

**(1950) 01 PAT CK 0003**  
**In the Patna High Court**  
**Case No : A.F.A.D. No. 1993 of 1948**

Chutahru Bhagat and Others

APPELLANT

Vs

Hialal Sah and Others

RESPONDENT

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**Date of Decision :** 12-01-1950

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 4, Order 7 Rule 3  
Specific Relief Act, 1877 — Section 42

**Citation :** AIR 1950 Patna 306

**Hon'ble Judges :** Das, J

**Bench :** Single Bench

**Advocate :** B.N. Jha and Ashwini Kumar Sinha, for the Appellant; Rajkishore Prasad and Nakuleshwar Prasad, for the Respondent

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## Judgement

Das, J.—This is a second appeal by the defendants first party from the decision of the learned Subordinate Judge of Purnea dated nth July 1948, modifying the decision of the Additional Munsif of Purnea dated 28th June 1916, in a suit for a declaration of title and recovery of possession in respect of some lands comprised in plot No. 1248. The short facts are the following: Two plots, namely, plot No. 1238 with an area of .91 acres and plot No. 1248 with an area of 4.57 acres appertained to khata No. 207 of village Dharahra, Against the khata or holding in question the name of one Lalit Dhangar was recorded as gair dakhalkar for two years. The tenure-holder under whom the laud was held was one Gulab Missir. It was the admitted cage of the parties that Lalit abandoned the holding, and the tenure-holder Gulab Misair came in possession on the death of Gulab Misair his son, Ramji Missir, came in possession. This Ramji Misair settled portions of plot No. 1248 with different persons. Some portion was settled with one Lalit Dhangar; another portion, the exact area of which is in dispute, was settled with one Prem Singh. The plaintiffs-respondents alleged that an area of 1 bigba 18 kathas 7 dhurs out of plot No. 1248 was settled with them by Ramji Missir by means of a parwana fated 12th Agban 1329 Fasli. It appears that subsequently the interest of Ramji Missir was sold and purchased by one

Syed Asad Reza, mutwalli of the waqf property of one Rani Quamarunnissa Begum Nageshwar Singh, nephew and heir of Prem Singh, sold his interest of the portion settled with Prem Singh out of plot No. 1248 to defendant 2 Girwar Narain Bhagat on 10th August 1934. The present appellants based their title on that purchase, and their case was that what was settled with Prem Singh out of plot No. 1248" was not 2.10 acres only but a much larger area, namely, 3.61 acres. The case of the plaintiffs-respondents was that the patwari of the waqf estate under the mutwalli Syed Asad Reza came in collusion with Prem Singh and granted rent receipts to Prem Singh in respect of the entire area of plot No. 1248. They further alleged that by the purchase which the appellants had made from Nagesbwar Singh the appellants had acquired no title to more than 8.10 acres settled with Prem Singh. But some time in 1940, that is Pous 1347 Fasli, the appellants who are men of influence, had dispossessed the plaintiffs, respondents from part of the land Which had been settled with the plaintiffs-respondents. Originally, the area from which the plaintiffs-respondents were alleged to have been dispossessed was given to be 10 kathas and odd. Subsequently, after the report of a pleader commissioner who was deputed to measure the land on the spot, an amendment was made by which the plaintiff-respondents alleged that they had been dispossessed from .69 acres out of the area settled with them.

2. The learned Munsif who dealt with the suit in the first instance held that the plaintiffs-respondents had established their title with regard to 1 bigha 18 kathas 7 dhurs of land out of plot No. 1248. He did not, however, accept the story of dispossession and gave a decree declaring the title of the plaintiffs-respondents and confirming their possession over the entire area of 1 bigha 18 kathas 7 dhurs. He further directed that the plaintiffs-respondents would be entitled to construct a ridge or some line of demarcation to avoid any dispute in future. The learned Subordinate Judge in appeal affirmed the decision of the learned Munsif on the question of title. He held that the plaintiffs-respondents had proved their settlement and their title based on that settlement with regard to 1 bigha 18 kathas 7 dhurs out of plot No. 1248. He further held that what was settled with Prem Singh was 2.10 acres only and not 3.61 acres. He also found that the plaintiffs-respondents had been dispossessed from portion of the land settled with them, and on the basis of the report of the pleader commissioner he held that the area from which the plaintiffs-respondents had been dispossessed was .69 acres towards the south west of the land settled with the plaintiffs-respondents. He passed a decree affirming the decision of the learned Munsif but modifying it in a way indicated below. He stated as follows:

"In my opinion, the plaintiffs" story of possession and dispossession is substantially correct and they are, on the facts proved in this case, entitled to a decree for possession. It will be, however, necessary for the plaintiffs to get a survey knowing pleader commissioner appointed for the purpose of demarcating his own land from the lands of the defendants and Lalit Dhangar out of plot No. 1248. The pleader Commissioner will measure out the lands of the parties as

Indicated above and then deliver possession to the plaintiffs over the area from which they have been dispossessed by the defendants."

In other words the learned Subordinate Judge has given the plaintiffs-respondents a decree for possession by means of demarcation, though the relief of demarcation was not asked for by the plaintiffs respondents.

3. In the view which I have taken of this appeal, it would be inadvisable for me to express any opinion on the question of title. The point which has been urged before me on behalf of the appellants is that they were greatly prejudiced by the failure of the plaintiffs, respondents to indicate clearly by means of boundaries etc. the identity of the particular portion of plot No. 1248 which the plaintiffs-respondents were claiming in the suit. Learned counsel for the appellants has drawn my attention to Order 7, Rule 3 and to Order 20, Rule 9, Civil P C. Order 7, Rule 3 states that where the subject-matter of the suit is Immovable property the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. Order 20, Rule 9 is in similar terms and states that where the subject-matter of the suit is Immovable property, the decree shall contain a description of such property sufficient to identify the same. In the case before me, the plain tiffs-respondents were claiming a portion of plot No. 1248. It is true that they did mention the plot number in the plaint. They also gave the area which they were claiming, namely, 1 bigha 18 kathas 7 dhurs. In a schedule appended to the plaint it was stated that the portion which had been encroached on was from the southern side, but nowhere was it stated in the plaint from which side of the plot the settlement of 1 bigha 18 kathas 7 dhurs was made in favour of the plaintiffs respondents. It is to be observed that the area of plot No. 1248 is 4 acres and odd. It is also to be observed that Ramji Missir had settled portions of this plot with three different sets of persons, the settlement in favour of Prem Singh and Lalit Dhangar being earlier in point of time than the settlement in favour of the plaintiffs-respondents. It was, therefore, very necessary to fix the identity of the particular portion which the plaintiffs-respondents were claiming as having been settled with them. Learned counsel for the plaintiffs-respondents has drawn my attention to a petition which his clients had filed on 24th January 1946. In that petition a reference was made to an earlier demarcation of the different portions of the plot by a Collectorate amin in a demarcation proceeding. It was alleged in that petition that the portion of plot No. 1248, which is south of plot No. 1249, marked 1 in plot No. 1248 as shown in a map attached to the petition along with the portion marked 2 in plot No. 1218 was the area of the plaintiffs" land measuring 1 bigha 18 kathas 7 dhurs. It was further alleged that the plaintiffs-respondents had been dispossessed from the area marked 2 in the map. The plaintiffs respondents wanted that the said map of the Collectorate amin should form part of the plaint 90 as to fix the identity of the lands which the plaintiffs respondents were claiming. Unfortunately, however, no order was passed on this petition. Order No. 45, dated 24th January 1946, which deals with this petition

merely states that a pleader commissioner be appointed to measure the land on the spot. It seems to me that the points which the appellants have taken, namely, that the plaint did not clearly indicate the identity of the lands which the plaintiffs-respondents were claiming, and that the present appellants were prejudiced in their defence have some substance.

4. The learned Subordinate Judge has no doubt relied on the report and map of the pleader Commissioner. I am not saying anything about the correctness or otherwise of that report and map, but from the map which the pleader Commissioner prepared it appears that the portion which the plaintiffs-respondents showed as the portion from which they had been dispossessed had an area of .46 acres only. What happened was this. On behalf of the plaintiffs-respondents a particular place was shown as the place where the old ridge stood--the ridge which had been broken by the present appellants at the time of encroachment. The pleader Commissioner drew a line across the field at that place, and by measurement he found that the encroached portion, according to that ridge, would be .45 acres. The learned Subordinate Judge, however, proceeded on a somewhat different footing. He held that 1 bigha 13 kathas 7 dhurs had been settled with the plaintiffs-respondents ; but the plaintiffs respondents were in possession of only .90 acres, that is, 22 and 23 kathas. The shortage was, therefore, .69 acres and in that way the learned Subordinate Judge found that the encroachment was to the extent of .69 acres. If the learned Subordinate Judge was in a position definitely to find that an area of .69 acres had been encroached on by the appellants, then the proper decree to pass would have been a decree for recovery of possession of that area. It is difficult to understand why the plaintiffs-respondents were given a decree for a demarcation of their lands when they had not asked for it. It is obvious that in a suit for a declaration of title and recovery of possession two things have to be found--title and possession. If it is found that the plaintiffs have proved subsisting title, then they are entitled to a decree for recovery of possession to the extent of the area from which they have been dispossessed.

5. It seems to me that unless the plaintiffs respondents indicate the identity of the lands which they are claiming either by means of boundaries or by means of a map as they purported to do by their petition dated 24th January 1946, it is difficult, if not impossible, to find whether they have title to the lands, and whether any encroachment has been made by the appellants. It would be impossible to pass a decree capable of execution unless the identity of the lands is known. The question of prejudice also comes in, and it would be difficult for the appellants as defendants to show, if they are able to so (sic) show, that the plaintiffs-respondents have no title to the lands which they are claiming.

6. For the reasons given above, I would allow this appeal set aside the decisions of the Courts below, and send the case back on remand to the learned Munsif for a fresh decision in accordance with law. The learned Munsif will allow the plaintiffs-respondents an opportunity to indicate the identity of the lands which

they are claiming either by stating the boundaries of by filing a map by way of an amendment, of the plaint. If after such amendment, the appellants wish to file any additional written statement, they should be allowed to do so, and the parties will be entitled to adduce additional evidence. The evidence already recorded will be evidence in the case but any additional evidence which the parties may wish to adduce after amendment of the plaint and the filing of the additional written statement, if any, will be recorded by the learned Munsif. The learned Munsif will then consider the entire evidence in the case afresh in the light of the observations made above, and thereafter decide all the questions at issue between the parties. Costs incurred at the present hearing as also costs incurred before the order of remand will abide the result of the fresh decision. Fresh costs incurred after the order of remand will be dealt with by the learned Munsif.