

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.425 of 1990

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DEOMUNI DEVI and ORS

... .. Appellant/s

Versus

RAM AUTAR MAHTO and ORS

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar Singh, Advocate Mr. Dhananjay Kumar Tiwary, Advocate
For the Respondent/s	:	Mr. Janardan Prasad Singh, Sr. Advocate Mr. Dipak Kumar, Advocate Mr. Arbind Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT

Date : 02-02-2026

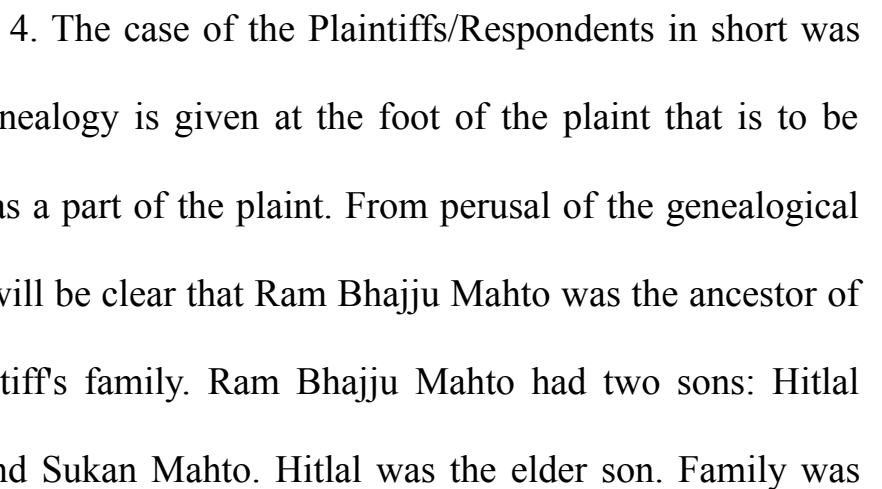
This appeal has been preferred against the judgment and decree dated 28.07.1990 passed by 8th Subordinate Judge, Chapra in Title Suit Number 129 of 85, wherein and whereunder the suit was decreed with cost.

Case of the Plaintiffs/Respondents

2. Plaintiffs/Respondents have filed Title Suit Number 129 of 1985 for declaring their title on the disputed land and also for delivery of possession if the Plaintiffs are found dispossessed from any part of the disputed property.

3. For better appreciation of the case of the parties, genealogical table is given in the plaint which is given hereunder:-





joint. Hitlal Mahto had a son, Dev Narayan Mahto, who died issueless 45 years ago; his wife had predeceased him.

5. It is further submitted that in the RS Survey, all the joint family property along with other co-parceners was entered in Khata Number 96. In that RS Survey, the shares of Hitlal Mahto and Sukan Mahto are jointly shown. Before some time of survey, Hitlal Mahto, who was the Karta of the joint family, some lands were purchased in his name from the nucleus of joint family that is entered in Khata Number 129 of RS in the name of Hitlal Mahto, but the possession of both the brothers was there.

6. Further case of the Plaintiffs/Respondents is that Hitlal Mahto had separated from his brother in mess and residence, but the lands were not partitioned. Hitlal Mahto was issueless and had love and affection for the Plaintiffs. At the occasion of Dussehra in year 1943, a reunion took place between them. After the death of Hitlal Mahto, all the properties devolved upon Plaintiffs by way of survivorship, and that possession was without any obstruction and the names of Plaintiffs were entered in the records of ex-landlord. And, the Plaintiffs are getting rent receipts after paying the rent.

7. Further case of the Plaintiffs is that the title of the Plaintiffs is in continuance since 1950 and is in the knowledge of



the Defendants and without their interference; as such, the title of Plaintiffs has been confirmed by way of adverse possession.

8. It has further been submitted that the enemies of the Plaintiffs have executed a sale deed in favor of Defendant Numbers 2 and 3, due to which there is some cloud of doubt on the title of the Plaintiff, hence the need for suit.

9. It has further been submitted that Defendants have wrongly stated in their W.S. that the marriage of Dev Narayan was solemnized with Tetari Devi and Ram Jhari was daughter of Dev Narayan. Dev Narayan was married to one Kailashi Devi, daughter of Dular Chand, resident of Hajipur, who predeceased her husband issueless. Tetari is the daughter of Shivnandan, resident of Basant, and is wife of Kishun Mahto. Ram Jhari is daughter of Kishun Mahto.

10. Further case of the Plaintiffs is that the sale deed dated 02.01.1985 executed by Ram Jhari Devi in favor of Triloki Mahto and Dev Muni Devi, Defendant Nos. 2 and 3, is forged and fraudulent and is without consideration. It has also been submitted that the deed was not acted upon. Ram Jhari Devi did not have title or possession over the lands of the deed, and the purchasers also did not receive possession of the land at any moment.



11. At the time of the death of Hitlal Mahto, the Plaintiff had possession over the entire stretch of land, and the sale deed in question is sham and fraudulent.

12. It has also been submitted that Hitlal Mahto, Sukan Mahto, Dev Narayan Mahto and the Plaintiff were members of joint family. There was no partition between them. Hitlal Mahto was the Karta of the joint family. And, after the death of Sukan Mahto and Hitlal Mahto, Ram Avtar became the Karta of the joint family. Dev Narayan died in the lifetime of Hitlal.

13. The lands of the two sale deeds dated 2.1.85 is detailed in Schedule 1 and 2 of the plaint which is the disputed land.

Submission of the Appellants

14. Learned counsel for the Appellant has submitted that the Trial Court has decreed the suit without considering the fact that the Plaintiff-Respondent had no cause of action. Plaintiff-Respondent is neither the owner nor has right, title, and interest over the suit land. Learned Trial Court did not consider that the suit property was the self-acquired property of Ram Narayan, who died leaving behind his daughter Ram Jhari Devi, the Appellant, who is the owner of the suit. Ram Jhari Devi sold the same to the



Appellant's ancestors who are the rightful owner of the suit property.

15. It has further been submitted that the story set up by Plaintiff in the pleading is self-contradictory. As such, cannot be relied upon. Learned counsel for the Appellant has submitted that at one place the Plaintiffs-Respondents claim that they are the owner of the disputed land, and in the next para of the plaint, the case of the Plaintiffs is that the title of the Plaintiffs is confirmed by adverse possession.

16. Learned counsel for the Appellants has submitted that no one can have adverse possession on his own land. Adverse possession is the hostile possession against the real owner. Learned counsel for the Appellants has further submitted that the Plaintiffs/Respondents have nowhere stated as to when their possession was hostile to the interest of Appellants as they have claimed that the land belongs to them.

17. It has also been submitted that it is well-settled law of pleadings that a Plaintiff cannot make contradictory claims; however, the defendant is at liberty to make contradictory defenses.

18. Learned counsel for the Petitioner has further submitted that Trial Court could not consider that the question of



title by adverse possession does not arise as there cannot be any question of hostile title or possession in joint family property.

19. Learned Trial Court has not considered the story of partition and reunion as set up by Plaintiff is false as there is no document of reunion.

20. Learned Trial Court has not considered that Ram Narayan is the son of Hitlal and Ram Jhari Devi is the daughter of Dev Narayan and grand-daughter of Hitlal.

21. Learned Trial Court has not considered the documentary evidence that is Exhibit B wherein Plaintiffs admitted that Ram Jhari is the daughter of Ram Narayan and grand-daughter of Hitlal.

22. Learned Trial Court has not considered the admissions by Plaintiff in Exhibits B and D which completely demolish the case of Plaintiffs. It has further been submitted that the documentary evidence adduced by the Appellants clearly establish that Ram Jhari Devi is the daughter of Dev Narayan Mahto and grand-daughter of Hitlal.

23. Learned Trial Court has relied on the oral evidences that Ram Jhari gave the document and money to Ram Avtar and the same do not seem to be true without considering that she in good faith gave the documents and money to her uncle.



24. Learned Trial Court failed to consider that the case of the Plaintiff about adverse possession cannot be accepted with the case of title as well.

25. It has further been submitted that learned Trial Court should have considered the oral evidences of the Appellant and should have disbelieved the PWs. As such, it has been prayed to set aside the judgment and decree of the learned Trial Court.

Case of the Defendant

26. The defendant's case in brief is that the case of the plaintiffs is not maintainable and the plaintiffs have no title and interest in the suit property. It is further said Hitlal had a son: Dev Narayan Mahto who was married to Tetri Devi daughter of Shiv Nandan Mahto of village- Aami and Ram Jhari Devi is their daughter. Khata No. 129 was acquired by Hitlal Mahto after the death of Hitlal Mahto and the death of the parents of Ram Jhari Devi in the lifetime of Hitlal Mahto, the properties came in the possession of Ram Jhari Devi. Khata No. 129 was not acquired through the joint family fund and the same was acquired by the personal income of Hitlal Mahto out of his earnings in Assam and as such, Sukan Mahto or the plaintiff Ram Avtar Mahto had no joint possession along with Hitlal Mahto. Ram Jhari Devi used to manage her properties with the help of the persons of his



nanihaal and the usurp was enjoyed by her. Ram Jhari Devi was a plain, simple and illiterate lady and as such, if some documents have been forged and prepared against her, the documents are not binding upon her.

27. Further case of the defendants/appellants is that for meeting her own purposes, the said Ram Jhari Devi executed a sale deed in favour of the defendants and the purchasers/defendants came into possession of the suit property by virtue of the sale deeds executed by Ram Jhari Devi. It is also alleged that the plaintiffs have a larger income than what is shown by them to save the court fee. Further case of the defendants is that in case of 685 and 785 under the Ceiling Act, the sale deeds have been accepted by the plaintiffs and a compromise has been effected with the defendants. So, the suit is hit by estoppel, waiver and acquiescence.

28. Learned counsel for the respondents has submitted that the learned trial court has considered all the documentary and oral evidence of the parties and has rightly decreed the suit of the plaintiffs/respondents. Learned counsel for the respondents/plaintiffs has further submitted that at the stage of first appeal, this Court can reappraise the evidence and in reappraisal of the evidence, if this Court finds that the finding of



the learned trial court that the plaintiffs have completed their title by adverse possession is superfluous but otherwise, the suit is liable to be decreed then the same may be accordingly made.

29. Learned counsel for the respondents has brought to the notice relevant provisions of CPC Order 41 Rule 33. The same is being reproduced hereunder for reference:-

33. Power of Court to appeal- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection ²[and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

³[Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order].

30. After considering the pleadings of the parties, learned trial court framed the following issues :-

(i) is the suit as framed maintainable?

(ii) have the plaintiffs got cause of action?

(iii) have the plaintiffs' right, title and interest in the suit land ?

(iv) have the defendants right, title, and interest in the suit land?



(v) is the suit barred by law of limitation ?

(vi) any other reliefs or reliefs to which the plaintiffs are entitled to ?

31. The Same is hereby decreed on contest with cost and it is held and declared that plaintiffs have right title and interest over the suit land and defendants possesses no right title.

32. Plaintiffs have examined 8 witnesses which are given hereunder in a tabular form. Apart from that, Plaintiffs have also adduced certain documentary evidence, the same is also given hereunder in tabular form.

P.W.1	Ram Janak Singh
P.W.-2	Sukhdeo Pandit
P.W.-3	Ram Jiyach Mahto
P.W.-4	Dashrath Singh
P.W.-5	Manager Rai
P.W.-6	Durga Prasad Singh
P.W.-7	Lalan Singh
P.W.-8	Ram Avtar Mahto

Documentary Evidence on behalf of plaintiffs/respondents

Ext-1	Baimeyadi deed executed by Ram Avatar Mahto in favour of R Lal Bahadur
Ext-1/a	Baimeyadi deed executed by Ram Avtar in favour of Sitaram Singh



Ext- 2 to 2/B	Rent Receipt
Ext-3	Original (Zerpshesgi) deed executed by HIt Lal Mahto in favour of Mohan Kumar dt. 23.09.15
Ext-3/A	Original (Zerpshesgi) deed executed by Hit Lal Mahto in favour of Shital Raut dt. 05.12.47
Ext-3/B	Original (Zerpshesgi) deed executed by Hit Lal Mahto in favour of Deo Narain dt. 16.06.43
Ext-4	Land possession Certificate
Ext-5	Certified copy of Khatiyan
Ext-5/A	Certified copy of Khatiyan
Ext-6	Certified copy of order sheet dated 06.07.85
Ext-6/A	Certified copy of order sheet 3.10.79
Ext-7	Certified copy of Electoral roll (voter list)
Ext-7/A	Certified copy of Voter list
Ext-3/C	Original (Zerpshesgi) deed executed by Hit Lal Mahto in favour of Shital Rai 02.01.46
Ext-3/D	Original Zerpshesgi dee executed by Mohit Mahto in favour of Jainur Haque dated 03.07.45

33. As against this, defendants have examined 14 witnesses. Apart from that, defendants have adduced documentary evidences which is given hereunder in a tabular form.

D.W.-1	Ram Nath Mahto
D.W.-2	Ram Jeet Mahto
D.W.-3	Vijay Kumar



D.W.-4	Vidur Singh
D.W.-5	Heera Lal Singh
D.W.-6	Mathura Mahto
D.W.-7	Om Prakash Mahto
D.W.-8	Ram Jeet Mahto
D.W. -9	Madhusudan Bind
D.W.-10	Badri Mahto
D.W.-11	Prem Prasad Singh
D.W.-12	Ram Jhari Devi
D.W.-13	Lamuna Rai
D.W.-14	Braj Kishore Singh

Documentary evidence on behalf of
appellants/defendants

Ext-A	Original Sale deed executed by Smt. Ram Jhari Devi in favour of Smt. Deomuni Devi
Ext-A/1	Sale deed executed by Ram Jhari Devi in favour of Triloki Mahto
Ext-A/2	Original Sale deed executed by Smt. Jago Devi in favour of Jagernath Mahto dated
Ext-B	Original written statement in T.S. No. 72/85 in the court of of 3 rd Munsif, Chapra
Ext-C	Certified copy of order sheet dated in case no. 6/85-86
Ext-D	Certified copy of petition ceiling case no. 6/85
Ext-D/1	Certified copy of petition ceiling case no 7/85 in the Court of D.C.L.R., Chapra
Ext-E	Certified Copy of order sheet dated 08.01.86 in the ceiling case no. 7/85-86 in the court of D.C.L.R, Chapra
Ext-F	Certified copy of order sheet in Misc.



	32/72/86 in the court of S.D.O, Chapra
Ext-G	Certified copy of Khatian
Ext-H	Original Zerpeshgi deed executed by Sheo Nandan Mahto in favour of Ramji Prasad
Ext-I	Ration Card in the name of Mathura Mahto
Ext-J	Certified copy of voter list.
Ext-H/1	Certified copy of zerpeshgi executed by Ram Avtar Mahto in favour of Shital Raut
Ext-H/2	Certified copy of Zerpeshgi executed by Hitlal Mahto in favour of Shital Raut

34. Heard the learned counsel for the parties and perused the case of the learned trial court. During the course of arguments, learned counsel for the respondent has admitted that the finding of the trial court regarding completion of adverse possession of respondents/ plaintiffs should not have been made and it has also been argued that the finding is not on merits but that is a superfluous finding, and notwithstanding that the case of the respondents is proved.

35. As against this, the main contention of the appellants is that trial court has not considered the documentary evidences of the appellants and that the finding of the learned trial court regarding adverse possession of plaintiffs/respondents is against the established law.



36. So the first issue which I would like to discuss is whether the finding of the learned trial court regarding adverse possession is sustainable in the eye of the law?

37. Learned Trial Court has held in para- '10' of the judgment which is given hereunder:-

“After the death of Hitlal Mahto the said Ram Autar Mahto came to acquire the properties of the deceased Hitlal Mahto. There is ample evidence on record to support the contention of the learned counsel for the plaintiff. At the same time learned defence counsel submits that there was no question of re-union as it was not possible under the existing circumstances and the law on the point. This position and state of affairs requires investigation into the fact that at the zerpeshgi deeds executed by Hitla Mahto have been produced from the possession of Ram Autar Mahto. Further it appears from the evidence on record that Ram Autar Mahto paid the redemption money in order that the properties may be cleared from the charge and encumbrance created by the zerpeshgi deeds. On this count one Ramjhari Devi appearing as a defence witness says that the documents and money for the purposes were given by her to her uncle Ran Autar Mahto but the same were not returned to her, I fail to understand why Ramjhari Devi shall take the risk of giving the documents as well as the money to Ram Avtar Mahto to meet the requirements of law. Even the earlier rent receipts have been produced from the custody of the plaintiff and not from the custody of Ramjhari Devi or her purchasers. Further there is cogent and reliable evidence on record to show that Ram Avtar Mahto has been in possession of the properties and has been cultivating the same since long, for several 12 years. That way it will not be out of place to mention that he has acquired adverse possession over the suit properties as argued by learned counsel for the plaintiff. Ext. 1 series the Baimeyadi deeds show that Ram Autar Mahto has been dealing with the properties. Ext. 3 series the zerpeshgi deeds and their custody go to show that Ram Autar Mahto was in possession of the documents as also he was the real person who dealt with and transacted the business relation to the properties of deceased Hitlal Mahto. One of the defence witness saying that Ramjhari Devi was major at the time of Hitlal's death, dispels the claims of Ramjhari Devi that she was brought up by Hitlal Mahto and thereafter looked after by her maternal uncle. One circumstance creating great doubt is that had Hitlal been alive at the time of majority of Ramjhari Devi, he would have solemnized her marriage in the capacity of guardian and manager of the family, rather than her maternal uncle who is said to have come from a different village to look after her and solemnized her marriage. The proposition of the learned defence counsel that the



documents and the money for the payment of rent and redemption were entrusted to Ram Autar Mahto by Ramjhari Devi does not stand to reason as, after the documents were not returned to her, she did not take action in accordance with law for the possession and custody of the same. Needless to say, that Ram Autar Mahto had all along been in custody as well as the properties in question and the said Ramjhari Devi, did not have any role to play in the said transactions. Even if, the doctrine of re-union is not invoked in the instant case, there is perfection of title on the part of Ram Autar Mahto, by dint of continuation of adverse possession over the suit properties for several 12 years. In that view of the matter Ext. A series the sale--deeds in favour of the defendant executed by Ramjhari Devi do not last any cloud over the title of Ram Autar Mahto and thereby his title and interest over the suit lands are not encroached upon by the said sale-deeds which are not binding upon Ram Autar Mahto as it has been executed by one who has no stake, right, title and interest in the suit properties. The possession of Ext. 4, land possession certificate and Ext. 5 & 5/A khatiyans also substantiate the case of the plaintiff.

38. Learned counsel for the appellant has stated that in this case, issue numbers 4 and 5 are the most pertinent issues, and the Trial Court has decided these issues in favor of the Plaintiffs/ Respondents.

39. Learned Trial Court has held that there is perfection of title on the part of Ram Avtar Mahto by dint of continuation of adverse possession over the suit properties for several 12 years.

40. It has also been submitted by learned counsel for the appellants that Plaintiff cannot make out contradictory claims regarding his title. In this case, the Plaintiff claims title over the disputed land and *vis-a-vis* also claim adverse possession.

41. It is pertinent to note that it is well-settled law that plaintiffs may make rival pleas in the alternate.



42. The learned counsel for the appellants has relied on a judgment of Hon'ble Apex Court in the case of **Kishundeo Rout and Ors. V. Govind Rao and Ors. in SLP Civil Number 22070 2025**. In para 20 of the said judgment, Hon'ble Apex Court has held as follows:

“20. The plea of adverse possession is not always a legal pleas. Indeed, it is always based on facts which must be asserted and proved. A person who claims adverse possession must show on what date he came into possession, what was possession, whether the factum of his possession was known to the legal claimants and how long his possession continued. He must also the nature of his These are show whether his possession was open and undisturbed. all questions of fact and unless they are asserted and proved, a plea of adverse possession cannot be inferred from them. (Therefore, in normal cases an appellate Court will not allow the plea of adverse possession to be raised before it.) There is no doubt that in some cases, the plea will be allowed for the reason that in some form or the other allegation upon which it can be raised might have been made at the time and the facts necessary to prove the plea were brought before the court and proved.”

43. In this case, from perusal of the pleading of the Plaintiffs/Respondents, only this much has been pleaded that the Plaintiff has continuous possession since 1950 for more than 12 years. As such his title has perfected by way of adverse possession as well.

44. Learned counsel for the appellants has submitted that no details regarding the dates when this hostile possession started and when the same completed, is there in the pleading of



the Plaintiffs/ Respondents. Nor there is any evidence on that point. But the learned Trial Court has held without the specific pleading and evidence that the Plaintiffs/Respondents have also perfected his title by way of adverse possession.

45. It has also been submitted that learned Trial Court has not considered the documentary evidence of the defendants.

46. That is Exhibit B, which is W.S. [Written Statement] filed by Ram Avtar Mahto in Title Suit Number 72 of 1985. Needless to say that Ram Avtar Mahto is the plaintiff of this case. In Exhibit B in para 7, he has stated that Dev Narayan Mahto pre-deceased his father Hitlral in the year 1940 and he had a daughter namely Ramjhari. In 1950 Hitlral Mahto also died and his brother Sukan Mahto got the possession over his lands by way of survivorship.

47. Learned counsel for the appellants has submitted that in this written statement which was filed in Title Suit Number 72 of 1985, the plaintiff of present case has admitted that Ramjhari Devi was the daughter of Dev Narayan Mahto. Whereas in this case, plaintiff has stated that Ramjhari Devi is not the daughter of Dev Narayan.

48. It has also been submitted that the pleading of the parties are filed on affidavits and any statement made therein



against the interest of the parties is treated as admission. Section [58] of Evidence Act declares that facts admitted need not be proved and the same is quoted hereunder:-

58. Facts admitted need not be proved.- No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

49. It has further been submitted that in Exhibit D/1 also, the case which was filed under Ceiling Act by Ram Avtar Mahto, the plaintiff of this case, Ramjhari Devi was one of the defendants and her parentage is shown as daughter of Dev Narayan Mahto. This case was also filed by Ram Avtar Mahto, the plaintiff of this case.

50. In that case, a genealogy was also appended and the genealogy also shows that Ramjhari Devi was the daughter of Dev Narayan. Exhibit D/1 is also the plaint of Ceiling Case and in that case also ,same facts are averred by the plaintiff of this case.

51. These exhibits prove that Ramjhari Devi was the daughter of Dev Narayan. In this respect, I would also like to refer Section 91 of the Evidence Act which is regarding exclusion



of oral evidence regarding documents and the same is being reproduced hereunder:-

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.- When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except, the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinabove contained.

Explanation 3.- The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

52. Learned counsel for the appellant has submitted that if the appellant is able to prove that Ramjhari Devi is the daughter of Devnarayan, in that case, the sale deeds executed by her are valid deeds and the vendees of Ramjhari Devi will get title from that transfer.

53. It has also been submitted that though, by amendment, the plaintiff-respondent has introduced a case of adverse possession, he has not pleaded the essentials of adverse possession—such as, when the possession started, when it was hostile, that the same was in the knowledge of the real owner and ultimately the date on which the adverse possession was



completed and by way of adverse possession the plaintiff has got his title over the disputed land.

54. Admittedly, the disputed land has been sold by Ramjhari Devi to defendant No. 2 and defendant No. 3. The sale deeds have been executed by Ramjhari Devi; that much is the admitted position. But the case of the plaintiff is that as Ramjhari Devi is a stranger to the family of the plaintiff, she has got no right and title over the disputed land, and likewise, her transferee also did not get any title out of those transactions.

55. Learned counsel for the appellant has further submitted that the plaintiff has not challenged the sale deeds in question directly but indirectly challenged the right of Ramjhari Devi who, according to the plaintiff, is a stranger in the family of the plaintiff. It is apparent from the above exhibits (Ext-B and Ext-D/1), as discussed above, that the plaintiff himself has admitted in these documents that Ramjhari Devi was the daughter of Devnarayan Mahato.

56. Learned counsel for the appellant has further submitted that from a perusal of the impugned judgment, it is clear that the learned trial court has relied on the oral evidences which are not the pleadings of the parties, and that there is no statement in the plaint regarding the Zarpeshgi deed which has come in the



evidence that Hitlal Mahato has executed a Zarpeshgi deed in favor of Mohar.

57. Learned trial court has relied mostly on the oral evidences which were beyond the pleadings of the plaintiff-respondent. It is well settled that in civil cases, parties have first of all to plead their case, and after pleading, they have to prove their case from oral and documentary evidences. I find it appropriate to refer the judgment of the Hon'ble Apex Court in the case of **Shivshankara and Another Vs. H.P. Vedavyasa Char** reported in **2023 SCC OnLine SC page- 358** wherein in para-64 and para-65, the Hon'ble Apex Court has held which are given hereunder:-

“64. In the decision in *Duggi Veera Venkata Gopala Satyanarayana v. Sakala Veera Raghavaiah* [*Duggi Veera Venkata Gopala Satyanarayanav. Sakala Veera Raghavaiah*, (1987) 1 SCC 254] this Court agreed with the observation made in the earlier decision in *Hasmat Rai v. Raghunath Prasad* [*Hasmat Rai v. Raghunath Prasad*, (1981) 3 SCC 103] that any amount of proof offered without pleadings is generally of no relevance. I *Duggi Veera Venkata Gopala Satyanarayana* [*Duggi Veera Venkata Gopala Satyanarayana v. Sakala Veera Raghavaiah*, (1987) 1 SCC 254] with respect to the aforesaid observations in *Hasmat Rai* [*Hasmat Rai v. Raghunath Prasad*, (1981) 3 SCC 103] this Court held, “we respectfully agree with the above statement of law and reiterate the same”. Further, it is also relevant to refer to para 85.6 of the decision in *Union of India v. Ibrahim Uddin* [*Union of India v. Ibrahim Uddin*, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362] , which reads thus : (*Ibrahim Uddin case* [*Union of India v. Ibrahim Uddin*, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362] , SCC p. 182)

“85.6. The court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the court, it is just to be ignored. Though it may be a different case where in spite of specific pleadings, a particular issue is not framed and the parties having full knowledge of the issue in controversy lead the evidence and the court records a finding on it.”



65. In such circumstances, we have absolutely no hesitation to hold that the original defendants failed to raise sufficient and appropriate pleadings in the written statement that they have better right for possession of the suit properties. No amount of proof offered without appropriate pleadings would have any relevance. The courts below have rightly relied on the evidence of PW 5 to hold forceful dispossession of the defendants from 'B' schedule property. Nothing is on record to uphold the said finding."

58. In the instant case, the evidences adduced by the parties, especially the plaintiffs, to prove that Ramjhari was not the daughter of Devnarayan have brought a Zarpeshgi deed which, according to the plaintiff's oral evidence, was executed by Hitlal Mahato in favour of Mohar. It is well settled that no amount of evidence cannot remove the defect of pleading. The facts which are not pleaded cannot be proved by any amount of evidences.

59. Regarding the exhibits (Ext- B and Ext-D/1), it has been stated by the plaintiffs that the ceiling cases were filed on wrong advice. If this piece of evidence is admitted, then also there is no evidence that the averments made in those ceiling cases were false. Only that the cases were filed on wrong advice, but it is not specifically the case of the plaintiff that the statements made by the plaintiff in those ceiling cases are not true or against the real state of affairs. In my view, these two documents sufficiently prove that Ramjhari Devi was the daughter of Devnarayan Mahto. And she being the daughter of Devnarayan Mahto has executed the sale



deed with regard to the disputed land. As she was the daughter, she has the right to sell it out.

60. The case of the plaintiffs is that the defendant No.1, Ramjhari Devi, was a stranger to their family, is fully demolished by the above exhibits (Ext-B and Ext-D/1) of the appellants-defendants. Now, the other ground on which the learned trial court has decreed the suit is that the plaintiffs have completed their title by way of adverse possession. It is needless to reiterate that regarding adverse possession, pleadings made by the plaintiffs are insufficient and they do not disclose the manner or the period in which the title was completed by adverse possession. There is not only a lack of pleading on the point of adverse possession rather there is no evidence as well. I am surprised how the learned trial court has concluded without pleading and evidence that the plaintiffs have completed their title by way of adverse possession.

61. Learned counsel for the plaintiff/respondents has argued that in view of the provisions of CPC (Supra), the first Appellate Court has got the same jurisdiction which the trial court has and it can look into the materials and come to its own finding. This is well-settled law that appeal is the continuation of the suit. But the bases on which the plaintiffs have claimed title in this case are two: First is that defendant no. 1 was a stranger to the family of



the plaintiffs, as such sale deeds executed by her did not confer any right or title to the defendant nos. 2 and 3. And second is that plaintiffs have completed their title by way of adverse possession.

62. On both scores, the plaintiffs have not been able to prove their case either by way of oral or documentary evidence.

63. Learned trial court has relied mostly on oral evidences and has relied on the Zarpeshgi deed executed by Hitlal Mahato in favor of Mohar which was not in the pleading, and has assumed on the basis of oral evidence that Ramjhari Devi was not the daughter of Devnarayan Mahato. This assumption of the trial court is not based on the material on record. And at this stage, from perusal of all the materials, especially the exhibits (Ext-B and Ext-D/1), it is amply clear that the plaintiffs have admitted that Ramjhari Devi was the daughter of Devnarayan Mahto.

64. From the above discussions, it is clear that Ramjhari Devi was the daughter of Devnarayan Mahto, and as she was the daughter of Devnarayan Mahato, she has executed the sale deeds in favor of Defendant Nos. 2 and 3, which is legal and binding. And as far as the claim of the plaintiffs regarding title on the basis of adverse possession is concerned, the same is not properly pleaded and proved.



65. Therefore, the findings of the learned trial court are erroneous and perverse. As such, the judgment and decree of the learned trial court is hereby set aside.

66. In result, this appeal is allowed.

67. Office is directed to draw decree accordingly.

68. Let the records of the learned trial court with a copy of this judgment be sent to the learned trial court.

(Ashok Kumar Pandey, J)

Shubham/-

AFR/NAFR	NAFR
CAV DATE	04.11.2025
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