

**IN THE HIGH COURT OF JHARKHAND, RANCHI**  
**S.A. No.126 of 2014**

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- 1.** Baldeo Kisku, S/o Late Parmeswar Kisku
- 2.** Sohagini Kisku, W/o Late Sarjan Kisku
- 3.** Bablu Kisku @ Pawan Kisku
- 4.** Babudhan Kisku
- 5.** Minor Dhono Kisku,

Sl. Nos.3 to 5 are sons of Late Sarjan Kisku

Sl. No.5 is represented through his mother and natura guardian  
Sohagini Kisku

- 6.** Sukhi Kisku W/o Late Ram Jit Kisku
- 7.** Krishna Kisku S/o Late Ram Jit Kisku
- 8.** Minor Mohan Kisku, S/o Late Ram Jit Kisku, represented  
through his Mother and natural guardian Sukhi Kisku

Sl. Nos.1 to 8 are residents of village – Bodma, PS – Mihijam,  
Sub-Division,PO – Chandradhipa, District – Jamtara

**.... Appellants**

-- Versus --

**1(a)** Birbal Kisku, S/o Late Sital Kisku, R/o village – Bodma, PO  
– Chandradhipa, PS – Mihijam Sub-Division, District - Jamtara

**1 (b) (i)** Rajshree Kisku R/o Janamghotu, PO – Karlla, PS –  
North Asansol, Paschim Bardwan

**2.** Rajesh Kisku, S/o Late Hopna Kisku, resident of village –  
Bodma, PO – Chandradhipa, PS – Mihijam, Sub-division and  
District – Jamtara

**3.** Poran Murmu, S/o Late Nilmani Kisku and Biru Murmu

**4.** Som Marandi

**5.** Nunulal Marandi

**6.** Sunil Marandi

Sl. Nos.4 to 6 are sons of Uchumu Kisku and Sitaram Marandi

Sl. Nos.3 to 6 are residents of village – Bodma, S.C. –  
Garichand, PO, PS and District – Jamtara

**7.** Lakhimoni Kisku, W/o Mihir Soren, D/o Late Jitan Kisku, residents of village – Lokdih Tola Pahrudih, PO – Bowa, PS – Mihijam, District – Jamtara

**8.** Dhani Kisku, W/o Mishil Hansda, D/o Late Jitan Kisku, resident of village – Kitajbore, PO – Ladna, PS – Jamtara, District – Jamtara

**9.** Manodi Kisku, W/o Hemlal Hembram, D/o Late Jitan Kisku, resident of village – Kusiara, PO – Kewatjali, PS – Mihijam, District – Jamtara

**10.** Kamli Kisku, W/o Late Jaideo Hembrom, D/o Late Jitan Kisku, residents of village – Bodma, PO and PS – Mihijam, District – Jamtara

**11.** Deputy Commissioner of Jamtara, At, PO, PS and District – Jamtara

**.... Respondents**

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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|---------------------|----|-------------------------------------|
| For the Appellants  | :- | Mr. Manjul Prasad, Sr. Advocate     |
|                     | :- | Mr. Akhouri Prakhar Sinha, Advocate |
|                     | :- | Mr. Aman Kedia, Advocate            |
| For the Respondents | :- | Mr. Kaushik Sarkhel, Advocate       |
|                     | :- | Mr. Siddharth Gautam, Advocate      |

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**22/22.04.2026** Heard Mr. Manjul Prasad, learned senior counsel appearing for the appellants.

**2.** The present second appeal has been preferred being dissatisfied with the judgment and decree dated 30<sup>th</sup> May, 2014 (decree sealed and signed on 2014) passed by learned Principal District Judge, Jamtara in Title Appeal No.12 of 2011 reversing the judgment and decree dated 8<sup>th</sup> July, 2011 (decree sealed and signed on 25<sup>th</sup> July, 2011) passed by learned Sub-Judge-I, Jamtara in Title Suit No.57/1992.

**3.** Mr. Prasad, learned senior counsel appearing for the appellants submits that the plaintiffs/respondents have instituted the suit for declaration of their right, title and interest over the suit properties and further declaration that the principle defendants have no manner as such, right, title and interest in the same and also for recovery of possession mesne profit besides other reliefs and cost of the suit which was numbered as Title Suit No.57 of 1992. He further submits that the said suit was decided by the judgment dated 24.01.2007 whereby the suit has been dismissed and aggrieved with the said judgment the plaintiffs/respondents preferred an appeal being Title Appeal No.3 of 2007 wherein after hearing both the parties, learned Additional District Judge by judgment dated 01.09.2008 remanded back the case for deciding afresh in light of observation made in the appellate court judgment.

**4.** From the judgment of the learned Court, it transpires that the case of plaintiffs/respondents are that they are Santhal and they are governed by Santhal Customary Law in the matter of inheritance and succession. The suit property is appertaining to AKJ No.55 are comprises of several plots of different area as per schedule of the plaint located at mouza Bodma. In the last survey settlement, the suit property was recorded in the name of Rotu @ Rutin Kisku. The said Rutin Kisku died leaving behind his agnates Hopna Kisku, Jiten Kisku as his nearest heirs and successors. He also left behind his widow Delo Menjhian. On the death of Rutin Kisku, Hopna and Jiten

succeeded to the property in suit and widow of Rutin Kisku was allowed to cultivate the suit property in lieu of her right to maintenance. Delo Menjhian died in the year 1956 and after her death, suit property was taken back by the plaintiffs. Because of the dispute over suit property, several criminal litigations have been drawn either at the instance of plaintiff or at the instance of contesting defendants. Out of several litigations, one Misc. Case u/s 145 Cr.P.C. was filed in 1973 by plaintiff Hopna Kisku, because principle defendants started trouble in possession of the suit land. In the said proceeding, the then learned Magistrate held that principle defendants were in possession over the suit property and the revision against the order of Magistrate was dismissed. In the said proceeding, principle defendants set up their claim that Rutin Kisku adopted Chandan Kisku as his son and after death of Delo Menjhian, principle defendants succeeded to the suit property as they are son of Chandan Kisku who was adopted son of Rutin Kisku. It has been further mentioned in the plaint that in Santhal Customary Law, there is no custom of adoption, therefore, the claim of principle defendants through adoption of their father Chandan Kisku by Rutin Kisku was not acceptable in the eye of law. It is the further case of the plaintiff that in July 1992 the principle defendants with the help of several persons forcibly dis-possessed the plaintiffs from the land in suit except plot no.1617. Under Santhal Customary Law, the plaintiffs are rightful owners of the properties in suit and they are entitled to recover the possession thereof and they

are also entitled to mesne profits for the period they are kept out of possession of the properties in suit by the principle defendants.

**5.** From the judgment of learned Courts, it further transpires that the case of the defendants are that the plaintiffs never cultivated the suit land and therefore, it has been wrongly alleged that the principle defendants disturbed the possession of the plaintiffs. According to these defendants, recorded tenant Rutin Kisku adopted Hindu culture and therefore, Chandan Kisku was adopted by him. It was a valid adoption and defendants being the sons of Chandan Kisku the adopted son of Rutin Kisku succeeded to the suit properties and they are living permanently since their birth and are also cultivated the suit land. The genealogy given by the plaintiffs in the plaint is incorrect. The matter of adoption was known to everybody and also incorporated in the judgment passed by Sri S.S. Paul, Magistrate in criminal case no.40/1948 in which the plaintiff and their father were found guilty and were sentenced. On the death of Rutin Kisku the property never possessed to his agnates, rather passed to his adopted son's son. Hopna Kisku or Jiten Kisku or Sonamuni never exercised any kind of possession over the properties at any point of time. The plaintiffs never cultivated land but these defendants were cultivating the lands while the plaintiffs tried to disturb, as such the plaintiffs falsely and motivatedly implicated these defendants and others in the murder case and these defendants were acquitted in appellate court as the charge could not have been proved and the appeal preferred by

the State was also been dismissed by the Hon'ble Patna High Court. The plaintiffs have no manner of any claim over the suit properties as such, the question of recovery of possession and mesne profit does not arise. The plaintiffs have no cause of action for the suit and these defendants never occupied the suit properties forcibly rather they have been in peaceful cultivating possession by virtue of normal course of succession and the suit of plaintiff is liable to be dismissed with cost. Defendant No.3, 4 and 5 in their written statement has stated that these defendants have been unnecessarily impleaded in this suit, as they have been never put any claim over the suit properties for themselves in any previous proceeding nor they have contested the claim of the plaintiffs. These defendants are not liable for any cost of the suit.

**6.** In light of the above pleadings, the learned trial court has recasted seven issues to decide the suit. The learned trial court has taken up issue Nos. III, IV, V and VI and while deciding the said issues the learned trial court has dismissed the suit saying that there was no relief sought with respect to adoption of Chandan Kisku by Rutui Kisku and in view of that the suit has been dismissed by the judgment dated 08.07.2011 and aggrieved with that plaintiffs/appellants (herein respondents) preferred Title Appeal No.12 of 2011 which was allowed by the learned appellate court by way of setting aside the judgment of the learned trial court passed in Title Suit No.57 of 1992 and aggrieved with that the present

second appeal has been preferred by the appellants/defendants.

**7.** Mr. Manjul Prasad, learned senior counsel appearing for the appellants submits that the learned appellate court while deciding issue No.F only considering rituals confirmed in the Santhals ignoring the right of adoption in Santhals and thus decided against the defendants and in view of that he submits that there is a law point to admit the present second appeal. According to him, learned appellate court has failed to appreciate the evidence of DW-9 and DW-10 and thus erred in decreeing the suit of plaintiff that is another point of law to admit the present second appeal. On these grounds, he submits that the second appeal may kindly be admitted.

**8.** The said title suit was dismissed and in Title Appeal No.3 of 2007 the said suit was further restored to decide afresh and thereafter the learned trial court has framed further seven issues to decide the suit after remand. While remanding the suit the learned appellate court in the first round of litigation in Title Appeal No.3 of 2007 considering that the learned trial court has not framed the issue regarding the material proposition of the fact which is affirmed by one party and denied by another that is whether plaintiffs/appellants are legal heirs of the suit property as being agnates or whether the principal defendants/respondents are having right, title and interest over the suit property on the basis of alleged adoption of Chandan Kisku by Rutui Kisku. On the said

observation, the suit was remanded to decide afresh and the learned first appellate court has found that in spite of the said the issue has not been framed by the learned trial court in its right perspective and therefore the learned appellate court in light of power made under Order XLI Rule 24 of CPC to decide the suit afresh after settling proper issue on the basis of the pleadings of the parties and pursuant to that the learned appellate court has framed seven issues to decide the said appeal.

**9.** Learned appellate court has further reconsidered the entire exhibits as well as the evidences of PWs and DWs. The plaintiffs/respondents instituted the suit for declaration of right, title and interest over the suit property and has claimed that parties to the suit are Santhals and they are governed by Santhal Customary Law wherein appellants/defendants have contested the suit on the basis of their claim that father of the principal defendants Late Chandan Kisko was adopted by Rutui Kisko and after the death of said Rutui Kisko, the principal defendants came in cultivating possession of the suit properties. The appellants/defendants have claimed that the said Rutui Kisko was sufficiently Hindu and he used to worship Hindu God and Goddess and as such said Rutui Kisko was never governed by the Santhal Customary Law. It has been also contended that Chandan Kisko was adopted by the said Rutui Kisko and the principal defendants and one Sarbeshwar Kisko were born in the house of said Rutui Kisko and further Chandan Kisko



predeceased his adoptive father and as such when Rutui Kisko died in the year 1947, the principal defendants and their brother Sarbeshwar Kisko step into the shoe of their father and came into cultivating possession of the suit properties and PW-8 in his cross examination at paragraph Nos.22 and 23 has admitted about the custom.

**10.** PW-9, who is the mukhiya, has supported the fact that Santhal used to celebrate certain festivals as their main festival as stated by PW-8 and Hindu do not celebrate those festivals and in view of that the learned appellate court has found that the defendants' case is falsified that Rutui Kisko was Hinduised.

**11.** Learned first appellate court has rightly held that the claim of tribal that he is sufficiently Hinduised has to be pleaded and proved covering three important features of Hinduism viz. Birth Ceremonies, Marriage Ceremonies and Death Rituals of Pindadan etc. and the learned first appellate court has found that no pleadings were written in the statement of principal defendants.

**12.** It was the admitted case of the parties that the suit properties stand recorded in the name of Rutui Kisku and both the parties are claiming their right, title and interest over the suit properties through said Rutui Kisku. It is further an admitted position that defendants were putting their claim over the suit properties on the basis of alleged adoption of Chandan Kisku, father of principal defendants. Learned first appellate court has rightly

relied in the case of ***Madhusudan Das vs. Narayani Bai & Ors.*** ***reported in 1983 B.B.C.J. (S.C.) page 33 and para 19*** wherein it has been held that “persons seeking to displace the natural succession to the properties by alleging adoption must discharge the burden, which lies on him by proof of valid adoption.”

**13.** Learned first appellate court has further found that there is no statement of adoption and further held that evidence beyond pleadings cannot be adduced and as such the story of adoption create doubt at the onset. Learned first appellate court has rightly said that the defendants/appellants were required to plead and prove the alleged adoption of Chandan Kisku by said Rutui Kisku, the recorded tenant and that has not been further proved by way of brought on the record the date, month and year of alleged adoption, name of natural parents from whom the adoption was taken by Rutui Kisku and their residence, age of Chandan Kisku on the date of alleged adoption and relationship of his natural parents with Rutui Kisku and furthermore there was also nothing to suggest that any physical act of “giving and taking” of such adoption was taken place and in view of that learned first appellate court has found that the appellants/defendants have discharged their burden to prove the factum of adoption as claimed by them and if such pleading was not there and it has not been proved which are essential by way of ingredients as discussed therein of dates, months, parents and relationship etc. and even the physical act of

giving and taking the learned first appellate court has rightly held so.

**14.** Learned first appellate court has also found that the principal defendants did not specifically denied the genealogical table. Instead they claimed that the name of Chandan Kisko should have been incorporated as adopted son of Rutui Kisko and have claimed their right, title and possession over the suit properties on the basis of being sons of said Chandan Kisko, alleged adoptive son of Rutui Kisko. Learned first appellate court has further taken into consideration that Gantzer's Survey Settlement Report at paragraph No.46 states that "In the Santhal Community, Law of Inheritance is patriarchal in nature. In absence of the son of the properties go to the nearest male agnates and they are recognized as heirs of such person and herein the case there is no dispute of taking of the property by the defendant.

**15.** Learned first appellate court has further taken into consideration the evidence of PW-7 who has categorically deposed that initially the suit property initially recorded in the name of Tutui Kisku. Rutui Kisku died issue-less. There were three more brothers of Rutui Kisku namely Moral Kisku, Ganesh Kisku and Kali Das. Ganesh was died issue-less and there were only daughters of Kali Das. Therefore, at the time of death of Rutui Kisku except Jitan and Hopana, there were no any male agnates. According to Santhal customary law after the death of Rutui Kisku, his entire property

devolved upon Hopana and Jitan and both of whom were the grand-son of Moral. At para 5 of his statement, he has stated that Hopana and Jitan gave the maintenance to widow of Rutui namely Delo throughout her life time. She died after forty years ago and after her death, plaintiffs possessed the entire share of Rutui Kisku. The other witnesses have also supported the case of the plaintiff and no cross-examination was made by the defendants to discredit the witnesses on this point.

**16.** On the point of limitation, learned first appellate court has held that even believing that the defendant's claim of adoption is well proved and this fact come to the knowledge of the plaintiffs way back in 1965 and even thereafter the plaintiffs failed to challenge the adoption within three years of knowledge, however, the learned Court has said that since the defendants with regard to adoption of Chandan Kisko by Rutui Kisko not proved and has further held that the plaintiffs are agnates and nearest legal heirs according to Santhal Customary Law, therefore, the question of application of limitation against the rightful owners do not arise.

**17.** Learned first appellate court also held that even it is accepted that the defendants became a tres-passers no relief can be extended in light of judgment of Hon'ble Patna High Court in the case of reported in AIR 1973 Patna 1 wherein it has been held that in respect of jamabandi lands of Santhal Praganas an outsider, even if in possession, cannot acquire title by adverse possession unless

he has remained in continuous possession for twelve years prior to 01.11.1949 i.e. the date of passing of the SPT Act, 1949. It was the admitted position that Rutui Kisko died in 1947 and only after his death the appellants/defendants grand-father entered into possession since the death of Rutui Kisko and that was never matured into title.

**18.** In light of above, it transpires that learned first appellate court after fully applying its mind and rightly appreciating the law has reversed the finding of the learned trial court. The law point raised by Mr. Manjul Prasad, learned senior counsel appearing for the appellants have been rightly dealt with by the learned first appellate court.

**19.** There is no law point to further consider and in view of that the second appeal cannot be admitted, as such this second appeal is hereby dismissed.

**20.** Interim order, granted earlier, is hereby vacated.

**(Sanjay Kumar Dwivedi, J.)**

*Dated 22.04.2026*  
*Sangam/*  
**A.F.R.**