

In the Court of District Judge I, Darbhanga Present - Neeraj Kumar II, BSJS, BR00552 Partition Appeal/CIS- 01/2021 Under Order XLI rules 1 & 2 of the Code of Civil Procedure Against the Judgment Dated 12/11/2020 and Decree dated 25/11/2020 Passed by the Learned Civil Judge Senior Division V Darbhanga in Partition Suit 92/2006 Nagendra Narayan Choudhary Versus Sunita Choudhary and others			
Date of Judgment- Monday, The 20 th day of July, 2026			
Appellant Plaintiff	A1	Nagendra Narayan Choudhary, aged about 76 Years, son of Late Surendra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117	
	Represented by	Sri Nawal Kishore Jha, Learned Advocate Sri Rajni Kant Choudhary, Learned Advocate Ms. Sanju Kumari, Learned Advocate	
Versus			
Respondents Defendants	R1	Sunita Choudhary, wife of Late Bhogendra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117 (Original Defendant 1)	
	R1(क)	Subhash Kumar Choudhary, son of Late Bhogendra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117	
	R1(ख)	Lata Choudhary, wife of Sanjay Choudhary, daughter of of Late Bhogendra Narayan Choudhary, resident of Mohalla Rajeev Nagar, Darbhanga, Present resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117	
	R1(ग)	Shanta Jha, wife of Chetana Nand Jha, daughter of Late Bhogendra Narayan Choudhary, resident of Village and PO Kakaraul, District Madhubani 847229, present resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117	
	R1(घ)	Mamta Choudhary, daughter of Late Bhogendra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117	
	R1(ङ)	Sarita Choudhary, daughter of Late Bhogendra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117	
	R2	Meena Devi, wife of Late Grindra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri,	
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	District Samastipur, 848117 (Original Defendant 2)
R2(क)	Nitish Kumar Choudhary, son of Late Grindra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117
R2(ख)	Bini Kumari, daughter of Late Grindra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117
R2(ग)	Guriya Kumari, wife of Sri Alok Kumar Choudhary, daughter of Late Grindra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117
R3	Most. Mithilesh Choudharain, wife of Late Shailendra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117
R4	Mukund Kumar Choudhary @ Sandeep Kumar Choudhary, son of Late Shailendra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117
R5	Govind Narayan Choudhary, son of Late Shailendra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117
R6	Anand Kumar Choudhary, son of Late Shailendra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117
R7	Rakhi Jha, daughter of Late Shailendra Narayan Choudhary, resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117
R8	Gayatri Jha, wife of Prem Kant Choudhary, resident of Village Mauyaha, Via Lokaha, District Madhubani, Present resident of Village and PO – Ballipur, PS Hathauri, District Samastipur, 848117
(R1 to R8) Respondents 1st Party/Defendants 1st Party	

In the Court of District Judge I, Darbhanga

Present - Neeraj Kumar II, BSJS, BR00552

Partition Appeal/CIS- 01/2021

Under Order XLI rules 1 & 2 of the Code of Civil Procedure

Against the Judgment Dated 12/11/2020 and Decree dated 25/11/2020

Passed by the Learned Civil Judge Senior Division V Darbhanga in Partition Suit 92/2006

Nagendra Narayan Choudhary Versus Sunita Choudhary and others

	Represented By		None
	R9	Gulab Singh, son of Late Jiwneshwar Singh, resident of village and PO Nemaithi, PS Baheri, District Darbhanga 847101	
	R10	Suresh Prasad Singh, son of Late Jiwneshwar Singh, resident of village and PO Nemaithi, PS Baheri, District Darbhanga 847101	
	Represented By		None
	R11	Rajkumari Devi, wife of Late Shambhu Prasad Singh, resident of Mohalla Balbhadrapur, PS and PO Laheriasarai, Town Ward 35, District Darbhanga, 846001	
	R12	Niraj Kumar Singh, son of Late Shambhu Prasad Singh, resident of Mohalla Balbhadrapur, PS and PO Laheriasarai, Town Ward 35, District Darbhanga, 846001	
	R13	Pranay Kumar Singh, son of Late Shambhu Prasad Singh, resident of Mohalla Balbhadrapur, PS and PO Laheriasarai, Town Ward 35, District Darbhanga, 846001	
	(R9 to R13) Respondents 2 nd Party/Defendants 2 nd Party		
	R11 to R13 Represented By		Ms. Punam Kumari, Learned Advocate

Judgment

1. Having been aggrieved and dissatisfied with the Judgment Dated 12/11/2020 and the Decree dated 25/11/2020 passed by the Learned Civil Judge Senior Division V Darbhanga in Partition Suit 92/2006, the above named appellant/Plaintiff filed the instant appeal. By the impugned Judgment the Learned Civil Judge Senior Division dismissed the suit on contest.

Plaint of PS 92/2006

2. Case of the Plaintiff/appellant according to the plaint dated 27/07/2006 in Partition suit 92/2006 in brief is that A1 is the manager of his family, which is governed by the Mitakshara School of Hindu Law.

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A1 father Surendra Nath Choudhary, passed away in the year 1960, leaving behind four minor sons, Shailendra Nath Choudhary, Nagendra Nath Choudhary, Bhogendra Nath Choudhary, Girindra Nath Choudhary, and one minor daughter Gayatri Kumari, and his widow Padmavati Choudharain. Shailendra Nath Choudhary also passed away in 1996, leaving behind his widow Mithilesh Choudhary and son Mukund Kumar Choudhary @ Sandeep Kumar Choudhary, Govind Nath Choudhary, Anand Kumar Choudhary and daughter Rakhi Jha. Padmavati Choudharain passed away in year 2000.

A1's father Surendra Nath Choudhary, obtained the land described in Schedule -I of the plaint and other lands in partition among his cosharers the late Bijayendra Nath Choudhary and Samarendra Nath Choudhary, etc., through an award Decree in Title Suit No. 24/1957 by the Sub-Judge, Darbhanga. The total area of the land described in Schedule-I is 09 Kathas 17 ½ Dhurs situated in Mohalla Balbhadrapur, Ward No. 35, Thana- Laheriasarai, District- Darbhanga. Surendra Nath Choudhary remained in actual physical possession of the land described in Schedule-I until his death (1960).

After that the Plaintiff, Defendants 1, 2 and 8 along with Shailendra Nath Choudhary and Padmavati Choudharain, jointly came into full physical possession of the land. Some of the land out of the schedule 1 land was sold by the Plaintiff's late mother Padmavati Choudharain and Defendants 1, 2 and late Shailendra Nath Choudhary upon which the Defendants (9, 10, 11, 12 and 13) 2nd Party came into possession.

Schedule I which was divisible, the Plaintiff share remained 7/36 (01 Kathas 18 ½ Dhurs), out of this, Padmavati Choudharain, in her capacity as the natural guardian of her minor sons and in her personal capacity sold 04 ½ Kathas towards south with 08 Dhurs land as pathway towards east to, Chandra Madhav Singh on 21.05.1963. Chandra Madhav Prasad Singh later sold his purchased to Pavitri Devi. Pavitri Devi was also dead hence her sons Gulab Singh and Suresh Prasad Singh were impleaded as Defendants.

The Plaintiff and all his brothers as well as Gayatri Jha have a share of 01 Kathas 05 ½ Dhurs each in the remaining land as mentioned in Schedule – II. Thus the land area 05 Kathas 07 ½ Dhurs is the subject matter of the suit.

All properties situated in village Ballipur have already been partitioned among the Plaintiff and the Defendants 1st Party years ago by mutual consent, and at that very time, an agreement was reached among the parties that they would partition the land described in Schedule-II of the plaint among themselves in the future according to their

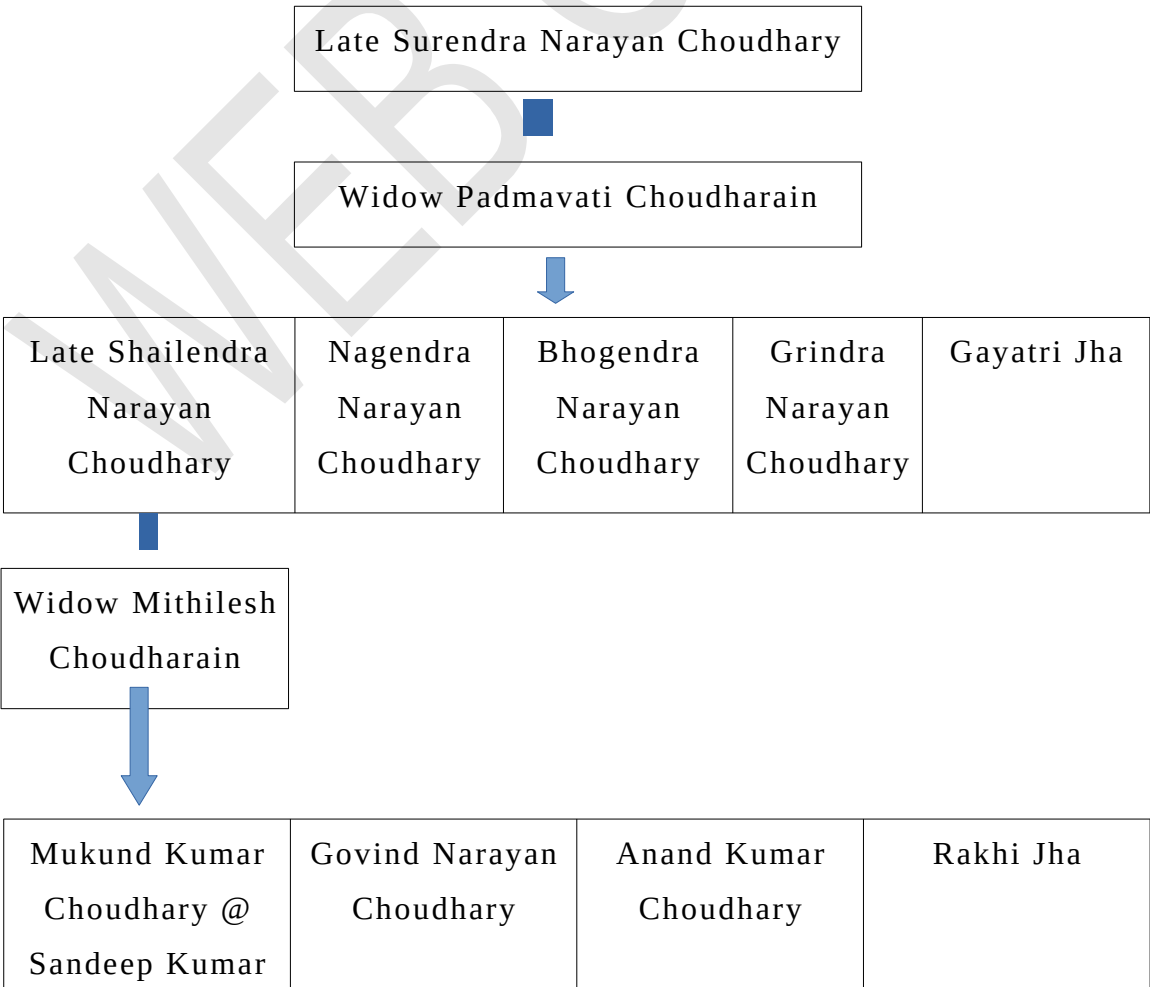
convenience.

Due to lack of mutual partition of the land described in Schedule II, frequent disputes arise regarding physical possession and occupation among the Plaintiff and the Defendants, and sometimes it resulted in criminal matter as the Plaintiff wants to construct a house on his share of the land. The Plaintiff has been repeatedly requesting the Defendants to completely partition the land described in Schedule-II according to their respective shares and to prepare documentation accordingly, but was absolutely refused by the Defendants on 26.07.2006 and the cause of action arose to file the suit.

3. The Plaintiff seeks following reliefs

1. A preliminary Decree of partition be passed, declaring the Plaintiff’s share in Schedule II land as 01 Kathas 5 ½ Dhurs.
2. Thereafter an Advocate Commissioner be appointed to carve out a separate allotment for the Plaintiff’s share, deliver physical possession of the same through the Court and pass a final Decree.
3. Costs
4. Any other relief or reliefs

4. Genealogy



Choudhary			
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5. Suit Property

1. Schedule 1 -

Mohalla Balbhadrapur, Pargana Purab Bhigo, PS Laheriasarai, Ward 35,
 Khesra 2173 From East - 03 Kathas 18 ½ Dhurs

Khesra 2172 Old - 05 Kathas 19 Dhurs

Total – 09 Kathas 17 ½ Dhurs

2. Schedule II

Khesra 2173 - 03 Kathas 14 Dhurs,

Khesra 2172 - 01 Kathas 13 ½ Dhurs

Total – 05 Kathas 7 ½ Dhurs

Boundaries

North:- Municipal Road,

South:- Pavitri Devi,

East:- Pavitri Devi,

West:- Nand Kumar Thakur

6. Written Statement by Defendants 1, 2, 8 (Grindra, Bhogendra and Gayatri)

In the written statement dated 20/12/2006, these Defendants submitted that Plaintiff and Defendants 1, 2 are full brothers, while Defendant no 8 is their sister and they have Title over the Schedule II land according to their share. The Defendants 3 to 7 are the branch of Late Shailendra Narayan Choudhry (died in 1996) who was the full brother of the Plaintiff and Defendants 1, 2 and 8 and they as a branch have equal share in the Schedule II land. The Genealogy was not disputed. The statements made in para 3 to 14 of the plaint were not denied.

The Defendants 1 and 2 respectively sold a small portion of land out of their respective shares from the schedule II of land to Defendants 12 and 13 in the years 1994 and 1998. There was no partition among the Plaintiff, Defendants and others over the suit land and all the documents proving title over the suit land are in the possession of the Plaintiff.

Except the facts of the plaint which the Defendants have admitted , rest are denied. These Defendants expressed no objection if the partition is carried out according to the respective shares of each shareholder.

7. Written statement by Defendant 9 and 10 (Gulab and Suresh)

In the written statement dated 25/04/2007, these Defendants submit that the suit as framed and filed is not maintainable either in law or on facts and the suit is barred by the principle of estoppel, waiver and acquiescence, law of limitation, law of partial partition. The suit is bad for multifariousness and is hit by section 34 of Specific Relief Act , non-joinder of necessary parties. No unity of title and possession in respect of any portion of the suit land between these Defendants and the Plaintiff. Admittedly the Defendants are purchasers of defined shares and as such no partition suit can lie. As a matter of fact the Plaintiff in collusion with other Defendants have cunningly and with malafide intention filed this title suit for declaration of his title and recovery of possession in the illegal, wrong and false garb of partition suit which deserves to be dismissed in limine. The Plaintiff has deliberately under valued the suit property and the Court fee paid is insufficient and unless the Plaintiff pays ad valorem Court fee thereon, the suit cannot proceed. The suit has been framed with vague indefinite, confusing and self contradictory statements and as such the plaint deserves to be rejected.

The statements made in para 1 and 2 of the plaint are denied. The Statements made in para 3 to 8 of the plaint are neither accepted nor denied . The statements made in para 9 and Para 10 of the plaint are vague, self contradictory and not correct. As a matter of fact the Plaintiff mother and brothers sold 04 Kathas 10 Dhurs of land to Chandra Madhav Singh along with 13 Kari Rasta by the vendors for the vended land. The statements made in para 11 and 12 of the plaint are correct except the fact regarding making of Chandra Madhav Singh as party to the suit as the vendor of these Defendants are necessary party to the suit.

The statements made in para 13 of the plaint is vague, wrong and self contradictory as no detail of the lands sold to Defendants 11, 12 and 13 has been given although they have been made parties to the suit and as such the details of land given in schedule 2 of the plaint is totally imaginary, wrong and vague and the right of the Plaintiff if any on any portion of the suit land has been extinguished by law of prescription as he is neither in joint or exclusive possession of any portion or the suit land.

The statements made in para 14 and 15 of the plaint are totally wrong and false as all the properties of the Plaintiff and his other co-sharers including the suit land were well-

partitioned and the suit land have been sold to different purchasers by the mother and brothers of the Plaintiff who are coming in exclusive, continuous, hostile, open possession of their respective purchasers more or less well bounded to the knowledge of the Plaintiff and his other co-sharers since last several 12 years alongwith the houses constructed on the spot and accordingly revisional survey entries have been prepared unchallenged and they are paying rent to the state and holding tax to the corporation and no area of the suit land is left in possession or ownership of the Plaintiff or his other co-sharers which can be partitioned.

The statement made in para 16 of the plaint is imaginary as a matter of fact the Plaintiff has no cause of action against these Defendants nor there was any reason or occasion to demand any partition. The statement made in para 17 of the plaint is totally wrong as above the suit land is not properly valued nor proper and sufficient Court fee has been paid. The statement made in Para 18 of the plaint is wrong and the Plaintiff is not entitled to get any relief or reliefs. It is prayed to dismiss the suit.

8. Written statement by Defendants 11, 12, 13 (Rajkumari, Neeraj, Pranay)

In the written statement dated 01/12/2006 these Defendants state that the suit as framed is not maintainable as the Plaintiff has got no cause of action and the suit is barred by law of limitation. The suit suffers from misjoinder and non-joinder of necessary party. The Plaintiff has undervalued the suit property. The suit though filed in the garb of a Partition suit but is really for a declaration of title and recovery of possession and unless the Plaintiff pays ad valorem Court fee, it can not run. The Defendant 7 and 8 are unnecessary party in the suit as they have no interest in the suit property.

These Defendants are unaware of the contents of para 1 of the plaint and also the Genealogy of the Plaintiff and other Defendants. The burden of proof with respect to the contents of para 3, 4 and 5 lies upon the Plaintiff. The contents in para 6 is matter of record of Title suit 24 of 1957.

With respect to the para 8 of the plaint it is submitted that after the death of Late Surendra Narayan Choudhary his widow and his four sons came in joint possession of the Balbhadrapur land measuring 9 Kathas 17 Dhurs by amicable partition and no share was allotted to Defendant 8.

The contents of para 9 to 12 are vague as the Plaintiff has not given details of the

transactions. The contents of para 15 and 16 are incorrect as the Plaintiff and Defendant 1st party were in separate possession of the land allotted to them by partition hence the question of any demand by the Plaintiff for partition of the suit property does not arise. The real fact is that Late Surendra Narayan Choudhary got 9 Kathas 17 Dhurs land in Mohalla Balbhadrapur through a Decree passed in T.S.No.24/1957 by the Court of Sub Judge, Darbhanga and after his death, his widow Padmabati Choudharain for self and as guardian of the four minor sons including the Plaintiff, sold 4 Kathas 10 Dhurs of land by sale-deed dated 21.5.1963 claiming her share as 02 Kathas and her sons share as 02 ½ Kathas.

Thereafter the sons of Late Surendra Narayan Choudhary partitioned all the properties including suit land among themselves wherein the Plaintiff got his share from north. Late Shailendra Narayan Choudhary was allotted 2 Kathas 12 Dhurs and Bhogendra Narayan Choudhary and Girindra Narayan Choudhary got 12 Dhurs each.

Shailendra Narayan Choudhary sold an area of 2 Kathas and after his death his widow Mithilesh Choudharain sold 12 Dhurs through sale deed dated 10.12.1973 and 16.10.1998 respectively. Bhogendra Narayan Choudhary and Girindra Narayan Choudhary sold their respective share to Defendant 12 and 13 through sale-deed dated 7.2.1994 and 27.3.1998 respectively. Three sons of Late Surendra Narayan Choudhary sold away 3 Kathas 16 Dhurs land to Defendant 11 to 13. The rest land measuring about 1 Kathas 11 Dhurs from north is the land which fell in the share of the Plaintiff. Thus the Plaintiff has got no title or possession with respect to any land in possession of the Defendants.

The Plaintiff was never in possession of any portion of land save and except about 1 Kathas 11 Dhurs from north in the entire land allotted to Surendra Narayan Choudhary by the Decree of the suit after partition between Plaintiff and his brothers some time in 1970 when they amicably separated and partitioned the entire properties including the suit land among themselves. It is prayed to dismiss the suit.

9. The Defendants 3, 4, 5, 6 and 7 appeared on 27.11.2019 but did not file their written statement and the suit proceeded against them under Order VIII Rule 10 CPC.
10. During the pendency of the Suit, Defendant 1 Bhogendra Narayan Chaudhary died and he was substituted by his surviving legal representatives vide order dated 12/08/2009 who are the respondents of R1 series in the instant appeal. Grindra Narayan Choudhary died after the Partition suit fixed for Judgment and his legal representatives were impleaded in the appeal as R2 series.

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11. Issues settled for adjudication by the Learned Trial Court		
Issue I	Whether the suit as framed by the Plaintiff is maintainable ?	
Issue II	Whether the Plaintiff has got cause of action or right to sue ?	
Issue III	Whether the schedule 2 property is joint family property of the Plaintiff and Defendant ?	
Issue IV	Whether there is unity of possession of the suit land in between the Plaintiff and Defendant ?	
Issue V	Whether Plaintiff is entitled to the share as claimed by him in the plaint r ?	
Issue VI	Whether the Plaintiff is entitled to get preliminary Decree?	
Issue VII	Whether the Plaintiff is entitled to any other relief?	
12. Evidence adduced by the parties		
1. Evidence by the Plaintiff/appellant		
1. Oral Evidence		
P. W. 1	Nagendra Narayan Choudhary	Plaintiff/A1
P. W. 2	Suresh Jha	
P. W. 3	Abinash Chandra Choudhary	
2. Documentary Evidence		
Exhibit 1	C. C. of Succession Certificate issued by Munsif Samastipur in Succession Case 05/1970	
Exhibit 2	C. C. of the registered sale deed dated 21/05/1963 executed by Padmavati Choudharain in favor of Chandra Madhav Singh	
Exhibit 3	C. C. of the Decree/Award passed in Title Suit 24/1957	
2. Evidence adduced by Respondents/Defendants		
1. Oral Evidence by Defendants 9 and 10		
D. W. 1	Suresh Prasad Singh	
D. W. 2	Jawahar Prasad Singh	
D. W. 3	Bhubneshwar Jha	Formal
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2. Documentary Evidence by Defendant 9 and 10		
Exhibit A - A/1	Rent Receipts of 1994-95	
Exhibit B - B/1	Revisional Survey Khatiyon of Khata 228 and 1059	
Exhibit C	C. C. of the order of Circle Officer Date 07/11/1994 with respect to the Mutation of the land area 04 Kathas 10 Dhurs Old Kesara 2172 and 2173	
Exhibit D	Original Sale Deed dated 03/06/1967 executed by Chandra Madhav Singh in favor of the mother of the Defendant 9 to 11	
3. Oral Evidence by Defendants 11,12,13		
D. W. 4	Pranay Kumar	
D. W. 5	Shambhu Prasad	Formal
D. W. 6	Rajendra Sahni	Formal
D. W. 7	Jogendra Mandal	Formal
D. W. 8	Lal Babu Choudhary	Formal
D. W. 9	Kameshwar Prasad Singh	Formal
D. W. 10	Baleshwar Singh	
D. W. 11	Dilip Kumar Singh	
D. W. 12	Manoj Kumar Singh	
D. W. 13	Manoj Kumar Thakur	
D. W. 14	Pashupati Nath Jha	
4. Documentary Evidence by Defendants 11, 12 and 13		
Exhibit E	Original Sale deed dated 07/02/1994 executed by Bhogendra Narayan Choudhary in favor of Defendants 12 and 13	
Exhibit E/1	Original Sale deed dated 27/03/1998 executed by Girendra Narayan Choudhary in favor of Defendants 12 and 13	
Exhibit E/2	Original Sale deed dated 16/10/1998 executed by Mithilesh Choudharain in favor of Defendants 12 and 13	
Exhibit E/3	Original Sale deed dated 10/12/1973 executed by Shailendra Narayan Choudhary in favor of Defendants 11 and 12	
Exhibit E/A	Signature of Dilip Kumar Singh on Exhibit E/1	
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Exhibit F - F/1	Rent receipts issued in favor of Rajkumari and Neeraj
Exhibit G	Municipal Holding Receipt dated 05/02/2016 of Holding 1960 Ward 35

**Order passed by Learned Civil Judge Senior Division V, Darbhanga in
Partition Suit 92/2006**

13. On the basis of the materials and evidence available on record, the Learned Civil Judge Senior Division dismissed the Partition Suit 92/2006.

Grounds of Appeal

14. The impugned Judgment has been challenged on the following grounds:

1. The Judgment and Decree is bad in law and on facts as is based on conjecture and surmises, hence perverse and self contradictory and not in consonance to the pleading of the parties.
2. The Judgment and Decree is against the weight of evidence ignoring overwhelming materials on record in favour of Plaintiff/appellant.
3. The Learned Trial Court below erred in dismissing the suit of the Plaintiff/appellant and the reasons assigned are unsound, unsatisfactory, against the law.
4. The Learned Trial Court even fail to correctly state the case of the parties and simply gathered the oral and documentary evidence and miserably failed to consider the evidence judicially.
5. The Learned Trial Court illegally and erroneously considered other oral evidence of Defendant/respondent as gospel truth ignoring the crucial evidence elicited by Plaintiff/appellant in their the Cross examination which have totally discredited to testimony of Defendants/respondents.
6. The Learned Trial Court didn't take into account the notes of argument, the cited Judgments and Principles of Partial Partition and not even whispered in the Judgment under appeal otherwise the Court below could not have dismissed the suit.
7. The Learned Trial Court while deciding issue No. 3, 4, 5 rightly held that from the oral evidence of the witnesses of the Defendant, the fact that suit property has been partitioned amongst Plaintiff and Defendant 1st party is not proved.
8. The Learned Trial Court ought to have held that the Plaintiff and his witnesses clearly stated that the suit property was never partitioned in the family of Plaintiff and Defendant 1st party and is still joint.
9. The Learned Trial Court failed to consider that the Defendant 2nd party did not

produce any oral evidence to say that the suit property was partitioned amongst Plaintiff/appellant and Defendant/respondent 1st party in their presence nor produce any written document to show the manner of partition and the area allotted to each brothers.

10. The Learned Trial Court failed to consider that the Defendant/respondent 2nd party miserably failed to prove and discharge their onus to prove partition of suit property by metes and bounds amongst Plaintiff and Defendant 1st party.
11. The Learned Trial Court is wrong in deciding all the issues against the Plaintiff/appellant rather should have decided the issues in his favour and should have Decreed the suit.
12. The Judgment and Decree under appeal is bad in law and fit to be set aside.
13. The Learned Trial Court did not appreciate the facts, circumstances and position of law properly and erroneously dismissed the suit.
14. The Learned Court below misconstrued, misinterpreted and mis-appreciated the Exhibits and oral evidence and misdirected in giving the findings.
15. It is prayed to allow the appeal and set aside the Decree .

Points for determination

15. Following points are formulated for determination

(A)	Whether the Learned Civil Judge Senior Division V Darbhanga ignored the evidence of the Plaintiff/appellant, not taking into account the settled principles of law of Partial Partition and Judgment of Hon’ble Apex Court, not rightly appreciating the oral and documentary evidence available on record, and passed the Judgment illegally and dismissed the suit ?
(B)	Whether the Judgment and Decree passed by the Learned Civil Judge Senior Division V Darbhanga requires interference and is liable to be set aside ?

Argument by the rival sides

16. Argument of the Appellant

Initiating the argument, the Learned Counsel of the appellant reiterated

the contents of the plaint and the different written statements filed by the Defendants/respondents. The Learned Counsel also put forward the grounds mentioned in the Memo of appeal and submitted that

1. The schedule II property was decided by the Plaintiff and his brothers to be divided later on.
2. Citing Mulla Hindu Law Article 328 and Hon'ble Apex Court Judgment in AIR 1961 SC 1077 and Hon'ble Patna High Court Judgment in 1996(1) PLJR 483, it was argued that the partial partition of the Hindu Joint Family property was valid.
3. After the partial partition, the joint family property was substituted as share of the cosharers as Tenants in common which could be divided according to their share.
4. The Defendants 1, 2 and 8 fully supported the Plaintiff case of partition of schedule 11 property.
5. The scribe wrongly mentioned in Exhibit E (Original Sale deed dated 07/02/1994 executed by Bhogendra Narayan Choudhary in favor of Defendants 12 and 13) that the land to be sold was acquired by the seller from mutual partition.
6. Citing Exhibits E, E/1, E/2, E/3 (Original Sale deed dated 07/02/1994 executed by Bhogendra Narayan Choudhary in favor of Defendants 12 and 13, Original Sale deed dated 27/03/1998 executed by Girendra Narayan Choudhary in favor of Defendants 12 and 13, Original Sale deed dated 16/10/1998 executed by Mithilesh Choudharain in favor of Defendants 12 and 13 and Original Sale deed dated 10/12/1973 executed by Shailendra Narayan Choudhary in favor of Defendants 11 and 12), the Learned Counsel argued that Shailendra didn't mention in his sale deed (E3) that the land which he sold, had been acquired through mutual partition. It was also submitted that Mithilesh also mentioned in her sale deed (E2) that the land was her husband property. It was argued that the boundaries mentioned in Exhibit E, E/1 and E/2 clearly proved that the property was joint and undivided.
7. The Defendants second set were outsiders and the manner of division told by them was not legally permissible, rather it was settled principle that the purchaser of joint family property only got a right of equity. It was argued that no documentary evidence regarding the partition nor oral statement in this regard was produced by the Defendants.
8. The contention of the Defendants 9 and 10 that Padmavati sold 08 Dhurs extra land as road in addition to 04 Kathas 10 Dhurs land was absolutely false when Exhibit 2 and Exhibit 3 were perused minutely.

9. The defence contention that once partition was effected, no question of unity of title and possession existed between the cosharers and their reliance on the Judgments AIR 1995 SC 1728, 2014 (1) PLJR 347, 2019 1 PLJR 367, 2016 (1) PLJR 391 were not applicable in the instant case.
10. The onus to prove partition was upon the party alleging partition between co-sharers in a Hindu Joint Family and the respondents/Defendants hopelessly failed to prove the same.
11. Citing M. Venkataramana Hebbar (D) By L.Rs vs M. Rajagopal Hebbar & Ors PLJR¹ it was argued that for partition of a joint family property, the parties have to prove the partition by metes and bounds and mere severance in the joint family will not prove partition and the parties deemed to have joint Title and possession over both the suit property.
12. The Court below did not appreciate the facts, circumstances and position of law properly and erroneously dismissed the suit for partition.
13. The Learned Court below failed to appreciate that there was still jointness between the parties with regard to the schedule II property.
14. There was no controversy over the factum of both the sides (Plaintiff and the Defendants first set) being the descendants of the common ancestor and the Plaintiff was entitled to have a share in the schedule II property.
15. The suit was maintainable and the Plaintiff had real cause of action and were entitled to the Decree as claimed.
16. The Learned counsel urged that the impugned Judgment and Decree was not sustainable in law or on facts
17. It is prayed to allow the appeal and set aside the Decree .

17. Argument by Respondents 11 to 13

Per contra, vehemently objecting the arguments of the appellant, the Learned counsel of the respondents pointed out that

1. The appeal was misconceived, illegal and not maintainable as the Judgment and Decree passed by the Learned Civil Judge Senior Division was legal and valid and not require any interference.

¹ 2007(3) PLJR 81 SC

2. Admittedly partition already took place between the Plaintiff and his brothers. It was argued that the alleged division of schedule II property was hit by the principles of Partial partition and it was perfectly divided among the Plaintiff and his brothers.
3. The Plaintiff got 01 Kathas 11 ½ Dhurs land from north and it still lying vacant.
4. Citing Exhibits E, E/1, E/2, E/3 (Original Sale deed dated 07/02/1994 executed by Bhogendra Narayan Choudhary in favor of Defendants 12 and 13, Original Sale deed dated 27/03/1998 executed by Girendra Narayan Choudhary in favor of Defendants 12 and 13, Original Sale deed dated 16/10/1998 executed by Mithilesh Choudharain in favor of Defendants 12 and 13 and Original Sale deed dated 10/12/1973 executed by Shailendra Narayan Choudhary in favor of Defendants 11 and 12), the Learned Counsel argued that all the sale deeds provided a distinct boundary of each sold land and particularly in Exhibit E it was mentioned that the sold land came into the vendor share after mutual partition. It was argued that it also mentioned the manner of division among the Plaintiff and his brothers as it mentioned that the Plaintiff got the share in extreme north, thereafter Girendra got the share, after that Shailendra and the Plaintiff mother got the share and in the south Bhogendra got the share.
5. Citing para 9 of the plaint, it was argued that the Plaintiff admitted that his mother and brothers sold disputed land to the Defendants second set and they were in possession thereon.
6. These Defendants had their house over the disputed land and they lived in with their family.
7. It was admitted fact that most of the properties of the Plaintiff family had already been divided, in these circumstances, the burden to prove that some other property remained joint fell upon the person who claimed as such, as once it was admitted that the property was divided, the existence of the joint Hindu Family no longer survived.
8. Citing 2014 (1) PLJR 347, 2019 ALJR 367, it was argued that these Judgments supported the Defendants case fully.
9. The Plaintiff's brothers sold land with different boundaries and it was not objected to by the Plaintiff and the Khatiyans with respect to the disputed land also existed in the name of Defendant 9 and 10 (Exhibit B) which clearly proved that the disputed property was already divided

amongst the Plaintiff and his brothers.

10. Citing AIR 1995 SC 1728 and 2019 1 PLJR 367, it was argued that it was not necessary that the partition would always be effected through registered documents.
11. Citing 2016 (1) PLJR 391, it was argued that once the partition was proved, it could not be reopened for dividing again.
12. Quoting 2008(1) PLJR 649, the Learned counsel argued that the parties could lead evidence only on the facts stated in their pleadings and any evidence adduced beyond the pleadings could neither be admitted nor taken into consideration.
13. The Learned Trial Court rightly appreciated that the Court should lean towards validity of Partition and in supporting the same instead of disbelieving the same on hyper technical grounds and further that the settled principle of law that a partition or family arrangement effected orally and amicably is valid and lawful and that the partition mutually effected can not be disbelieved on account of difference in distribution, area and value of the property allotted to one or the other co parcener.
14. The Judgment and Decree passed by the Learned Trial Court was well discussed with the proper consideration of the pleadings and evidence adduced by both the sides and it did not require any interference by this Court.
15. The Learned counsel prayed to dismiss the appeal.

Decision and reasons for the decision

18. Now the point [A] is taken first for determination

Point A	Whether the Learned Civil Judge Senior Division V Darbhanga ignored the evidence of the Plaintiff/appellant, not taking into account the settled principles of law of Partial Partition and Judgment of Hon’ble Apex Court, not rightly appreciating the oral and documentary evidence available on record, and passed the Judgment illegally and dismissed the suit ?
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19. For the better appreciation of the facts stated and the evidences adduced thereon Issues no III, IV, V and VI are inter-connected issues, are

discussed together hereinafter

Issue III	Whether the schedule 2 property is joint family property of the Plaintiff and Defendant ?
Issue IV	Whether there is unity of possession of the suit land in between the Plaintiff and Defendant ?
Issue V	Whether Plaintiff is entitled to the share as claimed by him in the plaint ?
Issue VI	Whether the Plaintiff is entitled to get preliminary Decree?

20. On perusal of the entire case record, it is undisputed that

1. The Plaintiff/appellant and the Defendants first side/respondents are the descendants of a common ancestor
2. There is no dispute over genealogy of the Plaintiff.
3. Schedule 2 property is the ancestral property of the Plaintiff/appellant and the Defendants first side/respondents.
4. The Defendants second set/respondents were the purchasers of the land from the Plaintiff’s mother and Defendants first set.

21. The Plaintiff/appellant as well as the Defendants first set claimed that there was no partition in the Schedule 2 property and it was refuted by the Defendants second set saying that the partition already took place and every co sharer dealt with his respective property exclusively and also sold it away and this false suit was filed with a greedy intent. In this context it would be very important to have a look over the statements of the witnesses of both sides.

1. Plaintiff/Appellant Witnesses

1. P. W. 1 is Nagendra Narayan Choudhary, the Plaintiff. In the Chief Examination he admitted that the Defendants first set were his brothers, sisters and other family members and he was also familiar with other Defendants. He state that the suit land was situated in Mauza Balbhadrapur, Thana Laheriasarai, Ward No. 35 bearing Khesra Nos. 2173 and 2172, with a total area of 5 Kathas 7 ½ Dhurs, with boundaries North - Municipal Road, South and East - property of Pavitri Devi and West - property of Nand Kumar Thakur. He

stated that the suit land had been continuously possessed by his late father through an award Decree following a partition among his other co-sharers the late Bijayendra Narayan Choudhary, Samarendra Narayan Choudhary and others in Title Suit 24 of 1957 in the Court of Sub-Judge, Darbhanga, and that he had submitted the documentation of the said award Decree from his possession to the Court. He stated that his father passed away in the year 1960 and prior to his demise, he had been in continuous physical possession and occupation of the total area of the suit plot. He stated that following his father's demise, he had remained in joint physical possession and occupation of the suit land along with his mother and brothers, and that his mother Padmavati Choudharain, passed away in the year 2000. He stated that his elder brother Shailendra Narayan Choudhary, passed away leaving behind his widow Mithilesh Choudhary Defendant no. 3, his sons Mukund Kumar Choudhary @ Sandeep Kumar Choudhary Defendant no. 4, Govind Narayan Choudhary Defendant no. 5, Anand Kumar Choudhary Defendant no. 6, and his daughter Rakhi Jha Defendant no. 7. He stated that his younger brother, Bhogendra Narayan Choudhary, passed away during the pendency of the suit. He stated that his youngest brother Girindra Narayan Choudhary was Defendant no. 2 and his sister Gayatri Jha Defendant no. 8. He stated that his late mother Padmavati Choudharain had already sold 4 ½ of land during her lifetime on dated 21.05.1963, and he stated that a certified copy of the said sale deed from his possession to the Court. He stated that the land sold by his mother had not been included as part of the partition-able property in this suit. He stated that his late brother Shailendra Narayan Choudhary and late Bhogendra Narayan Choudhary Defendant no. 1 and Girindra Narayan Choudhary Defendant no. 2 respectively had already sold land to second party Defendants no. 11, 12 and 13 without any formal partition and without the advice or consent of the other joint family members. He stated that his mother had sold 4 ½ Kathas of land to Chandra Madhav Prasad Singh who subsequently sold it to Pavitri Devi, and that Pavitri Devi also passed away. He stated that his share in the land described in Schedule-II of the plaint was 1 Kathas 5 ½ Dhurs, and similarly, the first-party Defendants namely the late Bhogendra Narayan Choudhary, Girindra Narayan Choudhary, and Defendants no. 3 to 7 collectively each had an identical share of 1 Kathas 5 ½

Dhurs, while the remaining leftover land out of the partition-able property would form the share of Defendant no. 8, Gayatri Jha. He stated that the land left behind by his father in Mauza Ballipur had already been mutually partitioned by the consent of the parties. He stated that this suit was presented as a consequence of the Defendants' refusal to execute a formal and final partition of the Schedule-II land. He contended that the assertion made by the Defendants No. 11, 12 and 13 claiming that the Plaintiff had no title, right or possession over the disputed land, was incorrect. He stated that the assertion of Defendants no. 9 and 10 claiming that the Plaintiff had no title, right or possession over the land described in Schedule-II and that his title had been extinguished, was incorrect. He stated that the assertion made by Defendants no. 9, 10 claiming that a 13 links pathway was given to Chandra Madhav Singh apart from the 4 ½ Kathas of land, was incorrect.

In the cross examination para 20 he stated that there was 50 to 55 bigha land amongst them in Mauja Ballipur Bahadurpur. In para 21 he stated to have been practicing advocate in Rosera since 1995 and prior to that he lived in Ballipur. In para 22 he stated to have no documentary proof regarding the partition affected between them. He stated that two plots 2172 and 2173 were in dispute, but he could not tell in whose name old khatiyani existed. In para 23 he stated that his father has got 9 Kathas 17 ½ Dhurs land. In para 24 he could not tell the boundaries of both the plots of the land. He could not tell when the revisional survey took place in Darbhanga and whose name it was registered. In para 25 he could not tell about existing jamabandi. He stated that the land which his mother sold, had been in possession of the purchasers and their house was upon it. He stated that his mother had sold the land to Chandra Madhav Singh but latter was not impleaded as a party. He stated that Chandra Madhav had sold the land to Pavitri Devi but he could not tell the year. He stated that the land was sold to Chandra Madhav in 1962-63. He stated to have seen only one sale deed of the two. In para 26 he stated that he had mentioned 5 Kathas 7 ½ Dhurs land in dispute. He could not tell how much land had been in possession of Defendant 11, 12, 13. In para 30 he stated that the land in dispute was acquired through TS 24/1957 and the land mentioned in Schedule B of the Decree came to their share. He stated that there was no documentary partition. He stated that the land of Laheriasarai was neither partitioned nor any paper was prepared. In para 31 he stated to have not got the disputed land measured. He could not tell how much land his brothers sold out of 09 Kathas 17 ½ Dhurs land. He could not tell how

much land was purchased by whom. In para 34 he stated that the disputed land was never partitioned.

2. P. W. 2 is Suresh Jha. In the Chief Examination he stated that he was acquainted with the Plaintiff and the Defendants of this case. He stated that the Defendants of the first party were the brothers and family members of the Plaintiff. He stated that the Defendants of the second party were the deed holders and purchasers of the Balbhadrapur land sold by the first party Defendants and the late Padmavati Choudharain. He submitted that the Plaintiff's late father, Surendra Narayan Choudhary, owned 09 Kathas 17 ½ Dhurs of land in Mohalla Balbhadrapur, Laheriasarai. He stated that following the demise of the Plaintiff's father, the Plaintiff's mother, the late Padmavati Choudharain, had sold 04 Kathas 10 Dhurs of land from the South-East portion and the Plaintiff and his family had a remaining balance of 05 Kathas 7 ½ Dhurs of land in Balbhadrapur Mohalla, which was still held jointly. He stated that the Plaintiff's brothers had sold small portions of land from their respective shares out of the aforementioned property. He stated that frequent disputes erupted between the Plaintiff and the Defendants regarding the partition and physical possession of the said land, and that he had been continuously trying to resolve these disputes. He stated that approximately 04 ½ years prior, he had accompanied the Plaintiff along with an Amin to measure the Balbhadrapur land for the purpose of partition, but the Defendants did not allow the measurement to take place and resorted to quarreling, creating a disturbance and escalating to physical assault.

In the cross examination para 10 he stated that no partition took place between the Plaintiff and his brother with respect to the land situated in Laheriasarai and they lived in accordance with the convenience. In para 11 he stated to have no concern with the business of both sides. He stated that 05 Kathas land was in dispute but he could not tell the khata, plot, boundaries, area and parcels. In para 12 he stated that three houses were on 05 Kathas. In para 15 he stated that the purchasers had been in possession over sold out land. In para 17 he stated to have no concern with the disputed land. In para 18 he stated that the Plaintiff had not his house over the disputed land. In para 19 she stated that the purchasers had been residing over the land after getting the house constructed thereon. In para 20 he stated that 1 ½ -1 ¾ Kathas vacant land lying in north of disputed land.

3. P. W. 3 is Avinash Chandra Choudhary. In the Chief Examination he

stated that he was acquainted with both the parties of this case. He stated that the Defendants first party were the brothers and family members of the Plaintiff. He stated that the other Defendants were the purchasers of the Balbhadrapur land sold by the family members of the Plaintiff. He stated that the Plaintiff's late father, Surendra Narayan Choudhary had 09 Kathas 17 ½ Dhurs land in Balbhadrapur out of which the Plaintiff's mother, the late Padmavati Choudharain, had sold 04 Kathas 10 Dhurs of land and the remaining 05 Kathas 7 ½ Dhurs was still held jointly, out of which the Plaintiff's other brothers had sold small portions of land. He stated that frequent disputes erupted between the Plaintiff and the Defendants regarding the partition and physical possession of the land. He stated that in the year 2006, he had accompanied the Plaintiff and the Plaintiff's other brothers to measure the Balbhadrapur land for partition; however, the Defendants did not allow the measurement to take place and resorted to physical assault.

In the Cross examination para 9 he stated to have not seen the papers of the case and he could not tell the names of all the Plaintiff and the Defendants. He stated to have no concern with the business of both sides. He could not tell the date and month of selling of land and who executed the sale deed in whose favour. He stated to have not counted the houses built upon the parcels of the disputed land nor could he tell the Khata and plot numbers. In para 11 he stated to have come to depose on being asked by the Plaintiff and Defendant first set. In para 13 he could not tell how much land was purchased and how much land the Plaintiff family members sold. In para 15 he stated to have not seen any receipt belonging to the Plaintiff. He stated to have no concern with the Plaintiff's business. In para 16 he stated that all the land of the Plaintiff was already orally partitioned.

2. The Defendants/respondents witnesses

1. Witnesses of Defendants 9 and 10

1. D .W. 1 is Suresh Prasad Singh, the Defendant 10. In the Chief Examination he stated that the Defendant 9 Gulab Singh was his elder brother who was currently unwell. He stated that he was

acquainted with both parties to the suit and was familiar with the disputed land. He stated that out of disputed land 4 ½ Kathas of land was sold on dated 21.05.1963 by the Plaintiff's mother, the late Padmavati Choudhary, and Shailendra Narayan Choudhary to Chandra Madhav Singh, and that the vendor had provided 13 linkss wide pathway from her own land towards the East of the said property, which was duly described in the said sale deed. He stated that from the date of purchase, Chandra Madhav Singh remained in physical possession the said land along with the pathway and sold the same to his mother vide registered sale deed dated 03.06.1967 and thereafter his mother remained in possession to the knowledge of all parties. He stated that after his mother demise, he and his brother had been in continuous and peaceful physical possession over 04 ½ Kathas land upon which their residential house constructed. He stated that the Plaintiffs and their relatives never had any connection, joint interest, or physical possession over the said 4 ½ Kathas of land, nor do they have it now. He stated that mutation had been completed for the said 4 ½ Kathas of land, and land revenue receipts were being issued jointly under the names of both brothers. He stated that during the recent survey, their names entered in the khata. He stated that the khata for the thirteen links wide pathway towards the East was entered in the name of the Municipal Corporation. He stated that the actual market value of the disputed land in the year 2006 was Rs. 40,00,000/- or potentially even higher, but the Plaintiff undervalued the disputed land. He stated that the suit was related to the Title and unless the plaintiff paid the proper Court fees on correct valuation, it could not proceed. He stated that the description of the disputed land provided in the plaint was ambiguous.

In the Cross examination Para 21 he stated to have submitted thte documents and the sale deeds. In para 22 he could not tell the plot and Khata of the disputed land. He stated that the sale deed dated 21.05.1963 executed by Padma Choudharain in favour of Urmila Devi and others and related to the Balbhadrapur, Laheriasarai appertaining to 04 ½ Kathas land and 13 links more land. In para 23 he denied to have stood as a witness of the sale deed but his brother Gulab Singh was a witness. He stated that the sale deed was with respect to to 04 ½ Kathas and 13 links

land separately mentioned in sale deeds. In para 24 he stated that it was true that in the sale deed Plot 2172 area 04 Kathas 02 Dhurs and 2172 2173 area 8 Dhurs with respect to the road was written. In para 25 he stated that the sale deed executed by Pavitri Devi was given by him to his advocate but he could not tell whether it was submitted or part of the record or not. In para 26 he stated that he came into possession over the land which was executed through a sale deed in his mother's name. He stated that only two brothers got the share and not the third one. In para 27 he stated that it was true that Padma Choudharain executed sale deed on her behalf and behalf of her children. In para 28 he stated that he purchased the same land which was sold by the Plaintiff. In para 29 he stated that it was mutated in the name of Gulab Prasad Singh and Suresh Prasad Singh. In para 30 he stated that in the revisional survey it was 04 ½ Kathas. In para 31 he stated that 08 Dhurs land which was his road was shown in the municipal khesra. In para 32 he stated that Plaintiff did not get notice and he had no knowledge. In para 34 he stated that no sale deed was executed with respect to the road of 04 ½ Kathas land. In para 36 he stated that the partition case was rightly filed.

2. D. W. 2 is Jawahar Prasad Singh. In the Chief Examination he stated that he was acquainted with Gulab Singh, Suresh Singh, and others. He stated that he was familiar with their residential house and land situated within Mohalla Balbhadrapur, which was located directly opposite his own house. He stated that the residential house of Gulab Singh and Suresh Singh was constructed upon an area of 04 ½ Kathas of land. He further stated that there was a pathway in the eastern side of the house running North and South.

In the Cross examination Para 10 he stated that later on he came to know that 04 ½ Kathas land was purchased by Gulab Singh . He stated to have not seen sale deed and it was only heard and knew about about in May during its measurement. He stated that it was 04 ½ Kathas land leaving the road aside. In para 13 he denied knowing who was the Plaintiff. In para 16 he could not tell about the sale deed.

3. D. W. 3 is Bhuvaneshwar Jha. Formal Witness. In the Chief Examination he

stated that he was acquainted with Digambar Singh, karmachari of the Bahadurpur Circle and that he identified his handwriting and signature who was posted in the Bahadurpur Circle in the year 1994. In the Chief Examination Para 4 he got the rent receipts dated 19.11.1994 marked as Exhibits A and A/1. In para 5 he could not tell where Digamber Singh was posted. He stated to have no correspondence with him and no specimen of his handwriting.

2. Defendants/Respondents 11, 12 and 13 Witnesses

1. D. W. 4 is Pranay Kumar @ Praveen Kumar Singh, the Defendant 13, son of Defendant 11 and younger brother of Defendant 12. He stated that an area of 03 Kathas 16 Dhurs of land was acquired by them through four registered sale deeds, one sale deed for 02 Kathas in his mother name and rest three sale deeds of 12 Dhurs in his and his brother name and they had been in unobstructed physical possession thereon upon which they had constructed their residential house with boundaries on all four sides. He stated that it was duly mutated and receipts and municipal taxes were paid. He stated that he had submitted all four original sale deeds, land revenue receipts and municipal receipts for the purchased property from his custody. He submitted that the actual market value of the dispute land in the year 2006 was Rs. 40,00,000/-, or potentially even higher but it was undervalued by the Plaintiff. He stated that Defendant no. 7 and Defendant no. 8 never had any connection, interest or concern with the suit land, nor do they have it now.

In the Cross examination para 14 he stated that Gulab and Suresh had their land south of his land which was purchased through Plaintiff elder brother. He stated that the land was 04 ½ Kathas. In Para 17 he could not tell the amount of land in dispute. He stated that he was not born when sale was executed in favour of Gulab singh and Suresh Singh. In para 21 he stated that the Defendant 9 and 10 purchased the Plaintiff's 04 ½ Kathas from the South. In para 22 he could not tell the amount of land in dispute nor the khata and plots. In para 23 he stated not knowing Defendant no. 7 and 8 and in para 24 he could not tell what right they had on such land. In para 28 he could not tell the exact share of Shailendra and whether he sold more land than his share. In para 29 he stated that no wall was in the western and northern side when he got the sale deeds. In para 30 he stated that no wall was upon the western boundary. In para 33 he stated that there was 03 Kathas 16 Dhurs land inside the boundary. In para 37 he stated that Shailendra was of 18 year when he got

the sale deed in 1973. He denied knowing that he was in need of money to fly the airplane. In para 38 he stated that his mother was alive in 1973. In para 40 he stated that Shailendra got the consent of all persons before executing the sale deed. In para 41 he could not tell the exact share of Shailendra. In para 42 he stated that on 07.02.1994 Defendant 1 executed sale deed to Neeraj Kumar and Pranay. In para 44 he denied that no partition took place. In para 49 he stated that on 16/10/1998 Mithilesh executed the sale deed. He stated to have not asked whether Mithilesh had right to sell or not. He stated that Nagendra, Bhogendra consented, but it was not a written one. In para 53 he stated that the mutation was done with respect to 02 Kathas of land and jamabandi was not running in name of Padmavati. In para 54 he denied saying that the Plaintiff has 01 Katha 11 Dhurs land vacant. In para 55 he stated that there should have been 12 Dhurs as a share in disputed land.

2. D. W. 10 is Baleshwar Singh. In the Chief Examination he stated to have been acquainted with both parties to the suit and was familiar with the disputed land. He stated that out of the disputed land, Bhogendra Narayan Choudhary had sold his 12 Dhurs share of land to Neeraj Kumar Singh and Pranay Kumar Singh vide sale deed dated 07.02.1994 upon which he was a witness. He stated that all the co-sharers of the vendor had stated in his presence that a private partition of the disputed land had already taken place among them. He stated that prior to the execution of the deed, the Defendant's house stood constructed towards the South of the property.

In the Cross examination para 8 he stated to have been deposing on behalf of Pranay Kumar Singh. In para 12 he stated that the sale deed dated 07.02.1994 was executed by Bhogendra Narayan Singh. In para 16 he stated that the case was related to land, but could not tell exactly what the case was about. In para 17 he stated that 12 Dhurs of land was under dispute in this suit. In para 18 he stated that in the sale deed dated 07/02/1994 for 12 Dhurs land, he was a witness. but he could not recall how much money was paid. In para 20 he stated that Bhogendra Narayan Singh executed the sale deed on the date 07.02.1994 in the names of Pranay Kumar Singh and Neeraj Singh. He stated that adjacent to it, the Plaintiff's land was also left out in the north. He stated that he did not know how much land it was. In para 21 he stated that he could not tell the Khata and Khesra of the land involved in the sale deed.

3. D. W. 11 is Dilip Kumar Singh. In the Chief Examination he stated that he was acquainted with both parties to the suit and was familiar with the disputed land. He stated that out of the disputed property, Neeraj Kumar Singh and Praveen Kumar Singh had purchased 12 Dhurs of land from Mithilesh Choudharain vide sale deed in the year 1998 and he was a witness of the sale deed. He stated that the Plaintiff was present during the parleys and it was stated in his presence that a mutual partition had already taken place among the family members. He stated that the family of Praveen Kumar Singh had previously purchased land and had already constructed a house there. He got his signature on the sale deed dated 27/02/1998 as a witness marked as Exhibit E1(A).

In the Cross examination para 9 he stated to have retired from the service in January, 2013. In para 11 he could not tell who was the other witness besides him on 16/10/1998. In para 12 he stated that each of the four brothers had 12 Dhurs of land. In para 13 he stated that all the four brothers had told him that the property had already been partitioned, but he could not recall the date on which they had stated so. In para 14 he stated that Praveen Kumar Singh had been in possession over the disputed land prior to the year 1980 and his house was situated on that land. In para 15 he stated that Shailendra Choudhary and the Plaintiff had inherited the land from their ancestors. He stated to know that the land in dispute measured 05 Kathas and 7½ Dhurs. In para 18 he stated that the disputed land measured 48 Dhurs. In para 20 he stated to have no concern with the business of four brothers. In para 21 he denied that no partition had taken place in his presence. In para 22 he stated that he had signed as an attesting witness on the sale deed executed by Mithilesh Kumar Choudhary in favour of Dheeraj Kumar Singh and Praveen Kumar Singh and except that he had not attested any other document.

4. D. W. 12 is Manoj Kumar Singh. In the Chief Examination he stated that he was acquainted with the families of Gulab Singh, Neeraj Kumar Singh, and the Plaintiff and was familiar with the land of Neeraj Kumar Singh located in Mohalla Balbhadrapur. He stated that the Neeraj Singh family had purchased the land in the full knowledge of the Plaintiff and his family and they had been residing there after constructing a house. He stated that Neeraj Kumar Singh had enclosed the said land with boundary walls, and neither the Plaintiff nor any members of his family had ever raised any objection to it.

In the Cross examination para 12 he stated to have heard that in the years 1994 and 1998 three parcels of land was purchased by the family of Neeraj Singh. In para 16 he stated that the dispute was related to the land but he could not tell its exact nature. In para 17 he stated that the land in dispute was 01 Katha 16 Dhurs. He stated that the Plaintiff had some land remaining there but he could not tell its volume.

5. D. W. 13 is Manoj Kumar Thakur. In the Chief Examination he stated that he was acquainted with Neeraj Kumar Singh and his family. He stated that the land belonging to the said family was situated in Mohalla Balbhadrapur, upon which their house stood constructed. He stated that the family had acquired the said land through various sale deeds between the years 1973 and 1998. He stated that no person had ever raised any dispute regarding the said land.

In the Cross examination para 4 he stated to know the Plaintiff and it was a partition suit. In para 5 he could not tell who executed first sale deed. He could not tell about the sale deeds from 1973 to 1998. In para 11 he could not tell that whether partition took place at the time of execution of the sale deed or not.

6. D. W. 14 is Pashupatinath Jha. In the Chief Examination he stated that he was acquainted with both parties to the suit and was familiar with the land and house belonging to Neeraj Kumar Singh. He stated that the negotiations regarding the land purchased by Neeraj Kumar Singh took place in the presence of the Plaintiff Nagendra Narayan Choudhary. He stated that from the very date of purchase, with the full knowledge of Nagendra Narayan Choudhary, Neeraj Kumar Singh had consolidated the purchased land with his other property, enclosed it, and had been residing within a single compound. He stated that during the purchase negotiations, the vendors had stated in the presence of Nagendra Narayan Choudhary that they had acquired the said land through a mutual private partition.

In the Cross examination para 10 he stated that Neeraj and Pranay had their house upon 02 Kathas land. In para 11 he stated that there were three sale deeds of 12 Dhurs each. In para 12 he

stated that the first sale deed of 1994 was executed by wife of Shailendra Choudhary. In para 14 he stated that rest two sale deed were executed in 1998 one by Bhogendra and the other by Harendra. In para 18 he stated that one of the co-sharers told about the partition but he could not tell his name.

7. Formal Witnesses

1. D. W. 5 is Shambhu Prasad. In the Chief Examination he stated that he was acquainted with late Bhogendra Narayan Choudhary who sold 12 Dhurs of land vide sale deed dated 07.02.1994 in favor of Neeraj Kumar Singh and Pranaya Kumar Singh. He stated that Jognanad Singh drafted the sale deed on being asked by Bhogendra Narayan Dhoudhary and got it marked as Exhibit E.

In the Cross examination Para 7 he stated to have no correspondence with Bhogendra. In para 8 he could not tell who was witness of the sale deed. In para 9 he stated to have gone to get certified copy and he was present when Joganand was writing he stated that the money was not given in his presence and no one stood surety before him.

2. D. W. 6 is Rajendra Sahni. In the Chief Examination he stated that he was acquainted with Girindra Narayan Choudhary who had sold 12 Dhurs of land vide sale deed dated 27.03.1998 in favor of Neeraj Kumar Singh and Praveen Kumar Singh and he recognized the signatures of the vendor and the witnesses upon the said deed. He stated that the sale deed was drafted by scribe Joganand Singh on being asked by Girindra Narayan Choudhary and got it marked as Exhibit E/1.

In the Cross examination para 8 he stated to have seen Girindra in connection with some case and saw him reading and writing. He stated to have seen him in the registry office. He stated that the registration was not done in his presence.

3. D. W. 7 is Jogendra Mandal. In the Chief Examination he stated that he was acquainted with Mithilesh Choudharain, wife of late Shailendra Narayan Choudhary who had sold 12 Dhurs of land vide sale deed dated 16.10.1998 in favor of Neeraj Kumar Singh and Pranay Kumar Singh @

Praveen Kumar Singh and that he recognized the signatures of the vendor and the witnesses upon the said deed. He got the sale deed marked as Exhibit E/2.

In the Cross examination para 6 he stated that Mithilesh Choudharain and the witnesses signed in his presence. In para 8 he stated that he was an advocate clerk. He stated to have met Mithilesh Choudahrain first time in the registry office. In para 10 he stated that the signature on the sale deed was not taken in his presence. He stated to have not stood surety on it. In para 12 he stated that he did not recognize Mithilesh handwriting letters.

4. D. W. 8 is Lal Babu Choudhary. In the Chief Examination he stated that he was acquainted with Ramchandra Thakur, a karmachari of Bahadurpur Circle, and had seen him writing and reading. He stated that receipt number 429837 issued in the name of Rajkumari Devi for area 02 Kathas, and receipt 429836, issued in the names of Neeraj Kumar Singh and Pranaya Kumar Singh for area 01 Katha 16 Dhurs respectively and got them marked as Exhibits F and F1.

In the Cross examination para 6 he stated to be working as an advocate clerk since 1992. He stated that the signatures were not made in his presence. In para 8 he stated to have been recognizing his signature and writing.

5. D. W. 9 is Kameshwar. In the Chief Examination he stated that he was acquainted with Umesh Jamadar, a tax collector of the Darbhanga Municipal Corporation and he had seen him writing and reading. He stated that tax receipt 18863, covering holding number 960 situated in Mauza Balbhadrapur, Ward No. 35 issued on dated 05.02.2011 was written by the said tax collector. He got it marked as Exhibit G.

In the Cross examination para 6 he stated that the receipt was not issued in his presence.

22. Both sides have also produced certain documentary evidence, it would be beneficial to have a look over that

1. Plaintiff/appellant Documentary Evidence

1. Exhibit 1 is Certified copy of Succession Certificate dated 15.12.70 in Succession Case 5/70 by Munsif 1st Samastipur in favor of Smt. Padmawati Choudharain widow of Late Surendra Narain Chaudhary, Shailendra Narain Choudhary, Nagendra Narain Choudhary, Bhogendra Narain Choudhary, Girendra Narain Choudhary (minor), Gaiyatri Kumari (minor), sons and daughter of Late Surendra Narain Choudhary, both minors under the natural guardianship of their mother Smt. Padmawati Choudharain (applicant no. 1).
2. Exhibit 2 is the Certified copy of Sale deed dated 21.05.63 executed by Padmavati Choudharain on her behalf and on behalf of her minors Bhogendra Narayan Choudhary, Nagendra Narayan Choudhary, Girendra Narain Choudhary, Shailendra Narain Choudhary in favour of Chandra Madhav Prasad Singh with respect to 04 Kathas 10 Dhurs land appertaining to Kesara 2172 and 2173 of Mauja Balbhadrapur .
3. Exhibit 3 is the Certified copy of Decree of Title Suit 24/57 dated 13.03.1957 along with map.

2. The Defendants/respondents second set Documentary Evidence

1. Exhibit A is the rent receipt in the name of Suresh Singh with respect to Jamabandi 5032 area 02 Kathas 05 Dhurs of Year 1994-95.
2. Exhibit A/1 is the rent receipt in the name of Gulab Singh with respect to Jamabandi 5031 area 02 Kathas 05 Dhurs of Year 1994-95.
3. Exhibit B is the certified copy of the Khatian in the name of Gulab Singh and Suresh Singh with respect to Khata 228 Kesara 2172 (old 1453), Kesara 2172, 2191(Old 1454).
4. Exhibit B/1 is the certified copy of the Khatian in the name of Nagar Nigam Darbhanga with respect to Khata 1059, Kesara 2172, 2173 (Old 1456).

5. Exhibit C is the certified copy of the Mutation order dated 07/11/1994 in Mutation case 134(c)/1994-95 with respect to Mauja Balbhadrapur, Khata 387, Kesara 2172, 2173 area 04 Katha 10 Dhurs in favor of Gulab Singh and Suresh Singh.
6. Exhibit D is the Certified copy of Sale deed 9351 dated 03.06.1967 executed by Chandra Madhav Prasad Singh in favor of Pavitri Devi with respect to 04 Kathas 10 Dhurs land appertaining to Kesara 2172 and 2173 of Mauja Balbhadrapur .
7. Exhibit E is the original Sale deed 2491 dated 07/02/1994 executed by Bhogendra Narayan Choudhary in favour of Neeraj Kumar Singh and Pranay Kumar Singh with respect to 12 Dhurs land appertaining to Khata 387, Kesara 2173 of Mauja Balbhadrapur with boundaries North – Shailendra Na. Choudhary and others 01 Katha 16 Dhurs, South – Rajkumari Devi, East- Pavitri Devi, West – Nand Kumar Thakur.

It says (चूँ एराजी मोन्दरजे खाने ५ मनमोकीर को आज नाम बाबु दामोदर ना० चौधरी दादा मनमोकीर के हासील है जिसको बदरम्यान फरीकैन बाजरीए बाखुदहा आपसी तकसीम से खास हिस्सा मनमोकीर का है । जिससे फरोखत करने का पुर्ण अधिकार मनमोकीर को हासील है ।)

8. Exhibit E/1 is the original Sale deed 3539 dated 27/03/1998 executed by Girindra Narayan Choudhary in favour of Neeraj Kumar Singh and Pranay Kumar Singh with respect to 12 Dhurs land appertaining to Khata 387, Kesara 2173 of Mauja Balbhadrapur with boundaries North – Shailendra Na. Choudhary and thereafter road South – Nij Kharidar (Personal property of the purchaser), East- Pavitri Devi and Nij Sadak West – Nand Kumar Thakur

It is important to notice here that Bhogendra Narayan Choudhary was a witness of this sale deed.

9. Exhibit E/2 is the original Sale deed 13781 dated 16/10/1998 executed by Mithilesh Choudharain wife of Shailendra Narayn Choudhary in favour of Neeraj Kumar Singh and Pranay Kumar Singh @ Praveen Kumar Singh with respect to 12 Dhurs land appertaining to Khata 387, Kesara 2173 of Mauja Balbhadrapur with boundaries

North – Nagendra Na. Choudhary

South – Nij Purchasers

East- Nij Purchasers

West – Nand Kumar Thakur

It is important to notice that Sandeep Chowdhary was a witness of the sale deed.

10. Exhibit E/3 is the original Sale deed 18288 dated 10/12/1973 executed by Shailendra Narayn Choudhary in favour of Rajkumari Devi wife of Shambhu Prasad Singh with respect to 02 Kathas land appertaining to Khata 387, Kesara 2172, 2173 of Mauja Balbhadrapur with boundaries

North – Nagendra Na. Choudhary, Girindra Narayan Choudhary

South – Bhogendra Narayan Choudhary

East- Pavitri Devi

West – Nand Kumar Thakur

11. E/1(A) is signature of Dilip over Exhibit E/1.

12. Exhibit F is the rent receipt in the name of Rajkumari Devi with respect to Jamabandi 3078 area 02 Kathas of Year 2011-2012. Since these are related to the period during pendency of the Suit, these are not relevant.

13. Exhibit F/1 is the rent receipt in the name of Neeraj Kumar Singh and Pranay Kumar Singh Suresh Singh with respect to Jamabandi 6970 area 01 Katha 16 Dhurs of Year 2011-2012. Since these are related to the period during pendency of the Suit, these are not

relevant.

14. Exhibit G is the Holding Tax receipt in the name of Rajkumari Singh issued by Darbhanga Municipal Corporation with respect to Ward 35 Holding 960 of the Year 2011-2012. Since these are related to the period during pendency of the Suit, these are not relevant.

23. During Argument, the appellant relied on

1. Article 328 of the Principles of Hindu Law

328. Partial partition - (1) A partition between coparceners may partial either in respect of the property or in respect of the person making it.

After a partition is affected, if some of the properties are treated as common properties, it cannot be held that such properties continued to be joint properties since there was a division of title but such properties were not actually divided.

(2) Partial as to property. -It is open to the members of a joint family to make a division and severance of interest in respect of a part of the joint estate, while retaining their status as a joint family and holding the rest as the properties of a joint and undivided family. However, where there is evidence to show that the parties intended to sever, then the joint family status is put an end to, and with regard to any portion of the property which remained undivided the presumption would be that the members of the family would hold it as tenants-in-common unless and until a special agreement to hold as joint tenants is proved. When a partition is admitted or proved, the presumption is that all the property was divided and a person alleging that family property, in the exclusive possession of one of the members after the partition, is joint and is liable to be partitioned, has to prove his case.

Under the Hindu Law, a mere declaration by one of the members of the undivided Family is sufficient to constitute a partition and with such a declaration, the status of the joint family comes to an end and therefrom, they hold the property as tenants in common with definite shares.

(3) Partial as to the persons separating.-Just as a partition may be partial as regards the property, so it may be partial as regards the person separating. This case arises when there is no general partition amongst all the members of the family.

(1) The general principle is that every Hindu family is presumed to be joint unless the contrary is proved. This presumption, however, does not continue after one member has separated from the others. 'There is no presumption when one coparcener separates from the others, that the latter remain united.

2. Judgment of Hon'ble Apex Court in the case of Kashinathsa Yamosa Kabadi

versus Narsinga Bhaskarsa Kabadi², wherein it is held that ” It is always open to the members of a joint Hindu family to divide some properties of the family and to keep the remaining undivided. Such properties as are not partitioned can be divided later on - Such division is to be made consistently with the rules of Hindu Law. “

3. Judgment of Hon’ble Ranchi Bench in the case of Moti Koeri and another versus Mangaru Koeri @ Mangru Mahto and others³, wherein it is held that “ It cannot be said that all the property of the joint Hindu family must also have been partitioned by metes and bounds, even though there has been partial partition with regard to some of the properties, the left over properties are liable to be partitioned under Hindu Law.”

24. On perusal of the Judgments passed in the cases of **Harey Harey Singha Chowdhury vs. Hari Chaitanya Singha Chowdhury⁴, Mansharam vs. Ganesh⁵, Panchanan Mallick vs. Shiv Chandra⁶, Balaram vs. Ramchandra⁷, Abdul Karim vs. Badruddin⁸**, it came to the fore that partial partition have also been recognized under some of the following circumstances, namely:

- (i) where different portions of family property are situated in different districts, separate suits for partition for lands of each district may be brought;
- (ii) it may be allowed when portion of joint property at the time of the suit for partition is incapable of partition;
- (iii) where the property left out from its very nature impartible;
- (iv) where the property is held jointly with strangers who cannot be joined as parties to a general suit for partition the same may be left out; or
- (v) where the co-owners by mutual agreement decide to make partition of the joint family property leaving some portion in common.

25. It is specific claim of the Plaintiff/appellant that “ All properties situated in village Ballipur have already been partitioned among the Plaintiff and the Defendants 1st Party years ago by mutual consent, and at that very time, an agreement was reached among the parties that they would partition the land described in Schedule-II of the plaint among themselves in the future according to their convenience”, **In the case of Kesharbai @ Pushpabai Eknathrao Nalawade (D) by L.Rs & Anr. v. Tarabai Prabhakarrao Nalawade & Ors⁹** Hon’ble Apex Court observes

2 AIR 1961 SC 1077

3 1996 (1) PLJR

4 40 CWN 1237

5 17 CWN 521

6 ILR 14 Cal 805

7 ILR 22 Bom 922

8 ILR 28 Mad 216

9 AIR 2014 SC 1830

“ 27. It is a settled principle of law that once a partition in the sense of division of right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. Undoubtedly the joint and undivided family being the normal condition of a Hindu family, it is usually presumed, until the contrary is proved, that every Hindu family is joint and undivided and all its property is joint. This presumption, however, cannot be made once a partition (of status or property), whether general or partial, is shown to have taken place in a family. This proposition of law has been applied by this Court in a number of cases. “

26. It is admitted case of the Plaintiff that the property of Ballipur has already been partitioned. It is not the case of a partition of the entire property, but only related to a partial partition. It is not the appellant case that different portions of family property are situated in different districts and that the property of the Balbhadrapur was incapable of partition and that this property out from its very nature impartible or that the property is held jointly with strangers who cannot be joined as parties to a general suit for partition the same may be left out. It is claimed that an agreement was reached between the parties to partition the Schedule II property at some future time, but except the verbal allegation no supporting evidence (either oral or documentary) was adduced by the Plaintiff/appellant on this point. None of his Defendant/relative (Defendants 1 to 8) came to the Court in support of the Plaintiff version that the schedule II property was agreed between the co-sharers to remain joint and be partitioned in future. What is important to note that the schedule II property was a vacant land, this fact also came to the fore as when different co-sharers sold the parcels of Schedule II land to Defendants second set, the purchasers not only came into possession thereon but also made their houses. One of the Plaintiff Witness Avinash as P. W. 3 stated conversely that all the properties of the Plaintiff had already been orally partitioned.

27. What is noteworthy to observe that the Defendants 1, 2 and 8 who supported the Plaintiff/appellant also not adduced any evidence, either oral or documentary, to buttress the Plaintiff version. Section 114 of the Indian Evidence Act - Court may presume existence of certain facts. —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the

facts of the particular case. Illustrations The Court may presume—(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. Non examination of any Defendant (1, 2 and 8) supporting the Plaintiff relegated their status to mere onlookers. Their pleadings fell insignificant. An adverse presumption may also be drawn that their coming to the Court might be more unfavourable to them as well as the Plaintiff in the backdrop of operation of estoppel against the Defendants 1 and 2 from retracting from their or their predecessor in interest selling the land to the contesting Defendants second set.

28. **Hon'ble Apex Court in the case of Banaraj Alakhdhari Pathak Vs. Ambika Prasad Pathak¹⁰** observes that "Once partial partition was admitted or proved, presumption would arise that all properties, movable and immovable, belonging to joint family were divided"

29. Recently in the case of **H. Vasanthi vs A. Santha (Dead) Through Lrs. And Ors.¹¹**, **Hon'ble Apex Court** observes that "Either the previous partition or separate ownership of any property is accepted on the evidence placed on record by the parties. In the case on hand, the Plaintiff is legally obliged to discharge the burden that the plaint schedule is not only a coparcenary but continued to be so and that the Plaintiff is entitled to enforce the claim for partition."

30. In the instant case, it is not in dispute that the Plaintiff is a co-sharer, but by itself, it could not be a reason to accept the prayer for partition unless the Plaintiff discharges the burden that the partial partition did not affect his rights in Schedule II. When the Parties themselves acknowledge previous partition, there can be no two view of cessation of status of jointness. Once there is evidence of partition which has been acted upon, there cannot be perpetual plea for claim of re- partition.

31. **In the case of Smt. Asha Devi @ Asha Rani & Ors Versus Sri Ram Deo Singh & Ors¹²**, **Hon'ble Patna High Court** observes that " if there is finding or admission with respect to partition of one or more of the Hindu Joint Properties the presumption of jointness with respect to the rest of the properties will not be there. However, the question as to whether there is partition with respect of other properties or there is jointness has to be decided on the basis of evidence adduced in course of trial without taking into account the presumption of jointness in the Hindu Joint Family.

10 (1953) 1 SCC 414

11 2023 INSC 731

12 (2014) 1 PLJR 347

32. Oral evidence of the parties have the neutralizing effect as most of their witnesses are unaware of what really transpired. Coming to the documentary evidence adduced by the Plaintiff, there is no denial over the fact that the Plaintiff mother Padmavati already sold 04 Kathas 10 Dhurs land of Balbhadrapur (Schedule 1 land read with Exhibit 2). The genealogy of the Plaintiff is not in denial (Exhibit 1). This is also not in dispute that the Plaintiff father got the property through a Court award (Exhibit 3). Except that the Plaintiff could not produce any cogent substantive evidence which can help him demonstrating that the Schedule II property remained joint.

33. Exhibit E series are the sale deeds executed by the Plaintiff's brothers and family to the strangers (Defendants second set). Obviously these sale deeds are led in evidence by the Defendant second set in support of their defence of partition among the Plaintiff family and the co sharers dealing with their shares separately and exclusively. Arranging these exhibits in their chronological order

1. First comes the Exhibit E/3.

1. It is the original Sale deed 18288 dated 10/12/1973 executed by Shailendra Narayn Choudhary in favour of Rajkumari Devi wife of Shambhu Prasad Singh with respect to 02 Kathas land appertaining to Khata 387, Kesara 2172, 2173 of Mauja Balbhadrapur .
2. When the description of the land sold is seen, it is found that the sold land is bounden in North by Nagendra Na. Choudhary, Girindra Narayan Choudhary, in south by Bhogendra Narayan Choudhary, East Pavitri Devi and West Nand Kumar Thakur.
3. Pavitri Devi is the purchaser of Chandra Madhav Singh who purchased the land from Padmavati Choudharain (Plaintiff's mother).
4. It is clear from the Plaintiff case that except the Schedule I land no land came into the share of Plaintiff father at Mauja Balbhadrapur. It clearly means that originally the boundaries of the schedule 1 land area 09 Kathas 17 ½ Dhurs must have been different before the sale by Shailendra to Rajkumari in 1973. The Plaintiff chose not to provide the original boundaries of the schedule 1 land.
5. Shailendra sold the land by showing his brothers in its Northern and southern boundaries, North by Nagendra Na. Choudhary, Girindra Narayan Choudhary, south by Bhogendra Narayan Choudhary. The Plaintiff has been shown by Shailendra in northern boundary of the land he sold to Rajkumari in 1973.

6. It also doesn't appear probable that the other co-sharer has no knowledge of such sell by Shailendra at that time. None of the co-sharer objected such sale. Moreover, the Plaintiff could not decipher the circumstances which compelled him to keep mum for 33 Years.
7. The purchasers of Shailendra has acquired Title in the purchased land adverse to the interests of other co-sharers as they had been in possession over that land for many twelve years.
8. The bizarre silence of the Plaintiff and other co-sharers and their non-objection for over such a long period of time, clearly pointing towards a different story than what was told by the Plaintiff. It clearly shows that schedule II property was also partitioned amongst the Plaintiff and his co-sharers.

2. Next comes Exhibit E

1. Which is the original Sale deed 2491 dated 07/02/1994 executed by Plaintiff's brother Bhogendra Narayan Choudhary in favour of Neeraj Kumar Singh and Pranay Kumar Singh with respect to 12 Dhurs land appertaining to Khata 387, Kesara 2173 of Mauja Balbhadrapur. Neeraj and Pranay are the Defendants 12 and 13. Bhogendra sold the land by showing his brother Shailendra Na. Choudhary and others in the North, and the Shailendra's vendee Rajkumari Devi in south. Rest two boundaries in Eastern and western directions are undisputed.
2. The recital of the sale deed executed by Bhogendra says चूँ एराजी मोन्दरजे खाने ५ मनमोकीर को आज नाम बाबु दामोदर ना० चौधरी दादा मनमोकीर के हासील है जिसको बदरम्यान फरीकैन बाजरीए बाखुदहा आपसी तकसीम से खास हिस्सा मनमोकीर का है । जिससे फरोखत करने का पुर्ण अधिकार मनमोकीर को हासील है.
3. Translating the verse in English means that the land came into the exclusive share of the vendor after mutual partition with other cosharers and the vendor got absolute right to sell the same.
4. This sale deed of 1994 clearly and unequivocally indicates towards the partition between the Plaintiff and his brothers with respect to even Schedule II property.
5. The Plaintiff argues that the mentioning of partition was a mistake by scribe and has no value in the eyes of law. The Plaintiff

impleaded Bhogendra's legal representatives as Defendants but none of them came forward to support even formally the Plaintiff version. This is an argument in isolation as the recital of partition was a mistake doesn't find mention in the plaint even. Moreover, in their written statement the Defendants 1, 2 did not say that the recital of partition in the sale deed executed by Bhogendra was a mistake of the scribe. The argument put forward by the Plaintiff in this respect has no basis on the facts, materials available on record.

3. Next is Exhibit E/1

1. The original Sale deed 3539 dated 27/03/1998 executed by Girindra Narayan Choudhary in favour of Neeraj Kumar Singh and Pranay Kumar Singh with respect to 12 Dhurs land appertaining to Khata 387, Kesara 2173 of Mauja Balbhadrapur. In this sale deed, Girindra put Shailendra Na. Choudhary and thereafter road in the North, in the south it was the personal property of the purchasers.
2. It is important to notice here that Bhogendra Narayan Choudhary was a witness on this sale deed. Now a question arises how can a co-sharer become a witness in the sale deed executed by another co-sharer, if there is no partition amongst them.

4. Lastly Exhibit E/2

1. Which is the original Sale deed 13781 dated 16/10/1998 executed by Mithilesh Choudharain wife of Shailendra Narayn Choudhary in favour of Neeraj Kumar Singh and Pranay Kumar Singh @ Praveen Kumar Singh with respect to 12 Dhurs land appertaining to Khata 387, Kesara 2173 of Mauja Balbhadrapur. This land is sold with Nagendra in the north and the personal property of the purchasers in the south.
2. It is important to notice that Sandeep Chowdhary (Shailendra son) was a witness of the sale deed. Moreover the plaintiff is shown in the northern boundary of the land sold through this sale deed.

34. In Jitendra Singh & others through legal representatives v. Ram Naresh Singh & others through their legal representatives¹³, Hon'ble Patna High Court observes that " whenever there happens to be evidence of previous partition, then in that event, the subsequent suit for partition is legally non-permissible. In the instant case, the Plaintiff could not demonstrate that the plaint schedule II continued to be a joint family property

¹³ (2016) 1 PLJR 391

available for partition.

35. From perusal of the Exhibit E series it is evident that the land from Schedule II were continuously sold by the Plaintiff brothers from 1973 to 1998 and he didn't raise any objection over that. From the plaint, it is apparent that Plaintiff/appellant in spite of having disclosure made by the Defendants second set in their written statement regarding presence of various sale deeds executed by the Plaintiff's brothers and their legal representative from 1973 to 1998 in their favour, the reason best known to the Plaintiff, he did not opt to amend the plaint and to bring the aforesaid document within the ambit of instant suit. In terms of Order-VI, Rule-2 as well as Order-VII, Rule-1 of the CPC, it is incumbent that pleading must state material facts on which the party bases his claim. Because of the fact that no such pleading was there on account of lapses on the part of the Plaintiff, and it made his case weak and fragile. The Plaintiff did not seek the relief of getting these sale deeds declared void. The question is If there was no partition between the parties then how one co-sharer sold a particular property with exact boundaries describing other cosharer in one of the boundaries. What is interesting to note that the Plaintiff himself was shown in northern boundaries in the sale deed of 1973 Exhibit E/3 as well as Exhibit E/2. From perusal of the sale deeds, nothing is found as such that shares in the property were sold, rather these related to particular property giving clear boundaries and specific area of the sold land. It clearly indicate partition and exclusive possession of the parties. The cumulative effect of the entire Exhibit E series has that the continuing of family in jointness has also become doubtful. The documents falling under Exhibit E series suggest that the parties are dealing independently with regard to land falling under their share exclusively.

36. It is one of the point of argument by the Plaintiff/appellant that the Exhibit E series only depict an unequal, inequitable and injudicious partition as it was absurd to assume that one co-sharer would be allotted more than 02 Kathas and others only 12 Dhurs and it can not be accepted as a due partition.

1. In this regard, we can revert to what the Plaintiff says once. According to the Plaintiff, the property of Ballipur was divided fully, but he failed to describe the exact share he got in Ballipur property or what was the exact volume of the property came into share of each party. It is not clear whether all the co-sharers got equal share in the Ballipur property or not. None of the Defendant first set came forward to say anything in this regard. If the plaintiff himself couldn't explain how much of the property he got in the partition of Ballipur property, how could he claim equal share in other property. This concealment of material fact regarding the volume of the property of Ballipur and the ratio of its division amongst different co-sharers of the plaintiff, also a fatal flaw in his

case.

2. **In the case of Arjun Mahto v. Monda Mahatain¹⁴ Hon'ble Patna High Court** observes that “ an unequal division of the lands at the time of partition cannot always be reopened.”
 3. The Plaintiff has not given evidence to show that the inequality in the division of lands between the ancestors of the Plaintiffs and the Defendants of the Plaintiffs and the Defendants was such which may be taken to be shocking to the conscience.
 4. The principle of Hindu law is equality of division, but inequality of division in volume of the lands does not invariably lead to the conclusion that there was unequal division of the lands at the time of their partition. For the sake of argument, even if I accept that there was an unequal division of the landed properties of Schedule II, then even there is no explanation by the Plaintiff as to why he didn't object his brothers selling the portion of schedule II property to strangers and kept mum. Thus the argument put forward by the Plaintiff regarding unequal unjustified division could not hold ground.
37. The real dispute in the case is not the partition among the Plaintiff and his brothers, but only limited to schedule II property was claimed by the Plaintiff as undivided. The burden to prove the jointness of Schedule II property is upon the Plaintiff. Section 101 of the Evidence Act provides that anyone, who desires a Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. The evidence must be reliable and acceptable, compelling the Court to take a view in consonance with the pleadings of the Plaintiff. In the case of **Rangammal v. Kuppuswami¹⁵** it is observed that “ the Evidence Act has clearly laid down that the burden of proving a fact always lies upon the person who asserts it. Until such burden is discharged, the other party is not required to be called upon to prove his case. The Court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party. “. In the case also the Plaintiff fails to discharge his burden of proving that Schedule II property continuously remained joint and was available for partition.
- 38. On the basis of above discussion, it is decided that the Plaintiff/appellant has failed to prove that the schedule II property is joint family property. It is also decided no unity of Title and Possession existed in the suit property. It is further decided that**

¹⁴ AIR 1971 Patna 215

¹⁵ (2011) 12 SCC 220

the Plaintiff is not entitled to any share as claimed by him in the plaint and thus not entitled to get preliminary Decree. Issues III, IV, V and VI are decided accordingly.

39. From the anxious perusal of the pleadings of the rival sides, it appears that the Learned Trial Court omitted to frame issues relating to Court fees, Suit Valuation, Limitation Law, Specific relief Act, Estoppel, waiver, acquiescence. Hence questions are framed and decided in the following paragraphs.

1. Whether the suit is properly valued and the Court fees paid is sufficient ?

1. As the Defendants/respondents claimed that the suit property is valued less and the Court fee paid by the Plaintiff/appellant is insufficient. But, except the verbal allegation, the Defendants have brought no evidence in support of this claim and legal privilege of the Plaintiff regarding declaration of valuation of the suit appears to prevail. **Accordingly this question is decided in favor of the Plaintiff/appellant.**

2. Whether the Suit is barred by law of limitation ?

1. The Defendant raised the matter that the suit is hit by limitation as well. Section 3 of the Limitation Act says that the despite the Defendant not taking specific Defence of limitation, it has to be mandatory considered by the Court and suit if is hit by the provisions of limitation, the same must be dismissed.

2. Article 58 of the Indian Limitation Act provides that “ To obtain any other declaration” the period of limitation is “ Three years” from the date” When the right to sue first accrues”.

3. **In the case of Sheoji Sah & Ors.v. Mukh Narain Sah & Ors¹⁶, Hon’ble Apex Court** observes that “no case is made out that the Plaintiff had no knowledge of a existence of this document. The Limitation Act provides that any declaration with respect of setting aside a document is 3 years as provided under Article 58 and 59 of the Limitation Act.

4. The Plaintiff kept absolute mum when he got the knowledge of the sale deeds executed by his brothers with respect to Schedule II land. Obviously and admittedly the sale deeds were executed from 1973 to 1998 by different brothers of the Plaintiff. The suit was filed in the year 2006 which evidently transgressed the period of limitation of three years, that too without seeking declaration of getting them void. No explanation was offered by the Plaintiff/appellant in this regard. **Hence this suit is also barred by law of limitation.**

5. Whether the suit is barred by Section 34 of the Specific Relief Act?

1. Section 34 of Specific Relief Act : Discretion of Court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the Plaintiff need not in such suit ask for any further relief: Provided that no Court shall make any such declaration where the Plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

2. From the materials available on record, it is clear that the Plaintiff was not in possession of the suit property. He also not clarified in whose possession such property was. He sought a mere declaration of his share, but omitted to seek further relief which may be available to them. It is the Defendant second set assertion that Plaintiff actually brought a Title suit for declaration of his title and recovery of possession in the illegal, wrong and false garb of partition suit. **In the result, the defence contention of the suit being hit by section 34 of the specific relief Act is found tenable.**

6. Whether the suit is barred by law of estoppel?

1. Section 115 of the Evidence Act provides for Estoppel. It says When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. A Constitution Bench of the Supreme Court in Pannalal Binjraj v. Union of India¹⁷ succinctly discussed the scope of estoppel. It says that once an order is passed against a person and he submits to the jurisdiction of the said order without raising any objection or complies with it, he cannot be permitted to challenge the said order, subsequently, when he could not succeed. The conduct of the person in complying with the order or submitting to the jurisdiction of the order of the Court by participation, disentitles him to any relief before the Court. Acquiescence is followed by estoppel. Estoppel though a branch of the law of evidence is also capable of being viewed a substantive rule of law in so far as it helps to create or defeat rights, which would not exist or be taken away but for that doctrine. A party giving a contradictory statement should not be heard. Estoppel is not 'conclusive evidence', but acts as some piece of evidence that generates a strong ground that shows that the other party is denying a truth that he himself stated earlier. **In the instant case, the Defendants/respondents could not bring forth anything which could estop the Plaintiff/appellant from retracting its previous statement, conduct or act. Hence this case is not hit by law of estoppel.**

7. Whether the suit is barred by principle of acquiescence ?

1. Acquiescence occurs when a person knowingly stands by without raising any objection to the infringement of his or her rights, while someone else unknowingly and without malice aforethought acts in a manner inconsistent with their rights. The Principle of Acquiescence has been explained in Black's Law Dictionary, 9th Edition, as a person's tacit or passive acceptance or implied consent to an act. It has been described as a principle of equity which must be made applicable in a case where the

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order has been passed and complied with without raising any objection. It is settled that law does not permit a person to both approbate and reprobate as no party can accept and reject the same instrument. A person cannot be permitted to say at one time that the transaction is valid and to obtain advantage under it and on the other hand to say that it is invalid or incorrect for the purposes of securing some other advantage. The plaintiff appears to have not raised any objection to the infringement of his alleged interest in the schedule II property when his brothers and their family members sold it to strangers and thus allowed his brothers’ purchasers to act in a manner hostile to his own rights. The plaintiff, thus acquiesced to the acts of his brothers and subsequently by his brother purchasers and now could not revert to cry foul. **This question is decided against the plaintiff accordingly.**

8. Whether the suit is barred by principles of waiver?

1. Waiver means waiving of one's protected rights. It is the voluntary relinquishment or surrender of some known right or privilege. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of the relinquishment of such right. It means forsaking the assertion of a right to the proper opportunity. It was held that voluntary choice is the essence of waiver for which there must have existed an opportunity for a choice between the relinquishment and the conferment of the right in question. **In the instant case, the Defendants/respondents could not bring forth anything which could show how the the Plaintiff/appellant case is hit by by the principles of waiver. This is decided accordingly.**

40. Now it is time to discuss issues 1, II and VII

Issue I	Whether the suit as framed by the Plaintiff is maintainable ?
Issue II	Whether the Plaintiff has got cause of action or right to sue ?
Issue VII	Whether the Plaintiff is entitled to any other relief?

1. The relevant laws relating to the framing of the Suit are
 1. Order II rule 1 of CPC provides Frame of suit— Every suit shall as far

as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. Order II rule 2 CPC provides that Suit to include the whole claim—
- (1) Every suit shall include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action; but a Plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.
- (2) Relinquishment of part of claim—Where a Plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.
- (3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

2. The pleadings of the Plaintiff is indefinite and incomplete leaving room for confusion and uncertainty. It is hardly necessary to emphasise that the importance of the pleadings cannot, of course, be ignored, because it is the pleading that lead to the framing of issues and a trial in every civil case has inevitably to be confirmed to the issues framed in the suit. Even though incorporating vague references of selling of land by his own brothers in the Plaint and subsequent disclosure in detail by the contesting Defendants second set, the Plaintiff chose not to amend the pleadings nor the reliefs. The suit so framed would only fuel more litigation than adjudication.

41. On the basis of discussion made in this part and in light of the finding with respect to the issues III, IV, V and VI, I am of the considered opinion that the suit as framed by the Plaintiff/appellant is not maintainable and he has no cause of action to sue and hence the Plaintiff is not entitled to any relief. **Thus all three issues I, II and VII are decided against the Plaintiff/appellant.**

42. On perusal of the impugned Judgment of Learned Civil Judge Senior Division V Darbhanga in Partition Suit 92/2006 it appears that the Learned Court observes as follows

From the perusal of Ext. - E, Ext.- E/1, Ext.- E/2 and Ext.- E/3 it is clear that the bothers of the Plaintiff sold their shares from the schedule-II land of the plaint to the Defendant no. 11, 12 & 13. Ext- E is the sale deed executed by Defendant no. 1 (now deceased) in favour of Defendant no. 12 and 13, in the said sale deed it has been stated that Defendant no. 1 has got the said share in the property through amicable partition by metes and bonds and the property mentioned therein is his absolute property. It is also pertinent to note here that all the sale deeds (Ext-E, Ext-E/1, Ext.-E/2 and Ext-E/3) executed by the bothers of the Plaintiff i.e Defendant 1st party also contain the defined boundary therein, indicating the defined shares of the Defendant 1st party. The boundary mentioned in Ext-E contains the name of Shailendra Narayan Chaudhary (Husband of Defendant no. 3) in the north. Similarly, Ext-E/2 contains the name of Nagendra Narayan Chaudhary (The Plaintiff) in the north. Further Ext-E/3 in its boundary mentions the name of Nagendra Narayan Chaudhary and Bhogendra Narayan Chaudhary (Defendant No.1, now deceased) from north and south respectively. Had there been no partition between the Plaintiff and Defendant 1st party, there was no occasion for describing the name of Plaintiff and Defendants in the boundary of the aforesaid documents.

From the bare reading of the plaint it is apparent that Plaintiff has nowhere in the plaint mentioned about the details of transaction done by the Defendant 1st party in favour of the Defendant no. 11, 12 & 13 with respect to the suit property, nevertheless they have been made party to the suit. Every fact which is necessary for the Plaintiff to prove to enable him to get a Decree should be set out in clear terms. In spite of disclosure made by the Defendant 2nd party regarding the various documents relating to sale of the shares of the Defendant 1st party, Plaintiff did not opt to amend the plaint and to bring the aforesaid facts within the ambit of present suit.

Thus from the above discussion it is ample clear that the Plaintiff has failed to discharge his burden that the suit property continued to be joint despite the previous partition. To sum up from the conduct of the parties in dealing with the suit lands it is apparent that there is unequivocal indication of separation from the joint family status and as such there is no unity of title and possession between the parties.

43. It is obvious that the Learned Civil Judge Senior Division hasn't ignored the Plaintiff/appellant oral and documentary evidence and facts of the case. There was no jurisdictional error and the Learned Court rightly arrived at correct conclusion. The Learned Court rightly decided that the Schedule II property was not a Joint family property and no unity of Title and unity of possession exists therein and also the Plaintiff also has no

right to have any share in it. Except the issue on Court fees, valuation, Limitation, Waiver, Estoppel, Acquiescence and section 34 of the specific relief act, the Learned Trial Court has not erred or omitting to frame any specific issue. The Learned Court has passed a correct Judgment dealing meticulously all the evidence available on record. The Learned Civil Judge Senior Division Darbhanga has considered all the facts of the case, not ignored any evidence, taken into account the settled principles of law and rightly appreciated the oral and documentary evidence available on record, and passed the Judgment which is completely legal. **The Learned Civil Judge Senior Division has passed the Judgment taking into consideration the oral, documentary evidence and other material available on record and rightly dismissed the suit. Thus, Point (A) is decided accordingly.**

44. Point (B)

Whether the Judgment and Decree passed by the Learned Civil Judge Senior Division V Darbhanga requires interference and is liable to be set aside ?

1. In light of the discussions made above and in the backdrop of the findings in Point (A), I am of the considered opinion that during the course of hearing, Learned counsel for the appellant failed to point out any patent illegality or perversity in the impugned Judgment passed by the Learned Civil Judge Senior Division V, Darbhanga.
2. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail.
3. **No case for interference has been made out. The Judgment Dated 12/11/2020 and Decree dated 25/11/2020 passed by the Learned Civil Judge Senior Division V Darbhanga in Partition Suit 92/2006 whereby the suit was dismissed on contest is wholly correct. As such the Judgment and Decree requires no interference. Point B is decided accordingly. Hereinafter order is passed.**

Order

45. In light of the findings made above with respect to Points (A) and (B)
Following orders are passed

- 1. Let this Partition appeal along with the Partition Suit be and the same are dismissed.
- 2. Parties to bear their own costs.
- 3. Let a copy of this Judgment along with the entire TCR be transmitted back to the Learned Court concerned.
- 4. Let the case record of this Partition appeal be consigned to the District Record Room or any other specified place in accordance with law and rules, but only after all due diligence. I order accordingly.

Pronounced by me in open Court	Written and corrected by me
.....	
Neeraj Kumar II	Neeraj Kumar II
District Judge I, Darbhanga	District Judge I, Darbhanga
The 20 th day of July, 2026	The 20 th day of July, 2026

Date of Judgment/Order	20.07.2026
Date of Reserving Judgment/Order	20.06.2026
Uploading Date	20.07.2026
Uploaded by	Pushkar (Stenographer)