

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



Present: Smriti Tripathi
Additional Civil Judge (Junior Division)-III
[22nd June, 2023]
District: Ramgarh
[Title Suit 215/2014]
(CNR No. JHRG020000182014)

Plaintiffs	1. Mahavir Sahu s/o late Shyam Lal Sahu, deleted on 11.05.23 [P1] 2. Toshak Nath Sahu s/o late Dharam Nath Sahu, deleted on 20.07.17 [P2] 2. Sheela Kumari w/o late Toshak Nath Sahu [P2a] 2(a)Ranjit Kumar s/o late Toshak Nath Sahu [P2b] 2(b) Poonam Prasad d/o late Toshak Nath Sahu [P2c] 2(c) Preeti Prasad d/o late Toshak Nath Sahu [P2d] 3. Rajesh Kumar Sahu s/o late Dharam Nath Sahu [P3] 4. Balram Sahu s/o late Dharam Nath Sahu [P4] 5. Sachidanand Sahu s/o Mahavir Sahu [P5] All r/o Deoriya Bargaon, PS Deoriya Bargaon, PS Bhurkunda, District Ramgarh
Represented By	<i>Sri G.C. Jain and Sri Uday Kumar Sinha, Ld. Adv</i>
Defendants	1. Jugal Nayak s/o late Girdhari [D1] 2. Dhaneshwar Nayak s/o late Girdhari [D2] 3. Raghuvir Nayak s/o late Girdhari [D3] 4. Sahdeo Nayak s/o late Girdhari [D4] 5. Lala Nayak s/o late Girdhari [D5] 6. Raj Kumar Nayak s/o late Girdhari [D6] all r/o Deoriya Bargaon, PS Deoriya Bargaon, PS Bhurkunda, District Ramgarh
Represented By	<i>Sri Nilkanth Prasad, Ld. Adv.</i>

Date of Filing	03.11.2014
Date of Admission	02.12.2014
Date of Framing Issues	16.08.2016
Date of commencement of evidence	03.09.2016
Date when Judgment is reserved	08.06.2023
Date of Judgment	22.06.2023

J U D G M E N T

- The plaintiffs have brought this suit against the defendants u/s. 26 of The Code of Civil Procedure, 1908 (Hereinafter referred to as the "CPC") praying for declaration of their right, title, interest and possession over the suit land and for recovery of possession over the suit land after demolition of the room constructed upon it through the process of court.

PLAINTIFF'S CASE

2. Before discussing the case of the plaintiff, it will be apt to reproduce description of the land and the genealogical table, as mentioned in the plaint concerning which the present suit has been brought:

Land settled to Shyam Lal Sahu

- a) Land measuring 0.90 dicmil out of 65 decimil in plot no. 1836 khata no. 63, Mouza Deoriya Bargaon, Thana No. 48, PS Ramgarh (New: P.S. Bhurkunda), District Hazaribag (New: Ramgarh);

Boundaries:

North- Land of Girdhari Ghasi South- Dukhu Ravidas
 East- Chhotu Manjhi West- Raasta

The above land will hereinafter be referred to as the "suit land" for brevity as the present suit pertains to this portion of the land only.

- b) Land measuring 0.52 dicmil out of 65 decimil I in plot no. 908 khata no. 63, Thana No. 48, PS Ramgarh (New: P.S. Bhurkunda), District Hazaribag (New: Ramgarh)

Boundaries:

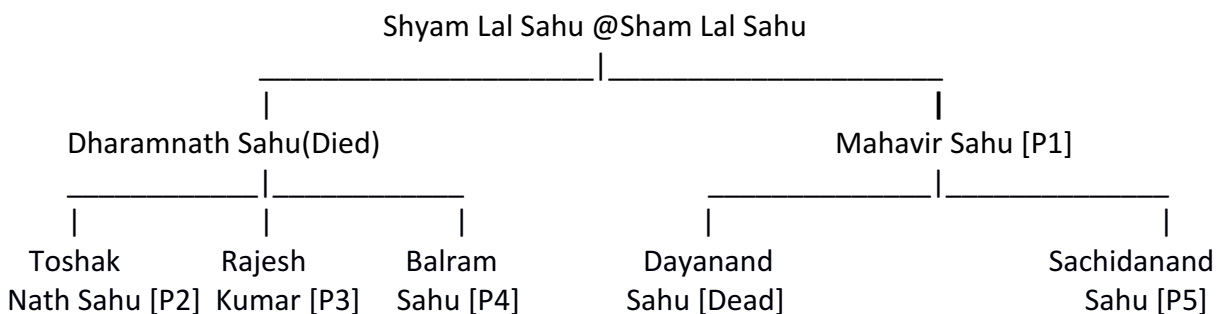
North- Private South- Sukhlal Manjhi
 East- Simanan of Mauza Matkana West- Sukhlal Manjhi

- c) Land measuring 0.60 decimal out of 65 decimil in plot no. 908 khata no. 63, Thana No. 48, Mouza Deoriya Bargaon, PS Ramgarh (New: P.S. Bhurkunda), District Hazaribag (New: Ramgarh)

Boundaries:

North- Md. Amin Kalam South- Private
 East- Private West- Railway

Genealogical Table



3. The compendious case of the plaintiffs as it emerges from their pleadings in the plaint, filed on 03.11.2014 and admitted on 02.12.2014 is that Sham Lal Sahu @Shyam Lal Sahu (father of P1 and grandfather of P2 to P5 and hereinafter referred to as the "settlee") got settlement of lands described in paragraph no. 2 of this judgment by means of *parcha* granted by Bihar Bhoodan Yogya Committee on 20.04.1956. As the original certificate was lost, Certified Copy was obtained which is filed with the plaint. The settlee remained in possession of these lands and improved them after cutting soil and cultivated upon it till his demise in 1987 whereupon,

he was survived by two sons namely Dharam Nath Sahu and P1. Dharam Nath Sahu died in 2007 leaving behind his three sons namely P3, P4 and P5. The plaintiffs further aver that the plaintiffs inherited right, title, interest and possession of the lands of their deceased ancestor as his legal heirs including the suit land.

4. It is alleged that the plaintiffs have been cultivating the lands and applied for issuance of rent receipts again when they learnt that the application for issuance of rent receipts filed by the settlee earlier had been misplaced in the office of the CO, Patratu, which the plaintiff did not know till a long time due to death of the settlee.
5. The plaintiffs further state that on 04.05.2014, for the first time, D1 laid claims over the suit land and alongwith other defendants, became adamant to dig a foundation to construct a room on the suit land which belongs to the plaintiffs in order to take forcible possession of it after taking undue advantage of the fact that his father Girdhari Ghasi had taken settlement of land measuring 1.50 acres in the same plot no. 1836 adjacent to the suit land and towards its northern side, on the same date i.e. 20.04.1956. The plaintiffs objected to the unlawful and arbitrary act of digging up the foundation, but the defendants threatened them that they will be killed and hence P1 lodged FIR at Police station on 07.05.2014 when the defendants did not stop work even after intervention by the villagers. The police in collusion with the defendants, who are rich persons, submitted collusive and false report dated 24.05.2014 to the SDM, Ramgarh for action u/s. 144 of CrPC without holding spot inquiry and wrongly submitted that a room was being constructed beside the house of the defendants showing wrong area and wrong boundary of the land.
6. The Id. SDM, Ramgarh initiated proceeding u/s. 144 of CrPC on 09.06.2014 bearing Case No. 102/14 on the basis of this police report during which, the defendants presented photocopy of the *parcha* granted on 20.04.1956 by Bihar Bhoodan Yogya Committee in the name of Girdhari Ghashi which contains description of the lands measuring 1.50 acres situated adjacent to the suit land on the same plot no. 1836 but comprising of different boundaries and thus, an order was passed wrongly observing that the old residential house of the defendants had been found to be built up on the suit land though actually the old house was standing on the portion of the land of the defendants situated towards north beyond the land of the plaintiffs. The plaintiffs further that the Id. SDM wrongly dropped the proceeding u/s. 144 of Cr.PC on 07.08.14 directing the plaintiffs to approach the Civil Court concerning its claim over the suit land.
7. The defendants then illegally and forcibly constructed one room on the suit land putting Asbestos sheet on its roof after taking undue advantage of the order dated 07.08.2014 passed u/s. 144 of Cr.PC.
8. The plaintiffs further state that the defendants have wrongly and falsely claimed the land beyond their area of 2.40 acres noted above and they should have confined their claim over the area within their respective boundaries. The defendants in collusion with the employees

of the recent survey (1998-2010), got entry of their names wrongly for the lands for which, matter is pending to be decided u/s. 89 CNT Act.

9. The plaintiffs further state that they have right, title, interest and possession over the suit land, but the defendants have forcibly constructed a room on the South-West corner on the suit land.
10. The cause of action for the suit arose on 04.05.2014 when the defendant started digging foundation for a room, and on 07.08.2014 when order u/s. 144 of Cr.P.C was passed directing the plaintiffs to approach the Civil Court and on 25.09.2014, when construction of the said room was completed and day to day ever since, within the jurisdiction of this Id. Court.
11. The suit has been valued at ₹2,00,000/- upon which *ad-valorem* court fee is paid.
12. The plaintiffs pray for the following reliefs:
 - (a) that the suit be decreed in favour of the plaintiffs declaring their right, title, interest and possession over the suit land.
 - (b) that the possession of the suit land be recovered after demolishing the constructed room through the process of the court.
 - (d) that the cost of the suit also be awarded in favour of the plaintiffs.
 - (e) that any other relief and reliefs of the plaintiffs found entitled to under law on equity be also passed in favour of the plaintiffs.

DEFENDANT'S CASE

13. On 06.06.2015, written statement was filed on behalf of the defendants who pleaded that the present suit is not maintainable as framed, is barred by law of limitation, SRA, principle of estoppel, ouster 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 with an intention to encroach the land of the defendants and grab them alongwith the house built on it. It has further been stated that the suit is not properly valued and the court fee paid is insufficient as the proper market value of properties in the suit is not less than ₹10,00,000/-. Thus, the suit cannot proceed ahead, unless the suit land is put to the said valuation and proper *ad valorem* court fee payable thereon, is paid by the plaintiffs. The defendants also state that the plaintiffs have got no *locus standi* to institute this suit and seek the reliefs prayed in the plaint. The defendants also state that the suit is barred by provisions of law, particularly by section 34 of Specific Relief Act, as the plaintiffs are required to seek further and better reliefs of declaration of their title to the suit land and recovery of possession thereof.
14. The defendants also aver that the suit suffers from defect of parties and necessary parties to this suit, whose names are disclosed in the written statement later on have not been impleaded as the dispute between the parties in respect of the property in suit cannot properly and effectively be decided in their absence. Further, that the suit is out of the jurisdiction of this court as, as per the averments appearing in the plaint itself, the dispute

between the parties has arisen out of entries in the survey records, cognizance whereof is barred under section 139 of the Chhotanagpur Tenancy Act.

15. The defendants deny the allegations made in paragraph 1 and 2 of the plaint as false and incorrect, and state that the plaintiffs' claim of settlement of lands, as made out in paragraph 1 of the plaint is not real as no settlement of lands as stated in para 1 of the plaint was ever made either by State Government or by Bhoodan Yagna Committee on 20.04.1956 or at any point of time, with the settlee. The *parcha* and/or the certificate relied upon and referred to by the plaintiffs in para 1 of the plaint is not a legal, valid and genuine document. Rather it is forged, fabricated, manufactured and an *ante dated* document having been created recently by the plaintiffs for the purpose of laying their bogus claim to the suit land and was not issued on 20.04.1956.
16. The defendants further state that the description of the land mentioned para no. 2 of this judgment is unclear, non-specific and vague as a result of which, no land can be specified, identified or located. It has been stated that Shyam Lal Sahu was not the settlee of the lands mentioned in para 2 of this judgment as they were never settled at any point of time by any authority to Shyam Lal Sahu and he has thus, never set his foot on these lands or exercised any right, enjoyed any benefit or appropriated usufructs thereof in any manner, and therefore, devolution upon his descendants is also out of question, and thus, the suit land is and never was in the possession of the plaintiffs. He was also never recognized as either a settlee, *raiyyat*, owner, possessor, user or occupier of these lands under any law in force. Also, that neither did he obtain any *Jamaabandi* for these lands ever and nor was his name ever entered in Register-II.
17. The defendants have also denied the genealogical table provided in the plaint as being incorrect and incomplete as the same does not contain the names of female descendants of Shyam Lal Sahu; as both; Shyam Lal Sahu and Dharam Nath Sahu died leaving behind their respective widows and daughters besides their sons.
18. Denying that the defendants claimed the suit land for the first time on 04.05.2014, it is averred that rather, their claim over the suit land is existing since when the suit lands together with other lands, were settled vide permanent *raiyyati* in favour of the plaintiffs' ancestor Girdhari Ghasi on 20.04.1956 by the Bihar Bhoodan Yagna Committee and the said settlement was approved, confirmed and recognized by the authority of State Government by creating *Jamaabandi* in the name of the settlee Girdhari Ghasi, by entering his name in Register-II of village Deoriya Bargaon as *raiyyat*, owner and possessor of the said lands, and rent was accepted from him and rent receipts were issued to Girdhari Ghasi who acquired good legal, valid and indefeasible title to these lands including the suit land and came in actual physical, exclusive, continuous and cultivating possession on the very date of settlement thereof. Thereafter, Girdhari Ghasi constructed his house over a portion of the suit land and resided therein with the members of his family and cultivated the lands settled with him including the suit lands and exercised his rights, enjoyed benefits and appropriated usufructs and on

payment of rent, obtained rent receipts without any hindrance as an absolute owner and exclusive possessor of the entire land settled with him by Bihar Bhoodan Yagna Committee, including the suit land.

19. After his death, his sons and grandsons started owning, possessing, cultivating, exercising rights, enjoying benefits, appropriating usufructs, paying rent and receiving rent receipts for these lands and thus, the suit land is still within the absolute ownership and exclusive possession of the defendants and the plaintiffs have got no concern whatsoever with its right, title, interest and possession or over any land in the vicinity of the suit lands as will appear from the boundaries and description of the suit land. With regard to the allegations that the defendants started digging foundation over the suit land, the same was done in exercise of their right as owners and possessors thereof and the same was not unlawful or arbitrary and both the old and new houses of the defendants on the suit land are inseparable.
20. It was also submitted that the preparation of *khatiyana* of recent survey was on the basis of prevailing facts and features relating to the lands recorded therein and the objection of the plaintiffs to it are false and untenable.
21. Basing on these, the defendants pray that as opposed to the plaintiffs, it is the defendants who have got valid right, title and actual possession of the suit lands and have constructed their house over the suit land in exercise of their rights, as owners and possessor thereof and not forcibly as falsely alleged by the plaintiff and therefore, the plaintiffs are not entitled to grant of the relief/reliefs sought by them in the plaint and the suit is fit to be dismissed with cost.

ADMITTED FACTS

22. The description, nature and surroundings of the suit land is admitted. That, a building is constructed over its southern side by the defendants is also admitted. The proceedings u/s. 144, CrPC and its final order/outcome is also admitted.

ISSUES FOR ADJUDICATION

23. 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:

- (i) Is the suit, as framed, maintainable?*
- (ii) Have the plaintiffs got valid cause of action for the present suit?*
- (iii) Is the suit properly valued and sufficient court fee paid?*
- (iv) Is the suit barred by provision of section 34 of SRA?*
- (v) Is the suit barred by the law of limitation, adverse possession, prescription, ouster, waiver, estoppel and acquiescence?*
- (vi) Whether the suit suffers from defect of parties?*
- (vii) Is the suit barred u/s. 139 of CNT Act?*

- (viii) Whether the plaintiffs are entitled to get a decree for declaration of their right, title, interest and possession over the suit land described in Schedule C of the plaint?
- (ix) Are the plaintiffs entitled to get recovery of possession of the suit land after demolishing the constructed room through process of the court?
- (x) To what any other relief or reliefs to which plaintiffs are found to be entitled?

ARGUMENTS ADVANCED

24. 9 dates were set for arguments and during none of these dates did either side turn up before the court to argue the matter despite the case being called out repeatedly and it was thus, fixed for judgment.

EVIDENCES

25. 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
PW01	Sachidanand Sahu	Interested Witness [Plaintiff P5]
PW02	Charu Manjhi	Related Witness [Neighbor]

B. Defendant's Witnesses

Rank	Name of witness	Relation
--nil--		

List of Plaintiff/Defendant/Court Exhibits

A. Plaintiff's Exhibits

Sl. No.	Exhibit	Description
--nil--		

B. Defendant's Exhibits

Sl. No.	Exhibit	Description
--nil--		

FINDINGS

Issue Nos. I, II, III, VI

(Is the suit, as framed, maintainable?; Have the plaintiffs got valid cause of action for the present suit?; Is the suit properly valued and sufficient court fee paid?; Whether the suit suffers from defect of parties?)

26. The defendants have mentioned in their written statement that the suit is bad for non-joinder and mis-joinder of parties as the genealogical table provided in the plaint is incorrect and incomplete as the same does not contain the names of female descendants of Shyam Lal Sahu; as both; Shyam Lal Sahu and Dharam Nath Sahu died leaving behind their respective

widows and daughters besides their sons. However, they have not mentioned particularly as to which necessary or proper party has not been impleaded, who succeeded whom, and how many parties have been left by the plaintiff. Even during the course of the suit, and oral arguments this issue was not contested or discussed. As to the issue of cause of action, the plaintiff's case is that the cause of action arose on 04.05.2014 when the defendant started digging foundation for a room, and on 07.08.2014 when order u/s. 144 of Cr.PC was passed directing the plaintiffs to approach the Civil Court and on 25.09.2014, when construction of the said room was completed and day to day ever since. As to maintainability, this objection by the defendants is also cosmetic in nature. Regarding court fee, as per the Shrishtedar's report, it has sufficiently been paid.

26.1 In effect, all these issues are decided in favor of the plaintiffs.

Issue No. IV

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

27. 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.

27.1 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 claiming right over the suit land and are denying plaintiff's claim over it. The plaintiffs seek declaration of right, title and possession over the suit land alongwith seeking further relief of recovery of possession over the suit land after demolition of the room constructed by the defendants upon it. It appears from pleadings of both the sides that the defendants have denied and are interested in denying the title of the plaintiffs. Thus, the above bar does not apply to this suit.

27.2 This issue, in effect, is decided in favor of the plaintiffs.

Issue No. V

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

28. It has been mentioned in the plaint that it was on 04.05.2014, when the defendants started digging foundation for a room on the suit land, that the cause of action first arose as this was the first instance when the defendants denied title of the plaintiffs over the suit land. The Limitation Act, 1963 (Hereinafter referred to as the "ILA") prescribes in Article 58 a three year' period from the date on which right to sue first accrues to obtain such declaration. Thus, the suit being filed within 3 years from that date, is not barred by limitation. As to the issue of estoppel, waiver and acquiescence; although the defendants have raised these objections, they have not shown as to how and when the plaintiffs committed what acts which would amount to these. The defendants instead plead that the plaintiffs are claiming their lands.

28.1 In effect, this issue is decided in favour of the plaintiffs.

Issue No. VII

(Is the suit barred u/s. 139 of CNT Act?)

29. The defendants have stated in their Written Statement that the suit is out of the jurisdiction of this court as, as per the averments appearing in the plaint itself, the dispute between the parties has arisen out of entries in the survey records, cognizance whereof is barred under section 139 of the Chhotanagpur Tenancy Act. However, no evidence has been filed in furtherance of this pleading and thus, as this suit has been filed not to decide over such entries but to claim title and possession over the suit land based on settlement granted, this issue is decided in favour of the plaintiff.

Issue No. VIII & IX

(Whether the plaintiffs are entitled to get a decree for declaration of their right, title, interest and possession over the suit land described in Schedule C of the plaint?; Are the plaintiffs entitled to get recovery of possession of the suit land after demolishing the constructed room through process of the court?)

30. In order to prove their right, title and possession over the suit land, the plaintiffs have produced the following evidence:

30.1 PW01 deposed in his examination-in-chief that P1 was his and P2-P4's grandfather, who obtained 90 decmil of land in khata no. 63, plot no. 1836, and 1.12 acre of land in plot no. 908, both in mouza Devariya Bargaon vide *parcha* by Bhoodan Yagya Committee on 20.04.1956 and has been in possession ever since. Of this, 90 decimal of land is suit land and he corroborated its description as in the plaint. He further deposed that his grandfather made the suit-land suitable for agricultural purpose and then used it for the same. When Shyamlal died in the year 1987, his two sons namely, Dharamnath Sahu and Mahavir Sahu became his successors and obtained title and possession over the suit land. Then in 2007, Dharamnath Sahu died and his three sons Toshak Nath Sahu, Rajesh Kumar Sahu and Balram Sahu became his successors and obtained title and possession over his share of the land. Then, the plaintiff went to Circle Officer, Patratu and submitted application for issuing the receipt again, as the previous application submitted by Shyamlal Sahu was lost in the

said office. Further, that on 04.05.2014, for the first time, Jugal Nayak claimed his right over the suit land and started insisting over digging up a foundation for construction of a room thereon, as his father Girdhari Ghasi also obtained 1.5 acres of land in the same plot no. 1836, north to the suit land vide vide Bhoodan Yagya Samiti. This witness further stated that the defendant was adamant for construction because his intention was to obtain the portion of the land belong to the plaintiffs by illegal means and therefore, on 07.05.2014, an FIR was registered in Bhurkunda P.S. against his father Mahavir Sahu and uncle Balram Sahu. Then, without much investigation, an application dated 24.05.2014 was filed by the police before SDM, Ramgarh u/s. 144 of CrPC to register the case bearing no. 102/2014. As the police had wrongly written/reported that new room was being constructed next to the house of defendant, the court observed that new room was being constructed by the defendant over the 90 decimal of land and accordingly, the matter was disposed of on 07.08.2014. The witness further stated that the defendant should have restrained to their portion of land but on the south-west side of the suit land, they started construction of room and wrongfully started claiming the plaintiff's land. Further, he stated that denial of the fact that plaintiff's ancestor obtained suit land vide Bhoodan Yagya Samittee, its *purcha* and denial of description of the suit land by the defendants is wrong. The witness says that through this suit, they intend to obtain the suit land which belongs to them, after destruction of the room constructed by the defendant upon it. The witness was not cross-examined and discharged.

30.2 PW02 deposed in his examination-in-chief that his land is next to the suit land in Khata no. 36, and he knows both sides to the suit. He corroborated the description of the suit land as mentioned in the plaint and also supported genealogical table provided by the plaintiff. He also stated that Shyamlal Sahu was granted the suit land in the year 1956 vide Bhoodan Yagya Samiti who obtained possession during his life time and after his death, his sons Dharamnath Sahu and Mahavir Sahu came in its possession as successors. After death of Dharamnath Sahu, his sons Toshaknath Sahu, Rajesh Kumar Sahu and Balram Sahu came in possession of their father's share as descendants. He further stated that suit land belongs to the plaintiff and they are in its possession. He further stated that in 2014, Jugal Nayak and his brother, intending to obtain the suit land by wrongful means started construction of a room on its southern side by digging foundation. As the plaintiff objected to this, proceeding u/s. 144 of CrPC were initiated which were concluded within two months after which the defendants forcefully constructed a room and covered it with asbestos sheet. The witness further stated that Girdhari Ghasi, the father of defendant Jugal Nayak was given 1.5 acres of land in khata no. 63, plot no. 1836 on the northern side of the suit land by Bhoodan Yagya Samiti and that land is different from the suit land. That, the defendant forcefully constructed a room with intention

to grab the suit land. Finally, he said that the suit land belongs to the plaintiff; and the defendant has not right title or possession over it. In his cross-examination, he stated that his house is at a distance of about 2 kms from the suit land and that he is not an interested party in the suit land. He corroborated surroundings of the suit land and further deposed that the plaintiffs have not constructed their house on the suit land. He further stated that he neither side to this suit sent him the details regarding location of the suit-land. He then stated that proceedings u/s. 144 of CrPC were initiated between the parties but he does not know what was decided therein. Further that, as decision was in favour of the defendants, present suit has been filed. He also stated that he has no knowledge about the amount paid as rent for the suit land. Further, that the defendant's construction next to the suit land has been there for the past 50-60 years. He stated that he does not know in whose name *khatiyan* of the suit land is registered and whether or not it is in the name of father of the plaintiff. He then stated that suit land belongs to four people and that Toshaknath does not have any sister and also that the suit land is agricultural in nature but that he does not know how many pieces the suit land is divided into or how many *raiyyats* are there in khata no. 63 or the total area of plot no. 1836. He then stated that the defendant resides next to the suit land and were constructing house on the suit land. He then stated that there is no boundary on the other side of the suit land demarcating it. He then denied knowing whether or not plaintiffs were awarded the suit land vide Bhoodan Yagya Samittee on 20.04.1956. He also denied any knowledge about whether or not the plaintiff paid rent or obtained rent receipt w.r.t the suit land but he stated that the defendants are not in possession of the suit land. He then stated that Toshaknath prepared his evidence/affidavit on which he has signed and does not know it but he knows its contents.

30.3 Apart from these two witnesses, the plaintiffs have not produced a single piece of evidence. No document has been produced to show their claim over the suit land. PW01 being the plaintiff, is an interested party himself. PW02's testimony in support of the claim of the plaintiff cannot grant them title in absence of other corroborative material. The issues were settled on 16.08.2016 and the plaintiff's evidence was closed on 11.03.2019. Still, the plaintiff has failed to produce any other evidence to prove their title.

30.4 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. The defendants are denying the case of the plaintiffs. However, since the plaintiffs have not been able to prove their case and shift the burden of proof upon the

defendants, the absence of evidence by the defendants as well is of no deterrent to them.

30.5 In effect, these issues are decided against the plaintiffs.

Issue No. IX

(To what any other relief or reliefs to which plaintiffs are found to be entitled?)

31. None.

32. Accordingly, the plaintiffs have not proved their case and establish that the suit land belongs to them thereby necessitating declaration of their right, title, interest and possession over the suit land and recovery of possession over the suit land after demolition of the room constructed upon it through the process of court

Hence, in the result, it is hereby ordered

That let the suit be and the same is dismissed on contest without cost.

(Pronounced by me in open court)

(Dictated and corrected)

Sd/-

Sd/-

Smriti Tripathi

JO Code: JH02021

Addl. Civil Judge (Jr. Div.)-III, Ramgarh

Ramgarh, dated the 22nd June, 2023

Smriti Tripathi

JO Code: JH02021

Addl. Civil Judge (Jr. Div.)-III, Ramgarh

Ramgarh, dated the 22nd June, 2023