



IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
ROHTAS AT SASARAM

[BIHAR]

[TITLE APPEAL No. 59/2017]

[CIS No. 59/2017]

(An appeal U/S 96 read with Order XLI Rule 1 CPC)

(Appeal against Judgment dated 10-08-2017 and decree dated 23-08-2017 passed by the Ld. Court of Sri Madhukar Singh, Sub-Judge-4th, Sasaram in T.S. No. 442/1998)

IN THE MATTER OF :-

1. Krishna Paswan, aged 38 years, S/o Late Raghunath Paswan
2. Amit Kumar, aged 24 years, S/o Late Ram Bachan Paswan
3. Nitish Kumar, aged 19 years, S/o Krishna Paswan
RR/o Village- Medanipur, P.S. Sasaram, Distt. Rohtas
4. Ragini Devi, aged 27 years, W/o Lalloo Paswan
R/o P.O- Baluahi, P.S. Dehri/Indrapuri, Distt. Rohtas
5. Sunaina Devi, aged 30 years, W/o Ashok Paswan
R/o- Pandeypur, P.S. Kargahar, Distt. Rohtas
6. Phulparo Devi, aged 55 years, W/o Butan Paswan
R/o Village- Chatar, P.S. Dawath, Distt. Rohtas
7. Parwato Devi, aged 50 years, W/o Thakur Paswan
R/o P.S. Sasaram, Distt. Rohtas
8. Utamraj Devi, aged 48 years, W/o Dhanji Paswan
R/o P.S. Chenari, Distt. Rohtas

----- Appellants/Plaintiffs

Vs.

1. Siyaram Paswan, S/o Late Talsi Paswan
R/o Village- Medanipur, P.S. Sasaram, Distt. Rohtas
2. Mundrika Dusadh
3. Raghunandan Dusadh
4. Janak Dusadh
5. Kanhaiya Dusadh
6. Sobaran Dusadh
Sons of Late Nanhak Dusadh
7. Mishri Dusadh, S/o Mundrika Dusadh
8. Basant Dusadh, S/o Janak Dusadh
9. Bishal Dusadh
10. Bijlal Dusadh
11. Kiran Dusadh
Sons of Tanak Dusadh
12. Sumant Dusadh
13. Chatur Dusadh

14. Mithun Dusadh
15. Karmu Dusadh
Sons of Kanhaiya Dusadh
16. Bholu Dusadh
17. Narain Dusadh
18. Bhadau Dusadh
Sons of Sobaran Dusadh
19. Jaigovind Dusadh, S/o Telika Dusadh
20. Jairam Dusadh, S/o Kailash Dusadh
21. Pradeep Dusadh, S/o Jaigovind Dusadh
22. Om Prakash
23. Lal Bihari
24. Kamlesh Dusadh
25. Guput Dusadh
Sons of Jairam Dusadh
26. Krishna Dusadh
27. Baliram Dusadh
Sons of Siyaram Dusadh
RR/o Village- Medanipur, P.S. Sasaram, Distt. Rohtas

----- Respondents/Defendants

Ld. COUNSEL FOR APPELLANTS : Sri Ram Ayodhya Singh, Advocate.

Ld. COUNSEL FOR RESPONDENTS : Sri Rajan Kumar, Advocate.
(No. 1 to 18)

Ld. COUNSEL FOR RESPONDENTS : Sri Narendra Kumar Singh, Advocate.
(No. 19 to 25)

Ld. COUNSEL FOR RESPONDENTS : Sri Satendra Kumar, Advocate.
(No. 26 and 27)

Date of Judgement: 26-05-2026

Present : Anuj Kumar Jain
Principal District Judge
Rohtas at Sasaram

J U D G E M E N T

26.05.2026

1. This appeal has been preferred against judgment dated 10-08-2017 and decree dated 23-08-2017 passed by the Ld. Court of Sri Madhukar Singh, Sub-Judge 4th Rohtas at Sasaram in T.S.No. 442/1998 whereby Suit of the Plaintiffs for partition of the share in the suit property has been dismissed on merits.

2. Brief facts of the case, as per Genealogical Table given in plaint, common ancestor of the plaintiffs and defendants was Kauleshwar Dusadh, who was survived by his three sons namely (1) Deni Dusadh from first wife, (2) Parha @ Raj Kumar Dusadh and (3) Nanhak Dusadh from second wife. It has been pleaded that the defendants No. 1 to 18 are descendants through Nanhak Dusadh and defendants No. 19 to 25 are descendants through Deni Dusadh. The defendants No. 26 and 27 are descendants through Parha @ Raj Kumar Dusadh. Further, Kauleshwar Dusadh had suit property, which was owned and possessed by his above three sons. During Revisional Survey operation vide RS Khata No. 93, 94, 97 and 54, Survey Authorities made some mistake in preparation of Revisional Survey Kahtiyan; Name of Talika and Kailash was entered in RS Khata No. 54 with other sharers while name of Mst. Dhanpatiya w/o Parha Dusadh was missed to be entered in RS Khata No. 93. Whereas, RS Khata No. 94 and 97 were prepared correctly; For the sake of convenience the sons of Deni Dusadh have been enjoying some more area of plots under RS Khata No. 54 than legal share of 1/3rd in the family of Kauleshwar Dusadh; the share of sons of Deni Dusadh including other members of the family of Kauleshwar Dusadh has to be demarcated and defined in the lands of RS *Khata* No. 54 through partition by metes and bounds. Further, there was a partial partition of the lands of *Khata* No. 94 and 93 between the plaintiffs and defendant No. 1 on 29.11.1994 vide registered deed of partition with consent of sons of Nanhak Dusadh who never objected to the registered deed of partition dated 29.11.1994; since the RS Khatiyan of Khata No. 54 and 97 was not available at the time of partition dated 29.11.1994 so no partition could be done of the land of RS Khata No. 54 and 97. On 06.02.1996, the certified copy of RS Khatiyan of Khata No. 54 and 97 was obtained and they came in the knowledge about the co-parcenary properties; that plaintiffs and other defendants are entitled to their share in *Khata* No. 54 and 97 also; lands of Khata No. 93 and 94 have already been partitioned between the plaintiffs and defendant No. 1 leaving the share of the descendants of Nanhak Dusadh; if the descendants of Nanhak Dusadh have any objection regarding partition deed dated

29.11.1994, which has already been acted upon, then the plaintiffs are also ready to get the land of RS *Khata* No. 54, 93, 94 and 97 as per the share of the parties. The descendants of Nanhak Dusadh are putting hindrance in the joint cultivation of the land of *Khata* No. 54 and 97 and pay no heed to the request of the plaintiffs regarding partition, hence, the plaintiffs filed the suit.

3. The defendant No. 2 to 9 and 12,13,16 and 17 appeared and submitted written statement in which they pleaded that the plaintiffs have submitted wrong genealogical table and the fact is that Parha @ Raj Kumar Dusadh was brought with his mother Atwariya and after their marriage in *Sagai* form with Kauleshwar Dusadh, Nanhak Dusadh was born out from their wedlock. As such, descendants of Parha @ Raj Kumar Dusadh have no right over property of Kauleshwar Dusadh. Therefore, the appellants/plaintiffs are not entitled for the relief as prayed for.

4. The defendant No. 10,11,14,15,18 and 25 appeared and submitted written statement in which it has been pleaded that the suit is not maintainable and barred by law of limitation. Further, the suit is hit by misjoinder and non-joinder of necessary party. Therefore, it is prayed to dismiss the case with cost.

5. The respondent/defendant No. 19 to 24 appeared and submitted written statement in which it has been pleaded that suit is not maintainable; the plaintiffs have no cause of action, suit is barred by law of limitation and principles of estoppel, waiver and acquiescence; suit is bad for non-joinder of necessary parties; the suit is barred under section 34 of the Specific Relief Act; there is no unity of title and jointness of possession among plaintiffs; defendants and plaintiffs have no concern, the Genealogical Table given in plaint is wrong and on the basis of the wrong Genealogy, the plaintiffs want to grab the land of these defendants; Kauleshwar Dusadh had only one wife namely Paudhariya and only one son Deni Dusadh; Deni Dusadh had two sons Talika Dusadh and Kailash Dusadh and defendants No. 19 to 25 are the descendants of Deni Dusadh; Neither Kauleshwar Dusadh ever solemnized second marriage nor Parha @ Raj Kumar Dusadh and Nanhak Dusadh happened to

be sons of Kauleshwar Dusadh. It has been further pleaded that Parha @ Raj Kumar Dusadh and Nanhak Dusadh were sons of Dhura Paswan resident of Village Fatehpur and after death of Dhura Paswan, his wife Atwariya and her two sons were brought to Medanipur by Kauleshwar Dusadh to do household work after death of wife of Kauleshwar Dusadh. Further, defendant No. 1 to 18 and 26 and 27 have filed the instant case under conspiracy to grab property of defendant No. 19 to 25. It has further been pleaded that defendant No. 19 to 25 have no knowledge and concern with the partition dated 29-11-1994 as they were not impleaded as party in the said partition. As such, plaintiffs have no claim over property of Kauleshwar Dusadh. Therefore, the appellants/plaintiffs are not entitled for the relief as prayed for.

6. The defendant No. 25 appeared and submitted written statement in which it has been pleaded that the case of the plaintiffs is not legally maintainable and barred by principle of estoppel, waiver and acquiescence. Further, it has been pleaded that plaintiffs are not descendants of Kauleshwar Dusadh and they have filed this case only with intention to grab the property of defendant No. 19 to 25. It has further been pleaded that the genealogy as given in its written statement by defendant No. 19 to 25 is correct. Therefore, the appellants/plaintiffs are not entitled for the relief as prayed for.

7. On the basis of the pleadings of parties to the suit, following issues were framed on by the trial court :

- I) Whether the suit is framed is legally maintainable?
- ii) Whether the suit is barred by the law of limitation?
- iii) Whether the suit is bad for defects of parties?
- iv) Whether the plaintiffs have valid cause of action to file the suit against defendant no. 19 to 25?
- v) Whether the suit is hit by the provisions of section 34 of Specific Relief Act?
- vi) Whether the plaintiffs have filed the suit with proper valuation of the suit properties?

- vii) Whether the plaintiffs have given correct Genealogical Table of the family of the parties to the suit?
- viii) Whether the plaintiffs and defendants except 19 to 25, are descendants of Kauleshwar Dusadh?
- ix) Whether there is unity of title and possession in respect of disputed land between the parties?
- x) Whether the Plaintiffs are in joint possession of the disputed land shown in Schedule- A of the plaint with defendants No. 19 to 25?
- xi) Whether the plaintiffs are entitled to get any other relief or reliefs as claimed by them?

8. In order to prove his claims and assertions, the appellants/plaintiffs have examined following witnesses:-

P.W. 1	Ram Bachan Paswan [plaintiff no. 2]
P.W. 2	Krishna Paswan [plaintiff no. 3]
P.W. 3	Nagina Paswan

9. In addition to oral evidence, the appellants/plaintiffs have adduced following documentary evidence:-

Exhibit- 1	C.C. of deed dated 29.11.1994
Exhibit- 2	C.C. of RS Khatiyans.

10. P.W.-1, Ram Bachan Paswan, who is father of appellant no. 2, has supported his pleadings in course of his statement in examination-in-chief he stated that Late Kauleshwar Dusadh had solemnized two marriages, out of which Deni Dusadh was born out of first wife and Parha @ Raj Kumar Dusadh and Nanhak Dusadh were born out from the wedlock of second wife. Further, he stated that partition took place

between the parties but there is dispute regarding possession over Khata No. 54,93,94 and 97. In para-11, he stated that there was partition between plaintiffs and defendants vide registered deed dated 19.11.1994 regarding land bearing Khata No. 93 and 94 situated at Medanipur. In para-12, he further stated that since Khatian of land bearing Khata No. 54 and 97 was not available at the time of registration of partition deed so it cannot be partitioned at that time. On 06.02.1996, it came to the knowledge about the Khatian of Khata No. 54 and 97 and after that when plaintiffs requested to the defendants to partition the said land also, they refused to do so. In para-14, he stated that since in joint Khata No. 54 and 97 there was convenience to cultivate so they have filed suit for partition.

In course of his cross-examination, Para-2, this witness has stated that Dhanpatiya came from Mauza Diliya but couldn't say when she had come. In para-9, he stated that the branches of Nanhak Dusadh and Deni Dusadh are not parties in registered partition deed dated 19.11.1994.

11. P.W.-2, Krishna Paswan, has supported his case in examination-in-chief as he has stated all the version as stated by P.W.-1, Ram Bachan Paswan.

In cross-examination, he stated in para-2 that branches of Nanhak Dusadh and Deni Dusadh had not been included in the registered partition deed. In para-10, he stated that some Khatian of his family has been prepared wrongly and some rightly. Neither his father nor brother filed any suit to correct the said Khatian.

12. P.W.-3, Nagina Paswan, has stated in examination-in-chief that both the parties are descendants of Late Kauleshwar Dusadh. He further stated that Ram Bachan Paswan and Krishna Paswan are sons of Lakhpatiya who was daughter of Late Parha @ Raj Kumar Dusadh. In Para-4, partition took place between the parties but there is a dispute over partition of some lands.

In course of cross-examination, he stated in Para-1 that he didn't see to Kauleshwar. He didn't know when he was married. He has no knowledge regarding his second marriage. In Para-2, he stated that he didn't know about khata plot numbers of disputed land.

13. In order to prove his claims and assertions, the respondents/defendants have examined following witnesses:-

D1W1	Mundrika Dusadh
D1W2	Mishri Paswan,
D2W1	Jai Ram Paswan
D2W2	Shiv Shankar Paswan
D2W3	Avadhesh Prasad,
D2W4	Ram Karan Prasad
D2W5	Ram Janm Paswan,
D2W6	Ram Dev Singh
D2W7	Raghubar Tiwari.

14. In addition to oral evidence, the respondents/defendants have adduced following documentary evidence:-

Exhibit A to A/5	Revenue Receipts
Ext-B to B/3	RS <i>Parcha</i>
Ext. C	certified copy of judgment of GR No. 3006 of 1979
Ext. D	Electoral Roll
Ext. E to E/1	RS <i>Khatiyani</i>
Ext. E/2 to E/4	CS <i>Khatiyani</i> .

15. D1W1, Mundrika Dusadh, in examination-in-chief he stated that the genealogical table as submitted by the plaintiffs is wrong. He further stated that his second wife had brought Parha @ Raj Kumar Dusadh born from her former husband. In para-4, he stated that only Nanhak Dusadh was born out of wedlock from the second wife of Kauleshwar Dusadh. In Para-5, he stated that one son Deni Dusadh was also born out from the wife of Kauleshwar Dusadh. In para-6, he further stated that there is no share of Parha @ Raj Kumar Dusadh in the land of Kauleshwar Dusadh. In para-8, he denied regarding partition in the year 1994 because they are not

party in the partition deed. In para-7, he further stated that partition had taken place between Deni and Nanhak Dusadh 50 years ago. In para-9, he further stated that the plaintiffs have no concern with the land of Kauleshwar Dusadh.

16. D1W2, Mishri Paswan in examination-in-chief he stated that plaintiffs have no right over the disputed land because Raj Kumar Dusadh did not belong to his family. In para-8, he denied regarding partition in the year 1994 because they are not party in the partition deed.

17. D2W1, .Jairam Paswan, in examination-in-chief he stated that Parha @ Raj Kumar Dusadh and Nanhak Dusadh were not sons of Kauleshwar Dusadh. Further, he stated that Khatian of Khata No. 53,54,55,93,94 was falsely prepared and plaintiffs and defendant no. 1 to 18 and 26, 27 want to grab the suit land on false ground.

18. D2W2, Shiv Shankar Paswan @ Babuni in examination-in-chief he stated that Deni Paswan of Medanipur was his uncle, who died leaving behind two sons Talika and Kailash. He further stated that Deni was the only son of Kauleshwar Dusadh.

19. D2W3, Awdhesh Prasad in examination-in-chief he identified rent receipt of the year 1984-85 written by Ram Singh. In cross-examination, Para-1, he stated that aforesaid receipt was not prepared in his presence.

20. D2W4, Ram Karan Prasad, in examination-in-chief he identified Survey *Parcha* written by Rajendra Prasad. In cross-examination, Para-1, he stated that aforesaid receipt was not prepared in his presence.

21. D2W5, Ram Janm Paswan, in examination-in-chief he stated that Atwariya Devi was wife of Dhura Paswan living in his village and had two sons. He further stated that after death of Dhura Paswan, Kauleshwar Dusadh brought her with him to his village for household work and since then she had been living with Kauleshwar Dusadh in Medanipur.

22. D2W6, Ramdeo Singh, in examination-in-chief on affidavit identified *Rayeti Parcha* written by Rajendra Prasad. In cross-examination Para-1, he stated that

Rajendra Prasad had signed on *Parcha* in his presence.

23. D2W7, Raghuvar Tiwari, in examination-in-chief on affidavit identified *Rayeti Parcha* written by Rajendra Prasad. In cross-examination Para-1, he stated that Rajendra Prasad did not sign in his presence and he has no personal knowledge regarding *Parcha*.

24. Ld. Counsel for the appellants/plaintiffs has argued that the present appeal has been preferred against judgment dated 10.08.2017 and decree dated 23.8.2017 which was dismissed by the court of Sub Judge-IV in Title Suit No. 442 of 1998. He further argued that in para-1 of the judgment dated 10-08-2017, only Khata No. 54, 93, 94 and 97 are mentioned and the remaining Khata Nos. have not been considered by the Ld. Trial Court. He further argued that the impugned judgment and decree is misconceived in law and erroneous on facts. He further argued that the appellants/plaintiffs had filed suit for partition of Khata No. 53, 54, 55, 93, 94 and 97, which are mentioned in the schedule attached with the plaint. He further argued that the Ld. Trial court has adjudicated issue No. VII and VIII wrongly. Both the above issues have been decided together against the plaintiffs by the Ld. Trial court. He further argued that appellants/plaintiffs are descendants of Kauleshwar Dusad and Parha @Raj Kumar and Nanhak are sons of Kauleshwar Dusad from his second wife Atwariya. He further argued that as per Revisional Survey *Khatiyan*, Exhibit-2, Khata no. 94 and 97 are entered in the name of descendants of Parha @ Raj Kumar Dusadh and Nanhak Dusadh. He further argued that the remaining Khata No. 54 is entered in joint names of the descendants of all the three sons of Kauleshwar Dusadh. He further submitted that Revisional Survey *Khatiyan*, Exhibit-2, has not been challenged or objected by the respondents till date. He further argued that when the plaintiffs/appellants filed the suit for partition, they brought before the court a fabricated fact that Parha @ Raj Kumar and Nanhak are not sons of Kauleshwar Dusadh. In the above situation where the relationship has been challenged, recourse to Section 50 and Section 60 of the Indian Evidence Act is necessary for settlement of the case. He further argued that as per Section 60, evidence must be

direct in all cases and witnesses must testify only to facts they personally saw, heard, or perceived. He further argued that respondent No. 19 to 25 have produced mainly two witnesses before the trial court, witness no. 1 Jairam Paswan, who stated in cross-examination Para-2 that *Khatiyani* filed by the appellants/plaintiffs is wrong but again he stated that he didn't have any information regarding the *Khatiyani*. Whereas, witness no. 5 Ram Janm Paswan, who stated in cross examination Para-1 that he has no documentary evidence that Atwariya was wife of Dhura Paswan. He couldn't produce any evidence regarding residence of Atwariya whether she belonged to Fatehpur or not. As such, Respondent No. 19 to 25 have not given any such evidence, which falls within the meaning of Section 50 and 60 of the Indian Evidence Act. The trial court has decided both the issues against the plaintiffs/appellants only on the basis of fabricated and baseless facts, which is wrong and not legally justified. The Ld. Trial court has adjudicated the suit only on the point of relationship which has been denied by the defendants. Further, no witness of the village of 2nd wife of Kauleshwar has been examined and as such pleading of the defendant No. 19 to 25 not proved. He further argued that the defendants have not produced any evidence about the family from whom the plaintiffs belong and as such it will be presumed that the plaintiffs belong to the branch of 2nd wife of Kauleshwar Dusadh. He further argued that Ram Bachan Paswan himself examined as P.W. 1, who stated in para 1 of examination-in-chief that he has given a genealogical table, which shows the relationship between plaintiffs and defendants. This witness further stated that late Kauleshwar Dusadh had solemnized two marriages and Deni Dusadh was born from the first wife and Parha @ Raj Kumar Dusadh and Nanhak Dusadh were born from second wife. All three sons of Kauleshwar Dusadh have died. All their descendants have been shown in the genealogy table. After death of Kauleshwar Dusadh, his descendants have been in possession of suit property. He further argued that due to non-availability of *Khatiyaan* of *Khata* No. 54 and 97 couldn't be partitioned and after obtaining the *khatiyani*, when the plaintiffs asked for partition, the defendants refused to do so. He further argued that descendants of Nanhak Dusadh did not accept

the registered deed of partition dated 27.11.1994. The property was partitioned on 29-11-1994 vide registered deed of partition, in which descendants of Nanhak were not made party nor were they made witness in the deed of partition. He further argued that in Revisional Survey *Khatiyaan* submitted by him, name of father of Parha @ Raj Kumar and Nanhak, is written as Kauleshwar. He further argued that P.W. 2 Krishna Paswan has stated in examination-in-chief that he has given a genealogical list in the suit, which shows the relationship between plaintiffs and defendants. This witness further stated that late Kauleshwar Dusadh had solemnized two marriages, Deni Dusadh was born from the first wife and Parha @ Raj Kumar Dusadh and Nanhak Dusadh were born from second wife. All three sons of Kauleshwar Dusadh have died. All their descendants have been shown in the genealogy table. After death of Kauleshwar Dusadh, his descendants have been in possession of suit property. He further argued that P.W.-3, Nagina Paswan stated in examination-in-chief Para-1, that both parties of this case are descendants of Kauleshwar Dusadh. He further argued that appellants/plaintiffs have established by producing oral as well as documentary evidence that the appellants/plaintiffs are descendants of Kauleshwar Dusadh and they have right for partition in the suit property as prayed for. Ld. Counsel on behalf of appellants prayed to set-aside the impugned judgment and decree and to allow the appeal.

25. Ld. Counsel for the respondents no. 19 to 25 argued that impugned judgment dated 10.08.2017 and decree dated 23.08.2017 is legal and correct. The Ld. Trial court has rightly passed the judgment after considering all the evidence on record. The land detailed in Schedule 'A' is falsely claimed by the appellants/plaintiffs and they have no right over the disputed land. He further argued that the appellants/plaintiffs have asserted that they are descendants from the ancestor of Kauleshwar Dusadh. So, it is onus upon their shoulders to prove their case and it is not onus upon respondents/defendants to prove negative fact. As, it is settled principle of law that negative is not proved. Further, in a partition suit, the onus to establish the genealogy as detailed in the plaint, lies on the plaintiffs. He further argued that

plaintiffs have claimed through second wife of Kauleshwar Dusadh. But, neither Kauleshwar Dusadh ever solemnized second marriage nor Parha @ Raj Kumar Dusadh and Nanhak Dusadh happened to be the sons of Kualeshwar Dusadh. He further submitted that Padha @ Raj Kumar Dusadh and Nanhak Dusadh are the sons of Dhura Paswan of Village Fatehpur who died leaving behind him his wife Atwariya and two sons Parha @ Raj Kumar Dusadh and Nanhak Dusadh. After death of Dhura Paswan, Kauleshwar Dusadh brought her with her two sons to his village for doing household chores and since then her descendants have been living in Medanipur. He further argued that in this regard a single independent witness has been examined on behalf of plaintiffs as P.W.-3, who deposed in Para-1 of cross-examination that he has no knowledge whether Kauleshwar Dusadh had solemnized second marriage or not. There is no document on record to establish the fact that Kauleshwar Dusadh had two wives. He further argued that respondent/defendant No. 2 (D1W1) Mundrika Dusadh has stated in Para-2 that the appellants/plaintiffs have given genealogical table is absolutely wrong and Atwariya had brought with her minor son Parha @ Raj Kumar Dusadh born from her previous husband Dhura Dusadh. He further argued that (D1W2) Mishri Paswan stated in Para-2 that the appellants/plaintiffs have no share in the disputed land because Parha @ Raj Kumar Dusadh did not belong to the family of Kauleshwar Dusadh. (D2W5) Ram Janm Paswan of village Fatehpur stated in Para-1 of cross-examination that Atwariya was wife of Dhura Paswan of village Fatehpur. He further argued that it is clear from Ext-D that house of descendants of Deni, Parha and Nanhak have been shown separately, which clarify that appellants/plaintiffs don't belong to the family of defendant No. 19 to 25. He further argued that during revisional survey, names of Nanhak and Parha Dusadh have wrongly been mentioned in the *Khatiyaan*, Ext.-2. He referred case of 'Suresh Kumar Shukla & Others Vs. Uma Devi & Others' reported in 2026 (1) B.L.J 780, in which it has been held that *Khatiyani* entry does not confer title upon any person and he must prove his title independently in order to decide relationship of one person to another. Hence, the claim and relief sought by the

appellants/plaintiffs to be declared title holder of the land is baseless and wrong. He also referred case of 'Janardan Paswan & Others Vs. Smt. Sheo Kumari Devi' reported in 2014 (3) BBC 490. Ld. Counsel prayed that the appellants/plaintiffs are not entitled to get relief which they have sought for. He prayed for dismissal of the appeal.

26. After considering the evidence, both oral and documentary, Ld. Trial court dismissed the suit of the appellants/plaintiffs vide judgment dated 10.08.2017 and decree dated 23.08.2017 in T.S. No. 442/1998. It is pertinent to mention here that the main contest of the appellants/plaintiffs in present case with the respondents/defendants no. 19 to 25.

27. Heard both the sides and perused the record.

FINDINGS

28. The appellants/plaintiffs have adduced altogether 3 witnesses i.e. P.W.-1, Ram Bachan Paswan, P.W.-2, Krishna Paswan and P.W.-3 Nagina Paswan.

29. The appellants/plaintiffs have also produced documents which have been marked as Ext.- 1, certified copy of deed dated 29.11.1994 and Ext.- 2 certified copy of RS Khatiyani.

30. The respondents have adduced altogether 9 witnesses i.e. D1W1 Mundrika Dusadh, D1W2 Mishri Paswan, D2W1 Jai Ram Paswan, D2W2 Shiv Shankar Paswan, D2W3 Avadhesh Prasad, D2W4 Ram Karan Prasad, D2W5 Ram Janm Paswan, D2W6 Ram Dev Singh, D2W7 Raghubar Tiwari.

31. The respondents have also produced documents which have been marked as Exhibit A to A/5 Revenue Receipts, Ext-B to B/3 RS Parcha, Ext. C certified copy of judgment of GR No. 3006 of 1979, Ext. D Electoral Roll, Ext. E to E/1 RS Khatiyani, Ext. E/2 to E/4 CS Khatiyani.

32. In brief, it is a case of appellants/plaintiffs that Kauleshwar Dusadh was common ancestor of the plaintiffs and defendants, who was survived by his three sons namely Deni Dusadh from first wife and Parha @ Raj Kumar Dusadh and Nanhak Dusadh from the second wife. The appellants/plaintiffs had filed Title Suit no.

442/1998 seeking relief of partition for the share as prayed for in the suit property bearing Khata No. 53, 54, 55, 93, 94 and 97 of village Medanipur, District- Rohtas, which are mentioned in the schedule attached with the plaint. This suit was dismissed by the Ld. Trial court vide Judgment dated 10-08-2017 and decree dated 23-08-2017 in T.S. No. 442/1998.

33. On the basis of the pleadings of the parties, evidence adduced oral and documentary on behalf of both the parties and the judgment and decree passed by the Ld. Trial court, the main points for determination before this Court are as under:

(I) Whether the appellants/plaintiffs are descendants of Kauleshwar Dusadh ?

(II) Whether the appellants/plaintiffs are entitled for the partition of the suit

land as prayed for ?

34. As per submissions on behalf of the appellants/plaintiffs, the common ancestor of the appellants and respondents has been shown in Genealogical table given in the plaint to Kauleshwar Dusadh, who had three sons namely Deni Dusadh from first wife, Parha @ Raj Kumar Dusadh and Nanhak Dusadh from the second wife.

Whereas, respondents No. 19 to 24 have denied the fact of the second marriage of Kauleshwar Dusadh as pleaded in their written statement that neither Kauleshwar Dusadh ever solemnized second marriage nor Parha @ Raj Kumar Dusadh and Nanhak Dusadh happened to be the sons of Kauleshwar Dusadh. Further pleaded that Parha @ Raj Kumar Dusadh and Nanhak Dusadh are the sons of Dhura Paswan of village Fatehpur who died living behind his wife Atwariya and two sons. Further pleaded that since wife of Kauleshwar Dusadh had already died so to handle the domestic affairs, Mst. Atwariya came to his house along with her two sons namely Parha @ Raj Kumar Dusadh and Nanhak Dusadh. Further pleaded that Kauleshwar Dusadh had allowed them to stay in a room spared by him on humanitarian ground only.

35. In a nutshell, the appellants have alleged that Kauleshwar Dusadh was survived by his three sons namely Deni Dusadh from first wife, Parha @ Raj Kumar Dusadh and Nanhak Dusadh from the second wife. Whereas, the respondents no. 19 to 24 have denied the fact of second marriage of the Kauleshwar Dusadh.

36. Hence, burden to prove the relationship in a partition suit lies securely on the plaintiffs who assert it. If the relationship is denied, the suit fails unless the plaintiffs prove a common ancestor.

37. From perusal of record, it appears that the appellants/plaintiffs have examined total three witnesses i.e., (PW-1) Ram Bachan Paswan, [Plaintiff No.2] (PW-2) Krishna Paswan [Plaintiff No. 3] and (PW-3) Nagina Paswan out of them one (PW-3) Nagina Paswan is an independent witness, who has stated in Para-1 of cross-examination that he didn't see to Kauleshwar. He didn't know when Kauleshwar was married. He didn't know the name of first wife of Kauleshwar. He didn't know whether Kauleshwar had solemnized second marriage or not. Moreover, as per section 50 of the Evidence Act, the appellants/plaintiffs have not produced any independent witness who has special means of knowledge regarding the existence of relationship of Kauleshwar Dusadh and Mst. Atwariya as husband and wife.

38. Hence, the appellants have failed to prove that they are descendants of Kauleshwar Dusadh. Accordingly, Point No. 1 is decided against the appellants/plaintiffs.

39. Now, the next point to consider is whether the appellants/plaintiffs are entitled for the partition of the suit land as prayed for ?

40. The appellants/plaintiffs have not produced any documentary evidence i.e. Aadhaar, PAN, Ration Card, Voter Card etc. to show the name of the father of Parha @ Raj Kumar Dusadh and Nanhak Dusadh. Moreover, mere showing joint names of appellants/plaintiffs and respondents in Revisional Survey *Khatiyani*, Exhibit-2 is not sufficient to prove title of the land. In case of 'Nand Kumar Rai and

Others versus State of Bihar and Others’, reported in 1974 PLJR 27, a full Bench decision of the Hon’ble Court held that an entry in the record of rights does not create or extinguish any right in favour of any person.

41. However, Cadestral Survey *Khatiyan* is foundational land record prepared during the initial British-era survey, while Revisional Survey *Khatiyan* is the subsequently updated record created to reflect later changes in ownership. In case of ‘Sitaram Chaubey Vs. State of Bihar & Others’, reported in 1993(2) PLJR 225, the Hon’ble Patna High Court has observed that an entry in Cadestral Survey *Khatiyan* in favour of plaintiffs raises strong presumption of its correctness.

In the present case, the respondents/defendants have produced Cadestral Survey *Khatiyan*, Ext. E/2 to E/4 in the names of Kauleshwar Dusadh and Deni Dusadh whereas, the appellants/plaintiffs have produced Revisional Survey *Khatiyan*, Ext.-2 showing joint names of appellants/plaintiffs and respondents/defendants. But the appellants have failed to produce any evidence to show the basis of subsequent change in Revisional Survey *Khatiyan*, Ext.-2. Further, in case of ‘Shamshad Alam and Others versus State of Bihar’, reported in 2025 SCC online Patna 956, it has been held that it is an established position of law that mere wrong entry in connection with a land in the revenue records does not abolish the title of one nor create the title in favour of one. If entry in the revenue record does not create any right, there was no need to challenge the same.

42. Further, in a partition suit, proving relationship of the parties with the common ancestor is essential to claim share in the property. Since, the appellants/plaintiffs have failed to prove that they are descendants of Late Kauleshwar Dusadh, hence, the appellants/plaintiffs are not entitled to claim partition in the suit land.

43. Thus, no case is made out to interfere in the judgment rendered by Ld Trial court. The Title Suit of the appellants/plaintiffs has been rightly dismissed vide judgment dated 10-08-2017 and decree dated 23-08-2017.

44. It is, therefore,

ORDERED

That there is no merit in the instant appeal and the same is hereby dismissed. Pending application(s), if any, stand disposed of. The parties shall bear their own costs. The impugned judgment dated 10-08-2017 and decree dated 23-08-2017 passed by the Ld. Trial court in T.S. No. 442/1998 is upheld and affirmed. The office is directed to draw Decree sheet accordingly. Trial court record along with a copy of this judgment be sent back. Appeal file be consigned to record room after due compliance.

Pronounced in open court on 26-05-2026.

(ANUJ KUMAR JAIN)

Principal District Judge
Rohtas at Sasaram

Dictated and Corrected by me,

(ANUJ KUMAR JAIN)

Principal District Judge
Rohtas at Sasaram

Judgment typed by :
Deepak Kumar
Stenographer