

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.39 of 1991

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1. Sita Ram Mahto Son of Munshi Mahto, Resident of Village- Bari, Police Station- Madanpur, District- Aurangabad
 2. Munshi Mahto Son of Doman Mahto, Resident of Village- Kankaithi, Post Office- Simariya, Police Station- Jagdishpur, District- Bhagalpur.

... .. Appellant/s

Versus

Jamuna Mishra Son of Sri Kauleshwar Mishra, Resident of Village- Bari, Police Station- Madanpur, District- Aurangabad

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Abhishek, Advocate
For the Respondent/s : Mr. Nagendra Dubey, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 30-04-2025

This second appeal has been preferred against judgment and decree dated 26.11.1990 and 21.12.1990, respectively passed in Title Appeal No. 09 of 1982 / 15 of 1989 by learned Sub-ordinate Judge-III, Aurangabad.

2. Factual matrix of the case appearing from the record is that the appellants were plaintiffs before the learned trial court and the respondent was the defendant. As the title suit was decreed in favour of the plaintiffs, a regular first appeal was preferred by the defendant and plaintiffs became the respondent in the first appeal. For the sake of convenience the appellants of this case would be referred as plaintiffs and the respondent as



the defendant. The plaintiffs brought a suit for declaration of title and recovery of possession over 52 decimals of land bearing Plot No. 395 appertaining to Khata No. 113 situated at Village Beri, P.S- Madanpur, District-Aurangabad. The plaintiffs also sought permanent injunction for restraining the defendant from cutting and removing the trees standing on the suit land apart from mesne profit. The suit land has been described in Schedule -1. The plaintiffs claim that disputed Plot No. 395 under Khata No.-113 was originally held by ex-landlord as *Bakast* land and was part and parcel of an orchard at the time of cadastral survey operations. However, the orchard died down and the landlord cut and removed all the trees. The plaintiffs took oral settlement of the entire Plot No. 395, 48 decimals out of Plot No. 398 and 75 decimals of Plot No. 394 and came in possession of the same. When the land became fully cultivable and productive, landlord Ganga Prasad Singh was paid *Nazrana* and he fixed *Nakdi* rental and issued rent receipts in the year 1351 Fasali. The plaintiffs amalgamated the three suit plots in one compact plot and planted several trees. The landlord submitted return showing the suit land as *raiya* land of plaintiff no. 1, Sita Ram Mahto. After vesting of *zamindari* demand was opened in the name of plaintiff no. 1 and he started paying rent



to the Government of Bihar. Kauleshwar Misher, father of the defendant, had 89 decimals of *raiya* land bearing Plot Nos. 278 and 394. The plaintiffs claim the suit land was never settled in favour of father of the defendant by the ex-landlord but the defendant came in collusion with Krishna Prasad Singh, son of Late Ganga Pd. Singh. Further case of the plaintiffs is that the landlord got some interpolation made in the said return and made the *jamabandi* submitted in the name of the plaintiffs no. 1 look suspicious. The defendant also got prepared a forged and fabricated *Parwana* dated 20.08.1952 allegedly granted by Ganga Pd. Singh in favour of Kauleshwar Misher for the suit land. The *zamindari* of Ganga Pd. Singh was vested in the State of Bihar in the year 1952-53 prior to the alleged settlement with Kauleshwar Misher. The original demand prior to interpolation showed that the land of the defendant appertained to Khata No. 127 and 137 but the defendant clandestinely got a change made therein to replace Khata No. 127 with Khata No. 113. When the plaintiffs came to know about this fact, they approached the authorities to undo the mischief committed by defendant and after a thorough inquiry the order was passed for restoration of original demand standing in the name of Kauleshwar Misher in their favour. Further case of the plaintiffs is that there was a



proceeding under Section 144 of the Cr.P.C. between the parties which was eventually converted into a proceeding under Section 145 Cr.P.C. Thereafter, learned Executive Magistrate made a reference under Section 146 of the Cr.P.C. and the said proceeding was decided against the plaintiffs. Being emboldened by that order, the defendant forcibly dispossessed the plaintiffs from the suit land on 10.03.1979. In the aforesaid facts and circumstances, the plaintiffs brought the title suit for declaration of title, recovery of possession and mesne profits.

3. On the other hand, contesting the claim of the plaintiffs, defendant in his written statement submitted that his father Kauleshwar Misher has taken settlement of disputed land measuring 52 decimal Plot No. 395 appertaining to Khata No. 113 from the ex-landlord by virtue of a *Parwana* on payment of *Nazrana* of Rs. 49 and came in possession of the same. The outgoing landlord submitted return at the time of vesting of *Zamindari* showing the father of the defendant as tenant of the disputed land but inadvertently Khata No. 127 was mentioned instead of Khata No. 113 against the Plot No. 395. Subsequently, the Circle Officer of Madanpur vide order dated 08.08.1981 in Misc. Case No. 25/70-71 ordered for rectification. The defendant denied the claim of the plaintiffs that they have



taken settlement in respect of the entire Plot No. 395, 398 and 75 decimal out of the Plot No. 394. Plaintiffs, in collusion with the employees of the revenue office of Madanpur block, made some interpolation in the certified copy of the return and on that basis applied for opening of the demand in his name with respect to the land in the suit. The defendant filed a petition of objection and ultimately the proceeding was dropped on 13.07.1973. Subsequently, the plaintiff no. 1 surreptitiously got the demand opened in his name for the disputed land. The plaintiffs were never in possession of the suit land and they have never planted any trees. The defendant claimed that he has been coming in possession of the suit land and prior to him his father was in possession of the same land and he has planted trees in the disputed land. Further case of the defendant is that he and his father had executed a mortgage bond in favour of one Ram Khelawan Thakur with respect to the suit land and that mortgage bond was redeemed by the defendant. The defendant also claimed that vesting of the *zamindari* of ex-landlord Ganga Pd. Singh took place in the year 1955 and not in the year 1952-53. Proceeding under Section 145 of the Cr.P.C. was rightly decided in favour of the defendant and all allegation on contrary are false. One Smt. Padmawati Devi was settlee of landlord in Plot No.



394, Khata No. 127 and she was in possession thereon. She herself sold her land to different persons including the answering defendant by virtue of registered sale deeds and the purchasers are in possession and have been paying rent and getting receipts. Sale deed of the defendant is dated 12.06.1971 for 62 decimals land of Plot No. 394. He has amalgamated some of the lands of Plot No. 394 with the disputed land. Apart from that some portions of adjacent *parti* land of *gairmajarua malik* has been amalgamated with disputed land.

4. On the ground of the aforesaid pleadings, the learned trial court framed the following issues for consideration:

- 1. Is the suit as framed maintainable?*
- 2. Have the plaintiffs got any cause of actions for the suit?*
- 3. Is the suit barred by limitation?*
- 4. Have the plaintiffs got any right, title and interest in the suit land?*
- 5. Are the plaintiffs entitled to recovery of possession by evicting the defendants from the lands in suit?*
- 6. Are the plaintiffs entitled to mesne profits?*
- 7. Are the plaintiffs entitled to obtain a decree for permanent injunction restraining the defendants permanently from cutting down and removing the trees in the suit land ?*
- 8. To what other relief or reliefs, if any are the plaintiffs entitled ?*

6. The learned trial court after considering the



evidence of the parties decreed the suit of contest against the defendants with cost. The defendant was directed to vacate the possession through the suit land within a period of three months from the date of order failing which the liberty was granted to the plaintiffs to get the delivery of possession effected through the process of Court.

7. Aggrieved by the judgment and decree of the learned trial court dated 27.11.1981 and 09.12.1981, respectively, a regular first appeal was preferred and the learned 1st Appellate Court after considering of the material before it came to a finding that the findings of the learned trial court were not sustainable and allowed the appeal while setting aside the judgment and decree of the learned trial court and the suit of the plaintiff was dismissed with cost. The learned Single Judge admitted the appeal formulating one substantial question of law.

8. Before proceeding further, it would be advantageous to discuss the findings of both the subordinate courts.

9. The learned trial court took note of the fact that both the parties are claiming the document of the other side to be spurious and thereafter, it went on to discuss the oral evidence and the documentary evidence of the parties. Relying



on Exhibit 1/D and 1/E, two rent receipts said to be issued by ex-landlord in the name of Sita Ram Mahto with respect to khata nos. 127 and 113 bearing the seal of the Collector, Gaya and the rent receipts were held to be genuine by the learned trial court. Thereafter, learned trial court relied on Exhibit 4/A, certified copy of the order under Section 103A of the B.T. Act, the document shows the demand was opened in the name of Sita Ram Mahto with respect to suit land after due enquiry by the Circle Inspector and Circle Officer. Exhibit 4/B is the certified copy of the order dated 15.06.1973 passed in Misc. Case No. 68/72-73 relating to correction of the demand. The learned trial court took note of the fact that the demand was earlier existing in the name of Kauleshwar Mishra with respect to 52 decimals of disputed Plot No. 395 but the same was subsequently cancelled and demand was allowed to be opened in the name of Sita Ram Mahto. Further Exhibit 5, the certified copy of rent receipt, is in the name of Sita Ram Mahto with respect to 52 decimal of land out of Plot No. 395 and 23 decimals of land out of Plot No. 398. Exhibit 2 is the original requisition issued by this Court and Exhibit 3 is the certified copy of the petition of complaint by Jamuna Mishra against Sita Ram Mahto and others and Exhibit 4 is the certified copy of the order dated



13.05.1972 by which the petition of the complainant was dismissed under Section 203 of the Cr.P.C.

10. On the other hand, the documents filed by the defendant was not believed by the learned trial court. The learned trial court did not record any opinion on veracity of Exhibit A, mortgage bond, and Exhibit C, the note of redemption on Exhibit A. However, learned trial court considering the Exhibit I/1 (certified copy of the orders under Section 146 Cr.P.C.) observed that the case of the defendant in Section 145 Cr.P.C. proceeding was that mortgagee, i.e., Ram Khelawan Thakur, did never come into possession of the land given in the mortgage as he had no means of cultivation and the father of the defendant used to divide the usufructs of the mortgage. One of the witnesses, namely D.W. 9 stated that mortgage money was paid by Sita Ram Mahto and he has handed over the mortgage bond to Sita Ram Mahto. The learned trial court disbelieved the mortgage bond filed in the Court by the defendant. The learned trial court further disbelieved Exhibit G and G/1 finding it to be not the original return submitted by the outgoing landlord as it was a duplicate copy of return. The learned trial court while discussing the Exhibits I/2 and I/3 which are certified copies of order relating to correction of



demand with respect to disputed Khata No. 113 in the name Kauleshwar Misher, held that no opportunity was given to the plaintiffs in whose name demand was previously existing to explain and correction of khata number was allowed behind the back of the plaintiffs. The learned trial court did not find the other documents relevant. Thus, learned trial court came to the finding that the evidence laid on behalf of the plaintiffs and documents filed by them are superior to that of defendant and on the basis of the evidence it was held that the plaintiffs have amply proved their title over the lands in suit. The issues were accordingly decided.

11. The judgment and decree of the learned trial court being challenged before the learned 1st Appellate Court, the learned 1st Appellate Court discussed at length the evidence and documents and came to the finding that judgment and decree passed by the learned trial court were not sustainable and held that title of the appellant was proved over the suit land. The learned 1st Appellate Court discussed the Exhibit D, Parwana dated 20.08.1952, in respect of the suit land in favour of Kauleshwar Misher and held that the same bore the signature of Ganga Pd. Singh. Exhibit B is the Zamindari rent receipt in the name of Kauleshwar Misher for the suit land and Exhibit B/1 to



B/9 are state rent receipt in respect of Khata no. 137 and 127 total area 89 decimals in the name of Kauleshwar Misher. Exhibit M is the certified copy of return in compensation case no. 6/53-54 which shows that Plot No. 395 area 52 decimal in Khata No. 127 along with other plots total area 89 decimal has been shown in the name of Kauleshwar Misher. It further shows that entire area of 3.98 acre of Plot no. 394 under Khata No. 127 was shown in the name of Padmawati Devi by the ex-landlord. The Exhibit 1/3, certified copy of the order passed in Misc. Case No. 25/70-71 shows that the Anchal Adhikari, Madanpur corrected the Khata No. 127 in respect of suit land and he found that the real khata was 113 of the suit and accordingly demand was corrected vide order dated 08.08.1970. Further Exhibit-A is the original mortgage deed executed by Kauleshwar Misher in favour of Ramkhelawan Thakur in respect of the suit Plot no. 395. Thus, the learned 1st Appellate Court came to a finding that Plot no. 395 area 52 decimal was settled with Kauleshwar Misher, father of the defendant, in the year 1952. The learned 1st Appellate Court also took note of the claim of the defendant that by mistake Khata no. was wrongly entered as 127 instead of 113 and it was admitted case that Kauleshwar Misher had 89 decimals of raiyati land in the village appertaining to Khata No.



137, Plot No. 278 measuring 37 decimals and Khata No. 127 measuring 52 decimals in Plot No. 394. Ganga Pd. Singh had already settled Plot No. 394 to his wife Padmawati Devi and therefore, Plot No. 394 was not settled to the defendant by the aforesaid ex-landlord. The document return Exhibit-M filed by the ex-landlord in Compensation Case No. 6/53-54 showed that Plot No. 394 area 3.98 acres was settled with Padmawati Devi and admittedly the total area of this plot was 3.98 acres. Similarly, Exhibit F, certified copy of the sale deed dated 21.07.1971, showed transfer by Padmawati Devi in favour of Jamuna Misher, the defendant in respect of 62 decimal of Plot No. 394. Similarly, Exhibit F/1 is the original sale deed executed by Padmawati Devi in favour of Prasad Mahto on 02.04.1970 in respect of 2.21 acres of Plot No. 394 under Khata no. 127. The learned 1st Appellate Court also came to a finding that Plot no. 394 under Khata No. 127 was settled with Padmawati Devi and she had transferred the same to some different persons including the defendant through registered sale deeds.

12. Thus, the learned 1st Appellate Court came to a finding that no question arises for settlement of Plot No. 394 by the ex-landlord in favour of either of the parties and for this reason there could be no amalgamation of the disputed plot in



Plot No. 394 by the plaintiffs. Learned 1st Appellate Court further discussed the details of Cr. Revision No. 106 of 1972 filed by the defendant before this Court, wherein the learned Single Judge set aside the order under Section 145 of the Cr.P.C. passed by the learned Magistrate 1st Class and remanded the matter for fresh consideration in the light of observation made therein. In the revision case, it was pointed out that in the certified copy of the return filed by the plaintiffs in miscellaneous case, Plot No. 395 has been entered into a different ink and pen. The learned Single Judge found interpolation in the certified copy in different ink and pen. The learned Single Judge also examined serial no. 81 of the '*Laggit*' as Plot No. 398 was mentioned in the '*Laggit*' in Khata No. 127 before this Court and there had been no mention of Khata No. 113 or Plot No. 395 or Plot No. 394 as mentioned in the certified copy. This Court remanded the case after setting aside the order passed under Section 145 Cr.P.C. for fresh decision with observation to give a finding as to whether any interpolation was done in the return filed on behalf of the plaintiffs. It further transpires that the matter was referred to the learned Munsif/Magistrate and learned Munsif in reference held that Khata No. 113, Plot No. 395 area 52 decimal has been



entered in the certified copy filed by the plaintiff in different ink. The learned Munsif decided the reference in favour of defendant Jamuna Misher vide order dated 06.03.1979 and accordingly, the Magistrate 1st Class declared possession of Jamuna Misher over the suit land vide his order dated 06.04.1989. It was also found that Plot No. 394 area 48 decimals and Plot No. 395 area 52 decimals under Khata No. 113 have been recorded in different ink and pen. This '*Laggit*' was also produced before this Court and it was found that entry of Plot No. 398 under Khata No. 127 area 75 decimals only in the name of Sita Ram Mahto. Therefore, two other plots namely 394 and 395 have been entered in Sl. No. 181, by way of interpolation after return of this document from the High Court. The learned 1st Appellate Court took note of the fact that the plaintiffs did not file certified copy of the return in the lower court though this document was filed in the proceeding under Section 145 of the Cr.P.C. and this document was also available at the time of hearing of criminal revision before this Court. The learned Single Judge found entries of Plot No. 395 and 394 were in different ink in the certified copy of the return filed by Sita Ram Mahto. The learned Munsif while deciding the reference also found interpolation in the said return, in respect of Plot No.



394 and 395. At the same time, the learned 1st Appellate Court found in the document, namely Exhibit 1/D, a land receipt, as certain interpolation having been made in different ink in the said document. Further Exhibit B/1, zamindari rent receipt, in the name of Sita Ram Mahto showed that it was originally for 75 decimal in respect of Khata No. 127 but by interpolation it has been made for 175 decimals. In figures, the interpolation is much apparent. Further, Khata No. 113 on the right side of the figure 127 has been entered in different ink which is apparent on face of it. Thus, the learned 1st Appellate Court found the document unreliable. The learned 1st Appellate Court in course of discussion further observed that Exhibit 4/B shows that Anchal Adhikari, Madanpur has ordered to open demand in respect to Plot No. 395 under Khata No. 113 area 52 decimal in the name of Sita Ram Mahto. Exhibit 5 was disbelieved as it was passed under Section 145 during the pendency of the Criminal Revision. In the light of the aforesaid discussion, the learned 1st Appellate Court found merit in the case of defendant/appellant and held that suit land was not settled with plaintiff no. 1 and further held that plaintiffs have no right, title and interest over the suit property. In this manner, the 1st appeal was allowed.



13. The appellants came before this Court in second appeal against judgment and decree of the 1st Appellate Court. While admitting the appeal, the learned Single Judge framed the following substantial question of law :-

“Whether, in the peculiar facts and circumstances, the finding recorded by the court of appeal are binding on this Court in the Second Appeal”

14. The learned counsel for the appellant assailing the judgment and decree of the learned 1st Appellate Court submitted that the findings recorded by the 1st Appellate Court in favour of the defendants/respondents on the basis of documents holding it to be interpolated and fabricated is legally not justified. The learned 1st Appellate Court did not consider that the defendant has not made any counter claim to the title and did not seek any declaration that the return filed in favour of ancestors of the plaintiff was a forged document. The learned 1st Appellate Court fell into error while giving more weightage to a duplicate copy of return ‘Laggit’ to the certified copy of the return marked Exhibit ‘C’. The learned Appellate Court did not take into consideration the importance of Exhibit 4/A and it ought to have held that Exhibit 4/A will prevail over the documents filed by the parties since it is an order under Section 103B of the



B.T. Act. The learned 1st Appellate Court committed further error by accepting the jurisdiction of the Circle Officer to make correction in the return submitted by ex-landlord as it was beyond the jurisdiction of the Circle Officer to make correction in the return. Learned 1st Appellate Court also failed in considering the point that the return submitted by the ex-landlord was sufficient to prove the case of the plaintiff which was accepted by the defendant but with a rider that interpolation had been made. Learned counsel further submitted that the original documents were never called for and the learned 1st Appellate Court relied on a criminal proceeding but a decision under Section 103B of the B.T. Act would prevail on the finding of the criminal court and the order under Section 103 of the B.T. Act was never challenged. In fact there is no document to show the title of the defendant. Duplicate copy of return is neither a primary nor a secondary piece of evidence and this fact was overlooked by the learned 1st Appellate Court when it considered the duplicate copy of return and gave a finding in favour of the defendant. Learned counsel further submitted that as the Circle Officer has no right to correct the plot number in return and finding based on this fact was erroneous.

15. Learned counsel thereafter referred to certain



decisions. In the case of ***Neeraj Dutta Vs. State(Govt. Of N.C.T. of Delhi)*** reported in ***2023(1) PLJR (SC) 63*** the Constitution Bench of Hon'ble Supreme Court held in para. 42 as under:-

“42. Section 61 deals with proof of contents of documents which is by either primary or by secondary evidence. When a document is produced as primary evidence, it will have to be proved in the manner laid down in Sections 67 to 73 of the Evidence Act. Mere production and marking of a document as an exhibit by the court cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence. On the other hand, when a document is produced and admitted by the opposite party and is marked as an exhibit by the court, the contents of the document must be proved either by the production of the original document i.e., primary evidence or by copies of the same as per Section 65 as secondary evidence. So long as an original document is in existence and is available, its contents must be proved by primary evidence. It is only when the primary evidence is lost, in the interest of justice, the secondary evidence must be allowed. Primary evidence is the best evidence and it affords the greatest certainty of the fact in question. Thus, when a particular fact is to be established by production of documentary evidence, there is no scope for leading oral evidence. What is to be produced is the primary evidence i.e., document itself. It is only when the absence of the primary source has been satisfactorily explained that secondary evidence is permissible to prove the contents of documents. Secondary evidence, therefore, should not be accepted without a sufficient reason being given for non-production of the original.”



In the case of ***Rajesh Jain Vs. Ajay Singh*** reported in **2023 (4) PLJR (SC) 384**, the Hon'ble Supreme Court in paragraph nos. 29 and 30 held as under:-

*“29. There are two senses in which the phrase ‘burden of proof’ is used in the [Indian Evidence Act, 1872](#) ([Evidence Act](#), hereinafter). One is the burden of proof arising as a matter of pleading and the other is the one which deals with the question as to who has first to prove a particular fact. The former is called the ‘legal burden’ and it never shifts, the latter is called the ‘evidential burden’ and it shifts from one side to the other. [See *Kundanlal v. Custodian Evacuee Property* (AIR 1961 SC 1316)]*

30. The legal burden is the burden of proof which remains constant throughout a trial. It is the burden of establishing the facts and contentions which will support a party's case. If, at the conclusion of the trial a party has failed to establish these to the appropriate standards, he would lose to stand. The incidence of the burden is usually clear from the pleadings and usually, it is incumbent on the plaintiff or complainant to prove what he pleaded or contends. On the other hand, the evidential burden may shift from one party to another as the trial progresses according to the balance of evidence given at any particular stage; the burden rests upon the party who would fail if no evidence at all, or no further evidence, as the case may be is adduced by either side (See Halsbury's Laws of England, 4th Edition para 13). While the former, the legal burden arising on the pleadings is mentioned in [Section 101](#) of the Evidence Act, the latter, the evidential burden, is referred to in Section 102 thereof. [[G.Vasu V.](#)



Syed Yaseen(AIR 1987 AP139) affirmed in *Bharat Barrel Vs. Amin Chand* [(1999) 3 SCC 35]]”

Thus, learned counsel submitted that the burden is on the defendant to prove interpolation and the defendant did not discharge this burden. For discharging this burden original was required to be compared with the certified, but no such comparison was made. Learned counsel next referred to the case of *Bhaddo Uraon & Ors. Vs. The State of Bihar & Ors.* reported in *1988 PLJR 1101*, wherein in paragraph no. 31 it has been held as under:

“31. Under sub-section (3) of section 103B of the said Act of 1885 an entry in the record of rights published is an evidence of the matter referred to in such an entry and will be presumed to be correct till proved by further evidence to be incorrect. The presumption, which arises from the entries in the record of right is a rebuttable presumption and could have been rebutted by further evidence. Similarly, the affidavit of village Mukhiya and the report of the local police are all pieces of evidence to be considered while deciding the matter finally.”

16. Learned counsel further submitted that there is presumption of correctness attached with the return filed by the ex-landlord in favour of the ancestors of the plaintiffs. There is no document to show that return was not submitted. On the nature of evidence, the learned counsel referred to the decision



of *Asha Devi Vs. Indu Devi* reported in **2019(4) PLJR 93**

wherein in paragraph no. 13, 14 and 17 it has been held as under:-

“13. However, there are certain exceptions whereby secondary evidence relating to documents may be given. They have been described in Section 65 of the Evidence Act.

14. In order to enable a party to produce secondary evidence, it is necessary for the party to prove existence and execution of the original document. Unless the conditions laid down in Section 65 of the Evidence Act is fulfilled, secondary evidence can not be admitted.

17. Under such circumstances, the court could not have allowed the xerox copy submitted by the petitioner to be taken into evidence and marked as exhibit. Hence, the court below has rightly rejected the application filed by the petitioner; vide order dated 10.12.2018.”

Thus, learned counsel submitted that the learned trial court rightly held that the evidence of the plaintiff was superior to the evidence of the defendant and as the defendant has failed to discharge the burden fastened upon him, the learned 1st Appellate Court wrongly decreed the appeal in favour of the defendant.

17. On the other hand the learned counsel appearing on behalf of the appellant/respondent vehemently contended that there is no infirmity in the impugned judgment and decree of the learned 1st Appellate Court and the same has been passed



after due consideration of the evidence of the parties *vis-a-vis* the pleadings of the parties. Learned counsel appearing on behalf of the respondent vehemently contended that the second appeal filed by the appellants is devoid of any merits and the same could should have been rejected *in-limine*. Learned counsel further submitted that the learned 1st Appellate Court took into consideration the oral as well as documentary evidence and passed an order which is supported with reason and is not open to challenge. The learned counsel stressed on two points that the plaintiffs made interpolation in the documents for their claim of title over the suit property and this interpolation in mentioning of Plot No. 395 was mentioned by this Court as well as the Court of learned Munsif which recorded an unequivocal finding about the interpolation being made by the plaintiffs. Learned counsel further submitted that afraid of the fact that his interpolation would be caught and the forgery made in the document would come on record, the plaintiffs did not file the certified copy of the return before the learned trial court.

18. Learned counsel referred to the judgment of the learned 1st Appellate Court where referring to the observation of the learned Single Judge of this Court that entry of Plot No.



398 under Khata No. 127 having area of 75 decimal only was in the name of Sita Ram Mahto. Further the rent receipts produced by the plaintiffs were found to be fabricated documents as there has been interpolation even in the rent receipts and the interpolation is much apparent. Interpolation was further made in the area under the ownership of Sita Ram Mahto by making 75 decimal of land to 175 decimal. The learned counsel thus submitted that the learned 1st Appellate Court rightly differed from the finding recorded by the learned trial court as the judgment of the learned trial court was not supported with proper appreciation of evidence and proper reasoning in support of the findings. Therefore, the second appeal does not deserve any consideration from this Court and is liable to be dismissed by this Court.

19. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

20. The plaintiffs admitted that the father of the defendant had 89 decimal of *raiyati* land appertaining to Khata No. 137, Plot No. 278 measuring 37 decimal and Khata No. 127 measuring 52 decimal of Plot No. 394. The plaintiff has also admitted possession of defendant over 89 decimal of land. The bone of contention between the parties is whether while



settling the plot no. 395, the ex-landlord mentioned wrong Khata No. of 127 in place of the correct Khata No. 113. Admittedly, the claim of the plaintiffs is based on oral settlement of the suit land including Plot No. 394 by the ex-landlord. Further, it is also not in dispute that Plot No. 395 is in Khata No. 113 and Plot No. 394 is an adjoining plot. The claim of the plaintiff is based on the certified copy of return filed by the plaintiff in support of his title interest and possession. However when the matter travelled to this Court in criminal revision, the learned Single Judge examined the document closely and it was observed that under Khata No. 127, only Plot No. 398 was mentioned and there was no mention either of other Khata No. 113 or Plot No. 395 or Plot No. 394 as mentioned in the certified copy. The learned Single Judge returned the matter for fresh consideration with observation to record a finding whether any interpolation was done in the return filed on behalf of the plaintiff. When the matter came before the learned Munsif, Aurangabad for recording finding on this point under reference, the learned Munsif held that Khata No. 113, Plot No. 395, area 52 decimal has been entered in the certified copy filed by the plaintiffs in different ink. The learned Munsif returned a finding which favoured the defendant and



possession of the defendant was declared over the suit land. In criminal revision, the learned Single Judge also recorded that entry of Plot No. 398 under Khata No. 127 area 75 decimal only was in the name of Sita Ram Mahto. So finding recorded by the learned 1st Appellate Court that the Plot No. 394 and 395 have been mentioned in serial no. 181, after return of this document by the High Court by way of interpolation and this goes on to show that Plot No. 395 and 394 had been entered in the *Laggit* by way of interpolation. It is also a relevant factor to be taken into consideration that the plaintiff did not file the certified copy of the return before the court of learned Munsif during the pendency of title suit.

21. Much stress has been put on the importance of document Exhibit 4/A which is the certified copy of the order of B.T. Act, case filed by Sita Ram Mahto against Kauleshwar Misher on 16.11.1974 for correction of the demand in respect of the suit land. The learned 1st Appellate Court has observed that the settlement officer also found interpolation in the certified copy of the return. He has found that Plot No. 395 was entered in certified copy by interpolation. The objections of the plaintiffs were allowed by the learned Magistrate on the basis of an order passed under Section 145 of the Cr.P.C. but the said



order was set aside by this Court. Therefore, the proceedings ended in favour of the defendant and further I find no error in the appreciation of the oral evidence of the parties by the learned 1st Appellate Court whether on the point of title or on the point of possession/dispossession.

22. If the claim of the plaintiffs over Plot No. 394 has not been found sustainable, there was no occasion for the plaintiffs to amalgamate Plot No. 394 with 398. It is pertinent to note here that the ex-landlord settled that Plot No. 394, area 3.98 acre in favour of Padmavati Devi and the total area of said plot is 3.98 acre. The learned 1st Appellate Court also disbelieved the story of amalgamation of Plot No. 398 and 394 with Plot No. 395 on the ground that Plot nos. 394 and 398 were bigger plots having area of 3.98 acres and 4.09 acres, respectively and could not be amalgamated with the disputed plot having lesser area and if amalgamation was claimed it was a case of encroachment and not of amalgamation. Moreover when possession of the defendant over the 52 decimal of land was held to be correct, the story of amalgamation gets falsified. Further, no date or year of amalgamation has been mentioned. There is another important piece of evidence which favours the case of the defendant. Exhibit A which is the original mortgage deed dated



02.06.1966 which was executed by Kauleshwar Misher in favour of Ram Khelawan Thakur and the endorsement shows that Kauleshwar Misher, the father of the defendant has mortgaged the suit land in favour of Ram Khelawan Thakur and also redeemed the mortgage. Further, the entry in *kahtiyan*, Exhibit 'L' also favours the defendant.

23. It has been vehemently contended by the learned counsel for the appellants that '*Laggit*' is not an authenticated document and cannot be relied upon. But this document was called by the Court from the Collector's office to examine the genuineness of the return filed by the plaintiffs and this document was also produced before this Court in criminal revision and was not challenged. There has been findings recorded that at Sl. No. 181, the plaintiffs have made interpolation by introducing Plot No. 398 and 395 under Khata No. 113 by different ink and pen. In criminal revision, this Court did not find mentioning of Plot nos. 398 and 395 under the said khata number. Therefore, on the basis of documents and the oral evidence, there appears no infirmity in the judgment and decree of the 1st Appellate Court.

24. So far as the claim of the plaintiffs putting stress on the fact that Circle Officer was not empowered to make



correction in the return submitted by the ex-landlord, the same is not of much consequence in the light of the other facts and circumstances and the reading of the documents filed by the parties.

25. In the light of the discussion, I do not find any error in the findings recorded by the learned 1st Appellate Court and therefore, the substantial question of law framed, the present matter is decided against the appellants. It is pertinent to note here that a number of other substantial questions were suggested during the argument but these were mainly concerned with appreciation of the fact and evidence and hardly qualified as substantial questions of law. Moreover, these issues raised during arguments have been taken care of by this Court in the discussion hereinbefore and answered accordingly. Thus, finding no infirmity in the judgment and decree of the learned 1st Appellate Court, the same are affirmed.

26. As a result, the second appeal is dismissed.

(Arun Kumar Jha, J)

Anuradha/-

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CAV DATE	21.01.2025
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