

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.83 of 2010

1. Shamshad Alam, S/O Late Abrar Hussain, R/O Mohalla- Kanhauli Known As Rambagh Road, P.S. - Mithanpura, P.O.- Town Muzaffarpur, District-Muzaffarpur.
2. Saquib Alam, S/O Shamshad Alam, R/O Mohalla- Kanhauli Known As Rambagh Road, P.S.-Mithanpura, P.O.-Town Muzaffarpur, District-Muzaffarpur.
3. Sharique Alam, S/O Shamshad Alam, R/O Mohalla -Kanhauli Known As Rambagh Road, P.S. -Mithanpura, P.O.- Town Muzaffarpur, District-Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Nagendra Rai, Sr. Adv. Ms. Jyotsna Rani Mishra, Adv.
For the Respondent/s	:	Mr. U.S.S. Singh, (GP-19)

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

Date : 27-01-2025

The instant First Appeal has been filed against the judgment dated 26.03.2010 passed in the Title Suit No. 27 of 2001 by the learned trial court of Sub Judge-VII, Muzaffarpur by which the plaintiffs' suit was dismissed on contest. The appellants were plaintiffs before the learned trial court whereas the sole respondent was the defendant. The plaintiffs filed their suit with a prayer to declare their title in the suit land. Here, it is important to mention that the respondent appeared before the



learned trial court but failed to file written statement despite being given several opportunities by the learned trial court and finally, one more opportunity to file the written statement on the condition of payment of Rs. 100/- (Rupees One Hundred) was granted but even then the cost was not deposited, so, the learned trial court did not take into account the written statement filed by the defendant at later stage and since there was no pleading of the defendant, so, the learned trial court did not frame issue. Further, the defendant did not give any oral or documentary evidence to disprove or rebut the plaintiffs' pleadings and finally, both the parties were heard and the learned trial court dismissed the suit of the plaintiffs mainly on three following grounds.

2. First ground, is that, the suit land is in the name of Bihar Government and in this regard, there is an entry in the Revisional Survey Khatiyan (in short 'RS Khatiyan') which was done between 1972 and 1981 and the said entry is alleged to be wrong as per pleading of the plaintiffs but neither the vendor of the appellants nor the appellants themselves attempted to correct the entry in the RS (Khatiyan) and the suit was filed thirty years after the completion and publication of the RS (Khatiyan) while the same ought to have been filed within three years from the



date of the publication of the RS (Khatiyar).

3. The second ground which was taken into account by the learned trial court in dismissing the suit of the appellants is that there are variations in respect of the boundaries in the sale deeds (Exts. '1', '1/A' and '4') which are related to the transfer of title in favour of the appellants and their vendors.

4. The third ground is that the plaintiffs failed to prove by adducing sufficient evidence that Shri Kameshwar Singh then Maharaja Dhiraj, Darbhanga, who was said to be the owner of the suit land, had ownership title and right to sale the same through his Chief Manager. As per learned trial court, the main question for determination was whether the plaintiffs got a valid title through the sale deed No. 19871 dated 09.09.2000 (Ext.- '1') and whether the land in question was validly transferred to the plaintiffs by their vendors having legal title in the suit land and therefore, whether the plaintiffs/appellants were entitled to get the decree of the declaration of their title in the suit land. The said questions were answered against the plaintiffs by the trial court and consequently, their suit was dismissed

5. Mr. Nagendra Rai, learned senior counsel appearing for the appellants has argued that the aforesaid grounds taken by



the learned trial court in the judgment impugned while disbelieving the claim of the plaintiffs are completely not tenable in the eye of law. As it is an admitted position that the pleadings of the plaintiffs remained unrebutted as the written statement filed by the defendant was not taken into consideration by the learned trial court and further, no evidence was adduced by the defendant against the pleadings of the plaintiffs and accordingly, there was no denial of the pleadings of the plaintiffs by the defendant and it is well settled law that if there is no specific denial by the defendant in respect of the specific plea taken by the plaintiff in his pleading then such pleading must be treated as being admitted. In support of this contention, learned counsel has placed reliance upon the judgment of this Court passed in the case of **Shree Durga Industrial Corpn. vs. The Minerals and Metals Trading Corporation of India Ltd.** reported in **1988 PLJR 96** and the relevant paragraph No. 14 upon which the reliance has been placed is being reproduced as under : -

“14. The question of jurisdiction can be decided briefly on the ground that in paragraph 2 of the plaint the plaintiff has categorically stated that the Mica in question, which was to be exported in



terms of the contract with the defendant, was to be despatched from Giridih. It has further been mentioned therein that the defendant also carries on business having its office at Giridih, for gain. The aforementioned statements made in paragraph 2 of the plaint have not been denied or dispute by the defendant. The defendant in fact in paragraph 2 of the written statement does not traverse the aforementioned statements made in paragraph 2 of the plaint at all. In view of the fact that the defendant has not specifically denied in the written statements so far as the allegations made in the plaint are concerned that it carries on business at Giridih for gain stands unrebutted in terms of the provisions of Order 8 Rule 3 and Order 8 of the Code of Civil Procedure. Keeping in view the provisions of section 58 of the Indian Evidence Act along with the aforementioned provision, the statements made in the plaint that the defendant carries on business for gain at Giridih stands admitted.”



6. According to the appellants' counsel, the above mentioned principle was followed by this Court in the case of **M. Venkataramana Hebbar (D) by L.Rs. vs. M. Rajagopal Hebbar & Ors.** reported in **2007 (3) PLJR (SC) 81** and the relevant paragraph Nos. are **11 and 12.**

7. It is further submitted that there is no variation in the boundaries of the land given in the sale deeds (Ext. '1', '1/A' and '4'), if the boundaries mentioned in these deeds are taken into account considering the gap between the execution of these sale deeds and the initial area of the land of the first vendor and among these sale deeds two boundaries are equally same. The variation only with regard to two boundaries comes due to the first sale deed (Ext. 1/A) being executed in respect of '8' acre and '9' decimal land which was much larger area than the land of other subsequent deeds and as the vendor of the appellants got only 2 *Katha* land transferred out of the said area of 8 acre 99 decimal from his vendor so, in the sale deed concerned to his sale, the boundaries relating to the Eastern and Southern part were shown in the sale deed as *Zo No.* which is an urdu word and its meaning is '*part of the same plot*' and the sale deed concerned to the (35-33) appellants was executed in the year 2000 in which adjacent to the said boundaries in the



Southern and Eastern side, the land of two persons Ashrafi Lal Arya and late Lakshmi Narayan were shown respectively which cannot be made a ground of variation as there was a great possibility of transferring the remaining part of the plot by the first vendor Kedarnath Mehta and further the old Khesra No. remained same in all these three sale deeds so mere variation in two boundaries in these sale deeds, the registered documents cannot be disbelieved with regard to the claim of the plaintiffs. Learned counsel submits that all these sale deeds are registered documents, so, the genuineness and correctness of these deeds must be presumed and in this regard, the observation made by this Court in the case of **Suresh Prasad Singh vs. Nathuni Ansari** reported in **2013 (3) PLJR Page 341** is important. The relevant paragraphs upon which the reliance has been placed by the appellants' counsel are being reproduced as under : -

“14. He submits that there cannot be any presumption as regards genuineness of any registered document including the registered sale deed and such document has to be proved as per Section 67 of the Indian Evidence Act, 1872. Once a challenge to the genuineness was raised by the defendants, it was the duty of the plaintiffs to prove the signature of the executant as well as the contents of the sale deed.

15. Mr. Counsel has submitted while



dealing with the main submission made on behalf of the appellant that there is no presumption of genuineness of a registered document, reference may be made to a judgment of Supreme Court in case of Prem Singh AND Ors. vs. Birbal and Ors., (2006) 5 SCC 353 : [2006 (3) PLJR (SC) 179] laying down that there is a presumption that a registered document is validly executed and prima facie would be valid in law. Paragraph 27 of the said judgment is being quoted hereinbelow for quick reference:—

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would-be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

8. It is further argued that the learned trial court has wrongly interpreted the limitation period as the appellants got their title in the suit land in the year 2000 through the registered sale deed and they filed their suit in the year 2001 and as per the limitation act, the period of limitation for a suit for getting a declaratory decree is three years and so far as the entry in the RS (Khatiyani) with regard to the suit land which is wrong is



concerned, it is an established law that an entry in the records of rights neither creates nor extinguishes the title or rights of one and further the plaintiffs had no reason to get the knowledge of the alleged wrong entry in the records of rights and RS Khatiyan before the execution of their sale deed.

9. On the other hand, Mr. U.S.S. Singh, learned counsel appearing for the respondent has argued that before the trial court, the plaintiffs/appellants filed only one rent receipt that was issued in the year 1981 but no other rent receipt relating to the period before and after 1981, was produced by the plaintiffs. Further the plaintiffs failed to adduce any evidence to show the names of their vendors being in the Register-II and no evidence was given by them to show the so-claimed authority of Maharaja Dhiraj Darbhanga, Shri Kameshwar Prasad Singh, to sell the land in question through his manager in favour of Babu Kedar Mehtha, so, the appellants failed to prove the transfer of valid title to his vendor from one Babu Kedar Mehtha who was said to have purchased the land in question from Darbhanga Maharaj.

10. Heard both the sides and perused the impugned judgment and decree as well as pleadings of both the parties and the evidences adduced by the plaintiffs/appellants.



11. The main questions which have arisen for determination are :-

(i) whether the plaintiffs succeeded to prove their title in the suit land as well as their possession over it,

(ii) whether the appellants' suit was liable to be dismissed mainly on account of limitation ground.

12. As per the case of the appellants, the suit property belonged to then Maharaja Darbhanga, Shri Kameshwar Prasad Singh, who sold it, through his manager, to one namely Babu Kedar Mehtha by executing a registered sale deed dated 23.11.1949 and thereafter, the said Babu Kedar Mehtha sold the suit land to one namely Ram Teerath Prasad vide registered sale deed dated 19.02.1963 and the plaintiffs claimed to have purchased the suit land from said Ram Teerath Prasad through a registered sale deed which was executed on 09.09.2000. Accordingly, the case of the appellants/plaintiffs is based on three registered sale deeds and the plaintiffs pleaded the chain of titles starting from 1949 to 2000. Plaintiffs produced these sale deeds before trial court which were marked as Exhibits '1/A', '4' and '1' which are registered documents. The first sale deed was executed in the year 1949 more than 30 years before filing of the suit, so, in such a situation, the presumption of



genuineness of the said sale deed arises and for rebutting the same, no evidence was given by the defendant/respondent before the trial court and the other two sale deeds, through which the so-claimed title was passed to Ram Teerath Prasad and finally to plaintiffs, are also registered documents, so, in such a situation, there was no option before the trial court except to presume the said deeds to be correct and genuine. As for rebutting this presumption, no evidence was given by the defendant and in the written statement, though it was not taken into consideration by the trial court however if the same is taken into consideration, even then, no specific denial of these registered documents was made by the defendant, hence, the learned trial court erred in not believing these registered documents. It is a settled position of law that if a pleading of the plaintiff made in his plaint is neither denied nor disputed in the written statement then such pleading should be treated as stands admitted in terms of Order VIII, Rule 3 and section 58 of the Evidence Act and in this regard, the principle laid down by this Court in the case of **Shree Durga Industrial Corpn. vs. The Minerals and Metals Trading Corporation of India Ltd.** reported in **1988 PLJR 96** is relevant.

Furthermore, to disprove the presumption regarding the



legal validity of a registered sale deed, the onus would be on one who has questioned the validity of such registered deed and in the present matter, the defendant failed to discharge the onus and in this regard, the principle laid down by this Court in the case of **Sita Sharan Prasad vs. Manorama Devi** reported in **2012 (2) PLJR 190** is relevant.

13. So far as the question of limitation is concerned, the trial court committed an error in holding the plaintiffs' suit to be barred by limitation as according to the case of plaintiffs, the title in favour of the plaintiffs in the suit land arose on 09.09.2000, when the sale deed was executed by their vendor in their favour in connection with the suit land. So, in such a situation, the limitation period for correcting the revenue records started either from the date of the execution of the sale deed or when plaintiffs' prayer for mutation in the suit land was denied by revenue authority as there was no reason for the plaintiffs to file a suit under sections 106 and 108 of B.T. Act before getting a title in the land in question. And, it is an established law that mere an adverse entry in the revenue records will not give rise to cause of action, the right to sue accrues when there is a clear and unequivocal threat to infringe a right and in this regard, the observation made by this Court in



the case of **The State of Bihar & Anr. vs. Alakh Singh & Ors.** reported in **2013 (4) PLJR 363** is relevant.

14. It is an established position of law that mere a wrong entry in connection with a land in the revenue records does not abolish the title of one nor create the title in favour of one and as per the pleading of plaintiffs, the alleged error in survey record regarding an entry in respect of the suit land was first detected when the plaintiffs tried to get the mutation done in respect of their purchased land and only then, the cause of action arose in their favour and since that point of time, the limitation period can be deemed to have started.

15. While opposing the claim of the plaintiffs, the defendant placed reliance mainly on an entry made in the R.S. Khatiyan in favour of the defendant in respect of suit land but no evidence was given by the defendant to show how the State of Bihar got the ownership and title in the suit land. So far as the trial court's observation with regard to variation in the boundaries of the suit land in the sale deeds is concerned, the trial court did not appreciate the description of the boundaries mentioned in the sale deeds in proper manner as the sale deed concerned to the vendor of the plaintiffs was executed in the year 1963 whereas the plaintiffs' sale deed was executed in the year 2000 and if a comparison to the boundaries of the land in question in both the sale deeds is made then it appears that there is no difference to the Northern and



Western boundaries and both are matching and so far as the boundaries of Southern and Eastern sides are concerned, the variation in respect of them might have taken place due to the gap of several years between 1963 and 2000, which is possible as the first sale deed executed in the year 1949 relates to nine *bighas*, of which only some part was sold to the vendor of the plaintiffs and with the passage of time as well as on account of the possibility of sale of other part of the land described in the sale deed of the year 1949, the variation in the boundaries might have occurred. Furthermore, such variation in the boundaries cannot be made a ground to disbelieve a registered deed. Accordingly, this Court is of the view that the learned trial court committed a serious error in disbelieving the case of the plaintiffs. The plaintiffs succeeded to prove their title and possession over the suit land. Accordingly, both the above-mentioned questions are decided and answered in favour of the appellants.

16. In the result, the instant appeal stands allowed and the judgment and decree impugned are set aside and the appellants’ suit is hereby decreed. There is no order as to costs.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
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