

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Second Appeal No. 75 of 2003

Smt. Padda Devi	...	...	Appellant
	Versus		
Jhagru Mahto & Ors.	...	...	Respondents

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant	: Mr. K.K. Ambastha, Advocate
For the Respondents	: Mr. Arun Kumar, Advocate

29/10th September 2025

1. Learned counsel for the parties are present.
2. Learned counsel for the appellant has submitted that he does not want to press the additional substantial question of law, as proposed by the appellant which has been filed on a sheet of paper on 01.08.2025.
3. This appeal has been filed against the judgment dated 20.12.2002 (decree signed on 10.01.2003) passed by the learned Additional District Judge-XI, Dhanbad in Title Appeal No. 42 of 2001, whereby the appeal has been partly allowed. The learned trial court's judgment is dated 09.08.2001 (decree signed on 21.08.2001) passed by the learned Munsif-II, Dhanbad in Title Suit No. 104/97.
4. The suit was filed seeking a declaration that the registered sale deed no. 1676 dated 18.03.1996 and 5065 dated 10.08.1996 are null and void, collusive, manufactured and without consideration and for declaration of right, title and interest of the plaintiff with respect to Schedule-C, Schedule-D and Schedule-B properties. A relief was also prayed that if the plaintiff is found dispossessed from the suit property, the relief for recovery of possession be granted and a permanent injunction be issued against the defendants.

5. The case of the plaintiff was that the land under Mouza no. 320, Khata No. 22 including plot no. 140 was originally recorded in the name of Gopal Singh, S/o Teju Singh in the cadastral survey khatian;

Gopal Singh died leaving behind his two sons, namely, Guman Singh and Trishul Singh;

Guman Singh died leaving behind his widow Churamani Devya having no issue.

Trishul Singh died leaving behind two sons, Murlidhar Singh and Chakradhari Singh.

Murlidhar Singh died leaving behind his only son Bhutnath Singh

Bhutnath Singh died leaving behind his widow Sarala Devya.

Chakradhari Singh died leaving behind his two sons, namely, Gauri Singh @ Jyoti Singh and Jamku Singh.

6. It was the case of the plaintiff that after the death of Gopal Singh, his two sons Guman Singh and Trishul Singh inherited the property and there was amicable partition between them with respect to the entire land of khata no. 22 including plot no. 140 area 82 decimals. Both had half share each and continued in separate peaceful possession.

After death of Guman Singh, his widow Churamani Divya, and Jyoti Singh, S/o Late Chakradhari Singh, disposed of their shares in plot no. 140 in favour of the plaintiff measuring **51¾ decimals** by virtue of registered sale deed no. 9675 dated 23.10.1975. Further, Bhutnath Singh, husband of defendant no. 1 had sold the land and executed registered sale deed with respect to 23 decimals in plot no. 140 along with other lands in favour of Jitu Mahato (proforma defendant nos. 4) and Nitai Mahato (proforma defendant no. 5) vide registered sale deed no. 18614 dated 25.06.1974.

Similarly, Chakradhari Singh, father of defendant no. 2, sold 7 decimals out of his share in the southern side in plot no. 140 along with other land in favor of proforma defendant nos. 4 and 5 vide registered sale deed no. 10037 dated 11.04.1972.

7. In this way, the entire land i.e. 82 decimals of plot no. 140 were sold to the plaintiff and the proforma defendant nos. 4 and 5 and aforesaid purchased 51 $\frac{3}{4}$ decimals of land was mentioned in Schedule-B of the plaint in which the plaintiff claimed to have started using as khaliyan.

8. The cause of action arose when in the year 1996, defendant no. 3 tried to disturb the peaceful possession of the plaintiff with respect to Schedule-B property, for which a preventive case bearing case No. 404/96 under Section 144 of Cr.P.C. was registered before the S.D.M., Dhanbad which was converted into Section 145 of Cr.P.C. In the show cause of the above case, the plaintiff found that the defendant no. 1 Sarla Devi had executed registered sale deed No. 1676 dated 18.03.1996 in favour of defendant no. 3 Smt. Podda Devi. It was also disclosed that defendant no. 2 entered into an agreement in respect of 10 $\frac{1}{2}$ decimals in favor of defendant no. 3 in plot no. 140.

9. In enquiry, the plaintiff found that the defendant no. 1 has executed a registered sale deed no. 1676 dated 18.03.1996 in favor of defendant no. 3 measuring an area of 20 $\frac{1}{2}$ decimals of land in plot no. 140 (detail mentioned in Schedule-C of the plaint) and further defendant no. 2 Jamku Singh has executed another registered sale deed no. 5065 dated 19.08.1996 in favor of defendant no. 3 measuring an area of 10 decimals in plot no. 140 along with other lands. The detail of 10 decimals has been specified in Schedule-D of the plaint.

10. It is the case of the plaintiff that defendant nos. 1 and 2, intentionally and knowing fully well that the Schedule-C and Schedule-D lands of the plaint have been already sold by Churamani Divya and Jyoti Singh Singh to the plaintiff, sold the property to the defendant no.3. Since the property was already sold to the plaintiff it was alleged that the aforesaid sale deeds in favour of defendant no. 3 are forged and fraudulent.

11. The written statement was filed by the defendants who had opposed the prayer and ultimately the learned trial court dismissed the suit.

12. The plaintiff was the appellant before the learned 1st appellate court. The learned 1st appellate court has set-aside the judgment and decree of the learned trial court and held that the deed no. 9675 dated 23.10.1975 in favour of the plaintiff was valid and genuine document and hence all the subsequent deeds with respect to the land covered by deed no. 9675 dated 23.10.1975 to any other person were declared null and void.

13. Thus, the present second appeal has been filed by the defendant no. 3-Padda Devi which has been admitted for final hearing on the following substantial question of law: -

(a) Whether even on the finding of the Lower Appellate Court that one of the executants of the sale deed in favour of the plaintiff died on 16.10.1975, the finding that the sale deed executed on 23.10.1975 was executed by one Smt. Churamani Devi is not vitiated by a clear error of law amounting to a substantial error of law?

(b) When a sale deed is executed by a person along with another and one of them is found to be dead on the date of the alleged execution of the sale deed, can it be treated as invalid as a whole so as to convey nothing to the assignee thereunder?

(c) Whether on the facts and in the circumstances of the case, the lower appellate court is justified in granting the plaintiff a decree for recovery of possession?

14. The learned counsel for the appellant has commenced the arguments and he has submitted that the matter be posed for further hearing on 17.09.2025.

15. With the consent of the parties, post this case for further hearing on 17.09.2025 to be taken up as the first case at 10:30 a.m.

(Anubha Rawat Choudhary, J.)

Mukul/-