

In the Court of District Judge, Balrampur.

Present: Utkarsh Chaturvedi, H.J.S

Code- U.P. 1882

UPBP010010182016



Civil Appeal No. 28/2016

1. Rajkumar Verma son of Radheyshyam
2. Smt. Sunita Devi wife of Rajkumar
R/O Village Bhariya H/o Khagaijot Pargana, Tehsil and District
Balrampur presently residing Village Dhusah, Pargana, Tehsil and
District Balrampur

.....Appellants.

Vs.

1. Smt. Rita Devi Shukla wife of Shivram Shukla resident of village
Gugaulikala, Pargana, Tehsil and District Balrampur.
2. Smt. Janki daughter of Takur Prasad wife of Suresh Dutt resident of
Village Dhusah, Pargana, Tehsil and District Balrampur.

.....Respondents.

With

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2. Smt. Sunita Devi wife of Rajkumar
R/O Village Bhariya H/o Khagaijot Pargana, Tehsil and District
Balrampur presently residing Village Dhusah, Pargana, Tehsil and
District Balrampur

.....Appellants.

Vs.

1. Smt. Janki daughter of Takur Prasad wife of Suresh Dutt resident of
Village Dhusah, Pargana, Tehsil and District Balrampur.
2. Suresh Dutt Pandey son of Jagdish Prasad Pandey resident of village
Kukurbhukwa H/O Sirsiya, Pargana, Tehsil and District Balrampur.
3. Smt. Reeta Devi Shukla wife of Shivram Shukla resident of village
Gugaulikala, Pargana, Tehsil and District Balrampur.

.....Respondents.

Judgment

1. Civil Appeal No. 28 of 2016 has been preferred against the ex parte Judgment and Decree dated 19.08.2016 passed in Original Suit No. 643 of 1994, *Sita Devi v. Smt. Rita Devi Shukla and Others*, whereas Civil Appeal No. 29 of 2016 has been preferred against the Judgment and Decree dated 19.08.2016 passed in Original Suit No. 30 of 1986, *Surju v. Thakur Prasad Shukla and Others*.

2. Since the parties to both the original suits are substantially the same and the principal dispute pertains to the same property, and further, both the suits were consolidated and decided by the learned Civil Judge (Junior Division), Balrampur, by a common ex parte Judgment and Decree dated 19.08.2016, both the appeals are being disposed of by this common judgment/order for the sake of convenience.

3. The relevant facts pertaining to Original Suit No. 643 of 1994, from which Civil Appeal No. 28 of 2016 arises, are as follows:-

3(I). Original Suit No. 643 of 1994, *Sita Devi v. Rita Devi*, was instituted by the plaintiff Ram Prasad and others seeking cancellation of a sale deed. It was pleaded that the land comprised in Gata No. 658 measuring 0.08 decimal, described in the impugned sale deed, originally belonged to Defendant No. 2. It was alleged that Defendant No. 2 had transferred the said land to the husband of the plaintiff in the year 1950, whereafter the plaintiff's husband constructed a residential house thereon along with certain adjoining land and remained in possession thereof. Since then, and continuously thereafter, the plaintiff Smt. Sita Devi (who died during the pendency of the proceedings) remained in possession and occupation of the property.

The plaintiff further pleaded that after the death of her husband, Defendant No. 2, taking advantage of her vulnerable condition, dishonestly executed the disputed sale deed in the year 1992 in favour of Defendant No.

(3)

1 in respect of Gata No. 658 measuring 0.08 decimal, which had remained an abadi (residential) land continuously since 1950. Upon learning of the impugned sale deed, the plaintiff requested Defendant No. 1 to have the same cancelled; however, Defendant No. 1 continued to evade the matter and finally refused to get the sale deed cancelled on 19.10.1994.

It was asserted that the disputed sale deed was liable to be cancelled on the following grounds: the land covered by the sale deed had already been transferred by Defendant No. 2 to the plaintiff's husband in the year 1950 through a written instrument; Defendant No. 2 had not remained in possession of the property since then; the plaintiff's residential house had existed on the land for approximately forty two (42) years prior to the execution of the sale deed; the land was neither agricultural in nature nor capable of agricultural use; no delivery of possession had taken place pursuant to the impugned transaction; the sale deed was collusive, fraudulent and brought into existence through conspiracy and undue influence; Defendant No. 1 was not a bona fide purchaser for value; both defendants were fully aware that the plaintiff and her family were residing in a house constructed on the disputed land; no valid consideration had passed between the parties; and by virtue of her long, continuous and uninterrupted possession, the plaintiff had acquired ownership rights over the disputed land and the house standing thereon.

It was further pleaded that the plaintiff's husband had already instituted Original Suit No. 30 of 1986 before the Court of Munsif, Balrampur, wherein Defendant No. 2 Thakur Prasad had admitted in his written statement the existence of the plaintiff's house on the disputed property. The cause of action was stated to have arisen on 19.10.1994 within the territorial jurisdiction of the Court.

3(II). In Original Suit No. 643 of 1994, the plaintiff filed documentary evidence, namely a certified copy of the sale deed executed by Thakur Prasad in favour of Rita Devi, marked as Paper No. 62C/2.

4. The relevant facts pertaining to Original Suit No. 30 of 1986, from which Civil Appeal No. 29 of 2016 arises, are as follows:-

4(I). Original Suit No. 30 of 1986, *Surju v. Thakur Prasad*, was instituted by the plaintiff Ram Prasad and others seeking a decree of permanent injunction. It was pleaded that the plaintiffs were the owners of the house described at the foot of the plaint. The said house had been purchased by them from Smt. Ramjhari, widow of Bhagwati Prasad, resident of Village Dhusah, through a registered sale deed dated 09.06.1945 for a consideration of Rs. 375/- along with another house, and ever since the purchase the plaintiffs had remained in possession thereof.

During the pendency of the suit, the plaintiff Smt. Sita Devi died on 12.10.2008 and her legal representatives, namely Defendant Nos. 1/1/1 and 1/1/2, were substituted on the basis of a registered Will dated 16.07.1999. It was further pleaded that the property originally formed part of old Gata No. 1628 measuring 0.08 decimal, which after consolidation operations came to be renumbered as Gata No. 658 measuring 0.03 hectare. The disputed property, being an abadi house, was not affected by the consolidation proceedings. At the time of purchase, the structure was merely a dilapidated thatched building. After acquiring the property, the plaintiff invested his own resources in constructing three rooms and other structures, thereby converting it into a residential house, which continued to exist in that form.

It was further averred that the defendants had no right, title, interest or possession over the disputed house, but, by using force and intimidation, sought to take unlawful possession thereof. In furtherance of such attempts, the defendants allegedly threatened the plaintiff on 06.01.1986 and again on 09.01.1986, whereupon the plaintiff lodged a report at Police Station Balrampur Dehat. When the plaintiff requested the defendants not to interfere with his possession, they finally refused on 16.01.1986. The cause of action was thus stated to have arisen on 16.01.1986 within the jurisdiction of the Court.

4(II). Defendant Thakur Prasad filed a written statement (Paper No. K-1/22) denying the averments made in the plaint. It was specifically pleaded that the suit was false, frivolous and without any basis. The disputed house, according to the defendant, stood upon Gata No. 658 measuring 0.08 decimal, which was his bhumidhari land. The defendant asserted that he was the sole owner thereof and his name stood duly recorded in the revenue records.

It was further pleaded that neither the defendant nor any of his predecessors had ever executed any sale deed in favour of the plaintiff with respect to the disputed house. The defendant admitted that Smt. Ramjhari had sold another house situated west of the village pathway within the abadi area to the plaintiff, but denied that the disputed house formed part of such sale. The defendant further contended that the plaintiff had no right to institute the suit and was not the owner of the disputed property. According to the defendant, the disputed house had been constructed by him approximately eight to ten years earlier and had been let out to the plaintiff Surju on a monthly rent of Rs. 60/-. The property was stated to be a pucca structure comprising six rooms, a verandah and a courtyard, along with thirteen trees of mango, sheesham, teak, neem and custard apple planted by the defendant. The market value of the property was alleged to be not less than Rs. 25,000/-. It was further pleaded that the suit had been undervalued and insufficient court fee had been paid. Defendant No. 2, Suresh Kumar, being merely the son-in-law of Defendant No. 1, had been unnecessarily impleaded. The suit was also alleged to suffer from misjoinder of parties.

4(III). On the basis of the pleadings of the parties, the learned Trial Court framed the following issues on 26.09.2014:-

1. Whether the plaintiff is the owner in possession of the house described in the plaint?
2. Whether the suit has been undervalued?
3. Whether the court fee paid is insufficient?
4. Whether the plaintiff has no right to institute the suit?

5. Whether the suit suffers from misjoinder of parties?
6. Whether the Court lacks territorial and pecuniary jurisdiction to try the suit?
7. Whether the suit is barred under Sections 34 and 41 of the Specific Relief Act?
8. To what other relief, if any, is the plaintiff entitled?

4(IV). After hearing the parties, the learned Trial Court, by order dated 26.09.2014, decided Issue Nos. 2 and 3 against the defendants and in favour of the plaintiffs.

5. By order dated 19.11.2014, the learned Trial Court directed that the records of Original Suit No. 30 of 1986 and Original Suit No. 643 of 1994 be consolidated for the purposes of trial. The record of Original Suit No. 30 of 1986 was treated as the leading file, and all further proceedings were conducted therein.

6. In support of the plaint, the plaintiffs produced the following documentary evidence: filed through List No. 8-Ga, the original registered sale deed dated 09.06.1945 (Paper No. 9-Ga/1 to 9-Ga/2) **(Exhibit-2)** and Urdu to Hindi translation of the original registered sale deed dated 09.06.1945 (Paper No. 10-Ga). Through list No. 82-Ga, certified copies of Khatauni for Fasli Year 1360 (Paper No. 82-Ga/2 to 82-Ga/3), Khatauni for Fasli Year 1362 (Paper No. 82-Ga/4), Basic Year Khatauni Khata No. 85 (Paper No. 82-Ga/5 to 82-Ga/6), Aakar Patra-41 Gata No. 658 (Paper No. 82-Ga/7), Khatauni for Fasli year 1387 to 1392 (Paper No. 82-Ga/8), Six year Khatauni for Fasli Year 1399 to 1404 Khata number 96 (Paper No. 82-Ga/9), extract map of village Dhusah (Paper No. 82-Ga/10 to 82-Ga/11), registered original Will dated 16.07.1999 (Paper No. 83-Ga/1 to 83-Ga/2) **(Exhibit-1)**, original document executed by Thakur Prasad (Paper No. 84-Ga), and through List No. 111-Ga, certified copy CH Form-18 (Paper No. 112-Ga/1), certified photocopy CH-23(1) of Village Dhusah (Paper No. 112-Ga/2) and certified copy CH Form-2A (Paper No. 113-Ga/1 to 113-Ga/2).

7. On behalf of the defendants, documentary evidence was filed through List No. 18-Ga, Khatauni for Fasli year 1393 to 1398 Khata Number 89 (Paper No. 19-Ga) and Khasra for Fasli Year 1392 (Paper No. 20-Ga). Further, through List No. 87-Ga, a map of the disputed land (Paper No. 88-Ga) was filed. Through List No. 102-Ga, the defendants filed the original registered sale deed dated 13.08.1992 (Paper No. 103-Ga to 103-Ga3), certified copy of the judgment of mutation (Paper No. 104-Ga), certified copy of Khasra for Fasli year 1421 Gata Number 658 (Paper No. 105-Ga), and certified copy of Khatauni for Fasli Year 1417-1422 Gata Number 658 (Paper No. 106-Ga).

8. By way of oral evidence, the plaintiffs examined PW-1 Ram Jage, Lekhpal, PW-2 Anant Kumar Srivastava, PW-3 Talukdar, PW-4 Vimla Devi and PW-5 Budhai.

9. During the course of trial, as the defendants remained absent, the learned Trial Court, by order dated 01.07.2015, directed that the proceedings against them be conducted ex parte.

10. Upon hearing learned counsel for the plaintiffs and after examining the record, the learned Trial Court passed the impugned ex parte Judgment and Decree dated 19.08.2016 whereby Original Suit No. 30 of 1986 and Original Suit No. 643 of 1994 were dismissed. Aggrieved by the said Judgment and Decree, the plaintiffs/appellants have preferred both the present civil appeals.

11. In Civil Appeal No. 28 of 2016, the principal grounds urged by the appellants/plaintiffs are that the learned Trial Court committed a manifest error in holding that Ramjhari, being a Sirdar tenure-holder, had no authority to execute the sale deed. It is contended that the revenue records available on the record, particularly the Khatauni of Fasli Year 1360, were produced to establish that Ramjhari was recorded as the cultivatory tenant during the relevant year. Subsequently, her name was deleted and substituted by the name of Sundari Devi. Thereafter, in the Basic Year records, Thakur Prasad

came to be recorded as Sirdar of Gata No. 1628. However, during consolidation proceedings, Gata No. 1628 was separated as abadi land and assigned a new number, namely Gata No. 658. Thereafter, in the Khataunis for Fasli Years 1399 to 1404, Thakur Prasad was recorded as a transferable Bhumidhar. Taking undue advantage of such entries, Thakur Prasad executed a sale deed in favour of Rita Devi during the pendency of Original Suit No. 30 of 1986 despite the subsistence of an order of injunction.

It is further contended that the learned Trial Court failed to properly appreciate the evidence available on record and dismissed both suits in a cursory manner. The testimony of PW-1 Ram Jage, Lekhpal, was allegedly ignored. According to the appellants, PW-1 had conducted a spot inspection pursuant to the orders of the Court and categorically stated that the disputed property corresponded to old Gata No. 1628 prior to consolidation and to Gata No. 658 after consolidation, thereby corroborating the identity of the property sold by Ramjhari under the sale deed dated 09.06.1945 on the basis of the boundaries described therein.

The appellants further submit that the learned Trial Court failed to properly consider the testimonies of PW-2, PW-3, PW-4 and PW-5. It is argued that the observation of the Trial Court that the plaintiffs had failed to prove their case is contrary to the evidence on record. It is also urged that the finding of the Trial Court that the pleadings in Original Suit Nos. 30 of 1986 and 643 of 1994 were mutually inconsistent is wholly erroneous. According to the appellants, in Original Suit No. 30 of 1986, the plaintiffs specifically pleaded acquisition of title through a sale deed, whereas in Original Suit No. 643 of 1994 they merely sought to demonstrate that even Thakur Prasad had acknowledged the property to belong to Surju Prasad. It is, therefore, prayed that the ex parte Judgment and Decree dated 19.08.2016 passed in Original Suit No. 643 of 1994, *Sita Devi v. Rita Devi*, be set aside and the suit be decreed in favour of the appellants.

11(I). In the aforesaid appeal, respondent Smt. Rita Devi Shukla filed **objections** (Paper No. 12-Ga) contending that in Original Suit No. 30 of 1986, *Surju v. Thakur Prasad and Others*, Defendant No. 1 Thakur Prasad had specifically pleaded in paragraph 10 of his written statement that the disputed house belonged to him and stood upon Gata No. 658 measuring 0.08 decimal. The said Gata was his bhumidhari holding and he was its sole owner, duly recorded in the revenue records. Being a transferable Bhumidhar, Thakur Prasad validly transferred the property in question in favour of Rita Devi through a registered sale deed dated 13.08.1992 after receiving lawful consideration. Since the execution of the sale deed, Rita Devi has continued to hold the property in her own right and has constructed a residential house thereon from her own resources.

It is further submitted that Thakur Prasad had categorically pleaded in his written statement that neither he nor his predecessors had ever executed any sale deed in favour of the plaintiffs with respect to the disputed property. The respondent further contends that the document of the year 1945 relied upon by the appellants is written in Urdu and that the Hindi translation filed on record is not duly proved or authenticated. According to the respondent, the said document has no nexus whatsoever with the disputed property and the burden of proving the same rested upon the plaintiffs, which burden they failed to discharge during trial.

It is, therefore, contended that the Judgment and Decree dated 19.08.2016 is perfectly legal and valid both on facts and in law and does not warrant any interference. The learned Trial Court, after consolidating Original Suit No. 643 of 1994 with the leading suit, namely Original Suit No. 30 of 1986, minutely analysed each issue and rendered its decision. Consequently, it is prayed that Civil Appeal No. 28 of 2016 be dismissed with costs.

12. In Civil Appeal No. 29 of 2016, the appellants/plaintiffs have substantially raised grounds similar to those urged in Civil Appeal No. 28 of

2016. It is contended that the learned Trial Court erred in holding that Ramjhari, being a Sirdar tenure-holder, lacked authority to execute the sale deed. Reliance has again been placed upon the revenue records, particularly the Khatauni of Fasli Year 1360, to demonstrate that Ramjhari was recorded as the cultivatory tenant during the relevant period and that her name was subsequently replaced by the name of Sundari Devi in the Khatauni of Fasli Year 1362.

It is further submitted that Thakur Prasad was subsequently recorded as Sirdar of Gata No. 1628 in the Basic Year records; however, during consolidation proceedings, the said plot was separated as abadi land and assigned new Gata No. 658. Thereafter, Thakur Prasad came to be recorded as a transferable Bhumidhar in the Khataunis for Fasli Years 1399 to 1404, and taking advantage of such entry, he sold the property in favour of Rita Devi during the pendency of Original Suit No. 30 of 1986 despite the subsistence of an injunction order.

The appellants further contended that the learned Trial Court failed to properly appreciate the evidence on record, including the testimony of PW-1 Ram Jage, Lekhpal, who identified the disputed property as old Gata No. 1628 before consolidation and Gata No. 658 thereafter, thereby confirming the identity of the property conveyed by Ramjhari under the sale deed dated 09.06.1945. It is also submitted that the testimonies of PW-2, PW-3, PW-4 and PW-5 were not properly considered.

The appellants asserted, this finding of the Trial Court, that plaintiff had failed to prove their case is contrary to the evidence on record. They further challenged the finding that, the pleadings in Original Suit Nos. 30 of 1986 and 643 of 1994 were inconsistent, contending that both suits were founded upon the same transaction and claim of ownership. According to the appellants, Original Suit No. 643 of 1994 merely sought to establish that even Thakur Prasad had acknowledged the ownership of Surju Prasad over the disputed property.

Accordingly, the appellants pray that the Judgment and Decree dated 19.08.2016 dismissing Original Suit No. 30 of 1986, *Surju v. Thakur Prasad*, be set aside and that the suit be decreed in their favour.

12(I). In the aforesaid appeal, Respondent Smt. Rita Devi Shukla filed objections (Paper No. 20Ga) contending that in Original Suit No. 30 of 1986, *Surju v. Thakur Prasad and Others*, Defendant No. 1, Thakur Prasad, had specifically pleaded in paragraph 10 of his written statement that the disputed house belonged to him and stood upon Gata No. 658 measuring 0.08 decimal. The said plot, situated in Village Dhusah, was his bhumidhari holding, of which he was the sole owner, and his name was duly recorded in the revenue records in that capacity. Being recorded as a transferable Bhumidhar, Thakur Prasad validly transferred the property in question in favour of Rita Devi by means of a registered sale deed dated 13.08.1992 after receiving lawful consideration and conveying all proprietary rights therein. Since the date of execution of the sale deed, the respondent has continued to hold the property as a transferable Bhumidhar and has, from her own resources, constructed and occupied a residential house thereon.

It was further contended that Thakur Prasad had categorically pleaded in his written statement that neither he nor any of his predecessors had ever executed any sale deed in favour of the plaintiff with respect to the disputed property. The respondent further submitted that the document of the year 1945 relied upon by the appellants, originally written in Urdu and accompanied only by a Hindi translation, has not been duly proved or authenticated and bears no nexus whatsoever with the property in dispute. It was argued that during the course of trial, the appellants/plaintiffs failed to discharge the burden of proving the said document, which squarely rested upon them.

Accordingly, it was contended that the impugned Judgment and Decree dated 19.08.2016 is fully justified both in law and on facts and does not call for any interference by the appellate court. The learned Trial Court,

after consolidating Original Suit No. 643 of 1994 with the leading case, namely Original Suit No. 30 of 1986, undertook a detailed analysis of each issue and rendered its judgment dated 19.08.2016. The respondent has expressed complete agreement with the findings recorded therein. It has, therefore, been prayed that Civil Appeal No. 29 of 2016 be dismissed with costs on merits.

13. I have heard the submissions advanced by the learned counsel for the appellants/plaintiffs as well as the learned counsel for the respondents/defendants and have carefully perused the records of the present appeals and the original suits connected therewith.

14. For the just and proper adjudication of the present civil appeals, the following points for determination arise for consideration:-

- (1)** Whether the findings determined by the learned Trial Court, on the basis of the pleadings and assertions made by the appellants/plaintiffs, that “the plaintiff is not entitled to seek cancellation of the sale deed in question” is legally sustainable?
- (2)** Whether the conclusion reached by the learned Trial Court on the basis of the pleadings made by the appellant in the plaint that "the plaintiff is not entitled to get the relief of permanent injunction" is in accordance with law. ?
- (3)** Whether the Appeal No. 28/2016 and 29/2016 are liable to be allowed?

15. Point for Determination No. 1

Whether the findings determined by the learned Trial Court, on the basis of the pleadings and assertions made by the appellants/plaintiffs, that “the plaintiff is not entitled to seek cancellation of the sale deed in question” is legally sustainable?

16. Original Suit No. 643 of 1994 was instituted by the plaintiff seeking cancellation of the sale deed in question. The principal foundation of the suit is that the land covered by the disputed sale deed had already been transferred by Defendant No. 2 to the plaintiff's husband in the year 1950 through a written instrument and that, by virtue of long, continuous and uninterrupted possession, the plaintiff had acquired ownership rights over the disputed land and the residential house standing thereon.

17. In support of the aforesaid pleadings, the plaintiff filed a written document (Paper No. 84-Ga), purportedly executed by Thakur Prasad, acknowledging the transfer of the disputed property in favour of Surju. However, in another suit relating to the same property, namely Original Suit No. 30 of 1986, instituted by the plaintiff's husband seeking the relief of permanent injunction, the plaintiffs specifically pleaded that the disputed property had been purchased from Smt. Ramjhari, widow of Bhagwati Prasad, by means of a registered sale deed dated 09.06.1945.

18. In support of such pleadings, the plaintiffs produced, through Evidence List No. 8-Ga, the original registered sale deed dated 09.06.1945 (Paper No. 9-Ga) along with a Hindi translation of the Urdu document (Paper No. 10-Ga). In addition thereto, through Evidence List No. 82-Ga, the plaintiffs filed certified copies of Khatauni for Fasli Year 1360 (Paper No. 82-Ga/2), Khatauni (Paper No. 82-Ga/4), Basic Year Khatauni (Paper No. 82-Ga/3), Aakar Patra-41 (Paper No. 82-Ga/4), Khatauni (Paper No. 82-Ga/8), Khatauni for Fasli Years 1399 to 1404 (Paper No. 82-Ga/9), extract map (Paper No. 82-Ga/10), original Will (Paper No. 83-Ga/1), the written document allegedly executed by Thakur Prasad (Paper No. 84-Ga), and through List No. 111-Ga, CH Form-18 (Paper No. 112-Ga/1), Aakar Patra-23 (Paper No. 112-Ga/2) and CH Form-2A (Paper No. 113-Ga).

19. A careful scrutiny of the aforesaid documentary evidence reveals that a registered sale deed dated 09.06.1945 in respect of the disputed property was executed by Ramjhari in favour of Surju. It further appears from the

certified copy of the Khatauni for Fasli Year 1360 that Ramjhari was recorded as a Sirdar tenure-holder with respect of the disputed property. During the same Fasli year, however, the name of Ramjhari was deleted and substituted by the name of Sundari Devi as Sirdar. This clearly indicates that prior to Fasli Year 1360 (corresponding approximately to the year 1952), Ramjhari was recorded in possession of the disputed property as a Sirdar tenure-holder.

20. In such circumstances, if the pleadings set up by the plaintiffs in Original Suit No. 30 of 1986 (the leading suit) are accepted at face value, it follows that even up to the year 1952, i.e., nearly seven years after the execution of the sale deed in favour of Surju, the name of the vendor, Ramjhari, continued to be recorded in the revenue records as Sirdar in respect of the disputed property.

21. It is a well-settled legal position governing a “Sirdar” tenure-holder that, although his rights in the property were heritable, they were not transferable. Thus, at the time when the registered sale deed dated 09.06.1945 was executed by the vendor Ramjhari in favour of Surju, she had no legal authority to transfer the property. It is also a settled principle of law embodied in the maxim *Nemo Dat Quod Non Habet*, namely that no person can transfer a better title to a property than that which he himself possesses. Consequently, the evidence adduced through PW-4 Vimla Devi, whereby the signatures of her father, witness Baijnath, appearing on the sale deed dated 09.06.1945 were sought to be proved, cannot validate the vendor’s authority to transfer the property. In other words, no valid title in respect of the disputed property passed in favour of Surju on the basis of the sale deed dated 09.06.1945.

22. It is also pertinent to note that in Original Suit No. 643 of 1994 (the consolidated suit), the plaintiff herself admitted that Defendant No. 2 was originally the owner of the disputed property. Thus, the source of title

pleaded by the appellants/plaintiffs in the two original suits is mutually inconsistent and contradictory.

23. Furthermore, a perusal of the documentary evidence, namely the extract of Khatauni (Paper No. 82-Ga1/5), reveals that in the Basic Year records, the name of Thakur Prasad (Defendant No. 2) was recorded as a Sirdar tenure-holder. In addition thereto, the certified copy of the Khatauni (Paper No. 82-Ga1/8) for Fasli Year 1387 (corresponding to the year 1979) also records the name of Thakur Prasad, Defendant No. 2. Likewise, the six-yearly extract of Khatauni for Fasli Years 1399 to 1404 (corresponding to the years 1991 to 1996), marked as Paper No. 82-Ga1/9, clearly demonstrates that the name of Thakur Prasad, Defendant No. 2, was recorded as a transferable Bhumidhar. The said Khatauni further contains an endorsement showing that, by virtue of a sale deed, the name of Defendant No. 2 was expunged and the name of Defendant No. 1 was entered in the revenue records in his place.

24. At this stage, it would be apposite to refer to Section 131(a) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, as amended by U.P. Act No. 8 of 1977, which defines a Bhumidhar with non-transferable rights. The provision reads as follows:-

“Every person belonging to any of the following classes shall be called a Bhumidhar with non-transferable rights and shall have all such rights and be subject to all such liabilities as are conferred or imposed upon such Bhumidhars by or under this Act, namely:-

(a) Every person admitted as sirdar of any land under Section 195 before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977, or as a bhumidar with non-transferable rights under the said section on or after the said date;.....

25. Section 131-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 further provides as follows:-

“Every person who was a bhumidhar with non-transferable rights immediately before the commencement of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1995 and had been such bhumidhar for a period of ten years or more, shall become a bhumidar with transferable rights on such commencement.”

26. A conjoint reading of the aforesaid statutory provisions and the revenue records available on the record reveals that the Sirdari rights of Defendant No. 2 stood converted into the rights of a Bhumidhar with non-transferable rights after the year 1977. Thereafter, upon completion of ten years, i.e., in the year 1987, the rights of Defendant No. 2 as a Bhumidhar with non-transferable rights stood converted into the rights of a Bhumidhar with transferable rights. The sale deed in question relating to the disputed property was thereafter executed by Defendant No. 2 in favour of Defendant No. 1 in the year 1992, and at the time of its execution, Defendant No. 2 possessed full legal authority to transfer the property.

27. Here it will also be important to mention that Section 31 of the Specific Relief Act, 1963 provides the circumstances in which cancellation of an instrument may be ordered. The provision reads as follows:-

“31. When cancellation may be ordered.—

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may institute a suit to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.”

A plain reading of Section 31 makes it clear that only such person is entitled to seek cancellation of an instrument against whom the instrument is either void or voidable, or who is likely to suffer serious injury if the instrument is allowed to remain operative. It is, therefore, necessary to examine whether the instrument in question is void or voidable as against the

plaintiff and whether permitting the impugned sale deed to remain in existence is likely to cause any serious injury to the plaintiff.

28. According to the pleadings contained in the plaint of Original Suit No. 643 of 1994, the principal basis for seeking cancellation of the sale deed dated 13.08.1992, executed by Defendant No. 2, Thakur Prasad, in favour of Defendant No. 1, Rita Devi, in respect of Gata No. 658 measuring 0.08 decimal, is the assertion that the plaintiff and her husband had remained in possession of the disputed property since the year 1950 pursuant to a written document allegedly executed by Defendant No. 2 in favour of the plaintiff's husband, and that they had continued to remain in possession thereof as of right.

29. Since both parties have asserted that they derived their title and possession from Thakur Prasad, it stands established that the disputed property originally belonged to Defendant No. 2, Thakur Prasad, both in title and possession. The appellants/plaintiffs claim to have acquired possession over the said property on the basis of a written document dated 26.06.1950, (paper number 84Ga) in possession from a very long time whereas Respondent No. 1, Rita Devi, claims to have acquired title and possession through the sale deed in question.

30. The disputed property comprises Gata No. 658 measuring 0.08 decimal and is, therefore, immovable property. The document relied upon by the plaintiff is written on plain paper and is unregistered, whereas the sale deed relied upon by the defendant is duly executed on requisite stamp paper and is a registered instrument. The plaintiff claims possession on the basis of a document allegedly executed on 26.06.1950. It is an admitted position that at the relevant time Thakur Prasad was merely a Sirdar and possessed no right of transfer. On the other hand, when the sale deed dated 13.08.1992 was executed and registered in favour of Defendant No. 1, Thakur Prasad was recorded as a Bhumidhar with transferable rights in respect of Gata No. 658 measuring 0.08 decimal. On the basis of the document relied upon by

the plaintiff, the plaintiff's name was never recorded in the revenue records. Conversely, on the basis of the sale deed in question, a mutation order has been passed substituting the name of the purchaser, Rita Devi, in place of the vendor, Thakur Prasad, and even at present the name of Defendant No. 1, Rita Devi, continues to be recorded in the revenue records.

31. The document relied upon by the plaintiff is admittedly unregistered. Section 49 of the Registration Act, 1908 provides as follows:-

“49. Effect of non-registration of documents required to be registered.— No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, or of any other law for the time being in force, to be registered shall—

(a) affect any immovable property comprised therein; or

(b) confer any power to adopt; or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.”

The aforesaid provision clearly establishes that the document relied upon by the plaintiff is neither admissible in evidence for proving transfer of immovable property nor can any right, title, or interest be claimed by the plaintiff on the basis thereof.

32. Learned counsel for the appellants argued that Defendant No. 2 executed the sale deed by taking advantage of incorrect entries in the revenue records and that entries in revenue records do not constitute proof of title. In support of the aforesaid submission, the appellants relied upon the following judicial precedents:-

1. *Smt. Shanti Devi v. District Judge, Gonda and Others*, 2024 (42) LCD 1778.
2. *Smt. Sawarni v. Smt. Inder Kaur and Others*, 1996 SCALE (6) 333.

3. *State of A.P. and Others v. M/s Star Bone Mill and Fertiliser Co.*, 2013 SCCR 285.
4. *Ram Baran v. Chief Judicial Magistrate and Others*, 2024 (42) LCD 915.
5. *Smt. Kalawati v. The Board of Revenue and Others*, 2022 (40) LCD 1051.

I have carefully and respectfully considered the aforesaid authorities cited. However, the facts and circumstances involved in the said decisions are distinguishable from the facts and circumstances of the present case. Consequently, the appellants are not entitled to derive any benefit from the aforesaid judgments of the Hon'ble Supreme Court and the Hon'ble High Court.

33. In the context of the present case, it is necessary to refer Section 35 of Indian Evidence Act, 1872 (Section 29 of Bharatiya Sakshya Adhiniyam, 2023) and the relevant presumptive clause along with the related illustration of section 114 of the Indian Evidence Act, 1872 (Section 119 of Bharatiya Sakshya Adhiniyam, 2023). Which are as under:-

Section 35 Indian Evidence Act - Relevancy of entry in public record made in performance of duty-

“An entry in any public or other official book, register, record or electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, record or electronic record is kept, is itself a relevant fact.”

Section 114 Indian Evidence Act - Court may presume existence of certain facts

“The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural

events, human conduct, and public and private business, in their relation to the facts of the particular case.”

Illustrations

The Court may presume.....

(e) That judicial and official acts have been regularly performed

.....

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it.....

.....Illustration (e):

A judicial act, the regularity of which is in question, was performed under exceptional circumstances

.....

These provisions recognize the evidentiary value of entries made in public records by public authorities in the discharge of their official duties and permit the Court to draw reasonable presumptions from the ordinary course of human conduct and official acts in relation to the facts and circumstances of a given case.

34. The Hon’ble Supreme in the case of **Partap Singh (dead) through Lrs. and others vs Sri Ram (dead) through Lrs. (2020) 11 SCC 242** has held that the presumption of truth attached to the record-of-rights can be rebutted only if there is a fraud in the entry or the entry was surreptitiously made or that prescribed procedure was not followed. It will not be proper to rely on the oral evidence to rebut the statutory presumption as the credibility of oral evidence vis-a-vis documentary evidence is at a much weaker level.

35. Although it is correct that revenue entries do not constitute conclusive proof of ownership, they undoubtedly carry substantial evidentiary value regarding possession and enjoyment of the property. A mere oral assertion that such entries are erroneous does not, by itself establish the plaintiff's title over the disputed property. If the entries were indeed incorrect, the burden lies upon the plaintiff to prove the same by the cogent evidence, which has not been discharged in the present case. Furthermore, no material has been placed on record to demonstrate that the plaintiff ever challenged the long standing revenue entries before the competent forum nor has any evidence been adduced creating doubt as thereto correctness. Consequently there exist no legal impediment in drawing the presumption that the revenue entries are genuine and correctly recorded.

36. The plaintiff has relied upon Original Suit No. 30 of 1986 instituted by Surju Prasad (husband of plaintiff) alleging that the disputed property was purchased by Smt. Ramjhari, widow of Bhagwati Prasad, through a registered sale deed dated 09.06.1945 for a consideration of Rs. 375/- and that possession was delivered pursuant thereto. It is noteworthy that while Surju Prasad was the plaintiff in Suit No. 30 of 1986 and in Original Suit No. 643 of 1994 the plaintiff is Sita Devi, wife of Surju Prasad. Thus, the pleadings in both suits emanate from persons having a common source of claim. Sita Devi claims title through her husband, whereas in the subsequent suit she has also asserted ownership on the basis of long and continuous possession over the land and the house standing thereon. The pleadings contained in the two suits are mutually inconsistent. A litigant cannot simultaneously assert ownership based on title and adverse possession. Pleas of lawful title and adverse possession are fundamentally incompatible and cannot co-exist.

37. In this regard, the Hon'ble Supreme Court in case of **Karnataka Board of Wakf v. Government of India, AIR 2004 SC 3787**, has **observed:** "Plea on title and adverse possession are mutually inconsistent

and later does not begin to operate until former is renounced. Adverse possession is hostile possession by clearly asserting hostile title in denile of title of true owner, plea of adverse possession is not a pure question of law who claims adverse possession should show-

- (a) On what date he come into possession
- (b) What was the nature of possession
- (c) Whether the factum of possession was known to other party
- (d) How long his possession continued
- (e) His possession was open and undisturbed.

A person pleading adverse possession has no equities in his favour since he is trying to defeat the right of true owner. It is for him to clearly plead and establish that all facts necessary to establish his adverse possession."

38. The Hon'ble High Court in **Putti v. Assistant Director of Consolidation, 2006 (24) LCD 1557** has held that, "Right to claim title on the basis of adverse possession is a legacy of British law. Courts should be slow to declare right on the basis of adverse possession. In case liberal approach is adopted to extend right and title on the basis of adverse possession then it may become a weapon the hands of mighty persons to acquire the property of the weaker sections of the society. Accordingly, it shall always be incumbent upon Courts close scrutiny of the evidence and material on record within the four corners of law as settled by Apex Court, discussed hereinabove. Even little reasonable doubt on the evidence relied upon by a party to claim right and title on the basis of adverse possession may be sufficient to reject such claim under a particular fact and circumstances. There shall not be presumption of continuous possession to declare right and title on the basis of adverse possession unless year to year entries made in accordance to law in the Khasra or Khatauni are proved by

cogent and trust-worthy evidence. Burden of proof of such entries shall lie, as discussed hereinabove, on the person who claims Sirdari or bhumidhari right on the basis of adverse possession. In the absence of any such proof, presumption shall be in favour of recorded tenure holder whose name has been recorded in Column-1 of the Khatauni."

39. The plaintiff has pleaded that possession was originally delivered by Thakur Prasad and that, by virtue of long-standing possession, ownership over the disputed land and the structure standing thereon has accrued. However, it is a settled principle of law that mere possession, irrespective of its duration, does not ripen into ownership unless the requirements of adverse possession are strictly established. According to the plaintiff's own case, possession was permissive in nature, having been granted by Thakur Prasad. Yet there is neither any pleading nor any evidence indicating when such permissive possession allegedly became hostile possession adverse to the true owner. In the absence of such foundational facts, the plea of adverse possession cannot be sustained.

40. **Section 54 of the Transfer of Property Act, 1882** defines a sale as a transfer of ownership in exchange for a price paid or promised. The said provision further mandates that a transfer of immovable property by way of sale must be effected through a registered instrument. In the present case, the sale deed relied upon satisfies all statutory requirements relating to execution and registration. No challenge has been raised regarding its execution or registration. The contention that the sale consideration was inadequate is a matter exclusively between the vendor and the purchaser. A third party possesses no legal right to challenge the transaction on that ground alone.

41. In **Ashokan v. Lakshmi Kutty, AIR 2007 SC 56**, the Hon'ble Supreme Court has held: "When a registered document is executed and executor are aware of the terms and nature of document, a presumption arises in regard to the correctness thereof."

42. Similarly, in **Prem Singh v. Birbal**, AIR 2006 SC 3608, the Hon'ble Supreme Court observed: "There is a presumption that a registered document is validly executed. A registered document, thereof, prima facie would be valid in law. The onus of proof would be on a person who leads evidence to rebut the presumption."

43. On behalf of the appellants/plaintiffs, it is also argued that the trial court has not considered the testimony of PW1 Ramjage (Lekhpal), who has stated that after the consolidation proceeding Gata No. 1628 become new Gata No. 658. During the trial on 16.01.2015 PW1 Ramjage was summoned by the trial court to identify the disputed land with all relevant records. This witness has stated during his testimony, that boundaries of the disputed land are same which is mentioned in the said sale deed. He further stated that in Gata No. 658 a house is constructed over it which is of Surju and his maternal grandson Raju with his family reside in this house. In this regard firstly it is important that there is no dispute between the parties regarding the identity of the disputed land and the construction thereof. It is also important that in his testimony PW1 has clearly stated that the name of Rita Devi (Defendant No. 1 in Regular suit No. 643 of 1994) is recorded as tenure holder in the Revenue Records. So far PW1's statement about the possession over the constructed house is concerned, his testimony is not considerable.

44. It is also been contended that Sita Devi widow of Suraj Prakash has executed a will deed (paper number 83Ka) in the favour of the present appellants. However the legal position in this regard is well settled and has already been discussed in para 18 of this judgment. As observed therein, Ramjhari, through whom the appellants claim to derive their title over the disputed property did not possess any transferable right or interest in the said property. Consequently no valid title could be conveyed through the alleged will deed and therefore the appellants cannot derive any benefit or claim or any right on the basis of the said will.

45. From the foregoing discussion, it is evident that the plaintiffs have failed to establish a title superior to that of Thakur Prasad, the executant of the sale deed. Accordingly, the sale deed in question cannot be treated as void or voidable against the plaintiffs, nor can its continued existence adversely affect any legally enforceable right claimed by them.

46. In view of the facts and circumstances of the case, the applicable statutory provisions, and the authoritative pronouncements of the Hon'ble Supreme Court referred to hereinabove, in the opinion of this Court the learned Trial Court, on the basis of the pleadings and assertions made by the appellants/plaintiffs, that "the plaintiff is not entitled to seek cancellation of the sale deed in question" is legally sustainable.

Consequently, Point No. 1 is decided accordingly.

47. **Point for Determination No. 2**

Whether the conclusion reached by the learned Trial Court on the basis of the pleadings made by the appellant in the plaint that "the plaintiff is not entitled to get the relief of permanent injunction" is in accordance with law.

48. Original Suit No. 30/1986 "Surju versus Thakur Prasad" was presented by the plaintiff Surju Prasad for permanent injunction, in which it has been stated that the plaintiff is the owner of the house described at the end of the plaint, which he had purchased from Smt. Ramjhari widow of Bhagwati Prasad, resident of Village Dhusah, along with other property through a registered sale deed dated 09.06.1945 for a consideration of Rs. 375/- and has been in continuous settled possession. After the death of the plaintiff of the said suit, Surju Prasad, the names of his wife Sita Devi, followed by Rajkumar Verma and Smt. Sunita Devi, were substituted as legal representatives on the basis of a registered will dated 16.07.1999 as legal representative numbers 1/1 and 1/2.

49. In the original suit, the Gata number of the disputed property was not mentioned, and through an amendment, a new Gata number 658, area measuring 0.08 decimal, and old Gata number 1628, area measuring 0.08 decimal, of the disputed property was pleaded. It was also pleaded in the plaint that the disputed property was a thatched ruin, and after purchasing the said building, the plaintiff invested his own capital to construct three rooms; the defendants have no concern with the disputed building, nor have they ever been in possession of the said building or any part of it, but on the strength of their highhandedness and hooliganism, they want to take forcible possession of the said building. For this, the defendants threatened the plaintiff on dates 06.01.1986 and 09.01.1986, information of which was given by the plaintiff at Police Station Balrampur Dehat.

50. It has been stated by the plaintiff that the disputed land is a part of old Gata number 1628, whose new Gata number is 658, area measuring 0.08 decimal. There is no mention of any Gata number or the area of the sold property in the sale deed stated by the plaintiff; moreover, two properties are mentioned in the sale deed, and both properties have different boundaries. Out of the two, which land Gata number 658 is, has neither been clearly mentioned in the plaint nor has it been stated in the oral evidence. Apart from this, the boundaries of the two properties mentioned in the disputed land are distinct, and no boundary matches with the boundary of the disputed property mentioned in the plaint. The plaintiff could not prove the fact that the property mentioned in the sale deed and the property mentioned in the plaint are one and the same. Apart from this, Khatauni of 1360 Fasli has been produced in relation to the name of Smt. Ramjhari being recorded as Sirdar in the disputed land Gata number 658 prior to consolidation (and old Gata number 1628). In the very same Fasli year, the name of Smt. Ramjhari was canceled and the name of Sundari Devi was recorded as Sirdar. The year 1360 Fasli corresponds to the year 1952 A.D., meaning that the sale deed executed by Ramjhari dated 09.06.1945 remained recorded in the name of Ramjhari as Sirdar until about 7 years later. Sirdari rights are non heritable; a

Sirdar does not have the right to transfer land. In this manner, when the execution of the sale deed was done by Ramjhari in favor of the plaintiff, at that time she did not have any right to sell Gata number 1628; meaning thereby, even if for the sake of argument it is assumed that the land mentioned in the plaint is the one mentioned in the sale deed, since Ramjhari was merely a Sirdar, she did not have the right to sell it. In this way, the sale deed stated by the plaintiff is a void document. It is also noteworthy that along with Gata number 1628 in 1360 Fasli, the name of Sundari Devi is recorded in place of Ramjhari on all Gata numbers, meaning that the name of the plaintiff was never recorded. In the copy of the Khatauni filed by the plaintiff for Fasli year 1360, there is overwriting on number 6 in Gata number 1628, and after consolidation, Gata number 1628 area measuring 0.08 decimal became the new number Gata number 658 area measuring 0.08 decimal, which after consolidation became recorded in the documents as the bhumidhari land with transferable rights of defendant Thakur Prasad. In the Khatauni attached to the file for the Fasli years 1399 to 1404, it is recorded in the name of defendant Thakur Prasad as bhumidhar with transferable rights. There is no pleading that any suit between the parties regarding the said matter is pending in the Consolidation Court. In this regard, **Section 49 of the U.P. Consolidation of Holdings Act** is perusable—

"49. Bar on the jurisdiction of Civil Courts— Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land lying in an area, for which a notification has been issued under sub-section (2) of Section 4, or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding in respect of such rights."

51. The plaintiffs ought to have made an effort to get the said land recorded in their name by instituting a suit in the Consolidation Court

regarding the old Gata number 1628, and since no objection was raised by the plaintiff during the consolidation, therefore, after the **publication of Section 52 of the U.P. Consolidation of Holdings Act**, the Civil Court does not retain any jurisdiction to accept the plaint presented by the plaintiff; meaning thereby, the claim of the plaintiffs is barred by Section 49 of the U.P. Consolidation of Holdings Act as well.

52. A pleading has been made by the plaintiffs that they have purchased the disputed property in the original suit number 30/1986 from Smt. Ramjhari, whereas in original suit number 643/1994, a statement has been made by the plaintiffs to have acquired the disputed property from defendant Thakur Prasad in the year 1950. Both pleadings are mutually contradictory. In the original suit number 30/1986, the ownership of the plaintiff has been denied by defendant Thakur Prasad in his written statement, and a pleading of being the bhumidhar himself has been made. The defendant has also stated that the name is recorded in the revenue records. The construction of the house situated on the disputed property has been stated by the respondent to have been done by himself 8-10 years ago, but no replication was given by the plaintiff to the said rebuttal, nor has any relief for declaration been prayed for in the plaint. Apart from this, in paragraph 1 of the original suit number 643/1994, the admission of the former owner Thakur Prasad regarding the disputed property Gata number 658 area measuring 0.08 decimal has been accepted by the plaintiff.

53. In this regard, **the Hon'ble Supreme Court in the case of Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L.R's and others AIR 2008 SCC 2033 has held that, "11.** The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

(11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an

injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled injunction against the rightful owner.

(11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

(11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said raise over a person's title, when some apparent defect in his title to property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has ear title supported by documents, if a trespasser without any claim title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses n his defence the details of the right or title claimed by him, which raises a serious dispute or

cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.”

54. In the case of **Jharkhand Housing Board Vs. Didar Singh and another LCD 2018(4) 2759 SC Para 11 the Hon’ble Supreme Court** has held that, “It is well settled by catena of Judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction”

55. Although the oral evidence of witnesses PW3 Talukdar and PW5 Budhai appears to establish the plaintiff's actual physical possession of the disputed property, mere possession is not synonymous with ownership. However, when Defendant No. 1 Thakur Prasad in the leading case denied the plaintiff's ownership, the plaintiff should have amended the plaint and sought the relief of declaration of ownership and consequent injunction, which the plaintiff has failed to do. Furthermore, in the consolidated case, the plaintiff has alleged Defendant No. 2 Thakur Prasad as the owner of the disputed property. As for the plaintiff's allegation of long-term possession, there is a strict standard for proving this, and the plaintiff has not clarified the date on which his possession became contrary to the rights of the actual owner and when his adverse possession rights matured. Thus, the plaintiff's own right to the disputed property is doubtful, and the defendant's right as the superior and rightful owner is established. It is a settled principle of law that protection of possession is available against persons other than the true

owner, and this protection cannot be used to nullify the legitimate rights of the true owner. Thus, the Court cannot grant the relief of a permanent injunction in favour of the plaintiff to deprive the true owner from the use and enjoyment of his property.

56. The Hon'ble High Court's decision in **Amil V. Mohd. Umar and another 2016(2) JCLR 212 (ALL) Para 9** is also noteworthy: It is settled legal position that trespasser has no right to seek injunction against the true owner, therefore even if it is accepted that facts relating to plaint are totally correct, in that case also plaintiff/appellant is not entitled to relief for permanent injunction against true owner, that is defendants/respondents; and his suit was liable to be dismissed. In the above legal systems, provision has been made for not issuing injunction against the actual owner.

57. The relief of a permanent injunction is a relief based on equity and the discretion of the court, and can only be granted to a person who has come before the court with clean hands. In this regard, the Honorable High Court's guidelines in paragraphs 7 and 8 of the case of **Daulat Ram vs. Gopal Krishna Balodi (LCD 2009, Part 2, page 1053)** are as follows:

“7. Admittedly, plot No. 40 was recorded in the name of Rajendra Dutta (father of the plaintiffs). In the plaint it is nowhere pleaded that the disputed land actually lies in plot No. 40. In a cleverly drafted pleadings of the plaintiffs, it has been mentioned that adjoining to the defendant's plot, land measuring 1½ bigha, is in possession of the plaintiffs on which there is a cow shed of the plaintiffs and which is occupied by them since 1955. Such occupation of the disputed land by the plaintiffs is specifically denied by the defendants, who have pleaded that the land in dispute is part of plot No. 15, which is recorded in the name of defendant No.1, who is in possession of the same. The fact that the disputed land is part of plot No.15, is clearly admitted by P.W.1 Gopal Krishna Balodi himself in his cross examination. He has further admitted that said plot number is recorded in the name of defendant Daulat Ram. He has further stated that he does not know whether the

disputed land lies in plot No.40 or not. Ignoring this vital admission by the plaintiffs, the trial Court has decreed the suit for injunction against the defendants and lower appellate Court has affirmed the same with the blind eyes. The lower appellate Court has further erred in law by holding that the plaintiff's title is for injunction against the defendants and lower appellate Court has affirmed the same with the blind eyes. The lower appellate Court has further erred in law by holding that the plaintiff's title is 12 of 14 (12) matured by virtue of adverse possession over the disputed land. There is neither any plea of adverse possession taken by any party nor is there any evidence of adverse possession. Even otherwise the evidence of adverse possession cannot be recorded when there is no plea of adverse possession in the pleading. As such, the findings recorded by the trial Court as well as the first appellate Court are not only perverse but against the record.

8. Learned counsel for the defendants/respondents argued that once it is concurrently found by the Courts below that the plaintiffs are in possession of the land in suit, the plaintiffs are entitled to the decree of injunction against the defendants. In this connection, reliance has been placed on behalf of the defendants/respondents to the case of Anathula Sudhakar v. P. Buchi Reddy and others. (2008) 4 Supreme Court Cases Pg. 594 and Gurunath Manohar Pavaskar and others Vs. Nagesh Siddappa Navalgund and others. (2007) 13 Supreme Court Cases Pg. 565 I have gone through said case laws. In my opinion, these do not help the plaintiffs. Had it been a case that plaintiffs after occupying the land in suit had been threatened by anyone else than the true owner, it could have been said that they were entitled to protect their possession as against them and injunction could have been granted. But in the present case, as discussed above, defendants are owners of the disputed land and they are recorded tenure holder, as such, as against the true owner by decreeing the suit for injunction, the Courts below have committed grave error of law. Injunction is a relief based on equity. When the plaintiffs have themselves occupied the land of the defendants and sought injunction by confusing the Courts by

mentioning that plaintiff's father was recorded tenure holder of plot (13) No. 40, it cannot be said that they (plaintiffs) have come with clean hands and as such, they were not entitled to the relief of injunction sought by them against the defendants.”

58. Accordingly, the plaintiff has failed to prove his title and the plaintiff has not come before the Court with clean hands and has prayed for a permanent injunction against the true owner, which cannot be granted to the plaintiff in light of the principles laid down by the Hon’ble Supreme Court and the Hon’ble High Court.

Keeping in view the above facts and circumstances and the legal pronouncement of the Hon’ble Supreme Court, this court finds regarding the conclusion reached by the learned Trial Court on the basis of the pleadings made by the appellant/plaintiff in the plaint that "the plaintiff is not entitled to get the relief of permanent injunction" is in accordance with law.

Consequently, Point No. 2 is decided accordingly.

59. **Point for Determination No. 3**

Whether the Appeal No. 28/2016 and 29/2016 are liable to be allowed?

60. In the light of the analysis made in the point for determination number 1 and 2, this court comes to the conclusion that the finding given by the Learned trial court on the core issues of the matter is proper and free from any illegality. Thus, the impugned judgment and decree which is passed after consolidating the cases i.e. regular suit number 643/1994, Sita Devi v. Rita Devi Shukla and regular suit number 30/1986, Surju v. Thakur Prasad Shukla and others passed by the learned trial court is legal and well supported by evidence and does not warrant any interference by way of appeals in hand.

(34)

Point for Determination No. 3 is accordingly disposed of after perusing the evidence which are available on record, this court is of the firm opinion that the judgment/decreed dated 19.08.2016 passed by the Trial Court requires no interference. Accordingly the appeals in hand are liable to be rejected.

ORDER

The present civil appeals number 28/2016 and 29/2016 are hereby rejected. The judgment/decreed dated 19.08.2016 passed in regular suit number 643/1994 and 30/1986 passed by Civil Judge (J.D), Balrampur is hereby confirmed.

The parties will bear their own expenses.

The copy of this judgment be kept on the file of Civil Appeal Number 29/2016.

The file of the Trial Court along with the copy of this judgment be sent to the Trial Court.

Date 30.05.2026

(Utkarsh Chaturvedi)
District Judge
Balrampur.
Code- UP 1882

Judgment is signed, dated and pronounced by me today in open court.

Date 30.05.2026

(Utkarsh Chaturvedi)
District Judge
Balrampur.
Code- UP 1882