

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Second Appeal No. 09 of 2005

[Against the Judgment dated 11.10.2004 and Decree sealed and signed on 19.10.2004 passed by learned 1st Additional Judicial Commissioner, Khunti (Ranchi), in Title Appeal No. 57 of 2000]

1. Hem Prasad Singh Munda, Son of Late Basant Lal Babu.
2. (i) Gobardhan Singh Munda, Son of Late Phutu Singh Munda.
3. (i) Om Prakash Singh Munda.
3. (ii) Sudhanshu Singh Munda.
Both sons of Late Thakur Singh Munda.
3. (iii) Tulawati Devi, Wife of Late Thakur Singh Munda.
Sl. No. 2 (i), 3. (i) to 3. (iii) all resident of Village – Situdih, P.O. & P.S. – Sonahatu, District – Ranchi.
4. (i) Devi Balal Devi, Wife of Late Dhanjay Singh Munda.
4. (ii) Shaktim Singh Munda, Minor Son of Late Dhanjay Singh Munda, represented by her mother Devi Bala Devi.
5. Robin Singh Munda, Son of Late Basant Lal Singh Munda.
Sl. No. (1), 4. (i), 4. (ii) & 5, all resident of Village – Hasdih, P.O. & P.S. – Sonahatu, District – Ranchi.

... **Defendants/Appellants/Appellants**

-Versus-

1. Srikant Singh Munda
2. Kartik Singh Munda
Sl. Nos. (1) & (2) both minor sons of Late Jagarnath Singh Munda being represented through their mother and natural guardian Most. Shakuntala Mundain i.e. respondent no. 3.
3. Most. Shakuntala Mundain, Widow of Late Jagarnath Singh Munda.
4. Jeewan Singh Munda, Son of Late Pushkar Singh Munda.
All residents of Village – Hesadih, Tola – Sonhahatu, P.O. and P.S. – Sonhahatu, District – Ranchi.

... **Plaintiffs / Respondents / Respondents**

5. The Deputy Commissioner, Ranchi, P.O., P.S. and District – Ranchi.

... **Defendant / Respondent / Respondent**

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For the Appellants	: Mr. K.K. Ambastha, Advocate. Mr. Abdul Wahab, Advocate. Mr. Sumit Kumar, Advocate. Mr. Anurag Chandra, Advocate.
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For the Respondent : Mr. Ayush Aditya, Advocate.

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P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

C.A.V. on 15.07.2025 Pronounced on 18.09.2025

- 1.** Heard Mr. K.K. Ambastha, learned counsel for the appellants and Mr. Ayush Aditya, learned counsel for the respondents.
- 2.** The instant second appeal has been preferred by the appellants, being aggrieved and dissatisfied with the judgment and decree dated 11.10.2004 (decree signed on 19.10.2004) passed by learned 1st Additional Judicial Commissioner, Ranchi in Title Appeal No. 57 of 2000, whereby and whereunder, the appeal has been dismissed and the judgment dated 29.09.2000 (decree signed on 10.11.2000) passed by learned Additional Munsif, Khunti in Title Suit No. 09/1995 has been upheld and confirmed.

FACTUAL MATRIX

- 3.** The Title Suit No. 9 of 1995 was instituted by respondents / plaintiffs for declaration of their right, title, interest and possession over the suit land along with confirmation of possession. It is alleged that both parties are members of Munda Scheduled Tribe and guided by their own usage and customs in the matter of succession and inheritance, whereby the females

are excluded from inheritance. It is further alleged that plaintiffs and proforma defendant no. 6 are settled Raiyat, whereas defendants are Mundari Khunt Kattidari landlords of the same village, who realize the rent from Khunt Kattidari Tenants. The suit schedule lands were recorded in the revisional survey in the name of one Bigal Singh Munda, who out of legal necessity sold part of the land (suit schedule land) to Mohan Munda and Pushkar Munda through registered sale deed dated 16.05.1943. The plaintiff nos. 1 to 3 are the heirs of Mohan Munda and plaintiff no. 4 and proforma defendant no. 6 are the heirs of Pushkar Munda. It is further alleged that the defendants, being the landlords are claiming the lands as their own and creating disturbances, which gave rise to cause of action for the present suit.

- 4.** On the other hand, the defendants appeared and contested the suit by filing joint written statement and pleaded that the widow of recorded raiyat Bigal Singh Munda surrendered the suit land to the landlords on 11.08.1947, who accepted the same. However, the proforma defendant no. 6, being legal heirs of one of the purchasers instituted a case under Section 71(A) of the C.N.T. Act, but lost the same up to the appeal. Hence, the suit is not maintainable and also barred by law of limitation.

5. On the basis of pleadings of the parties, following issues were settled by the learned trial court:-

- (i) Is the suit maintainable in its present form?
- (ii) Has the plaintiffs any cause of action for the suit?
- (iii) Is the suit barred by law of limitation and adverse possession?
- (iv) Have the plaintiffs any right, title and interest over the suit land?
- (v) Have the defendants any right, title and interest over the suit land?
- (vi) Are the plaintiffs entitled for any relief or reliefs?

6. The learned trial court decided the core Issue Nos. (iv) & (v) taking together for adjudication and recorded findings that the sale deed executed in 1943 by the recorded raiyat Bigal Singh Munda is genuine and witnesses examined by the plaintiffs have also supported the factum of possession over the suit land of the plaintiffs since long. The question of surrender after execution of sale deed by the recorded raiyat by his own wife in favour of landlords does not arise. Accordingly, the learned trial court decreed the suit on contest with cost. The defendants preferred the first appeal i.e. Title Appeal No. 57 of 2000. On the basis of points of argument raised on behalf of

appellant / defendants, the first appellate court has formulated sole point for consideration as to whether court below has appreciated evidence, pleading and other materials and arrived at right decision or not? Whether the judgment of the court below is fit to be upheld or set aside?

7. The learned appellate court has also re-appreciated the oral as well as documentary evidence adduced by the parties. The appellate court also recorded findings that the plaintiffs have acquired right, title and interest over the suit property through the sale deed dated 16.05.1943 and also possession of the same and also concluded that there is no error of law in the judgment and decree passed by the learned trial court. Accordingly, dismissed the appeal.

8. This second appeal preferred by defendants / appellants has been admitted vide order dated 08.05.2009 on following substantial question of law:-

(i) Whether the raiyat has got right to sell Mundari Khunt Kattidari Tenancy in view of Section 240 of the C.N.T. Act?

9. Before imparting the judgment on the above substantial question of law, the provisions of Section 240 and 242 of the C.N.T. Act is extracted hereunder:-

240. Restrictions on transfer of Mundari khunt-kattidari tenancies - (1) No Mundari-khunt-kattidari tenancy or portion thereof shall be transferable by sale, whether in execution decree or order of a Court or otherwise :

Provided that, when a decree or order has been made by any Court for the sale of any such tenancy or portion thereof, in satisfaction of a debt due under a mortgage (other than a usufructuary mortgage) which was registered before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903 [(Ben. Act 5 of 1903)], the sale may be made with the previous sanction of the Deputy Commissioner.

(2) If the Deputy Commissioner refuses to sanction the sale of any such tenancy or portion thereof under the proviso to sub-section (1), he shall attach the land and make such arrangements as he may consider suitable for liquidating the debt.

(3) No mortgage of a Mundari khunt-kattidari tenancy or any portion thereof shall be valid, except a bhugut bandha mortgage for a period, expressed or implied, which does not exceed or cannot in any possible event exceed seven years :

[Provided that, a Mundari Khunt Kattidar tenant may transfer by simple mortgage his right in this tenancy or any portion thereof with a view to raising loan for agricultural purpose to a society or bank registered or deemed to be registered under the 'Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or a company or Corporation owned by or in which not less than fifty one per cent of the share capital is held by the State Government or the Central Government or partly by the State Government or partly by the Central Government and which has been set up with a view to providing agricultural credit to cultivators.]

(4) No lease of a 'Mundari Khunt kattidari' tenancy or any portion thereof shall be valid, except a lease of one or other of the following kinds, namely :-

(a) mukarrari leases' of uncultivated land, when granted to a Mundari or a group of Mundaris for the purposes of enabling the lessees or the male members of their families to bring suitable portions of the land under cultivation;

(b) leases of uncultivated land, when granted to a 'Mundari' cultivator to enable him to cultivate the land as a Raiyat.

Explanation. - The expression "uncultivated land" as used in this sub-section, includes land which, though formerly cultivated, is not, at the time the lease is granted, either under cultivation or in the occupation of the lessee for purposes of cultivation.

(5)Where a 'Mundari khunt-kattidari' tenancy is held by the group of 'Mundari khunt-kattidars' no bhugut bandha mortgage or 'mukarrari' lease of the tenancy or any portion thereof shall be valid, unless it is made with the consent of all the 'Mundari Khuntkattidars'.

(6)No transfer of a 'Mundari khuntkattidar' tenancy or any portion thereof, by any contract or agreement made otherwise than as provided in the foregoing subsections shall be valid; and no such contract or agreement shall be registered.

(7)Nothing in the foregoing sub-section shall affect any sale or, except as declared in the Proviso to sub-section (1), any mortgage or any lease, made before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903 [(Bengal Act 5 of 1903).]

242. Ejectment of persons unlawfully obtaining possession of such tenancies - If any person obtains possession of a 'Mundari-khunt-kattidari tenancy or any portion thereof in contravention of the provision of Section 240, the Deputy Commissioner may eject him therefrom. and if the tenancy was, before such possession was obtained entered as a 'Mundari khunt-kattidari tenancy in a record-of-rights finally published under the Act or under any law in force before the commencement of this Act, no suit shall be maintainable in any Court in respect of such ejectment; but an appeal shall lie as provided in Chapter XVI.

10. Learned counsel for the appellants has submitted that in view of restrictions on transfer of Mundari Khunt Kattidari Tenancy under Section 240 of the C.N.T. Act, the impugned judgment and decree passed by the courts below are not legally sustainable. The Sale Deed (Exhibit-2) relied upon by the plaintiffs is void ab initio, which convey no right, title and interest to the plaintiffs over the suit land. The registered deed of surrender of tenancy by the wife of Bigal Singh Munda has to be considered valid, effective and

conferring title to the defendants. It is further argued that the learned trial court failed to consider that the plaintiffs themselves have filed application for restoration of possession under Section 71 (A) of the C.N.T. Act and lost up to appellate stage. Therefore, the finding of possession of the plaintiff over the suit property by the court below is absolutely beyond the evidence on record and perverse.

11. It is further submitted that the validity of sale deed relied upon by the plaintiffs, which is executed in contravention of the provisions of law and being void ab initio can be challenged at any time even in absence of any pleadings. It is further submitted that under the C.N.T. Act, Section 240 to 242, the jurisdiction of Civil Court has also been barred. Therefore, the impugned judgment and decree are liable to be set aside, allowing this appeal.

12. On the other hand, learned counsel for the respondents has submitted that there is no pleading in the written statement of the defendants / appellants that the sale deed relied upon by the plaintiffs is in contravention of provisions of Section 240 of the C.N.T. Act. The provision of Section 240 of the C.N.T. Act is not applicable in this case. Admittedly, Bigal Singh Munda, the recorded tenant

in Khatian and in revisional survey also name of purchaser from Bigal Singh Munda is shown in column of possession. The entries in the revenue records of rights have never been challenged by the defendants. There is concurrent finding of both the courts below in favour of plaintiffs / respondents. There is no legal force in the argument of learned counsel for the appellants and no merits in this appeal, which is fit to be dismissed.

13. In the instant case, there is no doubt, rather admitted position that plaintiffs have purchased the landed property from the settled Mundari Khunt Kattidari Tenant and in para-3 of plaint the plaintiffs have asserted that the defendants are Mundari Khunt Kattidari landlords of the same village, who realize rent from the Mundari Khunt Kattidari Tenant, which was admitted by defendants in para-10 of their written statement. The specific case of plaintiffs is that the suit property was purchased from the settled Mundari Khunt Kattidari Tenant Bigal Singh Munda vide Sale Deed dated 16.05.1943. On the other hand, the case of defendants is based upon registered surrender deed executed by wife of said Bigal Singh Munda dated 11.08.1947.

14. In this regard, law is settled as per provisions of Section 240 and 242 of the C.N.T. Act that there are

restrictions on transfer of Mundari Khunt Kattidari Tenancy and there is no limitation for ejectment of person unlawfully obtained possession of such tenancy. Since the matter involved in this case is purely question of law, it does not require any pleading of the parties to the effect. It is settled principles of pleadings that it must contain concise facts only and not the law. Therefore, question of law can be agitated at any stage of proceeding. Therefore, the main objection of respondents / plaintiffs that the appellants / defendants have raised restrictions on transfer for the first time in the second appeal, which should not be entertained, cannot be accepted.

- 15.** The moot question arises to be considered for answering the aforesaid substantial question of law, that whether the transfer of the suit property through the registered sale deed allegedly executed by Bigal Singh Munda in favour of plaintiffs of this case confers any right, title, interest to the plaintiffs in the eyes of law?
- 16.** Before going to answer this question, it is to mention here, the object of Chapter-XVII of the C.N.T. Act, 1908.

Chapter-XVIII of the Act envisages a special provision with respect to Mundari khunt kattidari and

the object behind the special legislation is to protect such people from dispossession of their land. The objects are; (i) to prohibit sale; (ii) to stop all forms of mortgage save that known as “bhughut bundha” and thereby prevent these savages becoming the serfs of money lender; (iii) to follow recognized custom and allow certain forms of transfer to other Mundaris; (iv) to invest the Deputy Commissioner with power to give effect to this prohibition of sale and certain restrictions on transfer (v) to provide for the realization of arrears of rent, (vi) to secure the finality of the record of right. It is the objective view that Section 240 of the Act restricts the transfer of Mundari khunt kattidari tenancies except those provided in clause (4) of Section 240 of the Act.

- 17.** In the case of **Sandhu Munda Vs. State of Jharkhand 2009 (1) JCR 202 (Jhr.)**, it has been held that the nature of land as Mundari Khunt Katti for the purpose of imposing restrictions on transfer, there was concurrent finding of the courts below after perusal of khewats that the land was Mundari Khunt Katti. Therefore, the same was based on record as such, any transfer of such land made in contravention of provision of Section 240 of the C.N.T. Act, does not provide any right, title, interest on account of such

sell. It is also held that such tenancy is not transferable by a sell. Possession claimed on the basis of settlement by sada deed or by registered sale deed, comes within the mischief of Section 240 of the C.N.T. Act.

18. In the case of *Phago Mahto & Others Vs. Commissioner, South Chotanagpur Division and Others, 1986 BLT (Rep) 173; 1987 PLJR (NOC) 69*, it has been held that no time limit has been prescribed for such ejectment from Mundrai Khunt Kattidar tenancy. On a plain reading of the provisions of Section 242 of the C.N.T. Act, it appears that no time limit has been prescribed for ejectment of such persons unlawfully obtaining possession of a “Mundari-Khunt-Kattidar” tenancy in contravention of provisions of Section 240 of the C.N.T. Act. In accordance with the said provision, in fact, no suit shall be maintainable in any court in respect of such ejectment, but an appeal would lie as provided in Chapter XVI, that the transfer of land in question in the present case was in contravention of Section 240 of the C.N.T. Act. The petitioners could not prove in the court below the exact date of their possession.

19. In view of aforesaid discussion and reasons and keeping in mind the settled principles of law, I find

that admittedly the suit land stood Mundari Khunt-Kattidari land under the revenue records, the sale deed executed by Khunt Kattidar tenant namely, Bigal Singh Munda in favour of ancestor of the plaintiffs is in clear cut violation of provisions of Section 240 of the C.N.T. Act. The effect of such transfer has also been provided in Section 240 (6) of the C.N.T., which mandates that no transfer of Mundari-Khunt-Kattidari tenancy or any portion thereof, by any contract or agreement made otherwise than as provided in the foregoing sub-sections shall be valid; and no such contract or agreement shall be registered. Therefore, the very registration of such transfer is also barred by law. Therefore, no right, title and interest can be acquired through such sell, which has been prohibited under law and there is no limitation for ejectment of such purchaser.

20. Accordingly, I find merits in this appeal. The impugned judgment and decree passed by learned trial court as well as first appellate court suffer from perversity and based on flagrant ignorance of law. Therefore, the decree passed by both the courts below is hereby set aside and the suit of the plaintiffs stand dismissed.

21. Accordingly, the instant second appeal is **allowed**.

22. In the circumstances, both parties shall bear their own cost.

23. Pending I.A., if any, stand disposed of.

24. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated, the 18th September, 2025.

Sunil / **A.F.R.**