

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, MUZAFFARPUR

Present: Shweta Kumari Singh, Principal District Judge

Date of Judgment: 23/03/2026

Partition Appeal: 05/2024

1. Asha Devi, W/o- Indradeo Sah
R/o- Village- Dhamauli Ramnath, Tole- Sarmaipur, P.O.- Kalwari,
P.S.- Kanti, Anchal- Kanti, District- Muzaffarpur

Appellant

Versus

1. Amarnath Chaudhary, S/o- Late Bali Ram Chaudhary,
R/o- Village- Narsanda, P.O.- Kanti, P.S.- Kanti, Anchal- Kanti,
District- Muzaffarpur.

Respondent 1st Party

2. Smt. Mahapati Devi, W/o- Vishwanath Bhagat
3. Mukesh Kumar,
4. Raju Kumar,
Both S/o- Vishwanath Bhagat,
All R/o- Village- Narsanda, P.O.- Kanti, P.S.- Kanti, Anchal- Kanti,
District- Muzaffarpur
5. Smt. Daya Devi, W/o- Shri Deep Narayan Chaurasiya
6. Smt. Pramila Devi, W/o- Shri Bhagya Narayan Chaurasiya
Both R/o- Village- Ahirauliya, P.O.+P.S.- Chakiya, District- East Champaran

Respondent 2nd Party

7. Sandhya Devi, W/o- Shri Jay Narayan Chaurasiya,
R/o- Village- Narsanda, P.O.- Kanti, P.S.- Kanti, Anchal- Kanti,
District- Muzaffarpur

Respondent 3rd Party

Learned Counsel for the Appellant	: Shri Divakar Prasad Ratna
Learned Counsel for the Respondent 1 st Party	: Shri Lalan Kumar
Learned Counsel for the Respondents 2 nd Party	: Shri Ramakant Joshi
Learned Counsel for the Respondents 3 rd Party	: Shri Vikash Kumar Bharti

Date of Judgment : 23rd March, 2026

Present : Shweta Kumari Singh

JUDGMENT

1. The present Partition Appeal has been filed against the Judgment dated 20.03.2024, passed by learned court of Sub Judge 3rd West, Muzaffarpur, in Partition Suit No. 131/2010, seeking relief to set aside the judgment passed in Partition Suit No. 131/2010, whereby the suit of the plaintiff was decreed on contest partly, with an order that plaintiff and defendants are entitled for 1/4th share in the suit land detailed in schedule 4 of the plaint and the parties are directed to amicably partition the suit properties as mentioned in schedule 4.
2. The brief facts of the case is that in the year 1977, there was a partition in between the branch of Ram Khelawan Chaudhary and his other co-sharers and schedule 1 properties were exclusively allotted to the share of Brahmedeo Chaudhary. Brahmedeo Chaudhary during his life time gifted one acre 45 decimal land of Schedule 1 land, to his eldest daughter namely Mahapati Devi, which is mentioned in Schedule II. Brahmedeo Chaudhary was survived by his widow Ramkali Devi and daughters Mahapati Devi, Daya Devi and Pramila Devi. This fact is also admitted that Brahmedeo Choudhary died leaving behind him the properties mentioned in Schedule-IV of the plaint, inherited by his aforesaid legal heirs and the same is subject matter of partition in this Suit.

After the death of Brahmedeo Choudhary, his widow Ramkali Devi executed a registered deed of gift of 50 decimal land out of 82 dec., in favour of defendant nos. 02 and 03, namely Mukesh Kumar and Raju Kumar, sons of her eldest daughter Mahapati Devi. Ramkali Devi further executed a registered deed of gift dated 12.03.1997, in favour of Sandhya Devi with respect to 32 dec., 16 dec. from Plot no.

1066 and 16 dec. from Plot no. 1404. The present dispute relates to this 16 dec. land of plot no. 1404, out of which the plaintiff allegedly purchased 8 decimal land through registered sale deed, dated 11.06.2008, executed by Smt. Daya Devi and Smt. Pramila Devi, daughters of late Brahmadeo Chaudhary. It is further pleaded that since there was no partition of the property of late Brahmadeo Chaudhary, mentioned in schedule IV of the plaint, great inconvenience was caused in dealing with the same and accordingly, the present partition suit was filed by him for carving out his share of the purchased property.

3. The cause of action is said to have arisen when the plaintiff on 30th June 2009 and on several dates thereafter, demanded a partition of schedule IV land of the plaint by metes and bounds and defendant 1st party pay no heed to it.
4. The defendants filed their written statements and in addition to the objections related with the maintainability, limitation, estoppel, misjoinder and nonjoinder of parties, the defendants have denied the case of the plaintiff and stated that the suit has been filed with mala fide intent, to derive illegal gains and harass the defendants. The defendant nos. 01 to 03 filed the W.S., stating therein that a partition had taken place in the year 1997, in between branch of Ramkhelawan Chaudhary and his Co-sharer and Sch. I property of the plaint, exclusively fell in the share of Brahamdeo Bhagat and he had been enjoying the property without any objection. That Brahamdeo Chaudhary, being pleased with the services of his eldest daughter Mahapati Devi, executed a registered gift deed in her favour of 1 acre 47 decimal and she came in peaceful possession of the said land. It is also their contention that after Brahamdeo Bhagat died, his wife Ramkali Devi execute two registered deed of gifts on 12.03.1997, in favour of deft. no.- 02 and 03, of area 1 acre 4 dec. & 50 dec. respectively. That Daya Devi and Parmila Devi, defendant nos. 04 and 05 executed registered sale deed dt. 25.05.2010, in favour of defendant no. 02 and 03 and as a result of which the deft. no. 02 and 03 came in inclusive possession over their purchased land.

As per the contention of defendant nos.4/5/6 and 7, the present suit was not maintainable, as there was a partition between Ramkhelawan Chaudhary and his other co-sharers and the schedule 1 property exclusively fell in the share of

Brahmadeo Chaudhary. So there being no unity of title and possession, no partition could be sought. Their further plea is that the Partition Suit is hopelessly barred by law of limitation and liable to be dismissed on that ground itself.

It is further contended on their behalf that since the plaintiff is purchaser of only 8 dec., partition suit should have been brought only with respect to his purchased land, and not with respect to the entire family property.

5. The case of the plaintiff is that he is the purchaser of 8 decimal land from defendant no. 4 and 5 and there being no partition by metes and bounds amongst the plaintiff and the defendant 1st party, the necessity arose for filing the partition suit.
6. That on the basis of the pleadings of the parties, the following issues were framed for adjudication by the Id. Trial Court:-
 - i. Whether the suit as framed is maintainable?
 - ii. Whether plaintiff has adequate cause of action to sue the defendants?
 - iii. Whether suit is barred by limitation, hit by the principles of estoppel, waiver and acquiescence & section 34 of Specific Relief Act?
 - iv. Whether Sch. III properties of the plaint and ad-measuring 82 dec. were inherited by widow and three daughters of deceased Brahamdeo Chaudhary jointly?
 - v. Whether Ramkali Devi (W/o Brahamdeo) executed a deed of Gift dated 12.03.1997 in favour of her daughter Sandhya Devi (defendant no. 07) detailed in "Schedule-B of W.S. dated 23.11.2010 of defendant-6?
 - vi. Whether defendant no. 6 has rightfully purchased Schedule A lands (as described in her W.S. of dt. 23.11.2010) from deft. no. 7?
 - vii. Whether plaintiff has legally and rightfully purchased 8 dec. lands from defendant no. 04 & 05 and his sale deed dated 11.06.2008 in a valid one?
 - viii. Whether plaintiff is entitled to get his purchased portion carve out viz-a-vis partition of Sch.-III properties of the plaint?
 - ix. Whether plaintiff is entitled to for a decree of reliefs as prayed, or any other reliefs, if any?
7. On behalf of the plaintiff following oral evidence and documentary evidences have been filed:-

Evidences adduced by the plaintiff

Oral Evidences:-

PW 1- Amarnath Chaudhary (plaintiff)

PW 2- Ajit Kumar

PW 3- Pawan Kumar

PW 4- Satya Narayan Chaudhary

PW 5- Bikhar Chaudhary

PW 6- Arvind Kumar

PW 7- Anand Prasad

Documentary Evidences:-

Exhibit-1 Signature and handwriting of Revenue Karamchari made on the rent receipt.

Exhibit-2 Sale deed dated 11.06.2008 executed by Daya Devi and Pramila Devi.

Exhibit-4 R.S. Khatian of the disputed land.

Evidences adduced by the defendant no. 1 to 3:-

Oral Evidences:-

DW-1:- Mukesh Kumar

DW-2:- Jai Narayan Chaudhary

DW-3:- Jaleshwar Chourasiya

DW-4:- Subodh Kumar

DW-5:- Ram Dayal Chourasiya

DW-6:- Gyani Rai

DW-7:- Saroj Pandey

DW-8:- Raghuvir Bhagat

DW-9:- Sadanad Jha

Oral evidence on behalf of defendant no. 06:-

DW-1 Asha Devi

DW-2 Kishun Sah

DW-3 Mahesh Singh

DW-4 Ashrafi Sah

DW-5 Lakhindra Sah

DW-6 Sandhya Devi

Documentary Evidences adduced by the Defendant no. 01 to 03:-

- i. Exhibit-A :- Sale deed dated 25.05.2010, executed by Mukesh Kumar and Raju Kumar in favour of Daya Devi and Pramila Devi.
- ii. Exhibit-B :- Rent receipt of the Year 2012-2013.
- iii. Exhibit-C :- Deed of Gift dated 12.03.1997, executed by Ramkali Devi in favour of Mukesh Kumar and Raju Kumar.
- iv. Exhibit-C/2 :- Deed of Gift dated 09.12.1985 executed of Brahamdeo Choudhary in favour of his daughter namely Mahapati Devi.

Documentary Evidences adduced by the defendant no. 01 to 03 as well as defendant no. 06:-

- i. Exhibit-D:- Deed of Gift dated 12.03.1997, executed by Ramkali Devi in favour of Sandhya Devi.
 - ii. Exhibit-E:- Certified copy of order dated 24.12.2010, passed by D.C.L.R. (West), Muzaffarpur.
 - iii. Exhibit-E/1:- Certified copy of order dated 24.05.2013, passed by Additional Collector, Muzaffarpur.
 - iv. Exhibit- A/1:- Sale deed dated 28.02.2009, executed by Sandhya Devi in favour of Asha Devi.
8. The appellant has challenged the Judgment dated 20.03.2024, passed by Sub-judge 3rd, Muzaffarpur, in partition suit no. 131 of 2010, on the following grounds:-
- i. The judgment of the trial court is bad in law as well as on facts and is based on conjectures and surmises.
 - ii. The genealogical table has not been looked into and the order passed in a mechanical manner, without appreciating the facts in issue.
 - iii. It is evident from the plaint itself that a partition had taken place through Consolidation case no. 281 of 1977 and Brahmadeo Chaudhary had got 1/3rd share in the ancestral property
 - iv. The suit was bad for non-joinder of necessary party and the learned court decided the issue on the basis of Chak Bandi, when the entire Chak Bandi proceeding was cancelled by the Government.

- v. It is further contended that though no relief was sought against the deed of gift executed by Ramkali Devi in favour of Sandhya Devi dated 12.03.1997, the court decided that Ramkali had no right to do so, thus committing an illegality and exceeding jurisdiction.
9. The respondents appeared and filed separate written objection. The respondents have stated that the Appeal is not maintainable because it has been filed with wrong and false allegations. The judgment of the trial court has been passed after fully considering the facts, evidences and the law in question. It is further submitted that the Id. Trial court has rightly consider the G.T. and no illegality is being committed in passing the impugned Judgment and order.
- 10. The primary issue for adjudication before this Court is whether there was unity of title and possession, the requisite for deciding a Partition suit and whether the plaintiff was entitled to the relief of partition, granted by the learned Trial Court` ?***
11. Now, it is settled preposition of law that status of a purchaser is different from that of a co-sharer. So the presumption of jointness available to a co-sharer under the Hindu law is not available to the purchaser of a share. The first thing to be proved in a suit for partition is the factum of unity of title and possession. Here in facts of the given case, previous partition is admitted by the vendor Smt. Daya Devi and Smt. Pramila Devi in the slae deed as well as the witnesses examined.
12. It is averred in the plaint as well as the testimony of witnesses that a partition had taken place between the brothers of late Brahmadeo Chaudhary in the year 1977 and it is also admitted in the recital of the sale deed executed by defendant no.4 and 5 dated 26.05.2010, that partition had taken place between the daughters of late Brahmadeo Chaudhary by metes and bounds, and finding it difficult to manage their respective property, the sale was executed, thus rebutting the presumption of jointness of possession.
13. From perusal of the documents on record and the submissions made by learned counsels at length, it is clear that the alleged property were received by the daughters

of Brahmadeo Chaudhary as a result of partition and resultantly, the doctrine of estoppel comes into play and the same thing cannot be claimed again.

- 14.** On perusal of the record and the recital of the sale deed, unity of title and possession not proved. While deciding issue no. viii and ix, in paragraph 13 of the judgment, the learned trial Court has though mentioned that to claim partition, it is mandatory to prove that the suit land is joint family property, with no partition having taken place earlier, it has not been discussed as to how did the learned Court arrive at the finding that there was unity of title and possession and the alleged property was a joint family property?
- 15.** It is pertinent to mention that the learned trial court failed to appreciate the factum of partition, amongst the daughters of late Brahmadeo Chaudhary, admitted in the sale deed executed by defendant no.4 and 5 dated 26.05.2010. It is to be noted that admission by the parties in a sale deed, is a strong evidence of prior partition. Once separation is admitted, presumption of Jointness of Title and Possession is rebutted, and burden of proof shifts on the other side to prove jointness. In the facts of the given case, nothing has been brought on record, to establish jointness of title and possession. In addition to it, the recital of the gift deed executed by Ramkali Devi in favour of defendant nos. 2 and 3, further goes to prove the fact, that there was no unity of title and possession with respect to the alleged property. Thus, the issue is decided against the plaintiff and as such partition can not be granted.
- 16.** It is also made out from the impugned Judgment that the learned Court in paragraph 10, while deciding issue nos. iv, v, vi and vii, has held that the registered deed of gift executed by Ramkali Devi, widow of Brahmadeo Chaudhary, dated 12.03.1997, in favour of Mukesh Kumar, Raju Kumar, defendants nos. 2 and 3 and Sandhaya Devi-Defendant no.7 to be wrong, illegal and void documents in the eye of law. Now, under Order VII Rule 7 of the Code of Civil Procedure, relief must be specifically claimed. It is also a settled preposition of law, consistently held by the Hon'ble Apex Court that courts cannot grant a relief not prayed for and a party cannot be taken by surprise on a case never set up in pleadings. Ordinarily a court in a partition suit cannot decide a gift deed void, if such a relief has not been specifically sought and

put in issue, as it requires specific pleadings, evidence and opportunity of defence. Declaring a gift deed void is not an incidental relief, but an independent declaratory relief, requiring proper valuation and court fee, specific pleading of fraud, coercion, lack of capacity, etc.

In the facts of the given case, no such relief has been sought for. The plaintiff in his suit has sought passing of a preliminary decree to the extent of 08 dec. in plot no. 1404, described in Schedule-IV of the plaint. So the finding of the learned trial Court with respect to legality of the gift deed, is legally not sustainable.

- i. Accordingly, the impugned judgment and decree is set aside, the partition suit is dismissed and the present appeal stands allowed.
- ii. However, the plaintiff is at liberty to file a suit for declaration of his title before the appropriate forum.

The judgment was typed and corrected by Me:

sd/-
{Shweta Km. Singh}
Principal District Judge,
Muzaffarpur
Dated-23/03/2026