

In the Court of District & Addl. Judge 2nd, Jamui.

Title Appeal No. 35/2012

CIS No.-62/2014

Present:- Sudhir Sinha

1. Sakuntala Devi w/o Bajrangi Sah, village-Nathnagar, Bhagalpur.
2. Soni Devi w/o Ajay Sah, village-Aliganj, P.S-Sikandra, District-Jamui
3. Gayatri Devi w/o Arun Sah, village- Sarari, P.S+District-Jamui
4. Upendra Sah, 4(A) Rajesh Kumar, 4(B) Sumit Kumar, 4(C) Rani Kumari, 4(D) Jyoti Kumari, 4(E) Prity Kumari all sons and daughters of late Uptendra Sah,
5. Arjun Sah, 6. Madan Sah all are sons of late Mahadeo Sah, 7. Kailash Devi w/o Late Kishun Sah, Resident of Mohalla Mahisauri, P.S+District-Jamui. & Others.....Appellants

V.

1. Champa Devi@Chanarba Devi w/o late Shiv Sah, 2. Karu Sah, 3. Arun Sah, 4. Arbind Sah sons of late Shiv Sah all are residence of Mohalla-Mahisauri, PS+District-Jamui... Respondent/Defendant no... Ist Set, 5. Krishna Sah, 6. Vishwanath Sah both sons of Barho Sah, 8. Bhaso Devi w/o Barho Sah village-Kori Bandh, P.O-Jharia, Dist-Dhanbad, 9. Meena Devi w/o Late Ganesh Sah & Others.....Respondents

Present:- Sudhir Sinha

Distt. and Addl. Judge-II, Jamui

Ld. Counsel for the appellant..... Sri C. Tanti

Ld. Counsel for the respondent.....Sri S. C. Upadhyay

Date of Judgment:- 31.07.2026

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Judgment

This title appeal has been directed against the judgment dated 09.08.2012 and decree dated 01.09.2012 passed in T.S. No. 20/2003 by Sri Anil Kumar Mishra Sub Judge-II, Jamui by which the suit of plaintiff/appellant was dismissed.

The grounds of appeal are that- The plaintiffs/appellants filed T.S. No. 20/2003 for declaration of their title and recovery of possession over the suit house as described in Schedule-1 of the plaint and also for the relief to declare that defendant first set have got no right, title interest and possession over the suit property on the basis of sale deed dated 07.12.1950. The judgment and decree passed by Id. Court below is bad in law as well as on facts. It is admitted fact that the suit land is recorded in Survey Record of Rights (Khatiyani) in the name of Babu Lal Sah the ancestors of the plaintiff. But no any chit of paper has been filed by defendants/respondents Ist set to show that the said property (suit land) was sold or transferred by Babu Lal Sah or his legal heirs to Sobhan Rawat or Ramdhani Rawat. The Id. Court below wrongly and illegally dismissed the suit. The initial onus to prove the case lied on the defendant/respondent Ist set when the defendants, admitted the entries of Khatiyani. But the Id. Court below shifted the onus of proving the title of the case upon the plaintiff/appellant. The learned court below ought to have drawn adverse inference against the defendants/respondent Ist set who failed to produce any sale deed executed by Babulal Sah or his legal heirs. The Id. Court below dismissed the suit on the basis of imagination and surmises. The Id. Court below has wrongly come to conclusion that Khatiyani is not the title deed and Babulal Sah or his legal heirs are not the title holder of the suit property. The Id. Court below has wrongly arrived at a conclusion that plaintiffs/appellants could not establish and proved their title despite Khatiyani and rent receipt in their names. The finding of the Id. Court below on the point of title is incorrect, illegal, unsound and imaginary. The Id. Court below has wrongly relied upon the certified copy of compromise petition in the Eviction Suit No. 36/72 in which all the parties have not signed on the compromise

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petition and there was no compliance of Section 65 of the Indian Evidence Act. The Id. court below wrongly relied on the Ext. A sale deed in the name of defendant no.1 Shiv Sah who at the time of execution of the sale deed was minor. The Id. Court below did not believe the evidences of the plaintiffs/appellants and wrongly discussed the evidence of defendants/respondent Ist Set in the judgment. All the issue decided by the Id. Court below is wrong, incorrect and illegal. The D.W. 1 Shiv Sah the defendant himself has stated in para 4 of his testimony that he purchased the land in question from Ramdhani Rawat who purchased it in an auction sale. But neither any paper of auction sale has been brought on record. All the documents filed by the defendants/respondents are forged and fabricated. But the Id. Court below wrongly and illegally believed that forged document. There is no any issue or statement in the W.S. of defendant/respondent Ist set about the adverse possession. But the Id. Court below dismissed the suit on that point. There is no any independent witness examined by the defendants/respondent Ist set but the Id. Court below wrongly decided the suit against the plaintiffs/appellants. The Id. Court below has gone beyond the evidence in deciding the suit. In such view the Id. Counsel has prayed to set aside the judgment and decree was passed by the Id. Court below and to allow this title appeal with cost.

The case in brief is that one Babu Lal Sah was Khatiyani raiyyat of khata no. 72 of Mauja Mahisauri comprising several plots including plot No. 553 measuring an area of 1 (one) decimal over which he had constructed a tiled house. Later on he died leaving behind his two sons namely Ram Lal Sah@ Ram Sah and Leela Sah who came in possession over the property having perfect right, title and possession over the same and after their death legal heirs of them who were plaintiffs and defendant 2nd party inherited the suit premises jointly. In the year 1950 Govind Sah and Dhathuri Sah his brother-in-law had come to Ram Lal Sah and Leela Sah and on their request they lent out the same to them at the rate of monthly rent of Rs.16/-only, but after some years they stopped making payment of rent and as such Ram Lal Sah filed a Title Suit No. 36/72 in which he left to make pairvi on the request

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of them that they will vacate very soon and Dhathuri Sah vacated the same but Govind Sah continued in the suit premises and as such they decided to proceed with T.S. No. 36/72 but on inquiry they learnt that defendant playing fraud had filed an illegal and incomplete compromise petition alleged to have been signed by Mahendra Sah and by duping the Court he succeeded in getting a compromised decree but that Judgment and decree are not binding against the plaintiffs because they have not signed over the compromise petition of Title Suit No. 36/72. Thereafter the plaintiffs/appellants filed Eviction Suit No. 3/96 against the defendants/respondents on the ground of personal necessity in the court of Munsif, Jamui but the same was dismissed with observation that title can not be decided in Eviction suit and directed the appellants to file fresh suit to declare the sale deed dated 7.12.1950 as null and void.

In the light of said observation and direction the appellants filed Title Suit No. 20/2003 and the same was also dismissed by Sub-Judge 2nd Jamui vide Judgment dated 09.08.2012 and its decree dated 01.09.2012 against which the present Title Appeal has been preferred by the appellants.

The defendant/respondent's case is that the plaintiff's suit is quite incompetent. The plaintiffs have violated the provisions of law by not filing their documents in support of their claim so they are legally estopped to deny the title of the defendants upon the suit house while the ancestors of the plaintiffs have clearly admitted title and possession of the defendant in earlier suit. It has already been decided by the competent court that there is no relationship of landlord and tenant between the parties. The defendants are neither tenant at will nor licencees of the plaintiffs and their ancestors. The suit is barred by the provision of resjudicata and law of limitation. The defendants have been exercising their title and possession since 1950. The suit land does not belong to Ram Lal Sah and Leela Sah who had not inherited the land from Babulal Sah because Babulal Sah had sold suit land to Sobhan Rawat and later on Ramdhani Rawat s/o Sobhan Rawat sold the same to Shiv Sah the ancestor of defendants and now the heirs of Shiv Sah are in possession and paying holding tax to Jamui Municipality and are getting rent receipts. It

is further case of the respondents/defendants that Mahendra Sah, the heir of Babulal Sah felt weakness of his claim and he entered into compromise with defendant in T.S. No. 36/1972 and left his false claim and on the basis of compromise final Judgment and decree were passed in that suit. It is case of the respondents/defendants that Eviction suit No. 3/1996 and its appeal No. 10/2002 as well as T.S. No. 20/2003 have been decided in favour of respondents and as such there is no merit in this appeal.

On the basis of the pleadings of the parties the following issues were framed by the trial court.

1. Is the suit as framed maintainable ?
2. Is the suit barred by the law of limitation?
3. Is the suit barred by the principles of waiver estoppel and acquiescence?
4. Is the suit bad for misjoinder and nonjoinder of parties?
5. Have the plaintiffs valid cause of action for the suit?
6. Are the plaintiffs entitled to a declaration of title upon the suit property?
7. Are the plaintiffs entitled for the reliefs and any other relief or reliefs ?

The plaintiffs in support of their claim has examined all together 11 witnesses out of them P.w-3, P.W 4, PW 6, P.W 8, P.W 9, and P.W. 10 are formal witness who have proved different documents. In addition the plaintiffs have filed in support of their claim certain documents which are-

Ext.1 & Ext.1a, Ext.1b are rent receipts in name of Ramlal Sah and Leela Sah in respect of 3-1/4 decimal only.

Ext.1A is also rent receipt but the area and the name of tenant are not eligible.

Ext.1B is the rent receipt in respect of the land of khata no 19 and 72 for an area of 29-1/4 decimal. In none of these receipts there is anywhere mentioned the suit plot no.553

Similarly Ext. 2, 2A and 2B are municipal rent receipt. In these receipts also there is no mentioning of area and plot no.

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Ext. 3 is the certified copy of the written statement filed by Shiv Sah is T.S. No. 3/96.

Ext. 4 and 4A are the certified copies of the deposition of witness in T.S.3/96.

Ext. 5 is certified copy of register 2. In this Ext. 5 also plot no.553 is not mentioned anywhere.

Ext. 6 is the certified copy of the plaint of the T.S.36/72 and Ext. 7 is the certified copy of judgment passed in T.A. no. 10/2000.

The defence on the other hand has produced 11 oral witnesses DW-1 Shiv Sah, DW-2 Abadh Kishor Sinha, DW-3 Mukesh Kumar Sinha, DW-4 Babulal Sah, DW-5 Yogendra Sah, DW-6 Shankar Prasad, DW-7 Prabhat Mandal, DW-8 Md. Ajmal, DW-9 Dinesh Sah, DW-10 Fakira Yadav and DW-11 Janadi Mandal. The defence in addition filed certain documentary evidences which are Ext. A sale deed dated 07.12.1950, Ext. B-B/5 Manucipal Rent Receipt, Ext. C notice dated 06.07.1996, Ext. B/c-B/12 manucipal rent receipt, Ext D-D/9 Chaukidari receipt, Ext.E Certified copy of judgment passed in T.A. no. 10/2000, Ext E/1 certified copy of ST. no. 432/1997, Ext. F- certified copy of decree in M.T.A no. 10/2000, Ext. F/1 certified copy of decree passed in T.S no. 36/72, Ext. G certified copy of ordersheet of T.S no. 36/72, Ext. H certified copy of amendment petition filed in T.S no. 36/72 Ext. H/1 certified copy of petition for Khatiyani, Ext. I certified copy of written statement of T.S. no. 36/72.

The Id. Court of Sub-judge-II, Jamui on the basis of oral and documentary evidences available on record vide judgment dated 09.08.2012 dismissed the suit and accordingly the decree dated 01.09.2012 was passed.

On the basis of claim and counter claim of appellant and respondent the points for determination before this Court are-

1. Whether the respondent/defendants have purchased the suit land from the rightful owner in plot no. 553 under khata no. 72?
2. Whether on the basis of sale deed dated 07.12.1950 the ancesstors of respondents/defendants acquired valid right, title and possession over the suit land?

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3. Whether Mahendra Sah one of the plaintiffs in T.S no. 36/72 can enter into compromise with defendants and such compromised decree is enforceable against all plaintiffs?

4. Whether the judgment and decree passed by Sub-Judge II, In T.S no. 20/2003 is as per law and based on proper appreciation of evidences?

Taking together the points no. 1 and 2 for determination the Court finds that it is case of defendants/respondents that the land of plot no. 553 under khata no. 72 situated at Mahisauri P.S+District-Jamui compromising 1(one) decimal belonged to Babulal Sah who sold it to Sobhan Rawat and Sobhan Rawat sold it to Shiv Sah in 1950 who was ancestor of present respondents/defendants. After his death each defendants/respondents have been coming in peaceful possession after construction of dwelling house over it.

As per plaintiffs/appellants this appeal has been filed with reliefs that the title of the plaintiffs over the suit property be declared. The defendant 1st party have got no right, title, interest and possession over it on the basis of the sale deed dated 07.12.1950 and compromise decree dt. 21.8.1976. It was also prayed for passing of decree for recovery of possession over the suit property in favour of the plaintiffs and against the defendants first party and they be directed to hand over vacant possession of the suit property to the plaintiffs within time fixed and failing which the possession over the suit property be given to the plaintiffs through the process of the court. Babulal Sah was Khatiani raiyat of Khata No. 72 of Mauja Mahisauri comprising several plots including plot No. 553 measuring an area of 1 (one) decimal over which he had constructed a tiled house. He died leaving behind his two sons namely Ram Lal Sah and Leela Sah who came in possession over the same with perfect right, title and possession and after their death legal heirs of both who were plaintiffs and defendant 2nd party inherited the suit premises jointly. In the year 1950 Govind Sao and Dhathuri Sao his brother-in-law had come to Ram Lal Sah and Leela Sah on their request they left out the same to them at the rate of monthly rent of Rs.16/-only. But after some years they stopped making payments of rent and as such Ram Lal Sah filed a Title Suit

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No. 36/72 in which he left to make pairvi on the request of Govind Sah that they will vacate very soon and Dhathuri Sao vacated the land but Govind Sao continued in the suit premises and therefore Ram Lal Sah decided to proceed with T.S. No. 36/72 but he came to know that the defendant playing fraud on the basis of illegal and incomplete compromise petition alleged to have been signed by Mahendra Sah and duped the court and succeeded in getting a compromised decree. The Judgment and decree are not binding against the plaintiffs as they had not signed over the compromise petition of Title Suit No. 36/72.

Thereafter the plaintiffs/appellants filed Eviction Suit No. 3/96 against the defendants/respondents on the ground of personal necessity before the Court of Munsif, Jamui but unfortunately the same was dismissed with an observation that title can not be decided in Eviction Suit and directed the appellants to file fresh suit for declaring the sale deed dated 07.12.1950 null and void. The appellants filed Title Suit No. 20/2003 and the same was also dismissed by Sub-Judge-IIInd, Jamui vide Judgment dated 09.08.2012 and decree dated 01.09.2012/4.10.2012. Against this Judgment and decree the present Title Appeal has been preferred by the appellants.

As per Id. Counsel for the appellants the case of defendant is that the suit is suit is barred by the law of Limitation, Principle of estoppel, waiver and acquiescence. There is no relationship of landlord and tenant between the parties. The suit is also barred by the principle of adverse possession. The defendants have been exercising their title and possession since 1950. The suit land does not belong to Ram Lal Sah and Leela Sah because Babulal Sah sold suit land to Sobhan Rawat and later on Ramdhani Rawat S/o Sobhan Rawat sold the same to Shiv Sah the ancestor of defendants and now the heirs of Shiv Sah are in possession over the suit property which are also and paying holding tax to Jamui Municipality and are getting rent receipts. It is further case of the respondents/defendants that Mahendra Sah, the heir of Babulal Sah felt weakness of his claim and therefore entered into compromise with defendant in T.S. No. 36/1972 and on the basis of compromise final Judgment and decree were passed in their in favour. It is also case of the

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respondents/defendants that the Eviction Suit No. 3/1996 and its Appeal No. 10/2002 as well as T.S. No. 20/2003 have been decided in their favour and as such there is no merit in this appeal and prayed to dismiss the same.

As per Id. counsel for the appellants it is necessary to ascertain that whether Sobhan Rawat the vendor of Shiv Sah had got valid right, title and interest to transfer the suit land and purchaser Shiv Sah had got any title and ownership on the basis of the sale deed executed by him. The respondents/defendants have not filed any document to establish their claim that the suit land previously belonged to Sobhan Rawat and hence Sobhan Rawat had got no right and title to transfer the suit land to Ramdhani Rawat. The execution of sale deed by Sobhan Rawat in favour of Ramdhani Rawat stands not proved and as such adverse inference can easily be drawn against him.

The respondents/defendants got the sale deed dated 07.12.1950 marked as Ext. A. It is very much clear from perusal of recital of sale deed that vendor Ramdhani Sah purchased the duty stamp which is not proper. The normal course is that it is the purchaser who purchases the duty stamp but in the instant case the same was purchased by the vendor. Secondly it is also not mentioned in the sale deed that from whom he acquired the suit land and therefore his ownership over the suit land becomes doubtful. The appellants/plaintiffs claim over the suit land is on the basis of the being heirs of Khatiyani raiyyat Babulal Sah where as respondent/defendants claim their ownership on the basis of sale deed executed by Babulal Sah in vaour of Shobhan Rawat and in absence of any sale deed in the name of Sobhan Rawat the entire claim of ownership of Sobhan Rawat or his son Ramdhani Rawat becomes doubtful. No one can transfer better title than what he has in possession. Surprising fact has been found in this case as per Id. Counsel for the appellant is that Sobhan Rawat is the father of Ramdhani Rawat and according to law of inheritance Ramdhani Rawat could automatically inherit the property held in possession by his father. But in the present case, father executed sale deed on 07.12.1950 to his son by taking consideration money which makes the case of respondents/defendants doubtful.

The Id. Counsel has further argued that Shiv Sah has deposed on 21.11.2011 and told his age as 70 years and which after calculation can be said that he was 9 years old on 07.12.1950 when the sale deed was executed. Obviously he had got no income at that age nor a minor can purchase the suit land and therefore the entire case of defendant is nothing but bundle of lies. In view of the above facts and circumstances it is absolutely clear that the respondent Shiv Sah did not purchase the suit land from rightful owner or in lawful manner and he did not derive any valid right, title and possession over the same.

As per Id. Counsel for the appellants/plaintiffs the compromise petition filed by one of the plaintiff can not be accepted when there are several plaintiffs. In this case Mahendra Sah entered into the compromise with defendant Shiv Sah in T.S. No. 36/72 whereas there were several plaintiffs. Such compromise petition is neither admissible nor acceptable in the eyes of law. Hence, the compromised decree passed in T.S. No. 36/22 is no enforceable, legal and binding against other plaintiffs. The plaintiffs on the other hand have produced oral as well as documentary evidences in support of their case. Their evidence are reliable, cogent, credible and trustworthiness but the Id. Court below failed to consider the basis of the suit as the suit khata was recorded in the name of Babulal Sah in survey record of rights but no any chit of paper has been brought by the respondents/defendants Ist set to show that the suit land was sold by Babulal Sah to Sobhan Rawat. Therefore the Id. Court below has passed an illegal and erroneous Judgment and decree against the appellants/plaintiffs. The Id. Court below also failed to consider the evidence of Shiv Sah (D.W. 1) who himself stated during evidence that he had purchased the suit land from Ramdhani Rawat who purchased it in auction sale but no any paper of auction sale was filed on his behalf. The Judgment and decree passed by the Id. Court below in T.S. No. 20/2003 is fit to be set aside.

The Id. Counsel for the respondents on the other hand has argued that the plaintiff's suit is quite incompetent. The plaintiffs have not filed documents in support of their claim. So they are legally estopped to deny the

title of the defendants upon the suit house which the ancestors of the plaintiffs have clearly admitted their title and possession in earlier suit. It has already been decided by the competent Court that there is no relationship of landlord and tenant between the parties. The defendants are neither tenant at will nor licencees of the plaintiffs and their ancestors. The suit is also barred by the provision of resjudicata and law of limitation. In title appeal also the Appellate Court has observed that the plaintiffs have taken inconsistent pleas. The khatiyani raiyat had never constructed house upon the land in suit. The name of Babulal Sah recorded tenant was never mutated nor the sons of Babulal Sah ever inherited the suit plot 553. Further the plaintiffs or their ancestors were never assessed in Jamui Municipality nor in notified area committee. On the other hand, the defendant Shiv Sah was assessed in Jamui notified area committee and also in Jamui Municipality. It is wrong that Dhathuri Sao and the father of the defendants ever agreed to vacate the suit house. Mahendra Sah being the karta of this family had entered into compromised and had accepted the ownership of defendant.

As per Id. Counsel for the respondents/defendants, Shobhan Rawat the father of Ramdhani Rawat had purchased the suit premises from the khatiani raiyyat long long ago and thereafter his son Ramdhani Rawat inherited the said premises and transferred it to the father of the defendant for a consideration of Rs. 100/- on 07.12.1950 and since then the father of the defendants became owner of the suit premises. The defendant in alternative have also taken the plea of adverse possession. The sale deed dated 07.12.1950 is legal, valid, genuine and operative. The only document on behalf of the plaintiff/appellant is the khatiyani which was prepared in name of the ancestors of the plaintiff and their contention was that the plaintiff would be deemed to be the owner of the Khatiyani plot. The Ld. Trial Court in its judgment has held that khatiyani is not a document of title. The respondent has filed various decisions on this point which clearly mandates that revenue records such as rent receipt, Register-2, khatiyani are not documents of title. The plaintiff appellant could not file any decision contrary to the decisions filed by the respondents.

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The appellants never filed any miscellaneous case for setting-aside the compromise decree passed in T.S.-36/72. The defendant/respondent has filed the compromise decree which was marked as 'F1' & 'F' to show that Mahendra Sah has admitted in para 2 of the compromise petition that the suit house belongs to defendants no.-2 Shiv Sah and the plaintiffs of T.S. 36/72 have no concern with the same. Similarly the judgment passed in T.S. No. 3/96 was upheld in T.A. 10/2000 and it was found even by the Appellate Court that there is no relationship of landlord and tenant between the parties. The Id. Court has thoroughly examined all the documents, evidences, oral evidences produced by the parties in right perspective there is nothing wrong in the judgment and decree passed by the Trial Court. It is also settled principle of law that the plaintiff has to stand on its own footing and he cannot be allowed to take any advantage of the discrepancies in the defendants evidences.

The Hon'ble Court in **Laliteshwar Jha Vs. State of Bihar 2019(PLJR) 505** has held that in a suit for declaration of the title and confirmation of possession it is the plaintiff who has to establish his title and the weakness in the case of the defendant could not enure to the benefit of the plaintiff. The Hon'ble Court in full bench in **Nand Kumar Rai and others Vs. State of Bihar and others PLJR 1974, 27** has held that an entry in the record of rights does not create any title in favour of any person. **The Hon'ble Court in Punjab & Sind Bank Vs M/S Hotel Rajhands & Others 1995(2) BLJR 1028** has held that burden of proof always lies on plaintiff, case must stand or fall on own pleadings and proof of plaintiff's case. It is settled principle of law that the plaintiff's case must stand on its own pleadings and weakness in the defence case is of no consequences. The Id. Counsels therefore prayed that the judgment passed by Id. Trial Court is just proper and legal which does not require interference by the Appellate Court.

It is clear from the oral testimony of P.W.-1 Anil Sah who was plaintiff no.10 in Title Suit 20/2003 that Mahendra Sah is his uncle who had compromised T.S. No. 36/72. He had not forged any signature on the compromise petition. In cross para-17 he has also stated to have been seeing

Shiv Sah residing in the suit house since his coming to senses. Previously the suit house was kachha which has been converted into pucca by Shiv Sah. In para-18 he has stated that all the heirs of Shiv Sah were born in the suit house. In para-19 he has even admitted that the suit house falling within the jurisdiction Jamui municipality but he cannot say the holding number of the suit house nor can say about its amount of rent. In para-21 he has further stated that there are 2½ bigha lands in khata no. 72. but he cannot say how much land of khata no.72 were sold and to whom. In para-22 the plaintiff has clearly stated not to have seen any paper in name of Ramlal Sah and Leela Sah in respect of the suit house. In para-26 he has stated that in T.S. No. 3/96 Shiv Sah was claiming the suit house on the basis of sale deed and after purchasing the land when Shiv Sah before constructing new house, started demolishing the kachcha house but he was never stopped from doing so. In para-27 he has also stated that Shiv Sah has got no any other house.

Exhibits filed on behalf of the plaintiff:-

Ext.1 & Ext.1a, Ext.1b are rent receipts in name of Ramlal Sah and Leela Sah in respect of 3¼ decimal only.

Ext.1a is also rent receipt but the area and the name of tenant are not eligible.

Ext.1b is the rent receipt in respect of the land of khata no 19 and 72 for an area of 29¼ decimal. In none of these receipts there is anywhere mentioned the suit plot no.553

Similarly Ext. 2, 2a and 2b are municipal rent receipt. In these receipts also there is no mentioning of area and plot no.

Ext. 3 is the certified copy of the written statement filed by Shiv Sah is T.S. No. 3/96.

Ext. 4 and 4a are the certified copies of the deposition of witness in T.S.-3/96.

Ext. 5 is certified copy of register 2. In this Ext. 5 also plot no.-553 is not mentioned anywhere.

Ext. 6 is the certified copy of the plaint of the T.S.36/72 and Ext. 7 is the certified copy of judgment passed in T.A. no. 10/2000.

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Exhibit 3, 4, 4a, 5, 6 & 7 are not helpful to the plaintiff appellant.

The plaintiff had also filed Ext. 5, Register-2 to show name of Ramlal Sah and Leela Sah pertaining to Khata no. 19 and 72 but it is not clear when the Jamabandi was created further there was 78¼ decimal of land which was reduced to 29¾ decimal. The plaintiff in his plaint mentioned 1.77 Acre, Khata no. 72 but has not stated how much land was sold out of this 1.77 Acre. It is also not clear from Register-2 that it contains the suit land or not. It also does not mention the Jamabandi was created to how many plots of Khata no. 19 and 72. It is thus not clear that title of plaintiff is over the suit house. The possession of defendant is admitted since 1947. Further the rent receipts Ext. 1, 1/a, 1/b also does not make it clear that it belonged to the land in dispute. Likewise Ext. 2, 2/a, 2/b, 2/c does not mention that it relates to which land or house. The plaintiff has not filed any proof regarding valid holding of the disputed land. The documents produced by the plaintiff regarding his title over the suit plot but on perusal of these documents it is not clear that the title belonged to the plaintiff over the suit property. It is also admitted that plaintiffs have no possession over the land/house in dispute. The plaintiff himself has stated in the plaint that his ancestors in the year 1947 had given the defendants first set the suit house at a monthly rent of Rs. 16 per month. He himself has deposed before the Court and stated not to say when the house was constructed over the suit plot but it was constructed 50-55 years before. It was constructed before his birth in the year 1961 and he has been seeing Shiv Sah and his father living in that house since he attained senses. Earlier the house was Kachcha. A new house was constructed in place of Kachcha house by Shiv Sah. He has no witness that the house was given on rent and has never seen any rent receipt. In para-27 he has also stated that Shiv Sah has no any house in Jamui other than this disputed house. It is also clear that in title Suit No 36/72 Shiv Sah and Dhathuri Sah had filed their written statement on 18.04.1973 (Ext.-9) that the house earlier belonged to Sobhan Rawat and they had purchased it from Ramdhani Rawat the son of Sobhan Rawat on 07.12.1950 vide sale deed Ext. A. In the Eviction Title Suit No. 3/96 it was held that there is no relationship of tenant and landlord between plaintiff and

defendant. The appeal against that dismissal was decided on 26.07.2002 wherein it was held that in the execution suit title cannot be decided. The plaintiff then filed this title suit. The defendant enjoyed their peaceful possession over the suit property and when the kaccha house was converted into pucca house, the plaintiff did not raise any objection and it is very much clear that the house cannot be constructed over night. The contention of the plaintiff that the suit land/house belonged to him is based on the entry in Khatiyan which does not create title. The plaintiff has also raised an objection that Shiv Sah when purchased the suit plot was minor but it is clear that the seller was major and when he has raised no objection ever regarding minority of purchaser, the said sale deed shall be valid one. The said sale deed in favour of Shiv Sah is legal and valid. It is also clear from the document adduced by the defendant that the Municipal receipts upto year 1993 was in the name of Govind Sah father of Shiv Sah and since 1995 the name of Shiv Sah was entered in place of Govind Sah. It is also clear that the earlier holding no. was 4/73 which later on was changed to 269/14. All these documents point to possession of defendant over the suit house. The defendant witnesses too have supported that they have seen the defendant living in that suit house. It is thus clear that the plaintiff has not been able to prove his title over the suit plot. No. 553 under khata no. 72 while all the evidences point to possession and ownership of respondent/defendant over the house in dispute and sale deed dated 07/12/1950 is also valid and legal which is sufficient to create right title, possession of the defendant over the suit house. The points no. 1 and 2 for consideration therefore are decided against the appellant/plaintiff.

Now taking into consideration the point no. 3 that whether Mahendra Sah one of the plaintiffs in T.S no. 36/72 can enter into compromise with defendants and such compromised decree is enforceable against all plaintiffs is concerned, it is clear that Mahendra Sah was the Karta of the family who entered into compromise with the defendants in T.S no. 36/72 and has admitted that the suit plot house belonged to the defendants and the plaintiffs have no right, title and possession over the suit house. The final judgment and decree based on the compromise in T.S no. 36/72 was never

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challenged in any Competent Court of law even on the basis of fraud and therefore it attained finality. Being the karta of the family Mahendra Sah had the right to enter into the compromise on behalf of all the plaintiffs and the same was never challenged. The point no. 3 for determination is decided against the plaintiff appellant.

Lastly point no. 4 for determination whether the judgment and decree passed by Sub Judge-2, Jamui in Title Suit No. 20/2003 is as per law and based on proper appreciation of evidences, this appellate Court finds that the Id. Court of Sub Judge-2 Jamui on meticulous examination and appreciation of evidences available on record taking into account all the legal provisions related with the suit has passed a just proper and legal judgment dated 09.08.2012 and decree dated 01.09.2012. This Court finds that it was rightly held that the plaintiff has no right and possession over the suit land on the basis of materials available on record and therefore point no. 4 for determination is decided against the appellant/plaintiff.

In the light of discussions made above I come to the conclusion that the judgment and decree passed by Id. Trial Court in T. Suit no. 20/2003 is as per law and does not require any interference.

In the end this Title Appeal is **dismissed on contest** and the Judgment and Decree passed by Id. Trial Court in T.S No. 20/2003 is hereby confirmed.

Office is directed to prepare a decree accordingly.

Let a copy of this judgment and decree alongwith LCR be sent to the Id. Court of Sub-Judge-II, Jamui.

File of this Title Appeal be consigned to the record room after necessary compliance.

Dictated & corrected by me

Sd/-

District & Addl. Judge-II
Jamui
31.07.2026

Memo No...../dt.....

Copy forwarded to Id. Court of Sub-Judge-II, Jamui with L.C.R

District & Addl. Judge-II
Jamui
31.07.2026

In the Court of District & Addl. Judge 2nd, Jamui.

Title Appeal No. 35/2012

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Verdict
proposed
by