

THE COURT OF ADDITIONAL CIVIL JUDGE (JUNIOR DIVISION)-III

Present: Mrs. Smriti Tripathi
Additional Civil Judge (Junior Division)-III
 [29th day of November, 2022]

District: Ramgarh
[Title Suit 105/2010]
(CNR No. JHRG040000072010)

Plaintiffs	<p>1. Sheonarayan Prasad s/o late Doman Sao ——— [P1] <u>deleted v.o.d. 20.08.2022.</u> 1(a). Manish Anand s/o of late Sheonarayan [P1(a)] r/o Ward No. 6 of Ramgarh Cantonment Board, holding no. PT62C, PS and District Ramgarh 1(b). Suhas Kumar, gr.s/o late Sheonarayan Prasad [P1(b)] r/o Masipirih, Hazaribagh 1(c). Atul Kumar gr.s/o f late Sheonarayan Prasad [P1(c)] r/o Masipirih, Hazaribagh 1(d). Sangita Prasad d/o late Sheonarayan Prasad [P1(d)] r/o Old Nagra Toli, Ranchi 1(e). Vinita Prasad d/o late Sheonarayan Prasad [P1(e)] r/o Highlands School Close Downley, High Wycombe, Post Code- HP135TR, United Kingdom 1(f). Veena Devi w/o late Sheonarayan Prasad [P1(f)] r/o Patratu Basti, Block Office, PS and District Ramgarh</p>
Represented By	Sri Anuj Kumar Sinha, Ld. Adv.
Defendants	<p>1. Indrani Dev w/o Ganesh Prasad Yadav [D1] 2. Ganesh Prasad Yadav s/o Jagdish Yadav [D2] <u>(Suit abated w.r.t. D2 on account of his</u> <u>demise.)</u> r/o village Bongabar Sandi, PS Mandu, District Ramgarh</p>
Represented By	Sri Roopsanatan, Ld. Adv.

Date of Filing	25.11.2010
Date of Admission	29.11.2010
Date of Framing Issues	13.03.2012
Date of commencement of evidence	11.04.2012
Date of Judgment is reserved	19.11.2022
Date of Judgment	29.12.2022

J U D G M E N T

1. The plaintiffs have brought this suit u/s. 26, The Code of Civil Procedure, 1908 (Hereinafter referred to as the "**CPC**") against the defendants for declaration of right and title over the suit-land alongwith confirmation of possession, decree of eviction, realization of rent and a decree of permanent injunction.

PLAINTIFF'S CASE

2. Before discussing the case of the plaintiff, it will be apt to reproduce schedule A of the plaint which described the land concerning which the present suit has been brought. The land, as described below is hereinafter referred to as the "**suit land**" for brevity:

Lands measuring 16 decmils in plot no. 167, khata no. 238 in village Bongabar, PS Mandu, Thana no. 153. North: Bejoy Prasad; South: Sharmajee; East: Road; West: Forest

The area let out to the defendants as described in Schedule B of the plaint is hereinafter referred to as the "rented premises", the description of which is as follows:

House built over about 4 decmils under Khata No. 238, plot no. 167, village bongwar, PS Mandu, District Ramgarh, within the land of Schedule A.

3. The compendious case of the plaintiff as it emerges from their pleadings in the plaint, filed on 25.11.2010 and admitted on 29.11.2010 is that the suit land was purchased for a consideration amount of ₹10,000/- by Late Smt. Bimla Devi, w/o P1 jointly with Smt. Veena Devi, P2 by registered deed of sale being deed no. 5831 dated 10.05.1982 from D1, the then rightful owner, and consequently they came in possession and repaired and renovated the titled house with certain extension and surrounded the purchased area by a brick boundary wall with a gate on road-side. Apart from these, there is one Chapakal on the suit-land and the vacant lands was cultivated by the plaintiffs who grew crops and utilized the house for storing seeds, artisans, crops, cattle, etc.
4. Thereafter, the defendants approached the plaintiffs to take them as tenants in the house over the suit land for a limited period of three months by which time, they hoped to complete the construction of their house. Rent was settled at ₹200/- per month and the defendants paid a sum of ₹600/- as an advance for three months, which the plaintiffs accepted on 01.10.1983, and the tenancy commenced. It is further alleged that the premises so let out is detailed in Schedule-B of the plaint. The defendants continued to stay in possession over the rented premises even after the expiry of said

three month and sought extension but did not pay any further rent after the advance paid despite their promise to pay it when they will vacate the rented premises.

5. The trouble ensued when the request to vacate the suit house was refused by the defendants, which led to proceedings u/s. 144 of CrPC bearing Case No. 45/08 and Case No. 44/09 between the parties leading to the apprehension of breach of the peace. As the *Jamabandi* was still in the name of D1, on the mis-guidance of few people, the defendants started claiming ownership over the suit-land. Hence, the present suit.
6. The cause of action has been pleaded to arise on several dates including on 06.04.2008 and 26.07.1999 the date of proceeding u/s. 144 of CrPC and on 15.07.2010 when the defendants finally refused to vacate the house, and it is continuing.
7. The suit has been valued at ₹10,300/- of which ₹10,000/- being the value of the property, and ₹200/- being the monthly damage for wrongful occupation and ₹100/- for injunction, upon which *ad valorem* court fee has been paid.
8. The plaintiffs pray for the following reliefs:
 - (a) that the plaintiffs' title upon the Schedule-A and B property be declared and possession be confirmed.
 - (b) that a decree for eviction of the defendants from the suit property be granted and the plaintiffs be put into possession by evicting the defendants.
 - (c) that damage of ₹200/- per month from the date of default till eviction be also granted and the same be realized and recovered from the defendants and be paid to the plaintiffs.
 - (d) that a decree for permanent injunction restraining the defendants from disturbing the peaceful occupation and possession of the plaintiffs be allowed.
 - (e) that cost of the suit be awarded.
 - (f) that any other relief just and equitable the plaintiffs are found entitled to be also awarded.

DEFENDANT'S CASE

9. On the other hand, the defendants appeared before the court on 20.01.2011, and vide their written statement dated 25.03.2011 pleaded that the present suit is not maintainable as framed, is barred by principles of constructive *res judicata*, law of limitation, estoppel, waiver and acquiescence and is devoid of any cause of action and the dates and incidents mentioned in the plaint ascribing cause of action to the present suit are all imaginary and false, which have been created only for the present suit. On the point of valuation, it has been averred

that the suit property has not been correctly valued and proper value of the suit land on the day when the suit was filed being was atleast ₹16,00,000/- thereby implying that the suit is beyond the pecuniary jurisdiction of this court and thus, the plaint is liable to be returned to the plaintiffs for presentation before a court of competent jurisdiction.

10. Coming to the merits of the plaintiff's case it has been averred that the suit plot no. 167 of *khata* no. 238 of village Sandi Bongabar, Mandu consists of total area of 1.19 acres, but the plaintiffs have not disclosed as to towards which side of this 1.19 acres the area of 0.16 acres, for which the present suit has been instituted, exists. It was also denied that defendant no. 1 or anyone else transferred any land to Bimla Devi and Veena Devi and sale deed, if any is fabricated. The possession of plaintiffs over the suit land or any portion of it or acts of construction, renovation or cultivation at any point of time was also denied.
11. Rather, it was asserted that the defendants were and are residing in the house standing over plot no. 167 since the year 1969 when they purchased it by virtue of a registered sale deed being deed no. 12642 dated 28.08.1969 for lands measuring an area of 0.16 acres out of 1.19 acres in plot no. 167 of *khata* no. 238 of village Bongabar, *thana* no. 153, PS Mandu, District Hazaribagh (now Ramgarh). Thereafter, the defendants constructed a tilted house over a portion of the said 0.16 acres of land and surrounded the entire 0.16 acres of land by brick built compound walls from all sides by leaving a gate towards east and started residing in the house alongwith family peacefully. The plaintiff's case regarding defendants approaching the plaintiff for tenancy for a period for three months at ₹200/- per month w.e.f. 01.10.1983 was wholly denied while also denying that any rent was due and establishment of any landlord-tenant relationship between them, as the defendants claim to be the owner of the said house themselves.
12. Questioning the motive of the plaintiffs, the defendants aver in the WS that in order to grab the suit land and the house standing over it, first, the plaintiffs filed an application for restoration of the suit land u/s. 46(4)(a) of the CNT Act before the office of the Anchal Adhikari, Mandu against defendant no. 1 through one Rami Karmali s/o Minu Karmali and Khedan Karmali, registered as Land Restoration Case No. 44/89 which was dismissed on 28.11.1994. The plaintiffs thereafter filed another application for restoration of the suit land u/s. 46(4)(a) of CNT Act against defendant no. 1 through one Naresh Karmali s/o Mohara Karmali in the office of Anchal Adhikari, Mandu, registered as Land Restoration Case No. 18/08-09, which was dismissed on

18.11.2008. Against this, Land Restoration Appeal No. 3/2009 was filed before the court of the Additional Collector, Ramgarh by the plaintiff which was also dismissed on 08.07.2009 but during the pendency of which, the plaintiff no. 1, in collusion of Mandu PS got a report submitted before the court of SDM, Ramgarh recommending initiation of proceedings u/s. 144 of CrPC against the defendant no. 2 and his son with respect to the suit land and on receipt of the report of police, the Id. SDM, Ramgarh initiated proceedings u/s. 144 of CrPC for the suit land vide Case No. 45/2008 which was decided in favor of the defendant no. 2 and his son vide order dated 04.06.2008. Plaintiff no. 1, after having lost earlier Case No. 45/08 u/s. 144 of CrPC again filed an application before the court of SDM, Ramgarh praying to initiate proceedings u/s. 145 of CrPC with respect to suit land, and the said Case No. 44/2009 was also dropped vide order dated 21.04.2009. After not succeeding in any of these proceedings, the plaintiff filed the instant suit.

13. It has also been averred that defendant no. 1, after purchasing the suit land in 1969 got her name mutated in the office of the Anchal Adhikari, Mandu with respect to suit land and government rent receipts are being issued since then in her name. relying on these, and denying the case of the plaintiff, prayer was made to dismiss the suit.

ISSUES FOR ADJUDICATION

14. Based upon the pleadings of the parties, documents brought on record, oral examination during first hearing, the following issues were framed by the Id. predecessor court for adjudication. Findings are mentioned next to the issues and reasons for them are elaborated further in the judgment:

	.....Yes
I. <i>Is the suit maintainable in its present form?</i>	.....Yes
II. <i>Whether sufficient court fee has been paid by the plaintiff?</i>	.....No
III. <i>Whether the suit is barred under the provision of Specific Relief Act, 1963 ?</i>	.....Yes
	.....No
IV. <i>Is the suit barred by law of limitation, estoppel, waiver and acquiescence?</i>	.....No
V. <i>Is the suit is barred under the provisions of Res Judicata?</i>	.....No
VI. <i>Whether the suit is bad for mis-joinder and non-joinder of necessary and proper parties?</i>	.....No
	.....No
	.....No

- VII. Whether the plaintiff is entitled to right and possession over the lands described in Schedule-A and B of the plaint ?
- VIII. Whether the plaintiff is entitled to obtain rent at ₹200/- per month alongwith interest from the date of default till the date of eviction ?
- IX. Is the plaintiff entitled to the reliefs prayed for ?

EVIDENCES

15. In order to prove their case, the plaintiff and defendants have adduced the following evidence, reference is made to which at relevant parts of this judgment.

List of Plaintiff/Defendant/Court Witnesses

A. Plaintiff's Witnesses

Rank	Name of witness	Relation
PW-1	Girish Mohan Prasad	Not specified
PW-2	Gautam Kumar Dey	Neighbor of P1
PW-3	Om Prakash Verma	Not specified
PW-4	Shivnarayan Prasad	P1 (plaintiff)
PW-5	Veena Devi	P2 (plaintiff)

B. Defendant's Witnesses

Rank	Name of witness	Relation
DW-1	Indrasani Devi	D1 (defendant)
DW-2	Rajendra Yadav	Son of D1
DW-3	Sunil Kumar Mahto	Milkman of DW2
DW4	Raman Yadav	Formal witness

List of Plaintiff/Defendant/Court Exhibits

A. Plaintiff's Exhibits

Sl. No.	Exhibit	Description
-nil-		

B. Defendant's Exhibits

Sl. No.	Exhibit	Description
1.	Exhibit A	Receipt No. JA/40587901 issued on behalf of Indrasani Devi issued by Sanjay Dubey employee
2.	Exhibit A/1	Receipt no. JA/40149696 issued on behalf of Indrasani Devi issued by Sanjay Dubey employee
3.	Exhibit A/2	Receipt No. JN/393608654 issued by Mahendra Singh employee
4.	Exhibit A/3	Receipt No. AA39/5488175 issued on behalf of Indrasani Devi issued by Shamim Ansari

		employee
5.	Exhibit A/4	Original Govt. rent receipt no. C/8- 51483 in the name of defendant no. 1
6.	Exhibit A/5	Original Govt. rent receipt no. C/8-164585 in the name of defendant no. 1
7.	Exhibit B	Original electricity bill dated 11.03.2011 in the name of Smt. Indrasani Devi
8.	Exhibit C	Original telephone bill dated 11.06.2006 in the name of Smt. Indrasani Devi.
9.	Exhibit C/1	Original telephone bill dated 11.06.2004 in the name of Smt. Indrasani Devi
10.	Exhibit D	Original notary dated 13.01.1994 by S. Kujur, Executive Magistrate, Ramgarh in GR Case no. 10/1992 to D1
11.	Exhibit E	Original notary dated 07.07.1992 by Sri J. Pardhia, Executive Magistrate, Ramgarh in GR Case No. 10/92 to D1
12.	Exhibit F	Original notice vide letter no. 1036 dated 01.12.1998 by Asst. Engineer NH to D1
13.	Exhibit G	Certified Copy of order dated 29.07.1989 and 28.11.1994 passed by Sri S. Kujur, Executive Magistrate, Ramgarh in Case No. 44/898, 10/92 alongwith restoration application.
14.	Exhibit H	Certified Copy of order dated 13.02.2009 to 28.07.2009 passed in G.R. No. 03/2009 by addl. Collector, Ramgarh
15.	Exhibit I	Certified Copy of the order dated 18.11.2008 passed in Case No. 18/08-09 by Additional Collector, Ramgarh
16.	Exhibit J	Certified Copy of letter no. X/08-458 dated 28.06.2008 by D.C., Ramgarh to SDO, Ramgarh
17.	Exhibit K	Certified Copy of letter no. 1012 dated 24.10.2008 issued by the Anchal Adhikari, Ramgarh alongwith inquest report.
18.	Exhibit L	Certified Copy of order dated 05.03.2009 to 21.04.2009 passed in case no. 44109 u/s. 144 of CrPC
19.	Exhibit M	Certified Copy of the order dated 06.04.2008 to 04.06.2008 passed in Case No. 45/08 U/s. 144 of CrPC by SDM, Ramgarh
20.	Mark- X	Certified Copy of the show case filed by the first party in case no. 44/09 u/s. 144 CrPC in the court of SDM, Ramgarh
21.	Exhibit N	Certified Copy of the police report u/s. 144 CrPC in Non-FIR no. 02/08 dated 22.02.2008.
22.	Exhibit X/1	Certified Copy of show cause filed by first party in case No. 45/08 before SDM, Ramgarh
23.	Exhibit O	Certified Copy of sale deed no. 12642 dated 28.08.1969 executed by Mahadeb Sahu in favour of Indrasani Devi
24.	Exhibit P	Certified Copy of Khatiyani of Mauza Bongabar,

		PS no. 153 in the name of Indrasani Devi
25	Exhibit X/2	Copy of holding tax receipt dated 18.09.2017 issued by Ramgarh Nagar Parishad, Ramgarh

ADMITTED FACTS

16. That prior to the year 1982, the suit land belonged to the defendants is an admitted fact. It has also been admitted by both sides that the outcome of proceedings initiated u/s. 144 & 145 of CrPC was in favor of the defendants.

FINDINGS

Issue Nos. I, II, V, VI

(Whether the suit maintainable in its present form?; Whether sufficient court fee has been paid by the plaintiff?; Is the suit barred under the provisions of Res Judicata?; Whether the suit is bad for mis-joinder and non-joinder of necessary and proper parties ?)

17. The defendants have mentioned in their written statement that the suit is bad for non-joinder and mis-joinder of parties. However, they have not mentioned as to which necessary or proper party has not been impleaded. Even during the course of the suit, and oral arguments this issue was not contested or discussed. The law of *res-judicata* applies when another court has already adjudicated the matter in issues. However, there is no mention of any decision on the present issues in a suit pertaining to the suit land in question in any court of law. As to maintainability, this objection by the defendants is also cosmetic in nature. Regarding court fee, as per the Shristedar's report, it has sufficiently been paid.

17.1 *In effect, all these issues are decided in favor of the plaintiff.*

Issue No. III

(Whether the suit is barred under the provision of Specific Relief Act, 1963?)

18. It would be pertinent to reproduce S.34 of SRA at this stage:

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.

18.1 In order to obtain relief under Section 34 of the Specific Relief Act, the plaintiff has to establish that the defendant has denied or is interested in denying the character or title of the plaintiff. As we move to the proviso to s. 34, SRA, it states that in cases where declaration of title is sought, such as the present one and further relief can be sought in addition to the relief of declaration but the plaintiff omits to do so, the court shall not make the declaration as prayed for. It is a settled principle that where further relief can be claimed, and it has not been claimed, declaration simpliciter u/s. 34, SRA cannot be made. In the present suit, it is the case of the plaintiff that the defendants are continuing in possession of the house built over the suit land which belongs to the plaintiff, despite termination of tenancy between the parties. The plaintiff seeks declaration of right, title and possession over the suit land alongwith seeking further relief of decree of permanent injunction. It appears from pleadings of both the sides that the defendants has denied and is interested in deny the title of the plaintiff. Thus, the above bar does not apply to this suit.

18.2 *This issue, in effect, is decided in favor of the plaintiff.*

Issue No. IV

(Is the suit barred by law of limitation, estoppel, waiver and acquiescence?)

19. It has been mentioned in the plaint that a house in the suit land was let out to the defendants w.e.f. 01.10.1983 for a period of three months which was further extended on the request of the defendants. The present suit was instituted on 25.11.2010 i.e. after approximately 27 years from the date of commencement of tenancy. The plaintiffs have not mentioned as to exactly from which date or month or year did the plaintiff resided in the suit land against the wish of the plaintiffs. It has been mentioned that the default in payment of rent is for three months after 01.10.1983 i.e. from 01.01.1984. Even considering that date, the present suit has been filed after a good lapse of 26 years which would make the present suit hit under the provisions of section 25, of the Indian Limitation Act, 1963 and also the law of estoppel, waiver and acquiescence alongwith under articles 65 & 67 of the Indian Limitation Act.

19.1 A conjoint reading of sections 25 and 27 r/w articles 64 and 65 of ILA indicates that once possession is continuous for twenty years, open, to the knowledge of all and peaceful, it becomes adverse to the right of the other party upon expiry of this period and after expiry of the prescribed period to challenge it, it will defeat the substantial right of the title-holder. Similarly, in the instant suit, it is the case of the plaintiff that since the year 1984, the defendants are residing in the house let out to them, situated on the suit land. The plaintiffs have

prayed for a decree of eviction thereby implying that the defendants are still continuing in possession over the said house. It has nowhere been mentioned in the plaint that the possession of the defendants was ever broken between 1984 till the date of filing of the suit. It also appears from a conjoint reading of the pleadings from both sides as well as evidences brought forth that, such possession of the defendants is in the knowledge of the plaintiffs. The same is corroborated by way of exhibits A to A/5 and B to C/1. It appears that the defendants were in open in continued possession over the house situated in the suit land in question and thus, the period to challenge this possession as per law has also long expired.

19.2 *In effect, all this issue is decided against the plaintiff.*

Issue No. VII

(Whether the plaintiff is entitled to right and possession over the lands described in Schedule-A and B of the plaint?)

20. In order to prove their right, title and possession over the suit land it is the case of the plaintiffs as made out from the plaint that, by virtue of registered sale deed bearing no. 5831 dated 10.05.1982, P2 and wife of P1 purchased the suit land from D1 and came in possession of the suit land. Thereafter, they made construction upon it and in the vacant portion and grew crops. However, as the defendants had to construct a house; for the time being, the plaintiffs took them as tenants for rent agreed @ Rs. 200/- per month w.e.f. 01.10.1983. However, the defendant did not vacate the said house and rather, continued living in it without paying rent and claimed ownership of the house. The same led to proceedings u/s. 144 CrPC. In support of this, the plaintiffs have not filed any document as mentioned by them in their pleadings. In their oral evidence, the plaintiff's witnesses have somewhat supported the plaintiff's case but they could not stand the test of cross-examination.

20.1 PW1 has stated in examination in chief that he knows the suit land which is currently in the possession of the plaintiff who has constructed a boundary wall, a road, a gate and hand-pump over it and they do agricultural work over the remaining land. They have also constructed a house over the land in which they keep seeds, crops and animals. Further, that the defendants were let the house built over the suit land at agreed rent of ₹200/- per month for a period of three months but after its passage, the defendant neither vacated the house nor paid the due rent. During his cross examination, he mentioned a certain sale deed by which the plaintiff purchased the suit land from the defendant but then stated that he has not seen the said sale deed. He also deposed that presently the defendant is in possession over the

suit land but then stated that he does not know as to since when the defendant is in possession over the suit land or who was in possession since the year 1982 and prior to it.

20.2 PW4 (original P1 in the case who has now died) fully supported the plaintiff's case and deposed in his examination in chief that by virtue of sale deed no. 5831 dated 10.05.1982. He purchased the suit land from D1 for Rs. 10,000/- and obtained possession over it. The said sale deed was drawn in the name of PW4 by late Bimla Devi and wife of his brother-in-law Smt. Veena Devi. Thereafter, they constructed a pucca house over the suit land alongwith a boundary wall, road, a gate and expanded the suit land by consolidating the land over which a house was already built and installed a hand-pump. They started agricultural activities over the empty area in the suit land and used the house for storage of seeds, crops and animals. After sometime, the house was let to the defendants for a period of three months at an agreed rent of ₹200/- per month, as construction work of the defendant's house was underway. The defendant paid ₹600/- as advance rent for three months and the tenancy was effectuated from 01.10.1983. After the passage of three months, as the construction work of defendant's house could not be completed, the plaintiff allowed them to stay as tenants for more time. However, the defendants did not pay a single penny apart from the advance already paid and only gave the plaintiffs empty assurances that they will pay the rent. After the passage of considerable time, the plaintiff instituted proceedings u/s. 144 of CrPC bearing Case Nos. 45/2008 and 44/2009. Finally, he deposed that *Jamabandi* is in the name of D1 as the plaintiff purchased the land from them and as a result, the defendants lay their claim over the suit land. During his and PW5's cross examination, he deposed regarding these proceedings but the same are not being discussed in detail as they have no bearing on the issue. Land Restoration Case No. 18/2008-09 was also brought to light during the cross examination of PW4 which was instituted for the suit land by one Naresh Karmali and one Mohra Karmali against D1 where also, the decision was in favour of D1.

20.3 PW5, who is the plaintiff herself in this case has fully supported the plaintiff's case and corroborated the contents of examination-in-chief of PW4. She, in her cross-examination deposed that no written rent agreement was drawn between the parties and neither did the plaintiff give any written notice for evicting the suit land. As to the sale deed of 1983 upon which the case of the plaintiffs rest, she deposed that it was drawn jointly in the name of Sheonarayan Prasad and

separate shares of land were not allotted to each of them. It hasn't been mentioned as to who paid how much in the purchase amount of ₹10,000/-. She further deposed that she informed the revenue department about purchase of the suit land. However, she expressed her inability to depose as to in whose name the rent receipt was being issued. Finally, she deposed the surroundings of the suit land.

20.4 PW1, in his examination in chief deposed the details of the suit land, that the plaintiffs purchased it through a registered sale deed and carried out agricultural activities on it, and that they let a house in the suit land to the defendant for rent agreed at ₹200/- per month. In his cross examination, deposed that he saw the land in the year 1982 when there was a 8-10 years old three- room house on the suit land. But that he does not know as to who all lived there in the said house. He further deposed that since the year 1965, D2 got the house constructed over the suit land and is living in it since then, but whether she is residing as the owner or not, he does not know. Finally, he deposed that he has not seen the document related to the suit land.

20.5 PW2, in his examination-in-chief gave similar deposition as PW1. In his cross examination, he deposed that P1 was his neighbor since the past 32-33 years and they both have family relations, and that he knows D1 since the past 2-4 years. He also deposed that the plaintiff is claiming the suit land on the basis of registered sale deed about which he learnt from P1. Further, that in the year 2012 he saw that crops were planted on the back side of the suit land and that P1 told him about the tenancy and that the defendant was not paying the due rent to him.

21. The case of the defendant on the other hand is that, no sale deed as alleged by the plaintiff exists and that, the defendants have been continuing in possession over the suit land which was opened and to the knowledge of everyone including the plaintiff. During the course of argument, Id. counsel appearing on behalf of defendant also argued that the plaintiff's side has failed to support its case by way of any documentary evidence. It was also submitted by the Id. counsel that as per the case of the plaintiff, the defendant became their tenant in the year 1983. However, no tenancy agreement or rent receipt has been produced by them. He also submitted that if the tenancy was for limited period till the construction of the house of the defendants, then how come after a lapse of more than 20 years it was in the year 2008 only that the plaintiff took any step for the first time in the form of proceedings u/s. 144 CrPC. The Id. counsel for defendant also submitted that even if the plaintiff's case is to be believed that the defendant paid rent for only

some time from the year 1983 and then defaulted; the plaintiff still took any action for the first time in the year 2008. Thus, even by virtue of law of adverse possession, the defendants title over the suit land would be perfect.

21.1 DW1 is D1 herself, who has deposed that she is continuing in peaceful possession of the suit land which she bought in 1969 and till the year 2017, its rent receipt was being issued in her name from Mandu Anchal Office; and she has built a boundary wall and a house in which her family is residing to everyone's knowledge including the plaintiff. She further deposed that defendant no. 2 died on 09.04.2015 leaving behind her and their one son. Denying the plaintiff's case, she deposed that the suit has been filed to harass her and snatch the suit land from her. She further deposed that as the owner of the house situated in suit land, the electricity connection and telephone line are in her name. The defendant's side has filed Exhibits B, C and C/1 in support of this statement. She denied the plaintiff's contention that the sale agreement from the year 1982 was executed by him. She further denied the plaintiff's case that at present, she is residing in the suit property as a tenant or that the rent was decided between them at ₹200/- per month of which ₹600/- was paid as an advance in the year 1986. She also brought to light that the plaintiff had filed a case before the Executive Magistrate, Ramgarh which was dismissed in the year 1994 after which proceeding was filed u/s. 144 of CrPC in SDO Court, Ramgarh which was also dismissed on 04.06.2008. Thereafter, another proceeding was filed by the plaintiff u/s. 145 of CrPC which was again dismissed. In support, defendant has filed Exhibits G, H and I. In her cross-examination, she deposed that the suit land is registered in her name, which she purchased in the year 1969 for ₹800/- from one Mahadev Sao. She also corroborated the plot no., *khata* no. and area of the suit land, its surroundings, description and the area over which she has built a house. Lastly, she denied that she is a tenant over the suit land and affirmed that it was sold to her in her name.

21.2 DW2, who is s/o D1 and D2, has corroborated the statement of DW1 regarding death of D2, surroundings and description of the suit land, defendant's construction work and peaceful possession over it, that rent receipt was being issued till 2017 in the name of D1, denial of the plaintiff's case regarding sale deed of the suit land, denial that D1 was a tenant in the house situated in the suit land or that any rent was ever agreed upon or payable for the same. He also corroborated DW1's statement regarding the proceedings which were dismissed in the year 1994, 2008 and 2009 which are corroborated by Exhibits G, H & I. He

also corroborated DW1's deposition regarding there being telephone and electricity connection in the name of D1. Further, he denied that there was ever any tenancy between the plaintiff and defendant. He also denied the existence of any sale deed of the year 1983 by which suit land was sold by the defendants to the plaintiff and the plaintiffs consequently coming into its possession and doing construction work upon the suit land. In his cross examination, he again deposed the surrounding and description of suit land and further deposed that in the year 1982, although the suit land was not empty, a house was not built over it. That, a *pucca* house was constructed over the suit land around the year 2016. Further, that as far as he can remember, he is living in the house built on the suit land. That, the descendants of *khatiyani raiyat* of the suit land instituted a suit against the defendant for the suit land. Finally, he deposed that asbestos sheet house was built over the suit land in the year 1983 and he then deposed the surroundings of the said house.

21.3 DW3 deposed in his examination in chief that he knows D1 and D2 since the past 20 years who are residing over the suit land since the year 1969 peacefully and have also installed a hand pump over the suit land. Further, that he has never seen any of the plaintiffs or their family members do any agricultural work or reside in the suit land. He also deposed that D1 lives in the house she constructed over the suit land with her family. In his cross examination, he deposed the description and surroundings of the suit land which is at a distance of about 1 km from his house and that he sells milk to the defendant since the past 10 years. He further supported the case of the defendants and deposed that the suit land is in the name and possession of the defendants. Finally, he deposed that the *kuchha* house built over the suit land is about 35 years old.

21.4 DW4 is a formal witness upon whose identification Exhibits A-A/3 were exhibited.

21.5 In support of their case that the land belongs to them, DW1, DW2 & DW3 have all fully supported the case of the defendant which is further corroborated by Exhibits A to A5 showing that the rent receipt was being issued in the name of D2 and Exhibits B to C1 showing that the electricity and telephone connection in the said house built over the suit land was in the name of D2. Exhibits O and P show that D2 purchased the suit land on 28.08.1969 and that her name is entered in the records as the *khatiyani* of suit lands is in her name situated in *Mauza Bongabar*, PS No. 153. Even though it is the plaintiff who has mentioned earlier proceedings u/s. 144 CrPC and before Executive

Magistrate, Ramgarh, the plaintiff has failed to support these pleadings by way of any evidence. Rather, it is the defendant's side which has produced these documents and has got them exhibited as Exhibits G, H and I. The defendants have also produced Exhibits J, K, L, M and N in support. The details of all the exhibits are provided in the table above. However, it will be apt to mention at this juncture that these have no bearing on the Issue relating to title and possession before this court.

22. By virtue of **S. 102 of the Indian Evidence Act, 1872**, the burden of proving this case as well as the issue being considered lies upon the plaintiff. Needless to say, by not supporting their case with any evidence, the plaintiff has failed to shift the burden of proof upon the defendants. It is only after the plaintiff proves his case that the burden shifts upon the defendants making it necessary for them to prove their case. As the plaintiffs have failed to do so, a deeper scrutiny of the defendants' evidences is not being conducted by this court.

22.1 In effect, this issue is decided against the plaintiff.

Issue No. VIII

(Whether the plaintiff is entitled to obtain rent at ₹200/- per month alongwith interest from the date of default till the date of eviction?)

23. Although it is the case of the plaintiff that the defendant who entered into the suit land as a tenant is now laying claim over it; thereby necessitating their eviction, there is no evidence on record which would show firstly whether the plaintiff is owner of the suit land and secondly, whether the plaintiff and defendant were in the relation of landlord and tenant. Without the plaintiff proving these, the present issue cannot be considered. Also, it is not clear from the pleadings of the plaintiff or their evidence as to whether it was P1 or P2 who entered into the tenancy agreement with D2.

23.1 In effect, this issue is decided against the plaintiff.

Issue No. IX

(Is the plaintiff entitled to the reliefs prayed for?)

24. None.

25. Accordingly, the plaintiffs have not proved their case and establish that the suit land belongs to them thereby necessitating declaration of title in their favor and evicting the defendant from it and injuncting them permanently from the suit land.

Hence, in the result, it is hereby ordered

That let the suit be and the same is dismissed on contest without cost. A decree be drawn accordingly.

(Pronounced by me in open court)

(Dictated and corrected)

Sd/-

Smriti Tripathi
JO Code: JH02021
Addl. Civil Judge (Jr. Div.)-III
Ramgarh
Dated 29th November, 2022

Sd/-

Smriti Tripathi
JO Code: JH02021
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Ramgarh
Dated 29th November, 2022