
(2025) 12 JH CK 1835
In the Jharkhand High Court
Case No : Second Appeal No. 87 Of 2009

Shankar Oraon

APPELLANT

Vs

Manoj Kumar Bhagat

RESPONDENT

Date of Decision : 01-12-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 144, 145
Chhota Nagpur Tenancy Act, 1908 — Section 46, 48, 71A
Limitation Act, 1963 — Section 65

Citation : (2025) 12 JH CK 1835

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Ayush Aditya, Ashok Kumar Pandey

Final Decision : Dismissed

Judgement

Anubha Rawat Choudhary, J

1. This appeal has been filed against the judgment dated 20.02.2009 (decree signed on 28.02.2009) passed by the learned District Judge, Lohardaga in Title Appeal No. 02 of 2008 reversing the judgment dated 29.01.2008 (decree signed on 18.02.2008) in Title Suit No. 28 of 1999 passed by learned Munsif, Lohardaga.

2. The title suit was decreed in favour of the plaintiffs by the learned trial court, but the judgment and decree of the learned trial court was reversed by the learned 1st appellate court. Consequently, the plaintiffs are the appellants before this Court.

3. This appeal was admitted for final hearing vide order dated 10.10.2011 by framing the following substantial question of law:-

"Whether the learned lower appellate court has committed serious error in reversing the finding of learned trial court on the issue of adverse possession without considering the effect of Exhibit-2 coupled with the evidences of D.W.2, D.W.4 and D.W.6 which were taken into consideration by learned trial court for

recording his finding?”

4. The suit was filed for the following reliefs: -

- a) That right, title, interest of the plaintiffs over the suit land given in schedule of the plaint be passed.
- b) That it be declared that the entry of R.S. Khewat and C.S. Khewat No. 3/1 of column No. 2 be declared incorrect.
- c) That cost of the suit be awarded to the plaintiff.
- d) That any other relief or reliefs for which the plaintiff is entitled to be given.

Schedule to the plaint

Lands of Village Itta, P.S. Lohardaga, P.S. No. 200, District Lohardaga, under R.S. Khata No. 181 Plot No. 399 area 1.96 acres under R.S. Khewat No.3/1

Corresponding new survey Khata No.222, Plot No. 405, Area-1.96 acres.

Corresponding to C.S. Survey Khata No. 158, Plot No. 224, Area 2.03 acres under C.S. Khewat No.3/1

5. The original three plaintiffs were sons of Parna Oraon, Rama Oraon and Lachhua Oraon. The original defendant was Sahdeo Bhagat, and the Deputy Commissioner, Lohardaga was the defendant No.2 who was made a party in view of the statutory requirement. However, defendant No.2 did not contest the suit.

6. The arguments of the parties were recorded vide orders dated 24.09.2025 and 25.09.2025 and the gist of arguments are as under: -

7. Arguments of the appellants.

A. The judgment passed by the learned 1st appellate court is perverse on account of non-consideration of the evidence of DW-2, DW-4 and DW-6 and also non-consideration of the effect of exhibit-2. A reference has been made to internal page 9 of the trial court's to submit that the learned trial court has specifically considered as to whether the plaintiffs and their ancestors are in continuous possession over the suit land for more than statutory period i.e. for more than 30 years and whether the possession of the plaintiffs was open and hostile. The learned counsel for the appellants has referred to Bihar Schedule Areas Regulation, 1969 to submit that the point of 30 years for adverse possession arises due to the amendment with regard to period of limitation for adverse possession.

B. All the materials were considered by the trial court and Exhibit-2 clearly reveals that the plaintiffs were in continuous possession of the suit property since 1961. The learned counsel submits that the learned trial court has specifically recorded that though the deed of relinquishment, exhibit-2, which is dated 28.11.1961 did not create any title in favor of the plaintiffs as is hit by Section

46 of the Chhota Nagpur Tenancy Act, 1908 (hereinafter referred to as the C.N.T. Act) but exhibit-2 goes to show that the ancestors of the plaintiffs were in continuous possession over the suit property prior to 1961. The learned counsel submits that though the title did not pass by virtue of Exhibit-2 being hit by provision of Section 46 of the CNT Act, but the document was sufficient to prove the possession since prior to 1961. The period of 30 years expired in the year 1991 and the suit was filed in the year 1999.

C. So far as the other ingredients of adverse possession i.e. whether the possession was open and hostile was also considered by the learned trial court and finding was returned in favor of the appellants and while recording the finding Exhibit-2 dated 28.11.1961 has been taken into consideration which is a deed of relinquishment and the learned court recorded that it appeared that the son of the original owner had never objected the possession of the plaintiffs and he had relinquished his interest by executing a deed vide Exhibit-2 to acknowledge the same. He has also submitted that the learned trial court has also taken into consideration the filing of SAR Case seeking restoration of land, which was ultimately rejected.

D. The learned counsel has referred to paragraph 7 of the learned 1st appellate court's judgment and has submitted that exhibit-2 has been considered in isolation and the oral evidence of DW-2, DW-4 and DW-6 have not been taken into consideration. During the course of arguments and upon going through the impugned judgment, the learned counsel has not been able to show any oral evidence of these witnesses substantiating the case that the plaintiff was in possession of the property prior to 1961. However, the learned counsel submits that Exhibit-2 has not been properly appreciated by the learned 1st appellate court and the substantial question of law be answered in favor of the appellants.

E. The learned 1st appellate court has committed perversity by completely discarded Exhibit-2, which is a registered deed of relinquishment (exhibit-2). He submits that Exhibit-2 being a registered document, its execution cannot be disputed. He has also submitted that the Exhibit-2, though was in violation of Section 46 of Chota Nagpur Tenancy Act inasmuch as the required permission for transfer was not taken from the Deputy Commissioner to enter into such a deed of relinquishment deed which amounts to transfer of property, but the exhibit-2 cannot be discarded when it comes to acknowledgement of possession of the plaintiffs over the suit property.

F. The learned counsel for the appellants has relied upon the judgment passed by Hon'ble Supreme Court (2004) 8 SCC 340 [Situ Sahu & Others vs. State of Jharkhand & Others] and has submitted that though the proceeding was under the provisions of Section 71A of C.N.T Act, but the provisions of the Schedule Area Regulation 1969 with regard to extended period of limitation of 30 years has also been taken into consideration. He has submitted that in the plaint and in the written statement, there is no allegation of fraud or against the plaintiffs and mere violation of Section 46 of C.N.T Act cannot be a ground to

completely reject the Exhibit-2. He has submitted that the judgment of Hon'ble Supreme Court which is reported in (2003) 7 SCC 667 [Ibrahimpattam Taluk Vyavasaya Coolie Sangham vs. K. Suresh Reddy] has been considered by the Hon'ble Supreme Court in the case of (2004) 8 SCC 340 (Supra) and has argued that in the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud, the Exhibit-2 could not have been completely discarded. The learned counsel has also referred to paragraph 12 and 14 of the judgment passed in the case of (2004) 8 SCC 340 (Supra) and has submitted that even when the transfer is fraudulent, the period of dispossession can be taken into consideration. He has then relied upon the judgment passed by this Court in W.P.(C) No. 2833 of 2021 [Jatru Oraon vs. The State of Jharkhand and Others] and has referred paragraph 17 and has submitted that similar view has been taken by this Court and while deciding the case the judgments passed in the case of Fulchand Munda Vs. State of Bihar & Others reported in (2008) 14 SCC 774, Jai Mangal Oraon (Smt.) vs. Mira Nayak & Others reported in (2000) 5 SCC 141 and Situ Sahu & Others vs. State of Jharkhand & Others reported in (2004) 8 SCC 340 have been taken into consideration and it has been ultimately held in paragraph 17 that even if the contention of the petitioner of the said case to the effect that the land was fraudulently acquired by the ancestor of the private respondents is taken to be true, then also in view of the aforesaid judgments rendered by the Hon'ble Supreme Court, the petitioner of the said writ petition was held not entitled to get any relief since the case for restoration of the land was not filed within a reasonable period of time. Paragraph 10 and 17 of the said judgment is quoted as under: -

"10. It is evident from the record that a title suit being Title Suit No. 1105 of 1967 was filed by Manohar Lal Choudhary against the ancestors of the petitioner and the said suit was decreed in favour of Manohar Lal Choudhary in the year 1968 on the basis of a compromise arrived at between the parties. Even if the said decree is assumed to be a collusive one, the same proves possession of the private respondents/their predecessor since 1968 which has not been specifically controverted by the petitioner by bringing on record any cogent evidence. The application for restoration of the said land was filed in the year 2003 and as such the private respondents/their predecessor were in possession of the said land for almost 35 years from the date of dispossession of the petitioner's ancestors.

17. In the case in hand, the application for restoration was filed by the petitioner after about 35 years of dispossession of the petitioner/his predecessor from the said land which was rightly held by the revisional authority as barred by limitation. I am of the view that application for restoration filed by the petitioner after 35 years of dispossession cannot be said to be within a reasonable period of time. Even if the contention of the petitioner to the effect that the said land was fraudulently acquired by the ancestor of the private respondents is taken to be true, then also in view of the aforesaid judgments rendered by the Hon'ble Supreme Court, the petitioner is not entitled to get any relief since the case for

restoration of the said land was not filed within a reasonable period of time.”

G. Learned counsel for the appellants has further submitted that so far as evidence of D.W.2, D.W.4 and D.W. 6 are concerned, the same were duly considered by the learned trial court to come to a finding, but the learned 1st appellate court has not considered their evidence. He has submitted that on account of the aforesaid facts and circumstances the impugned judgment passed by the learned 1st appellate court suffers from perversity and therefore, the substantial question of law is fit to be answered in favour of the appellants.

H. Learned counsel for the appellants has relied upon the judgment passed by this Court reported in 2020 (1) JLR 108 [Sunil Kumar Jaiswal vs. The State of Jharkhand] and has specifically referred to paragraph 15 thereof to submit that it has been held that even assuming that the order which was involved in the said case was to be treated as collusive, the long possession cannot be denied, though the title would not pass.

8. Argument of the respondents.

I. The substantial question of law as framed by this Court is not a substantial question of law at all. He has submitted that the plea of adverse possession is essentially a question of fact and there is no scope for reappraisal of facts in second appeal by framing a substantial question of law by referring to the materials placed on record.

II. The learned 1st appellate court has taken into consideration each and every ingredient so far as plea of adverse possession is concerned. He has also submitted that the defence witnesses were also taken into consideration.

III. The Exhibit-2 being in violation of the statute was a fraudulent transaction and was void ab initio and cannot be acknowledged and recognized by any court of law and no finding can be recorded on the basis of Exhibit-2. He has further submitted that the other ingredients of adverse possession have also not been satisfied by the plaintiffs inasmuch as the proceeding under Section 144 Cr.P.C. was initiated way back in the year 1989 disputing and contesting the possession of the plaintiffs and such proceeding was initiated within 30 years even if it is counted from 1961. This aspect of the matter has also been taken care of by the learned 1st appellate court.

IV. In the written statement specific plea was taken that no date of possession has been specifically mentioned. The learned counsel has submitted that it is necessary for the plaintiffs to stand on their own legs by making necessary averment and proving the same by way of adequate evidence. Any lacuna in the case of the defendant will not give any benefit to the plaintiffs and the same cannot be a ground to decree a suit. The learned counsel for the respondents has relied upon the judgment passed by the Hon’ble Supreme Court reported in (2019) 11 SCC 309 [Poona Ram vs. Moti Ram (D) TH. LRS. And Others] and has referred paragraph 17 and 18 in support of his submission that the plaintiffs have

to prove his case before the court of law.

V. The learned counsel has then referred to the judgment reported in (2005) 11 SCC 115 [B. Leelavathi vs. Honnamma and Another] and has referred paragraph 11 to submit that any vague plea of adverse possession cannot be a ground to decree a suit claiming adverse possession and it has also been observed that adverse possession is a question of fact which has to be specifically pleaded and proved.

Findings of this court.

9. The suit was filed for declaration of right, title and interest of the plaintiffs over the suit property and also for a declaration that the entries made in column no.2 of the Cadastral Survey (C.S) Revisional Survey (R.S) with respect to Khewat no. 3/1 is incorrect.

10. The facts relevant for the purposes of answering the substantial question of law involved in this case is that the specific case of the plaintiffs was that the plaintiffs and the defendant no.1 belong to common ancestor. It was asserted that during Cadastral Survey Operation and also in Revisional Survey Operation C.S. Khewat No. 3/1 and R.S Khewat no. 3/1 was suit land and was wrongly recorded in the name of Sahdeo Mahto, who had no right, title, interest and possession over the land and the plaintiffs and their ancestors were throughout in possession of suit land.

11. Sahdeo Mahto died leaving behind his only son Jagat Mahto, and Jagat Mahto had one son Bishram Mahto, who died leaving behind a widow Mostt. Parwatia. After death of Sahdeo Mahto, his only son Jagat Mahto executed a registered deed of relinquishment dated 28.11.1961, relinquishing his right over the land under Khewat No.3/1 in favour of the plaintiffs and confirmed their right, title and possession.

12. It was the case of the plaintiffs that though they were in possession of the suit land much prior, but Jagat Mahto had executed the deed of relinquishment dated 28.11.1961 with respect to the suit land relinquishing his right, title, interest and possession over the suit land in favour of Rama Mahto and Lachhu Mahto and therefore, it was an estoppel against the defendants from denying the plaintiffs' right, title, interest and possession over the suit land.

13. Further case was that said Parwatia had filed one S.A.R. Case No. 28 of 81-82 against Rama Oraon for restoration of the suit land, which was rejected, and ultimately no appeal was filed.

14. Further, during survey operation the new khata No. 222, Plot No. 405 area 1.96 acres was prepared and finally published as Bakast Bhuinhari Mahtoi under Tenure Holder Mostt. Parwatia and in remarks column illegal possession of Rama Oraon and Lachhu Oraon having equal share, is shown since 1975. It was asserted that so far as entry of illegal possession since 1975 of Rama Oraon and Lachhu Oraon was concerned, the same was incorrect and infact, Rama Oraon

and Lachhu Oraon have been exercising their right, title, interest and possession over the suit land since the time of their ancestors to the knowledge of all concerned.

15. The further case of the plaintiffs is that in the year 1989 Sahdeo Bhagat (Defendant No.1) tried to disturb the peaceful possession of the plaintiffs over the suit land. As such, a proceeding U/S 144 Cr.P.C. being case No. M.515 of 1989 was started, which was later on converted into a proceeding U/S 145 of Cr.P.C., which was said to be pending before the court of Executive Magistrate, Lohardaga.

16. The proceedings related to mutation was taken up and contested till the stage of revision being Revision Case No. 48 of 1989 filed by Rama Mahto which was disallowed on 23.03.1999, holding that the title and possession are under dispute and the revenue court are not competent to decide complicated question of title. Thereafter, the suit was filed.

17. In the written statement the contesting defendant had taken a specific plea that the suit was barred by limitation. The Cadastral Survey record of right was published in the year 1912, whereas the Revisional Survey record of right was published in the year 1934, and the plaintiffs should have filed a suit within a period of 12 years from the date of final publication to challenge the entry made in the record of rights.

18. It was also asserted that the final date of cause of action as described dated 10.07.1999 was also incorrect since the plaintiffs had already stated that the dispute of possession started in the year 1989 for which a proceeding under Section 144 Cr.P.C. was started being Miscellaneous Case No. 515 of 1989 which was converted into a proceeding under Section 145 of Cr.P.C.

19. It was their further case that the plaintiffs and the defendant No.1 belong to different families and have different genealogy and Most. Parwatia had no right in connection with the property.

20. It was stated that plaintiff's ancestors were never in possession of the suit property prior to the year 1975. The further case of the defendant was that Jagat Mahto @ Jagat Narayan Bhagat, son of Sahdeo Mahto, never executed any deed in favour of the plaintiffs within his knowledge. Despite that, if the plaintiffs are in possession of any deed, the same is illegal and in contravention of Section 46 of C.N.T. Act and hence void. The suit land was in possession of the legal heir of Sahdeo Mahto, who was holder of Khewat No. 3/1. The plea of adverse possession was specifically denied. In the finally published record of right in the year 1994, the record of right prepared in the name of Most. Parwatia and in the remark column, possession of the plaintiffs was noted since 1975.

21. It was asserted that the period of 30 years prescribed for adverse possession was not completed hence, the question of title by way of adverse possession did not arise. It was also asserted that the plaintiffs may be put to give specific

evidence in connection with adverse possession.

22. The learned trial court has framed as many as IX issues. Issue No. (IV) was Whether the suit was barred by limitation?

Issue no. (V) was relating to adverse possession as to Whether the plaintiffs have acquired right over the suit land by adverse possession?

Issue no. (VIII) was relating to Whether the deed of relinquishment of 1961 executed in favour of the ancestors of the plaintiffs created any title in favour of them?

23. In support of the case of the plaintiffs, the plaintiffs had examined as many as 12 witnesses and also produced some documentary evidence which are as follows: -

Oral Evidence on behalf of plaintiffs

P.W.1

Radha Sahu

P.W.2

Shankar Oraon

P.W.3

Lachhu Oraon

P.W.4

Dhunna Oraon

P.W.5

Chander Sahu

P.W.6

Jodhan Sahu

P.W.7

Dasai Oraon

P.W.8

Marwadi Mahto

P.W.9

Kirtan Bhagat

P.W.10

Rambilash Oraon

P.W.11

Abhiram Nayak

P.W.12

Ashutosh Panda

Documentary Evidence on behalf of plaintiffs

Exhibit 1 to 1/E

Rent Receipts

Exhibit 2

Certified copy of relinquishment deed No.1879 of 1961

Exhibit 3

Original notice issued in the proceeding u/s 144 Cr.P.C.

Exhibit 3/1

Carbon copy of notice issued in the proceeding u/s 144 Cr.P.C.

Exhibit 4

Certified Copy of Khewat No. 3/1, 3/2 and 3/3

Exhibit 5

Certified Copy of New Survey Khata

Exhibit 6

Order of Commissioner South Chhotanagpur passed in M.Rev. No. 48 of 1989

Exhibit 7

Notice of Anchal in S.A.R. Case No. 28 of 81-82

Exhibit 8

Certified copy of Khata No. 181

Exhibit 9

Notice of Special Officer S.A.R. Lohardaga in Camp Case No. 28 of 81-82

24. In support of the case of the defendants, the defendants had examined as many as 06 witnesses and numerous documents were also exhibited which are as follows:-

Oral Evidence on behalf of defendant

D.W.1

Sahdev Bhagat

D.W.2

Smt. Soma Devi

D.W.3

Manoj Kumar Bhagat

D.W.4

Shyam Narayan Oraon @ Takko

D.W.5

Dindayal Bhagat

D.W.6

Jerku Oraon

Documentary Evidence on behalf of defendants

Exhibit A

Rent Receipts

Exhibit B

Certified Copy of R.S. Khewat No.2/1 and 2/2

Exhibit B/1

Certified Copy of C.S. Khewat

Exhibit C

Certified Copy of Order dated 09.03.1979 passed in M.A. 1 of 79

Exhibit C/I

Certified Copy of order dated 16.02.1982 passed in M.A. 1 of 79

Exhibit D

Certified Copy of new Khewat

Exhibit D/I

Certified Copy of R.S. Khatian No.181

Exhibit D/II

Certified Copy of new survey Khatian

Exhibit E

Certified Copy of order dated 23.03.1999 passed in Mutation Case No. 48 of

1989

25. The point of limitation was considered as issue No. (IV) and it was held that the plaintiffs should have brought the suit within a period of 12 years challenging the C.S. and R.S. record of right which was published way back in the year 1912 and in the year 1934. The plaintiffs' suit so far it related to challenging the entries in record of rights was barred by limitation. However, the point of adverse possession was still to be considered.

26. So far as issue No.(VIII) is concerned, the three questions were posed -

- a. Whether Bhuinhari land is transferrable?
- b. Whether relinquishment amounts to transfer?
- c. What is the effect of the deed of relinquishment Ext.2?

These three questions were examined in the light of Section 48 & 46 of the Chota Nagpur Tenancy Act which provides that in case of transfer of a land belonging to schedule tribe the previous sanction of Deputy Commissioner is required.

27. The learned trial court also held that it was apparent that Bhuinhari tenure is transferable, but for the same previous sanction of the Deputy Commissioner is necessary. The learned trial court held that the deed of relinquishment amounts to transfer and for executing the deed of relinquishment prior permission of the Deputy Commissioner is necessary. However, at the same time observed that the period of limitation for restoration of the transferred tenure is twelve years. The learned trial court recorded that the Exhibit-2 was executed in the year 1961, but the transferrer did nothing for restoration of the suit land in his favour rather, he supported the possession of the plaintiffs' ancestors and even Most. Parwatia preferred one S.A.R Case bearing No. 28 of 81-82 against Rama Oraon for restoration of the suit land which was rejected and against the said order no appeal was filed and the order became final. The learned trial court ultimately held that even though by the deed of relinquishment no title passed to the plaintiffs as the same is hit by Section 46 of C.N.T Act for want of prior permission of the Deputy Commissioner, but the plaintiffs could not be evicted from the suit land as the same was barred by limitation and as such this issue was decided in favour of the plaintiffs and against the defendants.

28. So far as issue No.(V) is concerned, the learned trial court observed that the point of adverse possession was mixed question of fact and law. Concrete proof of open, hostile and continuous possession against the true owner is required in order to substantiate a claim of perfection of title by adverse possession. Thereafter, the learned trial court posed a question which was required to be seen:

Whether the plaintiffs and their ancestors are in continuous possession over the suit land for more than statutory period i.e. for more than 30 years? And whether the possession of the plaintiffs was open and hostile?

29. With these questions the learned trial court has considered the oral evidence of the plaintiffs and also the oral evidence of the defendants and ultimately held that the deposition of the plaintiffs as well as defendants reveal that plaintiffs were in possession of the suit land since long and then the court went on to examine the period of possession of 30 years. The learned trial court recorded that the Exhibit-2 was a deed of relinquishment. Though, it did not create any title in favour of the plaintiffs, the same being hit by Section 46 of the Chota Nagpur Tenancy Act, it goes to show that the ancestors of the plaintiffs were in continuous possession over the suit land prior to 1961, when Exhibit-2 was executed. Exhibit-2 was executed by Jagan Narayan Bhagat, S/O: Sahdeo Mahato @ Sahdeo Bhagat in favour of Rama Mahato and Lachhu Mahto. The learned trial court recorded that S.A.R case filed by Parwatia Devi was decided against her. The learned trial court also observed that mere filing of a case for mutation in itself does not amount to disturbance in continuous peaceful possession of the plaintiffs and ultimately recorded a finding that it becomes clear that the possession of the plaintiffs and their ancestors over the suit properties is for a period of more than 30 years and the same was peaceful.

Thereafter, the learned trial court examined as to whether the possession was open and hostile to the possession of the original owner?

30. The learned trial court referred to Exhibit-2 (the deed of relinquishment) and observed that during the life time, the original owner or his son never objected to the possession of the plaintiffs' ancestors and the application filed by Most. Parwatiya being S.A.R. case seeking restoration of the suit land was dismissed which attained finality. The learned trial court recorded that from the time of the recorded tenant Sahdeo Mahato till the death of the last surviving member Most. Parwatia, the plaintiffs were in peaceful possession over the suit land. The learned trial court also considered the plea of the defendants that they were the nearest male agnate of the original owner and as per Oraon customary law, upon death, the property would devolve upon the surviving member of the family. The learned trial court observed that as long as Most. Parwatia was alive, the defendants had no role to play in the suit properties. The learned trial court ultimately held that the possession of the plaintiffs and their ancestors over the suit property was continuous and was for a period more than statutory period and it was open and hostile to the possession of the original owner and the original owner never objected to the same. As such it becomes clear that the plaintiffs have perfected their title by way of adverse possession.

31. Thus, the relief with regards to challenge to the entry in R.S record and C.S record of right was held to be barred by limitation, but so far as the plea of adverse possession is concerned, the same was decided in favour of the plaintiffs.

32. The learned trial court ultimately decided that it became clear that the plaintiffs have perfected their title over the suit land by way of adverse possession by remaining in peaceful possession for a period more than 30 years and held that the plaintiffs have got right, title and interest over the suit land.

The suit was ultimately decreed by holding that they have perfected their title by way of adverse possession.

33. This court finds that the proceeding initiated under Section 144 of Cr.P.C. in the year 1989 was not considered by the learned trial court while recording the aforesaid finding on the point of adverse possession. The plaintiffs had themselves disclosed that in the year 1989 Sahdeo Bhagat tried to disturb the peaceful possession of the plaintiffs for which a proceeding under Section 144 Cr.P.C. was filed which was later on converted in to a proceeding under Section 145 of Cr.P.C which was pending.

34. The learned 1st appellate court also considered the same issues as that of the learned trial court held that the title can still be asserted irrespective of the entries made in record of rights and observed that the suit was not barred by limitation. The learned 1st appellate court held that the deed of relinquishment (exhibit-2) was in contravention of Section 46 of Chota Nagpur Tenancy Act and the same cannot be the basis of title and decided the issue in favour of the defendants.

35. The point of adverse possession was considered. The learned 1st appellate court enumerated the basic ingredients for the purposes of claiming adverse possession and also referred to the provisions of Bihar Schedule Area Regulation 1969 which provides that the statutory period of limitation under Section 65 of the Limitation Act, 1963 would be 30 years for the purposes of Chota Nagpur Tenancy Act and therefore, the statutory period is to be taken as 30 years.

36. The learned 1st appellate court ultimately held that the plaintiffs have failed to make out the case of title over the suit by way of adverse possession. The learned 1st appellate court while holding so has recorded that no specific date and year was disclosed as to since when the plaintiffs came in possession of the suit land and against whom. The findings of the learned 1st appellate court on the point of adverse possession is quoted as under:-

"8. In order to succeed and prove title on the basis of adverse possession it must be adequate in continuity, exclusiveness, publicity and with hostile assertion. It was held in 1995 (2) SCC 543 A.B. Patil Vrs. Balwant that a person who bases his title on adverse possession must show by clear and unequivocal evidence i.e possession was hostile to the real owner and amounted to a denial of his title to the property claimed. Where the possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title.

It has also been held in P.Lakshmi Reddy Vrs. L Lakshmi Reddy AIR 1957 SC 314 As between co-heirs there must be evidence of open assertion of hostile title coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. It is well settled that the burden of making out ouster is on the person who claims to the lawful title of a

co-heir by his adverse possession. In collector of Bombay Vrs. Bombay Municipal Corporation AIR 1951 SC 469, it was held that before a right could be said to be acquired or lost by adverse possession; it must have been the subject of possession by a man without title as against the person with rightful title.

With regard to claim of title by way of adverse possession it may be noted that :-

Firstly: The plaintiff's case is that they were all along in possession of Khewat No. 3/1. No specific date and year is disclosed since when they came into possession of the suit land and against whom. The claim of title by adverse possession can only succeed against a rightful holder of title. The plaintiffs have denied the title over the suit land of the ancestors of the defendants and at the same time they claim it by adverse possession. They have themselves claimed to be true holder and at the same time claim it by adverse possession. Claim of title by inheritance and that by adverse possession are two inconsistent pleas which cannot be taken. This is the basic infirmity in the plaintiff's case.

Secondly: From when did the plaintiffs enter into possession of the suit land?

The assertion in para-13 of the plaint is that the ancestors of plaintiff were in possession since before the cadastral survey of 1912 and revisional survey of 1934. Entries in these records of rights are not in their favour. A rebuttable presumption arises that the defendant's ancestors were in possession of the suit land. No documentary evidence has been adduced to rebut this presumption. The only documentary evidence is the entry in the copy of recent survey Khatiyani of new khata No. 222 corresponding to plot No. 405 area 1.96 acres entered in the name of Mostt. Parbatia as tenure holder and in remarks column the illegal possession of Rama Oraon and Lachhu Oraon since 1975. Even if this is accepted as evidence of possession since 1975 the statutory period of 30 years as required under article 65 of the Limitation Act 1963 as amended by the Bihar Schedule Areas Regulation 1969, is not completed at the time of filing of the suit in the year 1999. The other point is that the very pendency of proceeding initiated in the year 1989 U/s 144 Cr.P.C. which was subsequently converted into a proceeding U/s 145 Cr.P.C. repels the contention of the plaintiff of being in continuous and peaceful possession and of assertion of hostile title against the defendants.

The defence on their part have adduced Ext. A which is a rent receipt of khewat No. 3/1 issued in the name of Sahdeo Bhagat on 24.6.2002.

Ext. C is the order of the D.C.L.R. passed in M.A. Case No. 1/79 arising out of Mutation Case No. 128R26 IV 79-79 passed on 9.3.1979. From the perusal of this order it transpires that the order was passed in favour of the applicant (Sahdeo Bhagat). This order was made in favour of the defendant Sahdeo Mahto since it was the khatiyani land of Bitan Bhagat after the abolition of zamindari in the register-II, khata No. 181 was entered in the name of Jagat Mahto. The genealogical table produced by Rama Mahto was not found to be correct. The deed of relinquishment in the absence of the necessary permission from the D.C.

was not accepted.

Against which an appeal had been preferred by Rama Mahto before L.R.D.C. in M.A. 1/79-80 in which the order of the Circle Officer was set aside.

The matter finally went up in the Court of Commissioner, South Chottanagpur Division in Mutation Revision No. 48/1989 preferred by Rama Mahto against Sahdeo Bhagat (Ext. E) in which the genealogy given by the petitioner was not accepted and on the basis of the possession land was directed to be mutated in favour of the opposite party confirming the order of Addl. Collector. It was also found that there has been fraud in collusion with revenue staff in getting the name of Rama Mahto entered in Jamabandi register.

The order of the Revenue Court's has been assailed by the respondent/plaintiffs that since Bhuinhari land was not an occupancy raiyat and does not come within the definition of tenure U/s 2(q) (iii) Land Reforms Act and revenue is not paid to the Government therefore, mutation was without jurisdiction. Reliance has been placed on Harat Sao Vs. Dukhan Pahan 1977 BBCJ 479. It is true that the Bhuinhari land is a privileged tenure land in which revenue is not paid but cess is paid to the Government. But the mutation for the purpose of collection of cess is no where barred.

In the result the entries in the record of rights of cadastral survey and revisional survey and the mutation orders are strong documentary evidence of possession in favour of the defendants. The recent survey entry do indicate illegal possession of Rama Mahto since 1975 but this by itself does not complete the statutory period required for adverse possession. On the face of the documentary evidence, the oral evidence cannot be attached much importance since both evidence on behalf of respective parties have stated about their respective claim of possession. My attention has been drawn to certain paras of the deposition of D.Ws particularly para-18 of D.W. 2, para-5, 7 and 15 of D.W. 4, para-17 of D.W. 6 wherein they have stated about the forcible possession of the plaintiffs. This does not establish the continuous peacefully possession of the plaintiffs. It also does not give the date when the plaintiffs are said to have come in possession. P.W. 4 who gave his age to be 45 years has deposed in para-5 that earlier Parbatia was tilling the land.

So the first contention of the plaintiff that they were in cultivating possession since C.S. and R.S. survey has been contradicted by his own witness. This has been further corroborated by P.W. 6 in para-3.

For the reason discussed above I am of the considered view that the plaintiffs have failed to make out their title over the suit by way of adverse possession. This issue is also accordingly decided in favour of the appellant/plaintiffs."

37. In the judgment passed by Hon'ble Supreme Court reported in (2005) 11 SCC 115 [B. Leelavathi vs. Honnamma and Another] it

has been held by the Hon'ble Supreme Court that adverse possession is a

question of fact which has to be specifically pleaded and proved.

38. A person who claims adverse possession must show on from what date he came into possession and what was the nature of his possession, whether the factum of his possession was known to the legal claimants and how long his possession continued. He must also show whether his possession was opened and undisturbed. These are the questions of facts and unless they are asserted and proved a plea of adverse possession cannot be inferred from them. Such view has been expressed by the Hon'ble Supreme Court in the Judgement passed in the case of Kishundeo Rout and Others vs. Govind Rao and Others reported in 2025 LiveLaw (SC) 790 in paragraph 20, 27 and 28 which are as follows:-

20. The plea of adverse possession is not always a legal plea. Indeed, it is always based on facts which must be asserted and proved. A person who claims adverse possession must show on what date he came into possession, what was the nature of his possession, whether the factum of his possession was known to the legal claimants and how long his possession continued. He must also show whether his possession was open and undisturbed. These are all questions of fact and unless they are asserted and proved, a plea of adverse possession cannot be inferred from them. Therefore, in normal cases an appellate Court will not allow the plea of adverse possession to be raised before it. There is no doubt some cases in which the plea will be allowed because in some form the allegation upon which it can be raised was made at the time and the facts necessary to prove the plea were brought before the court and proved.....

27. Ordinarily, the question of adverse possession is one of fact, resting upon proof of numerous circumstances which go to establish the several elements, indicating adverse character of the possession. In certain cases, it may be a question of law, or, a mixed question of law and facts as, where the decision rests upon inferences to be drawn from facts which are admitted or established.

28. The determination of adverse possession depends upon sifting of facts and circumstances, indicative of adverse possession, and then, upon testing of the evidence in the light of the law applicable.

39. In the judgment passed by Hon'ble Supreme Court reported in (2019) 11 SCC 309 [Poona Ram vs. Moti Ram (D) TH. LRS. And Others] in the paragraph 17 and 18 it has been observed that merely on the basis on doubtful material and cursory evidence, it cannot be held that the plaintiff was ever in possession of the property that too in settled possession and it was observed in paragraph 19 that the plaintiff has to prove his case to the satisfaction of the court and he cannot succeed on the weakness of the case of the defendant.

40. The facts of the present case reveal that the point of adverse possession is essentially a question of fact to be examined in the light of basic ingredients required to claim adverse possession.

41. The Hon'ble Supreme Court in the case of (2004) 8 SCC 340 [Situ Sahu &

Others vs. State of Jharkhand & Others] has taken note of the fact that under Bihar Schedule Area Regulation, 1969 the period of limitation under Section 65 of the Limitation Act is 30 years and held that even assuming that the transfer was fraudulent, exercise of power under Section 71(A) by the Special Officer Schedule Area Regulation after expiry of 40 years was not a reasonable time to exercise such a power. In the said case the judgment passed by Hon'ble Supreme Court reported in (2003) 7 SCC 667 [Ibrahimpattam Taluk Vyavasaya Coolie Sangham vs. K. Suresh Reddy] has been considered wherein it has been held that in the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud, there is no question of examining the point of fraud. In the judgment passed by this Court in W.P.(C) No. 2833 of 2021 [Jatru Oraon vs. The State of Jharkhand and Others] numerous judgements have been considered including Fulchand Munda Vs. State of Bihar & Others reported in (2008) 14 SCC 774, Jai Mangal Oraon (Smt.) vs. Mira Nayak & Others reported in (2000) 5 SCC 141 and Situ Sahu & Others vs. State of Jharkhand & Others reported in (2004) 8 SCC 340 wherein it has been ultimately held in paragraph 17 that the suit filed for restoration of land after 35 years of dispossession was rightly held by the revisional authority to be barred by limitation.

42. This Court is of the view that the judgment passed in the case of Situ Sahu (Supra) and aforesaid cases does not help the appellants in any manner in view of the fact that in those cases the suit seeking restoration or proceeding under section 71A was initiated after expiry of the period of 30 years from the date of dispossession. For claiming adverse possession, the period of uninterrupted and peaceful possession is 30 years subject to satisfaction of other conditions as well and in the present case the statutory period of 30 years of uninterrupted and peaceful possession to claim adverse possession was not complete even if the deed of relinquishment of 1961 is taken into consideration. From the year 1961, 30 years period expired in the year 1991 and prior to that a proceeding under Section 144 Cr.P.C. was instituted in the year 1989 which was converted into a proceeding under Section 145 Cr.P.C. and the proceedings under Section 145 Cr.P.C. was said to be pending. Although, the appellants claimed to be in possession prior to 1961 by referring to the deed of relinquishment of the year 1961 but there is neither any foundational pleading nor any evidence to substantiate the date or even year of possession prior to 1961. The appellants-plaintiffs claimed that although they were in possession since prior to C.S and R.S records in the year 1912 and 1934 respectively and that the entry made in the record of rights were incorrect but the trial court refused to grant such relief and the learned 1st appellate court did not interfere with the finding and no substantial question of law has been framed with regards to such a finding and consequently no arguments have been recorded in this regards.

43. The learned 1st appellate court while holding that the plea of adverse possession against the plaintiffs has taken note of the fact that in the year 1989 a proceeding under Section 144 Cr.P.C. which was subsequently converted into a

proceeding under Section 145 Cr.P.C. which according to the court repelled the contention of the plaintiffs of being in continuous and peaceful possession and of assertion of hostile title against the contesting defendant for a continuous period of 30 years prior to filing of the suit.

44. The learned 1st appellate court while considering the various exhibits placed on record came to a finding that the cadastral survey and revisional survey and the mutation orders are strong documentary evidence of possession in favour of the defendants and observed that the recent survey entry do indicate illegal possession of Rama Mahto since 1975, but this by itself does not complete the statutory period required for adverse possession. The learned 1st appellate court then referred to the evidence of defendants witnesses particularly paragraph 18 of D.W.2, paragraph 5, 7 and 15 of D.W. 4, paragraph 17 of D.W. 6 wherein they have stated about the forcible possession of the plaintiffs. The learned 1st appellate court held that this fact does not establish the continuous peaceful possession of the plaintiffs. It also does not give the date when the plaintiffs are said to have come in possession. P.W.4 who gave his age to be 45 years has deposed in paragraph 5 that earlier Parwatia was tilling the land.

45. The learned 1st appellate court held that the first contention of the plaintiffs that they were in cultivation possession since C.S. and R.S. survey has been contradicted by his own witness and this was corroborated by P.W.6.

46. The learned 1st appellate court ultimately held that the plaintiffs have failed to make out their title over the suit by way of adverse possession and the issue was decided in favour of the appellants. The learned 1st appellate court ultimately reversed the finding of the learned trial court.

47. This Court finds that the learned 1st appellate court has considered the oral evidence of D.W.2, D.W.4 and D.W.6 as relied upon during the proceedings and held that their evidence do not disclose the date when the plaintiffs came in possession and also considered the case of plaintiffs that they were in cultivating possession since C.S and R.S survey and recorded that the claim has been controverted by their own witness P.W-6. The substantial question of law refers to evidence of D.W.2, D.W.4 and D.W.6 only and exhibit-2 which was said to have been taken into consideration while decreeing the suit after holding adverse possession in favour of the plaintiffs and the 1st appellate court has reversed the findings allegedly without considering evidence of D.W-2, D.W.4 and D.W.6 only and exhibit-2. This Court is of the view that the learned 1st appellate court has considered every aspect of the matter based on material evidence placed on record. However, considering the nature of the substantial question of law this Court has examined evidence of D.W-2, D.W.4 and D.W.6 only and exhibit-2. The Exhibit-2 i.e. relinquishment deed of the year 1961 also does not reveal the date of possession of the plaintiffs with respect to the suit property and mere mentioning that the plaintiffs already in possession in the relinquishment deed does not serve any purpose and is not enough to establish the plea of adverse possession. This Court has gone through the evidence of D.W.2, D.W.4 and

D.W.6, but these witnesses has not stated anything about the period of possession much less the date of possession. During the course of hearing also the learned counsel for the appellants has not been able to show any oral evidence by these witnesses to substantiate that the plaintiffs were in possession of the property prior to 1961 which has been recorded by this Court in paragraph 7 of the order dated 24.09.2025.

48. This Court finds that even if the claim of possession of the plaintiffs is taken from the year 1961 then also it cannot be said that the possession was uninterrupted /peaceful for a period of more than 30 years inasmuch as in the year 1989, prior to expiry of 30 years, the proceeding under Section 144 Cr.P.C. was initiated.

49. This Court also gone through the evidence of D.W.-2, D.W.-4 and D.W.-6 and finds that none of these witnesses have substantiated that the plaintiffs were in possession of the property prior to 1961 much less disclosed the date or year from when the plaintiffs were in possession of the suit property. This Court is of the view that even if Exhibit-2 is taken into consideration which is the relinquishment deed of 1961 the period of 30 years did not expire prior to the initiation of proceeding under Section 144 Cr.P.C. This is over and above the fact that even in the relinquishment deed there is no discloser as to since when the plaintiffs were in possession of the property. This is coupled with the fact that cadastral survey and revisional survey record of rights did not support the case of possession of the plaintiffs and the recent survey record of rights indicated that the plaintiffs were in possession of the property only since 1975.

50. This Court finds that the learned 1st appellate court has not committed any error in reversing the findings of the learned trial court on the issue of adverse possession and has considered all the materials on record including Exhibit-2 and so far as the evidence of D.W.-2, D.W.-4 and D.W.-6 are concerned, they do not support the case of the plaintiffs on the point of adverse possession. The plaintiffs have miserably failed to prove their case of adverse possession.

51. Accordingly, the substantial question of law is answered against the appellants (plaintiffs) and in favour of the respondents (contesting defendants).

52. This 2nd appeal is accordingly, dismissed.

53. Pending interlocutory application, if any, is dismissed as not pressed.

54. Let a copy of this order be communicated to the concerned courts through "Fax/e-mail".

55. The lower court records be sent back to the concerned courts.