

IN THE COURT OF CIVIL JUDGE (SR. DIV.)-III, SAHARSA

District- Saharsa

Title Suit no. 109/2015

CIS No. 530/2015

Presiding Officer: Kudus Ansari, Civil Judge (Sr.Div.)-III

Shiv Shankar Sah & Sah & another v/s Sitaram Sah & another

IN THE MATTERS OF:

1. Shiv Shankar Sah s/o Late Rajendra Prasad Sah.

2. Jai Shankar Sah s/o Late Rajendra Prasad Sah.

Both are r/o Vill-Khajuri, Tola- Sapaha, P. S.-Saurbazar,

District- Saharsa.Plaintiffs 1st Party

3. Md. Amanat Miya s/o Late Idrish Miya

R/o Vill-Khajuri, Tola- Sapaha, P. S.-Saurbazar,

District- Saharsa.Plaintiff 2nd Party

Versus

1. Sitaram Sah s/o Late Dhani Sah.

2. Veena Devi w/o Late Kusheshwar Sah.

3. Gaurav Kumar s/o Late Kusheshwar Sah.

4. Sudarshan Kumar s/o Late Kusheshwar Sah.

5. Neetu Kumari d/o Late Kusheshwar Sah.

6. Kameshwar Sah s/o Late Dhani Sah.

7. Shiv Kumar Sah s/o Kameshwar Sah

8. Nasiw Sah s/o Late Kameshwar Sah.

9. Santosh Sah s/o Late Kameshwar Sah.

10. Rekha Devi d/o Sitaram Sah.

11. Mamta Kumari d/o Sitaram Sah.

12. Pratibha Kumari d/o Sitaram Sah.

13. Vinod Sah s/o Late Dinesh Sah.

14. Radhey Shyam Sah S/o Late Dinesh Sah.

15. Veena Kumari d/o Late Dinesh Sah.

16. Ratan Kumari d/o Late Dinesh Sah.

17. Rambha Kumari @ Punam Devi d/o Late Dinesh Sah.

18. Leela Devi d/o Late Dinesh Sah.

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- 19.Mosmt. Hazari Devi w/o Late Dinesh Sah.
- 20.Jaya Devi d/o Late Dhani Sah.
- 21.Maniya Devi d/o Late Dhani Sah.
- 22.Shailendra Sah s/o Late Awadh Sah.
- 23.Suresh Sah s/o Late Awadh Sah.
- 24.Ramesh Sah s/o Late Awadh Sah.
- 25.Mahesh Sah s/o Late Awadh Sah.
- 26.Ravi Shankar Sah s/o Mahesh Sah.
- 27.Shashi Bhushan Kumar s/o Mahesh Sah.
- 28.Munni Kumari d/o Shailendra Sah.
- 29.Pappu Kumar s/o Shailendra Sah.
- 30.Amrendra Sah s/o Shailendra Sah.
- 31.Santosh Sah s/o Shailendra Sah.
- 32.Amrendra Sah s/o Suresh Sah.
- 33.Arjun Sah s/o Suresh Sah.
- 34.Abhishek Sah s/o Ramesh Sah
- 35.Avinash Sah s/o Ramesh Sah
- 36.Rajeshwari Devi @ Rajiya Devi d/o Late Awadh Sah.

All of above are r/o Vill-Khajuri, Tola- Sapaha,

P. S.-Saurbazar, District- Saharsa.Defendants

Ld. Counsel for Plaintiffs:- Mr. Awadhesh Kr. Verma, Ld. Adv.

Ld Counsel for Defendants:- Mr. Abhay Kumar Singh, Ld. Adv.

Date of Judgment: - 06th August 2026

Present: - Kudus Ansari

Civil Judge (Sr Div.)-III, Saharsa

JUDGEMENT

1. This is a suit for declaration of right, title and possession over the suit land

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mentioned in schedule no.-A and B of the plaint and further permanent injunction against defendants in respect to the suit land.

2. The description of the suit land as per schedule-A and B of the plaint.

Schedule No.-A

Mauja	Khata	Khesra	Area Katha-dhur- dhurki
Khazuri	494 old 648 new	213 old 630 new	01 - 11 - 10

Schedule No.-B

Mauja	Khata	Khesra	Area Katha-dhur- dhurki
Khazuri	494 old 417 new	213 old 628 new 629 new	00 - 15 - 10 01 - 15 - 10
		Total	02 Katha 11 dhur

3. **The plaintiffs’ case:-** The plaintiffs’ case in brief is that the land appertaining to old Khata no. 494, old Khesra no. 213 measuring 08 katha 05 dhur was recorded in the name of Majlum Miya s/o Gena Miya, Rafid Miya @ Rafiq Miya and Zamurat Miya both are sons of Jahuri Miya in the Cadastral Survey Khatian and they were having possession over the same.

Som Miya had two wives namely Rabiya and Gaini. Jahuri Miya was the son of the first wife of Som Miya. Jahuri Miya had two sons namely Rafid Miya @ Rafiq Miya and Zamurat Miya. Rafid Miya @ Rafiq Miya has one son named Ganimat @ Galamat Miya, and Zamurat Miya has two sons namely Awul Miya and Jawul Maya. Rahim Miya, Surat Miya and

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Liyakat Miya were sons of Gaini, second wife of Som Miya. Rahim Miaya had one son named Akin Miya who had died issueless. Surat Miya had one son named Khantar Miya who had also died issueless. Liyakat Miya had died issueless. Majlum Miya had four sons namely Muslim Miya, Taslim Miya, Gafur Miya and Israel Miya. Majlum Miya s/o Gaina Miya, Rafid Miya @ Rafiq Miya and Zamurat Miya both are sons of Jahuri Miya who had executed sale deed no. 3228 dated 04.04.1959 in favour of Dhani Sah and Awadh Sah both are sons of Bhagalu Sah in respect to 04 katha 02 dhur 10 dhurki land from the northern side out of 08 Katha, 05 dhur land appertaining to old khesea no.213. Rest 04 katha 02 dhur 10 dhurki land under old Khesra no. 213 from southern side which remained in the possession of Majlum Miya and others.

4. Partition has taken place between Majlum Miya, Rafid Miya @ Rafiq Miya and Zumrat Miya, and 04 katha 02 dhur 10 dhurki land under old Khesra no. 213 was given to Rafid Miya @ Rafiq Miya and Zamurat Miya as their share. Other land was given to the family of Majlum Miya as his share, therefore, Majlum Miya has no concern with the land under Khesra no.213. Again, partition has taken place between Rafid Miya @ Rafiq Miya and Zamurat Miya in respect to 04 katha 02 dhur 10 dhurki land under old Khesra no. 213 and both got equal share. Zamurat Miya has executed a sale deed no.7470 dated 15.04.1978 for his half share in Khesra no.213 in favour of Awul Miya and Jawul Miya. Purchaser Awul

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Miya and Jawul Miya have executed sale deeds no.18708 and 18709 dated 28.12.1983 for their purchased land dated 15.04.1978 in favour of plaintiffs 1st party and plaintiffs have constructed their house over the same. After death of Rafid Miya @ Rafiq Miya, his only one son named Ganimat Miya @ Galamat Miya has sold his share under old Khesra no.213 to Md. Amanat Miya plaintiff 2nd party. Defendants are having possession over 04 Katha 02 dhur from the northern side and plaintiff 1st party are having possession over 04 Katha 02 dhur from the southern side out of 08 Kath 10 dhur land appertaining to old Khesra no.213. Zamurat Miya and Galamat Miya were illiterate persons and due to which they were not aware about the Revisional Survey, therefore they have not filed any objections against entry for new Khesra no.628 and 629 of Revisional Survey Khatiyani. The plaintiffs were also not aware about the map and entry in revisional survey khatiyani and they have purchased 04 Katha 02 dhur 10 dhurki land appertaining to old Khesra no.213, new Khesra no.628 and 629 and constructed their house. There was no any dispute till 08.10.2014 and they were having peaceful possession their purchased land under old Khesra no.213. Suddenly, on 08.12.2014 defendants namely Ramesh Sah, Suresh Sah, Mahesh Sah, Shailesh Sah and Sitaram Sah along with anti-social elements arrived to the house of plaintiffs and started digging soil for fixing pillars and raising wall, when plaintiffs objected, defendants ready to assault, then people of vicinity have

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mitigated the matter. Thereafter, disputed land was measured on 10.12.2014 by Amin in presence of *sarpanch* of *Gamhariya* Panchayat. After measurement, it was proved that new Khesara no.628 contained 15 dhur 10 dhurki land which is not as per khatiyani. It has also been surfaced that new khesra no.629 contained 01 katha 15 dhur 10 dhurki but it should be 02 Katha 01 dhur i.e 09 decimal. It has also come out at the time of measurement that Dhani Sah and Awadh Sah had sold 10 dhur land under old khesra no.213 to Laxmi Sah through sale deed no.8793 dated 09.08.1962 and purchaser was in possession over the same. Madhav Sah grandson of Laxmi Sah has produced his sale deed at the time of measurement. Madhav Sah has also shown his revisional survey which shows that New Khesra no.663 was created for 09 decimal of land which was purchased by Laxmi Sah. It has also been come out that new khesra no. 630 contained 05 katha 05 dhur land whereas defendants have purchased only 04 katha 02 dhur and 10 dhurki land by sale deed dated 04.04.1959 and defendants had sold out 10 dhur land to Laxmi Sah in the year 1962 and only 3 katha 12 dhur and 10 dhurki land was remained with defendants. Plaintiffs have made a complaint before S.D.O. Saharsa on 26.12.2014 and the same was registered as miscellaneous case no. 948/2014 u/s 144 Of Cr.P.C. After hearing both the parties, it was ordered by S.D.O. Saharsa that question of title is involved which is out of the purview of section 144 of Cr.P.C. Plaintiffs are having possession over the

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suit land which is mentioned in schedule-A of the plaint.

5. Written statement of defendants:- Besides the objection relating to maintainability, limitation, waiver, acquiescence, mis-joinder and non-joinder of necessary party, the defendants had denied the case of plaintiffs and stated in their written-statement that the suit land belongs to the defendants and the defendants have got full rights, title, interest and possession over the suit land. The true fact is that defendants are the descendants of Bhagalu Sah who had two sons namely Dhani Sah and Awadh Sah. Descendants of Dhani Sah are defendants no.1 to 21 and descendants of Awadh Sah are defendants no.22 to 36. On 18.02.1957 Bhagalu Sah had purchased 08 Katha 01 dhur land appertaining to old Khata no.494 old Khesra no.213 along with land under old Khata no.410, old Khesra no.907 and 1207 from Zamurat Miya and Rafid Miya both sons of Jahuri Miya, and they are in possession over their purchased land. Dhani Sah and Awadh Sah both sons of Bhagalu Sah had sold out 02 Katha 02 dhur and 10 dhurki land appertaining to old Khata no.494 Khesra no.213 to Zamurat Miya and Rafid Miya both are sons of Jahuri Miya on 04.04.1959, and on same day Zamurat Miya and Rafid Miya both are sons of Jahuri Miya and Majlum Miya s/o Gena Miya had executed registered sale deed no.3228 for the 04 Katha 02 dhur and 10 dhurki in favour of Dhani Sah and Awadh Sah both are sons of Bhagalu Sah. Therefore, defendants got total 09 Katha 12 dhur land under old Khata

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no.494 old Khesra no.213. In revisional survey, old Khesra no.213 was carved out into new Khesra no.628, 629 and 630 and khatiyani was prepared for new Khesra no.628, 629 and 630 in the name of defendants. Defendants are getting rent receipt after payment of rent for above said land. Defendants Shailendra Sah and Suresh Sah descendants of Bhagalu Sah have constructed their houses on other land, and rest defendants are residing over the suit land after construction of their house. The plaintiffs have no concern with the suit land. Defendants are having possession over the suit land since the date of purchase.

6. Points for Determinations (issues):- On the basis of rival contentions and points of variance the following issues were framed:-

1. Whether the suit as framed is maintainable ?
2. Whether plaintiffs have got any cause of action to file the suit ?
3. Whether the suit is barred by law of limitation ?
4. Whether the plaintiffs have filed sufficient court fee ?
5. Whether the suit is suffering from mis-joinder or non-joinder of parties ?
6. Whether the plaintiffs have right, title and possession over the suit land mentioned in plaint ?
7. Whether the plaintiffs are entitled to get a decree for permanent injunction against the defendants in respect to the suit land ?
8. Whether the plaintiffs are entitled to get decree as prayed for ?

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9. Whether the plaintiffs are entitled to get any other relief or reliefs ?

7. Plaintiff Evidence (oral evidence)

PW-1, Sanjay Kumar.

PW-2, Awul Miya.

PW-3, Shiv Shankar Sah.

PW-4, Sikandar Yadav.

PW-5, Shayamal Kishor.

PW-6, Lalan Yadav.

PW-7, Ganga Jha.

PW-8, Shiv Kumar Sah.

PW-9, Kiran Kumari.

PW-10, Madhav Kumar

Documentary Evidence:-

Ext.-1, Rent receipt no.24538 for the year 1984-85.

Ext.-1/a, Rent receipt no.579369 for the year 1993-94.

Ext.-1/b, Rent receipt no.567543 for the year 1998-99.

Ext.-1/c, Rent receipt no.628035 issued on 21.01.2015.

Ext.-2, Original sale deed no.18708 dated 28.12.1983.

Ext.-2/a, Original sale deed no.18709 dated 28.12.1983.

Ext.-2/b, Original sale deed no.16213 dated 14.10.1981.

Ext.-2/c, Certified copy of sale deed 7470 dated 15.04.1978.

Ext.-3, Certified copy of Revisional Khatiyan of Khata no. 648.

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Ext.-3/a, Certified copy of Revisional Khatiyani of Khata no.417.

Ext.-4, Certified copy of sale deed no.3228 dated 04.04.1959.

Ext.-5, Amin Report.

Ext.-6, Trace map of old map.

Ext.6/a, Trace map of new map.

Ext.-7, 7/a, 7/b and 7/c Field book

Ext.-8, Certified copy of order dated 26.02.2015 passed by S.D.O. Saharsa in Case no. 948/2014 u/s 144 of Cr.P.C.

Ext.-9, Writ issued to advocate commissioner for physical verification of suit land.

Ext.-10, Notice to advocate of plaintiffs sent by advocate commissioner.

Ext.-11, Report of Advocate commissioner.

Ext.-12, Order sheet from 18.12.2015 to 12.01.2016 of Advocate commissioner.

Ext.-13, original sale deed no.8793 dated 09.08.1962.

8. Evidence adduced by the Defendants (oral evidence):-

DW-1, Suresh Sah.

DW-2, Hareram Sah.

DW-3, Ranjan Yadav.

DW-4, Suraj Kumar.

DW-5, Mahesh Kumar.

Documentary evidence:-

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Ext.-A, Original sale deed no. 10960 dated 18.12.1957.

Ext.-A/1, Certified copy of sale deed no.3222 dated 04.04.1959.

Ext. A/2, Original sale deed no.3228 dated 04.04.1959.

Ext.- A/3, Original sale deed no.8792 dated 09.08.1962.

Ext.-A/4, Original sale deed no.6360 dated 11.05.1961.

Ext.-A/5, Original sale deed no.2071 dated 14.02.1958.

Ext.-B, Revenue rent receipt No.578433 for the year of 2015-16.

Ext.-C, Application for information no.3520/57.

Ext.-C/1, Application for information no.4406/57.

Ext.-D, Revisional Survey (Raiyati) Khatiyani of Kata no.648.

Ext.-E, Raiyati Khatiyani in the name of Dhaneshwar Sah

Ext.-F, Certified copy of order dated 25.02.2015 passed by S.D.O. in case no. 948/2014 u/s 144 of Cr.P.C.

FINDINGS

9. Issue No. 6:- “(6) Whether the plaintiffs have right, title and possession over the suit land mentioned in plaint ?

This issue is core issue involved in this case, hence dealt firstly. Here, the claim of right and title of plaintiffs over the suit land is based on sale deeds no.18708 and 18709 dated 28.12.1983 in favour of plaintiffs 1st party by Awul Miya and Jawul Miya and sale deed executed by Ganimat Miya @ Galamat Miya in respect to his share under old Khesra no.213 in

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favour of Md. Amanat Miya plaintiff 2nd party.

As per plaint, the case of plaintiffs is that disputed land appertaining to old Khata no. 494, old Khesra no. 213 measuring 08 katha 05 dhur was recorded in the name of Majlum Miya s/o Gena Miya, Rafid Miya @ Rafiq Miya and Zamurat Miya both are sons of Jahuri Miya in the Cadastral Survey Khatiyon. Zamurat Miya had executed sale deed no.7470 dated 15.04.1978 in respect to his land under Khesra no.213 in favour of Awul Miya and Jawul Miya. Purchaser Awul Miya and Jawul Miya have executed sale deeds no.18708 and 18709 dated 28.12.1983 for their purchased land dated 15.04.1978 in favour of plaintiffs 1st party and plaintiffs 1st party have constructed their house over the same. After death of Rafid Miya @ Rafiq Miya, his only one son named Ganimat Miya @ Galamat Miya has sold his share under old Khesra no.213 in favour of Md. Amanat Miya plaintiff 2nd party.

In order to prove their rights, title and possession over the suit land the plaintiffs have produced certified copy of sale deed no.7470 dated 15.04.1978 which has been marked as Ext.-2/c. From perusal of the recital of Ext.-2/c it transpires that Zamurat Miya s/o Jahuri Miya executed sale deed in favour of Awul Miya and Jawul Miya for 01 Katha 19 dhur land appertaining to old Khata no.494 old Khesra no.213. Plaintiffs have also produced original sale deeds no.18708 and 18709 dated 28.12.1983 which have been marked as Ext.-2 and 2/a respectively. From perusal of Ext.-2

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and 2/a it transpires that Awul Miya and Jawul Miya executed sale deeds no.18708 and 18709 for 4.50 decimal land each under old Khata no.494 new Khata no.417, old Khesra no.213 new Khesra no.628 and 629 in favour of Shiv Shankar Sah and Jai Shankar Sah, plaintiff no.1 and 2 respectively. Plaintiff no.3 claimed that Ganimat Miya @ Galamat Miya s/o Rafiq Miya had executed sale for his share under old Khesra no.213 in favour of Md. Amanat Miya plaintiff no.3 of this case. He has produced original sale deed no.16213 dated 14.10.1981 which has been marked as Ext.-2/b. From perusal of the recital of Ext.-2/b it transpires that Ganimat Miya @ Galamat Miya s/o Rafik Miya had executed sale deed for his share under old Khesra no.213, new Khesra no.628 and 629 in favour of Md. Amanat Miya plaintiff no.3 of this case. Ext-1 to 1/c is rent receipts. It is settled principle of law that rent receipts are not the documents of title, it can be used only for corroborating the evidence. Ext.-5 is Amin Report, Ext.-6, 6/a are Trace map of old and new map, Ext.-7, 7/a, 7/b and 7/c are field book of pleader commissioner, whereas Ext.-9, 10,11 and 12 are writ issued to advocate commissioner for physical verification of suit land, notice to advocate of plaintiffs sent by advocate commissioner, report of advocate commissioner and order sheet from 18.12.2015 to 12.01.2016 of advocate commissioner respectively. These exhibits are not documents of title, therefore these are not relevant for deciding the issue involved in this case. Ext.-8, is certified copy of order dated 26.02.2015

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passed by S.D.O. Saharsa in Case no. 948/2014 u/s 144 Of Cr.P.C. in which it was said that there is question of title involved and parties may approach to competent court. So far as exhibit-13 is concerned, from perusal of recital of Ext.-13, it transpires that sale deed was executed by Dhani Sah and Awadh Sah in favour of Laxmi Sah, but neither Laxmi Sah is party nor this sale deed is under question in this case. Therefore, Ext.-13 is not helpful to decide whether plaintiffs have right and title over the suit land.

10. To prove their case, plaintiffs have also examined altogether 10 witnesses and out of them PW-1, PW-4, PW-5, PW-6, PW-7 and PW-10 are formal witnesses. Plaintiff no.1 is examined as PW-3 who has deposed in his examination in chief that he and his brother Jai Shankar Sah along with Md. Amanat Miya have filed this case. The land appertaining to old Khata no.494, old Khesra no.213 measuring 08 katha 05 dhur was recorded in the name of Majlum Miya s/o Gena Miya, Rafid Miya @ Rafik Miya and Zamurat Miya both are sons of Jahuri Miya in Cadastral Survey Khatian. Further, this witness has stated whole story of plaint in his chief examination. Therefore, the cross examination of this witness becomes important piece of evidence. In cross examination this witness has stated that disputed land is 4 katha 02 dhur and 10 dhurki appertains to old Khata no.494, old Khesra no.213 and new Khesra no.628, 629 and 630. Further, stated that defendants have purchased 04 katha 2 dhur 10 dhurki land from

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Majlum Miya and Zamurat Miya in 1959. He has no knowledge about the purchase of land in 1957 by the defendants. Even he does not know that Zamurat Miya and Rafidf Miya have purchased land through sale deeds no. 3222 dated 04.04.1959. PW-2 Awul Miya, who has executed sale deeds no.18708 and 18709 in favour of plaintiff no.1 and 2, deposed in his examination-in-chief in the same line of PW-1. In cross examination he deposed that he is illiterate person. He does not have any land. He has no knowledge about mutual family partition. Even he does not know that when revisional survey was completed. This witness is admitted in para-22 of his cross examination that Majlum Miya, Rafiq Miya and Zamurat Miya have executed sale deed in favour of Dhani Sah and Awadh Sah. In para-24 he deposed that sale deed in the year 1983 was not executed in his presence. In para-25 he deposed that he has no knowledge about new Khatiyani of suit land. This witness has admitted in para-27 of his cross examination that his father and uncle had executed sale deed in favour of Awadh Sah in 1959. PW-8 is Amin who has measured the suit land. He deposed in his chief examination that he has measured the suit land on request of local *Sarpanch* and in-charge of Baijnathpur O.P. in presence of the villagers. PW-9 is pleader commissioner who has inspected the physical feature of suit land.

On the other hand, defendants contended that Bhagalu Sah had purchased 08 Katha 01 dhur land appertaining to old Khata no.494 old

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Khesra no.213 along with land under old Khata no.410, old Khesra no.907 and 1207 from Zamurat Miya and Rafiq Miya sons of Jahuri Miya through sale deed no. 10960 dated 18.12.1957 and they are in possession over their purchased land. To prove their version, defendants have produced original sale deed no.10960 which has been marked as Ext-A. From perusal of the recital of Ext-A, it transpires that sale deed was executed by Rafid Miya and Zamurat Miya s/o Jahuri Miya in favour of Bhagalu Sah for 01 bigha, 08 katha 09 dhur including 08 Katha 01 dhur land under old Khata no.494, old Khesra no.213 along with land under old Khata no.410, old Khesra no.907 and 1207. Plaintiffs have not challenged this sale deed.

Further defendants have also contended that Dhani Sah and Awadh Sah sons of Bhagalu Sah had sold out 02 Katha 02 dhur and 10 dhurki land appertaining to old Khata no.494 Khesra no.213 to Zamurat Miya and Rafid Miya sons of Jahuri Miya on 04.04.1959 and on the same day Zamurat Miya and Rafid Miya sons of Jahuri Miya and Majlum Miya s/o Gena Miya had executed registered sale no.3228 for the 04 Katha 02 dhur and 10 dhurki in favour of Dhani Sah and Awadh Sah sons of Bhagalu Sah. To prove this fact, defendants have produced certified copy of sale deed no. 3222 dated 04.04.1959 and original sale deed no.3228 dated 04.04.1959. Both the sale deeds have been marked as Exhibit-A/1 and A/2 respectively. From perusal of the recital of Exhibit-A/1 it transpires on

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04.04.1959 Dhani Sah and Awadh Sah sons of Bhagalu Sah executed sale deed in favour of Zamurat Miya and Rafid Miya sons of Jahuri Miya for 02 katha 11dhur and 10 dhurki land under old Khata no. 494 old Khesra no.213 along with other land of old Khata no.410, Khesra no.907 and old Khata no.496, Khesra no.208. It also transpires from perusal of recital of Ext-A/2 that on 04.04.1959 Majlum Miya s/o Gena Miya, Rafid Miya and Zamurat Miya sons of Jahuri Miya have executed sale deed in favour of Dhani Sah and Awadh Sah sons of Bhagalu Sah in respect to 04 Katha, 02 dhur and 10 dhurki land appertaining to old Khata no.494, Khesra no.213. Ext.-E is Raiyati Khatian of *Saabit* Khata no.494 which is existing in the name of Dhaneshwar Sah and Awadh Sah who are ancestors of defendants. Ext.-F is certified copy of order dated 25.02.2015 passed by S.D.O. in case no. 948/2014 u/s 144 of Cr.P.C. in which it was held that there is question of title involved in this matter. Ext.-C and C/1 are applications for information which show that old Khata no.494 was converted into new Khata no.417, and new Khesra no.628 and 629 carved out from old Khesra no.213. Ext.-B is rent receipt which is issued after filing of this suit. So far as Ext.A/3, A/4, A/5 and Ext.- D are concern, these exhibits are not related to suit land.

Defendants have also examined altogether Five witnesses, out of them DW-5 is formal witness. DW-1 who is defendants no.23 deposed in his examination-in-chief that his ancestor Bhagalu Sah had purchased 8 katha

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01 dhur land in 1957, thereafter, Dhani and Awadh Sah had sold 02 katha 11 dhur 10 dhurki land and on same day again purchased 04 katha 02 dhur 10 dhurki land, therefore they are having title and possession over 09 katha 12 dhur land under old Khata no.494 old Khesra no.213. In cross examination he deposed that Awadh Sah has four sons namely Shailendra Sah, Suresh Sah, Ramesh Sah and Mahesh Sah, and Awadh Sah is son of Bhagalu Sah. Disputed land is appertaining to old Khata no.494, Khesra no.213. Further he deposed in para-5 that in 1957 his father had purchased 8 katha 01 dhur land under old Khata no.213. The land of old Khesra no.214 is situated in the north old Khesra no.213. He has no knowledge that how much land his family has purchased under old Khesra no.214. Further, in para-14 he deposed that on 04.04.1959 his father had returned 02 katha 11 dhur and 05 dhurki land to seller and on same day again his father had purchased 04 katha 02 dhur 10 dhurki land under old Khesra no.213. DW-2 deposed in his examination-in-chief that he knows plaintiffs and defendants of this case. Defendants are having possession over the suit land. In cross examination he deposed that Shiv Shankar Sah and Jai Shankar Sah are plaintiffs in this case and their houses are not situated over suit land. This witness has deposed in para-9 that he has not seen the documents of title, but on basis of possession of the defendants, he is saying that defendants are having title over the suit land. DW-3 has supported the case of plaintiffs in his chief examination, but in cross-

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examination he deposed that he has no knowledge of Khata-Khesra and Mauza of suit land. DW-4 deposed in his chief examination that he knows the defendants and plaintiffs of this case. Defendants are having house over the suit land, and they are residing over the same with their families. He is seeing possession of defendants over the suit land since his childhood and plaintiffs have no concerns about the suit land. In cross examination he deposed that house has been constructed in 06 Katha out of 8 katha 5 dhur land. He further deposed that he does not know the Khata and Khesra number of suit land.

The main contention of the plaintiffs is that they have purchased the suit land from Awul Miya and Jawul Miya sons of Zamurat Miya, and Ganimat Miya @ Galamat Miya s/o Rafik Miya through registered sale deed. So, the title of vendors of plaintiffs is key factor in the light of settle principle of law that 'no one can transfer a better title than he himself has'. As per case of plaintiffs, the vendors of plaintiff no.1 and 2 have got their title through sale deed no. no.7470 dated 15.04.1978 executed by Zamurat Miya in favour of Awul Miya and Jawul Miya, which has been marked as Ext.-2/c. Now question is that Zamurat Miya was having title and right to execute sale deed for the land under old Khata no.494 Khesra no.213. From perusal of sale deed no.10960 dated 18.12.1957 which has been marked as Exhibit-A. From perusal of the recital Exhibit-A it transpires that sale deed was executed by Rafid Miya and Zamurat Miya

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s/o Jahuri Miya in favour of Bhagalu Sah for 01 bigha, 08 katha 09 dhur including 08 Katha 01 dhur land under old Khata no.494, old Khesra no.213 along with land under old Khata no.410, old Khesra no.907. It is pertinent to mention here that defendants are descendants of Bhagalu Sah. Moreover, from perusal of the recital of exhibit-A/1, it transpires on 04.04.1959 Dhani Sah and Awadh Sah sons of Bhagalu Sah executed sale deed in favour of Zamurat Miya and Rafid Miya sons of Jahuri Miya for 02 katha 11 dhur and 10 dhurki land under old Khata no. 494 old Khesra no.213 along with other land of old Khata no.410, Khesra no.907 and old Khata no.496, Khesra no.208. It also transpires from perusal of recital of Exhibit-A/2 that on 04.04.1959 Majlum Miya s/o Gena Miya, Rafid Miya and Zamurat Miya sons of Jahuri Miya have executed sale deed in favour of Dhani Sah and Awadh Sah sons of Bhagalu Sah in respect to 04 Katha, 02 dhur and 10 dhurki land appertaining to old Khata no.494, Khesra no.213. It is crystal clear from the perusal of Ext.- A, A/1 and A/2 that Rafiq Miya @ Rafiq Miya and Zamurat Miya had sold out their entire land under old Khata no.494 Khesra no.213 through sale deeds no.10960 and 3228 dated 18.12.1957 and 04.04.1959 respectively in favour of Bhagalu Sah, Dhani Sah and Awadh Sah, and defendants are descendants of Bhagalu Sah, Dhani Sah and Awadh Sah. These sale deeds i.e. Ext.-A and A/2 are within the knowledge of plaintiffs but same have not been challenged same. Moreover, PW-2 Awul Miya who is one of the vendors

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of plaintiff no.1 and 2, admitted in para-22 of his cross examination that Majlum Miya, Rafik Miya and Zamurat Miya have executed sale deed in favour of Dhani Sah and Awadh Sah. Further, this witness has admitted in para-27 of his cross examination that his father and uncle had executed sale deed in favour of Awadh Sah in 1959.

It is crystal clear from perusal of exhibit-A, A/1 and A/2 that entire suit land under old Khata no.494, Khesra no.213 was sold out by the Rafid Miya and Zamurat Miya sons of Jahuri Miya, and Majlum Miya s/o Gena Miya through registered sale deed no. 10960 and 3228 dated 18.12.1957 and 04.04.1959 respectively in favour of Bhagalu Sah and his sons namely Dhani Sah and Awadh Sah whose descendants are defendants in the instant case.

11.The rule is stated by Wills J. in Whistler v. Forster (1863) 14 C.B.N.S. 257-258 as follows:- “The general rule of law is undoubted, that no one can transfer a better title than he himself possesses: Nemo dat quod non habet”. Similar is the situation in the instant case. It has been stated by the plaintiffs that Zamurat Miya executed sale deed in favour of Awul Miya and Jawul Miya, thereafter, Awul Miya, Jawul Miya and Galamat Miya @ Ganimat Miya have executed sale deed in favour of Shiv Shankar Sah, Jai Shankar Sah and Md Amanat Miya plaintiff no.1, 2 and 3 of this case but the plaintiffs have failed to prove that the executants, of sale deeds no. 7470, 18708, 18709 and 16213 dated 15.04.1978, 28.12.1983 and

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14.10.1981 respectively, were having perfect and valid title over the suit land and right to execute sale deed. It is the duty of the plaintiffs to prove the chain of title or genesis of title so as to establish that they have not purchased a bag of wind. From the aforesaid discussion, it appears that the plaintiffs have miserably failed to prove the chain of their title as well as the title of the vendor for the purpose of this suit.

The initial burden of proof would be on the plaintiff in view of Section 101 of the Evidence Act, which reads as under:- "**Sec. 101. Burden of proof.** Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person." In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it. Pleading is not evidence, far less proof. In the instant case the burden to prove that the suit land was validly acquired by Awul Miya, Jawul Miya and Galamat Miya @ Ganimat Miya, lies on plaintiffs and the plaintiffs have not proved the same by any positive evidence. There must be some positive evidence to prove the existence of the aforesaid facts. The documentary as well as oral evidence produced on behalf of plaintiffs regarding title and possession of the suit land has been a very weak piece of evidence, in comparison to the oral as well as

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documentary evidence produced on behalf of the defendants. Hence, the evidence produced on behalf of plaintiffs are not cogent & convincing enough to decree the suit in their favour. Hence the issue no. 6 is answered in negative and accordingly, this issue is decided against the plaintiffs.

12.Issue no.7:- “(7). Whether the plaintiffs are entitled to get a decree for permanent injunction against the defendants in respect to the suit land ?

For granting relief of permanent injunction, it is expedient to prove the exclusive title over the land for which the relief of permanent injunction has been sought. From the oral and documentary evidence of the plaintiffs coupled with the documentary and oral evidence of the defendants and in the light of findings of issue No.6, it appears that the plaintiffs have miserably failed to prove that they have absolute title over the suit land and when the title of the plaintiffs have not been proved as per the requirement of law, then the permanent injunction could not be granted in the favour of the plaintiffs. Consequently, for the reasons as discussed above, the issue no.7 is answered in negative and against the plaintiffs.

13.Issues No.3 :- “(3) Whether the suit is barred by law of limitation ?

14.The burden to prove these issues was on the defendants but they have not pressed these issues before the court. From perusal of pleading as well as documentary and oral evidence, no where it comes out that this suit is

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barred by limitation, therefore, it appears to be ornamental as no evidence has been adduced by the defendants to prove this issue. Consequently, this issue is accordingly answered in negative and in favour of the plaintiffs.

15.Issue no.5:- “(5). Whether the suit is suffering from mis-joinder or non-joinder of parties?

The burden to prove this issue was on the defendants but they have not pressed this issue before the court. From the pleading as well as documentary and oral evidence, no where it comes out that this suit is suffering from mis-joinder and non-joinder of parties. Consequently, this issue is accordingly answered in negative and in favour of the plaintiffs.

16.”(4). Whether plaintiffs have filed sufficient court fee ?

In para-20 of the plaint, the plaintiff has valued the suit as Rs.100/- and accordingly paid the court fee. The defendant has denied the proper valuation of the suit in her written statement and made an omnibus allegation that the plaintiff has not paid the Court fee after proper valuation of the suit. The value of the suit has not been asserted by the defendant. Further, the defendant has not adduced any evidence in this regard. This issue has not been pressed by either parties to the suit, in the course of proceedings of this case. Hence this issue no.5 is decided in favour of the plaintiff.

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17.Issues No.1, 2, 8 & 9:- “(1) Whether the suit as framed is maintainable ?

“(2). Whether plaintiffs have got any cause of action to file this suit ? “(8).

Whether the plaintiffs are entitled to get decree as prayed for ? “(9).

Whether the plaintiffs are entitled to get any other relief or reliefs ?

As the plaintiffs have failed to prove the main issue that is issue no.6 of this suit. Hence it can be said that the plaintiffs have no valid cause of action to file this suit for declaration of their rights, title possession over the suit land mentioned in schedule no. A, and B of the plaint and permanent injunction against defendants in respect to the suit land, and the suit as framed and filed is not maintainable. Consequently, the plaintiffs are not entitled to get any relief. Hence these issues are answered in negative and decided against the plaintiffs.

18.In the result, it is therefore

ORDERED

That the Suit be and same is dismissed on contest without cost.

Decree shall be drawn accordingly.

(Kudus Ansari)

Civil Judge (Sr Div.)-III, Saharsa

06.08.2026

Certified that the judgment is typed, corrected and pronounced in the open

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Court by me on this 06th Day of August 2026.

(Kudus Ansari)

Civil Judge (Sr. Div.)-III, Saharsa

06.08.2026