

BRKH010074252018



Presented on : 11-12-2018
Registered on : 11-12-2018
Decided on : 19-03-2026
Duration : 7 years, 3 months, 8 days

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
At Khagaria (Bihar)
Presided Over by Shri Rajesh Kumar Bachchan**

Title Appeal No.- 42/2018

In the matter of:

- 1A. Subodh Kumar Verma
1B. Pankaj Nayan
1C. Priyanshu Prem
All sons of Late Vishundev Mahto
1D. Rekha Devi
W/o- Jaiprakash Mahto
R/o- vill+post -Mahkad P.S-Simri Bakhtiyarpur
District- Saharsa
1E. Nutan Devi
W/o Lalan Kumar,
R/o-Vill.+post-Samda, P.S.-Shourbazar,
District- Saharsa
2. Sunil Kumar Verma
3. Sushil Kumar Verma
both Sons of Late Kishundev Verma
All R/o- vill. Barua, Post- Raun, P.S. Alauli,
District- Khagaria

.....Appellants

VERSUS

Shankar Mahto
S/o-Late Mishri Mahto
R/o- vill. Barua, Post- Raun, P.S. Alauli,

R. Bachchan

Sub-Division+District- Khagaria

..... Respondent /Plaintiff.

:: J U D G M E N T ::

1. The instant Appeal has been filed assailing the judgment dated 27.04.2018 and decree dated 17.05.2018 rendered by the Ld. Court of Munsif, Khagaria (hereinafter referred as 'Ld. Trial Court') in Title Suit No. 24/2010, titled as Shankar Mahto vs. Vishundeo Mahto and Ors., whereby the suit of the plaintiff has been decreed, declaring his title and possession over the suit land and permanently injunctioning the defendants to not interfere in peaceful possession of plaintiff.

CASE OF THE PLAINTIFF

2. The case of the plaintiff is that Santokhi Koeri alias Mahton son of Ram Dayal was his great grandfather. Santokhi Mahton had acquired the land in Mauza Raun appertaining to Khata No.445 Khesra No.905 mentioned in the Schedule-A of the plaint. After death of Santokhi Koeri, Kallar Mahto and then Mishri Mahton inherited his entire properties. Plaintiff got constructed his residential house on the plot No.1096 i.e. Schedule -B land which is part of the Schedule -A. Area of plot No.1096 is 10 dhurs but the same is wrongly mentioned as eight katha in the khatian. In year 2002 when the plaintiff started reconstructing his house, the defendants tried to interfere and made claim over the suit land.

CASE OF THE DEFENDANTS

3. Defendants have contended in their written statement that the genealogical table presented by the plaintiff is incorrect. Kallar Mahto is not son of Santokhi Koeri. Land of khata No. 445 khesra No. 1096

NCS Subodh

was not Santokhi Koeri. Land of khesra No.1096 is land of khata No. 464. The total area of khesra No. 1090, 1091, 1092, 1093, 1096 and 1097 is 2 kattha 17 dhur and the same is entered as Gairmajarua aam khalihan in survey Khatiyani. They have stated that in survey map area of Khesra No. 1096 has been mentioned as 10 dhur and entry in khatiyani for khesra no. 1096 having area 8 kattha has been wrongly shown. Defendants have further stated that the nature of lands of Khata No. 464 having khesra No. 1090, 1091, 1092, 1093, 1096, 1097 has changed from khalihan to jot. This was the reason ex-landlord of Sakarpura estate vide Hukumnama No. 67 dated 09.02.1952 settled in the name of Dukha Mahto and his descendants are coming in title and possession of the same. Defendants have denied that plaintiff is descendant of Santokhi Koeri. They have also denied that plaintiff has a residential house at Khesra No. 1096 measuring 10 dhur. Defendants have claimed that they have right, title and possession over the disputed land as their ancestor Dukha Mahto had obtained the same in 1952 from the ex-landlord.

4. On pleadings of the parties following issues were settled by the Ld. Trial Court on 13.07.2012.

1. Whether the suit is maintainable?
2. Whether the plaintiff has cause of action?
3. Whether the suit is barred by law of Limitation Act?
4. Whether the suit is bad for acquiescence estoppel?
5. Whether the suit is liable to be dismissed under Section 34 of the Specific Relief Act?
6. Whether the suit is bad for mis-joinder and non-joinder of the parties?
7. Whether the plaintiff is entitled to decree of declaration of his title over the suit land mentioned in Schedule B of the plaint having khata no. 445 khesra no. 1096 area 10 dhur?
8. Whether the plaintiff is entitled to relief of confirmation of possession over the suit land?
9. Whether the plaintiff is entitled to the relief of permanent injunction against the defendants to not interfere in his possession?
10. Whether the plaintiff is entitled to cost of the suit or any other proper relief?

M. B. Chohan

5. Plaintiff and defendants led their evidence and after hearing both sides, Ld. Trial Court passed impugned judgment and decree.

ARGUMENTS ON BEHALF OF APPELLANTS/ DEFENDANTS

6. Ld. Counsel for the appellants has argued that the impugned judgment and decree are not sustainable and liable to be set aside. He has further submitted that plaintiff has failed to prove his title in possession over the suit land and despite the said fact Ld. Trial Court has decreed the suit.

ARGUMENTS OF RESPONDENT

7. Ld. Counsel for respondent has submitted that Ld. Trial Court has passed a well reasoned judgment after appreciating the evidence on record.

POINT FOR DETERMINATION

8. After going through record and hearing submissions of respective Ld. Counsels following point arises for determination by this Court:

“Whether impugned judgment and decree are proper or any interference is required in the same?”

DISCUSSION, DECISION AND REASONS THEREOF

9. It is the case of the plaintiff that suit land having khata No. 445, khesra No. 1096 having area 10 dhurs has passed to him from his great grandfather whose name is registered in the Khatiyani. The plaintiff has filed khatiyani of the said land (Ext. 1) and its area has been shown as 8 kattha and khatiyani is in the name of Santokhi Koeri. Defendants have stated in their written statement that land of khesra No. 1096 of survey khatiyani is related to khata No. 464 and not of khata No. 445.

Subodh Kumar Verma

10. In order to prove his title and possession the plaintiff has filed certified copy of Khatiyān (Ext.1), certified copy of survey map(Ext.2) and his original Bank passbook(Ext.3) as documentary evidence and as ocular evidence, he has examined six witnesses.
11. Plaintiff has claimed that there is mistake in khatiyān while mentioning area of Khesra No. 1096 and in fact the area should have been 10 Dhurs but in khatiyān it is mentioned as 8 kattha. Plaintiff has also filed survey map of Khatiyān but the same is illegible and even stressing eyes khesra No. 1096 cannot be located. Plaintiff has tried to prove the alleged discrepancy by oral evidence but the oral evidence proffered by him revolves around his claim of possession over the suit land. It is settled law that revenue entries carry a presumption of correctness. The plaintiff has not examined any revenue official to show the discrepancy in the area in khatiyān. Plaintiff has not filed any document to show the actual area of the suit land.
12. Plaintiff has also not got examined the area of suit land by any government surveyor or survey knowing pleader commissioner to measure the exact physical boundaries of the suit land. Boundaries mentioned in the plaint of the suit land does not match with that of the khatiyān. There is no evidence on record that the plaintiff had ever approached the revenue official for correction in the area of the suit land in Khatiyān. Plaintiff deposing as P.W.4 has stated in his cross examination that the lands of Khesra No. 1090, 1091, 1093, 1096 and 1097 are under Khata No. 464. Therefore, his title cannot be declared on the same.

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13. Plaintiff has also failed to prove his possession over the suit land. P.W.2 Shatrudhan Mahton has stated in his cross examination that defendants are residing in the disputed land. P.W.3 Ramjappo Mahton has also stated in his cross examination that according to his knowledge the defendants are using the suit land.
14. In view of aforesaid discussion, this Court arrives at conclusion that plaintiff has failed to prove his title and possession over the suit land mentioned in Schedule-A of the plaint therefore no relief can be granted to him.

ORDER


15. In view of aforesaid discussion judgment dated 27.04.2018 and decree dated 17.05.2018 rendered by the Ld. Court of Munsif, Khagaria in Title Suit No. 24/2010, titled as Shankar Mahto vs. Vishundeo Mahto and Ors., are set aside.
16. T.A. No. 42/2018 is hereby **allowed**. Office is directed to prepare the decree and send back the L.C.R. to the Ld. Trial Court with a copy of the judgment.

(Dictated and corrected by me)



(Rajesh Kumar Bachchan)
Principal District Judge,
Khagaria.
Dated 19.03.2026.

(Dictated)



(Rajesh Kumar Bachchan)
Principal District Judge,
Khagaria.
Dated 19.03.2026