

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.98 of 1997

1. Oshihar Chaudhary, Son of Late Rukhi Chaudhary Resident of Village Baikunthpur, Pargana Sipah, P.S. Manjhagarh, District Giopalganj.
2. Jai Ram Chaudhary, Son of Late Rukhi Chaudhary Resident of Village Baikunthpur, Pargana Sipah, P.S. Manjhagarh, District Goopalganj.
3. Mokhtar Chaudhary, Son of Late Rukhi Chaudhary, Resident of Village Baikunthpur, Pargana Sipah, P.S. Manjhagarh, District Gopalganj.
4. Ram Chandra Chaudhary, Son of late Rukhi Chaudhary, Resident of Village Baikunthpur, Pargana Sipah, P.S. Manjhagarh, District Gopalganj.
5. Most. Darpaniya, Wife of Rukhi Chaudhary, Resident of Village Baikunthpur, Pargana Sipah, P.S. Manjhagarh, District Gopalganj.
6. Smt. Gautam Devi, Wife of Sigasan Chaudhary Resident of Village Paithanpatti, P.S. Manjhagarh, Pargana Sipah, District Gopalganj, at present resident of Village Baikunthpur, Pargana Sipah, P.S. Manjhagarh, District-Gopalganj.
7. Smt. Sheo Kumari Devi, Wife of Shri Muniraka Yadav and D/o Late Rukhi Chaudhary, Bhaisahi, P.S. Manjhagarh, District Gopalganj, at present village Baikunthpur, P.S. Manjhagarh, Pargana Sipah, Sipah, District Gopalganj.
8. Smt. Phul Kumari Devi, Wife of Ram Nath Yadav, Village Kamalpur, P.S. Barauli, District Gopalganj, at present village Baikunthpur, P.S. Manjhagarh, Pergana Sipah, District Gopalganj.
9. Binda Devi, Wife of Rudal Chaudhary and D/o Late Rukhi Chaudhary, Village Mustakabad, P.S. Goreya Kothi, District Siwan, at present residing at Village Baikunthpur, P.S. Manjhagarh, District Gopalganj.
10. Smt. Sanjam Kumari, Wife of Lachhuman Yadav, Village Supouli, P.S. Sidhwalia, District Gopalganj, at present Village Baikunthpur, P.S. Manjhagarh, District Gopalganj.
11. Tulful Kumari, D/o Late Rukhi Chaudhary, Resident of Village Baikunthpur, P.S. Manjhagarh, District Gopalganj.

... .. Appellant/s

Versus

1. Manshi Chaudhary, Son of Late Jadu Chaudhary, Resident of Village Baikunthpur, Pargana Sipah, P.S. Manjhagarh, District Gopalganj.
2. Banka Chaudhary, Son of Manshi Chaudhary, Resident of Village Baikunthpur, Pargana Sipah, P.S. Manjhagarh, District Gopalganj.
- 3.1. Most. Sabaria Devi, W/o late Banshi Chaudhary, Resident of Village Baikunthpur, Pargana Sepha, P.S. Manjhagarh, District Gopalganj.
- 3.2. Most. Ratia Devi, W/o late Chatri Chaudhary, Son of late Banshi Chaudhary, Resident of Village Baikunthpur, Pargana Sepha, P.S. Manjhagarh, District Gopalganj.



- 3.3. Raju, Son of late Chatri Chaudhary, Son of Late Banshi Chaudhary, Resident of Village Baikunthpur, Pargana Sepha, P.S. Manjhagarh, District Gopalganj.
- 3.4. Manju, D/o late Chatri Chaudhary, Son of Late Banshi Chaudhary, Resident of Village Baikunthpur, Pargana Sepha, P.S. Manjhagarh, District Gopalganj.
- 3.5. Nanhey Chaudhary, Son of late Banshi Chaudhary, Resident of Village Baikunthpur, Pargana Sepha, P.S. Manjhagarh, District Gopalganj.
- 3.6. Umar Chaudhary, Son of Late Banshi Chaudhary, Resident of Village Baikunthpur, Pargana Sepha, P.S. Manjhagarh, District Gopalganj.
- 3.7. Bal Chaudhary, Son of late Banshi Chaudhary, Resident of Village Baikunthpur, Pargana Sepha, P.S. Manjhagarh, District Gopalganj.
- 3.8. Phulmati Devi, W/o Hira Chaudhary, Resident of Village Pathara, P.S. Manjhagarh, Dist. Gopalganj.
- 3.9. Jiyuti Devi, W/o Ram Chaudhary, Resident of Village Batwaliya, P.S. Barharia, Dist. Siwan.

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr.Gautam Bose. Sr. Advocate Mr.Indraeel Sen Gupta, Advocate
For the Respondent/s	:	Mr.Amar Prakash, Advcate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 08-05-2025

This Second Appeal is directed against the judgment and decree dated 31st January, 1997 passed by the learned 4th Additional District and Sessions Judge, Gopalganj in Title Appeal No. 62 of 1982, affirming the judgment and decree dated 26th February, 1982 passed by the learned 2nd Additional Munsif, Gopalganj in Title Suit No. 165 of 1978. The appellants herein, being the defendants before the learned trial court, have challenged the concurrent findings of fact by the courts below whereby the plaintiffs' title over the suit property was confirmed and the defence based on oral partition



and purchase from Batami Devi was disbelieved.

2. This appeal came up for admission hearing under Order 41 Rule 11 of the Code of Civil Procedure, 1908 on 18.02.1998 and the following Substantive Question of Law is formulated:

1. Whether the Suit filed by the Plaintiff maintainable?

3. The principal contention in this Second Appeal revolves around the validity of a claimed oral exchange of land, the evidentiary value of a sale deed executed by one Batami Devi, and the legal effect of an order under Section 145 of the Code of Criminal Procedure, 1973, particularly where the civil suit does not contain a specific prayer for declaration of title. The appeal also raises the ancillary but significant issue of whether possession alone, determined in a summary proceeding, can affect adjudication in a title suit.

4. The suit property comprises of plots bearing Nos. 684 (under Khata No. 106), 209 (under Khata No. 38), and 210 (under Khata No. 104), situated in Mauza Baikunthpur, within the jurisdiction of Manjahagarh P.S., District Gopalganj. The plaintiffs instituted Title Suit No. 165 of 1978 for declaration of their title over the suit plots and for



confirmation of possession, on the basis of inheritance and subsequent oral exchange.

5. The plaintiffs' case is that the land originally stood recorded in the name of one Gular Sah in the Survey Khatiyan. After his demise, the property devolved upon his legal heirs. The plaintiffs and defendants are related as descendants of the same lineage. It is their specific case that by virtue of inheritance, they came into possession of the suit land jointly with the defendants.

6. Subsequently, in the year 1974, an oral exchange was effected between the parties whereby the plaintiffs relinquished their claim in respect of Plot No. 684 and in exchange were put in possession of Plots No. 209 and 210. In furtherance of such oral exchange, a deed of exchange dated 02.06.1974 (Exhibit 3 / Ext-3 Ka) was executed and relied upon by the plaintiffs. It is claimed that ever since such exchange, the plaintiffs have remained in possession of Plots No. 209 and 210 peacefully and continuously.

7. The defendants contended that the suit land had already been partitioned amongst the heirs of Gular Sah and that Batami Devi, the daughter of Gular Sah, sold her share, including Plot No. 684, to the defendants by a registered sale



deed dated 11.08.1975 (Exhibit-B). They placed reliance on this sale deed and claimed exclusive ownership and possession of the land purchased hereunder. The defendants contended that the property had been partitioned among heirs of Gular Sah, yet no formal partition deed was presented. Additionally, witness testimonies provided by the defendants contained inconsistencies regarding the timing and nature of partition. Some witnesses asserted that partition had taken place decades earlier, while others failed to confirm key details regarding the division of property. These contradictions undermine the credibility of the defendants' partition claim and reinforce the appellate court's conclusion that joint ownership remained intact

8. Further, the defendants also relied upon an order passed by the Sub-Divisional Officer, Gopalganj, under Section 145 of the Code of Criminal Procedure in Case No. M(747) of 1975. The said proceeding concluded in an order dated 12.08.1978, whereby possession was declared in favour of the defendants. However, proceedings under Section 145 are summary in nature, meant to prevent breaches of peace and do not adjudicate ownership. The Supreme Court in *Mohd. Abid v. Ravi Naresh* reported in **2022 SCC OnLine SC 2416**



emphasized that once a civil suit is pending, under section 145 of the Cr.P.C. proceeding must cease. Further, in Ram Padarath Singh v. State of Bihar (CR. MISC. No.41314 of 2016, decided on 28.01.2025), it was held that criminal proceedings cannot override title adjudications in civil courts. The lower courts, applying these principles, correctly disregarded the SDO's possession order, reaffirming that rightful ownership must be determined through civil adjudication. The plaintiffs, on the other hand, asserted that such an order, passed in a summary proceeding, cannot override the rightful title or possession determined by a competent civil court.

9. During the trial, both parties led oral and documentary evidence. The trial court, after appreciating the materials on record, decreed the suit in favour of the plaintiffs. The appellate court, upon reappraisal of evidence, affirmed the findings of the trial court and dismissed the appeal filed by the defendants. Aggrieved thereby, the present second appeal has been preferred.

10. While both parties presented documentary evidence supporting their respective claims, a crucial aspect that requires discussion is the absence of formal mutation in



revenue records. The plaintiffs relied on the exchange deed dated 02.06.1974 (Exhibit-3 / Ext-3 Ka) to establish ownership, while the defendants produced rent receipts from 1977–78 indicating possession. However, neither party initiated mutation proceedings to officially register ownership changes, leading to ambiguity in revenue records. The lower courts rightly noted that, while possession is relevant, non-mutation does not invalidate an otherwise valid transaction, provided it is supported by legal documentation and long-standing possession. The lower courts rightly noted that non-mutation does not invalidate a transaction when supported by possession and documentary evidence.

11. In the light of the concurrent findings of fact by the courts below and the grounds urged in the present second appeal, the following questions arise for consideration:

1. Whether a valid oral exchange of immovable property, followed by delivery of possession and acted upon by the parties, can confer title and be recognised in a declaratory suit, even in the absence of a registered document?

2. Whether an order passed under Section 145 of the Code of Criminal Procedure, 1973, which merely determines possession and not ownership, can be relied upon



to defeat the claim of title established in a civil proceeding?

3. Whether a civil suit, instituted for a declaration of possession and confirmation of title, can be adjudicated and decreed in the absence of an express prayer for declaration of title, where title is otherwise in issue and evidence thereof is led by the parties?

I have consciously not reformulate the above questions as substantial question of law, but proposed to decide them under broad substantial question of law relating to maintainability, due to the prolonged pendency of this case and to avoid unnecessary delay.

12. These questions are to be addressed in the framework of the case, evidentiary materials, and concurrent findings returned by the trial and first appellate courts.

13. Section 9 of the Transfer of Property Act, 1882, permits the transfer of property without writing in cases where writing is not expressly required by law. However, for transfers of immovable property Section 17 of the Indian Registration Act, 1908, mandates a registered instrument for transactions involving immovable property valued at ₹100 or more. In the present case, the plaintiffs rely on an oral exchange followed by possession and a subsequent



unregistered deed dated 06.02.1975. The courts below found that this exchange was acted upon, with the plaintiffs taking possession of Plots No. 209 and 210. Given the specific circumstances and the execution of a deed, the exchange can be considered valid.

14. Under Section 118 of the Transfer of Property Act, 1882, an exchange of immovable property generally requires a registered instrument. However, courts have recognized exceptions where an oral exchange, followed by delivery of possession and mutual acknowledgment, can confer valid title. In ***Paramjit Singh v. Ratti Ram***, reported in ***2004 SCCOnline P&H 250***. Paragraph No. 9 is relevant and quoted below:-

"9. I have considered the submissions made by the learned counsel for the parties and I am of the considered view that there was sufficient evidence before the trial court to come to the conclusion that there was an oral exchange of the suit land between the plaintiff and the appellant. The fact that there was an oral exchange of the land is not disputed by the plaintiff throughout the proceedings'. He has filed the suit after



a period of 10 years, for the first time raising the plea that since Ex. D1 was not a registered document, the exchange itself was invalid. I am of the opinion that the suit filed by the plaintiff was wholly misconceived. Document Ex. D1 clearly shows that there was an oral exchange of the land between the plaintiff and the appellant. Possession of the land was handed over to the appellant in the year 1963, Revenue record from 1963 onwards continuously shows that the appellant has been recorded to be in possession of the land. Therefore, for all intents and purposes, the oral agreement between the parties had been fully acted upon, May be out of abundant caution, the parties decided to execute ex. d1 to put beyond doubt the factum of oral exchange. Therefore, the trial court was correct in holding that the exchange which was based on an oral agreement, did not require compulsory registration. Execution of Ex. D1 cannot be permitted to be used to deprive the appellant of the ownership



rights which accrued to the appellant on the basis of oral exchange. In my opinion, the lower Appellate Court has misdirected itself by styling Ex. D1 as the instrument of exchange. No new right or title was conveyed by Ex. D1. It merely recognised pre-existing legal rights of the parties, which came into existence on the basis of the oral agreement. It is well settled proposition of law that any document even a decree which merely recognises pre-existing rights, does not require registration. This view of mine finds support from a Division Bench judgment of this court in the case of Gurdev Kaur v. Mehar Singh, [1989 P.L.J. 182] . In the aforesaid Division Bench judgment, it has been held as follows: "For the reasons recorded above, by agreeing with the view taken in the judgments cited above that a compromise decree does not require registration, provided the immovable property is subject matter of the suit, we hold that a compromise decree regarding immovable property which is subject



matter of the dispute in the suit, does not require registration, even if title is created in favour of the decree holder for the first time under the decree, whether with consideration or without consideration."

15. Section 145 of the Code of Criminal Procedure, 1973, empowers an Executive Magistrate to address disputes likely to cause a breach of peace concerning land or water. However, proceedings under this section are preventive in nature and do not adjudicate title or ownership.

16. The Supreme Court in *Mohd. Abid and Others Versus Ravi Naresh and Others* (supra) observed:

"4. It is, however, an admitted fact that the petitioners have already filed a suit for injunction in which ex-parte ad-interim injunction has been granted by the Civil Court, Faizabad, Uttar Pradesh on 05.12.2020. Once the Civil Court is seized of the matter, it goes without saying that the proceedings under Section 145/146 Cr. P.C. cannot proceed and must come to an end. The inter-se rights of the parties regarding title or possession are eventually to be determined by the Civil Court."



17. Similarly, the Patna High Court in Ram ***Padarath Singh & Ors. v. The State of Bihar & Anr.*** (supra).

Paragraph Nos. 25 and 35 are relevant and quoted below:-

“25. From the perusal of Sections 145 to 148 Cr.PC, it clearly transpires that the statutory provisions therein are meant to maintain public order and peace by empowering the Executive Magistrate to take preventive measures in case of apprehension of breach of public peace on account of dispute as to actual possession of the land or water. When the Executive Magistrate is satisfied from the report of Police Officer or any other information that such dispute is likely to cause a breach of peace, he can initiate proceeding under Section 145(1) Cr.PC, stating the ground of such satisfaction and take steps to hear the parties concerned in regard to the actual possession of the subject of the dispute. However, during such hearing, the Magistrate is not required to examine title or right of any party to possess the subject of the dispute, but only to find out which of the party was in actual possession at the time of the report or the information. However, if it appears to the Executive Magistrate that any of the party has been forcefully and wrongfully dispossessed within two months next before the date on which the report or information was received



by him or after that date and before the date of his order under Sub-Section (1), he may treat the party so dispossessed, as if that party had been in possession and he is empowered to restore the possession to the party so forcefully and wrongfully dispossessed and pass order forbidding of disturbance of such possession, until eviction therefrom in due course of law.

35. It is also pertinent to point out that if a Civil Suit regarding title and possession is pending in regard to the property in question in a Civil Court, a parallel proceeding under Section 145 Cr.PC is not permissible. It would be sheer wastage of public time and money. The Civil Court is also competent to adjudicate the dispute regarding actual possession of the property between the parties and pass interim order during pendency of the Civil Suit. Hence, no purpose would be served by permitting parallel criminal proceeding under Section 145 Cr.PC by Executive Magistrate. It goes without saying that outcome of proceeding under Section 145 Cr.PC is subject to outcome of Civil Suit and the order of Civil Court is binding upon the criminal Courts. Hence, there is no justification for continuation of parallel proceeding under Section 145 Cr.PC, if Civil Suit is already pending in Civil Court in regard to the landed property in question. In



this regard, one may also refer to the following judicial precedents:

(i) Kunjbihari Vs. Balram and Anr. (2006) 11 SCC 66

(ii) Gyandeo Sharma Vs. State of Bihar 2006 (2) PLJR 181

(iii) Ras Bihari Rai & Ors. Vs. The State of Bihar (2006 SCC Online Pat 263)

(iv) Nand Kishore Prasad Sah Vs. State of Bihar, 2005 (2) PLJR 506

(v) Mahar Jahan vs. State of Delhi (2004) 13 SCC 421

(vi) Mahant Ram Saran Das Vs. Harish Mohan (2001) 10 SCC 758

(vii) Amresh Tiwari Vs. Lalta Prasad Dubey (2000) 4 SCC 440

(viii) Atahaul Haque & Ors. Vs. Md. Allauddin (2000) 3 PLJR 90

(ix) Chandra Shekhar Singh & Ors. Vs. State of Bihar & Anr., (2000 SCC Online Pat 1095)

(x) Prakash Chand Sachdeva Vs. State & Anr. (1994) 1 SCC 471

(xi) Ram Sumer Puri Mahant Vs. State of U.P. (1985) 1 SCC 427”

The requirement of an express prayer for declaration of title in a civil suit depends on the nature of the dispute. Where the plaintiff's title is clear and undisputed, and



the suit is for possession or injunction, an explicit declaration may not be necessary.

18. In *Anathula Sudhakar v. P. Buchi Reddy*, reported in (2008) 4 SCC 594, the Hon'ble Supreme Court held

“14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in



such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.”

19. While an express prayer for declaration of title strengthens a suit, its absence does not preclude the court from adjudicating title if the issue is central to the dispute and evidence has been led. In this case, both parties presented evidence on title, and the courts below made findings accordingly. Thus, the lack of an explicit prayer does not invalidate the suit or the judgments rendered.

20. The suit primarily seeks confirmation of possession. The lower courts found sufficient evidence to establish plaintiffs' title. While an explicit prayer for declaration of title strengthens a claim, its absence does not bar adjudication where evidence clearly supports ownership.



The Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy* (supra) clarified that title determination is inherent in suits involving possession, especially where the defendant raises serious objections. Here, both parties presented title-related evidence, and the courts below made findings on ownership accordingly. Thus, the lack of a distinct declaratory prayer does not affect the validity of the suit or its adjudication.

21. Upon careful consideration of the pleadings, evidence on record, and findings of both the trial and appellate courts, this Court is of the opinion that the judgments rendered by the courts below suffer from no legal infirmity requiring interference in second appeal.

22. The claim of oral exchange made by the plaintiffs finds support not only from the testimonies but also through subsequent conduct and possession, as reflected in the execution of the exchange deed dated 02.06.1974. The oral exchange, though not evidenced by a registered instrument at the initial stage, was followed by possession and later documentation, thereby satisfying the requirement of transfer under law in the facts and circumstances of this case.

23. As regards the order passed under Section 145 of the Code of Criminal Procedure, the settled position in law



is that such orders are confined to determining possession for the purpose of maintaining public peace and cannot, under any circumstance, be treated as conclusive determination of title. The courts below were justified in disregarding the findings of the said proceedings in assessing civil rights.

24. The objection as to the absence of a specific prayer for declaration of title in the suit is also without substance. It is evident that both parties contested the case on the basis of title and led evidence accordingly. The trial court rightly adjudicated the question of ownership and possession, and such adjudication was affirmed in first appeal after independent appraisal of evidence. A suit for possession based on title necessarily involves determination of the ownership, and a formal declaration is not a sine qua non where the relief for recovery is granted on the basis of established ownership.

25. Accordingly, this Court finds no substantial question of law arising in the present appeal. The second appeal is devoid of merit and is liable to be dismissed.

26. In such circumstances, this Court is of the considered view that the contentions raised on behalf of the appellants cannot be countenanced. As such, the second appeal is devoid of merits. Hence, it is dismissed.



27. However, there shall be no order as to cost.

(Bibek Chaudhuri, J)

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