

**DISTRICT:- DEOGHAR**

**THE Court OF CIVIL JUDGE (SR. DIV.)-II, DEOGHAR**

**Present :** Divya Mishra,  
Civil Judge (Sr.Div.)-II  
Deoghar.

**Deoghar, Dated 02<sup>nd</sup> August, 2025**

**Title (D) Suit No. - 239 / 2002**  
**CNR No.:- JHDG02-000139-2002**

1. Dineshwar Das

2. Santu Das

Both S/o Late Ghutar Das, R/o Village- Rohini, Goradih, PS-  
Jasidih, Subdivision & District-Deoghar.

**3. Gujar Mahra S/o Late Lokhi Mahra (Died on 17.06.2003 &  
substituted v.o.d 07.07.2004)**

**3A. Laxmi Das (Died on 12.03.2014 and substituted v.o.d  
07.07.2004),**

3B. Rubiya Devi W/o Late Laxmi Das,

3/C. Kankey Kumari, D/o Late Laxmi Das

3/D. Tara Kumari, D/o Late Laxmi Das

3/E. Gunja Kumari, D/o Late Laxmi Das

3/F. Shibu Kumar, S/o Late Laxmi Das

3/G. Manish Kumar, S/o Late Laxmi Das

All by faith Hindu, by Profession Cultivators, R/o Village-  
Rohini, Goradih, P.S.- Jasidih, Subdivision & District- Deoghar.

3/H. Badri Das S/o Late Gujar Mahra,

3/I. Kanhai Das S/o Late Gujar Mahra,

..... Plaintiffs

- Versus -

**1. Chandar Mahra S/o Late Shankar Mahra (Died & Substituted  
v.o.d 06.02.2019)**

1/a. Most. Chameli Devi W/o Late Chandar Mahra

1/b. Mantu Das S/o Late Chandar Mahra

Both are R/o Village- Rohini, Gouradih, Ward No. 4, P.O.-  
Rohini, P.S-Jasidih, Subdivision & District- Deoghar.

1/c. Manju Devi W/o Kishun Das, R/o Village- Sirsia, P.O. Bhojpur,  
P.S. Jasidih, Subdivision & District- Deoghar.

1/d. Sanju Devi W/o Late Bhupendra Das, R/o Village- Rohini,  
Gouradih, Ward No. 4, P.O.-Rohini, P.S-Jasidih, Subdivision &  
District- Deoghar.

2. Rikhiya Devi D/o Shankar Mahra, W/o Santu Mahra

**3. Hari Mahra S/o Late Bhairo Mahra (Died on 09.10.2022 and  
Substituted v.o.d. 05.12.2022)**

3(a). Birmi Devi W/o Late Hari Mahra,

3(b). Kamdeo Das S/o Late Hari Mahra,

3(c). Ramu Das S/o Late Hari Mahra

All R/o Village- Shankari, P.O. Deopur, P.S.-Jasidih,  
Subdivision & District-Deoghar.

3(d). Sumanti Devi W/o Bangatu Das, D/o Hari Mahra, R/o Village-

Tharhi Dulampur, P.O. Deosangh, P.S.Kunda, Subdivision & District- Deoghar.

3(e). Khajo Devi W/o Basudeo Das, D/o Late Hari Mahra, R/o Karon Dumarthar, PO+PS- Karon, Subdivision Madhupur & District - Deoghar.

3(f). Baby Devi W/o Mantu Das, D/o Late Hari Mahra, R/o Khubhu, PO+PS- Rikhiya, Subdivision & District -Deoghar.

3(g). Urmila Devi W/o Neman Das D/o Late Hari Mahra, R/o Village- Rohini Goradih, P.O.Rohini, P.S.Jasidih, Subdivision & District- Deoghar.

3(h). Asha Devi W/o Naresh Das D/o Late Hari Mahra R/o Village- Gariya, PO, P.S. and Subdivision- Madhupur, District- Deoghar.

**4. Panwa Devi D/o Dhano Mahra W/o Ketkuli Mahra (Deleted & and substituted Dated 02.05.2016)**

4a. Bahadur Das S/o Late Ketkuli Mahara R/o Village- Ranganta, P.O. Nawadih, P.S.-Chandramandih, District- Jamui (Bihar)

4/b. Rajia Devi W/o Jalo Das, D/o Late Ketkuli Mahra & Panwa Devi, R/o Village-Badia, P.O. & PS- Chakai, District- Jamui.

4/c. Munka Devi W/o Late Falguni Das & D/o Late Ketkuli Mahra and Panwa Devi, R/o Village- Chhatakurum, P.O.-Nawadih, PS- Chandramandih, District- Jamui (Bihar)

4/d. Rania Devi W/o Gujar Das & D/o Late Ketkuli Mahra and Panwa Devi R/o Malodih, P.O.Rohini, P.S.-Jasidih, District- Deoghar.

4/e. Lalita Devi W/o Bhutak Das and D/o Late Ketkuli Mahra and Panwa Devi, R/o Village- Bhogan, P.O. & PS-Chakai, District- Jamui (Bihar).

**5. Sania Devi W/o Hari Mahra (Deleted and substituted Dated 06.08.2012)**

5a. Ishwari Das S/o Hari Das

5b. Basudeo Das S/o Hari Das

5c. Binod Das S/o Hari Das

5d. Kailash Das S/o Hari Das

5e. Jasmatia Devi D/o Hari Das

All R/o Village-Tharhi Dulampur, P.O.Deosangh, P.S.-Kunda, District- Deoghar.

**6. Mainwa @ Mania Debi W/o Kistu Mahra (Deleted and substituted Dated 13.04.2022)**

**7. Nuna Mahrain W/o Bhuman Mahra (Deleted and substituted Dated 06.08.2012)**

7. Navin Das S/o Bhuman Mahra,

Defendants No. 5 to 7 daughters of Late Bhairo Mahra

8. Shrikant Mahra S/o Rameshwar Mahra,

9. Kalsharia Devi W/o Ganu Mahra D/o Loki Mahra

**Defendant No.1** of village Rohini Goradih, P.S. Jasidih, District Deoghar. **Defendant No.2** of Village Gidhaiya, P.S. Jasidih, District Deoghar. **Defendant No. 3** of Village Goradih, Rohini, P.S. Jasidih,

District Deoghar, **Defendant No. 4** of Village Goradih, Rohini, P.S. Jasidih, District Deoghar, At present resides at Rangania, P.S. Chandramandih, District Jamui, **Defendant No. 5** of Village Tharhi Dulampur, P.S. Kunda, District Deoghar. **Defendant No.6** of Village Konkribank, P.S. Jasidih, District Deoghar, **Defendant No. 7** of Village Orpa, P.S. Jasidih, District Deoghar. **Defendant No.8** of Village Tarabad, P.S. Mohanpur, District Deoghar, **Defendant No.9** of Village Gandsar, P.S. Jasidih, District Deoghar

**10. Chhedni Devi D/o Late Dhano Mahra & W/o Thakur Mahra**  
R/o Village-Goradih Rohini, P.O. Rohini, P.S.Jasidih, District-Deoghar.

**10/A. Murli Das** S/o Late Thakur Das & Chhedni Devi, R/o Rohini Goradih, P.S.Jasidih, Subdivision & District-Deoghar.

**10/B. Shakun Devi** W/o Nandkishore Das granddaughter of Thakur Das & Chhedni Devi, R/o Devichak, P.S.Rikhiya, Subdivision & District- Deoghar.

**10/C. Malo Devi** W/o Ayodhya Das granddaughter of Thakur Das & Chhedni Devi, R/o Kashidih, P.S.Kunda, Subdivision & District-Deoghar.

**10/D. Rani Devi** W/o Sunil Das granddaughter of Thakur Das & Chhedni Devi, R/o Sataria, P.S.Jasidih, Subdivision & District-Deoghar.

**11. Mahabir Das** S/o Late Sona Das, aged about 61 years,

**12. Pappu Kumar** S/o Mahabir Das, aged about 37 years,

**13. Abhay Kumar Das** S/o Mahabir Das, aged about 28 years,

**14. Sipu Kumar Das** S/o Mahabir Das, aged about 25 years,

**15. Tipu Kumar Das** S/o Mahabir Das, aged about 23 years,

All by caste Chamar, Category of Schedule caste

All R/o Village- Narayanpur, P.S.Jasidih, District- Deoghar.

..... **Defendants**

**Learned Counsels:-**

**For the Plaintiffs :-** Sri Baleshwar Mandal, Ld, Adv.

**For the Defendants :-** Sri Pradeep Singh, Sri Maheshwar Sinha  
Sri Shailendra Kumar, Ld. Adv.

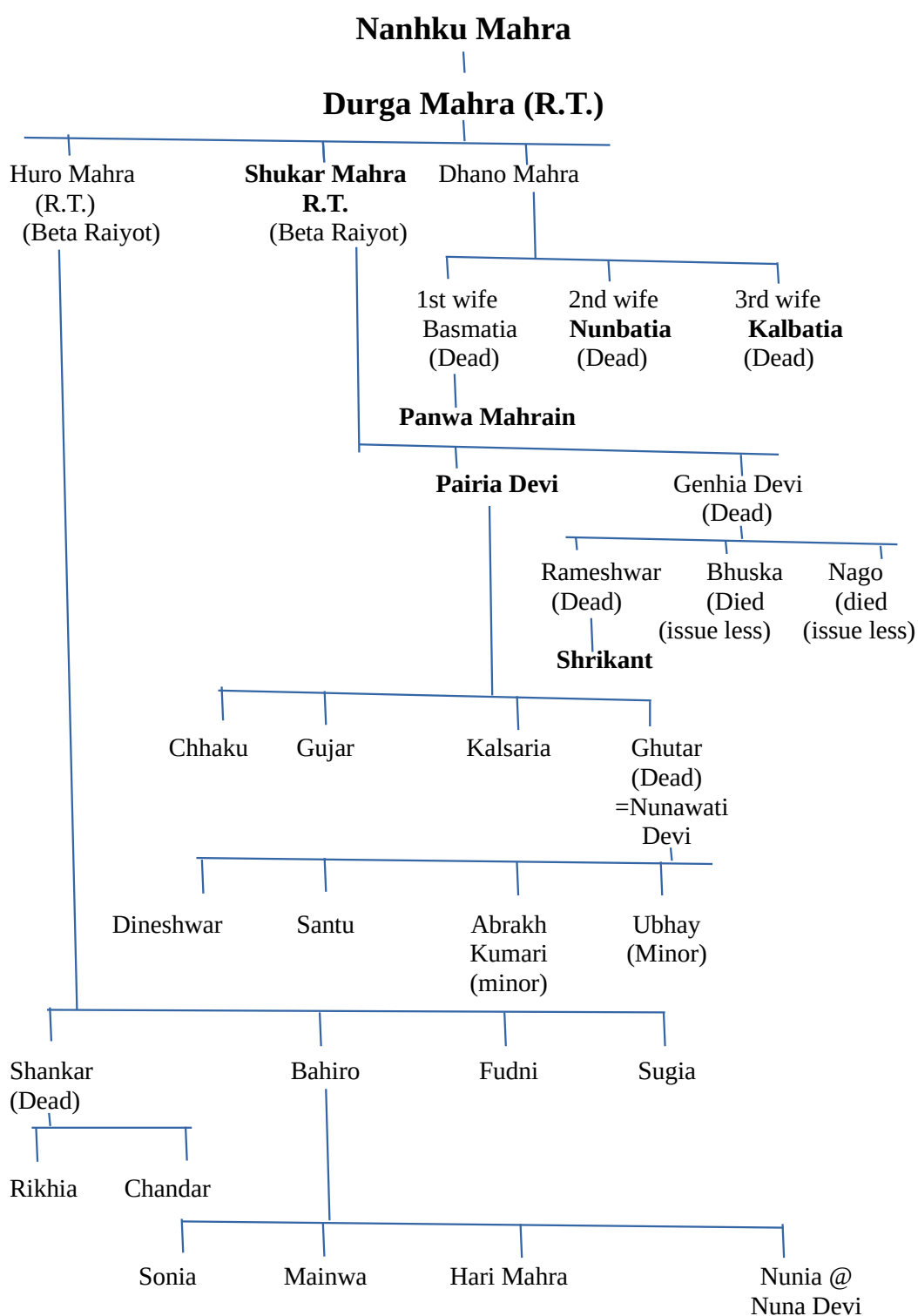
**J U D G M E N T**

**1. The present suit has been filed by the Four Plaintiffs against Fifteen Defendants for a preliminary decree for partition of the suit properties ie Schedule- 1 and 2, according to legal and legitimate share of the parties, for appointment of an Amin Commissioner to effect partition by metes and bounds in accordance with preliminary decree; for final decree embodying the report of Amin Commissioner; for the cost of the suit; for such other relief or reliefs to which the Court may deem fit and proper.**

**2. PLAINT:** The Plaintiffs' case in brief is that the the parties are Hindus and they are governed by Mitakshara School of Hindu Law. They have given a Genealogical table to clear the relationship of the

parties with the recorded tenants:

## Genealogical Table



recorded jointly in the names of **Shukar Mahra, Huro Mahra and Dhano Mahra** in the parcha of last Mr. Gantzer's Settlement. They further contended that all the recorded tenants till their life- times, remained in peaceful possession of the aforesaid properties and after their deaths, their legal heirs inherited and succeeded the interest being Class- I heirs. They further contended that the lands under **Jamabandi No. 103** was the separate property of Durga Mahra and in his life time, he had allotted the land, those are described in Schedule-II to his sons. Thereafter Durga Mahra's sons' names were entered during Mr. Gantzer's Survey Settlement. They further contended that **Huro Mahra** died before the year 1956, leaving behind 2 sons, namely, **(i) Shankar Mahra and (ii) Bhairo Mahra and 2 daughters Fudni Devi and Sugia Devi**. They further contended that because Huro Mahra died before the year 1956, hence, his daughters have not been made parties in the suit. They further contended that **Shankar Mahra** died leaving behind one daughter **Rikhia** and one son **Chandar Mahra**. And, **Bhairo Mahra** died leaving behind Three daughters, namely, **Sania Devi, Mania Devi and Nuna Devi and one son Hari Mahra**. They further contended that **Shukar Mahra** died about 30 years ago remaining in separate family from the recorded tenant Huro Mahra, since after Mr. Gantzer's Survey operation and in his life time, his daughter **Pairia** and her husband **Lauki Mahra** remained in the Estate of her father,

without partition, his daughter and daughter's sons, Grand sons have been enjoying the same and his *Shraddha Karma Kriya* was done alone by the Plaintiffs and mother of the Plaintiff No. 3. They further contended that **Dhano Mahra** died **remaining with joint family with Ghutar Mahra**, leaving behind only daughter **Panwa Mahrain**. She lives in her matrimonial village- Rangania, PS- Chandramandih, District- Jamui, but she often used to visit the Estate of her father at Rohini/Goradih. They further contended that Dhano Mahra had **Three wives, one Basmatia, another Nunbatia and 3<sup>rd</sup> Kalbatia**, and out of Them, **Nunbatia and Kalbatia died issue-less**. They further contended that the suit- properties are in joint possession and there has been no partition by metes and bounds by any competent Court. And in absence of legal partition, frequent disputes and differences used to arise in between the parties for cultivating and enjoying the lands and its usufructs. Accordingly, the **father of Plaintiffs No. 1 and 2** and their uncle **Gujar Mahra** asked for partition in the month of **March, 1998** on which, the Defendants did not agree for the legal partition. Therefore, Ghutar Mahra and his brother had filed a **Partition Suit on 30.05.1998**, but the **Plaintiff Ghutar Mahra on account of a cancer disease died on 12.04.2000**. They further contended that the **Plaintiff No. 3 also could not appear in the earlier suit** due to this fact and on account of non appearance of Ghutar Mahra and Gujar Mahra, the **Title (P) Suit No.**

**4/98** was dismissed in the year 2000. They further contended that the Plaintiffs are entitled to get 1/2 share of the suit properties, whereas, the Plaintiffs are cultivating and enjoying the properties but not by metes and bounds, there is one pucca old drinking well, excavated by Beta Raiyot, which remained in joint for using water, one irrigational well, that was constructed exclusively by the Plaintiffs upon Government cost in **Plot No. 410/411**. They further contended that after dismissal of the suit, the Plaintiffs asked for the amicable partition again in the month of November, 2000, but the Defendants did not agree, hence, necessity arose for filing the fresh present suit. They further contended that the mother of Plaintiff No. 1 and 2, minor sister and brothers have not been made parties in this suit only with a purpose to avoid the encumber of the suit; inspite of their interests are being represented by the Plaintiffs No. 1 and 2. They further contended that however, in the Genealogical table, the mother, minor sister and brothers also have been shown.

**3. RELIEFS:** Vide **para-17** of the plaint the Plaintiffs prayed for the following reliefs :--

- (i) For a preliminary decree for partition of the suit properties according to legal and legitimate share of the parties.
- (ii) For appointment of an Amin Commissioner to effect partition by metes and bounds in accordance with preliminary decree.
- (iii) For final decree embodying the report of Amin Commissioner.

- (iv) For the costs of the suit
- (v) For such other relief or reliefs to which the Court may deem fit and proper.

4. SUIT PROPERTY:

**4.(i) Schedule– I Property:** In the District of Deoghar, Subdivision Deoghar, PS-Jasidih, Mouja: Rohini Tola Goradih, Jamabandi No. 103, recorded in the name of **Durga Mahra:**

| <u>Plot No.</u>   | <u>Kind</u>           | <u>Area (Ac.-Dec.)</u> |
|-------------------|-----------------------|------------------------|
| 410               | Bari 2 <sup>nd</sup>  | 2.56                   |
| 411               | Bari 2 <sup>nd</sup>  | 1.04                   |
| 759               | Bari 2 <sup>nd</sup>  | 0.44                   |
| 760               | Dhani 3 <sup>rd</sup> | 0.36                   |
| 761               | Makan-mai-sahan       | 0.03                   |
| (At present Bari) |                       |                        |
| 767               | Bari 1st              | 1.36                   |

**4(ii). Schedule – II Property:**

In the District of Deoghar, subdivision Deoghar, PS-Jasidih, Mouja: Raidih, No. 122, under **Jamabandi No. 44**, recorded in the names of Shukar Mahra, Huro Mahra and Dhano Mahra.

| <u>Plot No.</u> | <u>Kind</u>           | <u>Area (Ac.-Dec.)</u> |
|-----------------|-----------------------|------------------------|
| 682             | Dhani 3 <sup>rd</sup> | 0.04                   |
| 683             | Bari 2 <sup>nd</sup>  | 0.12                   |
| 684             | Dhani 3 <sup>rd</sup> | 0.09                   |

|     |                       |      |
|-----|-----------------------|------|
| 693 | Dhani 3 <sup>rd</sup> | 0.08 |
| 695 | Bari 2 <sup>nd</sup>  | 0.31 |
| 722 | Dhani 2 <sup>nd</sup> | 0.28 |
| 348 | Dhani I <sup>st</sup> | 0.18 |
| 351 | Dhani 2 <sup>nd</sup> | 0.11 |
| 363 | Dhani 3 <sup>rd</sup> | 0.40 |
| 733 | Dhani 3 <sup>rd</sup> | 0.35 |
| 734 | Dhani 2 <sup>nd</sup> | 0.26 |
| 740 | Dhani I <sup>st</sup> | 0.28 |

**4(iii) Schedule – III property:** In the District of Deoghar, Subdivision Deoghar, PS- Jasidih, Mouja: Rohini/Goradih, all the following **trees**, are standing over **Plot No. 667**:

| <u>Kind of Tree</u> | <u>Number of Tree</u> | <u>Value</u> |
|---------------------|-----------------------|--------------|
| Jack fruit          | 1                     | Rs. 3000.00  |
| Chimli              | 2                     | 2000.00      |
| Sagwan              | 3                     | 3000.00      |
| Neem tree           | 5                     | 2500.00      |
| Gowava              | 1                     | 500.00       |

**Valuation Chart**

| <u>Kind of land</u>   | <u>Area</u><br><u>Ac.-Dec.</u> | <u>Rate</u>     | <u>Value</u> |
|-----------------------|--------------------------------|-----------------|--------------|
| Dhani 1 <sup>st</sup> | 0.46                           | @ 75/ per Acre  | Rs. 34.50    |
| Dhani 2 <sup>nd</sup> | 0.65                           | @ 60/- per Acre | Rs. 39.00    |
| Dhani 3 <sup>rd</sup> | 1.32                           | @ 45/- per Acre | Rs. 59.40    |

|                      |      |                 |                 |
|----------------------|------|-----------------|-----------------|
| Bari 1 <sup>st</sup> | 1.36 | @ 45/- per Acre | 61.20           |
| Bari 2 <sup>nd</sup> | 4.27 | @ 30/- per Acre | 134.10          |
| Value of trees       |      |                 | <u>11000.00</u> |

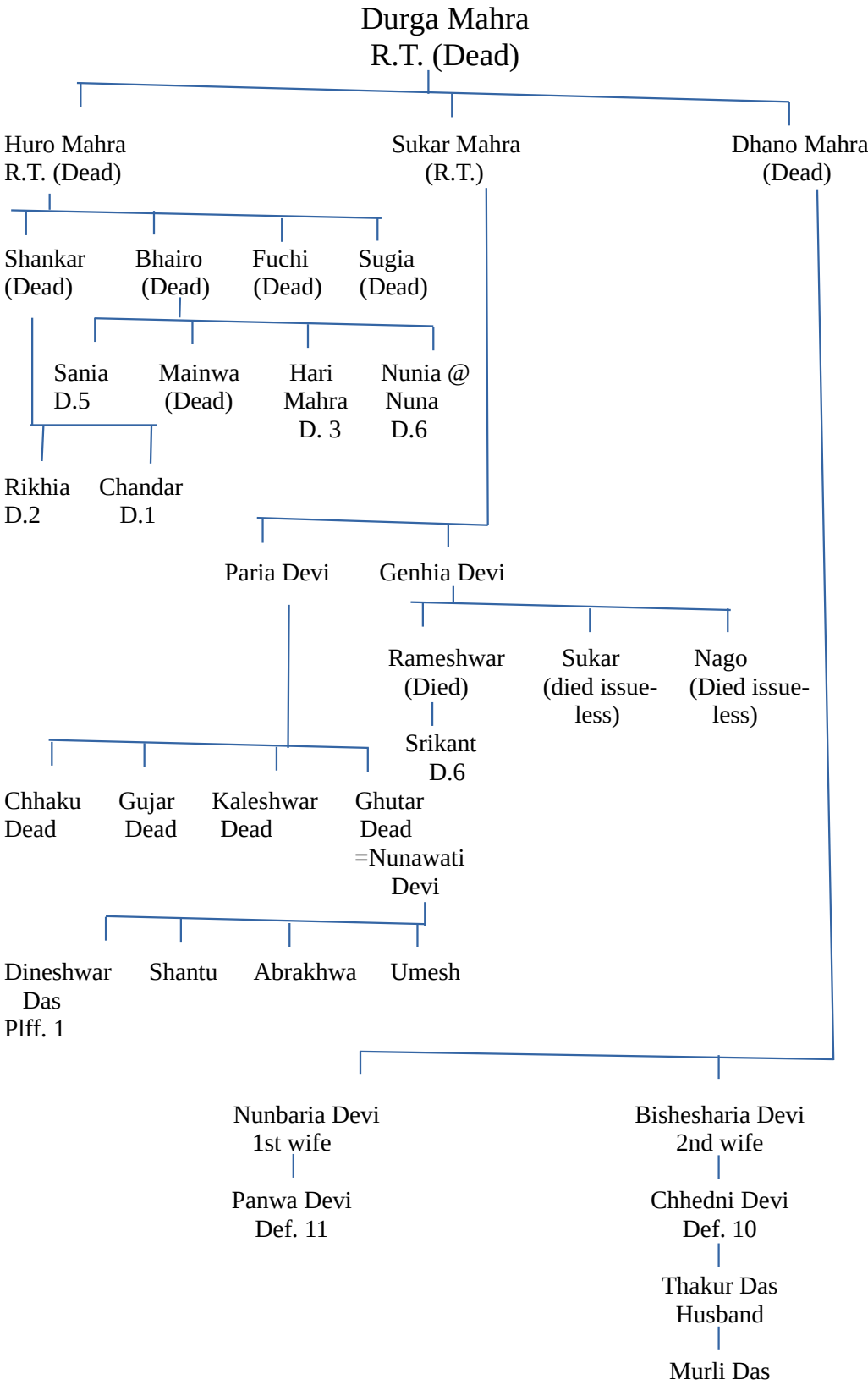
Total Rs. 11,328.20 paise

**5. CAUSE OF ACTION:** In the month of November, 2000 within the jurisdiction of this Court, when Plaintiffs demanded amicable partition of the suit properties and when the Defendants refused the same within the jurisdiction of this Court, where the parties reside and subject matter of suit exists.

**6. JURISDICTION:** The suit is valued at Rs. 11,328.20/- for the purpose of jurisdiction and Court fee but required *ad- valorem* Court fee has not been paid as exempted on account of Notification by Bihar Govt. of survey operation, as pleaded vide para- 16 of the plaint.

**7. Written statements filed on behalf of the Intervenor-Defendant No. 10 Chhedni Devi on Dated 02.11.2006:** This Defendant admitted that the Plaintiffs' father **Ghutar Mahra and others** had filed **T(P) Suit No. 4/98** before the Assistant Settlement Court, Deoghar, in which all the Defendants appeared and filed W.S. She further contended that even in that suit, this petitioner was not impleaded as a party. And she filed a petition U/O 1 Rule 10 C.P.C. for becoming a party in that suit for the partition of her father's property, including the property recorded in the name of her grand

father **Durga Mahra**, And in that suit, neither the Plaintiffs nor the Defendants had filed any rejoinder against the aforesaid petition, and the learned Court allowed the petition of this Defendant No. 10 **vide order Dated 07.04.1999**. Thereafter, she filed her W/S on 09.06.1999. She further contended that the aforesaid Partition Suit was **dismissed for default on 01.12.1999**. She further contended that her sister **Panwa Devi, the Defendant No. 4** alongwith her son **Bahadur Das** had also filed **T(P) Suit No. 33 of 1994** before the A.S.O., Deoghar against this **Defendant No. 10** and the Plaintiff's father and other Defendants. And that very suit was also dismissed for default. She further contended that thereafter, there was a criminal proceeding between this Defendant and Defendant No. 1 and others, which was **compromised on 27.06.1997** admitting that this Defendant and daughters of Dhano Mahra are cultivating the suit land as per their choice and convenience. She further contended that the Plaintiffs knowing fully well all the facts have filed the present suit without filing **Misc. Case U/O IX Rule 9 C.P.C.** for restoration of the T(P) Suit No. 4/1998 suppressing all earlier developments between the parties. She further contended that this Defendant had also filed a petition U/O 1 Rule 10 C.P.C. in this suit on **03.10.2003**, which was allowed by this Court on **12.04.2006**. She further given a complete G.T. as below:



She further admitted that some lands are recorded in the name of **Durga Mahra**, the grand father of this Defendant, during the settlement operation of Gantzer's Settlement, so after his death, rest

land was recorded in the names of his sons, **Shukar Mahra, Huro Mahra and Dhano Mahra** in Mouja: Rohini (Gauradih) **J.B. No. 103** and also in Mouja: Raidih **J.B. No. 44**. She further admitted that one of the Defendants i.e. Defendant No.-4 daughter of Dhano Mahra, namely, **Panwa Mahrain** has been married at village Rangania, where she has been residing with her family members in village: Goradih, Rohini, but the Plaintiffs have purposely suppressed that this Defendant is in actual physical possession and enjoyment of the property of Dhano Mahra, being his daughter. She further contended that the father of this Defendant Dhano Mahra had Two wives, from his first wife Nunbatia, Panwa had been begotten, who had been made **Defendant No. 4**, whereas her mother Bisheshwaria Devi was his second wife and after the death of Nunbatia Devi, the father of this Defendant Dhano Mahra died in or about in the year 1960 at village: Gauradin, Rohini, **leaving behind this Defendant and his mother Bishesharia Devi** at village Gauradin. She further contended that the father of this Defendant had constructed his own house at **Plot No. 768, Mouja: Rohini**, where his wife and this Defendant has been residing therein. She further contended that her mother Bishesharia Devi died in the year **1969**. She further contended that the Plaintiffs are in actual physical possession and enjoyment of their respective share of Shukar Mahra. Whereas the **Defendant No.-1** is in enjoyment of the land of the Branch of **Huro**

**Mahra** because the Defendant No.-3 has been residing at village Sankari Kothia since last long. She further contended that during pendency of the case, the Defendant No.-3's son in law **Nema Mahra** has constructed his house over his father in law's share and also encroaching upon the portion of the allotted share of this Defendant since 12.04.2006 after being added as a party in the present suit and Defendant No.-3 has illegally acquired portion of his land to Sukhdeo Rai. She further contended that there has been no partition by metes and bound but the parties are cultivating their shares land since long separately on their respective shares. She further claimed that the Plaintiff and his other co-sharers are entitled to 1/3<sup>rd</sup> in the entire suit land, who being branch of the R.T. Shukar Mahra, whereas this Defendant and Defendant No.-4 are entitled to 1/3 share in the suit property. She alleged that the Plaintiff has not got constructed the drinking well but the old well, being in possession and enjoyment of all. She further claimed that the Plaintiff has got no cause of action, rather the Plaintiff has tried to lodge a false cause of action for the present suit. She further pleaded that the Plaintiff and other Defendants are entitled to legitimate share in the suit property and this Defendant is also entitled to the property being her legitimate share and in possession and enjoyment including her residential house over **Plot No. 768**, which has not been made subject matter of the suit. She further contended that she is paying Revenue

Rent of the land regularly of her share and is in possession of some Revenue Rent receipts.

**8. Written statement filed on behalf of the Defendant No. 4**

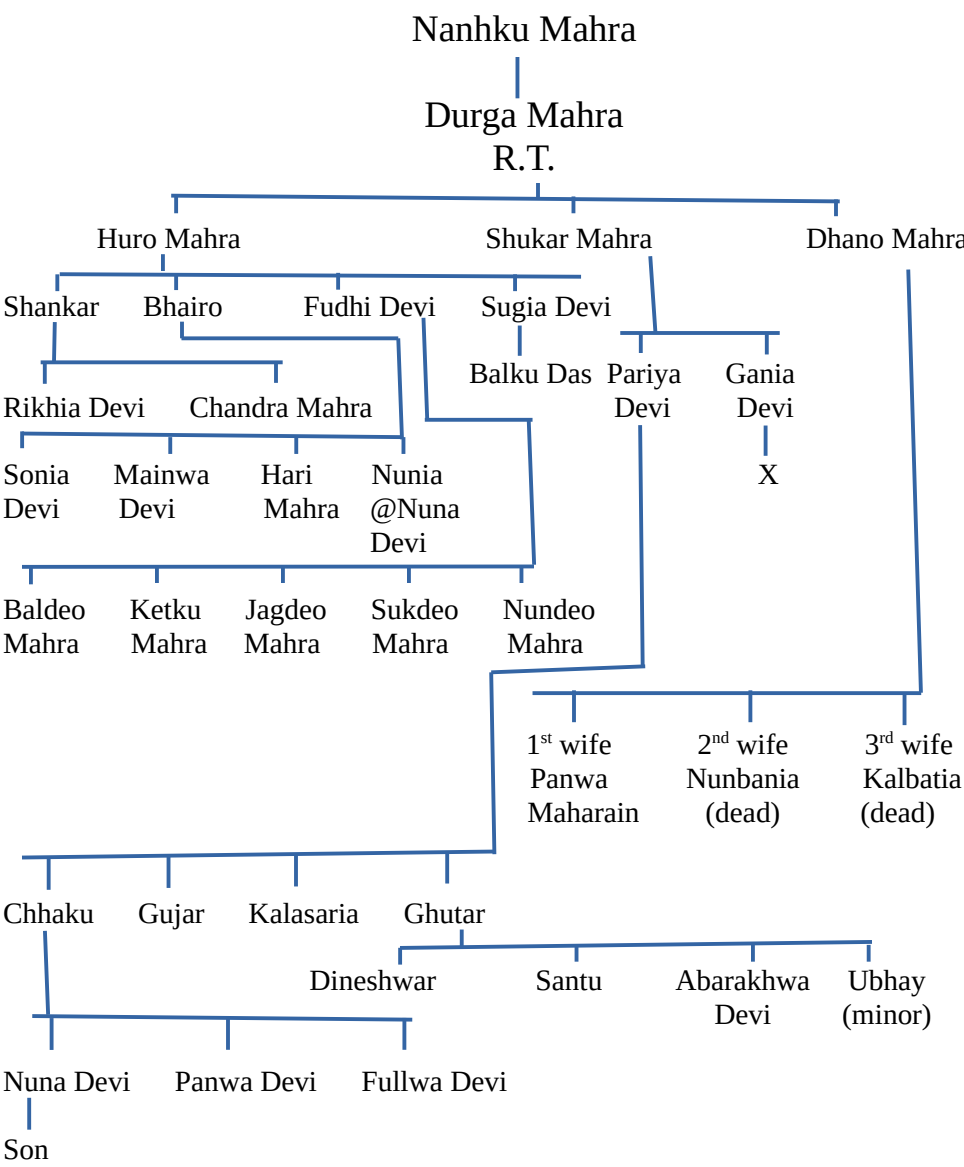
**Panwa Debya on Dated 12.03.2007:** This Defendant admits the genealogical table as furnished by the Defendant No. 1 to 3 and 5 to 7 in their written statement vide para-3 filed on 18.07.2002. And that all the R.Ts. are in peaceful possession during their life time. She claimed that it is false that after their deaths, their legal heirs inherited and succeeded the interest being Class- I heirs. She further contended that The R.T. namely, **Shukar Mahra died in the year 1945**, and his wife predeceased to him, while the family was joint as such the right, title and interest devolved upon his Two brothers, namely, Dhano Mahra and Huro Mahra. And the Daughters of Shukar Mahra did not inherit Shukar Mahra's interests. She further admitted that the **J.B. No. 103** is recorded in the names of **Durga Mahra** in the last survey settlement known as Mr. Gantzer's settlement. And pleaded that said Durga Mahra hasnot allotted the lands to his sons but the real fact is this that during the last survey operation of Mouja: Raidih, Durga Mahra passed away and his Three sons, namely, Huro Mahra, Shukar Mahra and Dhano Mahra were recorded as tenants. And they never made any partition till date, by metes and bounds among the descendants of the R.Ts. And further pleaded that on request of Ghutar Mahra, Dhano Mahra had allowed

them to remain in village: Rohini, tola: Goradih, due to love and affection. She admitted that Dhano Mahra died about 32 years ago, leaving behind his one daughter, namely, **Panwa Devi** (this Defendant No. 4) and this Defendant has been married with Katkuli Das of village Rangania, P.S.Chandramandih, District-Jamui and further contended that the said Defendant never claimed any interest in the suit property and basically she had/has been ousted from the joint possession over the suit property and the death period of Dhano Mahra is under dispute between the parties. She claimed that it is completely false to state that Dhano Mahra died in the joint estate with Ghutar Mahra. However, Ghutar Mahra couldnot succeed the suit property, after death of Shukar Mahra in the year 1945, which was the co-parcenery property, So, Ghutar Mahra did not acquire any interest in the suit property in joint-ness with Dhano Mahra. She further contended that **Kalbatia @ Bishesharia Devi** was earlier married with one **Bihari Mahra** of Kenmankathi and out of their wed-lock, **Chandni** was begotten and thereafter, her mother Kalbatia @ Bishesharia Devi married with Dhano Mahra and since then Chandni was living with her mother at the house of Dhano Mahra as lag-bate and from Dhano Mahra, there was no issue begotten to said Kalbatia @ Bishesharia Devi. She further contended that previously this Defendant was ready to allow  $\frac{1}{2}$  share to Chandni Devi in the share of Dhano Mahra due to love and affection, as both have spent

their childhood as sisters but she (Chandni Devi) has not any right, title and interest over the property of Dhano Mahra, in any manner. She further contended that fraudulently on 01.05.1994, in the name of this Defendant as Plaintiff, a **Title (partition) Suit No. 33/1994** had been filed in the Court of the learned Settlement Officer at Dumka, through **Chandni Devi** by giving this Defendant false and fraudulent allurements and the said Defendant as being illiterate and rustic lady could not follow her game and put her L.T.I. in the plaint of the said Title (P) Suit No. 33/1994 in which, Chandni Devi became the Defendant No. 1 as well as she also described her as daughter of Dhano Mahra and claimed her  $\frac{1}{6}$ <sup>th</sup> share through the said Defendant as the Plaintiff in the  $\frac{1}{3}$ <sup>rd</sup> share of the deceased Dhano Mahra, being his another daughter with the Plaintiff, as his natural daughter for  $\frac{1}{6}$ <sup>th</sup> share each and having knowledge, this Defendant, left to take any proper step in the **Title (P) Suit No. 33/94** and ultimately, **it was dismissed for default**. She also claimed that the suit properties are joint and has not been partitioned by metes and bounds but it is false that the father of the Plaintiff No. 1 & 2 asked for partition. She claimed that the Plaintiffs have no right, title, possession and interest over the suit properties. So, far the well is concerned, which is described in this para, the same was excavated and constructed by Durga Mahra during his life time. She further claimed that the present suit is bad for mis-joinder and non-joinder of

the parties as well. Hence, claimed that the instant suit is not maintainable on other various grounds and is fit to be dismissed with exemplary cost.

**9. Written statement filed on behalf of the Defendant No. 1 to 3 and 5 to 7 on Dated 18.07.2002:** The Defendants contended that the genealogical table shown in the plaint in para-2 is incomplete and incorrect and given a correct genealogical table hereunder :



They further contended that during the life time of R.T. they were in peaceful cultivating possession of the same and after their death,

lands are under the peaceful possession of the heirs of R.T. Huro Mahra. They further contended that during the last survey settlement of **Mouja: Rohini, Durga Mahra** was alive but at the time of settlement of **Mouja: Raidih**, Durga Mahra died leaving behind his Three sons **Shukar Mahra, Huro Mahra and Dhano Mahra**. Hence, name of Durga Mahra has been recorded in the name of Mouja: Rohini under Khata No. 103 and names of Shukar Mahra and his brothers have been recorded in Mouja: Raidih No. 122 under **Khata No. 44**. They further contended that Huro mahra and his Two brothers, Shukar Mahra and Dhano Mahra were joint in all intent and purposes, constituted joint Hindu family and accordingly, they have been recorded jointly under **Khata No. 44 of Mouja: Raidih No. 122, PS-Jasidih**. They further contended that Dhano Mahra and his brother Shukar Mahra died in the state of joint-ness with Huro Mahra in difference of One or Two years in or about the year 1945-47 . And according to old Hindu Law, as then prevalent all the right and interests of Dhano Mahra and Shukar Mahra devolved upon the surviving brother Huro Mahra. They further contended that the wife of Shukar Mahra also died after a few years of the death of Shukar. Similarly, the 1<sup>st</sup> wife of Dhano Mahra died just after a year of death of Dhano Mahra. Hence, under law neither the daughters of Shukar Mahra, namely, **Pairia Devi and Genia Devi** nor the daughter of Dhano Mahra, namely, **Panwa Mahrain** were entitled to any legal

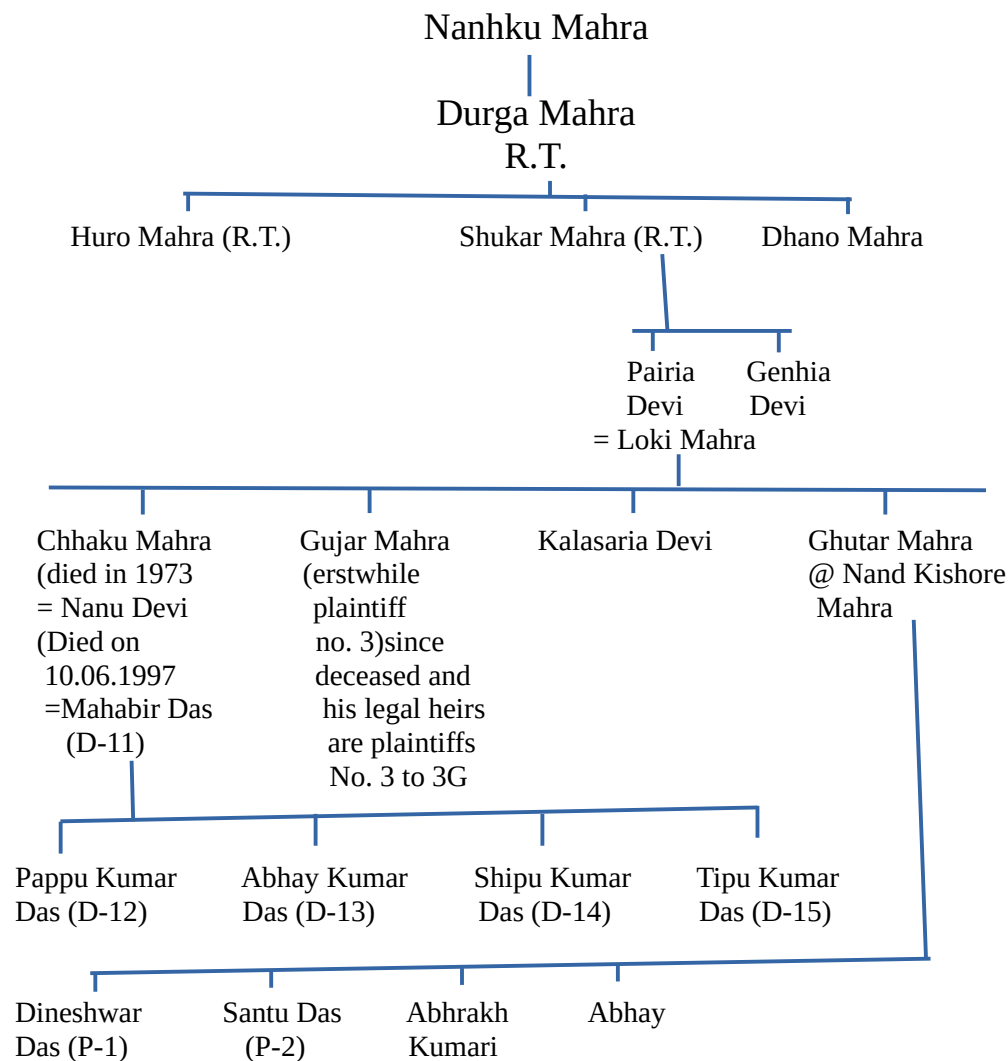
interest in the joint property of their father Shukar Mahra and Dhano Mahra. They further contended that the other Two wives of Dhano Mahra died issueless. They further contended that the lands of **J.B. No. 103** of Mouja: Rohini is the property of Durga Mahra. But he never allotted any land to any of his sons as falsely stated by the Plaintiff. They further contended that Shukar Mahra died remaining in separate family from R.T. Huro Mahra, and it is falsely stated that Shukar Mahra separated since after the last survey settlement. And accordingly, as per old law, his interest whatsoever devolved upon his surviving brother Huro Mahra. They further contended that Dhano Mahra also died in the state of jointness with his brother Huro Mahra and it was Huro Mahra, who got Panwa married at village Ranania with Ketkuli Mahra PS: Chandramandih, District: Jamui (Bihar) and she is residing at her matrimonial house. She never claimed any interest in the suit land nor she had any interest in the same. Hence, claimed that she is not entitled to any interest of the suit property. They further contended that the suit properties are in joint possession. They admitted that a previous suit for partition was dismissed for default **vide T(P) Suit No. 4/98 from** the Court of A.S.O. They further contended that the Plaintiffs are not entitled to any share in the suit land nor they are in possession of the same. So far the pucca well is concerned it has been constructed by Durga Mahara during his life time. They also claimed that the Plaintiffs

have got no cause of action and cause of action shown in the plaint is imaginary. They further claimed that the plaint relates to non-inclusion of certain persons. Besides that there are also other persons who have not been impleaded as parties in this suit and thus the suit is bad for non-joinder of parties. They further contended that the suit is over valued. They also claimed that the suit is barred by law of limitation, estoppels, and acquiescence. And the suit is fit to be dismissed with cost.

**10. Written statement filed on behalf of the Defendant No. 5/a, 5/b, 5/c, 5/d, 5/e & 7, namely, Ishwari Das, Basudeb Das, Binod Das, Kailash Das, Yasmati Devi & Nabin Das on Dated 12.09.2022:** corresponds to the **Written statement filed on behalf of the Defendant No. 7 Nabin Das on Dated 23.01.2023:** The Defendant No. 7, alongwith the aforesaid Defendants **No. 5/a, 5/b, 5/c, 5/d, 5/e** contended and additionally stated that **Bhairo Mahra** died leaving behind his one son and Three daughters, named as **Hari Mahra, Sonia Devi, Menwa Devi and Nunia Devi**, out of that Menwa Devi died issueless as such her entire interest has been devolved upon her surviving brother and sister and this Defendants are the heirs of **Sonia Devi W/o Hari Mahra** and during her life time, she has used to pay proportionate Revenue Rent to Hari Mahra and thereafter Hari Mahra used to pay Revenue Rent to the authority concerned and collected Revenue Rent receipts but unfortunately, the

mother of these Defendants died and they inherited the properties of their mother and these Defendants also cultivated some land in hotch potch manner without any partition. They further contended that this Defendant also wants partition.

**11. Written statement filed on behalf of the Intervenor-Defendant No. 11 to 15, namely, Mahabir Das, Pappu Kumar Das, Abhay Kumar Das, Sipu Kumar Das, Tipu Kumar Das on Dated 05.07.2023:** The Intervenor Defendants contended that they had filed petition U/O 1 rule 10 C.P.C. which was allowed by this learned Court. They further admitted that the parties are Hindus governed by Mitakshara School of Hindu Law and contended that the genealogical table, given in the plaint is incomplete and incorrect and the Plaintiffs have intentionally left to show/mention the ascendants of **Chhaku Mahrat**, so in continuation of the G.T. set forth in the plaint at page-3, the Genealogical table was given by them herein below to clear the relationship of these Defendants with the R.Ts. Durga Mahra his son Shukar Mahra



They further contended that the Shradha Karma Kriya of said Shukar Mahra (R.T.) was also performed and participated by **Chhaku Mahra**, ascendants of these Defendants. They also contended that the suit land and properties are in joint possession of the parties of this suit, including these Defendants, without any partition by metes and bounds and it is an admitted fact that earlier suit was dismissed. They further claimed that these Defendants are entitled to get 1/3<sup>rd</sup> share out of 1/2 share in the suit land and properties and that the Plaintiffs and all the Defendants are entitled for legitimate share in the suit properties.

**12. APPEARANCE OF THE DEFENDANTS:** The **Defendant No. 1 and 2** appeared before the Settlement Court on 23.01.2002 and filed their W.S. on 18.07.2002. The Defendant No. 1 and 2 left taking steps after after filing the W.S. Second set is ie **Defendant No. 4** left taking steps after filing the W.S. on 12.03.2007, after appearing on 09.02.2002. The substituted **Defendants No. 4 to 4 (d)** appeared on 17.05.2019 and filed their W.S. on 07.01.2020. The **Defendant No. 3** is only the contesting party, who appeared on 09.02.2002 and filed his W.S. on 18.07.2002. The **Defendant No. 2, 5, 6 and 7** appeared on 10.04.2002 and filed their W.S. on 18.07.2002. The substituted **Defendants No. 1 (a) to 1(b) and 1 (d)** appeared on 17.05.2019 and filed their W.S. on 17.05.2019. The substituted **Defendants No. 3 (a) to 3 (h) and Defendant No. 1(c)** appeared on 17.07.2023 and filed petition to adopt previous WS filed by their predecessor on 18.07.2002. The substituted **Defendants No. 5 (a) to 5(f)** appeared on 04.01.2022 and filed their W.S. on 12.09.2023. The **Defendants No. 8 and 9 never** appeared. Hence, vide this date, the proceeding against them is set *ex-parte*. The **intervenor- Defendant No. 10** appeared in this suit on Defendant had also filed a petition U/O 1 Rule 10 C.P.C. in this suit on **03.10.2003**, which was allowed by this Court on **12.04.2006** and filed W.S. on 02.11.2006. and **Defendant No. 11 to 15** are supporting the case of the Plaintiffs, who were made parties U/O 1 Rule 10 C.P.C. in this suit on 08.05.2023. and filed

their W.S. on 05.07.2023. The substituted **Defendant No. 7** is also supporting the Plaintiffs' case, who appeared on 20.06.2022 and filed W.S. on 23.01.2023.

**13. ISSUES: On the basis of pleadings of both the parties, following issues have been settled on 11.09.2015:-**

1. Whether the suit as framed is maintainable ?
2. Whether the Plaintiffs has valid cause of action for the present suit ?
3. Whether the suit is bad for non joinder of necessary parties ?
4. Whether the suit is barred by the law of Limitation, Estoppel and Acquiescence ?
5. Whether there is a unity of title and community of possession amongst the parties with respect to the suit properties ?
6. Whether the Plaintiffs is entitled for one half share in the suit property ?
7. Whether the Plaintiff is entitled for any other relief/reliefs ?

**14. PLAINTIFF EVIDENCE:** The Plaintiff Evidence started on 05.07.2023 and was closed on 19.07.2024. Meanwhile, the Plaintiffs had examined altogether 02 witnesses in support of their case, namely,

**1. PW-1 is Dineshwar Das: Plaintiff No.1,**

**2. PW-2 is Santu Das: Plaintiff No. 2,**

The P.W. 1 is also the Plaintiff No.1. He admitted to file this suit against his brothers and cousins against the Defendant Chameli Devi etc. For the suit land located in Mouja: Rohini, Mouja: Raidih against Jamabandi No. 103 i.e. recorded in the Gantzer Survey Khatian in the name of Durga Mahra and Jamabandi No. 44 of Mouja: Raidih is recorded in Gantzer Survey Khatian in the name of Shukar Mahra, Huro Mahra and Dhano Mahra. He further admitted that Durga Mahra died leaving behind his Three sons of Huro Mahra, Shukar Mahra and Dhanu Mahra and all the Three brothers were separated in mess and farms. Shukar Mahra died leaving behind his Two daughters Periya Devi and Geniya Devi. Pariya Devi died leaving behind his Three sons Chhuku Mahra, Gujan Mahra and Ghutar Mahra along with a daughter Kalsariya Devi.. He further admitted that Geniya Devi died leaving behind his Three sons Rameshwar, Bhutka and Nago Mahra, Rameshwar died leaving behind Srikant Mahra, who is the Defendant in this suit. He further admitted that Huro Mahra died leaving behind his Two sons Shankar Mahra and Bhairo Mahra ( theirs heirs and Defendants in this suit) alongwith Two daughters Fudani and Sugiya. He further admitted that Dhano Mahra died leaving behind his Two daughter Panwa Devi and Chedni Devi, who are the Defendants in this suit. He further admitted that

the Plaintiffs have constructed a cemented well in the Plot No. 410/411 of Mauza Rohini. He further admitted that there is no partition of the suit land and the parties are enjoying the possession of the land as per their convenience but due to consistent dispute for the Partition Suit filed in this Court. In his cross examination he admitted that before this suit his father late Ghutar Mahra has also filed a suit against Defendants in which originally Chhedni Devi was not party but later on became party in that suit. He further admitted vide para12 that the aforesaid suit was dismissed and not restored by his father and after death of his father he has filed this suit. He further admitted that in this suit also originally Chhedni Devi was not party but later on became party in this suit. He further admitted that Chedni Devi D/o Dhanu Mahra lives on her paternal land and cultivates it and her father got married twice with Basmatiya and Bishesariya. He further admitted that Basmatiya's daughter Panma Maharain got married in Chakai Ranganiya and Bishesariya's daughter got married to Thakur Mahra, who lives in Chhedni Devi's house as Ghar Jamai. He further admitted that Chhedni has got one son Murli Das and a daughter Bhagwatiya Devi while her daughter died. He further admitted that Murli has got Three sons Barku, Kajal, Chhota, Tulsi Das and the daughter has got married in Julhariya Chandih. In his further cross-examination, he admitted that the disputed property is located in Rohini Mouja: ride, were Chhedni

Devi lives after constructing her house alongwith this witness and Defendants. In para 24 he admitted that in the year 1965, he has got a Notice for patrolling department, in which Bishesariya Devi has also received a Notice and received the compensation amount from patrolium department (para 26). In para 25, he admitted that they have received Three Notices land acquisition officer in which there are lands of Chhedni Devi and Pano Devi. In his further cross-examination vide para 33 and 34 that the disputed property is Ijmail and there are Three parchas while the land is in Two Mauza. In para 44 he admitted that his father Ghutar Mahra was also known as Nand Kishore Mahra. In para 47 he denied to know the date of death of Chhaku Mahra. He further admitted vide para 58 that Chhedni Devi has also filed a case earlier in which he was not the party that was dismissed but he did not file any documents relating to that case.

Now, going through the testimony of P.W.2, who is also **Plaintiff No. 2** has narrated the similar fact as that of P.W.1 and in his cross examination he admitted that being another son of Ghutar Mahra vide para 16 that the name of the daughter of Murli Das son of Chhedni Devi is Lata Devi @ Chameli Devi. In para 19, he admitted that Chhedni Devi w/o Thaur Das are living on her paternal property as Ghar Damad in para 21 he admitted that the Notices from land acquisition officer were received on 14.02.2015, 04.10.2015 and 31.04.2016 in the name of Chhedni Devi and also Notice Dated

16.05.1964 was issued in the name of Bishesariya Devi W/o Dhanu Mahra. In para 23 they admitted that they have also filed a compromise petition Dated 09.12.2021 signed by all the Plaintiffs and Defendants excepts descents of Hari Mahra, hence, the compromise petition was not accepted.

**15. Documentary evidence exhibited by the Plaintiff are as follows :--**

1. **Exhibit. –1:** Voter I D. Card of Ghutar Mahra;
2. **Exhibit- 2: Certificate of Bonded labour;**
3. **Exhibit- 3:** Work order of construction of well in Village:  
Rohini, Tola: Goradeeh;
4. **Exhibit- 4:** Irrigation Insurance Scheme.

Going through the documentary evidences adduced by the plaintiff I find that Exhibit. 1 is the abstract khatiyani of Jamabandi No. 44 Raidih No. 122 Rohini @ Rakudih, Deoghar and the land lord is Ashutosh Deo for old settlement No. 38 2.50 Acres land i.e. recorded in the name of Sukar Mahra, Huro Mahra, Dhano Mahra, all sons of Durga Mahra and the type of the land is Jamabandi Raiyat land. Hence, this is non salable land and this certified copy was issued on 01.10.1997. This Exhibit. also includes the abstract khatiyani of Jamabandi No. 44 Raidih No. 122 Rohini @ Rakudih, Deoghar and the land lord is Ashutosh Deo for old settlement No. 39 1.58 Acres land i.e. recorded in the name of Sukar Mahra, Huro

Mahra, Dhano Mahra, all sons of Durga Mahra and the type of the land is Jamabandi Raiyat land.

The **Exhibit. 2** is the voter I.D. of Ghutar Mahra S/o Lauki Mahra, Exhibit. 2/1 is the bounded labour libration certificate Dated 01.09.1988/27.09.2004 that shows that Ghutar Mahra was the bounded labour of Goradih village Rohini Panchayat. Now, the **Exhibit. 2/2** is work order issued by Milian well scheme in the name of Ghutar Mahra of plot No. 411 of village Goradih scheme No. 24/1990-91 Dated 15.01.1991 issued by Sub Divisional Development Officer, Deoghar now mark- X is the certificate of National agriculture Insurance scheme issued in the name of Ghutar Mahra of Village Goradih Rohini Panchayat. However, this certificate has not been marked as **Exhibit.2/2**.

Now all the documentary evidences adduced by the plaintiff however show that the property of **Jamabandi No. 44** is jointly in the names of Sukar Mahra, Huro Mahra and Dhano Mahra all sons of Durga Mahra and admittedly, Ghutar Mahra is the son of Lauki Mahra, who is apparently resident of village Goradih, Rohini. Now, we will have to analyse the genealogy table to relate Ghutar Mahra and Lauki Mahra to Durga Mahra.

**16. DEFENDANTS EVIDENCE:** The Defendants Evidence ran from 29.07.2024 till 30.07.2025.

**I.** Now the Intervenors- and Substituted Defendants namely,

**Kamdeo Das, Ramu Das and Manju Devi**, the contesting Defendants i.e. **Defendants No. 3A to 3H and 1C** from 29.07.2024 to 30.07.2025 have produced the following Four witnesses in support of their case :

- (a) **I.D.W. 1 Niranjan Verma**, Advocate Clerk;
- (b) **I.D.W-2 Babulal Mahra**, Independent Witness,
- (c) **I.D.W-3 Basudeo Mahra**: Independent Witness and,
- (d) **I.D.W-4 Kamdeo Das**: Substituted Defendant No. 3(B),

I.D.W. 1 is the advocate- clerk. Being the formal-witness, exhibited the Revenue Rent receipt No. JB/41 617433 Dated 29.05.2010 issued in the name of Durga Mahra for the land located in **Jamabandi No. 103** as **Exhibit. A**. In his cross examination, he admitted that during the proceeding of this case this receipt was generated.

**I.D.W.2** admitted that during the proceeding of the suit Chandan Mahra and Hari Mahra died. He further admitted that he has never found Durga Mahra or his sons cultivating or possessing the suit land and it was only cultivated and possessed by the descendants of Hari Mahra and Shukar Mahra including descendants of Chandar Mahra. He has further admitted that he has heard that the Three sons of Durga Mahra, namely, Huro Mahra, Shukar Mahra and Dhani Mahra also have got their land in Raidih Mouja: and the land of Rohini Mouja: is recorded in the name of Durga Mahra in the old

parcha, after which he died and the land of Raidih Mouja: was recorded in the names of these Three brothers and now possessed by descendants of Shankar Mahra and Bhairo Mahra and no other land is possessed by the sons of Durga Mahra, while the claim of the Plaintiff is not valid.

In his cross examination, he admitted that there is his paternal property in Ajan Tola in the name of his father late Chhotelal Mahra and he has got not land in Gouradih i.e. in the name of Durga Mahra.

Now the **I.D.W.3 and I.D.W.4** have narrated the similar fact as I.D.W.2. And the I.D.W.3 admitted additionally by way of his cross examination vide para 54 that the parcha is recorded in the names of Bhairo Das and Hari Das.

**I.D.W.4** admitted that earlier there are Two brothers, those are sons of Ghutar Mahra are the Plaintiffs in this suit and they have earlier filed a **Partition Suit as T(P)S 04 of 1998**, in which the Defendants were also made parties but that suit was dismissed for default and thereafter Two years this suit has been filed in the year 2000 before Survey Court, Dumka and thereafter in the year 2002, this record was received in Deoghar Civil Court. He further admitted that the genealogy shown in the plaint by the Plaintiff is incomplete and false and the genealogy shown by the Defendants No. 1 to 3 and 5 to 7 in their written statement is correct i.e. accepted by these

Defendants. He also admitted that Dhano Mahra and Shukar Mahra died leaving behind her brother Huro Mahra, who was vested with their interest because the wives to Shukar Mahra and Dhano Mahra died within few years of their husband's death and hence, now the descendant of Huro Mahra have got right interest and possession over the suit land. He further admitted that the sisters of Hari Mahra, those are Defendants No. 5 to 7 have surrendered their rights in favour of Hari Mahra but there is no such evidence adduced by the Plaintiffs in this regard. He further admitted that Huro Mahra died before the year 1956 and Shukar Mahra died in between the year 1945 to 1947. Now after Hari Mahra and Chandar Mahra their descendants are coming into possession of the suit land and daughter of Hari Mahra also surrendered their rights in the suit land in favour of their brothers but again this is devoid of any such evidence.

In his cross examination vide para 39, he admitted that the suit land is located in Jamabandi No. 3 Plot No. 410 ( 2.56 decimals), 411 ( 1 Acre 4 decimals) 659 ( 44 decimals) 660 ( 36 decimals) 661 (Three decimals), 767 ( 1 Acre 36 decimals) in Mouja: No. 196 in Rohini Mouja.

**II.** Now the Intervenor- **Defendant No.10** has examined altogether 04 witnesses in support of their case from 07.05.2025 to 11.06.2025, namely,

(e) **DW-1 Shyam Sundar Pandit:** Advocate Clerk,

(f) **DW-2 Rajendra Das:** Independent Witness,

(g) **DW-3 Ajay Das:** Independent Witness,

(h) **DW-4 Murli Dash:** Son of Chhedni Devi: Substituted Defendant,

The D.W. 1 has exhibited the Revenue Rent receipt No. 258484 Dated 18.01.1971 issued in the name Shukar Mahra exhibited as **Exhibit.A/1**, the Revenue Rent receipt No. 4208435 Dated 03.12.1914, issued in the name Shukar Mahra, exhibited as **Exhibit.A/1/1**, Revenue Rent receipt No. 769972 Dated 07.01.1975 issued in the name Shukar Mahra exhibited as **Exhibit.A/1/2**, Revenue Rent receipt No. 003778 Dated 18.01.1971 issued in the name Shukar Mahra exhibited as **Exhibit.A/1/3**. He further admitted that he has exhibited Four receipts.

Now, **D.W.2** admitted that Bishesariya Maharain died in the year 1968 and his husband Dhano Mahra died in the year 1958 and his former wife Basmatiya has got a daughter Panwa Maharian, who died leaving behind her daughter Chhedni Devi and a son Bahadur Mahra, who lives in Chandramandih Ranganiya, Bihar and Chhedni Maharain is living at her paternal place since her birth in Plot No. 668 Mouja: Rohini (Gouradih) and further admitted that the Defendant No. 10 has got cultivated land in Mouja: Rohini and Raidih. In para 10, he further admitted that the Plaintiffs and the Defendants have compromised in this suit, but compromise petition

is not accepted. He further admitted that the Defendant Kamdeo Mahra and his brothers lived in Mouja: Sankari. In his cross examination, he admitted that the Plaintiffs are living in Raidih and Rohini in their own houses since the life time of their ancestors. In his further cross examination, he admitted that because of no partition the disputes took place between both the parties vide para 17. In para 26 and 27, he admitted that Shukar Mahra has got Two daughters Pairiya Devi wife of Lauki Mahra and Ghaniya Devi. Pairiya Devi has got Four issues, Chhaku Mahra, Gujar Mahra, Palsariya Devi and Ghutar Mahto @ Nand Kishore Mahra. He further admitted that Chhaku Mahra died leaving behind a daughter Nunu Devi W/o Mahabir Das in the year 1973 and Nunu Devi died in the year 1997. In para 28, he admitted that Mahabir Das (Defendant No.11) and Nuno Devi have got Four issues (Defendant No. 12 to 15) namely, Pappu Kumar, Abhay Kumar, Siku Kumar and Tiput Kumar Das. In para 29, he admitted that the Defendants No. 11 to 15 are coming into possession of the share of their land. In his further cross examination in para 14 that Chhedni Devi is his aunt.

Now, the D.W.3 has additionally stated that Dhanu Mahra has lived on his ancestral land located in Plot No. 768 area 8 decimal. He further admitted that Chedni Devi wife of Thakur Das have got a daughter, namely, Mohbatiya Devi, who also died and a son Murli Das, who is also living on the property of his maternal

grand father Dhanu Mahra in Plot No. 768 Mouja: Goradih and cultivates over the land in Mouja: Raidih. In para 11, he admitted that he has filed compromise petition in this Court excluding Kamdeo Mahra, hence, it was not succeeded. In para 14, he further admitted that Defendant No. 10 lives in village Gouradih in his ancestral house and the Defendant Kamdeo Mahra lives in Mouja: Sankari P.S. Jasidih. In his further cross examination, he admitted vide para 37 that his land is recorded in the name of Jharu Mahra but denied to file the parcha relating to this land. In his further cross examination that all the parties are coming into the possession of their land as per their convenience.

The D.W.4 admitted that the Plaintiffs are the descendants of Jamabandi Raiyat Shukar Mahra while the Defendants of Jamabandi Raiyat Huro Mahra, Defendant No. 4 and Panwa Devi @ Maharain (His maternal aunt) is the daughter of Dhano Mahra and Chhedni Maharain is daughter of Jamabandi Raiyat Dhano Mahra. He further admitted the fact of dismissal of Partition Suit No. 04 of 1998 that was dismissed on 01.12.1999 on default. In para 6 he admitted that earlier a title Partition Suit No. 33 of 1994 was filed in which his mother was Defendant No. 1 and there was Hari Mahra and Chandar Das as Defendants, that was dismissed for default on 11.09.1995. In para 7, he further admitted that his mother Chhedni Devi was added as party in this suit by the order of the Hon'ble High Court and in this

suit, he filed his written statement on 02.11.2006 and admitted all the facts stated by D.W.1 and D.W.3. He further admitted that a part of this land was acquired by the state Government in the year 2015-16 in which, his mother Chhedni Devi has received a Notice and he has filed the original copies of the Notices in the Court. In para 12, he admitted that except the descendants of the Defendant Hari Mahra, a compromise petition has been filed on 09.12.2021 that could not be accepted by the Court. In his cross examination, he admitted that Nunu Devi daughter of Chhaku Mahara died in the year 1978.

**III.** The **Defendant No.07** has examined from 20.06.2025 to 23.06.2025 only one witness in support of his case, namely, Navin Das.

This witness examined by the **Defendant No. 7 is D.W..5** and also the party in this suit, being son of Bhubneshwar Mahra. He further admitted that Bhairo Mahra is his maternal grand father, who has got one son Hari Mahra and Three daughters Sonia Devi, Menwa Devi and Nonia @ Nuna Devi, who is his mother. He further admitted that sonia Devi has got Four sons, namely, Ishwari Das, Basudeo Das, Binod Das and Kailash Das, alongwith a daughter Jasmati Devi. He further admitted that the disputed land is possessed by them by cultivating as per their convenience and the disputed property is their joint property. In his cross examination vide in para 7, he admitted that the disputed property is recorded in parcha in the

name of Durga Mahra and his sons Huro Mahra, Shukar Mahra and Dhano Mahra. He further admitted that he is the descendants of Huro Mahra including Defendant Kamdeo Mahra. He also narrated the similar fact as that of the witnesses, examined by Defendant No. 10. In para 16 he admitted that there was one sulahnama was filed in this suit but because of objection of the Defendant No. 3 Kamdeo Das, this compromise petition was not accepted in the Court. In para 18 he admitted to be added in this suit as intervenors. He further admitted that the Plaintiffs come from the lineage of Shukar Mahra. He also denied the facts of the written statement filed by the Defendant No. 1 and 3.

**IV. The Defendant No. 11, 12, 13, 14 & 15** have examined only one witness from 11.06.2025 to 16.06.2025 in support of their case, namely, **Mahabir Das as DW5**.

Now, this sole witness DW5 has been examined by the Defendant No. 11 to 15, who is also the **Defendant No. 11**. He further admitted that he is the descendant of Shukar Mahra son of Khatiyani Raiyat Durga Mahra. He further admitted the fact that the suit property has not been partitioned in any Court and is in the joint state. In para 7, he admitted that Shukar Mahra has got Two daughters Pairya Devi and Geniya Devi and Pairya Devi got married to Loki Mahra, and they have got Four issues namely, Chhaku Mahra, Gujar Mahra, Kalsariya Devi and Ghutar Mahra, who are the

**Defendants No. 12 to 15** in this suit. He further admitted that Chhaku Mahra died in the year 1973, leaving behind daughter Nuna Devi, who died on 10.09.1997.

In his cross examination, he also narrated the similar facts as that of the other supporting Defendant Witnesses.

## **17. DOCUMENTARY EVIDENCES ADDUCED BY THE DEFENDANTS:**

### **I. DOCUMENTARY EVIDENCES ADDUCED BY THE**

**Defendant No. 3 :** The Defendant No. 3 has filed the following documents as aforesaid, exhibited in support of his case such as :-

- i. **Exhibit A**– Revenue Rent receipt,
- ii. **Exhibit B**– Certified Copy of the order sheet of **T(P)S Case No. 04 of 1998** passed by A.S.O.
- iii. **Exhibit C**– Certified Copy of order sheet of **T.S. Case No. 157 of 2003**,
- iv. **Exhibit D**– Certified Copy of Parcha of Mouja: Raidih No.122 D.B.No.44,

### **II. DOCUMENTARY EVIDENCES ADDUCED BY THE**

**Defendant No. 7 :** The Defendant No.7 has filed the following documents as aforesaid, exhibited in support of his case such as :-

- v. **Exhibit A/2**– Certified Copy of Judgment of T(P)S Case No. 28 of 1993,
- vi. **Exhibit A/2/1**–Certified Copy of Judgment of Civil Appeal No. 24 of 2017,
- vii. **Exhibit B/2**– Certified Copy of decree sheet of T(P)S Case No. 28 of 1993,

viii. **Exhibit B/2/1**–Certified Copy of decree sheet of Civil Appeal No. 24 of 2017.

**III. DOCUMENTARY EVIDENCES ADDUCED BY THE Defendant No. 10 :** The Defendant No.10 has filed the following documents as aforesaid, exhibited in support of his case such as :-

- ix. **Exhibit A/1**– Revenue Rent receipt No. 258484,
- x. **Exhibit A/1/1**– Revenue Rent receipt No. 4208435,
- xi. **Exhibit A/1/2**– Revenue Rent receipt No. 769972,
- xii. **Exhibit A/1/3**– Revenue Rent receipt No. 003778,
- xiii. **Exhibit B/1**– Certified Copy of Parcha Mauza Raidih No.122, Sl. No. 78,
- xiv. **Exhibit B/1/1**– Certified Copy of Parcha Mauza Raidih No.1344,
- xv. **Exhibit B/1/2**– Certified Copy of Parcha Mauza Rohini No.128,
- xvi. **Exhibit B/1/3**– Certified Copy of Parcha Mauza Rohini No.127,
- xvii. **Exhibit B/1/4**– Certified Copy of Parcha Mauza Rohini No.196,
- xviii. **Exhibit C/1 to C-1/3**– Four copies of Notice issued from the office of the Land Acquisition Officer, Deogharin favour of Most. Pariya, Anghiya etc.
- xix. **Exhibit D/1**– Certified Copy of plaint of T(P)S No. 33/1994,
- xx. **Exhibit E/1 to E-1/1**– Certified Copy of order sheet of T(P)S No. 33/1994 and T(P)S 04 of 1998,
- xxi. **Exhibit F/1** – Certified Copy of W.S. of T(P) S No. 04 of 1998

Now going through the documentary evidences adduced by the Defendants in length, I find that the **Exhibit. A** series i.e. **Exhibit.A/1 to A/1/3** are the Revenue Rent receipts of the years 1967, 1968, 2010, 2014 and 2016 issued in the names of **Durga**

**Mahra and Shukar Mahra** for the land located in Khata No. 103 of Mouja: Rohini and Raidih.

**Exhibit. A/2** is the certified copy of the judgment Dated 12.07.2017 passed by the Ld. Court of Civil Judge Sr. Division No.1 passed in T(P) S 28 of 1993/T(P) S 597 of 1997 filed by Hari Mahra and others against Hakim Mahra and others, that was filed for partition for the schedule B, C and D properties and the same was decrees on contest that was relating to Jamabandi No. 5 Jamabandi No. 39 of P.S. Jasidih Mouza Sankari Ratari Thana No. 229, against which the civil Appeal No. 24 of 2017 was filed and the certified of the judgment Dated 25.11.2024 passed by the Ld. Court of District Judge-IX , Deoghar is cited as Exhibit. A-2/1 by which the judgment passed in T(P) S 597 of 1997 was affirmed and the aforesaid appeal was dismissed. The decree of both the judgment have been cited as Exhibit. B/2 and B/2/1 respectively.

Now, **Exhibit. B** is the order sheet of Assistant Settlement Officer. Court, Deoghar in **T.(P)S 04 of 1998**, filed by Ghutar Mahra against Chandar Mahra by which vide order Dated 09.03.1999 the petition filed by Chedni Devi daughter of Late Dhanu Mahra was allowed vide order Dated 07.04.1999 and the order sheet Dated 01.12.1999 shows that the aforesaid suit was dismissed for default by the concerned Court.

**Exhibit. B/1** series is relating to the certified copy of the

Khatiyan. The **Exhibit. B/1** is the abstract Khatiyan of Jamabandi No. 44, recorded in the name of Raiyat Shukar Mahra, Huro Mahra, Dhano Mahra, all sons of Durga Mahra and the name of the landlord is Aashutosh Dev and the typed of the land is recorded as Jamabandi.

**Exhibit. B/1/1** relates to abstract Khatiyan of **Jamabandi No. 46** of Rohini, Rakhodih, recorded in the name of Raiyat Shukar Mahra, Huro Mahra, Dhano Mahra, all sons of Durga Mahra and the name of the landlord is Aashutosh Dev and the typed of the land is recorded as Jamabandi.

Now **Exhibit.B/1/2 and B1/1/3** are relating to the abstract Khatiyan of **Jambandi No. 103** of Mouja: Rohini Sarath, Deoghar recorded in the name of Durga Mahra with the landlord Ashutosh Dev and the type of the land is Jamabandi land. **Exhibit. B/1/4** recorded in the name of Raiyat Durga Chamar S/o Nanku Chamar, and the name of the landlord is Aashutosh Dev and the type of the land is recorded as Basauri.

**Exhibit.C** is the certified copy of the plaint Dated 16.06.2003 filed by Chhedni Devi against Neman Mahra as Defendant and the order sheet Dated 17.09.2003 passed by the learned Court of **Sub Judge III at Deoghar** in **T.S. No. 151 of 2003** in Chhedni Devi Vs. Neman Mahra. By going through this order, I find that by this order the plaint in the concerned suit was returned u/0 7 rule 11 section 9 and section 151 C.P.C. r/w section 5 of Santhal Pargana Regulation

Act 1872 to file it before appropriate forum as per Santhal Pargana Act, and it also includes the plaint of the suit filed by Chhedni Devi against Neman Mahra Dated 16.06.2003 relating to jamabandi No. 103 of Mouza Rohini as schedule property.

**Exhibit. C/1 to C/1/3** are the Notices and publications, issued by the **Special Land Acquisition Officer** for the Middle irrigation scheme, Deoghar and Additional Land Acquisition Officer, Deoghar.

**Exhibit. C/1** is the Notice issued for **Nawadih distribution scheme** in relation to **Land Acquisition Case No. 7/2014-15** for acquisition of 8.65 Acre land, located in Mouza Rohini-1 Thana No. 196 circle and District- Deoghar against Notification No. 111 Dated 25.04.2015 issued in the names of **Pappu Das S/o Nuna Devi, Panwa Devi, Chanchala Devi, both daughters of Chhaku Mahra, Laxmi Das, Badri Das, Anath Das, All sons of Gujar Das Munka Devi wife of Ghutar Das, Dinesh Das, Santu Das, Umesh Das S/o Ghutar Das, Srikant Das S/o Rameshwar Mahra, Rikhiya Devi, Chandar Mahra S/o Shankar Mahra, Hari Mahra, Saniya Devi, Menwa Devi, Ullu Devi, D/o Bhairav Mahra, Panwa Devi, Chhedni Devi,** both daughters of Dhano Mahra, For the land located in Khata No. 103 plot No. 410 area 0.95 decimals. **Exhibit. C-1/1** is publication of the same case against the aforesaid party vide No. 98/16.10.2015. The **Exhibit.C-1/2** is the publication issued against all the aforesaid parties in relation to Land Acquisition Case No. 05/2014-2015

corresponding to 4.27 Acres land located in **Khata No. 44** plot No. 722 area 0.28 decimal located in Mouza Raidih, Deoghar vide No. 12/08.06.2015 of the Special Land Acquisition Officer, Deoghar.

**Exhibit.C-1/3** is the Notice relating to Case No. 06/Jasi issued in favour of Shankar Mahra S/o Huro Mahra, Bhairav Mahra, Mostt. Bisheshwari W/o Dhano Mahra, Mostt. Pairya, Andhiya D/o Sukar Mahra of Rohini informing that some of Rs. 24 and 09 paise is awarded as compensation u/s 10(1) of Petroleum pipe lines (Acquisition of right of user in land) Act 1962 in reference to aforesaid case and they were called to be present on 26.08.1965.

Exhibit. B is the certified copy of the abastract Khatiyani of Jamabandi No. 44 recorded in the name of Sukar Mahra Huro Mahra and Dhano Mahra, all sons of Dhano Mahra.

Now **Exhibit. D/1** is the certified copy of the plaint in title Partition Suit No. 33 of 1994, filed by Panwa Devi and Bahadur Das against Chhedni Devi, Hari Mahra Chandan Mahra, Chanchala Devi, Panwa Devi, Gujar Mahra, Ghutar Mahra and Srikant Mahra for jamabandi land No. 103 of Mouza Rohini recorded in the name of Durga Mahra and jamabandi No. 44 of Mouza Raidih, recorded jointly in the names of Hari Mahra Sukar Mahra and Dhano Mahra Dated 14.06.1995, **Exhibit. D/2** is the order sheet of Title Partition Suit No. 33/1994 filed by Panwa Devi etc. against Chhedni Devi etc. of the Court of Assistant Settlement Officer, Deoghar Dated 11.05.1994 to

23.05.1995 and **Exhibit. E, E/1** are the order sheets of the aforesaid suit from 28.06.1995 to 11.09.1995 and vide Dated 11.09.1995, the aforesaid suit was dismissed, **Exhibit. E-1/1** is the certified copy of the order sheet Dated 07.04.1999 and 01.12.1999 and by the last order dated 01.12.1999, the suit was dismissed that was filed by Ghutar Mahra and others against Chandar Mahra etc. **Exhibit.F-1** is the certified copy of the written statement of intervenor- defendant Chhedni Devi in the aforesaid suit **T(P)S No. 48 of 1998** Dated 09.06.1999.

#### **18. APPRECIATION OF THE EVIDENCE: ADJUDICATION:**

It is the admitted case that the suit lands and properties as described in **Schedule-I** of the plaint stands recorded exclusively and separately in the name of **Durga Mahra** that relates to the lands under **Jamabandi No. 103** and he had allotted the landed properties of **Schedule-II** of the plaint, hence, these stood recorded jointly in the names of his Three sons, **Shukar Mahra, Huro Mahra and Dhano Mahra** in the parcha of last Mr. Gantzer's Settlement, that is clear by **Exhibit- B-1 Series and Exhibit- D adduced by the supporting Defendants and Exhibit- 1 for Jamabandi No. 44 by the Plaintiffs.**

Now, the Plaintiffs claim that **Shukar Mahra** died remaining in separate family and in his life time, his daughter **Pairia** and her husband **Lauki Mahra** remained in the Estate of her father, without

partition, that Plaintiffs failed to establish. The Plaintiffs also contended that **Dhano Mahra** died **remaining with joint family with Huro Mahra**, leaving behind only daughter **Panwa Mahrain**. They further contended that Dhano Mahra had **Three wives, one Basmatia, another Nunbatia and 3<sup>rd</sup> Kalbatia**, and out of Them, **Nunbatia and Kalbatia died issue-less**. And **Panwa Mahrain** was begotten with **Basmatia**. The Issues of this Panwa Mahrain have been brought on the record as the **Defendant No. 4- Series**.

It is true that earlier the Plaintiffs failed to make the necessary parties as defendants in the present suit but on their own, the left out are brought on the record, so the suit is not bad for the misjoinder or non-joinder of the parties here.

It is also admitted that Pairia had got Threer sons and a daughter Kalsaria, but this Kalsaria is not made still a party in this suit and the reason given by the Plaintiff doesnot seem to be the proper one. Now, as per the **Exhibits-E1, E 1/1, Exhibit: F-1 and Exhibit- B**, her sons, Ghutar Mahra and his brother had filed a **Title Partition Suit No. 04-1998 on 30.05.1998** before the Assistant Settlement Court, Deoghar, in which all the Defendants appeared and filed W.S. but the Plaintiff Ghutar Mahra on account of a cancer disease died on 12.04.2000 and on account of non appearance of Ghutar Mahra and Gujar Mahra, due to disease of Ghutar Mahra, the Title (P) Suit No. 4/98 was **dismissed for default on 01.12.1999**. The Intervenor-

**Defendant No. 10 Chhedni Devi** contended that in T(P) Suit No. 4/98 also, She was not impleaded as a party.

A fact is also brought on record by the Intervenor-**Defendant No. 10 Chhedni Devi** that is clear as per Exhibits- **D1 and E 1**, that her sister **Panwa Devi, the Defendant No. 4** alongwith her son **Bahadur Das** had also filed **T(P) Suit No. 33 of 1994** before the A.S.O., Deoghar against this **Defendant No. 10** and the Plaintiff's father and other Defendants. And that very suit was also admittedly dismissed for default.

The Intervenor-**Defendant No. 10 Chhedni Devi** appeared in this suit U/O 1 Rule 10 C.P.C. on **03.10.2003**, which was allowed by this Court on **12.04.2006**. She further contended that the father of this Defendant Dhano Mahra had Two wives, from his first wife Nunbatia, Panwa had been begotten, who is **Defendant No. 4**, whereas her mother Bisheshwaria Devi was his second wife and after the death of Nunbatia Devi, the father of this Defendant Dhano Mahra died in or about in the year **1960**. She further contended that her mother Bishesharia Devi died in the year **1969**.

Now, the Defendant No. 4 contended that the R.T. namely, **Shukar Mahra died in the year 1945**, while the family was joint as such the right, title and interest devolved upon his Two brothers, namely, Dhano Mahra and Huro Mahra. And the Daughters of Shukar Mahra did not inherit Shukar Mahra's interests, that contention satiates the

mind of the Court.

The plaintiffs contend that said Durga Mahra allotted the lands to his sons but as per the documentary evidences, available on the record during the last survey operation of Mouja: Raidih, Durga Mahra passed away and his Three sons, namely, Huro Mahra, Shukar Mahra and Dhano Mahra were recorded as tenants.

Now, the Defendant No. 4 further claimed that **Chandni Devi, her step sister through her mother Bishesharia @ Kalabati Devi** filed a suit ie **Title (P) Suit No. 33/1994** before Court of Settlement Officer at Dumka, by giving this Defendant fraudulent allurements through this Defendant only, who put her L.T.I. in the plaint of the said in which, Chandni Devi also became the Defendant No. 1, she also described her as daughter of Dhano Mahra, claiming her 1/6<sup>th</sup> share through this Defendant as Plaintiff in the 1/3<sup>rd</sup> share of the deceased Dhano Mahra and having knowledge, this Defendant, left to take any proper step in the Title (P) Suit No. 33/94, therefore it was dismissed for default.

**The Defendant No. 1 to 3 and 5 to 7 contended that the GT given by the Plaintiffs is incomplete.** They further contended that the wife of Shukar Mahra also died after a few years of the death of Shukar. Similarly, the 1<sup>st</sup> wife of Dhano Mahra died just after a year of death of Dhano Mahra. Hence, under law, neither the daughters of Shukar Mahra, namely, **Pairia Devi and Genia Devi** nor the daughter of

Dhano Mahra, namely, **Panwa Mahrain** were entitled to any legal interest in the joint property of their father Shukar Mahra and Dhano Mahra. They further contended that the other Two wives of Dhano Mahra died issueless.

The Plaintiffs claimed that they are entitled to get 1/2 share of the suit properties. But in the instant suit, they are claiming the share of Shukar Mahra but his date of death has never been brought on record by the parties concerned. Now, It is true that his share bifurcates into Two of his daughters but at the same time, the Plaintiffs also failed to show the year or date of death of his daughters, Pairia Devi or Genia Devi. Their date of death will clarify the consequent effect of the Hindu Succession Act, 1956. In absence of that it will be presumed that the property of the estate of Shukar Mahra devolved upon his surviving brothers being coparceners.

Further, there is one more claim by the Plaintiffs that except- the Defendant- 3 Series and Defendant 1(c) all the Defendants are supporting their case but this is not enough to establish the case of the Plaintiffs. Rather the Plaintiff and the Defendants have admitted the ownership of the sons of Durga Mahra but thereafter the notch of Shukar Mahra is under dispute, that could not tilt in favour of the Plaintiffs.

Moreover, the Plaintiffs claim that their names have already been included in the property records, that is why they were served with

the summons in the aforesaid Land Acquisition Cases, but that instead of supporting the case of the Plaintiffs are deviating the mind of the Court towards the fact that what is the present status of the acquired land and how much of the suit land has been acquired for the Petroleum Pipe-line or otherwise. That both the parties to bring over the record. Neither any proof of correct genealogy nor any proof of the deaths of the recorded tenants have been brought on record by the Plaintiffs.

"The rule of production of documents by a partry, on which it relies, was reaffirmed by the Hon'ble Supreme Court in **Rameshwar Singh v. Bajit Lal [AIR 1929 PC 95]**, and was approved by the Hon'ble Supreme Court in **Riralal v. Badkulal [AIR 1953 SC 225]**. These decisions lay down that it is the duty of a party to a suit in possession of important documents to produce them in Court, and if that duty is not discharged the Court may as well draw the presumption which it is entitled to do under section 114 of the Evidence Act.

The proposition of Hon'ble Supreme Court of India in **M. Siddiqui v. A. Ramalingam, AIR 2011 SC 1492** directs that the Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. More so, the court should have borne in mind

that the admissibility of a document or contents thereof may not necessarily lead to drawing any inference unless the contents thereof have same probative value.

They further contend the issue of *Res-judicata*, however there is no relevance to discuss the same, as the Plaintiffs failed to prove their case on their own. However, for the sake of deciding the Issues, it is analysed that it is well settled that the principle of *res judicata* is only a mode of estoppel to prevent a party bound by an earlier decision of a Competent Court from raising the same contentions in subsequent proceedings. There is no want of jurisdiction for the reason only of an earlier decision of a court of competent jurisdiction to decide the question raised before it. If a plea of *res judicata* available to the parties is not raised, it is the duty of the court to decide the question properly brought up for decision by it. In *K.Modi v. K.N.Modi*, reported in (1998) 3 SCC 573, the Hon'ble Apex Court has held in paragraph number 44 as follows:

"44. ... The reagitation may or may not be barred as *res judicata*. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the

court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted."

Now, Explanation (IV) to Section 11 of the Civil Procedure Code postulates that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Order II, Rule (2) of the Code of Civil Procedure provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action and if he omits to sue in respect of, or intentionally relinquishes, any portion of his claim, then he shall not afterward sue in respect of the portion, so omitted or relinquished.

The test of res judicata is the identity of title in Two litigations and not the identity of the actual property involved in the Two cases, held by the Hon'ble Apex Court in ***Rajlakshmi v. Banmali, AIR 1953 SC 33 and Ram Govinda v. Smt. H. Bhakta, AIR 1971 SC 664***. It was also held that both Courts must be of concurrent jurisdiction as held, both the previous and the subsequent Courts must be Courts of concurrent jurisdiction and this concurrency of jurisdiction must be as regards the pecuniary limits as well as the subject matter ***P. M.***

***Karade v. A. Bokil, AIR 1971 SC 2228 and Mst. Gulab Bai v. Manphool Bai, AIR 1962 SC 214.***

It is equally true that the correctness of a Judgment of a Court cannot be impeached ordinarily but it must be shown in Order to get rid of it, that the value of the Judgment, assuming to be correct, is destroyed by collateral or extraneous fraud in the obtaining of it. The unsuccessful party cannot be allowed a fresh suit nor to make a fresh attempt in Order to show that the evidence which was insisted on by his opponent as true was in reality false, and to characterise such insistence as fraud in obtaining the Judgment. Due to aforesaid discussions, this suit is certainly barred by the principles of waiver, estoppel and acquiescence.

Now I find after perusal all the documentary and oral evidences adduced by the plaintiffs and the supporting defendants as well as contesting defendants I find that the main contentions of the contesting party is that the reliefs sought in this suit for partition have already been dealt by plaintiff and defendant no.10 Chhedni Devi several times by way of T(P) S 28 of 1993, T(P) S 33 of 1994 and T(P) S 04 of 1998, but going through Ext.A-2 and E, E 1/1, F-1 and B, I find that T.(P)S 04 of 1998, was however filed by Ghutar Mahra against Chandar Mahra but vide order Dated 01.12.1999, the aforesaid suit was dismissed for default by the concerned Court.

Now, there is another **Exhibit.C** that shows vide order Dated 17.09.2003 passed by the learned Court of **Sub Judge III at Deoghar** in **T.S. No. 151 of 2003** in Chhedni Devi Vs. Neman Mahra. that the concerned plaint of the suit was returned u/0 7 rule 11 section 9 and section 151 C.P.C. r/w section 5 of Santhal Pargana Regulation Act 1872 to file it before appropriate forum as per Santhal Pargana Act.

Thereafter, as per the evidences available on the record, it is apparent vide **Exhibit. D/1, D/2, Exhibit. E, E/1 and Exhibit.F-1 that a Title Partition Suit No. 33 of 1994**, was also filed by Panwa Devi and Bahadur Das against Chhedni Devi, Hari Mahra Chandan Mahra, Chanchala Devi, Panwa Devi, Gujar Mahra, Ghutar Mahra and Srikant Mahra against Chandar Mahra etc. for Jamabandi land No. 103 of Mouza Rohini recorded in the name of Durga Mahra and **Jamabandi No. 44** of Mouza Raidih, recorded jointly in the names of Hari Mahra, Sukar Mahra and Dhano Mahra, in which, lastly vide order dated 01.12.1999, the suit was dismissed for default only.

But, her only the Exhibit- C is rejected under Order- 7 Rule- 11 CPC, while other two are Dismissed for default. However, in TPS 28/1993 ie Exbit- A-2 and Exhibit- B2, the parties are different but of the same lineage and the partition was alloewed by the Court, and in this suit some of the descendants of the parties of that suit are parties.

**19. FINDINGS ON THE ISSUES:** After carefully examining the testimonies of Five oral and Three documentary evidences given by the Plaintiff and No. oral and documentary evidences, adduced on behalf of the Defendants, I find that it is trite law that the quality of evidence matters and not the Quantity of the evidence.

In partition cases, it is a settled principle of law that proof of existence of the joint family does not lead to the presumption that the property held by any member of the family is joint and the burden lies upon the person, who asserts the same to be the joint family property. But, where it could be established by the proper evidence that the joint family possessed some joint properties which from its nature and relative value may have formed the nucleus, from which the property in question may have been acquired, then burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the joint family property.

The Partition is a re-distribution or adjustment of pre-existing rights, among co-owners/ coparceners, resulting in a division of lands or other properties jointly held by them, into different lots or portions and delivery thereof to the respective shareholders. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty. In partition the co-ownership is converted into individual ownership. The purpose of a suit for partition or separation of a share is Two fold: one declaration of

Plaintiff's share in the suit properties under the preliminary decree, and the other is division of his share by metes and bounds which would take place under the final decree. A preliminary decree for partition only identifies the properties to be subjected to partition, defines and declares the shares/rights of the parties. The prayer relating to actual division by metes and bounds and allotment is left for being completed under the final decree proceedings.

Also, there is eruption of the jointness of property, the moment the suit land is said to be sold by any of the parties, when even jointness couldnot be established. Hence, there is a severance of status, and there is No jointness of property, unity of title or possession for establishing a cause for the partition suit.

Hence, the conduct of the Plaintiffs in not taking recourse to legal action for over a period of more than 10 years of the earlier filed suit is considerable.

**20.** Now, in the present case at hand, the following issues are decided accordingly:

**1. Whether the suit as framed is maintainable ?**

The suit is not maintainable in the present form as the proper course of action has not been adopted by the Plaintiffs of this Case for the vindication of their rights. Thereafter, as per the evidence given by the Plaintiff, they denied to have amicable

partition amongst all the co sharers as per their share but it could not be proved by the Plaintiffs.

**2. Whether the Plaintiffs has valid cause of action for the present suit ?**

No, the suit is not maintainable in the present form, due to misconceived cause of action, as discussed above, that is collusively created by the Plaintiffs.

It is a settled principle of law that cause of action is the bundle of facts which are necessary for the just adjudication of the dispute. In view of the discussion made under the other issues it becomes clear that the cause of action shown by the Plaintiffs for filling of this suit is just and proper. And as such it could be said that the Plaintiff has got valid cause of action for filing the suit and the suit framed is maintainable. The plea taken by the Plaintiffs is to create an illusory cause of action, so as to overcome the lacunae of jurisdiction. The plea raised is rejected as being meritless and devoid of any truth.

**3. Whether the suit is bad for non joinder of necessary parties?**

Yes.

**4. Whether the suit is barred by the law of Limitation, Estoppel and Acquiescence ?**

The Periods of Limitation for the Suits relating to immovable property is provided under the Limitation Act. The Article 27

of *The Limitation Act, 1963 provides for the* Extinguishment of right to property and lays down that at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. Moreover, the duration of filing any suit for Title or possession for immovable property or any interest therein based on title is Twelve Years (when the possession of the Defendants becomes adverse to the Plaintiff). But here the claim of the Plaintiffs is hopelessly time barred, as they didnot proceeed for setting aside the order of Dismissal in TPS 33-1994 or TPS- 4- 1998 under Order 9 Rule- 13 C.P.C. rather tried to manipulate the date of demanding partition. Also, by way of Estoppel the Plaintiff are precluded to claim the suit property by virtue of the Revenue Records, also exhibited by the Plaintiffs in this case. Hence, this Issue is decided in Negative against the Plaintiffs.

**5. Whether there is a unity of title and community of possession amongst the parties with respect to the suit properties ?**

No, as discussed above.

**6. Whether the Plaintiffs is entitled for one half share in the suit property ?**

No, as discussed above.

**7. Whether the Plaintiff is entitled for any other relief/reliefs ?**

Consequently decided in Negative against the Plaintiffs.

**21.** Henceforth, The Court has meticulously analyzed each and every aspect of the matter and after analyzing the materials, available on the record and hearing both the parties, the findings arrived at, is that, the Plaintiff has sufficiently succeeded to establish his right, title or interest over the Schedule A property. **Hence, it is hereby.....**

**ORDERED**

**That the Suit be and the same is hereby Dismissed on contest without cost against the Plaintiff. The parties to the suit shall bear their own costs. Let a Decree of Dismissal be prepared accordingly.**

**(Dictated & Corrected by me)**

**Sd/-**

**(Divya Mishra)**

Civil Judge (Sr. Div.)-II  
Deoghar, Dt: 02.08.2025  
J.O. CODE : JH00588.

**(Pronounced by me)**

**Sd/-**

**(Divya Mishra)**

Civil Judge (Sr. Div.)-II  
Deoghar, Dt: 02.08.2025  
J.O. CODE : JH00588