

IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
MUZAFFARPUR



Present: Shweta Kumari Singh, Principal District Judge

Date of Judgment: 23rd April, 2026

Title Appeal: 54/2009

(BRMZ010001502009)

1. Mosmat Shail Devi, W/o- Late Lakhan Rai
 - (a) Naresh Rai
 - (b) Santosh Rai

(Both sons of- Late Lakhan Rai, R/o- Village- Rampur Mani
Tole- Shankarpur Kuleshwar, P.S.- Sakra, P.O.- Sushta Mohammadpur,
Bhaya- Silout, District- Muzaffarpur)
 - (c) Smt. Mithilesh Devi, W/o- Parmanand Thakur

R/o- Village- Ganga Jogani, P.O.- Bariyarpur, P.S.- Sakra, District-
Muzaffarpur
 - (d) Smt. Chitralakha Devi, W/o- Anil Thakur

R/o- Village- Ganga Jogani, P.O.- Bariyarpur, P.S.- Sakra, District-
Muzaffarpur
 - (e) Smt. Singhashan Devi, W/o- Vinod Singh,

R/o- Village- Biddipur, P.O.- Bariyarpur, P.S.- Sakra, District-Muzaffarpur
 - (f) Smt. Punam Devi, W/o- Nawal Pandey,

R/o- Village- Ramnath Dhamauli, P.O.- Kalwari, P.S.- Kanti, District-
Muzaffarpur
2. Mosmat Indu Devi, W/o- Late Mahendra Rai
 - a. Pinki Devi, D/o- Late Mahendra Rai
 - b. Shambhu Kumar Singh, S/o- Late Mahendra Rai

- c. Chandan Kumar Singh, S/o- Late Mahendra Rai
All R/o- Village- Rampur Mani, Tole- Shankarpur Kuleshwar, P.S.- Sakra,
P.O.- Sushta Mohammadpur, Bhaya- Silout, District- Muzaffarpur
3. Mosmat Bina Kuer, W/o- Late Bhulan Rai
- a. Bhushan Rai, S/o- Late Bhulan Rai
- b. Priti Kumari, D/o- Late Bhulan Rai
All R/o- Village- Rampur Mani, Tole- Shankarpur Kuleshwar, P.S.- Sakra,
P.O.- Sushta Mohammadpur, Bhaya- Silout, District- Muzaffarpur
- c. Baby Devi, W/o- Kunjhesh Mishra, D/o- Late Bhulan Rai
R/o- Village+P.O.- Shambha, P.S.- Sakra, District- Muzaffarpur
- d. Rubi Devi, W/o- Satish Singh, D/o- Late Bhulan Rai
R/o- Village+P.O.- Bishautha, P.S.- Katra, District- Muzaffarpur

.....Appellants

Versus

1. Dharamdeo Lal, S/o- Late Ramlagan Rai
R/o- Village- Rampur Mani, Tole- Shankarpur Kuleshwar, P.S.- Sakra,
P.O.- Sushta Mohammadpur, Bhaya- Silout, District- Muzaffarpur
- I. Kavita Devi, W/o- Shree Raj Lal Rai
R/o- Village- Purnia, P.S.+P.O.- Bariyarpur, District- Muzaffarpur
- II. Babita Devi, W/o- Shree Pramod Kumar
- III. Khusboo Devi, W/o- Shree Amod Kumar
Both R/o- Village- Adalpur, P.O.+P.S.- Mahuwa, District- Vaishali
- 1(a) Rajdeo Rai, S/o- Late Sukhdeo Rai
R/o- Village- Rampur Mani, Tole- Shankarpur Kuleshwar, P.S.- Sakra,
P.O.- Sushta Mohammadpur, Bhaya- Silout, District- Muzaffarpur
- 1(b) Nawan Rai
- 1(b) (i) Rahul Kumar
both Sons of- Late Birju Rai
- (ii) Aklu Devi,
- (iii) Putul Devi,

(v) Rupa Devi

All D/o- Late Birju Rai

All R/o- Village- Rampur Mani, Tole- Shankarpur Kuleshwar, P.S.- Sakra,

P.O.- Sushta Mohammadpur, Bhaya- Silout, District- Muzaffarpur

1(c) Amarjeet Kumar

1(c) (i) Sanjeet Kumar Rai

(ii) Nank Rai

(iii) Gautam Kumar

All Sons of- Late Kamesh Rai

All R/o- Village- Rampur Mani, Tole- Shankarpur Kuleshwar, P.S.- Sakra,

P.O.- Sushta Mohammadpur, Bhaya- Silout, District- Muzaffarpur

2. Ramesh Rai

(a) Dinesh Rai

(b) Suresh Rai

(c) Guddu Rai

All Sons of- Late Mewa Rai,

All R/o- Village- Rampur Mani, Tole- Shankarpur Kuleshwar, P.S.- Sakra,

P.O.- Sushta Mohammadpur, Bhaya- Silout, District- Muzaffarpur

3. Arvind Prasad Sinha,

(a) Awdhesh Prasad Sinha

(b) Anand Kumar Sinha

(c) Ajay Kumar Sinha

All Sons of- Late Dhanai Prasad Srivastava

4. Gagan Prasad Srivastava

5. Gopal Prasad Srivastava

6. Akhilesh Prasad Srivastava

7. Kanta Prasad Srivastava

All Sons of- Late Shywmadhari

8. Mosmat Punam Sinha, W/o- Late Baban Prasad Srivastava
(a) Amulya Ranjan @ Munna Prasad
(b) Krishna Ranjan @ Babua Prasad
All Sons of- Late Baban Prasad Srivastava
9. Lalan Prasad Srivastava @ Dhirendra Prasad Sinha, S/o- Kapileshwar Lal
10. Pushkar Prasad Srivastava, S/o- Late Krishnadeo Prasad Srivastava
11. Bajrang Prasad Srivastava, S/o- Late Monoj Prasad Srivastava
12. Kripashankar Prasad Srivastava
(a) Maya Shankar Prasad Srivastava, Both S/o- Late Suresh Prasad Srivastava
13. Bhukhulu Prasad @ Anand Mohan
14. Chantu Prasad Srivastava
15. Sanju Prasad Srivastava
16. Sonu Prasad Srivastava
All Sons of- Late Jaimangal Prasad Srivastava
17. Ram Naresh Rai
18. Ramat Rai
Both Sons of- Late Janak Rai
19. Shivchandra Rai, S/o- Late Budhan Rai
20. Nagendra Rai
(a) Chandeshwar Rai
(b) Davendra Rai
All Sons of- Late Sogarath Rai
All R/o- Village- Rampur Mani, Tole- Shankarpur Kuleshwar, P.S.- Sakra,
P.O.- Sushta Mohammadpur, Bhaya- Silout, District- Muzaffarpur,
Respondent no.(13-16) At present Residing- in Club Road, Mithanpura,
Madnani Colony, Bekash Nagar, P.S.- Mithanpura, District- Muzaffarpur
21. Smt. Laxmi Devi, W/o- Kishun Rai, R/o- Village- Maudah, P.S.- patepur, District-
Vaishali, At present- Village- Shankarpur, P.S.- Sakra, District- Muzaffarpur

- (a) Smt. Basmati Devi, W/o- Rajendra Rai, R/o- Village- Badhiya, P.O.- Kuer,
P.S.- Patepur, District- Vaishali
22. Jata Rai
23. Vishwanath Rai
24. Bishuni Rai
All Sons of- Jhari Rai
25. Ram Narayan Rai,
(a) Shambhu Rai, Both S/os- Late Pancham Rai
(b) Sumitra Devi, D/o- Late Pancham Rai
All R/o- Village- Rampur Mani, Tole- Shankarpur Kuleshwar, P.S.- Sakra,
P.O.- Sushta Mohammadpur, Bhaya- Silout, District- Muzaffarpur
26. Ramdeo Rai, S/o- Late Bahadur Rai
27. Harendra Rai,
28. Nandkishore Rai
29. Devendra Rai
All Sons of- Late Pyare Rai
30. Mosmat Sabaj Devi, W/o- Late Chulhai Rai
(a) Ramashray Rai
(b) Surendra Rai
(c) Awdesb Rai
(d) Kamlesh Rai
(e) Mukesh Rai (minor) under Guardianship of mother Mosmat Sabaj Devi
All Sons of- Late Chulhai Rai
31. Mosmat Sharda Devi, W/o- Late Kusheshwar Rai
(a) Krishna Mohan Rai
(b) Vishundeo Rai
(c) Kamaldeo Rai
All Sons of- Late Kusheshwar Rai
32. Sohagan Devi, W/o- Late Bisheshwar Rai
(a) Raju Rai
(b) Rakesh Kumar Rai
(c) Arun Kumar Rai

All Sons of- Late Bisheshwar Rai

33. Sitabiya Devi, W/o- Late Maheshwar Rai

(a) Lal Sudhan Rai

(b) Jaikishun Rai

(c) Rajesh Rai

All Sons of- Late Maheshwar Rai

(d) Ranjeeta Devi, D/o- Late Maheshwar Rai

34. Jaddishwar Rai

35. Shankar Rai

36. Shankar Singh

37. Bajrang Singh

38. Anita Devi, D/o- Late Permal Prasad

(a) Aparn Kumar @ Shanni

(b) Priyam Kumar

Both Sons of- Late Permal Prasad

(c) Neha Kumari, D/o- Late Permal Prasad

All R/o- Village- Rampur Mani, Tole- Shankarpur Kuleshwar, P.S.- Sakra,

P.O.- Sushta Mohammadpur, Bhaya- Silout, District- Muzaffarpur

.....*Respondents*

Learned Counsel for the Appellant No. 01 & 03 : Shri Divakar Prasad Ratna, Advocate

Learned Counsel for the Appellant No. 02 : Smt. Hema Praveen, Advocate

Learned Counsel for the Respondents : Shri Ajay Narayan Sinha, Advocate

Date of Judgment : 23rd April 2026

Present : Shweta Kumari Singh

J U D G M E N T

1. The present Title Appeal has been filed against the Judgment and Decree dated 16.06.2009 and 20.06.2009, respectively passed by learned Execution Munsif

Muzaffarpur, in Title Suit No. 29/1889, whereby the suit of Plaintiff was decreed partly on contest, with direction to defendant nos. 3 to 16 to hand over the land of Chak plot no. 1252, area 05 dec. to the plaintiffs and defendant no. 2. Nawa Rai was directed to hand over 16 dec. land of plot no.1261 to the plaintiffs.

2. The plaintiffs filed the present suit, seeking decree for recovery of possession over Schedule IV land of the plaint and removal of structure thereupon and confirmation of possession over Schedule V land against the defendants.

The case of the plaintiffs/Appellants is that they and the defendants are members of the joint family. The Athar Kothi was lessee to the extent of six anna share of T.No. 5882 of village Rampurmani Tola, Shankarpur Kuleshwar. At the time of cadastral survey, Lakshman, Dukhit and Mushan were tenants of CS Khata No. 100 with respect to total area 5 bigha 7 kattha 16 dhur. After death of the tenants Lakshman, Dukhit, Musan, Manu Gope and Shiv Dhari Gope, sons of Lakhman Gope came in possession of the entire holding of 5 bigha 7 kattha and 16 dhur, with Dukhit and Mushan having died issueless. As Manu Gope and Shiv Dhari Gope could not pay the rent, Athar Kothi filed Rent Suit no. 1279 of 1901. The said suit was decreed and Execution Case No. 459 of 1903 was filed by Athar Kothi and the holding was auctioned on 21.05.1903 and purchased in the name of Jatadhari Lal, though Rakshya Rai and Bansi Raut contributed equally in the purchase money. Subsequently, delivery of possession was obtained by the auction purchasers and three of them came in joint possession of the land.

Thereafter, Umrao Mishra filed Misc. Case No. 118 of 1904 with respect to land of Khata No. 36, recorded in the name of his ancestors and the same was ordered to be released under order 21 Rule 100 CPC. Though, Jatadhari Lal filed Title suit No. 164 of 1906 to set aside the order passed in Misc. Case No. 118 of 1904, a compromise was arrived at between the parties and the land of Khata No. 36 was released. The remaining land continued to be in possession of the auction purchaser who cultivated the land by mutual agreement.

It is further pleaded that Madan Rai and Ram Sharan Rai were maternal uncles of Rakshya Rai and Gharbharni Kunwar was the wife of Madan Rai.

Jatadhari Lal had taken loan from Gharbharni Kunwar, during the auction purchase and put them in possession of some of the land pertaining to CS Khata no. 100. Since Madan Rai died issueless and Ram Sharan Rai remained bachelor and became ascetic, Mosmat Gharbharni and Ram Sharna Das gifted their lands of CS Khata No. 73, 77, 99 and 100 to Rakshya Rai under deed of gift dated 12.02.1992 and Rakshya Rai came in possession of the gifted land. This deed of gift was attested by Jatadhari Lal and Banshi Raut with full knowledge of its contents. Subsequently, Jatadhari Lal executed two separate deeds of Ladavi dated 24.02.1923, one in favour of Rakshya Rai with respect to 01 acre 7 dec. of RS Khata No. 100 and another in favour of Banshi Raut for 01 acre 30 dec. out of CS Khata No. 100. Thus, the ostensible auction purchaser Jatadhari Lal accepted the title and possession of Rakshya Rai and Banshi Raut over the auction purchased land mentioned in the Ladavi. So, by all the way Rakshya Rai was in possession of 2 acres of land of CS Khata No. 100. Rakshya Rai died leaving behind his son Rajeshwar Rai who came in possession of the alleged properties including the land mentioned in Schedule-I of the plaint.

It is further pleaded that Chakbandi proceeding started in the area in 1958-59. Rijhawan Rai being an illiterate, sick and ailing person and the plaintiffs being illiterate, minor sons of Rijhawan Rai, relied upon Sukhdev Rai defendant no. 1, Neba Rai and other defendants and entrusted his papers to Shiv Gulam Prasad for getting the Chakbandi papers prepared in his name. It is further pleaded that Shiv Gulam Prasad and others played fraud upon him and got the Chakbandi proceeding wrongly recorded. However, Rijhawan Rai continued in peaceful possession of the land mentioned in Schedule I of the plaint and after his death the plaintiff continued in peaceful possession and paid rent to the State Government. Thereafter, Sukhdev Rai and Neba Rai started making false claims with respect to the property in their possession. It was then that the plaintiffs began looking for the documents and found that original deed of gift dated 13.02.1992, executed by Mosmat Gharbharni and Ram Sharan Das and deed of Ladavi dated 24.02.2023, executed by Jatadhari Rai were missing. It was then the plaintiff came to know that Title Suit No. 60/30 of 1962/1965 between Shiv Gulam Prasad and Sukhdev Rai, defendant no. 1 with respect to the land in CS Khata no. 100 was decided by

the Addl. Munsif Muzaffarpur vide judgment dated 31.08.1965. In the said suit, Shiv Gulam Prasad based his title on the auction purchased by Jatadhari Lal, Rakshya Rai and Banshi Raut. However, Sukhdev Rai based his plea on ancestral title and possession being descendant of the tenant in the cadastral survey. Title Suit No. 60/28 of 1962-63 was decreed and it was held that lands of C.S.Khata No. 100 was sold in Execution Case No. 459 of 1903 and the claim of the defendant no. 1 was negatived. Subsequently, title appeal was filed by defendant no. 1, Sukhdeo Rai, but the same was withdrawn and title of auction purchaser was confirmed.

It has been further pleaded that in course of Title Suit No. 135/81 / 71183, which was decreed in favor of the plaintiffs with respect to Sch. II land of the plaintiff, that they came to know that from CSP No. 723 and 724, Chak Nos. 1252, 1259, 1260, 1261, 1262, 1599, though Chak No. 1259 was recorded in the name of plaintiff's father. Chak Nos. 1252, 1260, 1261, 1262 and 1599 were wrongly recorded in the name of Chulahi Rai, Sukhdeo Rai, Niba Rai and Ayodhya Rai respectively and from CSP No. 516 and 516/1118, Chak No. 1102 was wrongly recorded in the name of Sukhdeo Rai and from part of CSP No. 516 and 1516/1118 of Chak No. 1103 is wrongly recorded in the name of Ayodhya Rai, Chakbandi No. 1114 is recorded in the name of Bigan Rai. CSP No. 706/1186 of Chakbandi No. 1537 is wrongly recorded in the name of Sukhdeo Rai, CSP No. 743, 743/1193 of Chak No. 1566 P and 1567 P were wrongly recorded in the name of Raghu Rai and Chulai Rai. CSP No. 929 and 926 and 926/1267 of Chak No. 1440 were wrongly recorded in the name of Sukhdeo Rai. CSP No. 855 and 855/1246 of Chakbandi No. 1171 were wrongly recorded in the name of Ramashish Rai and Chakbandi record were wrongly recorded in respect to the land of C.S. Khata No. 100 and others. It has been further pleaded that despite the wrong entries made in the name of defendants in the Chakbandi proceeding, the plaintiff's father and plaintiffs continued in possession of Schedule-I land of the plaintiff.

It has been further pleaded that all the defendants in collusion with each other, dispossessed the plaintiffs from Sch.IV land constructed a small structure in part of Chak No. 1261, dispossessing to the plaintiff. Schedule-V land is still in the

possession of plaintiff but wrongly recorded in Chakbandi proceeding in the name of the defendants.

3. The present appeal has been filed on the following grounds: -

- i. The order of the trial court is bad in law as well as on facts and is based on conjectures and surmises and the ld. Trial court erred in decreeing the suit partly and the reason assigned thereto is also untenable.
- ii. The trial court has erred in deciding the Issue no. IV, V, VI and VII partly against the Appellant and it is contrary to weight of oral as well as the documentary evidence produced by the Appellants.
- iii. The ld. Trial court ought to have appreciated the relevancy of Ext.11 to 14 which are the document of title, and which are against defendant no. 01 and 02.
- iv. That the learned court has failed to appreciate the document on record and arrived at a finding on mere surmises.
- v. The ld. Trial Court also ought to have considered that the consolidation Khatiyani is also a record of right, prepared under tenancy Act and such entries do neither create nor extinguish one's right, title and interest in the land.
- vi. The ld. Trial court also ought to have considered that the village in question was de notified u/s 26 of the consolidation Act and the consolidation officer has no right to decide the title of the parties.
- vii. That the impugned order is misconceived, speculative and not sustainable in the eyes of law.

4. The contention of the Plaintiffs/Appellants is that the village where the suit land lies, was de notified under Section 26 of the Consolidation Act and the Consolidation officer had no right to decide the title of the parties and no title was decided by the consolidation officer and the Civil Court was competent to give the relief sought by them. Though the names were wrongly recorded during Chakbandi proceedings, the plaintiffs remained in possession of the disputed land and that they were illegally dispossessed of Sch. IV land by the defendants and consequently they seek recovery of possession over the same.

5. The issue for adjudication before this Court is:-

1. Whether the trial court erred in decreeing the suit partly on contest?
2. Whether the finding regarding possession/dispossession is sustainable in law?
3. Whether the impugned judgment and decree are liable to be set aside?
4. Whether the plaintiff is entitled to recovery of possession?

Discussion and Findings: -

6. At the very outset, it must be seen whether the Civil Court had the jurisdiction to decide the issue, considering bar of jurisdiction of Civil Court, contained in Section 37 and 37A of the Act of 1956.

Section 37 of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Hereinafter called the Act of 1956), reads:- Bar of jurisdiction of Civil Courts [Substituted by Bihar Act 27 of 1975] "No Civil Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act".

In Prabhawati Kumari Vs. State of Bihar and Ors., referring to Seikh Haider Zan case, it was held that a bare reading of Section 37 of the Act shows that it is in two parts. The first part provides that the civil court has no jurisdiction to entertain any suit or application to vary or set aside any decision or order passed under the Act and the second part provides that the civil court has no jurisdiction to entertain a suit with regard to the matter which could or ought to have been taken under the Act, meaning thereby, that if any person aggrieved by any entry even with regard to the question of title has not raised it at the appropriate stage in spite of having a notice or knowledge of the proceeding, he cannot be allowed to agitate the matter in the civil court. In other words, it contains a principle of constructive resjudicata.

7. It has consistently been held by the Hon'ble Supreme Court, in **Ram Krit Singh Vs. State of Bihar [AIR 1981 SC 1867]** and **Sheikh Haidar Zain Vs. State of Bihar [AIR 1983 SC 911]**, that in view of the purpose sought to be achieved under the Act of 1956, the Consolidation Authorities have been conferred with the status of "deemed courts" as they have also been conferred with the power to summon witnesses, taking evidence etc. The Act of 1956, contains a detail provision for determination of the question of right and interest, including the question of title and it also provides an adequate remedy in terms of Section 37A and 37B of the Act of 1956. Section 37A contains a non-obstante clause and it clearly records that the authorities under the Act shall be deemed to be court of competent jurisdiction while deciding disputes, hearing objections, appeals.
8. Accordingly, it was held in **Prabhavati Kumari Vs State of Bihar & Ors** that *"the decision of the consolidation authorities cannot be reopened/challenged in a Civil Court by the parties even after closure of notification under Section 26A of the Act"*. It was also held that consolidation authorities have got the powers of the civil court vested in them to decide the question of title. The Revisional order passed by the consolidation authority is open to challenge before the Hon'ble High Court under Article 226 of the Constitution of India. Thus, the orders of the consolidation authorities may be scrutinized to that extent.
9. Thus, it is well settled by virtue of the judgments of the Hon'ble Supreme Court, including **Sheikh Haider Zain Vs. Mohd. Zubair & Ors.** that consolidation authorities are fully competent to deal with the issue of title with only exception which has been carved out by the Hon'ble Supreme Court in the case of **Gorakh Nath Dubey**, wherein it has been held that the existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective but where there is a document the legal effect of which can only be taken away by setting aside or its cancellation, it

can be urged that the consolidation authorities have no power to cancel the deed, therefore they must be held to be binding on them so long as it is not cancelled by a court having power to cancel it.

10. Now, coming to the facts of the present case, it is admitted in the plaint itself that Consolidation proceeding started in the area in the year 1958-59 and different Chaks belonging to the plaintiffs were wrongly/illegally recorded in the name of the defendants. Thus, the consolidation proceeding was well within the knowledge of the plaintiffs. The very definition of Section 37 of the Act of 1956, says that the civil court has no jurisdiction to entertain a suit with regard to the matter which could or ought to have been taken under the Act, meaning thereby, that if any person aggrieved by any entry even with regard to the question of title has not raised it at the appropriate stage in spite of having a notice or knowledge of the proceeding, he cannot be allowed to agitate the matter in the civil court. In other words, it contains a principle of constructive res-judicata.

11. Thus, it is settled principle that if a suit is expressly or impliedly barred by a statute (here by reference to Section 37 of the Act of 1956), the civil court lacks inherent jurisdiction to hear it.

1. Whether the trial court erred in decreeing the suit partly on contest?
2. Whether the finding regarding possession/dispossession is sustainable in law?

12. Thus, in view of the discussion made herein above, this Court is of the view that the Ld. Trial Court erred in decreeing the Suit partly and the same is not sustainable. Accordingly, this appeal is dismissed on contest without cost. Exercising power under Order 41 Rule 33 of Civil Procedure Code, this Court finds that the Original Suit filed by the plaintiffs/appellants is not maintainable in view of the bar contained under Section 37 of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, and any finding on merits by a court

lacking jurisdiction is null and void. [**Ravi Singhal & Ors v. Rajeev Goyal & Ors, 2005**]

Hence, the Original Suit is dismissed. Office is directed to prepare the decree accordingly.

The judgment was typed and corrected by Me:

Sd/-

{Shweta Kumari Singh}

Principal District Judge,

Muzaffarpur.

(Dated 23rd day of April, 2026)