

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

**Present: Smriti Tripathi**  
**Additional Civil Judge (Junior Division)-III**

[28<sup>th</sup> day of April, 2023]

**District: Ramgarh**

**[Title Suit 98/2016]**

**(CNR No. JHRG040004092019)**

Plaintiff	1. Sushila Devi w/o late Tibhu Ram Sonar @Tibhu Saw Swarnkar [P1] 2. Sarda Devi w/o Dineshwar Prasad [P2] 3. Sangita Devi w/o Umesh Sao [P3] All r/o of village Gari Kala, P.S. -Keredari, District Hazaribag 4. Seema Devi w/o Ravi Kumar Verma, r/o village Pundy Dih, PS Tetul Maru, District Dhanbad [P4]
Represented By	<i>Sri D.N. Singh, Ld. Adv.</i>
Defendants	1. Hamid Hashmi s/o Abdul Hamid [D1] 2. Santosh Kumar Swarnkar s/o late Tibhu Ram Sonar @Tibhu Sao Swarnkar [D2] Both r/o village Chitarpur, PS Rajrappa, District Ramgarh
Represented By	<i>Sri Rajendra Kumar, Ld. Adv.</i>

Date of Filing	23.12.2016
Date of Admission	30.01.2017
Date of Framing Issues	18.02.2019
Date of commencement of evidence	15.03.2019
Date when Judgment is reserved	25.04.2023
Date of Judgment	28.04.2023

**J U D G M E N T**

1. The plaintiffs have brought this suit against the defendant u/s. 26 of The Code of Civil Procedure, 1908 (Hereinafter referred to as the "**CPC**") praying for declaration of their title and confirmation of possession over the suit land and for declaration that the sale deed w.r.t the suit land is void and inoperative and for passing a decree of permanent injunction.

**PLAINTIFF'S CASE**

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

*Lands measuring 0.8 decimal in plot no. 392, khata no. 24, Khewat No. 1, Tauji No. 28, village Marangmarcha, Thana No. 160, PS & District Ramgarh;*

***Boundaries:***

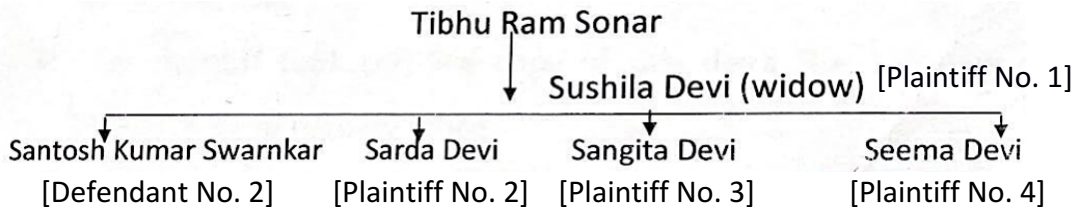
*North- Meghu Mahto*

*South- Sewage and road*

*East- Dhirit Mahto*

*West- Jodhan Mahto*

3. The compendious case of the plaintiffs as it emerges from their pleadings in the plaint, filed on 23.12.2016 and admitted on 30.01.2017 is that the father of defendant no. 2, who is also the husband of the plaintiff no. 1 namely late Tibhu Ram Sonar purchased total 0.13 dismals of land through sale deed bearing no. 962 at village Marangmarcha, PS Ramgarh, District Ramgarh under Khata No. 24, Tauji No. 28 Khewat No. 1. It comprised of the suit land as referred to in paragraph no. 2 of this judgment and another 0.5 dismal of land in plot no. 406.
4. After his death on 01.11.2007, he left behind the following legal heirs, hereinafter referred to in the geological table below:



5. It is the plaintiffs' case that all the plaintiffs and defendant no. 2 constituted a joint Hindu Family Governed by Mitakshara School of Hindu Law and hence, they have equal share, right, title, interest and possession over the properties of the late Tibhu Ram Sonar and hence, they are entitled to 1/5<sup>th</sup> share each from total area of 0.13 decimal in both properties i.e. khata no. 24, plot no. 392 area 0.8 decimal and plot no. 406 area 0.5 decimal.
6. Coming to the crux of their contentions, the plaintiffs plead that the sale deed no. 1889 dated 30.09.2016 by virtue of which defendant no. 2 sold and transferred the suit land to the defendant no. 1 and put him in its possession is illegal, void and inoperative since defendant no. 2 had the right to only transfer the share he is entitled to inherit from the suit land after the demise of his father namely Tibhu Ram Sonar, i.e. 1/5<sup>th</sup> of the suit land only. The plaintiff obtained a certified copy of the sale deed no. 1889 on 21.10.2016 from the registry office.
7. On 22.10.2016, when the plaintiffs asked defendant no. 2 why he sold the suit land without their permission, he did not give any reply. On 25.10.2016, the plaintiffs also asked defendant no. 1 why he purchased their share in the suit property without their permission.
8. On 10.11.2016, defendant no. 1 started constructing a *pucca* house upon the suit land illegally, and forcibly encroached the share of the plaintiffs in the suit land thereby necessitating the instant suit.
9. The cause of action for the suit has been pleaded to arise on 25.10.2016 when the defendant no. 1 abused and assaulted the plaintiffs and on 10.11.2016, when defendant no. 1 started construction of a *pucca* house upon the suit property illegally, and encroached the share of the plaintiffs and day to day thereafter within the jurisdiction of this Court.
10. The suit has been valued at ₹2,50,000/-, as per the value mentioned in the sale-deed w.r.t which the declaration is sought and the relief of injunction is valued at ₹200/- over which *ad volorem* court fee and fixed court fee have been paid separately.
11. The plaintiffs pray for the following reliefs:
  - a. That after adjudication, the title of the plaintiffs w.r.t. their share upon the suit land be declared and possession of the plaintiffs upon the same be confirmed and if found

dispossessed from the same, the plaintiffs may be put in possession over the same through the process of the court.

- b. That, it be further declared that the sale deed no. 1889 dated 30.09.2016 executed by defendant no. 2 in favor of defendant no. 1 is illegal, void, inoperative and has conferred no right title or interest upon defendant no. 1.
- c. That, a decree for permanent injunction be passed restraining the defendants, their agents and staffs from disturbing the peaceful possession of the plaintiffs upon suit land in any manner whatsoever.
- d. That cost of the suit be also awarded in favor of the plaintiffs.
- e. That any other relief(s) which the plaintiffs may be found entitled to under the law of equity be also passed in favor of the plaintiffs.

#### **DEFENDANT'S CASE**

12. On the other hand, on 01.08.2017 defendant no.1 filed written statement and 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 grab the land of defendant. Defendant no. 2 further pleads that a co-sharer of the recorded tenant is in physical possession of the suit land who has not been made a party to this suit and therefore, it is bad for non-joinder of necessary party
13. The defendant further pleads that defendant no. 2 alongwith a plaintiff approached defendant no. 1 to purchase the suit land assuring him that they had several ancestral properties which they have partitioned as per which the suit land was allotted to defendant no. 2. Relying upon this assurance, the defendant no. 1 agreed to purchase the suit land.
14. It has also been averred that after complete assurance from plaintiffs and defendant no.2 that the co-sharer will be removed from possession of the suit land and that every dispute will be managed, defendant no. 1 paid complete consideration amount and purchased the suit land. Basing on this, the defendant avers that the defendant no. 2 and the plaintiff have all conspired against him and have created this litigation even after taking complete consideration amount from him and defendant no. 1 was never put in possession of the suit land. The defendant further states that plaintiff has complete knowledge about the transaction between defendant no. 1 and defendant no. 2.
15. Finally, pleading that the story made in the plaint is false and frivolous and the plaintiff alongwith defendant no. 2 has deprived defendant no.1 of his right title and interest over the suit land, the defendant no.1 denies any other version of the events as stated in the plaint and prayed for suit to be dismissed with cost.
16. As to defendant no. 2, the suit was set *ex-parte* against him on 30.06.2017.

#### **ADMITTED FACTS**

17. Before dwelling into the issues, it would be pertinent to mention the admitted facts. As per the written statement, the sale deed no. 1889 dated 30.09.2016 and that defendant no. 1 purchased the sit land from defendant no. 2 has been admitted. The area and description of the suit land has also been admitted. The defendant has also admitted the geological table as does he the demise of Tibhu Saw Swarnakar.

**ISSUES FOR ADJUDICATION**

18. 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 maintainable in its present form?*
- II. *Have the plaintiffs got valid cause of action for the present suit?*
- III. *Is the suit bad for non-joinder of necessary parties?*
- IV. *Is the suit hit by the provisions of the Specific Relief Act?*
- V. *Is the suit barred by the Law of Limitation?*
- VI. *Is the suit barred by the law of estoppel and acquiescence?*
- VII. *Whether the plaintiffs are entitled to get a decree for declaration of title and confirmation of possession over their share of the suit land described in Schedule-A of the plaint and if found dispossessed, recovery of possession through the process of the court?*
- VIII. *Whether the plaintiffs are entitled to get a decree for declaration that the sale deed no. 1889 dated 30.09.2016 executed by defendant no. 2 in favor of defendant no. 1 is illegal, void, inoperative and does not confer right, title and interest upon defendant no. 1?*
- IX. *Whether the plaintiffs are entitled to get a decree for permanent injunction against the defendant for restraining them to disturb peaceful possession of the plaintiffs over the suit land?*
- X. *To what any other relief or reliefs to which plaintiffs are found to be entitled?*

19. After the issues were framed on 18.02.2019, the record was set for plaintiff's evidence on 15.03.2019 which was closed on 02.06.2022 after which, the record was advanced for defendant's evidence which was closed on 23.08.2022 and the record was set for arguments and arguments were heard at length. On 18.01.2022, the case-record was received by this court from the Court of Addl. Civil Judge (Jr. Div.)-I, Ramgarh.

**EVIDENCES**

20. 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	Category
PW01	Sushila Devi	Interested witness [Plaintiff]

B. Defendant's Witnesses

Rank	Name of witness	Category
---nil---		

**List of Plaintiff/Defendant/Court Exhibits**A. Plaintiff's Exhibits

Sl. No.	Exhibit	Description
1.	Ext.1	Sale Deed no. 962 dated 15.03.1973 in the name of late Tibhu Ram Sonar
2.	Ext.2	Death certificate of late Tibhu Saw Swarnkar issued by Govt. of Jharkhand Reg. No. 10/2008 dated 20.06.2008
3.	Ext.3	Certified Copy of Sale Deed no. 1889 on dated 30.09.2016

B. Defendant's Exhibits

Sl. No.	Exhibit	Description
---nil---		

**FINDINGS****Issue Nos. I, II, III**

21. Is the suit maintainable in its present form?; Have the plaintiffs got valid cause of action for the present suit?; Is the suit bad for non-joinder of necessary parties?

22.1 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. 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.

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

**Issue No. IV**

22. Whether the suit is barred under the provision of Specific Relief Act, 1963?

23.1 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.*

23.2 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, the plaintiffs seek declaration of confirmation of possession over the suit land, declaration that the said sale deed is void and inoperative alongwith seeking further relief of decree of permanent injunction. It appears from pleadings of both the sides that the defendants have denied and is interested in deny the title of the plaintiffs. Thus, the above bar does not apply to this suit.

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

**Issue No. V and VI**

23. Is the suit barred by law of limitation?; Is the suit barred by the law of estoppel and acquiescence?

24.1 It has been mentioned in the plaint that the sale deed challenging which the present suit has been filed is dated 30.09.2016. The suit has been filed on 23.12.2016. The prescribed period for seeking declaration of confirmation of possession and that the sale deed is illegal, void and inoperative as provided by article 58 of The Limitation Act, 1963 (Hereinafter referred to as the "ILA").

24.2 Now, coming to the plea of estoppel and acquiesce, these are also cosmetic pleadings. No fact has been shown by the defendant to show any act of estoppel or acquiesce by the plaintiffs.

24.3 *In effect, both these issues are decided in favor of the plaintiff.*

**Issue No. VII and VIII**

24. Whether the plaintiffs are entitled to get a decree for declaration of title and confirmation of possession over their share of the suit land described in Schedule-A of the plaint and if found dispossessed, recovery of possession through the process of the court?; Whether the plaintiffs are entitled to get a decree for declaration that the sale deed no. 1889 dated 30.09.2016 executed by defendant no. 2 in favor of defendant no. 1 is illegal, void, inoperative and does not confer right, title and interest upon defendant no. 1?

25.1 For better appreciation of evidence, these issues are being taken up together.

25.2 PW1 has stated in her examination in chief that the suit land was purchased by her husband by virtue of registered sale deed dated 15.03.1973. In support of this, she has filed the said sale deed exhibited as Ext. 1. She then tallied the description of the said land. She further deposed that her husband died on 01.11.2007 and after his death she as well as her children came to into possession equally on that land. In

support, she has filed death certificate of her husband exhibited as Ext. 2. In para 4 she deposed that her son, defendant no. 2 sold some part of this land to defendant no. 1 through registered deed no. 1889 dated 30.09.2016 which has been exhibited as Ext. 3; without the permission or consent of other co-sharers who all have 1/5<sup>th</sup> share in it. She has deposed the description of both these lands and it tallies with the description in the respective exhibited originals. She further deposed that the plaintiffs and defendant no. 2 are living jointly as one family and there was no partition of the suit land. In context with the sale of the suit land, when defendant no. 2 and 1 were asked about the same by the plaintiffs, they did not give any satisfactory reply and defendant no.1 became angry and abused the plaintiffs and on 10.11.2016, defendant no.1 also started construction over the land sold to him.

25.3 The defendant on the other hand has not produced any evidence on his behalf.

25.4 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. Thus, we will first examine whether or not the plaintiffs have been able to prove their case.

25.5 The plaintiffs state that they and defendant no. 1 are all a part of one family, which has not been disputed by any of the defendants. As per the description of parties in the plaint, the name of plaintiff no 1's husband and other plaintiff's father is the same as defendant no. 2's father. This anyways, is an admitted fact. Thus, the parties except defendant no. 1 all constitute one family. The plaintiff's further case is that Tibhu Saw Swarnakar purchased the suit land as referred to in paragraph no. 2 of this judgment and another 0.5 dismal of land in plot no. 406. The same is clearly supported by Ext. 1. Further case of the plaintiffs is that then, the said Tibhu Saw Swarnakar died. Ext. 2 comes in support of this. The defendant has also admitted this fact. Based on these alone, it transpires that after the demise of Tibhu Saw Swarnakar, the plaintiffs and defendant no. 2 all were entitled to 1/5<sup>th</sup> share in his property. It has not long been settled vide the 2005 amendment to the Hindu Succession Act that a daughter is entitled to equal share as a son. Vide the rules of succession applicable on the parties thus, they are all entitled to 1/5<sup>th</sup> share each. Now, coming to the property purchased by the deceased, the parties will be entitled to 1/5<sup>th</sup> share each in that property as well. As per Ext. 1, the total land purchased vide that sale deed was 13 decmils. Thus, each of the plaintiffs and defendant no. 2 will be entitled to 2.6 decmils share each in this land. Looking at Ext 3, and as deposed by the plaintiff no 1, defendant no. 2 sold 8 decmils of land from the property purchase vide Ext. 1. Thus, the defendant no. 2 exceeded the share of land he was entitled to transfer and sold some of the portion belonging to the plaintiffs.

25.6 It is also the case that jointness is presumed till there is any evidence of partition. None of the sides have produced any evidence to show that there was a partition in which the suit land was exclusively allotted to the defendant no. 2.

25.7 Thus, the case of the plaintiffs is quite straight-forward and clear. The plaintiffs have successfully raised preponderance of probabilities in their favor and the burden of proof now shifts on the defendants to rebut this.

25.8 The defendants have not produced any evidence whatsoever to discharge their burden of proof.

25.9 Thus, reading the evidences as a whole, it is clear that the plaintiffs have successfully established their case and proved that the sale of 5.4 decmils of land in the suit land by defendant no. 2 was beyond his right, and he was only entitled to transfer his share i.e. 2.6 decmils in the suit land.

25.10 Thus, the plaintiffs are entitled to get a decree for declaration of title and confirmation of possession over their 5.4 decmils of share in the suit land and if dispossessed, they are entitled to recovery of possession through the process of the court.

25.11 Consequently, the plaintiffs are also entitled to get a decree for declaration that the sale deed no. 1889 dated 30.09.2016 executed by defendant no. 2 in favor of defendant no. 1 is illegal, void, inoperative and does not confer right, title and interest upon defendant no. 1 only with respect to 5.4 decmils of land. The decree and transfer made by it is valid and operative with respect to 2.6 decmils of land.

25.12 *In effect, these issues are decided in favor of the plaintiffs.*

**Issue No. IX**

25. Whether the plaintiffs are entitled to get a decree for permanent injunction against the defendant for restraining them to disturb peaceful possession of the plaintiffs over the suit land?

26.1 Based upon the discussion made in paragraph no. 25 of this judgment and for effective operation of the reliefs enlisted in paragraph nos. 25.10 and 25.11 of this judgment, the plaintiffs are held entitled to get a decree for permanent injunction against the defendant for restraining them to disturb peaceful possession of the plaintiffs over 5.6 decmils area in the suit land.

26.2 *In effect, this issue is decided in favor of the plaintiff.*

**Issue No. X**

26. Is the plaintiff entitled to any other relief(s)?

27.1 None.

26 Hence, having heard the arguments of Id. counsel of Plaintiffs and the Defendant, appreciation of documentary evidence as well as oral evidence available on record and discussion made hereinabove, this court has come to a considered conclusion that the plaintiffs have been able to prove their case and establish that they are entitled to the right, title and possession over 5.4 decmils area in the suit land. Consequently, the plaintiffs are also entitled to get a decree for declaration that the sale deed no. 1889 dated 30.09.2016 executed by defendant no. 2 in favor of defendant no. 1 is illegal, void, inoperative and does



not confer right, title and interest upon defendant no. 1 only with respect to 5.4 decmils of land. The decree and transfer made by it is valid and operative with respect to 2.6 decmils of land. The plaintiffs are also held entitled to get a decree for permanent injunction against the defendant for restraining them to disturb peaceful possession of the plaintiffs over 5.6 decmils area in the suit land.

- 27 The defendant is hereby ordered to file a suit for partition to carve out his share in the suit land, as opposed to that of the plaintiffs.

**Hence, in the result, it is hereby ordered**

***That let the suit be and the same is hereby decreed without cost in favor of the plaintiffs and against the defendant. Let a decree be drawn in favor of the plaintiffs declaring that the sale deed no. 1889 dated 30.09.2016 is illegal, void, inoperative and does not confer right, title and interest upon defendant no. 1 only with respect to 5.4 decmils of land. The decree and transfer made by it is valid and operative with respect to 2.6 decmils of land. Let the decree also declare the title and confirmation of possession of the plaintiffs over their 5.4 decmils of share in the suit land and if dispossessed, they are entitled to recovery of possession through the process of the court Let a decree also be drawn in favor of the plaintiffs for permanent injunction against the defendants for restraining them to disturb peaceful possession of the plaintiffs over 5.6 decmils area in the suit land.***

*(Pronounced by me in open court)*

*(Dictated and corrected)*

Sd/-

Sd/-

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**Smriti Tripathi**  
**JO Code: JH02021**  
Addl. Civil Judge (Jr. Div.)-III  
Ramgarh  
Dated the 28<sup>th</sup> April, 2023

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**Smriti Tripathi**  
**JO Code: JH02021**  
Addl. Civil Judge (Jr. Div.)-III  
Ramgarh  
Dated the 28<sup>th</sup> April, 2023