

आदेश का क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कार्रवाई के बारे में टिप्पणी, तारीख के साथ।
04/10/2021	<p style="text-align: center;">IN THE COURT OF THE COMMISSIONER SOUTH CHHOTANAGPUR DIVISION RANCHI</p> <p style="text-align: center;">Survey Appeal 108/2001</p> <p style="text-align: center;">Budhan Lal Mahto & Others</p> <p style="text-align: center;">Vrs.</p> <p style="text-align: center;">Mahipal Mahto & Others</p> <p>Survey appeal 108/2001 was filed by Budhan Lal Mahto and others against Mahipal Mahto and others challenging the order in revision case 268 (bundu)-87 by the Asst. Settlement officer.</p> <p>After the death of petitioner no. 1 and O.P no 1 their heirs were substituted.</p> <p>The case in the nut shell is that the Asst. settlement officer passed a order in favour of the petitioner on 11.12.1995. Subsequently O.Ps requested for review of the order and the same presiding officer heard the review petition ex party and passed the order in the favour of O.Ps on 08.04.1996.</p> <p>The claim of petitioner is that plot no 852 area 13.76 acres and plot no 823 area 9.53 acres situated at village Sumandih was settled by the ex landlord manki Sashibhushan Singh in the favour of Jaisingh Mahto, Sonai Mahto, Suku Mahto and Jaya Mahto in the year 1932. The petitioners are heirs of these settlees. As the settlees failed to pay the rent to the landlord a case was filed in the SDO's court vide rent suit case no 753B/1938-39 where in order was passed to pay the rent of Rs. 772 and 5 anna in 1940.</p>	

W. J. Singh

आदेश का क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश गड़कार के बारे में ति तारीख साथ
	<p>Thus this land was settled in the name of four people who were in joint possession on the same. During khanapuri of his recent survey Mahipal Mahto son of Sanai Mahto got a preliminary parcha prepared in the name of himself and his own brother. Appellants filed objection which got rejected after which revision was filed u/s 89. The ASO on 11.12.95 directed to prepare the khatian khata in the name of petitioners whereas on 08.04.96 he changed his own order and passed the order in the favour of O.P. Clearly his action was beyond his jurisdiction and not legally correct.</p> <p>The respondent on the other hand argue that the petitioners got order in their favour by producing wrong documents and when this was brought to the notice of the ASO; he modified his original order. A local enquiry was held and respondent's ancestors were found in the possession. A hukumnama produced by the appellants was found to be forged and hence the presiding officer corrected his own orders. While hearing the review petition appellants were asked to produce their evidence which they did not do so and hence the matter was heard ex-party. Ancestors of the appealants were not found in the possession at the time of khanapuri and tasdiq at the time of spot enquiry. Hence there is nothing wrong in the order of the lower court.</p> <p>From perusal of records it is found that the new khata no 251 has been recorded in the names of O.Ps in the recent operation which corresponds to RS khata no 71 of the village. The lands were recorded as gair majurwa malik in the last revisional survey of 1930. The claim of O.P is that on 04.04.1954 Manki Rajkishor Singh has settled the lands</p>	

2


आदेश का क्रम संख्या और तारीख	आदेश और पदाधिकारी का हस्ताक्षर	आदेश पर की गई कारवाई के बारे में टिप्पणी, तारीख के साथ।
	<p>with Sanai Mahto followed by rent receipt and they came in possession since then. The claim of the petitioner is that they are in joint possession of the lands with the O.Ps. A Khanapuri tanaja no 9 dtd. 05.06.78 is also on record wherein the settlement of 01.02.1932 produced by appellants was found to be suspicious. In fact during that tanaja it was held that the evidence produced by both the parties was suspicious and the land was "bihar sarkar" land. In that tanaja case except for plot nos. 20, 21, 22 adverse possession of Sanai Mahto was recorded. There is no challenge to his order. In this particular case the ASO has changed his order within one year as using power of review. Clearly in the name of review new facts cannot be entertained or examined and only factual error or otherwise can be corrected. However the ASO court has admitted new papers as evidence, examined them and changed his earlier order. This process is not correct and against the basic judicial principles. Mor so appellants were never heard when the order was completely reversed. Thus on this ground this order is set aside. Both the parties are directed to appear in front of settlement officer, Ranchi within 15 days from today and put up their claims. The Settlement officer, Ranchi shall hear both the parties and pass appropriate orders with two months time. With this observation this survey appeal is disposed off. Send a copy of this order to the Settlement officer, Ranchi.</p> <p>Dictated & Corrected</p> <p><i>W. Kumar</i> Commissioner</p> <p><i>W. Kumar</i> Commissioner</p>	