

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M. A. No. 179 of 2025

Nadeem Ahmad, S/o Late Mohammad Shamim, R/o Gali No.5, Road No. 02, Old Karimganj, Civil Line, P.O.-G.P.O., P.s.-Civil Line, Dist.-Gaya, Bihar, presently residing at 24 Moor Copse Close, Earley, Reading, Berkshire, R.G. 67NA(UK) through his constituted attorney Rayees Ahmad Ansari, S/o Late Anisur Rehman, R/o Suhana City, Churi Tola, Block Road, Kanke, P.O. & P.S.-Kanke, Dist.-Ranchi, Jharkhand
 **Appellant**

Versus

1. Mir Ibnul Hussain @ Ibne, S/o Late Mir Nisarul Hussain, R/o Moula Baba Lane Shanti Nagar, Chini Mill, Gajadharganj, P.O. & P.S.-Buxar Nagar, Dist.-Buxar, Bihar at present residing at Millat Colony, P.O. & P.S.-Kanke, Dist.-Ranchi, Jharkhand
2. Mohammad Hasim S/o Late Mohammad Rahim, R/o Millat Colony, Kanke, P.O. & P.S.-Kanke, Dist.-Ranchi, Jharkhand
3. Wajeda Tabassum, W/o Mohammad Hasim and D/o Syed Akil Ahmad, R/o Qr. No. 1B/46, Sawang Colliery, P.O. & P.S.-Gomia Bisra, Dist.-Bokaro, at present residing at Millat Colony, Kanke, P.O. & P.S.-Kanke, Dist.-Ranchi, Jharkhand
 **Respondents**

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Amar Kr. Sinha, Advocate
 Mr. Md. Abdul Wahab, Advocate
 For the Respondents : M/s Rohitashya Roy, Tarun Kr. Mahto,
 Shivam Kumar & Oishi Das, Advocates

Oral Order

06 / Dated : 08.09.2025

1. The appellant is the plaintiff and the instant misc. appeal has been filed for quashing the order dated 20.11.2024 passed in Original Suit No. 879 of 2023, whereby and whereunder, the petition under Order XXXIX Rule 1 and 2 of CPC has been rejected by the Trial Court.
2. The appellant filed the suit for declaration of right, title and interest and for confirmation of possession as well as for a declaration that the registered deed of sale dated 09.12.2019 executed by defendant no. 1 through his constituted attorney i.e. defendant no. 2 in favour of defendant no. 3 with respect to suit property was *ab initio* void, fraudulent and collusive and not binding on the plaintiff and also for permanent injunction.
3. The appellant claims title on the basis of a registered deed of sale executed on 24.03.2008 from legal heirs of Late Mir Nisar Ahmad namely Syed Ali Imam and others. After the said purchase, the land was

duly mutated in Mutation Case No. 1353 R 27/2008-09 and the rent is being paid to the State on grant of receipt to the same. The plaintiff claims to be in peaceful possession of the land by constructing boundary wall over it.

4. It is the admitted case of both sides that the land originally belonged to one Mir Ibnul Hussain (defendant no. 1). As per the case of the plaintiff, Mir Nisar Ahmad purchased the said land on 15.09.2003 from Mir Ibnul Hussain (defendant no. 1), and the plaintiff claims to have purchased the said land from the legal heirs of Mir Nisar Ahmad in 2008; whereas, Wajeda Tabassum (defendant no. 3) claims to have purchased the said land from defendant no. 1 on 09.12.2019 from the constituted power of attorney holder of defendant no. 1 and after the said purchase, he also claims to have got the land mutated in his name.
5. Mir Ibnul Hussain has filed a separate written statement, whereby and whereunder, it has been denied by him that he had ever executed the sale deed in favour of Mir Nisar Ahmad who is the vendor to the plaintiff. It is contended that the said deed of sale was forged and fabricated and executed by some imposter and he had never put his LTI on the said sale deed.
6. It is submitted by learned counsel for the respondents that there is admission in the application filed under Order XXXIX Rule 1 and 2 of CPC that in his (plaintiff's) absence, defendant no. 3 had put on a shutter and painted it as Sahil Enterprises and had a Hardware Shop running in it with GST registration and electric connection. It is further submitted that if the party is not in possession, then balance of convenience does not lie in his favour as held by the Hon'ble Supreme Court in **(2008) 4 SCC 594 (Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L.Rs. & Ors.)** wherein, it has been held that when the plaintiff is in possession but his title to the property is in dispute or under a cloud or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and consequential relief of injunction. With regard to the principles for grant of temporary injunction, the law has been settled by the Hon'ble Supreme Court in **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi (Civil Appeal No. 13001/2024)**

wherein, it has been held that the Court should be satisfied that non-interference by the Court results in irreparable injury to the party seeking relief and that there is no other remedy available to the parties except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession.

7. After having considered the submission advanced on behalf of both sides and on perusal of the materials on record, the central issue in the present case is whether Defendant No.1 had executed the registered sale deed in favour of Mir Nisar Ahmad in 2003 from whom the Plaintiff claims title in 2008. Whether there is a prima facie case of execution of sale deed in favour of Mir Nisar Ahmad by Defendant No.1.
8. So far, a registered sale deed is concerned, there is presumption of due execution in its favour. It has been held in **AIR 1923 PC 114** that the document found registered and certificate of endorsement under Section 60 is endorsed thereon, presumption arises under Section 114 of the Evidence Act, that official acts have been regularly performed and the document was duly presented by person duly authorized under law. Ratio laid down in **Ishwar Dass Jain Vs. Sohan Lal (2000) 1 SCC 434** is also to the same effect.
9. Thus, there is presumption of due execution of sale deed by Mir Ibnul Hussain in favour of Mir Nisar Ahmad, until it is rebutted by evidence during trial. Under Section 54 of the Transfer of Property Act, 1882 the title in a property passes on the execution of sale deed and the owner of the property is divested of any title and, therefore, any subsequent sale deed executed by him has no legality and it does not transfer any title, consequently subsequent mutation can be of no avail.
10. Further, it has not been disputed that after the execution of such sale deed, the land was mutated in the name of Mir Nisar Ahmad and later on, when the plaintiff purchased it, was also mutated in his name. It has been denied that the notice was ever issued to defendant no. 1 of these mutation proceedings. Nevertheless, the fact that the mutation was done way back in 2003 and again in 2008 and the plaintiff continued to pay rent, is a sufficient notice to all concerned parties. Defendant No.1 did not take any step for cancellation of the sale deed or the order passed in mutation cases.

11. The second question that has been very forcefully raised on behalf of defendants is with regard to the possession of the land. Mutation does not create or extinguish title. It is also not a conclusive piece of evidence with regard to possession. However, it is one of the acts of possession and cannot be completely ignored, when it is on the basis of a registered deed of sale. Here in the present case, the plaintiff is an NRI and, therefore, it cannot be expected that he will be always present on the land which he had duly purchased and mutated in his name. Only because a party has put up a shutter in his absence will not give him a legal possession.
12. It is inconceivable that defendant no. 1 was blissfully unaware of the sale deed executed in his name from 2003 to 2019, despite the fact that the said land changed hand twice and were duly mutated in Register-II. Plaintiff has a prima facie title and possession over the land in question, unless rebutted in trial. Therefore, learned trial Court fell in error in rejecting the petition for temporary injunction.

Under the circumstance, the impugned order is set aside and the application for temporary injunction filed by the plaintiff is allowed.

The observations made hereinabove will not prejudice the trial court in adjudicating the issues in trial.

Learned Trial Court is directed to dispose of the case within three months from the date of receipt/production of copy of this order. Depending upon the averment and evidence made, the Trial Court to decide the issue of relationship considering the principles laid down by the Hon'ble Supreme Court in **(1983) 3 SCC 118 (State of Bihar Vs. Radha Krishna Singh)**. Both the parties are directed to appear before the Trial Court within two weeks from the date of receipt/production of copy of this order.

Instant Misc. Appeal stands allowed.

Pending I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)