

(2025) 10 JH CK 1319
In the Jharkhand High Court
Case No : Second Appeal No. 241 Of 2018

Smt. Rubi Rai Tirkey

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 31-10-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 80
Chotanagpur Tenancy Act, 1908 — Section 46, 83, 83(1), 83(2), 86, 87, 89, 96
Limitation Act, 1963 — Section 58
Limitation Act, 1963 — Article 58, 64, 65, 112, 113

Citation : (2025) 10 JH CK 1319

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Rahul Kr. Gupta, S.B. Gupta, Navnit Prakash, Sanjay Kr. Tiwari,
Krishna Kr. Bhatt

Final Decision : Allowed

Judgement

Anubha Rawat Choudhary, J

1. This appeal has been filed against the judgment dated 09.02.2018 (decree signed on 23.02.2018) passed by learned District and Additional Sessions Judge-X, Jamshedpur in Civil Appeal No.03 of 2017 whereby the learned 1st appellate court dismissed the appeal preferred by the appellant. The trial court judgment dated 20.12.2016 (decree signed on 03.01.2017) was passed by learned Civil Judge (Senior Division)-I, Jamshedpur in Title Suit No.11 of 2006 whereby the learned trial court had dismissed the suit of the plaintiff.

2. The suit was filed for the following reliefs:

“(a) For a decree declaring the right, title and interest of the plaintiff over the suit property.

(b) For decree declaring that the settlement entry in respect of the schedule land of the plaintiff in the records of right finally published on 10.08.1979 showing the

Khata in the name of "Ban Bibhag Bihar Sarkar" is wrong and erroneous.

(c) For permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff over the schedule land in any manner whatsoever and also from taking forcible possession of same or any part therefrom.

(D) For cost of the suit.

(E) For any other relief or reliefs to which the plaintiff be found entitled under the law and equity."

3. The following substantial questions of law were framed by this Court vide order dated 30.01.2023:

1. Whether learned First Appellate court has committed perversity by holding that the sale deed executed by Ladura Ho in favour of the mother of the plaintiff, is barred by provisions of the Chota Nagpur Tenancy Act, even though there is no such pleading of the parties?

2. Whether the First Appellate Court has committed gross illegality by observing that the plea of adverse possession can be used as a shield and not as a sword in view of principle of law settled by the Hon'ble Supreme Court of India in paragraph 64 of the judgment in the case of Ravinder Kaur Grewal & Ors. vs. Manjit Kaur and Ors. reported in 2019 (8) SCC 729?

3. Whether learned First Appellate Court has committed perversity by excluding Exhibit 5, which is relevant material in arriving at the finding?

4. Whether learned First Appellate Court has committed gross illegality by holding that the suit is barred by limitation in view of the principle of law settled by Hon'ble Supreme Court of India in paragraph 18 of the judgment in the case of Daya Singh & Anr. vs. Gurdev Singh (Dead) by LRs. and Ors. reported in 2010 (2) SCC 194?

4. Learned counsel for the appellant has placed the facts from the trial court's judgment and submitted that the plaintiff was claiming title by virtue of registered Sale-Deed No.3518 dated 08.08.1956 who claimed to have purchased the suit property from Ladura Ho and claimed to be in possession of the property. The property was purchased by Masih Dhani Tirkey, the mother of the plaintiff. The learned counsel submits that the record of rights was finally published on 10.08.1979 wherein the suit property was shown to be recorded in the name of "Ban Bibhag Bihar Sarkar" and in the remarks column, the same was shown to be in illegal possession of Masih Dhani Tirkey, the mother of the plaintiff since 1971. Learned counsel submits that prior to final publication of record of rights, the defendant-State had filed a case under Section 83 of Chotanagpur Tenancy Act, 1908 (hereinafter referred to as 'CNT Act') with respect to the suit property against Masih Dhani Tirkey and vide order dated 24.08.1973, the Assistant Settlement Officer had confirmed the possession of the plaintiff and plaintiff's

mother. The learned counsel submits that the plaintiff came to know about the finally published record of rights dated 10.08.1979 only when one officer of the Forest Department had threatened the plaintiff to dispossess the plaintiff from the suit property in the year 2005. Thereafter, the plaintiff obtained the said records and filed a suit seeking a declaration of right, title and interest over the suit property and also seeking a declaration that the settlement entry in respect of scheduled land of the plaintiff in the record of rights, finally published on 10.08.1979 showing the Khata in the name of Ban Bibhag Bihar Sarkar was wrong and erroneous.

5. The learned counsel for the appellant has submitted that since the plaintiff was in possession of the suit property, there was no occasion to claim recovery of possession, rather no alternative relief was also claimed seeking recovery of possession, if the plaintiff is found dispossessed from the suit property. The learned counsel submits that mere entry in finally published record of rights on 10.08.1979 does not give the cause of action to file the suit, rather the cause of action arose when the authority of respondent-State threatened the plaintiff and therefore, the cause of action arose in the year 2005.

6. Learned counsel for the appellant has referred to the judgment passed by the Hon'ble Supreme Court reported in (2010) 2 SCC 194 [Daya Singh and Another Vs. Gurdev Singh (Dead) By Lrs. and others] and has referred to paragraph 18 thereof to submit that the High Court in the judgment impugned in the said case had fallen in grave error in holding that the suit was barred by time and ignored to appreciate that the rights of the appellants of the said case to have the revenue record accrued and first arose in 1990 when the appellants came to know about the wrong entry and the respondents failed to join the appellants in getting it corrected. The Hon'ble Supreme Court has held that mere existence of a wrong entry in the revenue records does not, in law, give rise to a cause of action within the meaning of Article 58 of the Limitation Act. The learned counsel submits that in view of the aforesaid judgment, the point of limitation is not to be counted from 1979 i.e., date of final publication of record-of-rights, but from the date of cause of action as disclosed in the plaint. He submits that the substantial question of law no. (4) is fit to be answered in favour of the appellant and against the respondents.

7. While referring to the 1st substantial question of law, the learned counsel for the appellant has submitted that there was no foundational pleading that the transfer of property by Ladura Ho in favour of mother of the plaintiff was barred by section 46 of CNT Act. The learned counsel has submitted that the State was claiming title over the property and if the transfer was barred by virtue of section 46 of CNT Act, then the property would have reverted back to the original owner and not to the State. Since the State was claiming the property, recourse to section 46 of CNT Act was completely out of the frame of the suit and therefore, such findings recorded by the Court without any foundational pleading that the case was barred on account of absence of permission under section 46

of CNT Act is not in accordance with law and such findings are perverse. The learned counsel has submitted that the State cannot dispute that it was their specific claim that the property belongs to the State and such entry in the record-of-right was challenged by the plaintiff in the present suit and not by the State. The learned counsel submits that the 1st substantial question of law is also fit to be answered in favour of the appellant and such findings are perverse.

8. With respect to the 2nd substantial question of law, the learned counsel for the appellant has placed the trial court's judgment as well as the 1st appellate court's judgment and has submitted that the learned trial court has considered the claim of adverse possession on various aspects of the matter, but the learned 1st appellate court has rejected the same by observing that the plea of adverse possession can be used only as a shield and not as a sword and such observation of the learned 1st appellate court is contrary paragraph 64 of the judgment passed by the Hon'ble Supreme Court in the case of "Ravinder Kaur Grewal & Ors. vs. Manjit Kaur and Ors." reported in 2019 (8) SCC 729 which judgment has been cited while framing the 2nd substantial question of law.

9. Learned counsel for the appellant has further submitted that even if everything is taken against the appellant, then also the entry in record-of-rights showed that the plaintiff was in possession of the property since 1971 and the suit was filed in the year 2006 which was beyond the period of 30 years. He submits that the plaintiff had filed the suit seeking declaration of right, title and interest over the property and the State neither took any action to evict the plaintiff nor disturbed the possession of the plaintiff in any manner although it was in full glare of the State that the plaintiff was in possession of the property since 1971. In such circumstances, the plaintiff had perfected the title by way of adverse possession since their possession was undisputed, open and hostile to the title of the State for more than 30 years. This would be in view of the provisions of Article 65 of the Limitation Act.

10. While referring to the 3rd substantial question of law, the learned counsel submits that the State made an attempt to get the entry in record-of-rights which was in favour of the plaintiff [to the extent it was shown that the plaintiff was in possession of the property since 1971] but that plea was rejected vide exhibit- 5. He also submits that since such a plea was rejected, the entry in record-of-rights continued to show that the plaintiff was in possession of the suit property at least since 1971. He submits that even exhibit- 5 clearly shows that there was a contest with regard to the possession of the plaintiff shown in the record-of-rights since 1971 and taking exhibit- 5 into consideration, the undisputed fact which comes up from the records of the case is that the plaintiff remained in possession of the property at least since 1971 and therefore, there cannot be any doubt that the plaintiff had perfected the title by way of adverse possession being in possession for more than 30 years and the basic ingredients of adverse possession were otherwise duly satisfied.

11. The learned counsel for the appellant has relied upon the judgment passed

by the Hon'ble Supreme Court reported in (2009) 13 SCC 229 (L.N. Aswathama and another Vs. P. Prakash) and has referred to paragraph 17 and 18 of the said judgment to submit that the circumstances under which a plaintiff can take both the plea of claiming title and also adverse possession have been duly considered by the Hon'ble Supreme Court. He has submitted that since the entry in the record-of-rights has a presumptive value, the learned courts have recorded that the plaintiff has failed to prove his title by way of registered deed of the year 1956 on the grounds mentioned therein, therefore, the claim of title on the basis of the sale-deed does not survive anymore in view of the findings recorded by the learned trial court.

12. Learned counsel for the appellant, while referring to the aforesaid judgment reported in (2009) 13 SCC 229 (Supra), has submitted that both the learned courts have held that the plaintiff had taken inconsistent plea by claiming title over the property through Ladura Ho and also claiming adverse possession against the State. He submits that such finding is contrary to the law laid down by the Hon'ble Supreme Court reported in (2009) 13 SCC 229 (Supra) and accordingly, the finding recorded by the learned courts is contrary to the settled law.

13. The learned counsel for the appellant has also submitted that the period of limitation for the State to file any suit for recovery of possession would be 30 years and has referred to Article 112 of the Limitation Act. He submits that Articles 65 and 112 are to be read together.

Submission on behalf of the respondents.

14. The learned counsel for the respondent-State has submitted that there are concurrent findings recorded by both the courts. He has submitted that the suit was filed for declaration of title and also challenging the settlement entry of 1979 stating it to be wrong. The plaintiff claimed the property on the basis of registered sale deed dated 08.08.1956 [exhibit 1] in favour of the mother of the plaintiff and simultaneously claimed adverse possession without disclosing the foundational pleadings, which are required to be pleaded and established for claiming adverse possession. He submits that otherwise also, the claim of the plaintiff on the basis of registered title deed and based on adverse possession are simultaneous and conflicting with each other.

15. He has referred to the submissions as recorded by the learned trial court that notice under Section 80 CPC was given primarily for the settlement of land and not for filing of suit, but the State had refused the settlement. He has further stated that a specific plea was taken that the suit was barred by Section 80 CPC and also barred by limitation.

16. The learned counsel has read the entire summary of the written statement from the judgement passed by the learned trial court. He has specifically submitted that a plea was raised before the learned trial court in the written statement that the suit was barred by Chota Nagpur Tenancy Act as well as

under Bihar Land Reforms Act and further in paragraph 9, the various provisions of Chota Nagpur Tenancy Act i.e. Sections 83, 86, 89 and 96 have been referred to. He submits that since a plea was raised that the suit was barred by Chota Nagpur Tenancy Act, therefore the learned courts have rightly entered into the point that no prior permission of the Deputy Commissioner was taken before entering into the registered sale deed of the year 1956 [exhibit 1].

17. Learned counsel for the respondents has read the entire finding of the learned Trial Court on issue nos. (iv) and (v) and also on issue no. (iii). He has submitted that the plaintiff had claimed title over the suit property by virtue of registered sale deed no. 3518 dated 08.08.1956 and ultimately the court found that the registered sale deed was hit by the provisions of Section 46 of the Chotanagpur Tenancy Act. This finding was recorded as on the face of Exhibit-1 it revealed that the vendor of the mother of the plaintiff Ladura Ho belonged to Schedule Tribe and the mother of the plaintiff belonged to Christian Community. The court has also recorded that in the sale deed, there is no mention that due permission from the Deputy Commissioner was taken before transfer of the property and these facts regarding taking due permission from the Deputy Commissioner to transfer the property has also not been stated by the plaintiff in the plaint or in the documentary or oral evidence.

18. The learned counsel has also submitted that on account of the aforesaid defect in connection with the registered sale deed, the learned Trial court has rightly held that the sale deed executed by Ladura Ho in favour of mother of the plaintiff was void ab initio and title of the land cannot pass to the mother of the plaintiff through the sale deed.

19. The learned counsel submits that the point regarding violation of Section 46 of the Chotangapur Tenancy Act is a pure question of law which can be raised irrespective of any pleading or proof to that effect. He has submitted that it was for the plaintiff to prove her case and she has failed to prove her title on the basis of the registered sale deed Exhibit-1.

20. The learned counsel has further submitted that the court has recorded that there is a presumption in connection with the entries made in record of rights and the plaintiff has failed to bring any substantive material to rebut the legal presumption. This has been recorded after having held that the sale deed exhibit-1 was null and void.

21. The learned court thereafter held that the plaintiff was claiming title on the basis of registered sale deed and simultaneously claiming adverse possession without any foundational pleading and the two pleas are inconsistent to each other. For this, he has relied upon the judgement passed by the Hon'ble Supreme Court reported in (2022) 10 SCC 217 (Kesar Bai versus Genda Lal and Another) paragraph 7. The learned counsel has further submitted that the plea of the plaintiff claiming title and also adverse possession has been rightly rejected by the learned trial court and the finding has been upheld by the learned 1st

appellate court.

22. So far as the point regarding limitation is concerned, he has submitted that the plaintiff had full knowledge of the wrong entry on and from 09.07.1973 and the record of right was finally published on 10.08.1979. The learned court has recorded that the plea of plaintiff that she had no knowledge did not inspire confidence. This was recorded by referring to exhibit-5, which is a certified copy of the order passed in the Case number 2268 of 1972-73 related to the suit land in which the mother of the plaintiff was a party and therefore the court recorded that the plaintiff had full knowledge about the wrong entry of the record of right from very beginning. The record of rights was finally published in the year 1979. Therefore, the court rejected the plea that the plaintiff came to know for the first time about the wrong entry only on 15.04.2005. However, during the course of hearing, it transpired that the order was finally passed in exhibit-5 on 24.08.1973 which was much prior to the final publication of the record of rights.

23. The learned counsel for the respondents has referred to the judgment passed by the Hon'ble Supreme Court reported in (2010) 5 SCC 203 (R. Hanumaiah and another versus Secretary to Government of Karnataka, Revenue Department and Others) paragraphs 19 and 20 to submit that the courts owe a duty to be vigilant to ensure that the public property is not converted into private property by unscrupulous elements and has also submitted that it has been held whether Government contests a suit or not, before suit for declaration of title against a government is decreed, the plaintiff should establish either his title by producing title deeds which satisfactorily trace title for minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority) or by establishing adverse possession for a period of more than 30 years. In such suits, courts cannot ignore the presumption which were in favour of the government, grant declaratory or injunctive decrees against the government by relying upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted or admitted.

24. While referring to the substantial questions of law, the learned counsel has submitted that the submissions which have been recorded as aforesaid covers all the substantial questions of law.

Rejoinder argument of the Appellant

25. In response, learned counsel for the appellant has relied upon the judgment passed by the Hon'ble Supreme Court reported in (1995) 6 SCC 309 [R. Chandavarappa & Others vs. State of Karnataka & Others] paragraph 11.

26. Learned counsel for the appellant has referred to paragraph 7 and 8 of the plaint to submit that the foundational pleading for adverse possession has been laid down and it has been asserted that the plaintiff has remained in possession of the property since 08.08.1956. Paragraphs 7 and 8 are quoted as under:

"7. That thereafter the plaintiff searched and inspected the records of right in respect of suit property in the office of the record room and could know that the suit property is wrongly recorded in the name of "Ban Bibhag Bihar Sarkar" and the same is also shown in the remarks column illegal possession of Masih dhani Tirkey, wife of Joseph Tirkey since the year 1971.

8. That the suit property is in actual physical possession of the plaintiff since long more than 48 years from the time of her mother since 8.8.1956 without any interference from any corner whatsoever and thereby the plaintiff has acquired her indefeasing right, title and interest thereon by virtue of adverse possession well within the knowledge of all concerns whatsoever. The plaintiff has and is performing all her acts of possession of the suit property since more than 48 years without any hindrance from any corner and thereby her possession and title over the suit property has been duly confirmed under the provision of law"

27. He submits that even if the sale deed is taken as null and void, the possession since 08.08.1956 can be relied. He submits that the State never filed any counter claim nor any separate suit for recovery has been filed till date.

28. Learned counsel has also submitted that the findings of the learned trial court that the sale deed of 1956 [exhibit 1] was void ab-initio is referable to substantial question of law No.1 as the sale deed has been held to be null and void on account of alleged violation of Section 46 of Chota Nagpur Tenancy Act, but no such foundational pleading was laid by the State in the written statement and the parties did not join issues on this point.

29. Learned counsel for the appellant has also submitted that once the Settlement Officer had rejected the objection of the State with regard to possession of the plaintiff, then the order ought to have reflected in the final publication of the records of right showing the possession of the plaintiffs since 1956.

Findings of this Court

30. The case of the plaintiff was that the scheduled property is in actual physical possession of the plaintiff since 08.08.1956 by virtue of registered Sale Deed No.3518 dated 08.08.1956 executed by Ladura Ho in favour of the mother of the plaintiff and after her death, the plaintiff inherited the property and continued in possession without any objection from any corner. It was the specific case of the plaintiff that her mother all along remained in possession free from any obstruction and within the knowledge of all concerned, and therefore, the plaintiff also set up a claim for adverse possession. The cause of action arose when on 15.04.2005, one person claiming to be the staff of Forest Department threatened the plaintiff to dispossess her from suit property on the basis of entry in record of rights finally published on 10.08.1979. It was the case of the plaintiff that she came to know for the first time that the suit property had been wrongly recorded in the name of "Ban Bibhag Bihar Sarkar" and then, upon search and inspection of the record, she came to know that in the remarks column, illegal

possession of her mother has been shown since the year 1971. It was her further case that prior to final publication of record of right on 10.08.1979, the defendant had filed a case under Section 83 of the CNT Act with respect to the suit plot against her mother seeking rectification of the finally published record of right but vide order dated 24.08.1973, the Assistant Settlement Officer confirmed the possession of the plaintiff and the petition was rejected. The land has also been mutated in the Mango Notified Area Committee. It was claim of the plaintiff that "Ban Bibhag Bihar Sarkar" has no possession of the suit property or any portion thereof at any point of time. A notice under Section 80 CPC was issued to the defendants on 03.05.2005 and thereafter on 12.07.2005 and having no response, ultimately the suit was filed. The contesting defendant i.e. defendant nos.1 and 2 filed their written statement alleging that the suit was not maintainable, the plaintiff has no cause of action. The suit was barred by limitation and also barred by Section 80 CPC and under the provisions of Chota Nagpur Tenancy Act as well as Bihar Land Reforms Act, Specific Relief Act and also barred by waiver, estoppel and acquiescence.

31. It was the case of the defendant nos.1 and 2 that the plaintiff had not justified her physical possession over the suit land since 08.08.1956. The ex-landlord was Raja Jagdish Chandra Deo and after abolition of zamindari, the entire land vested to the State of Bihar under Bihar Land Reforms Act, 1950. It was also asserted that after khanapuri, the record of right with respect to the plot of land and house has been prepared and recorded in Register II and in the record of rights, the name of plaintiff does not find place and the entire claim of the plaintiff is wrong. It was asserted that the suit land vested in the State Government since 1956. There was survey settlement operation in the year 1964 when the entire suit land was recorded in the name of State of Bihar and there were final survey and settlement in the year 1979 and the entire land vested in the State of Bihar and recorded in the State of Jharkhand. The records were published in 1979 but the plaintiff did not take any step for long years for correction of record of right.

32. Further, it was asserted that no rent with respect to the suit land was fixed by the State. The defendant further stated that the plaintiff did not move the Circle Officer for fixation of rent of the suit land. The possession since 1956 was denied. It was asserted that the plaintiff should have filed petition under Sections 83, 86, 89, and 96 of the CNT Act for correction of her claim to justify her possession. The claim of adverse possession was in fact illegal possession and the plaintiff was like an encroacher and the plaintiff was liable to be evicted under the process of law. The land is recorded in the name of Forest Department and the Government of India has got all title, right and interest and the question of threatening by the Staff of Forest Department is not correct.

33. With regard to entry in the record of rights showing the mother of the plaintiff to be in possession since 1971, it was asserted that illegal possession cannot give right to possession and the plaintiff was to be evicted from the suit

property under the process of law and at the same time, it was asserted that the claim of plaintiff regarding his possession over the suit property is wrong. It was asserted that the cause of action for the suit arose from the date of vesting in the State of Bihar as well as from the survey settlement 1964 as well as the final survey settlement 1979. It was asserted that the plaintiff has got no right, title and interest on government land and it was prayed that the suit be dismissed.

34. The following issues were framed by the learned trial court:

"I. Is the suit as framed maintainable?

II. Whether the plaintiff has valid cause of action for the suit?

III. Is the suit barred by law of limitation, waiver, estoppel, acquiescence, and under the provision of CNT Act, BLR Act, Specific Relief Act?

IV. Whether the plaintiff has right, title, interest and possession and has perfected his title by adverse possession?

V. Is the plaintiff entitled to get decree as prayed for?"

35. The plaintiff has examined altogether three witnesses including herself as P.W. 1 and exhibited 8 documents as follows: -

Exhibit No.

Prescription / Description

Ext. 1

Original sale deed dated 08/08/1956 (without objection)

Ext. 2 to 2/a

Carbon copy of notice dated 03.05.2005 and
12.07.2005 (without objection)

Ext. 3 and 3/a

Postal receipt dated 04.05.2005 and 15.07.2005 (without objection)

Ext. 4

Acknowledgment (without objection)

Ext. 5

Certified copy of objection case no. 2268/72- 73 under Section 83 CNT Act
(without objection)

Ext. 6 to 6/c

Panchmail receipts dated 02.04.1979, 08.07.1979, 20.06.2000, and 08.06.2005
(without objection)

Ext. 7

Certified copy of Khatian belonging to Khata no. 907 (without objection)

Ext. 7

Certified copy of exhibited village note of Manbhum settlement, Barabhum Estate (without objection)

36. On the other hand, the defendants did not produce any evidence, oral or documentary to support their stand in the written statement.

37. Issue nos.III, IV and V are relatable to the substantial question of law involved in the present case.

38. The learned trial court considered the issue nos.IV and V together and it came to light while considering the materials that the suit land was recorded in the name of Government of Bihar in the year 1964 as well as in the year 1979. Exhibit-1 was the sale deed dated 08.08.1956 and it is an undisputed fact that in the record of rights finally published on 31.08.1979 in column 7 illegal possession of mother of the petitioner was shown since 1971. The learned trial court recorded finding from paragraph 9 onwards and observed that the plaintiff had nowhere mentioned either in her plaint or in her evidence on which date she searched and inspected the records in respect of the suit property in the office record room regarding wrong entry in the name of "Ban Bibhag Bihar Sarkar" in the record of rights. It also observed that plaintiff was claiming right, title over the property on the sale deed (Exhibit 1). While scrutinizing Exhibit 1, the learned trial court made the following observation:

a) On perusal of recital of Exhibit 1, it appeared that vendor Ladura Ho had acquired the land from ex-landlord on the basis of oral settlement but the vendor had not disclosed the name of ex-landlord in the sale deed.

b) Plaintiff has also not mentioned this fact in her pleading nor adduced any oral or documentary evidence on it.

c) Ladura Ho belongs to Schedule Tribe and vendee (mother of the plaintiff) belongs to Christian community. It is nowhere mentioned in the recital of the sale deed exhibit 1 that Ladura Ho has sold the suit land after taking permission from the Deputy Commissioner.

d) The plaintiff has not mentioned this fact in her plaint and also not adduced any evidence on it.

e) There is no any documentary evidence which could establish that the suit land was sold in favour of mother of the plaintiff after taking permission from the Deputy Commissioner.

f) Section 46 of CNT Act described restriction on transfer of the right by raiyat.

g) The court concluded that it was clear that the vendor Ladura Ho has not sold

the land in favour of the mother of the plaintiff after taking prior permission of the Deputy Commissioner and as land has been sold without previous sanction of the Deputy Commissioner so sale deed (exhibit 1) executed by Ladura Ho in favour of the mother of the plaintiff becomes void ab initio and title of the land cannot be passed to the mother of the plaintiff through the so-called sale deed (exhibit 1).

h) On the point of possession, the learned trial court recorded that the plaintiff has not filed any chit of paper regarding the suit land which could establish the peaceful possession of the plaintiff over the suit land. Neither Malgajari receipt with respect to the vendor nor any government receipt, mutation slip belonging to the plaintiff with respect to the suit land was filed by the plaintiff.

i) The court also recorded that the plaintiff herself admitted in her cross examination in paragraph 25 that the suit property has been recorded in the name of State government in the record of right of 1964 and again it has been recorded in the name of "Ban Bibhag Bihar Sarkar" in the record of rights of 1977. The plaintiff did not make any application to the Circle Officer or to the Deputy Commissioner for realization of rent with respect to the suit land which she admitted during her cross-examination.

j) With respect to Exhibit 5, which is the order passed in objection case no.2268/72-73, it was observed that it goes to show that the State of Bihar has filed an objection against the mother of the plaintiff under Section 83 of the CNT Act in which claim of the State was ultimately dismissed. However, the learned trial court recorded that it was not clear from the order as to what was the claim of the State and what order was passed in favour of the plaintiff. It was further observed with respect to exhibit 5 that although the plaintiff has stated in paragraph 9 of the pleadings that in the said case, the Assistant Settlement Officer has confirmed the possession of the plaintiff with respect to the suit land but on perusal of exhibit 5, it is not clear that possession of the plaintiff with respect to the suit land has been confirmed.

k) With respect to entry in the record of rights, in RS operation, the court observed that the land was recorded in the name of "Ban Bibhag Bihar Sarkar" in the year 1979 so "Ban Bibhag Bihar Sarkar" becomes a paramount owner of the suit land and then observed that it is settled principle of law that entry in the record of right shall be presumed to be correct unless proved to be incorrect. In the aforesaid background, the learned trial court recorded that the plaintiff has failed to bring any substantive material on record to rebut the aforesaid legal presumption.

l) While considering the claim of adverse possession, the learned trial court recorded that the plaintiff has claimed possession over the suit property by way of adverse possession for more than 48 years since 08.08.1956 without any interference from any corner and thereby the plaintiff has acquired her indefeasible right, title and interest thereon by virtue of adverse possession well

within the knowledge of all concerned. The court recorded that the plaintiff was claiming her title on the basis of sale deed Exhibit 1 and also on the basis of adverse possession and such claim was contrary to each other and therefore the claim of adverse possession was not sustainable in the eyes of law.

m) The court then referred to the judgement passed by the Hon'ble Supreme Court in the case of Karnataka Board of Wakf Vs. Government of India and Ors. reported in (2004) 10 SCC 779 wherein it was held that plea of adverse possession is not a pure question of law but is a mixed question of fact and law and therefore the person show the following ingredients.

(a) On what date he came into possession.

(b) What was the nature of his possession.

(c) Whether factum of possession was known to the other party.

(d) How long his possession has continued.

(e) His possession was opened and undisturbed.

n) It was also held that in the said judgement that a person pleading adverse possession has no equity in his favour since he is trying to defeat the right of the true owner and it is for the person claiming adverse possession to clearly plead and establish all facts necessary to establish his adverse possession in the eyes of law. It was also observed that in the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion and that non-use of property by the owner even of a long time would not affect his title.

39. The learned court while examining the ingredients of adverse possession recorded as under:

(a) The plaintiff claimed to have purchased the suit land by virtue of registered sale deed dated 08.08.1956 and started residing thereon by constructing house and thus the possession was since more than 48 years.

(b) The court recorded that the defendant had filed objection case no.2298 of 72-73 under Section 83 of CNT Act with respect to the suit land, and therefore, the plaintiff cannot claim the continuation of possession over the suit land without any interruption.

(c) The court further recorded that no documentary evidence has been brought on record to show that plaintiff or his mother had come into possession over the suit land in the year 1956 and what was the nature of possession. By referring to the judgement passed by Hon'ble Supreme Court reported in (1995) 6 SCC 309, it was observed that if one intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby the possession would become adverse.

(d) It was observed that no such stand was taken nor any such evidence was

adduced on behalf of the plaintiff and also it was never clearly stated anywhere that the State government is true owner of the suit land and thus the plaintiff had not accepted in the plaint that the State government is the actual owner of the suit land. With this learned court observed that therefore in absence of crucial pleading which constitute the adverse possession of plaintiff, the plaintiff cannot claim that she had perfected her title by adverse possession against the State government.

(e) Ultimately, the court recorded in paragraph 10.1 of the judgement that it appeared from document exhibit 7 that the suit land belongs to "Ban Bibhag Bihar Sarkar", hence it could not be said that the possession of the plaintiff was hostile possession in the knowledge of the true owner. It also could not be said that the possession of the plaintiff was open and undisturbed. It was further observed that the possession of the plaintiff was also not hostile and continued over the statutory period. The plaintiff had also not disclosed the date when their possession becomes adverse within the knowledge of the State. The Court concluded that the plaintiff has failed to fulfil the basic ingredient as required to establish their title on the basis of law of adverse possession. The court ultimately came to conclusion that plaintiff had not acquired any right, title, or interest over the suit land either on the basis of sale deed executed in favour of the mother of the plaintiff Exhibit 1 and also on the basis of adverse possession and decided issue nos.IV and V accordingly.

(f) So far as issue no.III is concerned, the same was dealing with point of limitation. The learned court took into consideration the submission of the State that the plaintiff had full knowledge of wrong entry on and from 09.07.1973 and final publication of record of right was made on 10.08.1979 and therefore, the suit should have been filed within 10.08.1991 as per the provision of limitation in connection with correction of a wrong entry in record of right.

(g) The court also relied upon a judgement in the case of Union of India and Ors. vs West Coast Paper Mills Ltd. & Anr. [AIR 2004 SC 1596] which appears to have been passed under Articles 58 and 113 of the Limitation Act. It was held that the right to sue may accrue to a suitor in a given case at different point of time. Whereas, in terms of Article 58, the period of limitation would be reckoned from the date on which the cause of action arose first, and in Article 113, the period of limitation would be differently computed depending upon the last date when the cause of action therefore arose.

(h) The court ultimately recorded the finding in connection with the point of limitation by observing that in the present case, plaintiff had pleaded that the cause of action arose on and from 15.04.2005 when the staff of Forest department threatened her to dispossess from the suit property on the basis of erroneous entry in the record of right and that she came to know about the wrong entry for the first time on 15.04.2005 and she was in continuous possession since 1956 and the record of right was finally published on 10.08.1979. The findings in the aforesaid background are quoted as under:

"....

The plea of plaintiff does not inspire confidence because from perusal of Exhibit 5 which is certified copy of order passed in case no.2268 of 72-73, I find that the mother of the plaintiff was party in that suit which is related with the suit land. Thus, in my view plaintiff has full knowledge about the wrong entry in the record of right from very beginning finally published in 1979 so claim of the plaintiff that she knew first time about wrong entry in the record of right on 15.04.2005 appears to be false and hence not accepted."

(i) The learned court also observed that the plaintiff also sought a relief of declaration that the settlement entry in the suit land in the record of right finally published on 10.08.1979 was erroneous. So, cause of action certainly began after 10.08.1979. The court recorded that the suit was filed in the year 2006 which is much delayed and therefore the suit was barred by limitation. The court also recorded that since the sale deed with respect to the suit land was executed and registered in favour of the mother of the plaintiff without taking permission from the Deputy Commissioner so the suit is also barred under the provisions of CNT Act. Thus, the point of limitation as well as claim of title on the basis of registered sale deed dated 08.08.1956 and also the claim of adverse possession was decided against the plaintiff and the suit was dismissed.

40. So far as the learned 1st appellate court is concerned, the points for determination were as follows:

(i) "Whether the plaintiff/appellant has right, title and interest over the suit land?

(ii) Whether the plaintiff has perfected his title by way of adverse possession?

(iii) Whether the suit is barred by law of limitation?

(iv) Whether the plaintiff is entitled to get the relief as prayed in this suit?"

41. While deciding point no. (i), the learned court recorded as under:

a. The case of the plaintiff is that the land earlier belonged to Ladura Ho but sale deed was executed in the year 1956 showing Ladura Ho got the land about 30-40 years ago from the landlord by oral settlement and they cultivated the land. The court observed that there is no dispute that settlement of land can be through oral but there should be a subsequent payment of rent and evidence of cultivation. The court observed that on the basis of illegal possession on government land even for a long period, nobody can be owner of the property and that after passing of Bihar Land Reforms Act, 1956 all forest land vested in the government and therefore government became the owner of the property and in the year 1978, the name of "Ban Bibhag Bihar Sarkar" was recorded in the record of right and such entry was not challenged by the plaintiff within 12 years. The plaintiff had not even disclosed as to who was the ex-landlord. However, in evidence she stated that the landlord was Gobar Mukhi of West Bengal and she admitted that after abolition of zamindari, the land vested in the

Government of Bihar. In paragraph 30, she admitted that she did not file any application for fixation of rent. The court recorded that evidence of plaintiff itself showed that after vesting of estate, the suit land vested in the Government of Bihar. Apart from the aforesaid finding, the learned court went on to hold that the record showed that Ladura Ho belonged to Schedule Tribe and mother of the plaintiff was a Christian and under provisions of CNT Act, permission of Deputy Commissioner is required for transfer of land belonging to Schedule Tribe and no title passed in favour of the purchaser until the permission is obtained.

b. The learned 1st appellate court was of the view that the suit land recorded in the name of "Ban Bibhag Bihar Sarkar" in RS operation had the presumption of correctness of entry in the record of right unless it was proved to be incorrect and that the plaintiff has failed to bring any substantive material regarding legal presumption of correctness of the entry into the khatian. The court recorded that on the basis of evidence available on record, the plaintiff has not been able to establish her right, title over the suit land on the basis of sale deed.

c. Further, the court also rejected the plea of adverse possession by observing that the basic ingredients for adverse possession were not satisfied and adverse possession presupposes title of another person so plea on the basis of title as well as adverse possession is not maintainable at the same time and also observed that adverse possession can be used as a shield and not as a sword and that the trial court has rightly decided the plea of adverse possession.

d. With respect to the point of limitation, the learned court held as under:

"In this case, record of right was finally prepared and published in the year 1979 and in the record of right the suit land was recorded in the name of "Ban Bibhag Bihar Sarkar". No rent of the suit land has been assessed. No mutation ever allowed on the basis of alleged purchase of land by the plaintiff's mother. At the relevant point of time of publication of record for rights, the plaintiff were found in illegal possession over the suit land. The plaintiff is encroacher over the suit land. The entry in record of right has not been challenged by the plaintiff or her mother within 12 years of its publication. The plaintiff has filed title suit in the year 2006 that is much after period of limitation. Accordingly, the point of limitation is also answered against the plaintiff and in favour of the respondents. After having recorded concurrent findings the learned 1st appellate court dismissed the appeal.

1st substantial question of law

42. So far as 1st substantial question of law is concerned, this Court has gone through the plaint and the written statement and finds that the only statement with regard to the title of the mother of the plaintiff was made in paragraph 3 of the plaint that the suit property was purchased by the mother of the plaintiff from Ladura Ho by virtue of registered Sale Deed No.3518 dated 08.08.1956. In the written statement, the State simply denied the statement made in paragraph 3 of the plaint. In the plaint, nothing was mentioned regarding the recitals in the

sale deed of 1956 or the title of the plaintiff's predecessor-in-interest. Similarly, in the written statement, nothing was mentioned that the suit was barred under Section 46 of the CNT Act on account of absence of permission from the Deputy Commissioner as the vendor belonged to the Schedule Tribe community. The registered deed dated 08.08.1956 was exhibited and marked exhibit- 1 (without objection).

43. This Court finds that inspite of complete absence of foundational pleading alleging violation of Section 46 of CNT Act, the learned court held that the sale deed of the year 1956 was null and void on account of absence of permission by the Deputy Commissioner under Section 46. This Court also finds that the State neither filed any counterclaim nor any such plea was taken in the written statement nor the State took any step to amend the written statement so as to raise a plea with regard to violation of provision of Section 46 of CNT Act. This Court is of the considered view that in absence of such a foundational pleading, it was certainly not permissible for the learned trial court as well as the learned 1st appellate court to hold that the registered sale deed of the year 1956 (exhibit-1) was void in absence of permission of the Deputy Commissioner under Section 46 of the CNT Act to transfer the suit property.

44. This Court also finds that the plaintiff was examined as P.W. 1, who exhibited the sale deed but there is no such cross-examination of the plaintiff on this point. This Court is of the considered view that in absence of foundational pleading with regard to alleged violation of Section 46 of CNT Act, the learned courts were not at all justified in holding that the registered sale deed of the year 1956 was null and void for want of permission from the Deputy Commissioner. The State of Jharkhand was represented by Deputy Commissioner in the cause title. The requirement of permission from the Deputy Commissioner and its absence is essentially a question of fact which was required to be specifically pleaded by the defendants who argued on the point of absence of permission under Section 46 of the CNT Act. It was asserted in the written statement that the suit is barred under Sections 83, 86, 89, and 96 of the CNT Act, but none of those provisions deals with the requirement of permission from the Deputy Commissioner for transfer of land. Sections 83, 86, 89 and 96 deal with: preliminary publication, amendment and final publication of record-of-rights; decision of issues arising during course of settlement of rents; revision by Revenue Officer and power of Revenue Officer to give effect to agreement or compromise, respectively. There were no pleadings challenging the transfer of suit land to the mother of the plaintiff through registered sale deed way back in the year 1956 for want of permission from the Deputy Commissioner under Section 46 or any such requirement of permission for transfer, which was essentially a question of fact. Accordingly, it is held that in the absence of any foundational pleadings, the learned 1st Appellate Court committed perversity by holding that the sale deed executed by Ladura Ho in favour of the mother of the plaintiff was barred by the provisions of the Chota Nagpur Tenancy Act, 1908, and was null and void due to the absence of permission from the Deputy Commissioner. The 1st substantial

question of law is answered in favour of the appellant (plaintiff) and against the respondents (defendants).

2nd substantial question of law

45. So far as 2nd substantial question of law is concerned, the 1st appellate court has certainly committed gross illegality by observing that the plea of adverse possession can be used as shield and not as sword. Such finding is contrary to the principles of law settled by the Hon'ble Supreme Court of India vide Paragraph 62 and 64 of the judgement passed in the case of Ravinder Kaur Grewal & Ors. VS. Manjit Kaur and Ors. reported in (2019) 8 SCC 729 which are quoted as under: -

"62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

63. When we consider the law of adverse possession as has developed vis-à-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

64. Resultantly, we hold that decisions of Gurdwara Sahib v. Gram Panchayat Village Sirthala and decision relying on it in State of Uttarakhand v. Mandir Sri Laxman Sidh Maharaj and Dharampal v. Punjab Wakf Board cannot be said to be

laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by the plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on the aforesaid basis in case of infringement of any rights of a plaintiff.”

46. However, it is to be noted that at the time when the 1st appellate court’s judgment was passed, i.e. on 09.02.2018, the aforesaid judgement in the case of Ravinder Kaur (supra) was not pronounced. Now the law is well settled that the plea of adverse possession can be used as a shield by the defendant and also as a sword by the plaintiff and the plaintiff of this case claimed adverse possession against the defendants.

47. Accordingly, the observation of the learned 1st appellate court that plea of adverse possession can be used as shield and not as sword, cannot be sustained in the eyes of law. The 2nd substantial question of law is answered in favour of the appellant (plaintiff) and against the respondents (defendants).

48. However, the finding of this Court on the 2nd substantial question of law by itself will not confer title to the plaintiff by adverse possession as the plea of adverse possession has been rejected by citing other reasons also. This Court finds that the plea of adverse possession has been rejected by the learned 1st appellate court by holding that the plaintiff has not laid down the foundational pleadings for claiming adverse possession and that plea on the basis of title as well as on the basis of adverse possession is not maintainable at the same time and the case has been decided on merit rejecting the plea of adverse possession as raised by the plaintiff. Thus, in spite of holding that the plea of adverse possession can be used as shield as well as sword, the finding of the learned court on merit of the claim of adverse possession cannot be interfered with while answering the 2nd substantial question of law. This Court has to confine its findings to the contours of the substantial question of law.

4th substantial question of law

49. Before proceedings to deal with the 3rd substantial question of law, it would be better to deal with the 4th substantial question of law relating to the point of limitation. The learned trial court held that challenge to the finally published record of rights on 10th of August 1979 (exhibit-7) [wherein, the entry with regards to the suit property has recorded as “Ban Bibhag Bihar Sarkar” and in the remark’s column, the illegal possession of the plaintiff/her mother was recorded since the year 1971], is barred by limitation. The State had raised a plea that the plaintiff had full knowledge of wrong entry on and from 09.07.1973 and the record of rights was finally published on 10.08.1979 and thus, the suit ought to have been filed within 10.08.1991 (within 12 years). The suit was held to be barred by limitation on the ground that the plaintiff was a party to the proceedings filed by the State in Rectification Case No.2268 of 72-73 against the mother of the plaintiff with respect to the suit land seeking rectification of the record of rights and thus the plaintiff/her mother was throughout aware about

the wrong entry in the record of rights which was finally published on 10.08.1979. The claim of the plaintiff that she came to know about the wrong entry in the finally published record of rights for the first time on 15.04.2005 was rejected by the learned court and the suit seeking rectification of record of rights was held to be barred by limitation.

50. This Court is of the considered view that the learned trial court has miserably failed to consider that Exhibit 5 (order in Rectification Case No. 2268 of 1972-73) was passed prior to the final publication of the record of rights, and therefore, on the basis of Exhibit 5, it cannot be said that the plaintiff had knowledge of the wrong entries made in the record of rights, which was finally published in the year 1979. There is also no material produced by the defendants to indicate that the plaintiff had any knowledge of the wrong entries in the finally published record of rights. The fact remains that much prior to final publication of the record of rights, the objection raised by the State with respect to the draft entry in record of rights, was rejected. Exhibit-5 reveals that the case was decided against the applicant-State and in favour of the opposite party (mother of the present plaintiff) and the plea for rectification was rejected after taking into account the registered sale deed in favour of the plaintiff of this case of the year 1956 and also one title appeal of the year 1947 decided in favour of the vendor of the plaintiff.

51. Under the CNT Act, the record of rights is published at two stages and the entries therein can also be objected to at two stages. The draft record of rights is prepared under Section 83(1) of the CNT Act, objection is raised to the draft under Section 83(2) and upon disposal of the objection, the record of rights is finally published. The final publication of the record of rights can be challenged by filing a suit before the Revenue Officer under Section 87 of the CNT Act within 3 months from the date of certificate for final publication of the record of rights. In the judgement passed by this court in the case of Dwarika Sonar, it has been held that the maximum period of limitation for filing a suit before civil court for declaration of title and recovery of possession is 12 years from the date of final publication of the record of rights. As per Section 84 of the CNT Act, there is presumption as to final publication of the record of rights and every entry in a record of rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved, by evidence, to be incorrect. The disposal of objection in connection with record of rights under Section 83 (exhibit-5), that is, at the draft stage of the record of rights, cannot impute any knowledge on the part of the plaintiff with regard to incorrect entry in the record of rights finally published later on in the year 1979 (Exhibit-7).

52. The learned 1st appellate court relied upon the judgement passed by this Court in the case of Dwarika Sonar wherein it has been held that the maximum period of limitation for filing the suit for declaration of title and recovery of possession is 12 years from the date of final publication of the record of rights. The learned 1st appellate court while dealing with the point of limitation has held

that the plaintiff is the encroacher over the suit land and the plaintiff or her mother did not challenge the entry made in the record of rights within 12 years of its publication and filed the suit in the year 2006 much after the period of limitation and held that the suit was barred by limitation. The fact that the plaintiff is in possession of the suit property is not in dispute.

53. As held above, the disposal of the objection raised by the State regarding the draft publication of the record of rights cannot be treated as the date of knowledge of the finally published record of rights. There is no material on record to show that the plaintiff had knowledge of the finally published record of rights prior to the cause of action in 2005, as disclosed by the plaintiff, when on 15.04.2005, a person claiming to be a staff member of the Forest Department threatened to dispossess her from the suit property on the basis of the entry in the record of rights finally published on 10.08.1979. Thereafter, the plaintiff issued a notice under Section 80 of the CPC, and upon receiving no response, filed the suit. The fact remains that the plaintiff has been in possession of the suit property at least since 1971, even as per the finally published record of rights.

54. In connection with the point of limitation and the cause of action to sue, the judgement passed by the Hon'ble Supreme Court reported in Daya Singh (supra) assumes importance wherein it has been held that mere existence of a wrong entry in the record of rights does not, in law, give rise to a cause of action within the meaning of Section 58 of the Limitation Act. In the said case, the right to sue accrued when the appellants came to know about the wrong entry and the respondents of the said case failed to join the plaintiff to correct the record of rights. It has been held that the cause of action for the purposes of Article 58 of the Limitation Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.

55. On the point of limitation, the present case is squarely covered by the judgment passed in Daya Singh (supra), as there is no material on record to indicate that the plaintiff had knowledge of the wrong entry in the finally published record of rights, which was published on 10.08.1979. There is also no material on record to suggest that the defendant-State ever tried to infringe upon, or gave any threat to infringe or questioned the right of the plaintiff or her mother in possession of the suit property after the final publication of the record of rights on 10.08.1979 till the cause of action which arose in the year 2005. The suit was filed soon thereafter after completing the necessary formalities.

56. In this context, it is important to refer to Exhibit 5, which is the disposal of proceedings under Section 83 of the CNT Act at the stage of draft publication of the record of rights. The said proceeding, being Objection Case No. 2268 of 1972-73, was initiated by the State, and notice was issued to the mother of the present plaintiff. The claim of the State was initially accepted vide order dated

08.08.1973, as no one had appeared on behalf of the mother of the plaintiff of the present case. However, the said case was restored and vide order dated 14.08.1973, the entire objection of the State with respect to the entry in the record of rights was rejected vide exhibit-5 after taking note of the fact that the mother of the present plaintiff had purchased the property by registered Sale Deed No. 3518 dated 08.08.1956 and that the title of the vendor of the mother of the plaintiff since 1944 was proved in Title Appeal No.16 of 1947.

57. Considering the nature of the order passed under Section 83 of the CNT Act, there was no occasion for the plaintiff or her mother to even have any threat of their right, title, interest and possession with respect to the suit property. Thus, there was no cause of action for the plaintiff or her mother to seek declaration of their right, title, interest and possession with respect to the suit property and they peacefully remained in possession till 2005 as discussed above till they received a threat in the year 2005 to their right, title, interest and possession by referring to the entry in the record of rights finally published on 10.08.1979 and then suit was filed not only for declaration of title but also challenging the entry in the record of rights. In the aforesaid circumstances, this Court is of the view that period of limitation in the present case would commence only from 2005 and not from the year 1979 or from any date prior to 1979 based on Exhibit 5 passed in the year 1973.

58. Accordingly, 4th substantial question of law is decided in favour of the appellant (plaintiff) and against the respondents (defendants) and it is held that the 1st appellate court has committed gross illegality by holding that the suit was barred by limitation when seen in the light of the judgement passed in the case of Daya Singh (supra).

3rd substantial question of law

59. Having held that the suit was not barred by limitation while answering the 4th substantial question of law, the 3rd substantial question of law is to be answered.

60. The judgement of the learned 1st appellate court reveals that exhibit-5 has not been considered while arriving at its findings. The relevance of exhibit 5 with respect to the right, title, interest and possession of the plaintiff is required to be considered.

61. Exhibit- 5 is the disposal of proceedings under Section 83 of the CNT Act at the stage of draft publication of the record of rights and the proceeding was initiated by the State being the objector to the entries made in draft record of rights with respect to the suit property and was numbered as Objection Case No.2268 of 1972-73 in which notice was issued to the mother of the plaintiff of the present case and the claim of the State was initially accepted vide order dated 08.08.1973, as no one appeared on behalf of the mother of the plaintiff of the present case. However, the said case was restored and vide order dated 14.08.1973, the entire objection of the State with respect to the entry in the

record of rights was rejected vide exhibit-5 after taking note of the fact that the mother of the present plaintiff had purchased the property by registered Sale Deed No.3518 dated 08.08.1956 and the title of the vendor of the mother of the plaintiff since 1944 was proved in Title Appeal No.16 of 1947.

62. The defendants have not produced any evidence, either oral or documentary and have raised a plea in the written statement that the property stood vested in the State by virtue of Bihar Land Reforms Act, 1950. In absence of any evidence from the side of the defendants, it is not clear as to how the entry in the finally published record of rights showed the property in the name of "Ban Bibhag Bihar Sarkar", that is, the Forest Department of the State, and illegal possession of the plaintiff was shown only since 1971 inspite of the fact that at the stage of disposal of objection of the State vide exhibit-5 with respect to the entry in the records of rights at the draft stage, the objection of the State was rejected after taking note of the fact that the mother of the present plaintiff had purchased the property by registered Sale Deed No.3518 dated 08.08.1956. The title of the vendor of the mother of the plaintiff was proved since 1944 in Title Appeal No.16 of 1947 and a certified copy of the judgement was also produced before the authority. It was also submitted before the authority that in the year 1964, the entry in the record of rights was made in the absence of the mother of the plaintiff.

63. This Court finds that the learned trial court while dealing with exhibit-5 has recorded that the objection/claim of the State was rejected but observed that on perusal of exhibit-5, it was not clear that the possession of the plaintiff over the suit property was confirmed and then referred to the entry made in the finally published record of rights in the year 1979 and observed that the plaintiff failed to bring on record substantive materials to rebut the legal presumption of correctness in the entry made in the record of rights.

64. The learned trial court failed to consider that even as per finally published record of rights, the plaintiff was shown to be in possession at least since 1971 which was never challenged by the State by initiating any proceedings and the State never took any steps to recover the possession from the plaintiff or her mother. The fact that the plaintiff was claiming title and also possession by virtue of registered Sale Deed No.3518 dated 08.08.1956 was also within the knowledge of the defendant-State but no steps were taken to challenge the sale deed and recovery of possession from the plaintiffs.

65. So far as the learned 1st appellate court is concerned, it has completely ignored exhibit-5 which has material bearing on the right, title, interest and possession of the plaintiff. The fact remains that the plaintiff remained in possession of suit property and claimed title by virtue of registered sale deed of the year 1956 executed by Ladura Ho but the defendants, inspite of having come to know about the registered sale deed way back in the year 1973, neither took any step to challenge the sale deed nor took any steps to seek recovery of the property from the plaintiff or her mother.

66. This Court is of the considered view that a person in possession of a property by virtue of registered sale deed cannot be disturbed without challenging the sale deed unless the sale deed is void ab initio or a nullity in the eyes of law. In the present case, the sale deed has been declared to be void-ab-initio on the ground that no permission under Section 46 of the CNT Act was taken by the vendor of the mother of the plaintiff from the Deputy Commissioner to transfer the land but such finding has been set aside by this Court while deciding the 1st substantial question of law as the same is beyond the pleadings of the parties. Having held as aforesaid, it is interesting to note that in cases where a sale deed is set aside for want of permission of the Deputy Commissioner under CNT Act, the property goes back to the vendor and not to the State.

67. This Court is of the considered view that the learned 1st appellate court has committed perversity while coming to findings by ignoring exhibit-5. The 3rd substantial question of law is accordingly answered in favour of the appellant (plaintiff) and against the respondents (defendants).

68. Having held that the learned 1st appellate court has committed perversity in coming to its findings by ignoring exhibit-5, the impact of exhibit -5 is also required to be considered.

69. This Court is of the considered view that the plaintiff has produced enough materials on record to prove title over the suit property by virtue of registered sale deed of the year 1956 which was never challenged by the defendant-State and exhibit-5 reveals that the objection of the State against the mother of the plaintiff at the stage of draft publication of the record of rights was already rejected after inter alia, taking into consideration registered sale deed no. 3518 dated 08.08.1956 and recording that the title of the vendor of the mother of the plaintiff was proved since 1944 in Title Appeal No.16 of 1947.

70. The defendants did not lead any evidence. No basis has been shown by the defendants to justify the entry made in the finally published record of rights in the name of "Ban Bibhag Bihar Sarkar", that is, the Forest Department of the then State of Bihar (now Jharkhand) except raising the plea that there is presumption with respect to the correctness of the record of rights finally published.

71. This Court is of the considered view that the presumption of correctness of the record of rights so far as it relates to entry of the name of "Ban Bibhag Bihar Sarkar" stood rebutted by virtue of the registered Sale Deed No. 3518 dated 08.08.1956 read with exhibit-5 whereby the claim of the State seeking rectification of the draft record of rights was rejected. Merely because the plaintiff could not bring on record the title of the vendor of the registered sale deed of the year 1956, which was admittedly more than 30 years old registered document, and merely because there is no mention of any permission from the Deputy Commissioner in the sale deed and merely because the plaintiff or her mother did not apply for mutation in the revenue records pursuant to the sale

deed, the same does not make the registered sale deed null and void or illegal. The defendants claimed that the property was vested in the State after abolition of zamindari but did not lead any evidence, oral or documentary, to support such a plea. The law is well settled that a registered deed of sale is presumed to be genuine and valid unless proven otherwise. The burden of proof is on the party who challenges the deed and a registered deed is required to be challenged by specifically filing a suit within the period of limitation unless the deed is void ab initio/nullity on the face of it which can be avoided even otherwise. This becomes all the more relevant when the plaintiff is in possession of the property even as per the entry in the finally published record of rights. Nothing survives on record to say that the registered sale deed no. 3518 dated 08.08.1956 was void ab initio/nullity on the face of it. In the written statement, the defendants had denied the possession of the plaintiff but no evidence was led by the defendants to rebut the entry made in the records of right with respect to possession of the plaintiff since the year 1971. The factum of possession of the plaintiff at least since 1971 with respect to the suit property as recorded in the finally published record of rights was never challenged by the defendants by filing a counter claim or cross suit and admittedly no steps for recovery of possession from the plaintiff was ever taken by the defendants.

72. The entire case of the defendants as pleaded in the written statement was not supported by any evidence except the plea regarding presumption of correctness regarding entry made in the record of rights [suit property recorded in the name of "Ban Bibhag Bihar Sarkar"]. They also pleaded that the property vested in the State under Bihar Land Reforms Act, 1950 but did not lead any evidence to support their stand. The entry in the record of rights that the plaintiff is in possession at least since 1971 also could not be disputed by the defendants. The plaintiff has led enough evidence to prove her title with respect to the suit property by virtue of registered sale deed no. 3518 dated 08.08.1956 which remained unchallenged by the defendants inspite of full knowledge of the sale deed at least since 1972-73 (exhibit-5) when the objection of the State with regard to entry in the record of rights at draft stage was rejected. This is coupled with undisturbed possession of the plaintiff at least since the year 1971 till the cause of action arose in the year 2005, that is for more than 30 years.

73. As a cumulative effect of the aforesaid findings, it is held that the plaintiff is entitled for a decree declaring the right, title and interest of the plaintiff over the suit property and also for a declaring that the settlement entry in respect of the schedule land of the plaintiff in the records of right finally published on 10.08.1979 showing the Khata in the name of "Ban Bibhag Bihar Sarkar" is wrong and erroneous.

74. Before, parting with the judgement, it is important to record that arguments have been advanced by both the parties on the point of adverse possession of the plaintiff, as admittedly, 30 years have elapsed from the date of possession of the plaintiff, much prior to filing of the suit, when the entry in the record of rights

with regard to possession is taken into consideration but considering the scope of the substantial questions of law to be answered, this Court is not inclined to enter into such issue which may fall outside the scope of the substantial questions of law as framed and answered above and observations made in paragraph 48 of the this judgement.

75. Having answered all the substantial questions of law in favour of the appellant (plaintiff) and having considered the impact of exhibit-5 in the aforesaid manner, the impugned judgements are set - aside and the suit is decreed in the aforesaid terms.

76. This second appeal is allowed.