the raiyat column. He further elaborates, with the help of glossary and B.T. Act, that raiyat pays in cash, whereas, *bhaulidar* pays in kind or usufruct of the agriculture.
12. It was also asserted that under column-2 of the *khatiyani*, *bakasht* has not been mentioned but name is mentioned which proves that the land is not *bakasht* land.
13. Ld. Counsel for the Defendants, with the help of glossary, further submits that the word '*batai*' means share and '*nisf*' means half, as mentioned under the *lagan* column of the *khatiyani*. Which proves that raiyat was paying rent in kind, and for the reason, the Defendants

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applied for the commutation of rent from kind to cash, in accordance with the Sec. 40 of the B.T. Act.

14. Therefore, the Defendants submits that they are the *raiyyat* and title holder of the suit property and not the Plaintiffs.

15. Upon hearing the rival submissions at length and material placed before the Court, it transpires that Rent Roll, marked as **Ext.10**, records the name of *Sakaldhari Choudhary*, as *raiyyat*. Further, *khatiyani*, marked as **Ext.C**, records the *Ramki Barhi* in column-2 and rent column records '*batai nisf*.'

16. It is the case of the Plaintiffs that *khatiyani* has wrongly been recorded and entered into the name of *Ramki Barhi*. In support of the averment, the Plaintiffs have produced rent roll marked as **Ext.10**, which appears to be in favour of the Plaintiffs. Further, the rent column records, "*batai nisf*," which transpire that *Ramki Barhi* was a *bataidar* and not a '*bhaulidar*.'

[Issue No.2]

17. Pertaining to Issue no.2, Ld. Counsel for the Plaintiffs submits that *Ramki Barhi* left cultivating the suit land. By leaving, it was explained, abandoned the land just after cadastral survey, wherefrom, landlord got possession and amalgamated with his other blocks of land of other Survey Plot. Hence, *Ramki Barhi* did not surrender the land rather he abandoned the land *suo moto* by leaving cultivation.

18. It was further argued that words surrender and abandonment are two different modes of leaving possession of land lord's land. For the purpose of two provisions were cited:

Sec. 86(1) of B.T. Act provides that *raiyyat* not bound by a lease or other agreement for fixed period may at the end of any agriculture years surrenders his land.

Sec. 87(1) of B.T. Act provides that "If a *raiyyat* voluntarily abandons his residence without notice to his land lord or ceases to cultivate the land of land lord; the land lord may enter in the holding and let it to another

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tenant or take it in cultivation himself.

Other subsection of Sec. 87 provides that the land lord shall file notice in the office of collector before entering into possession. On such notice the collector will issue a general notice. And *raiyat* in consequence may file suit within two years, against land lord.

19. It was argued that in case of abandonment non-issuance of notice to Collector by landlord is not an evidence against abandonment. In support of the above averment, Hon'ble the High Court of Judicature at Patna, in the matter of **Bajinath Singh v. State of Bihar**, 2008 (1) PLJR 39, was cited.
20. It was further argued that for surrendering a land one ought to be *raiyat*, which is not the case with *Ramki Barhi*, rather he was *Bataidar*. Whereas the word "*Raiyat*" is defined in Sec. 4 (a) of B.T. Act as a person holding land at fixed rate. Wherein, *Ramki Barhi* was not *raiyat* but he was a *Bataidar* and no rent was fixed for the land to which he was cultivating. The same is apparent from the perusal of *khatiyani* marked as **Ext. C**.
21. Further, it was argued that *Ramki Barhi* had no right, title or any interest in the land in question because he was in permissive possession over land of ex-landlord who gave him land to cultivate. And it is an unbroken custom, still prevalent, wherein, a person cultivates the land of another person and divides the produce in the ratio of half and half, between the owner and the cultivator. For such system, no formal action is required.
22. If *Ramki Barhi* would be *raiyat* or tenant of land in question he must had to pay fixed rent to landlord and to get rent receipt issued by ex-landlord. The Defendant *Musharu Barhi* himself has deposed in para 7 of his cross examination in this suit that he has no rent receipt of ex-landlord nor he has receipt even after vesting *malikana* interest. He has admitted that he possesses no title deed or paper in proof of his possession.

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23. In support of the above averments, Ld. Counsel for the Plaintiff places his reliance upon sale deed executed in the year 1961 executed between *Baiju Choudhary* and *Bhatu Sah*, which is a 3rd Party document who has no connection with the instant suit. From the perusal of the sale deed it transpires that the land of sold S.P. exists in north and east boundary of disputed S.P. no. 177, hence, in both south and W. boundary of sold land name of *Sakaldhari Choudhary* is mentioned. The boundary description of this sale deed clearly proves that *Sakaldhari Choudhary* was in possession of disputed S.P. no. 177. The document is of 1961 and has been marked as **Ext. X**.
24. Similarly, a mortgaged deed dated 22-09-1952, also a third party document, records in the boundary, *Ayodhya Choudhary*, the ex-landlord and father of *Sakaldhari Choudhary*. The mortgaged deed has been executed in the year 1952 and has been marked **Ext. Xa**.
25. Similarly, perusal of boundary in **Exts. 2, 3, 4, 4A**, records the name of *Sakaldhari Choudhary* in the boundary.
26. *Per contra*, Ld. Counsel for the Defendants submits that the Defendants never surrendered the land in question. It was argued that as per Sec. 86 of the B.T. Act, only *raiyat* surrenders land before the ex-Landlord, which is not the case, herein.
27. In support, of the above averments, Ld. Counsel for the Defendants places his reliance on Sec. 86 of the B.T. Act, which provides a procedure of surrender, which was never followed in the instant case.
28. Upon hearing the rival submissions at length and material placed before the Court, it transpires that *Ramki Barhi* did not surrender the suit land, as for the purpose one requires to be a *raiyat*, which is not the case, herein. Also, the third-party documents viz. **Exts. X & Xa**, which records *Sakaldhari Choudhary*, in boundary which leaves an impression that the ancestor of the Plaintiffs as landlord.

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[Issue No. 3]

29. Pertaining to Issue no.3, Ld. Counsel for the Plaintiffs submits that the present suit is not barred u/s. 34 of Specific Relief Act. It reads:

“34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

30. It was argued that the object of the section, as observed by the High Courts, is “to perpetuate and strengthen testimony regarding title and protect from adverse attack as well as to prevent future litigation.” [AIR 1995 Orissa 59, AIR 1997 Cal 202].

31. Further, it was argued that from perusal of above discussed facts and circumstance, it was argued, a *prima facie* case appears that Plaintiffs have a clear right in suit property. Hence, the present suit is well-maintainable under sec. 34 of the Specific Relief Act.

32. *Per contra*, Ld. Counsel for the Defendants vehemently opposed the above claims of the Plaintiffs. It was argued that in the light of Sec. 40 of the B. T. Act, this suit is barred by Sec. 34 of the Specific Relief Act.

33. Upon hearing the rival submissions at length and material placed before the Court, it transpires that the Plaintiffs have a right to get a declaration of title in their favour, for which the suit has been filed. Therefore, the suit cannot be said to be barred by the abovesaid provision.

[Issue No. 4]

34. Ld. Counsel for the Plaintiffs submits that from the perusal of facts and evidence adduced by the parties to the suit, it is quite evident that the

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Defendants were not entitled to get rent fixed and get created *jamabandi* in his name, with respect to suit land, because he was neither occupancy *raiyat* nor had any concern with the land, rather *Ramki Barhi* was *Bataidar*.

35. It was further argued that the tenant's ledger, Register II was created after fixing rent by Form "M" of B.L.R. Act, 1950 under Rule 7-1 by the then Collector vide case no. 441/1960-61, in the name of *Sakaldhari Choudhary*, the ancestor and donor who later on paid rent to government, regularly, since 1954-55 to 78-79. Later on, Plaintiffs paid rent by way of mutation in the name of Plaintiffs. Therefore, it was quite illegal to fix rent in favour of Defendants under Sec. 40 of the B.T. Act.
36. It was also argued that the Defendants have failed in proving his claim and contention. They have produced three sale deeds which they have executed themselves, for which they were not entitled because if Defendant be treated as *bataidar* even then *bataidari* interest is not transferable.
37. Further, argument was advanced that those sale deeds are illegal void abinitio from which defendant too did not derive any right, title or interest his possession to be considered as tress passers on this point H. S.C. has given specific finding in a case and defined As.
38. Also, it was submitted that law recognises only three types of possession- (i) As an owner, (ii) As a tenant, and (iii) Permissive. Rest of the possession, if any, is illegal or as a trespasser. [2022 S.A.R. 591].
39. Lastly, it was submitted that Rent Receipts too produced by Defendants are not admissible, because the rent receipts relating to same land have been issued since 1961 in the name of *Sakaldhari Choudhari*.
40. *Per contra*, Ld. Counsel for the Defendants vehemently opposed the above government on behalf of the Plaintiffs. It was submitted that mere reading of Sec.40 (6) makes it apparent that order passed under this provision is final. It reads:

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“Sec. 40. Commutation of rent payable in kind.-

(6) (a) An appeal shall lie from an order referred to in sub-section (5).

(i) If such order is passed by any officer other than the Collector of a district, to the collector of the District or to any officer specially empowered by the State government by notification to hear such appeals;

(ii) If such order is passed by the Collector of a district, to the prescribed authority;

and the decision of the Collector of the district or of any officer so empowered or of the prescribed authority on any such appeal shall be final.”

41. Thus, the order passed by the Collector is final and no title suit shall be maintainable.

42. Upon hearing the rival submissions at length and material placed before the Court, it transpires that section 40 of the BT act provides for commutation of rent, and if an order pertaining to above purpose is passed by the collector, such order shall be final, and no appeal from the order shall be maintainable.

43. However, this suit is brought for mixed questions of law and fact, firstly, it has been sought as relief by the Plaintiffs to declare the order of commutation passed by the Collector as null and void, and secondly, the whole trial of the suit, evidences adduced and arguments advanced have been around the title of the suit.

44. Though, no specific relief has been sought by the plaintiffs pertaining to the title of the suit, the whole trial of the suit, as above recorded, have been around the title of the suit. Therefore, the relief pertaining to the title of the suit be deemed to be covered under relief no. (iv), which reads: “A decree for other reliefs to which the Plaintiffs be deemed entitled be also passed.”

45. The above position is necessary for keeping the settled principle based

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on public policy *interesse republicae ut sit finish litium*, else, further litigation shall be inevitable.

III. ANALYSIS

This Court, after perusal of record and considering the oral and documentary evidences of both the Plaintiffs and Defendants, and hearing the rival submissions of both the counsels, on behalf their respective parties, for better appreciation of evidences, shall now take up the issues one by one.

1. Issue No.1: Whether *Ramki Barhi* was the *Bhaulidar* of the suit land under ex-landlord *Ayodhya Chaudhary* or whether the suit land was the *Bakast* land of the ex-landlord?

From the findings of the court, discussed in para **II. 1-16**, above, it transpires that *Ramki Barhi* was not *bhaulidar* of the suit land under ex-landlord and the suit land was *bakast* land.

2. Issue No.2: Whether *Ramki Barhi* surrendered the land and ceased interest?

From the findings of the court, discussed in para **II. 17-28**, above, it transpires that *Ramki Barhi* did not surrender the land and ceased interest, rather abandoned the suit land.

3. Issue No.3: Whether the suit is barred u/s. 34 of the Specific Relief Act?

From the findings of the court, discussed in para **II. 29-33**, above, it transpires that the suit is barred under Sec. 34 of the Specific Relief Act.

4. Issue No.4: Whether the suit is barred u/s. 40 of the B. T. Act?

From the findings of the court, discussed in para **II. 34-45**, above, it transpires that the suit is not barred under Sec. 40 of the B.T. Act. However, the section bars the relief- "(i) It be declared by the Court that Defendant 1st Party had no right to get rent fixed under sec.40 of the B.T. Act. of the Specific Relief Act," sought by the Plaintiffs.

IN THE COURT OF MUNSIFF, TEGHRA, BEGUSARAI, 13
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In conclusion, following orders are being passed:-

IV. ORDER

1. The suit is being allowed in favour of the Plaintiffs, with parties to bear their respective costs of the suit.
2. A Decree be drawn accordingly to the effect of this judgment.
3. Office Clerk is directed to upload the judgment on CIS, thereafter, consign the record to the Record Room, in accordance with the procedure established.

Shailendra Kumar
Munsif
Teghra, Begusarai, Bihar.

This judgment was pronounced in open court and read over to the parties on **25th March 2026**, dictated and typed, runs in fourteen pages, including index, and each page of this judgment bears initial signature of the undersignatory.

Shailendra Kumar
Munsif
Teghra, Begusarai, Bihar.