

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S. A. No. 409 of 2019

Madhu Kumari Arya, aged about 37 years, daughter of Late Lakhan Lal Bhagat, wife of Basant Kumar Arya, resident of Motijhi, P.O. & P.S. Kanpur, District Kanpur (Uttar Pradesh), presently residing at Watch & Ward Colony, Dhanbad, P.O. & P.S. Dhanbad, District Dhanbad (Jharkhand)

... ... **Plaintiff no. 1/Appellant/Appellant**
Versus

1. The Union of India, represented through the General Manager, Eastern Railway, Fairly Place, P.O. & P.S. Kolkata, Kolkata-17, (West Bengal)
2. Divisional Manager, Eastern Railway, Dhanbad, P.O. & P.S. Dhanbad, District Dhanbad (Jharkhand)

... ... **Defendants/Respondents/Respondents**

3. Rajesh Kumar, son of Late Shiblal Bhagat, resident of Barmasia, P.O. & P.S. Barmasia, District Dhanbad (Jharkhand)

... ... **Plaintiff No. 2/Respondent/Respondent**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant	: Ms. Perna Jhunjunwala, Advocate
	: Ms. Arushi Agarwal, Advocate
For the UOI	: Ms. Nitu Sinha, Advocate

15/4th November 2025

1. Heard the learned counsel for the appellant.
2. This second appeal has been filed against the judgment dated 29.06.2019 (decree signed on 09.07.2019) passed by the learned District Judge-IV, Dhanbad in Title Appeal No. 29 of 2013, whereby the appeal preferred by the plaintiff has been dismissed. The judgment of the learned trial court is dated 31.01.2013 (decree signed on 14.02.2013) passed by the learned Additional Civil Judge-cum-Sub-Divisional Judicial Magistrate, Dhanbad in Title Suit No. 138 of 1998, whereby the suit was dismissed. Plaintiff No. 1 is the appellant and plaintiff No. 2 is the respondent No. 3 before this Court.

3. The suit was filed for the following reliefs: -

(a) A decree for declaration of right, title, interest and confirmation of possession for Schedule-B property be passed in favor of the plaintiffs and against the defendants.

(b) A decree for permanent injunction be passed restraining the defendants, their men, agents, servants, employee, representatives, executors, administrators, laborers and assignees to make any interference and obstruction in peaceful enjoyment of Schedule-D property by the plaintiff and or to waste and damage and/or to change the nature and character of the same in any manner.

(c) For the cost of the suit.

(d) For any other relief or reliefs to which the plaintiffs are entitled under the law and equity.

Arguments of the appellant

4. The learned counsel for the appellants, while assailing the impugned judgments, has submitted that the plaintiffs were claiming right, title, interest and possession with respect to Schedule-A and Schedule-B property by virtue of two registered sale deeds exhibit 6 and exhibit-6/A and the defendants were claiming the right over the property stating that the property was acquired for railways in Land Acquisition Proceeding No. 4 and 4/1 of 1952-53. She submits that the defendants did not produce any document in connection with acquisition of property and the two plans and one map, which were produced by the defendants and marked exhibit-A, B and C respectively, did not reflect that the same were in connection with plot nos. 50 and 51.

5. The learned counsel has submitted that Schedule-A property was 2 katha in plot no. 51 khata no. 11 and the plaintiffs were claiming right over Schedule-A property by virtue of sale deed dated 19.12.1949 (Exhibit-6); Schedule-B property was 2 katha in plot no. 51 khata no. 11 and the plaintiff was claiming right over Schedule-B property by virtue of registered sale deed dated 20.01.1954 (Exhibit-6/a). Schedule-C property was 9 decimals of land in plot no. 50 and 51, khata no. 11 and she

submits that it stands admitted that the same was encroached property of the plaintiffs. She has further submitted that the plaintiffs were seeking permanent injunction against the defendants with respect to Schedule-D property which consisted of Schedule-A + Schedule-B + Schedule C, total 16 decimals.

6. The learned counsel submits that in spite of the fact that the defendants failed to prove their right over the property and in spite of the fact that the plaintiffs were claiming Schedule-A and Schedule-B property by virtue of two registered sale deeds, the learned courts have decided the case against the plaintiffs. She submits that even before the Pleader Commissioner, the defendants had not produce any document with regard to acquisition of land. She submits that a substantial question of law be framed and the case be admitted for hearing.

Findings of this Court

7. After hearing the learned counsel for the appellant, this Court finds that the learned trial court had framed the following issues for consideration:

- (i) Have the plaintiffs got cause of action for the present suit?*
- (ii) Is the suit maintainable?*
- (iii) Is the suit barred by limitation?*
- (iv) Is the suit barred by principles of estoppel, waiver and acquiescence?*
- (v) Whether the plaintiffs have got their title over the suit land?*
- (vi) Whether the suit land was acquired by the defendants under Land Acquisition Act under the declaration No. 2341-1952 in the Land Acquisition proceeding No. 4 and 4/1 of 1952-53?*
- (vii) Whether the suit land is acquired land of the defendants and the defendants acquired their title over the suit land?*

(viii) Whether the plaintiffs are entitled to get any reliefs, so to what relief?

8. Both the parties led oral and documentary evidences. Exhibit-6 and 6/A were produced by the plaintiffs which were sale deed dated 19.12.1949 and 20.01.1954 respectively apart from other documents. The defendants produced two plans and one map which were marked exhibit-A, B and C respectively.

9. While deciding *issue no. V*, the learned trial court was of the view that though the plaintiffs were claiming title on the basis of purchase from another person, but the title of the person selling the land as vendor could not be proved. The vendor was Motiram Mahto and Churiram Mahto, but there was no evidence that they had the title over the property. The plaintiffs also failed to prove that the documents regarding mutation of land was done on the basis of the aforesaid sale deeds. The learned trial court ultimately held that the plaintiffs failed to prove title over Schedule-A and Schedule-B property as there was no evidence regarding the fact that the said Motiram Mahto and Churiram Mahto were recorded tenant of plot no. 51 and Khata no. 11 and in that capacity, they transferred the land by virtue of aforesaid sale deeds.

10. The learned court also recorded that there was no mention of specific boundary of the suit land in the aforesaid two sale deeds and also in the plaint. The learned trial court also discussed the report of the Pleader Commissioner and considered all other oral and documentary evidences on record and rejected the plea of adverse possession. The learned court recorded that the evidence of PWs. 1, 2 and 5 alongwith municipal documents do show the possession of the plaintiff over part of plot No. 51 but there was no evidence as to where this possession was hostile to the real owner and in fact it was nowhere mentioned by the plaintiffs as to whose land was encroached by the ancestor of the plaintiff, namely, Sukhlal Bhagat. The learned trial court recorded that in absence of fulfillment all the essential for the claim of adverse possession, the

possession of the plaintiffs cannot be deemed to have been perfected in title. The learned trial court recorded that the plaintiffs have failed to prove their title over Schedule-D land, the suit property, either on the basis of purchase or by way of adverse possession and ultimately decided issue no. V against the plaintiffs.

11. While deciding issue nos. VI and VII, the learned court also held that the defendants have also failed to prove the fact that plot nos. 50 and 51 of khata no. 11 of Mouza Barmasia have been required by the railways. However, the learned court recorded that the issue nos. VI and VII are of no help in deciding the title and possession of the plaintiffs.

12. While deciding *issue no. II*, the learned trial court found that no definite boundary was given in the plaint connection with the suit property. The learned trial court recorded that even in the sale deeds i.e. exhibit-6 and 6/a, the boundary was not given. It was also claimed by the plaintiffs Sukhlal Bhagat had encroached upon 9 decimals of vacant land in plot no. 50 khata no. 11, but again in connection with the said property no boundary was given and ultimately issue no. II was also decided against the plaintiffs by holding that in fact, the entire description of the suit property in the plaint is not ascertainable. The finding in connection with issue no. II in paragraph 9 of the trial court's judgment is quoted as under: -

“9. Issue No. (ii) : It is been contended by the defendants that the present suit is not maintainable as the description of the suit land is vague, not identifiable as the plaintiff has given no boundary of the suit property, Schedule-D, land in the plaint. The learned counsel for the defendants have further submitted that the description of the suit land as given in the plaint is not identifiable and as such due to mis-description of the property in the term of Order 7 Rule 3 of CPC, the suit is bad in law or not maintainable. This court finds force in the submission of the learned counsel for the defendants. From perusal of the plaint it transpires that the plaintiffs have nowhere given the boundary of the lands as description in the Schedule-A, Schedule-B, Schedule-C and schedule-D of the plaint. The schedule-A is the property which has allegedly been

purchased by the ancestor of the plaintiff Sukhlal Bhagat in the year 1949 through registered sale deed No. 10039 dated 19.12.49 but no boundary of this property has been given either in the sale deed (Ext.-6) or in description of Schedule-A land in the plaint. Further schedule-B is the property which has allegedly been purchased by Sukhlal Bhagat through sale deed No. 249 dated 20.01.54 but again the boundary of this property has not been given either in the sale deed Ext.-6/A or in description of schedule-B property. Further more it has been claimed by the plaintiffs that the said Sukhlal Bhagat have been encroached upon 9 dec. of vacant land of plot no. 50 of Khata No. 11, Mouza Barmasia but again there is no mentioned about the boundary of this encroached land and from which side of the alleged purchased land this encroached has been made by the ancestor of the plaintiffs. In fact the entire description of the suit property in the plaint is not ascertainable. Accordingly, issue No. 2 is decided against the plaintiffs.”

13. The learned 1st appellate court framed the point for consideration in paragraph 10 of the judgment as under: -

(I) Whether the appellant/plaintiff have a valid right, title, interest and possession over the suit land?

(II) Whether the plaintiffs have perfected their title over the suit land by way of adverse possession?

14. The learned 1st appellate court recorded that though it has been claimed that Sukhlal Bhagat purchased the suit land through the sale deeds from Motiram Mahto and Churiram Mahto, but the plaintiffs have not disclosed whether the above named vendors of the two sale deeds had valid title to sell those lands or not and the plaintiffs have not stated anywhere in their plaint regarding the title of Churaman Mahato and Motiram Mahto over plot no. 51 of Mouza Barmasia and there was no recital in the sale deed regarding title of the vendors. The learned 1st appellate court recorded that though P.W.-5 had deposed that the suit land was mutated in the name of his father Sukhlal Bhagat and rent was being paid to the government, but the plaintiffs did not prove any mutation order

or rent receipt which further created doubt about the genuineness of his claim of the plaintiffs.

15. The claim of adverse possession was also rejected by observing that the plaintiffs had not proved the requisite facts with respect to the claim of adverse possession. The learned 1st appellate court further recorded that the plaintiffs had not stated exact date anywhere over the plaint on which date they had amalgamated the lands with the purchased lands.

16. The learned 1st appellate court further considered the oral evidences and also observed that the learned trial court has observed that even the exact boundary of the suit land has not been mentioned in the plaint or even in the report of the Pleader Commissioner and from perusal of the records, it appeared that *neither* the Pleader Commissioner was examined *nor* his report was taken on record and hence the report of the Pleader Commissioner could not be considered at the appellate stage. The learned 1st appellate court recorded that the exact boundary of Schedule-D property has not been mentioned in the plaint and therefore the learned trial court had rightly refused to declare title of the plaintiffs over the suit land. There was no material on record to show as to whose land was encroached by Sukhlal Bhagat and when the possession became hostile to the real owner. Ultimately, the learned 1st appellate court held that the claim of the plaintiffs on the basis of adverse possession cannot be sustained.

17. This Court is of the considered view that the plaintiffs have to prove their case on merits. As recorded in the impugned judgements, nothing was mentioned in the plaint or the sale deeds, exhibit- 6 and 6/A as to how the vendors of the plaintiffs derive title to the suit property. Further, the learned courts recorded clear finding that no proper boundary with respect to the suit land was given and even in the sale deeds i.e. Exhibit-6 and Exhibit-6/A, on the basis of which the plaintiffs were claiming title with respect to Schedule-A and Schedule-B property, no specific boundary has been given in the sale-deeds. Thus, it was not ascertainable as to which

property on the ground with boundaries the plaintiffs were claiming to be the owner by virtue of the two registered sale deed -exhibit-6 and 6/A. In absence of boundary of the suit property in the plaint and also in the two registered sale deed -exhibit-6 and 6/A, no relief could be granted to the plaintiffs.

18. In aforesaid facts and circumstances, this Court is of the considered view that the learned trial court has rightly dismissed the suit and the learned 1st appellate court has also rightly dismissed the appeal. No perversity as such has been pointed out by the learned counsel for the appellants in the matter of appreciation of evidences placed on record and otherwise also this court does not find any perversity in the impugned judgements.

19. Considering the totality of the facts and circumstances of this case, there is no substantial question of law involved in this second appeal, which is hereby *dismissed*.

20. Pending I.A., if any, is closed.

21. Let a copy of this order be communicated to the court concerned through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Dated: 04.11.2025

Mukul/-

Uploaded On: 10.11.2025