

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S. A. No. 75 of 2003

Smt. Padda Devi, Wife of Sripati Goswami, Resident of Village
Telmocho, P.O. Ramagar, Garh, P.S.- Mahuda, District-Dhanbad.

..... **Defendant/Respondent/Appellant**
Versus

1. Bahadur Mahto, Son of Late Hira Lal Mahto, Resident of Village
Telmocho, P.O. Ramnagar Garh, P.S. Mohuda, District-Dhanbad
(Dead and substituted vide order dated 21.06.2019)

1.a Jhagru Mahato, Son of Late Bahadur Mahato

1.b Dukhu Mahato, Son of Late Bahadur Mahato

Both resident of Village-Telmacho, P.O. Ramgarh Garh, P.S.
Mahauda, District-Dhanbad

... .. **Plaintiff/Appellant/Respondent**

2. Smt. Sarala Debya, Wife of Late Bhutnath Singh.
3. Jamku Singh, Son of late Chakradhari Singh

... .. **Defendants/Respondents/Proforma Respondents**

4. Jitu Mahto Son of Late Kuni Mahto **(Dead and substituted vide
order dated 12.09.2022)**

4.a Charu Devi, Wife of Late Jitu Mahto

4.b Mahendra Teli, Son of Late Jitu Mahto

4.c Ramesh Mahto, Son of Late Jitu Mahto

4.d Sulochana Devi, Daughter of Late Jitu Mahto

4.e Asha Kumari, Daughter of Late Jitu Mahto

4.f Devanti Devi, Daughter of Late Jitu Mahto

4.g Maniya Devi, Daughter of Late Jitu Mahto

All residents of village-Pelmocho, P.O. Ramnagar, Garh,
P.S.Mahuda, District-Dhanbad, Jharkhand.

5. Nitai Mahto, Son of Late Kuni Mahto
Respondent Nos. 2 to 5 residents of village Telmocho, P.O.-
Ramnagar Garh, P.S. Mohuda, District-Dhanbad.

... .. **Proforma Defendants/Respondents/Proforma
Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant	: Mr. Kundan Kumar Ambastha, Advocate Md. Abdul Wahab, Advocate Mr. Anurag Chandra, Advocate Mr. Ujjal Chatterjee, Advocate
For the Respondents	: Mr. Jitendra Tripathi, Advocate

35/21.01.2026

1. Heard the learned counsel appearing on behalf of the parties.
2. This second 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 setting aside the judgment dated 09.08.2001 (decree signed on 21.08.2001) passed by the learned Munsif-II, Dhanbad in Title Suit No. 104 of 1997. The title suit was dismissed by the learned trial court.

3. This appeal was admitted vide order dated 24.12.2003 on the following substantial questions 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?

4. Before the learned trial court, the plaintiff prayed for the following reliefs: -

“(a) For a decree be passed in favor of plaintiff and against the defendants declaring the registered sale deeds vide no. 1676 dated 18.03.1996 and 5065 dated 10.08.96 are null and void, collusive, manufactured and without consideration and the same be declared the plaintiff’s right, title, interest and possession over the Schedule “C” and “D” land alongwith the Schedule “B” land.

(b) For a decree for permanent injunction in favor of the plaintiff restraining the defendants and their men and agents from disturbing peaceful enjoyment of the plaintiff.

(c) For any other relief or reliefs which the plaintiff is entitled to.”

Arguments of the appellant

5. The learned counsel for the appellant has submitted that as per the case of the plaintiff, the land situated in Khata No. 22 including plot number 140 originally belonged to and recorded in the name of

Gopal Singh, S/o Teju Singh in the last cadastral survey settlement records of right. Gopal Singh died leaving behind his two sons, namely, Guman Singh and Trishul Singh; Guman Singh died leaving behind his wife Churamani Devya having no issue; Trishul Singh died leaving behind his two sons Murlidhar Singh and Chakradhari Singh; Murlidhar Singh died leaving behind his only son Bhutnath Singh who also died leaving behind his widow Sarla Debya and Chakradhari Singh died leaving behind his two sons, namely, Gouri Singh @ Jyoti Singh and Jamku Singh.

6. The learned counsel for the appellant has submitted that defendant no. 3 in the present case had purchased the land in plot no. 140 through two registered sale deeds bearing no. 1676 dated 18.03.1996 from the defendant no. 1 Sarla Debya and purchased another portion of the land of the same plot vide registered sale deed no. 5065 dated 09.08.1996 from defendant no. 2-Jamku Singh. The learned counsel submits that as per the plaint, the area covered by sale deed dated 18.03.1996 was Schedule-C property and the area covered by sale deed dated 09.08.1996 was Schedule-D property. The learned counsel has also submitted that as per the plaint, said Churamani Devya W/o Late Guman Singh and Jyoti Singh @ Gouri Singh S/o Late Chakradhari Singh had sold property in plot no. 140 vide registered sale deed no. 9657 dated 08.11.1975 (exhibit-2/b) in favour of original plaintiff. The area covered by registered sale deed no. 9657 dated 08.11.1975 is described in Schedule-B. ***The learned counsel submits that it was the specific case of the plaintiff that Schedule-C and Schedule-D property is part and partial of Schedule-B property.***

7. Learned counsel for the appellant (defendant) has submitted that the specific case of the defendant No. 1 to 3 is that Churamani Debya never sold the property vide registered deed dated 24.10.1975 and it was specifically submitted that she had expired on 16.10.1975 before execution and registration of the sale deed dated 24.10.1975.

8. The learned trial court has framed the following issues:-

i. Is the suit as framed maintainable?

- ii. *Has the plaintiff valid cause of action?*
- iii. *Is the suit barred by the law of limitation?*
- iv. *Is the suit hit by the laws of waiver, estoppel and acquiescence?*
- v. *Is the suit bad for non-joinder of necessary parties?*
- vi. *Has the plaintiff right, title, interest over 51³/₄ decimals of land in plot No. 140, i.e. Schedule B land?*
- vii. *Are the deeds of sale No.1676 dated 18.03.1996 and 5065 dated 10.08.1996 executed by defendant No. 1 and 2 respectively to defendant No.3, null, void, collusive document and defendant No.3 did not derive any right, title, interest thereby over any portion of schedule B land?*
- viii. *Is the deed of sale said to be executed by Churamani Debya and Jyoti Singh alias Gauri Singh in favour of the plaintiff is a genuine, valid and operative document?***
- ix. *Is the plaintiff entitle to the reliefs claimed?*
- x. *To what other relief/reliefs the plaintiff is entitled for?*

9. The learned counsel for the appellants in particular has referred to issue no. (viii) and submitted that all the substantial question of law would be covered by issue No.(viii).

10. The learned counsel has referred to the findings recorded by the learned trial court while considering issue no. (viii) in paragraph 6 which was decided in favour of the defendant. He has also referred to issue nos. (vi), (vii) and (ix) which were taken up together in paragraph 7, wherein the learned trial court has recorded a finding that the sale deed dated 08.11.1975 said to have been executed by Churamani Devya and Jyoti Singh was not a genuine document.

11. The learned counsel then referred to the judgment passed by the learned 1st appellate court and submitted that the learned 1st appellate court also considered issue no. (vii) and observed that the main base of contention upon which the whole matter of this issue depends upon are whether the Schedule “B” property was sold by Churamani Devya W/o Late Guman Singh and Jyoti Singh @ Gouri Singh themselves vide deed no. 9657 dated 08.11.1975 and whether the same is a genuine deed or forged one and whether Churamani Devya was alive on 08.11.1975 and whether she had the right to transfer the suit land or not.

12. The learned counsel for the appellant has submitted that the learned 1st appellate court has recorded a specific finding that Exhibit-C which is the death certificate of Churamani Devya revealed that she died on 16.10.1975. The finding is as follows: -

“7.
I find that the date in their written statement respondents have admitted that Churmani Debya died on 16.10.1975. A death certificate of Churamani Debya W/o Late Guman Singh has also been submitted by the Respondents themselves which was marked as Exhibit-C that Churamani Debya died on 16.10.1975. I find this written admission of the Respondents and the death certificate more liable than the statements of P.W.-2 Sita Ram Ojha who was an 85 years old person who had anticipated the period of the death on the basis of his memory. Further P.W.-3 Sachun mahato had deposed that the disputed land was purchased by the appellant/Plaintiff from Churamani and Gauri Singh by registered deed. Further P.W.-4 Jhari Mahato had deposed that the disputed plot No. 140 was sold by Churamani Devya and Gauri Singh together in 1975.”

13. The learned counsel for the appellant has submitted that in spite of aforesaid, the learned 1st appellate court held that the sale deed no. 9657 dated 23.10.1975 was a genuine, valid and operative document. The learned counsel submits that since one of the executants of the sale deed, namely, Churamani Devya had already expired on 16.10.1975 prior to execution and registration of sale deed dated 23.10.1975, the 1st substantial question of law is fit to be answered in favour of the appellant. He submits that the sale deed is not severable and therefore the entire sale deed is invalid /void even if the sale deed was executed by two persons, namely, Churamani Devya and Jyoti Singh and admittedly, Jyoti Singh was alive on the date of execution of the sale deed.

Arguments of the respondents

14. The learned counsel for the respondents, while opposing the prayer, has submitted that the finding of the learned 1st appellate court as quoted above was only a discussion in connection with other evidences placed on record. He has also submitted that the sale deed being a registered document *prima-facie* has a presumption of

correctness. The learned counsel has submitted that the admission of the defendants could not have been taken into consideration to come up to a finding, inasmuch as, it was the defendant's case that Churamani Devya had expired on 16.10.1975 and therefore the sale deed executed by Churamani Devya and one Jyoti Singh is valid. He has also submitted that the learned court has not touched upon the legality and validity of the two sale deeds which were under challenge and has simply held that the sale deed executed by Churamani Devya was a valid document and therefore the defendant no. 3, who is the purchaser of the property by virtue of two impugned sale deeds to the suit does not have any surviving grievance.

15. The learned counsel for the respondents has also submitted that Schedule-C and Schedule-D property does not cover the entire area of plot no. 140. Schedule-B property is for an area of 51½ decimals and the total area of plot no. 140 is 82 decimals.

Rejoinder argument of the appellant

16. The learned counsel for the appellant, in response, has referred to the written statement filed by the defendant nos. 1 to 3 has submitted that it was their specific case that the Schedule-C and D property were part of Schedule-D property. Schedule-B property was allegedly sold vide sale deed dated 23.10.1975 and if it continues to remain valid, then the subsequent sale deed in connection with properties involved in Schedule-B property will have no value in the eyes of law. The learned counsel has referred to Section 48 of the Transfer of Property Act. He submits that the sale deed executed prior in point of time will have validity and therefore the legality and validity of the sale deed dated 23.10.1975 is a matter of concern for the appellant for which the substantial question of law has been framed.

Findings of this Court

17. After hearing the learned counsel for the parties and considering the facts and circumstances of this case in the light of the substantial questions of law framed vide order dated 24.12.2003, this Court finds that the learned 1st appellate court after having recorded a

clear finding that the court would rely upon Exhibit-C which is the death certificate showing the date of death of Churamani Devya on 16.10.1975. This Court is of the view that there was no occasion for the learned 1st appellate court to still hold that the sale deed dated 23.10.1975 (exhibit-2/b) was a valid document.

18. There is no doubt that there is presumption of validity in connection with a registered sale deed to have been duly executed by the executants, but it is a rebuttable presumption. Once it is found that one of the executors of the sale deed, namely, Churamani Devya died on 16.10.1975, prior to execution of the sale deed dated 23.10.1975 (Exhibit-2/b), there can be no doubt that the sale deed itself was null and void.

19. This Court is of the view that when one of the executants of the sale deed, namely, Churamani Devya, had expired prior to date of execution and registration of the sale deed, the sale deed dated 23.10.1975 (exhibit-2/b) cannot be said to be valid document and therefore there has been substantial error of law in the finding recorded by the learned 1st appellate court in holding that the sale deed dated 23.10.1975 (exhibit-2/b) was valid. *Accordingly, the substantial question of law no. (a) is answered in favour of the appellant and against the contesting respondents.*

20. So far as the 2nd substantial question of law is concerned, this Court is of the considered view that if one of the executants of the sale deed dated is found to be dead on the date of alleged execution and registration of the sale deed dated 23.10.1975 (exhibit-2/b), it has to be treated as invalid as a whole. *Consequently, 2nd substantial question of law is also answered in favour of the appellant and against the contesting respondents.*

21. Since the sale deed dated 23.10.1975 (exhibit-2/b), on the basis of which the plaintiff claimed title, was found to be not genuine and having been executed by one dead person, this Court is of the view that the learned 1st appellate court was not justified in granting the plaintiff a decree for recovery of possession. *Consequently, 3rd*

substantial question of law is also answered in favour of the appellant and against the contesting respondents.

22. In view of the aforesaid findings, the judgment passed by the learned 1st appellate court is hereby set-aside. Consequently, this appeal is hereby *allowed*.

23. Pending I.A., if any, is closed.

24. Let a copy of this order be communicated to the court concerned through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Dated: 21.01.2026

Binit/Mukul/Rakesh

Uploaded on: 18.05.2026