

IN THE COURT OF DISTRICT JUDGE-I, BANKA

Title Appeal No.-57/2013

CIS Reg. No.- 57/2013

IN THE MATTER OF

1. Manju Devi, w/o- Bulaki Das,
- 1.(a) Sakina Devi, w/o- Lochan Das,
- 1.(b) Chameliya Devi, w/o- Gopal Das,
- 1.(c) Anita Devi, w/o- Mohan Das,
- 1.(d) Hema Devi, w/o- Suresh Das,
- 1.(e) Fula Devi, w/o- Anil Das.
2. Anup Das, s/o- Late Chhatish Das,
3. Banarsi Pujhar, s/o- Sarju Pujhar,
Resident of Village- Kurumtanr (Surang), P.S-Chandan,
P.O.-Simultala, District- Banka
4. Khara Das, s/o- Karu Das,
5. Masoodi Das, s/o- Chhoti Das,
6. Lilo Das, s/o- Sanichar Das,
7. Sitabi Das, s/o- Prem Das,
8. Asho Das, s/o- Pochan Das,
9. Madan Das, s/o- Prem Das,
10. Basudeo Das, s/o- Late Chhatish Das,
11. Rajendra Das, s/o- Late Chhatish Das,
All resident of village- Kurumtanr, P.O.- Simultala, P.S-
Chandan, Dist.- Banka
12. Srimati Talliya Devi, w/o- Kartik Das, vill- Barmasia, P.S-
Chandan, Dist.- Banka
13. Geniya Devi, d/o- Darogi Pujhar, at present- village-
Kurumtanr, P.S- Chandan, Dist.-Banka

.....**Appellants**

Versus

- 1.(a) Fulia Devi, w/o- Late Kishan Mahto,
- 1.(b) Virendra Yadav, s/o-Late Kishan Mahto,
- 1.(c) Sanjay Yadav, s/o- Late Kishan Mahto,
- 1.(d) Chunchun Yadav, s/o- Late Kishan Mahto,
2. Churaman Mahto, s/o- Jago Mahto,
3. Nundeo Mahto, s/o-Kishan Mahto,
4. Sanjay Yadav, s/o- Kishan Mahto,
All resident of vill- Kurumtanr, P.S- Chandan, Dist.-Banka

.....**Respondents 1st Party**

5. State of Bihar through Collector, Banka
6. Anchal Adhikari, Chandan, P.O.+P.S.-Chandan, Dist.-
Banka

.....**Respondents 2nd Party**

(This Title Appeal is arising out of judgment dated 15/03/2013 and decree dated 04/04/2013 passed by Sri Parimal Kumar Mohit, Munsif, Banka, in Title Suit No.-90/1996).

For the Appellant:	Sri Bijay Narayan Pandit, learned advocate, Civil Court, Banka
For the Respondent:	Sri Nawal Kishore Sah, learned advocates, Civil Court, Banka.

Present:-
Kumar Amit Manu, District Judge -I, Banka,
Date of Judgment :- 18th of June 2026.

J U D G M E N T

1. The present appeal has been preferred by the appellants/defendants assailing the Judgment dated 15.03.2013 and Decree dated 04.04.2013 passed by the learned Munsif, Banka, Sri Parimal Kumar Mohit, in Title Suit No. 90 of 1996, whereby the suit instituted by the plaintiff was decreed and the plaintiff's title over the suit property was declared.

2. Upon admission of the present appeal, notices were issued to the respondents and the original records of Title Suit No. 90 of 1996 were requisitioned from the court below. The lower court records were duly received by the appellate court. Subsequently, the appeal came to be assigned to this Court for final disposal. It is pertinent to note that the respondent 1st party entered appearance in the appeal and contested the same by advancing their respective submissions and supporting the judgment and decree passed by the learned Trial Court. Respondent 2nd party is in support of appellant.

BRIEF FACTS OF APPELLANT/DEFENDANT CASE

3. Before advertng to the grounds urged in the present appeal, it would be appropriate to briefly recapitulate the case of the appellants/defendants as borne out from the pleadings and materials available on the record of the court below.

The present appellants were impleaded as defendants second party in Title Suit No. 90 of 1996, while the present respondents first

party were the plaintiffs and the State authorities/State of Bihar were arrayed as defendants first party.

The plaintiffs asserted that they had purchased the suit property situated in Mouza Surangi, Thana No. 20, Touzi No. 445, under Khata No. 1 comprising Plot Nos. 574, 575, 576, 577, 578, 579, 583 and 584 measuring a total area of 9 acres and 4 decimals through Registered Sale Deed No. 14868 dated 30.06.1989 executed by the surviving heirs of the recorded tenants. According to them, upon such purchase they acquired possession over 8 acres and 74 decimals of land, which constitutes the suit property.

It was further pleaded that the suit land had originally been recorded in the Cadastral Survey Khatian as raiyati land jointly in the names of Ahlad Tanti and Shamal Tanti, sons of Churkoo Tanti of village Kurumtanr, holding three equal shares, and Budhu, son of Mahangoo, holding the remaining one share. Upon the death of the recorded tenants, their heirs succeeded to the property and continued to enjoy right, title, interest and possession over the same. The plaintiffs further contended that, either by oversight or deliberate omission, the ex-landlord failed to submit returns in respect of Khata No. 1 in the names of the heirs of the recorded tenants at the time of vesting of the Zamindari in the State of Bihar, with the result that no jamabandi could be created in their names in the State records, despite their continued possession. The plaintiffs also alleged that some of the defendants second party had illegally encroached upon portions of Plot Nos. 579, 583 and 584 and had constructed residential houses over approximately 30 decimals of land. It was further stated that although the S.D.O.-cum-In-charge D.C.L.R., Banka had passed an order in Jamabandi Creation Case No. 14 of 1991-92 in favour of the plaintiffs, the said order was subsequently set aside by the Collector, Banka in Jamabandi Appeal Case No. 22 of 1993-94 by order dated 11.08.1995. According to the plaintiffs, despite service of notice under Section 80 of the Code of Civil Procedure, no remedial action was taken by the State authorities, compelling them to institute the suit seeking, inter alia, a declaration that the Collector's order dated 11.08.1995 was illegal, void and liable to be set aside, and a decree of injunction restraining the authorities from creating jamabandi in favour of the defendants second party. Subsequently, by way of amendment, the plaintiffs also sought a declaration that the survey

entries recorded in the names of the defendants were illegal and not binding upon them.

The appellants/defendants contested the suit by filing their written statement. They raised various preliminary objections, inter alia, that the suit was not maintainable, was barred by limitation, was hit by the principles of waiver, estoppel and acquiescence, suffered from non-joinder and mis-joinder of necessary parties, and was barred under the provisions of the Specific Relief Act. They further contended that the suit had been grossly undervalued. On merits, the defendants denied the plaintiffs' possession over the suit land and asserted that the ancestors of the defendants had been inducted by the Zamindar as cultivators as early as the year 1908 and had been continuously cultivating the land and enjoying its usufruct ever since. It was further pleaded that during the survey operations conducted in the year 1970, the survey authorities found the defendants' ancestors in possession of the suit land and accordingly recorded their names in the remarks column of the khatiyani as persons in possession. The defendants also pleaded that Budhu, son of Mahangoo, one of the recorded tenants, had died issueless and, therefore, his share reverted to the Zamindar. The genealogy set up by the plaintiffs to establish succession from Budhu through Nirpat Das and Meena Das was alleged to be false and fabricated.

It was further contended that the recorded tenants, namely Ahlad Tanti and Shamal Tanti, had lost their rights over the suit land in Rent Suit No. 727 of 1908 instituted by the Zamindar and that the decree passed therein was affirmed in appeal. Consequently, according to the defendants, the recorded tenants and their heirs ceased to have any subsisting right, title or interest in the suit property and were incapable of transferring any valid title to the plaintiffs through the sale deed dated 30.06.1989. It was asserted that the Zamindar became the absolute owner of the land and thereafter settled the same with the ancestors of the defendants, who continued in possession and raised residential structures and plantations thereon.

The defendants further contended that although the plaintiffs claimed to have purchased 9 acres and 4 decimals of land, they had instituted the suit only in respect of 8 acres and 74 decimals, thereby admitting the possession of the defendants over a

substantial portion of the land. According to them, the omission of the names of the recorded tenants from the returns submitted during vesting was justified in view of the earlier rent decree and the consequent extinguishment of their rights. The defendants also maintained that the order passed by the Collector, Banka in Jamabandi Appeal Case No. 22 of 1993-94 was legal, valid and binding and that the plaintiffs, having failed to challenge the same before any superior forum, could not subsequently question its correctness. They accordingly asserted that the jamabandi created in their favour was lawful. It was further alleged that the plaintiffs had suppressed material facts and had obtained the impugned judgment and decree by taking advantage of a compromise understanding between the parties, as a result of which the defendants allegedly stopped pursuing the suit. According to the defendants, the judgment and decree were obtained behind their back and by adopting fraudulent means.

Being aggrieved by and dissatisfied with the Judgment dated 15.03.2013 and Decree dated 04.04.2013 passed in Title Suit No. 90 of 1996, whereby the suit was decreed in favour of the plaintiffs, the appellants/ defendant second party have preferred the present appeal on the grounds enumerated in the memorandum of appeal.

4. GROUNDS OF APPEAL TAKEN BY APPELLANT/ DEFENDANT:-

1. **Erroneous and unsustainable judgment:** The impugned judgment and decree are alleged to be contrary to law, facts, and evidence available on the record and are therefore liable to be set aside.
2. **Failure to consider appellants rights:** The learned trial court allegedly failed to properly appreciate the subsisting rights and possession of the appellants over the suit property and passed the judgment mechanically.
3. **Wrong determination of Issues Nos. V and VI:** It is contended that the issues relating to the plaintiffs' right, title and interest over the suit land and the legality of the survey entry ought to have been decided in favour of the defendants, but were erroneously decided in favour of the plaintiffs.
4. **Effect of Rent Suit No. 727 of 1908:** According to the appellants, the recorded tenants Ahlad Tanti and Shamal

Tanti had lost their rights in the suit land in Rent Suit No. 727 of 1908 and the subsequent appeal therefrom. Consequently, their heirs had no right, title or interest to convey the property to the plaintiffs through the sale deed dated 30.06.1989.

5. **Partial claim over the land:** The total area of Khata No. 1 is 9.04 acres, whereas the plaintiffs sought relief only with respect to 8.74 acres, admitting possession of certain portions by the defendants. The trial court allegedly failed to appreciate this aspect.
6. **Zamindar's title ignored:** The appellants contend that after the decree in the rent suit, the Zamindar became the absolute owner of the property. Therefore, the omission of the recorded tenants' names from the return filed at the time of vesting was justified, and the trial court erred in overlooking this fact.
7. **Validity of Collector's order:** The order dated 11.08.1995 passed by the Collector, Banka in Jamabandi Creation Appeal Case No. 22/1993-94 is claimed to be legal and valid. Since the plaintiffs did not challenge the said order before any higher authority, the trial court ought not to have interfered with or ignored the findings recorded therein.
8. **Possession reflected in survey records:** The appellants assert that their ancestors were in possession of the suit land, had constructed houses thereon, and such possession was recognized during the revisional survey operation. The survey khatian allegedly supports their possession, and the trial court failed to give due weight to these records.
9. **Suppression of material facts:** It is alleged that the plaintiffs suppressed material facts relating to the earlier rent litigation and the status of the property, but the trial court ignored such suppression.
10. **Improper appreciation of evidence:** The learned trial court allegedly failed to properly evaluate the oral and documentary evidence available on the record.
11. **Fraud and compromise allegation:** The appellants contend that they stopped contesting the suit believing that a compromise had been arrived at between the parties, and the plaintiffs obtained the decree by taking advantage of their absence. Therefore, the decree is alleged to have been

procured fraudulently.

12. **Violation of principles of natural justice:** It is further contended that the trial court failed to adequately consider the defence case and the issues involved, thereby causing serious prejudice to the appellants and resulting in denial of natural justice.

Accordingly, the appellants pray that the judgment and decree passed by the learned trial court be set aside and the suit of the plaintiffs be dismissed.

5. Based on the rival pleadings of both the sides, the following issues were framed by the learned trial court below :-

- I. Is the suit as framed maintainable?*
- II. Is the suit barred by law of limitation?*
- III. Is the suit defect of parties?*
- IV. Have the plaintiffs got cause of action?*
- V. Have the plaintiffs got right, title over the suit land?*
- VI. Whether the entry in the recent survey operation is illegal, void?*
- VII. Whether the order dated 11.08.95 in case no. 22/93-94 passed by the Collector Banka is vague, illegal?*
- VIII. Cost of the suit?*
- IX. To what relief or reliefs entitled to?*

6. PLAINTIFFS PLEADING IN BRIEF:-

The plaintiffs' case is that the suit land originally belonged to recorded occupancy raiyats, namely Ahlad Tanti, Shamal Tanti and Budhu, whose names were recorded in the Cadastral Survey Khatiyani. Upon their death, their heirs inherited the property and remained in possession thereof. The plaintiffs claim to have purchased the suit land measuring 9 acres and 4 decimals through a registered sale deed dated 30.06.1989 executed by the surviving heirs of the recorded tenants and, upon such purchase, acquired right, title, interest and possession over the suit property. According to the plaintiffs, although the ex-landlord failed to submit returns in the names of the recorded tenants or their heirs at the time of vesting of the Zamindari, such omission did not extinguish their rights as occupancy raiyats. They further contend that the defendants second party illegally encroached upon certain portions of the land and subsequently succeeded in getting their names recorded in the survey records and revenue proceedings without any lawful basis. The plaintiffs assert that the order dated 11.08.1995 passed by the Collector, Banka, setting aside the jamabandi created

in their favour, is illegal, without jurisdiction and not binding upon them.

On these assertions, the plaintiffs sought a declaration of their right, title and interest over the suit land, a declaration that the survey entries and consequential actions taken in favour of the defendants are illegal and void, and a permanent injunction restraining the authorities from creating or recognizing jamabandi in favour of the defendants with respect to the suit property.

6.1 DEFENDANT FIRST AND SECOND PARTY PLEADINGS IN BRIEF:-

Defendants First Party (State of Bihar) –

The defendants first party contested the suit by asserting that it was not maintainable either in law or on facts and was barred by limitation, waiver, estoppel and acquiescence. They further pleaded that the suit suffered from non-joinder and mis-joinder of necessary parties and was also hit by the provisions of the Specific Relief Act. It was contended that the suit had been undervalued and proper court fees had not been paid. On merits, the State defendants admitted the description of the land as recorded in the survey records but denied the plaintiffs' claim of title and possession. They maintained that, except for a pucca house standing over a portion of the land, the suit property was in possession of the defendants second party. They supported the order dated 11.08.1995 passed by the Collector, Banka in Jamabandi Appeal Case No. 22 of 1993-94, whereby the earlier order creating jamabandi in favour of the plaintiffs was set aside. According to them, the Collector's order was legal, valid and binding upon the plaintiffs. They also denied the allegations regarding improper actions of the revenue authorities and disputed the service of notice under Section 80 CPC. On these grounds, they prayed for dismissal of the suit

Defendants Second Party – The defendants second party claimed independent possession and interest over the suit land and denied the plaintiffs' title and possession. Their specific case was that their ancestors had been inducted by the ex-landlord/Zamindar as cultivators long ago and had been continuously possessing and cultivating the land since about 1908 without interruption. They asserted that during the survey operations, the survey authorities

found them in possession and accordingly recorded their names in the remarks column of the Revisional Survey Khatiyan as persons in possession. The defendants further contended that the recorded tenants, namely Ahlad Tanti and Shamal Tanti, had lost their rights in the suit land pursuant to Rent Suit No. 727 of 1908 and the decree passed therein, which was also affirmed in appeal. Consequently, the recorded tenants and their heirs ceased to have any right, title or interest in the property, and therefore the sale deed executed in favour of the plaintiffs in 1989 conveyed no valid title. It was also pleaded that Budhu, one of the recorded tenants, died issueless and his share reverted to the Zamindar, rendering the genealogy furnished by the plaintiffs false and fabricated. According to the defendants second party, the Zamindar became the absolute owner of the property after the rent decree and subsequently settled the land with their ancestors, who remained in possession, constructed residential houses and planted trees thereon. They further asserted that the order passed by the Collector, Banka in Jamabandi Appeal Case No. 22 of 1993-94 was lawful and justified and that the jamabandi created in their favour was valid. On these premises, they sought dismissal of the suit.

7. FINDING OF LEARNED TRIAL COURT-

The learned Trial Court, based its finding mainly dwelling upon two issues ie Issue Nos. V and VI, namely **whether the plaintiffs had acquired right, title and interest over the suit land and whether the entries made in the Revisional Survey Records were illegal and void**, held the issues in favour of the plaintiffs and against the defendants.

The Court observed that the plaintiffs had adduced both documentary and oral evidence in support of their claim. The documentary evidence included the registered sale deed dated 30.06.1989 (Ext. 1), rent receipts issued by the State of Bihar (Ext. 2 series), notice under Section 80 CPC (Ext. 3), certified copies of the Cadastral Survey Khatiyan relating to Khata No. 1 (Ext. 4/A), certified copies of the Revisional Survey Khatiyan (Ext. 5 and 5/A), postal receipts (Ext. 6), notice issued in Jamabandi Creation Case No. 14 of 1991-92 (Ext. 7), and the order dated 18.03.1993 passed in the said jamabandi proceeding (Ext. 8). The Learned Trial Court further noted that the plaintiffs examined several witnesses in

support of their case, whose evidence remained substantially unshaken. On the other hand, although the defendants first party cross-examined the plaintiffs witnesses, neither the defendants first party nor the defendants second party adduced any oral or documentary evidence in support of their respective pleadings. The defendants second party ultimately stopped appearing in the suit and did not even cross-examine the plaintiffs witnesses. Upon appreciation of the evidence, the Trial Court concluded that the plaintiffs had successfully established that they had purchased the suit property from the heirs of the recorded tenants through a registered sale deed dated 30.06.1989 and had acquired possession thereunder. The Court further found that the plaintiffs vendors derived their title from the recorded raiyats whose names appeared in the Cadastral Survey Khatiyani. The Trial Court also held that the plaintiffs possession was recognized during the jamabandi proceedings, resulting in the creation of jamabandi in their favour and issuance of rent receipts by the State authorities. It was further observed that the Revisional Survey entries recording the names of the defendants second party as persons in illegal possession were made solely on the basis of the order passed by the Collector, Banka in Jamabandi Appeal Case No. 22 of 1993-94 and did not confer any lawful right upon them. Since the defendants failed to produce any documentary evidence in support of their claim of title or possession and did not substantiate their pleadings by evidence, the Trial Court drew an adverse inference against them. Consequently, it held that the plaintiffs had proved their right, title and interest over the suit land and that the contrary entries made in the Revisional Survey Records were illegal, void and not binding upon the plaintiffs. Accordingly, Issue Nos. V and VI were decided in favour of the plaintiffs and against the defendants. Suit was also decreed in its favour.

FINDINGS OF THIS COURT

8. From perusal of the Learned Trial court record it is evident that Plaintiff, in order to prove their claims have examined following witnesses:-

P.W.-1 – Devi Yadav, [witness of possession and genealogy]

P.W.-2 – Narayan Yadav, [witness of possession and genealogy]

P.W.-3 – Paro Yadav, [witness on possession]
P.W. -4 - Jageshwar Mahto, [witness of possession and genealogy]
P.W.-5 – Govind Yadav,[witness of possession and genealogy]
P.W.-6 – Sukdeo Yadav, [witness of possession and genealogy]
P.W.-7 – Churaman Mahto,[Plaintiff/Respondent 1st party]
P.W.-8 – Chhalo Tanti, [witness of possession and genealogy]
P.W.-9 – Rajendra Prasad Sah, [formal witness]
P.W.-10- Nageshwar Yadav, [formal witness]
P.W.-11- Ashok Kumar Gupta, [formal witness]
P.W.-12- Kailash Prasad Yadav, [formal witness]

9. In addition to the above witnesses, plaintiffs/ Respondent have proved following documentary evidences: –

Ext. 1 - the registered sale deed dated 30.06.1989,
Ext. 2 series - rent receipts issued by the State of Bihar,
Ext. 3 - notice under Section 80 CPC,
Ext. 4/A - certified copies of the Cadastral Survey Khatiyan relating to Khata No. 1,
Ext. 5 and 5/A - certified copies of the Revisional Survey Khatiyan,
Ext. 6 - Postal receipts,
Ext. 7 -notice issued in Jamabandi Creation Case No. 14 of 1991-92
Ext. 8 - order dated 18.03.1993 passed in the said jamabandi proceeding

10. On the other hand, defendants/ appellant has not produced and examined any oral or documentary evidence in their favor.

11. State of Bihar has also not produced a single documentary evidence/oral evidence during trial.

POINT FOR DETERMINATION

12. Now, in the light of facts of this suit, findings given in the impugned Judgment, as well as in the light of argument advanced by the learned counsel for the appellants/defendants as well as ld. Counsel of respondent/plaintiff following points arise for consideration in this appeal are as to :-

1. *Whether the plaintiffs have been able to establish their right, title and interest over the suit land on the basis of the registered sale deed dated 30.06.1989 executed by the heirs and legal representatives of the recorded tenants of C.S. Khata No. 1?*
2. *Whether the genealogy of the vendors of the plaintiffs and their status as descendants of the recorded tenants stand duly proved by the evidence on record, and if so, what is its effect on the claim of title advanced by the plaintiffs?*
3. *Whether the plaintiffs have succeeded in proving their possession over the suit land and whether such possession stands corroborated by the enquiry report of the Anchal Adhikari, the order passed in Jamabandi Creation Case No. 14 of 1991-92, and the oral evidence adduced during trial?*
4. *Whether the omission of the ex-landlord/intermediary to submit returns in respect of the lands of Khata No. 1 after vesting had the effect of extinguishing the rights of the recorded occupancy raiyats or their successors-in-interest?*
5. *Whether the entries made in the recent survey records in favour of the defendants second party are legal, valid and binding upon the plaintiffs?*
6. *Whether the order dated 11.08.1995 passed by the Collector, Banka in Jamabandi Creation Appeal Case No. 22 of 1993-94 is legal, valid and sustainable in law, and whether the same adversely affects the rights, title and possession of the plaintiffs over the suit property?*
7. *Whether the suit suffers from non-joinder of necessary or proper parties on account of non-impleadment of the vendors or their heirs?*
8. *Whether the findings and conclusions recorded by the learned Trial Court are based upon proper appreciation of the oral and documentary evidence available on record and call for any interference by this Appellate Court?*

13. This Court has carefully perused the records of the learned Trial Court, heard the learned counsel appearing on behalf of the parties at length, and proceeds to record its findings and reasons as hereinafter stated.

DISCUSSION, DECISION AND REASONS FOR THE DECISION

14. The Learned Trial court has framed following Issues:-

1. *Whether the suit, as framed, is maintainable in law and on facts?*
2. *Whether the suit is barred by the law of limitation?*
3. *Whether the suit is bad for non-joinder and/or mis-joinder of necessary parties?*
4. *Whether the plaintiffs have a valid cause of action for institution of the present suit?*
5. *Whether the plaintiffs have acquired and possess right, title and interest over the suit land?*
6. *Whether the entries made in the recent survey records with respect to the suit land are illegal, void and not binding upon the plaintiffs?*
7. *Whether the order dated 11.08.1995 passed by the Collector, Banka in Case No. 22 of 1993-94 is illegal, without jurisdiction, void and liable to be set aside?*
8. *Whether the plaintiffs are entitled to the costs of the suit?*
9. *To what other relief or reliefs, if any, are the plaintiffs entitled?.*

[14.1] Since Issue Nos. 3, 5, 6 and 7 go to the root of the controversy, they are taken up together for consideration. While discussing it this court will determine Point of determination no. 1 to 5 and 7. The principal dispute between the parties relates to the right, title and interest over the suit land and the legality of the entries made in the recent survey records as well as the effect of the order dated 11.08.1995 passed by the Collector, Banka in Case No. 22 of 1993-94. The plaintiffs have founded their claim upon the registered sale deed dated 30.06.1989 executed by the heirs of the recorded tenants of C.S. Khata No. 1. It has also been contended that the suit is bad for non-joinder and/or mis-joinder of necessary parties.

To substantiate claim of plaintiff, they have produced the certified copy of the Cadastral Survey Khatian, the registered sale deed, rent receipts, notices issued in Jamabandi proceedings, the order passed in Jamabandi Creation Case No. 14 of 1991-92 and the relevant survey records. The plaintiffs have also examined twelve witnesses in support of their possession and title. Except for PW-9 to PW-12, all witnesses have testified themselves on the point of possession, genealogy and title of the plaintiff/respondent first party.

[14.2] This court has gone through the oral and documentary evidence produced by plaintiff. The oral evidence adduced by the plaintiffs consistently supports their possession over the suit land. Significantly, such oral evidence finds corroboration from the documentary evidence brought on record. The order passed by the S.D.O./D.C.L.R. in Jamabandi Creation Case No. 14 of 1991-92 clearly proceeds on the basis of the enquiry report submitted by the Anchal Adhikari. The said report recorded the possession of the plaintiffs and their vendors over the major portion of the suit land. The findings recorded by the revenue authorities regarding possession are contemporaneous in nature and lend substantial assurance to the oral testimony adduced by the plaintiffs. What is more important is that despite extensive cross-examination conducted on behalf of the State authorities, the testimony of the plaintiffs witnesses on the point of possession could not be shaken. The plaintiff in oral evidence have also successfully proved the genealogy of their vendors, the ancestors of which were recorded tenants in cadastral survey. It is noteworthy that the defendants did not challenge the said genealogy during cross-examination. No suggestion was put to any witness disputing its correctness, authenticity or continuity. In the absence of any effective challenge, the genealogy stands substantially proved, nothing material has been elicited in their cross-examination which may create any serious doubt regarding their possession. Their evidence remains substantially unchallenged and inspires confidence and there is no reason for the Court to doubt its correctness. A revisional survey entry, by itself, neither constitutes proof of title nor confers possession unless it is supported by cogent and reliable evidence. Revenue or survey records are primarily prepared for fiscal and administrative purposes and cannot, in the absence of substantive evidence, override an otherwise established title. In the present case, the defendants have failed to produce even a single document in support of their claim during the trial. They have not brought on record any title deed, rent receipt, settlement record, order of settlement, or any other documentary evidence indicative of either title or lawful possession. On the contrary, the plaintiffs have successfully established both the title of their vendors and their own possession over the suit property through convincing oral and documentary evidence. The Cadastral Survey Khatiyan clearly

demonstrates that the ancestors of the vendors were recorded occupancy raiyats of the suit land. The genealogy connecting the vendors with the recorded tenants has remained unchallenged and un rebutted. The plaintiffs have further proved that they acquired the property through a registered sale deed executed by the heirs of such recorded tenants and have continued in possession thereafter. Their possession is corroborated not only by oral testimony but also by the enquiry report of the Anchal Adhikari and the order passed by the S.D.O during the jamabandi proceedings who has acknowledged the report of Anchal Adhikari on the point of possession. In these circumstances, a mere entry in the revisional survey khatian showing the names of the defendants cannot prevail over the weight of evidence adduced by the plaintiffs. Since the survey entry is unsupported by any independent evidence of title or possession and the defendants have failed to substantiate the basis of such entry, the same cannot be held to be binding upon the plaintiffs or capable of defeating their established right, title and interest over the suit property.

[14.3] From the Cadastral Survey Khatian (Exhibit-4), it appears that the lands of Khata No. 1 were originally recorded in the names of the raiyats namely Ahad Tanti, Shamal Tanti and others. The defendants have not produced any documentary evidence disputing the correctness of the said survey entry. The registered sale deed dated 30.06.1989 further establishes that the plaintiffs purchased the suit property from the descendants and legal representatives of the recorded tenants. Thus, the root of title of the plaintiffs stands supported by documentary evidence available on record. ***The principal argument advanced by the contesting defendants appears to be that the recorded tenants or their successors lost their rights because the erstwhile landlord did not submit return of the land after vesting of the Zamindari. This contention does not merit acceptance. Mere failure of a recorded raiyat to submit returns under the land reforms laws cannot, by itself, extinguish the rights of occupancy raiyats. The recorded tenants in the present case were not intermediaries but occupancy raiyats whose rights stood independently recognized under the survey records.*** The omission or negligence of the landlord in submitting returns cannot

have the legal effect of divesting occupancy raiyats of their accrued tenancy rights. When Khas possession of raiyats and the vendee of raiyats have been shown, mere non filing of return ,the rights do not automatically stood extinguished merely because no return was filed.

[14.4] Once the genealogy of the vendors has been satisfactorily established and accepted on record, and the evidence further demonstrates that the vendors were in possession of the suit land and that such possession subsequently passed on to the plaintiffs through the registered sale deed, **this Court finds no merit in the contention that the vendors or their heirs were necessary or even proper parties to the present suit.** The plaintiffs claim title through the vendors and have successfully traced the chain of title from the recorded tenants to themselves. The genealogy connecting the vendors with the recorded raiyats has remained unchallenged, and the possession of the vendors as well as the subsequent possession of the plaintiffs stands corroborated by both oral evidence and official records. In such circumstances, there is no dispute inter se between the plaintiffs and their vendors regarding title, succession, inheritance, or transfer of the suit property. The vendors have neither asserted any adverse claim against the plaintiffs nor questioned the validity of the sale transaction. The test for determining whether a person is a necessary party is whether an effective and enforceable decree can be passed in his absence. Likewise, a proper party is one whose presence may be necessary for a complete and final adjudication of the issues involved. In the present case, the controversy is not between the plaintiffs and their vendors; rather, it is between the plaintiffs and the defendants who are setting up a rival claim over the suit property. The rights of the vendors have already been conveyed to the plaintiffs under the registered sale deed and, therefore, no independent relief is sought either against the vendors or in their favour. Accordingly, once the genealogy of the vendors is proved, their possession over the suit land is established, and the plaintiffs' possession flowing from the vendors is also proved, the presence of the vendors in the suit ceases to be necessary for the effective adjudication of the dispute. Any decree passed in the present suit can be effectively executed without their participation. **Therefore, this Court is of the**

considered view that non-impleadment of the vendors or their heirs does not render the suit defective, nor can the suit be said to be bad for non-joinder of parties on that account. The objection raised in this regard is accordingly devoid of substance.

[14.5] On the contrary, the conduct of the defendants assumes significance. The defendants second party, after filing written statement, virtually abandoned the proceedings. They neither effectively participated in the trial nor cross-examined the plaintiffs' witnesses. More importantly, neither the defendants first party nor the defendants second party produced any documentary evidence whatsoever in support of their assertions. Not a single rent receipt, settlement paper, grant, parcha, survey document, revenue record or title document has been brought on record by them. In a title suit concerning immovable property, such complete absence of documentary support is a circumstance which cannot be ignored. The Court is conscious of the fact that weakness in the defence does not by itself prove the plaintiffs case. However, where the plaintiffs have adduced cogent oral and documentary evidence establishing their title and possession, and the defendants have chosen not to produce even a single document in support of their rival claim, the balance of probabilities necessarily tilts in favour of the plaintiffs. **From the foregoing discussion this court arrives at the following answers to the point of determination no. 1 to 5 and 7.**

	POINT OF DETERMINATION	FINDING
1	Whether the plaintiffs have been able to establish their right, title and interest over the suit land on the basis of the registered sale deed dated 30.06.1989 executed by the heirs and legal representatives of the recorded tenants of C.S. Khata No. 1	YES
2	Whether the genealogy of the vendors of the plaintiffs and their status as descendants of the recorded tenants stand duly proved by the evidence on record, and if so, what is its effect on the claim of title advanced by the plaintiffs?	YES. Title is proved.

3	Whether the plaintiffs have succeeded in proving their possession over the suit land and whether such possession stands corroborated by the enquiry report of the Anchal Adhikari, the order passed in Jamabandi Creation Case No. 14 of 1991-92, and the oral evidence adduced during trial?	Yes
4	Whether the omission of the ex-landlord to submit returns in respect of the lands of Khata No. 1 after vesting had the effect of extinguishing the rights of the recorded occupancy raiyats or their successors-in-interest?	No.
5	Whether the entries made in the recent survey records in favour of the defendants second party are legal, valid and binding upon the plaintiffs?	Not Binding
7	Whether the suit suffers from non-joinder of necessary or proper parties on account of non-impleadment of the vendors or their heirs?	No.

[14.6] Much emphasis has been placed on the order dated 11.08.1995 passed by the Collector, Banka. Even assuming the correctness of the said order, the same does not advance the case of the defendants. It is admitted case that cause of action arose when direction were issued by Learned Collector regarding settlement and issuance of Basgit Parcha to certain persons. It is well settled that a Basgit Parcha is not a document of title. At best, it confers limited rights under the relevant statute. **It cannot extinguish pre-existing proprietary or tenancy rights nor can it confer title upon a person in derogation of the lawful rights of others.** Therefore, merely because the Collector directed consideration of issuance of Basgit Parcha, it cannot be inferred that the plaintiffs lost their right, title and interest over the suit property. Nor does such an order negate the findings on possession recorded by the Anchal Adhikari on spot verification and the S.D.O. regarding possession of the plaintiffs. Had the defendants possessed

any contrary material, they could have easily produced the same before the Court. Their failure to do so lends further assurance to the correctness of the plaintiffs' case.

The burden of proof in a civil proceeding is not proof beyond reasonable doubt. The case is required to be decided on the touchstone of preponderance of probabilities. Upon cumulative consideration of the entire evidence on record, this Court is of the considered opinion that the plaintiffs have established a far greater probability in support of their claim than the defendants. The documentary evidence establishes the origin of title from recorded tenants. The oral evidence establishes possession. The official reports of public officer on spot verification corroborate such possession. The defendants have failed to produce any evidence of comparable evidentiary value. **As a result, the order of collector does not hold good and not binding on the plaintiffs. Thus, the point of determination no. 6 "Whether the order dated 11.08.1995 passed by the Collector, Banka in Jamabandi Creation Appeal Case No. 22 of 1993-94 is legal, valid and sustainable in law, and whether the same adversely affects the rights, title and possession of the plaintiffs over the suit property" is answered accordingly.**

[14.7] Accordingly, this Court concurs with the conclusion reached by the learned Trial Court but with different reasons that the plaintiffs have successfully proved their right, title and interest over the suit land and that the adverse entries made in the recent survey records in favour of the defendants second party are illegal, erroneous and not binding upon the plaintiffs. Issue Nos. 3 5 and 6 are therefore decided in favour of the plaintiffs.

[14.8] The other grounds taken in appeal regarding suppression of real facts by plaintiff, the factum of compromise, non-meeting of tenets of natural justice, regarding rent suit 727/1908 are based on facts and appellants have not produced a single chit of paper in this regard.

[14.9] Consequently, the challenge to the judgment and decree passed by the learned Trial Court is devoid of merit. The findings recorded by the learned Trial Court do not suffer from any illegality,

perversity or jurisdictional error warranting interference by the appellate court. **Thus, point of determination no. 8 Whether the findings and conclusions recorded by the learned Trial Court are based upon proper appreciation of the oral and documentary evidence available on record and call for any interference by this Appellate Court is decided in favout of plaintiff/ respondent and against the appellant.**

The appeal is accordingly dismissed. The judgment and decree passed by the learned Trial Court are hereby affirmed.

ORDERED

15. In view of the conclusions arrived on foregoing discussion this appeal is accordingly dismissed. The judgment and decree passed by the learned Trial Court are hereby affirmed. Parties shall bear their own costs.

Let the decree be prepared, accordingly.

Office to send back the T.C.R. along with a copy of the judgment to the learned trial Court.

(Dictated and after correction signed and then pronounced by me in the open court on this 18th June, 2026)

(Kumar Amit Manu)
District Judge-I
Banka.
Dated-18.06.2026

(Kumar Amit Manu)
District Judge-I
Banka
Dated-18.06.2026