

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

Present: Mrs. Smriti Tripathi
Additional Civil Judge (Junior Division)-III
[30th day of July, 2022]
District: Ramgarh
[Title Suit 61/2009]
(CNR No. JHRG040000032009)

Plaintiffs	1. Tejnath Mahto s/o late Sukhlal Mahto 2. Khilshwar Mahto s/o of late Sohan Mahto 3. Bindeshwar Mahto s/o of late Sohan Mahto 4. Prem Lal Mahto s/o of late Sohan Mahto All r/o village Kankebar, PS & Distt Ramgarh
Represented By	<i>Sri Satyaprakash Sinha, Ld. Adv.</i>
Defendants	1. Sheikh Jamaluddin s/o late Sheikh Abdul 1(a) Md. Jiyauddin 1(b) Sahadun Nisha 1(c) Ratima Khaton 1(d) Saharun Nisha 1(e) Jaitorn Nisha 1(f) Sahidun Nisha 1(g) Shamima Khaton All r/o village Kankebar, PS & Distt Ramgarh
Represented By	<i>Sri Ranjan Kumar Sinha, Ld. Adv.</i>

J U D G M E N T

1. The plaintiff has brought this suit against the defendant u/s. 26 of The Code of Civil Procedure, 1908 (Hereinafter referred to as the "**CPC**") claiming title and possession over the suit land pursuant to declaration of sale deed concerning the suit land null and void.

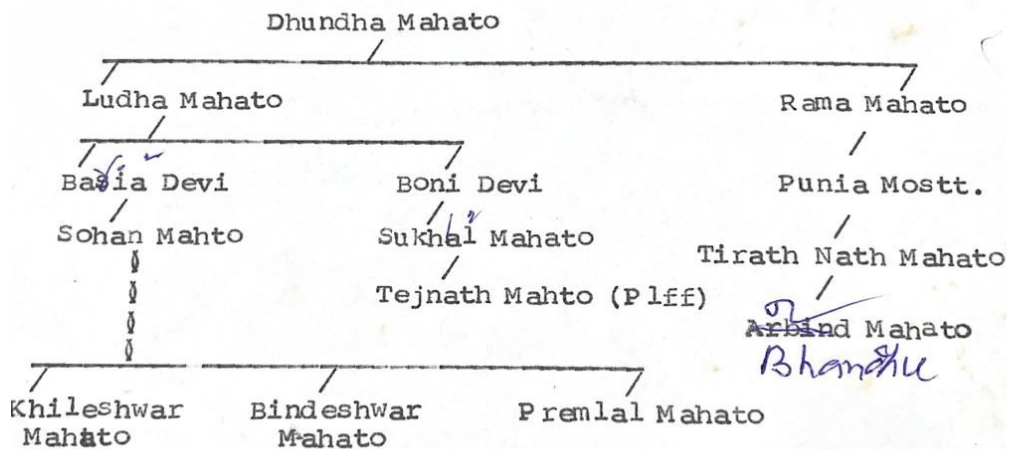
PLAINTIFF'S CASE

2. Before discussing the case of the plaintiff, it will be apt to reproduce schedule B 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:

All the land and structures in land measuring an area of 0.09 acres, i.e. 1/2 out of 0.19 acre in plot no. 535 of Khata no.22 situated in village Kankebar, Pargana-Chengarha, PS

Ramgarh, Thana no. 97 District- Ramgarh which is butted and bounded as North: NH33; South: Survey Road; East: Dasmi Devi; West: Defendants

3. The compendious case of the plaintiffs as it emerges from their pleadings in the plaint, filed on 04.08.2009, and admitted on 20.08.2009 is that Dhundha Mahto s/o Dhakhru Mahto was the recorded tenant with respect to the lands of *khata* no. 22 of village Kankebar, PS and District Ramgarh total measuring an area of 5.97 acres consisting of 20 plots inclusive of plot no. 535, area of 0.19 acres. The recorded tenant, Dhundha Mahto died leaving behind two sons namely Ludha Mahto and Rama Mahato, who jointly inherited the lands as mentioned above who mutually partitioned the entire land as mentioned above in the year 1948. Half share was allotted to each of them [i.e. 2.98 acre was allotted to Ludha Mahato and 2.98 acre was allotted to Rama Mahto out of the total area of *khata* no. 22]. Half-half area of each and every plot of the 20 plots was allotted to each of them. Thereafter, both of them came in separate possession in accordance with the allotment of their respective shares in each plot and started to make payment of rent to the State with regard to their respective shares separately against the grant of rent receipt to the hostile knowledge of everybody including the defendant. Ludha Mahato died leaving behind his two daughters namely Baria Devi and Boni Devi who got married and their respective husbands remained *Ghar Jamai*. Baria Devi died leaving behind her son Sohan Mahato who too died leaving behind three sons Khileshwar Mahato, Bindeshwar Mahato and Premlal Mahto. Bondi Devi also died leaving behind her son Sukhlal Mahto and Sukhlal Mahto also died leaving behind a son Tej Nath Mahato. The genealogical table, as provided by the plaintiff vide schedule A of the plaint is reproduced herein for reference:



4. In the meantime, Rama Mahto died leaving behind his wife Puniya Devi, who without having any right, title, interest and possession, executed a registered deed of sale bearing deed no. 2317 dated 16.06.1950 for an area of 0.19 acres in the suit land in favour of

defendant and his brother Sheikh Azimuddin behind the back of ancestors of these plaintiffs. Subsequently, Sheikh Azimuddin died issueless and the said registered deed of sale was never acted upon. The plaintiff pleads that if there is any rent receipt in regard to land involved in the said registered deed of sale in custody of defendants, the same is forged, fabricated and drawn in collusion with Anchal Staff by suppressing material facts.

5. It has further been pleaded that after the demise of their respective ancestors, the present plaintiffs were cultivating 1/2 area of the total of 0.19 acres of the suit land, alongwith their share in the other plots of *khata* no. 22 uninterruptedly, continuously, and to the hostile knowledge of everybody including the defendant.
6. It has been further pleaded that on 27.02.2009, all of a sudden, the defendant entered suit land armed with weapons and started to dig it and as the plaintiffs rushed to the suit land and objected to the same to which, they were met with threats of dire consequences. Then, the plaintiffs rushed to the local police for help but no action was taken. The plaintiffs, finding no alternative, then filed a petition before the SDM, Ramgarh who drew up a proceeding u/s 144 of CrPC vide Case No. 58/09 concerning the suit land which was disposed-off by an order dated 30.04.2009 in favour of the defendant. The plaintiffs then preferred a Criminal Revision bearing no. 114/2009 in the court of Ld. Sessions Judge, Hazaribagh against this order, which was dismissed observing therein that after the expiry of sixty days, the order passed u/s. 144 CrPC became infructuous and has no force in law.
7. After this, the defendant lost his mental balance and started to threaten the plaintiffs to vacate the suit land and laid false claim and made preparations to encroach the suit land and hence, the present suit was filed.
8. The cause of action has been pleaded to arise on several dates including on 27.03.2009, when the defendants tried to dig the suit land; then on 20.04.2009, when the proceeding u/s 144 of CrPC was disposed-off; then on 22.06.2009, when the Cr. Rev. No. 144/2009 was disposed-off.
9. The suit has been valued at ₹ 20,500/- for the purpose of court fee and jurisdiction out of which the suit for declaration of title and confirmation of possession is valued at ₹ 20,000/- and valued at ₹ 500/- for injunction upon which the *ad volorum* court fee is paid thereon.
10. The plaintiffs pray for the following reliefs:
 - a. For setting aside registered sale deed of dated 16.06.1950 bearing no. 2317 executed by Most. Puniya in favour of Sheikh

Jamaluddin & Sheikh Ajmuddin by declaring it as illegal, null and void.

- b. For declaration of title of the plaintiffs to the extent of $\frac{1}{2}$ of the total 0.19 acres [which equals 0.09 acres] over the suit land.
- c. For confirmation of possession of the plaintiffs over the suit land or, in the alternative, if the plaintiffs are found not in possession, a decree for *khas* possession by ejecting the defendant or his men or agent be passed.
- d. For a decree for injunction restraining the defendant from making any construction over the suit land or, a mandatory injunction directing the defendant to remove the same from the suit land.
- e. For a decree for cost of the suit be awarded to the plaintiffs.
- f. For any other relief or reliefs to which the plaintiffs may be found entitled.

DEFENDANT'S CASE

11. On the other hand, the defendant appeared on 06.10.2009, and vide their written statement dated 03.11.2009, pleaded that the present suit is not maintainable as framed 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 cause of action, it has been averred that the suit property has not been correctly valued. The land consists with its buildings and other structures which has not been valued. The value will be not less than ₹ 20 lakhs and the plaintiffs have not paid court fee upon the whole for which the plaint is liable to be returned. It has also been averred that the suit is barred by law of limitation and adverse possession. The suit was also averred to be barred under the provision of Specific Relief Act, 1963 as well as hit by the principles of estoppel and acquiescence.
12. Coming to the merits of the plaintiff's case it has been averred that the defendant and his ancestors are in possession of the suit land since 1936 and with absolute right since 1950 within the conscious knowledge of the plaintiffs and their predecessors. It is further stated that although mutual partition was effected between the two branches, it is denied that the partition was made half and half equally in each plot in the year 1948. Though, in the partition each branch got one half, yet some of the plots were allotted as a whole to each branch and the plot no. 535 consisting of 0.19 acres was allotted wholly to Rama Mahto. It is submitted that even prior to the partition, the two branches were cultivating the lands separately as per their convenience, and plot no. 535 was wholly cultivated by Rama Mahto @ Rama Kurmi. Subsequently, Rama Kurmi had raised loan of Rs. 25/- for the marriage of his son from Sheikh Abdul, father of the defendant and had

mortgaged the entire 0.19 acres of plot no. 535 of the suit land in his favour by putting him in possession on 15.04.1936. When the loan could not be repaid by Rama Kurmi, his wife, Most. Puniya Devi executed a registered sale deed in favor of S.K. Jamalluddin and S.K. Ajmuddin, two sons of mortgagee S.K. Abdul and discharged the debt of her late husband by transferring the whole of plot no. 535 of the suit land in her absolute right for legal necessity, within the knowledge of plaintiffs and Ludha Mahto who never challenged it. Since then, the defendant and his deceased brother had acquired absolute right title and possession over the entire 0.19 acres of the suit land and perfected it by prescription of law. Later, out of the suit land, the defendant gave 0.01 3/4 acres in the North-West corner for mosque. The defendant, after the purchase had constructed a titled house on the south-western portion of the suit land i.e. on the north of village Survey Road and has since been living there. He thereafter, constructed two *Pucca* house on the north i.e. of the NH-33. The defendant further acquired lands measuring 0.02 acres in plot no. 534 by purchase which has been amalgamated with the suit land and this was further surrounded by boundary wall and is in one compact block in peaceful enjoyment of these defendants. It has specifically been denied, that the said sale deed was never acted upon and that it is forged and fabricated; and that after the demise of the ancestors, the plaintiffs were cultivators of the lands of the suit land to the knowledge of everybody including the defendants.

13. Finally averring that the plaintiffs have no title and possession over the suit land, prayer has been made to dismiss the suit with costs without granting any relief.

ISSUES FOR ADJUDICATION

14. On the basis of admissions and denials of the parties and on the bedrock of oral examination of parties under Order X, Rule 2, CPC and other pleading and documents as produced, the following issues were framed on 13.01.2011 by the Id. predecessor court for adjudication. Findings are mentioned next to the issues and reasons for them are elaborated further in the judgment:

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| I. <i>Whether the suit maintainable as framed?</i> | No |
| II. <i>Whether the plaintiff has valid cause of action?</i> | es |
| III. <i>Whether the suit has been properly valued?</i> | Y |
| IV. <i>Whether the suit is barred by law of limitation & adverse possession?</i> | es |

- V. *Whether the suit is barred under the provisions of Specific Relief Act, 1963?*
- VI. *Whether the suit is barred by the principles of estoppel and waiver?*
- VII. *Whether the sale deed executed by Most. Puniya Devi bearing no. 2317 dated 16.06.2010 is illegal, null and void?*
- VIII. *Whether the plaintiff is entitled to right, title and interest over the suit land as described in Schedule-B of the plaint?*
- IX. *Whether the plaintiff is entitled to khas possession over the suit land?*
- X. *Is the plaintiff entitled to other relief(s)? If yes, what?*

15. After the issues were framed, the record was set for plaintiff's evidence on 02.11.2017 and closed on 07.03.2013 after which the record was advanced for defendant's evidence which was closed on 02.11.2017 and the record was set for arguments. During the course of arguments, the plaintiff filed a petition praying to mark exhibit certain documents which was allowed on 27.02.2018. Similar application was filed by the defendant on 30.05.2018 which was allowed on 18.03.2019 and vide order dated 18.01.2020 the defendant's evidence was again opened and it was closed on 28.02.2022 and the record was again set for arguments on 27.06.2022. Then, the plaintiff filed another petition dated 14.06.2022 which was allowed and the record was set for plaintiff evidence, then on 08.07.2022 after the plaintiff evidence was closed, an opportunity was to the defendant to produce evidence which he did not avail and on request of both the sides record was set for arguments again.

EVIDENCES

16. In order to prove their respective cases, both the sides have adduced the following evidences, 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	Khileshwar Mahto	Plaintiff
PW-2	Bhimnath Mahto	-
PW-3	Neelratan Mahto	-
PW4	Tejnath Mahto	Plaintiff
PW5	Yugal Mahto	-

PW6	Lakhan Lal Mahto	Formal Witness
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B. Defendant's Witnesses

Rank	Name of witness	Relation
DW-1	Yogendra Choudhary	-
DW-2	Newalal Mahto	-
DW-3	Md. Jiyauddin	Defendant
DW4	Md. Mokhtar	-
DW5	Visheshwar Ram	-
DW6	Hamid Ansari	Formal Witness
DW7	Naushad Hussain	Formal Witness
DW8	Kailash Mahto	-

List of Plaintiff/Defendant/Court ExhibitsA. Plaintiff's Exhibits:

Sr. No.	Exhibit Number	Description	Objection
1.	Ext. 1-1/7	Rent receipts	Without objection
2.	Ext.2	C.C. of registered sale deed no. 2317/1950	Without objection
3.	Ext.3	C.C. of Khatiyani of Khata no. 22 of Village Kankebar	Without objection
4.	Ext.4	C.C. of order sheet dt. 26.05.09 in Cr. Rev. No. 114/09	Without objection
5.	Mark-X	Receipt no. 759341 of Sukhlal Mahto	Without objection
6.	Mark-X/1	Rent Receipt No. 705026 of Sukhlal Mahto	Without objection
7.	Ext. X/2	Receipt No. 087411 of Sukhlal Mahto	Without objection

B. Defendant's Exhibits:

Sr. No.	Exhibit Number	Description	Objection
1	Ext. A	Govt. rent receipt no. JH/17A 018209	Without objection
2	Ext. B - B/3	Notice related to compensation case no. 02/10-11	Without objection
3	Ext.C	C.C. of sale deed no. 2317 dated 16.06.1950	With objection
4	Ext.D	Original mortgage/bond paper	With objection
5	Ext. E - E/1	Two Jamindari receipts	With objection
6	Ext. F to F/1	Original govt. receipts of Khata No. 18	With objection

6	Ext. F to F20	Original govt. receipts of Khata Nos. 22, 30, 8 and 45	With objection
6	Ext. F to F20	Original govt. receipts of Khata Nos. 22, 30, 8 and 45	With objection

17. After both the sides adduced evidences on their behalf, the suit was posted for arguments which was heard on behalf of both the sides at length and then, and the suit was posted for judgment.

ADMITTED FACTS

18. Before dwelling into the issues, it would be pertinent to mention the admitted facts. As per the written statement, the defendant has admitted pleading made in para nos. 6, 10, 11 and 12 of the plaint. Thus, both the sides have admitted that the suit land was ancestral property, that it was partitioned, the genealogical table of between whom it was partitioned, that both the branches arising from Dhundha Mahto have been allotted a total of half share in the partitioned property. The actual plots, etc. that were partitioned have also been admitted. The sale deed through which Most. Puniya Devi transferred the suit land to defendant has also been admitted. The only point of contest, thus, are date of the partition, plots and area in it allotted to each side, right of Most. Puniya Devi over $\frac{1}{2}$ share in the suit land, and right of Most. Puniya Devi to execute the said-deed in question.

FINDINGS

Issue Nos. I, II

(Whether the suit maintainable as framed?; Whether the plaintiff has valid cause of action?)

19. The plaint mentions that though the sale deed in question was executed in the year 1950, it was in 2009 that all of a sudden the defendants came to the suit land and tried to dispossess the plaintiff. However, a bare perusal of the material as a whole suggests that the dates mentioned ascribing cause of action have not been properly supported. Moreover, also considering the discussion made in para nos. 21 and 24 of this judgment, it appears that the suit is not maintainable as framed and suffers from lack of a valid cause of action.

19.1 *These issues are thus, decided against the plaintiff.*

Issue No. III

(Whether the suit has been properly valued?)

20. Based upon the reliefs sought, and Sarishtedar's report, it appears that this suit has been properly valued.

20.1 *This issue is decided in favour of the plaintiff.*

Issue No. IV

(Whether the suit is barred by law of limitation & adverse possession?)

21. Article 59 of The Indian Limitation Act, 1963 (Hereinafter referred to as the "ILA") provides a three-year time period for setting aside an instrument which are taken from the date the facts entitling the plaintiff to have the instrument set aside first become known to him. In the instant suit, though it is the case of the plaintiff that they learnt about the alleged sale deed which was executed in the year 1950 only in the year 2009, no cogent evidence has been brought on record supporting this plea apart from the plaintiffs themselves repeating the same in their examination in chief filed on affidavit. As the plaintiff has failed to make out its case as pleaded, this court is of the opinion that the time to challenge the alleged sale deed has long expired as per law.
- 21.1 A conjoint reading of sections 25 and 27 r/w articles 64 and 65 of ILA indicates that once possession is continuous for twenty year, 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, as the plaintiff has failed to establish that the defendants were not in possession over the disputed land, and rather, as discussed in para no. 24 of this judgment some of their witnesses have admitted in their cross examination that the defendants are residing in the suit land, it appears that the defendants were in possession over the suit land after the execution of the sale deed in question and thus, the period to challenge this possession as per law has also long expired.
- 21.2 *Both these issues are decided against the plaintiff.*

Issue No. V

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

22. It would be pertinent to reproduce s. 34, 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.

- 22.1 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. Since in the present suit, the plaintiff claims that the defendants are forcibly taking possession over the lands that belong to plaintiff, therefore, the declaration sought here is essentially in the nature of establishing the title of the plaintiffs over the suit land.
- 22.2 Further, 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 their plaint, apart from seeking declaration of their title, the plaintiffs have also claimed the relief of permanent or mandatory injunction and possession or *khas* possession, as the case may be.
- Therefore, the case of the plaintiff is not found to be barred by section 34, SRA.
- 22.3 *This issue, in effect, is decided in favour of the plaintiff.*

Issue No. VI

(Whether the suit is barred by the principles of estoppel and waiver?)

23. Yes. As already discussed in para no. 21 of this judgment, by not taking an action on the sale deed in question, the plaintiffs have waived off their right to challenge it and are now estopped from challenging it.
- 23.1 *This issue, in effect, is decided against the plaintiff.*

Issue No. VII

(Whether the sale deed executed by Most. Puniya Devi bearing no. 2317 dated 16.06.1950 is illegal, null and void?)

24. It is the plaintiff's case, as made out from their pleadings that $\frac{1}{2}$ share in Plot No. 535 in the suit land, just like other *khata* of Plot No. 22 was allotted to the branch of the plaintiffs and $\frac{1}{2}$ was allotted to Rama Mahto vide mutual oral partition in the year 1948 and subsequently both came in its possession. Basing upon this, the plaintiff avers that the sale deed executed by the wife of Rama Mahto after his demise is illegal, null and void, as it concerns all the lands of Plot No. 535 where has he was only allotted half share in this plot. The plaint also finds mention of proceedings that were initiated by the plaintiff u/s. 144, CrPC after one day, the defendant all of a sudden entered the lands of

Plot No. 535 armed with weapons to take possession over the suit land. We will now see what evidence the plaintiff has adduced to prove their pleadings.

- 24.1 PW01 being one of the plaintiffs has supported these pleadings. He also deposed that it was on 27.02.2009 that the defendant for the first time, prior to take forcibly possession of the suit land, based upon sale deed in question however, they never came in possession over the suit land. In his cross-examination, in para 8 he deposed that presently, a boundary wall has been constructed over the suit land. However, this suit has been filed only with respect to plot no. 535. He denied knowing whether $1\frac{3}{4}$ of total suit land has been given for Mosque or not. He further deposed that the *kewala* was done prior to his birth which he did not see during the drafting of the plaint and which, his ancestors never opposed. In para nos. 16 and 41 deposed that there is a *khapdail* house over the suit land since prior to his birth.
- 24.2 PW2- Bhimnath Mahto deposed that he knows both the sides of the suit and is a distant relative of Plaintiff No. 1 and that plaintiffs are in current and continued possession over the suit land. However, he also deposed that the defendant has constructed a house surrounded by boundary wall over half share of said land. He also deposed that he was not a witness to oral partitioned nor he has seen any paper, nor and that he learnt about the *Kewala* executed by Most Puniya Devi only after suit was filed. In para no. 16 of his cross examination he has deposed that Jamalluddin given some share in the suit land for mosque.
- 24.3 PW3 Neelratan Mahto also deposed that he is not a witness to the said oral partition but supported the plaintiff's case and deposed that the plaintiffs and defendants are in possession over half-half share in the Plot no 535 in the suit land however, in his cross examination he deposed that the defendants are in current possession over the suit land.
- 24.4 PW4-Tejnath Mahto, in addition to supporting the plaintiff's case deposed specifically that the defendant never came in possession over the full share in plot no. 535 rather they assumed possession over only half share in plot no. 535 and it is the plaintiffs who are in possession over the suit land and not the defendant. However, in his cross-examination he deposed that the partition between both sons of recorded tenant was done on paper which is contrary to the case of the defendant. He also deposed that a mosque has been constructed over half share of lands in Plot No. 535.

- 24.5 PWs 5 and 6 are formal witnesses who proved certain rent receipts relating to the suit land which were exhibited or marked however, in their cross examination both of them deposed that they do not know the persons whose signatures they have identified and they have only identified them basing on the names written.
- 24.6 As to the documentary evidence, the plaintiff has produced certified copy of *khatiyān* pertaining to the suit land which was marked as Ext. 3 however, since there is no dispute pertaining to the recorded tenant or the genealogical table, that is not being discussed. The plaintiff has also gotten exhibited certified copy of the sale deed forming the basis of this suit alongwith certified copy of order passed in revision to the proceedings initiated u/s. 144, CrPC, which dismissed as infructuous. So far, none of these exhibits pertain to the crux of the issue i.e. whether the plaintiffs were in possession of half portion of the suit land after it was allotted to them, thereby making the sale deed executed by Most. Puniya Devi illegal, null and void. Even in the oral testimonies the witnesses have not sustained the test of their testimonies during the course of cross examination. Their examination in chief on affidavit have all corroborated and supported the claim of the plaintiff however, during the course of cross examination, PWs 1 and 4 being the plaintiffs have supported their case. PW4 has however, deposed that the partition of the suit land was written which is contrary to the case of the plaintiff. PW3 has deposed that the defendants are in possession over the '*takrari zameen*' i.e. suit land whereas the case of the plaintiffs is that they were and are in possession of the suit land and this suit has been brought only to prevent attempts to dispossess them by the defendants. PW2 has somewhat supported the case of the plaintiffs overall but has deposed that he learnt about it all only after the suit was filed, from the plaintiffs. The defendant has, by way of cross examination, tried to bring on record that they have constructed a house and mosque over Plot No. 535 pertaining to the suit land, covered by boundary but whether that is situated in the half share allotted to them or to the plaintiff, as per the case made out by plaintiffs remains to be proved. Then, during the course of arguments, the plaintiffs were permitted to get certain rent receipts exhibited. The court will now discuss them. The plaintiff got certain rent receipts from the year 1960 till 1992 exhibited, issued in the name of Sukhlal Mahto, without prejudice pertaining to the suit land. However, all of these are for an area of 2.82 acres i.e. for the full area in plot No. 535 of the suit land which is contrary to the case of the plaintiffs. These, these also do not go to prove that $\frac{1}{2}$ share in the suit land was allotted to plaintiffs

and the other half to the branch concerning the husband of executant of the sale deed in question.

- 24.7 Secondly, the plaintiff has nowhere stated in his pleading or brought by way of evidences the authority of Most. Puniya Devi to transfer the land in question as a sole or part legal heir of her deceased husband as per succession rules applicable in India. It is rather the case of the plaintiffs that she was authorized to transfer only that half share in Plot No. 535 of the suit land which was allotted to her deceased husband. They have also not questioned as per Transfer of Property Act or prayed for adjudication upon the mortgage deed entered into by Rama Mahto taking a loan against the whole lands in Plot No. 535. Therefore, these aspects of the transfer are not being dwelled into due to lack of sufficient material on record, pleading or prayer.
- 24.8 Having regard to the above, this court is of the opinion that the plaintiff has not raised preponderance of probabilities that in the oral partition, $\frac{1}{2}$ - $\frac{1}{2}$ share in the suit land was allotted to each branch thereby negating the veracity of the sale deed in question.
- 24.9 The defendant on the other hand, has brought the following evidences on record to prove its case which are being discussed although the burden of proof did not shift to the defendant. The defendant got rent receipts in his name pertaining to the suit land exhibited as F-F/20. Some of these go as back as 1959 thereby indicating that the contention of the plaintiff that the sale deed in question was not acted upon till 2009 when all of a sudden the defendant came armed and tried to take possession over the suit land. It was urged by their Id. counsel that plain sale deed of Most Kurmi marked as Ext. D shows that Plot no. 535 was allotted exclusively to Rama Mahto who mortgaged it to father of defendant on 15.04.1936, and as Rama Mahto could not repay this loan, his wife executed the sale deed in question when Rama died, marked as Ext. C. it is the further case of the defendants that subsequent to this, they came in possession and paid rent which is proved by way of Ext. E and E/1 and further Ext. F-F/20 and even the State of Bihar recognized their ownership after which, $1\frac{3}{4}$ decimals was donated by father of the defendants for construction of mosque while a house was constructed over the area remaining alongwith two *pucca* building and lands of Plot no. 534 were also amalgamated with this and a boundary wall was constructed and a perusal of para no. 10 of the cross examination of PW1 also confirms the same. Then, during the construction of NH-33 entire land of Plot No. 535 and two decimals of Plot No. 534 was overtaken by Govt. including the constructed mosque, and notice was sent to Jamaluddin as he was the recorded

owner after the mutation. The notices have been exhibited as Ext. B - B/3. The plaintiff has made no mention of any such notice issued to them for their share in Plot No. 535 either in his pleadings or during the arguments. It is the further case of defendants that it is to claim this amount of compensation that the plaintiffs have instituted this suit which is sham.

24.10 DW1 apart from supporting the defendant's case has deposed that the defendants are in possession over this land and rent receipt is also being issued in their names. He deposed that the defendants also acquired two decimals of land in khata no. 18, vide sale deed no. 28619 executed in the year 1978. Also that land in both these khata no. 18-22 consisting no 3535534 together account for 21 decimal. A boundary has been constructed around both these plots by the defendants. Further that on the suit land, the defendant has his house, and mosque and same land has been acquired for expansion of NH-33. Further deposed that notice during expansion for construction for NH-33 was issued in the name of defendant Jamaluddin. He further deposed that Rama Mahto was allotted total 19 decimals of land in plot no. 535. In his cross-examination, he deposed that the suit land is ancestral land. He further deposed that he does not know between who all the partition took place or about the members of that whole family. He also deposed that he does not know as to whether plaintiffs are cultivating the land. He deposed that he has never seen the map or *khatiyān* of the suit land. DW2- Newalal Mahto did not bring any new fact on record apart from that Most. Puniya devi was the second wife of Rama Mahto. DW3 being a substituted defendant, fully supported his case but did not bring any new fact on record however, he affirmed continued possession of his father and him over the suit land but denied knowledge about year of partition of the suit land. DW3 was recalled to prove Ext. D, E-E/1 and F-F/20.

24.11 DW4 is a tenant of the defendant residing in the suit land. He supported defendant's case but could not stand the test of cross-examination. However, he has specifically deposed that for expansion of NH-33, said masjid, boundary wall, house of the defendant were demolished. Further he deposed that Rama Mahto came in Khas possession over the suit land as it was allotted to him during partition. DW5 and 8 gave similar deposition but specifically supported the fact of land acquisition for expansion of NH-33 and its notice being issued to the defendant, and that Ludha Mahto never claimed the suit land and after his death his descendants are laying claim over it. DW8

deposed that defendant had constructed a house, boundary wall and mosque over the suit and two decimals of land adjacent to that plot.

24.12 DW6 and 7 are formal witnesses who proved certain rent receipts relating to the suit land which were exhibited or marked however, in their cross examination both of them deposed that they do not know the persons whose signatures they have identified and they have only identified them basing on the names written.

24.13 Considering all the evidences brought on record, it appears that the plaintiff has failed to raise preponderance of probabilities by failing to prove that oral partition took place in 1948, and that $\frac{1}{2}$ share in each plot of the suit land was allotted to both sides subsequent to which they came in possession of these respective shares and continued with it. They have also pleaded that since then they are in continued possession over the suit land but the same has not been proved by them and their witnesses have not stood the test in their respective cross examinations. They have also failed to establish that Ext. D was executed one day without power and basing upon the same, Ext. C was drawn up which was done so without any authority.

24.14 *This issue, in effect, is decided against the plaintiff.*

Issue No. VIII, IX

(Whether the plaintiff is entitled to right, title and interest over the suit land as described in Schedule-B of the plaint?; Whether the plaintiff is entitled to khas possession over the suit land?)

25. Due to reasons ascribed above, as the former issues have been decided against the plaintiff hence, *these issues are also decided against the plaintiff.*

Issue No. X

(Is the plaintiff entitled to other relief(s)? If yes, what?)

26. None.

27. Accordingly, the plaintiff has not been able to discharge its burden of proof and prove its case and establish that partition took place in 1948 after which $\frac{1}{2}$ share in each of the plots were allotted to both the branches of the recorded tenant of the suit land, thereby entitling them to seek the desired declaration pertaining to the sale deed in question, and subsequent reliefs.

Hence, in the result, it is hereby ordered

That let the suit be and the same is dismissed on contest with out cost. A decree be drawn accordingly.

Pronounced by me in open court today.

(Dictated and corrected)

Sd/-

*(Addl. Civil Judge Jr. Div.-III)
Ramgarh
Dated 30th July, 2022*

Sd/-

*(Addl. Civil Judge Jr. Div.-III)
Ramgarh
Dated 30th July, 2022*