



2026:CGHC:4151-DB

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
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AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 03/12/2025

Judgment Delivered on : 23/01/2026

FA No. 17 of 2024

1 - Dayamati W/o Edward Ekka, Aged About 67 Years ,R/o Village Mopka, Tehsil and District Bilaspur (C.G.) (Defendant No.1)

--- Appellant

versus

1 - Barnabas Lakda S/o Pelus Lakda, Aged About 65 Years, R/o Quarter No. Hig 04, Sada Colony Jamnipali Tehsil Kathghora, District Korba (C.G.) (Plaintiff No.1)

2 - Athanas Toppo S/o Shri Johan Toppo, Aged About 61 Years, R/o House No. Hig 506 Sada Colony Jamnipali Tehsil Kathghora, District Korba (C.G.) (Plaintiff No.2)



3 - Pascal Minj S/o Shri Paulus Minj, Aged About 62 Years R/o House No.45 MIG, Pushpa Vihar RSS Nagar District Korba (C.G.) (Plaintiff No.3)

4 - Francis Lakda S/o Alloys Lakda Aged About 77 Years R/o Village Amdihah Post Tapkara, Tehsil Kunkuri, District Jashpur (C.G.) (Plaintiff No.4)

5 - Gajanan Rasad Banjare S/o Millu Ram Banjare Aged About 37 Years R/o Ward No.15 Neemchabutara, Village Karahi, Tehsil Jaijaipur, District Janjgir-Champa (C.G.) (Defendant No.2)

6 - Krishna Kumar Suryawanshi S/o Jagdish Prasad Aged About 42 Years R/o Pali Tehsil Janjgir, District Janjgir Champa (C.G.) (Defendant No.3)

7 - Trilokchand Miri S/o Milapchand Miri Aged About 46 Years R/o Lachanpur, Tehsil Janjgir, District Janjgir Champa (C.G.) (Defendant No.4)

8 - Parasram Sahu S/o Mahettar Sahu Aged About 49 Years R/o Railway Line, Bhojpur Champa, Tehsil Champa, District Janjgir Champa (C.G.) (Defendant No.5)

9 - Bindram Koshle S/o Pitambar Prasad Aged About 47 Years R/o Lachanpur, Tehsil Janjgir, District Janjgir Champa (C.G.) (Defendant No.6)

10 - Mulchand Tarakh S/o Ganesh Ram Aged About 46 Years R/o Ward No.2 Aamgaon Tehsil Jaijaipur, District Janjgir Champa (C.G.) (Defendant No.7)

11 - Vedprakash Kaushik S/o Bhaghwat Kaushik Aged About 35 Years R/o Village Kosmanda Tehsil Champa, District Janjgir Champa (C.G.) (Defendant No.8)

12 - State of Chhattisgarh Through Collector Janjgir Champa (C.G.) (Defendant No.9)

--- Respondents

FA No. 28 of 2024

1 - Gajanan Prasad Banjare S/o Millu Ram Banjare Aged About 37 Years R/o Ward No. 15 Neemchabutara, Village Karahi, Tehsil Jaijaipur, District : Janjgir-Champa, Chhattisgarh (Defendant



No.2)

2 - Krishna Kumar Suryawanshi S/o Jagdish Prasad Aged About 42 Years R/o Pali Tehsil Janjgir, District : Janjgir-Champa, Chhattisgarh (**Defendant No.3**)

3 - Trilokchand Miri S/o Milapchand Miri Aged About 46 Years R/o Lachanpur, Tehsil Janjgir, District : Janjgir-Champa, Chhattisgarh (**Defendant No.4**)

4 - Parasram Sahu S/o Mahettar Sahu Aged About 49 Years R/o Railway Line, Bhojpur Champa, Tehsil Champa, District : Janjgir-Champa, Chhattisgarh (**Defendant No.5**)

5 - Bindram Koshle S/o Pitambar Prasad Aged About 47 Years R/o Lachanpur, Tehsil Janjgir, District : Janjgir-Champa, Chhattisgarh (**Defendant No.6**)

6 - Mulchand Tarakh S/o Ganesh Ram Aged About 46 Years R/o Ward No. 2 Aamgaon Tehsil Jaijaipur, District : Janjgir-Champa, Chhattisgarh (**Defendant No.7**)

7 - Vedprakash Kaushik S/o Bhaghwat Kaushik Aged About 35 Years R/o Village Kosmanda Tehsil Champa, District : Janjgir-Champa, Chhattisgarh (**Defendant No.8**)

---Appellants

Versus

1 - Barnabas Lakda S/o Pelus Lakda Aged About 65 Years R/o Quarter No. H I G 04 Sada Colony Jamnipali Tehsild Kathghora, District : Korba, Chhattisgarh (**Plaintiff No.1**)

2 - Athanas Toppo S/o Shri Johan Toppo Aged About 61 Years R/o House No. H I G 506 Sada Colony Jamnipali Tehsild Kathghora, District : Korba, Chhattisgarh (**Plaintiff No.2**)

3 - Pascal Minj S/o Shri Paulus Minj Aged About 62 Years R/o House No. H I G 45 M I G, Pushpa Vihar Rss Nagar, District : Korba, Chhattisgarh (**Plaintiff No.3**)

4 - Francis Lakda S/o Allois Lakda Aged About 77 Years R/o Village Amdihah Post Tapkara, Tehsil Kunkuri, District : Jashpur, Chhattisgarh (**Plaintiff No.4**)

5 - Dayamati W/o Edward Ekka Aged About 67 Years R/o Village Mopka Tehsil And District Bilaspur, Chhattisgarh.

**(Respondent/Defendant No.1)**

6 - State Of C.G. Through Collector, District : Janjgir-Champa, Chhattisgarh **(Defendant No.9)**

--- Respondents

For Appellants	:	Mr. Manoj Paranjape, Sr. Advocate with Mr. Arpan Verma, Advocate.
For Respondents	:	Mr. Rajeev Shrivastava, Sr. Advocate with Ms. Anu Mishra, Advocate.
For Res./State	:	Mr. Devesh G. Kela, P.L.

**D.B. : Hon'ble Smt Justice Rajani Dubey &
Hon'ble Shri Justice Amitendra Kishore Prasad.**

(C A V Judgment)**Per Rajani Dubey, J.**

1. Since, both the aforesaid first appeals arise out the common judgment and decree dated 16.10.2023, they are being heard together and decided by this common judgment.
2. F.A. No.17/2024 has been filed by the Defendant No.1/appellant herein and FA. No.28/2024 has been filed by the Defendant Nos. 2 to 8/appellants herein being aggrieved by the judgment and decree dated 16.10.2023 passed by the learned Second Additional District Judge, Janjgir-Champa, District Janjgir-Champa (C.G.), in Civil Suit No.07A/2021, whereby the suit filed by the



plaintiffs/respondent Nos. 1 to 4 herein in both the aforesaid first appeals was partly allowed holding that the sale deeds executed by defendant No.1 in favour of defendant Nos. 2 to 8 are not null and void & further held that the plaintiffs/respondent Nos. 1 to 4 herein are entitled for the vacant possession of land after demolition of the superstructure. The Plaintiffs/respondent Nos. 1 to 4 herein have also filed cross appeal for cancellation of sale deeds of defendant Nos.1. The parties to the aforesaid appeals shall be referred herein as per their description before the learned Trial Court.

3. Brief facts of the case are that the plaintiffs had filed the civil suit for declaration of sale deeds executed by Defendant No.1 in favour of defendant Nos. 2 to 8 as null and void & vacant possession of the suit lands after demolition of the superstructure to the effect that they are the Bhumiswamis with full ownership rights of the suit property situated at Village Champa, Patwari Halka No. 4, Tahsil Champa, District Janjgir–Champa. Plaintiff No. 1 is the owner of land bearing Khasra No. 1485/15 admeasuring 0.20 acre; Plaintiff No. 2 is the owner of land bearing Khasra No. 1485/16 admeasuring 0.20 acre; Plaintiff No. 3 is the owner of land bearing Khasra No. 1485/17 admeasuring 0.20 acre;



and Plaintiff No. 4 is the owner of land bearing Khasra No. 1485/19 admeasuring 0.10 acre, which have been specifically described in Schedule "A" appended to the plaint. It was pleaded that Schedule "A" is accompanied by a map prepared on the basis of the map issued by the Patwari for the purposes of execution of the sale deeds, wherein the boundaries of the suit property and its location on the spot have been clearly demarcated. The plaintiffs had purchased the suit land from Omprakash through registered sale deeds, and subsequent to the purchase, the land was diverted for residential purpose. After mutation proceedings, the plaintiffs were allotted sub-divided Khasra numbers out of Khasra No. 1485. Defendant No. 1 had also purchased land admeasuring 0.31 acre out of Khasra No. 1485/1 from Omprakash Dewangan for a consideration of Rs. 19,000/- by a registered sale deed dated 17.06.1994. After mutation, the said land came to be recorded as Khasra No. 1485/18 admeasuring 0.31 acre. It was further pleaded that Defendant No. 1 subsequently sold the land bearing Khasra No. 1485/18 area 0.31 acres by executing registered sale deeds in favour of several persons. Upon obtaining information from the office of the Sub-Registrar, Champa, the plaintiffs came to know that Defendant No. 1



sold portions of Khasra No. 1485/18 to Defendant No. 2 admeasuring 202.60 square meters, to Defendant No. 3 admeasuring 245.12 square meters, to Defendant No. 4 admeasuring 121.56 square meters, to Defendant No. 5 admeasuring 162.08 square meters, to Defendant No. 6 admeasuring 202.60 square meters, to Defendant No. 7 admeasuring 202.60 square meters, and to Defendant No. 8 admeasuring 121.56 square meters. It was further pleaded in the plaint that while executing the aforesaid sale deeds, Defendant No. 1 wrongfully delivered possession of the plaintiffs' land, over which the plaintiffs have title and possession, to Defendants No. 2 to 8, and the said defendants have commenced construction over the land described in Schedule "A" to the plaint. It was pleaded that in all the sale deeds executed by Defendant No. 1, the boundaries of the plaintiffs' land have been erroneously shown. Defendant No. 1 had no right, title, or interest in the plaintiffs' land and, therefore, no authority to transfer the same. The plaintiffs were not parties or executants to the said sale deeds. It was further pleaded that the sale deeds executed in favour of Defendants No. 2 to 8, in so far as they relate to or affect the plaintiffs' land, are null and void, having been executed on the basis of incorrect boundaries.



The defendants have no lawful right to interfere with the peaceful possession and enjoyment of the plaintiffs over the suit property. Therefore, the plaintiffs filed a civil suit for relief of declaration and injunction.

4. The defendant No.1 filed his written statement with the averments that the plaintiffs and Defendant No. 1 have close familial relations. It was pleaded that at the instance and persuasion of the plaintiffs, a joint agreement to sell dated 08.05.2016 was executed between the plaintiffs and Defendant No. 1 for sale of the suit land. Pursuant thereto, the son of Defendant No. 1, namely Abhishek Ekka, paid an advance amount of Rs.1,00,000/- to the plaintiffs and thereafter made further payments from time to time by transferring amounts to the plaintiffs' bank accounts. The payments were made through cash, NEFT, and cheque. It was further averred that with the consent of the plaintiffs, the son of Defendant No. 1, being the beneficiary under the agreement to sell dated 08.05.2016, undertook development work by levelling the suit land by transporting the soil from other location. For the purpose of access and transportation, a pathway was constructed by laying soil, on the basis of oral consent of adjoining landholders, and an amount of approximately Rs.17,00,000/- was incurred



towards such development. According to Defendant No. 1, he and his son had incurred an expenditure exceeding Rs. 25,00,000/- on the suit land. It was pleaded that with the consent of the plaintiffs, the suit land as well as the land belonging to Defendant No. 1 was sold to Defendants No. 2 to 8. However, after completion of the leveling and development work, the plaintiffs, motivated by greed, instituted the present suit on false and untenable grounds. It was further pleaded that when the son of Defendant No. 1 issued a notice calling upon the plaintiffs to perform their obligations under the agreement to sell dated 08.05.2016, the plaintiffs submitted a reply on false and frivolous grounds. The plaintiffs had full knowledge of the construction of residential houses and the manner in which construction was being carried out by Defendants No. 2 to 8 at the suit site from the dates of sale. It was asserted that upon execution of the agreement to sell dated 08.05.2016, the plaintiffs divested themselves of their rights and possession and are, bound by the terms of the agreement. It was further pleaded that the plaintiffs never raised any objection to the construction activities undertaken by the defendants. The original Khasra No. 1485 had not been subjected to map bifurcation at the time of purchase by the



plaintiffs in the year 1994, nor has such partition been carried out till date. The plaintiffs did not file any application before the Tahsildar, Champa, seeking demarcation or partition of the land. Defendant No. 1 has further contended that the maps filed by the plaintiffs in Schedule “A” and Schedule “B” are misleading and contrary to law. It was also pleaded that the suit has not been properly valued and that adequate court fees have not been paid. On these grounds, it was thus contended that the suit, being founded on false premises, is liable to be dismissed.

5. The Defendants No. 2 to 8 have not filed any written statement and defendant No.9 – the State of C.G. was ex-parte.
6. The learned Trial Court, after appreciating oral and documentary evidence on record, partly decreed the suit of the plaintiff holding the sale deeds executed by the defendant No.1 in favour of defendant Nos. 2 to 8 are not null and void & the plaintiffs are entitled for vacant possession of the suit land after demolishing the superstructure. Hence, the aforesaid appeals by the respective defendants.
7. Mr. Manoj Paranjape, learned Sr. Advocate appearing for respective defendants/appellants herein in both the



aforesaid appeals submits that the impugned judgment and decree are illegal, erroneous, and contrary to the settled principles of law. It was contended that the learned trial Court failed to appreciate the oral as well as documentary evidence available on record in its proper perspective, which resulted in perverse findings and an unsustainable decree. The plaintiffs have utterly failed to discharge the burden of proof cast upon them and did not lead cogent or reliable evidence in support of their alleged claim. Learned counsel also argued that the learned Trial Court ignored the evidence adduced by Defendant No. 1, including the examination-in-chief and cross-examination of the plaintiffs and their witnesses, which clearly probalised the defence case. According to the defendants/appellants, proper appreciation of such evidence would have necessarily resulted in dismissal of the suit. It was also urged that the learned trial Court failed to consider that the suit was barred by limitation and, therefore, not maintainable. Additionally, the suit was liable to be dismissed for want of material particulars as mandated under Order VII of the Code of Civil Procedure, a defect which goes to the root of the matter. Learned counsel further submitted that the trial Court itself recorded a finding that the plaintiffs and Defendant No. 1



had purchased different parcels of land from one Omprakash. It was contended that once such a finding was recorded, the trial Court erred in granting relief in favour of the plaintiffs. It was also submitted that Defendant Nos. 2 to 8 had purchased the land from Defendant No. 1, were delivered possession, and had raised constructions thereon. In such circumstances, the suit filed by the plaintiffs was not maintainable. It was next contended that the learned trial Court failed to appreciate that the plaintiffs did not properly value the suit and thereby committed a serious illegality. The plaintiffs also failed to establish their title over the subject land, which was a sine qua non for grant of the reliefs claimed. It was further submitted that the suit was not properly valued for the relief of demolition of the superstructure, nor was it properly valued for the relief of possession. Adequate court fees were not paid, yet the learned trial Court illegally granted the relief of possession. Learned counsel for the appellants also argued that the relief of possession was never specifically claimed in the plaint and no court fee or stamp duty was paid for the said relief. Therefore, in view of the guidelines of Hon'ble Supreme Court, a relief not specifically claimed could not have been granted. It was further contended that the



learned trial Court exceeded its jurisdiction in passing the impugned judgment and decree. The suit, having been filed by improperly clubbing multiple causes of action, was not maintainable, and yet the trial Court committed a grave illegality in decreeing the same. Learned counsel also submitted that in the absence of specific pleadings and corresponding prayers, the evidence adduced by the plaintiffs could not have been legally appreciated or relied upon. The dispute essentially pertained to the identity of the property, and without adjudicating upon the said issue, the decree passed by the trial Court is unsustainable in law.

8. In support of his submission, learned Sr. Advocate placed reliance on the decisions of Hon'ble Apex Court in the matter of **Madan Lal L. Raja Ram & Others Vs. Munshi Datu and Ors.** reported in **AIR 1956 PEPSU 80**, **Pratibha Singh & Another Vs. Shanti Devi Prasad and Another** reported in **(2003) 2 SCC 330 : 2002 SCC OnLine SC 1136**, **Rajiv Ghosh Vs. Staya Narayan Jaiswal** reported in **2025 SCC OnLine SC 751**, judgment of High Court of Maharashtra in the matter of **Paikanna Vithoba Mamidwar and Another Vs. Laxminarayan Sukhdeo Dalya and Another** reported in **1979 Mh.L.J. 149**, **Laxman Singh s/o Meharban Singh Vs. Jagannath s/o Mansaram** reported



in **2000(1) M.P.L.J. 79**, judgment of High Court of Madhya Pradesh, Gwalior Bench in **Kanhaiyalal Vs. Keshodas** reported in **1960 SCC OnLine MP 134 : AIR 1961 MP 46** and judgment dated **25.01.2019 of this Court** passed in **S.A. No.726/2003 (In the matter of Radhey Shyam Vs. Shankar Lal Gupta & Anr.)**.

9. Learned Senior Advocate Shri Rajeev Shrivastava, appearing on behalf of the plaintiffs/respondent Nos. 1 to 4, supported the impugned judgment and decree and submitted that Defendant No. 1, in the written statement, has neither disputed the map nor the description of the suit property as mentioned in the plaint. On the contrary, Defendant No. 1 has admitted the sale of land belonging to the plaintiffs. It was the defence of Defendant No. 1 that the land was sold after execution of an agreement and with the knowledge of the plaintiffs. In view of such categorical admissions made in the written statement, no further proof was required to be adduced by the plaintiffs. It was further pointed out that the alleged agreement relied upon by Defendant No. 1 was never produced before the learned Trial Court.
10. Learned Senior Advocate further submitted that the plaintiffs had filed an application before the Tahsildar seeking



correction of the map, which was allowed by order dated 26.07.2021 (Ex.P-34). In the said order, it was specifically observed that by playing fraud, incorrect maps and boundaries were shown in the sale deeds executed by Defendant No. 1 in favour of Defendant Nos. 2 to 8. The said order dated 26.07.2021 has not been challenged or set aside by any competent authority and, therefore, has attained finality and is binding upon the defendants, in view of the law laid down by the Hon'ble Supreme Court in (1996) 1 SCC 435.

11. It was also submitted that Defendant No. 1 did not enter the witness box to prove the defence set up in the written statement and did not file any documentary evidence in support of the said contentions. On the other hand, Defendant Nos. 2 to 8 did not even file their written statements. Such conduct on the part of the defendants, according to learned Senior Advocate, clearly establishes that there was no material available with them to rebut the case of the plaintiffs, and therefore, the evidence led by the plaintiffs deserved acceptance. Learned Senior Advocate, however, submitted that the learned Trial Court committed an error in not granting complete relief to the plaintiffs.
12. It was further submitted that the plaintiffs/respondent Nos. 1



to 4 in both the appeals have filed cross-objections challenging the finding of the learned Trial Court insofar as it declined to declare the sale deeds executed by Defendant No. 1 in favour of Defendant Nos. 2 to 8 as null and void. It was thus argued that the description of the suit property has been given by the plaintiffs in the plaint averment in the Schedule attached with the plaint, which was never denied by the defendants, and in fact, defendant No.1 has admitted the statement and description of the property, therefore, in view of the specific admissions made by Defendant No. 1 and the order dated 26.07.2021 (Ex.P-34) relating to correction of the map, which has not been challenged before any competent Court, the objection related to the identity of the land is not maintainable. As such, both the appeals filed by the defendants are liable to be dismissed and cross-objection is liable to be allowed.

13. In support of his submission, learned Counsel placed reliance on the decision of Hon'ble Apex Court in the matter of **Chowdamma (D) by LR and Another Vs. Venkatappa (D) by LRs and Another** reported in **2025 LiveLaw (SC) 838, Arulmigu Chokkanatha Swamy Koil Trust Vs. Chandran** reported in **(2017) 3 SCC 702, State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth**



reported in (1996) 1 SCC 435 and Thangam Vs. Navamani Ammal reported in (2024) 4 SCC 247.

14. We have heard learned counsel for the parties and perused the material available on record.
15. It was an admitted position before the learned Trial Court that the plaintiffs and defendant No.1 Dayamati in FA No.17/2024, out of khasra No.1485/1, had purchased different area of land from one Omprakash Dewangan. It is also admitted position that defendant No.1 – Dayamati purchased 0.31 acres of land out of khasra No. 1485/1 from Omprakash Dewangan and she sold her land to defendant Nos. 2 to 8. Further, the sale deeds of plaintiffs and defendants are not disputed before the learned Trial Court.
16. As per the pleading of the plaintiffs, plaintiff Nos.1, 2, 3, 4 and defendant No.1 had purchased 0.20 acre, 0.20 acre, 0.20 acre, 0.10 acre and 0.31 acre land from one Omprakash Dewangan out of khasra No.1485/1, which was after mutation proceedings, the plaintiff Nos. 1 to 4 and defendant No.1 were allotted sub-divided Khasra numbers 1485/15, 1485/16, 1485/17, 1485/19 and 1485/18 respectively. As per the plaint averments, the defendant No.1 – Dayamati sold her land to defendant Nos. 2 to 8 by registered sale deeds and the subsequent



purchaser/defendant Nos. 2 to 8 constructed their houses encroaching upon the portion of land of the plaintiffs and thus, the suit was filed by the plaintiffs claiming reliefs which are as under :-

“1. यह कि यह घोषित किया जाए कि वादीगण वादभूमि ख.नं. [1485/15](#), [1485/16](#), [1485/17](#), [1485/19](#) कुल रकबा 0.70 एकड़ भूमि के भूमि स्वामी है तथा स्वत्व सहित वादपत्र में संलग्न सूची “अ” के नक्शा में वर्णित वादपत्र की कंडिका-2 में वर्णित विक्रय पत्रों के अनुसार अपने स्वत्व पर लाल रंग से चिन्हित भूमि पर काबिज है।

2. यह कि यह घोषित किया जाए कि प्रतिवादी क्रमांक 1 से 8 जो विक्रय पत्र वादपत्र की कंडिका 4 के अनुसार निष्पादित किया है वह सभी विक्रय पत्र, वादीगण की भूमि के संबंध में होने से अवैध और शून्य है।

3. यह कि यह आज्ञापक व्यादेश दिया जाए कि प्रतिवादी क्रमांक 1 से 8 वादीगण की सूची “अ” के नक्शे में तथा वादपत्र की कंडिका-2 के विक्रय पत्रों में वर्णित वादभूमि पर प्रवेश न करें। कोई निर्माण न करें तथा वादीगण के शांतिपूर्ण आधिपत्य में कोई व्यवधान न डालें तथा वादीगण को बेदखल न करें। प्रतिवादी वाद सील से अपनी अवैध निर्माण सामग्री और संरचना नियत अवधि में हटा लेंगे। “वादगण की वादभूमि पर यदि प्रतिवादीगण का निर्माण और आधिपत्य हो तो उसे तोड़कर हटाकर वादभूमि का खाली कब्जा वादीगण को प्रतिवादीगण से दिलाई जाये।”

17. The plaintiffs have also attached Schedule ‘A’ and Schedule ‘B’ with the plaint, wherein portion of land of the plaintiffs has been shown in red ink as A,B,C,D,E,F,G, which was encroached by defendant Nos. 2 to 8.



18. The defendant No.1 – Dayamati has filed her written statement, wherein she has contended in para 5 (a), (b) and 6, which read thus :-

‘यह कि वाद पत्र की कंडिका 05 का संपूर्ण अभिवचन तथ्यहीन होने से स्वीकार नहीं है, कारण कि

(क) यह कि वादीगण तथा प्रतिवादीगण क्र. 1 आपस में संबंधी है तथा घनिष्ठ पारिवारिक संबंध है। इसी पर आलम्बित हो प्रतिवादी क्र. 1 के पुत्र अभिषेक एक्का पिता एडवर्ड एक्का निवासी ग्राम मोपका तहसील व जिला बिलासपुर छ.ग. द्वारा वादीगण द्वारा प्रेरित किये जाने पर कि वादभूमि को हम लोग अपनी भूमि को विक्रय करना चाहते है। आप खरीद लीजिये जिससे सहमत वादीगण एवं प्रतिवादी क्र. 1 द्वारा संयुक्त ‘विक्रय इकरारनामा’ दिनांक 08.05.2016 को निष्पादित किया गया। जिसके परिणाम स्वरूप प्रतिवादी क्र. 1 के पुत्र अभिषेक एक्का द्वारा वादीगण को अग्रिम राशि प्रत्येक को 1,00,000/- एक लाख रुपये प्रदान किया गया। तत्पश्चात विभिन्न समयों पर वादीगण श्री बरनाबस जी को 4,00,000/- चार लाख रुपये, श्री अथनाथ जी को 1,50,000/- एक लाख पचास हजार रुपये, श्री पास्कल जी को 1,00,000/- एक लाख रुपये, तत्पश्चात दिनांक 13.01.2020 को पुनः श्री बरनावस जी को 1,00,000/- एक लाख रुपये बैंक खाते से अंतरण किया गया है।

इसी के अंतर्गत क्रेता पवन राठौर तहसील व जिला बिलासपुर के द्वारा वादीगण को रू. 1,00,000/- एक लाख रुपये, रू. 1,00,000/- एक लाख रुपये प्रत्येक वादीगण को नगद, एन.ई.एफ.टी. तथा चेक के माध्यम से प्रदान किये थे। इकरारनामा दिनांक 08.05.2016 के आधार पर।

इसी के अभ्यंतर प्रतिवादी क्र. 1 दयावती एवं मेरे पुत्र (अभिषेक एक्का) द्वारा उक्त इकरारनामा दिनांक 08.05.2016 के होने वाद वादीगण की सहमति से वादभूमि जो कि 5 से 12 फीट गड्ढा एवं उबड़ खाबड़ (उंची-नीची) भूमि को



जिसे कि अन्य स्थानों से मिट्टी राखड़ तथा पुराने मकानों के अवशेष मिट्टी का परिवहन से वादभूमि को समतल किया गया, जिस पर कि इकरारनामा के दिनांक से सामयिक समय तक समतलीकरण एवं वादभूमि में आवागमन के लिए रास्ता नहीं था (कृषि भूमि थी) जिसमें चौहद्दी के अन्य भूमि स्वामियों की मौखिक सहमति के आधार पर इस वादभूमि के लिए रास्ता हेतु मिट्टी डालकर रास्ता का निर्माण किया गया है। जिसका कुल खर्च 17,00,000/- सत्रह लाख रुपये खर्च किया जा चुका है जो वादभूमि के क्रय राशि के अतिरिक्त है। इस तरह 25,00,000/- पच्चीस लाख रुपये से अधिक राशि का व्ययन वादभूमि में प्रतिवादी क्र. 1 एवं मेरे पुत्र अभिषेक एक्का द्वारा किया जा चुका है।

(ख) यह कि वादीगण को वादभूमि (विक्रय इकरारनामा 08.05.2016 में वर्णित है जिसमें कि इस प्रतिवादी क्र. 1 दयावती) की भूमि भी सम्मिलित है का विक्रय प्रतिवादीगण क्र. 2 से 8 को वादीगण की स्वतंत्र सहमति से एवं अनुमति पश्चात हल्का पटवारी चांपा द्वारा दी गई नंबरछांट नकल के आधार पर इकरारनामा दिनांक 08.05.2016 से दिनांक 04.01.2020 के मध्य किया गया है जो कि वादीगण की पूर्ण सहमति एवं जानकारी से किया गया है।

इसी के अंतर्गत वादभूमि का समतलीकरण होने पर पश्चात विक्रय पर वादीगण के मन में लोभ उत्पन्न एवं व्यवहार में भिन्नता होने पर मेरे पुत्र द्वारा इकरारनामा दिनांक 08.05.2016 के पालन की नोटिस वादीगण को दिये जाने पर वादीगण द्वारा दिनांक 27.10.2020 को लोभवश नकारात्मक जवाब दिया गया। फलतः माननीय न्यायालय में दिनांक 17.11.2020 को यह वादपत्र झूठे तथ्यों के आधार पर प्रस्तुत किये है। इस कारण से इस कंडिका में वर्णित अभिवचन गलत है।

6. यह कि वादपत्र की कंडिका 06 का अभिवचन में गलत तथ्यों का समावेश होने से अस्वीकार है।

कारण कि प्रतिवादीगण क्र. 2 से 8 द्वारा वादस्थल पर निर्माण कर मकान बनाने तथा मकान निर्माण कार्य करने की विधि सम्यक जानकारी विक्रय दिनांक के पश्चात



से ही है। इसी कारण से जानकारी के स्रोत तथा अवलोकन करने आने का दिनांक/समय वादपत्र में नहीं किये है। वादीगण विक्रय इकरारनामा दिनांक 08.05.2016 के निष्पादन पश्चात अपने स्वत्व एवं आधिपत्य से वंचित हो विबंधित हो गये है इस कारण से वाद पत्र की कंडिका 16 के अनुसार किसी भी प्रकार से अनुतोष के अधिकारी नहीं है।”

19. The defendant Nos. 2 to 8 did not file any written statement.
20. Plaintiff No.1 – Barnawas Lakda examined himself as PW-1 to prove the case of the plaintiffs. The learned Trial Court on the basis of pleadings of both the parties, framed as many as 06 issues, out of which, issue Nos. 1, 2 and 6 are significant. For ready reference, issue Nos. 1, 2 and 6 are reproduced herein as under :-

कं.	विचारणीय प्रश्न	निष्कर्ष
1.	क्या प्रतिवादी कं. 1 द्वारा प्रतिवादी कं. 2 से 8 के पक्ष में निष्पादित विक्रय पत्र दिनांक 05.09.2018, दिनांक 04.01.2020, दिनांक 05.09.2018, दिनांक 04.01.2020, दिनांक 05.09.2018, दिनांक 05.09.2018, दिनांक 04.01.2020 वादीगण की वाद भूमि का विक्रय करने के कारण अवैध एवं शून्य है ?	“अप्रमाणित (कंडिका 24 के अनुसार)”
2.	क्या प्रतिवादी कं. 1 से 8 वाद भूमि पर अनाधिकृत रूप से प्रवेश कर कब्जा करने को प्रयास कर रहे है ?	“प्रमाणित”
6.	क्या वाद के लंबनकाल में वाद भूमि पर प्रतिवादिगण ने अवैध निर्माण किया है, जिसे हटाकर वाद भूमि का रिक्त अधिपत्य वादीगण प्राप्त करने के अधिकारी है ?	“प्रमाणित”

21. The plaintiffs duly proved their title by exhibiting their respective sale deeds as well as the relevant revenue



records, wherein their names stand recorded as landowners. The sale deed in favour of plaintiff No.1, Barnabas Lakda, dated 22.06.1994, was exhibited as Ex.P-10; the sale deed of plaintiff No.2, Athnas Toppo, dated 22.06.1994, was exhibited as Ex.P-14; the sale deed of plaintiff No.3, Pashkal Minj, dated 17.06.1994, was exhibited as Ex.P-20; and the sale deed of plaintiff No.4, Fransis Lakda, dated 27.07.1994, was exhibited as Ex.P-24. The plaintiffs also placed on record certified copies of the sale deeds dated 05.09.2018 executed by defendant No.1, Dayamati, in favour of defendant Nos. 3 to 8, namely Krishna Kumar Suryawanshi, Trilokchand Miri, Parasram Sahu, Bindram Koshle, Mulchand Tarakh and Vedprakash Kaushik, which were duly exhibited as Ex.P-29, Ex.P-28, Ex.P-32, Ex.P-30, Ex.P-33 and Ex.P-31, respectively.

22. It is apparent from all the aforesaid sale deeds that the same were executed by defendant No.1 – Dayamati after more than 20 years of previous sale deed.
23. Defendant No.1, Dayamati, in her written statement, pleaded that she sold the land in favour of defendant Nos. 2 to 8 with the consent and permission of the plaintiffs pursuant to an agreement allegedly executed between 08.05.2016 and 04.01.2020 on the basis of a 'Number-Chat'



(Khasra-Khatauni Nakal/Field Book Extract) issued by the Patwari; however, no such agreement was produced or proved on record.

24. The plaintiffs have also filed copy of order (Ex.P-34) dated 26.07.2021 passed by the Revenue Court (Tahsildar, Champa, District Janjgir-Champa (C.G.)), whereby the map of the plaintiffs was corrected. For ready reference, operative portion of the said order, is reproduced herein, which reads thus :-

“ प्रकरण तथा प्रकरण में संलग्न दस्तावेजों का अवलोकन किया। उभय पक्ष के विद्वान अधिवक्ताओं द्वारा प्रस्तुत तर्क का परिशीलन किया। प्रकरण से संबंधित विकय पत्रों का मेरे द्वारा अवलोकन किया गया। वास्तव में इस प्रकरण में हल्का पटवारी द्वारा अनावेदकगण को भूमि खरीदी करने के समय मौके पर जाकर चौहद्दी नहीं बनाया गया है, जो वाद का कारण है। दयावती द्वारा भूमि बेची गई, उस समय अनावेदक गण को हल्का पटवारी द्वारा चौहद्दी के साथ दी गई नजरी नक्शा के अनुसार उसके क़ेता मूलचंद पिता गनेशराम, बिन्दराम पिता पिताम्बर, त्रिलोकचंद पिता मिलाप, गजानंद पिता पीलू, कृष्ण कुमार पिता जगदीश, वेद प्रकाश पिता भागवंत कौशिक, परसराम पिता महेत्तर वगै० द्वारा कब्जा कर मकान निर्माण किया गया उस स्थान की चौहद्दी का मिलान नहीं होता है। अर्थात् दयावती द्वारा अपनी जमीन तो बेची गई किन्तु क़ेता गण को कब्जा आवेदगण की भूमि का दिया गया जो सर्वथा अनुचित है। यह मामला मूल नक्शे के अनुसार कम्प्यूटर नक्शे का मिलान नहीं होने से संबंधित है, किसी लिपिकीय त्रुटि का नहीं है, इसलिये अनावेदक अधिवक्ता द्वारा यह कहना कि नक्शा त्रुटि सुधार की समय सीमा 1 वर्ष की है मान्य किये जाने योग्य नहीं है। मूल नक्शे



से कम्प्यूटर नक्शे का मिलान नहीं होना, कम्प्यूटर की त्रुटि को दर्शाता है। मूल नक्शे से कम्प्यूटर नक्शे का मिलान होना चाहिये तभी कम्प्यूटर नक्शा को शुद्ध माना जा सकता है।

उपरोक्त विवेचना से इस निष्कर्ष पर पहुंचता हूँ कि अभिलेख शुद्ध रखने की जिम्मेदारी राजस्व विभाग का होता है। अतः तत्कालीन हल्का पटवारी द्वारा दिया गया मौका जाँच प्रतिवेदन मय नजरी नक्शा दिनांक 8/2/2021 जिसे तत्कालीन हल्का पटवारी के द्वारा स्वयं सत्यापित किया गया है, के अनुसार नियमानुसार कम्प्यूटर नक्शा को मूल नक्शा के अनुरूप सुधार करने पेन्सलिंग किये जाने, व राजस्व निरीक्षक चांपा को जांच परख कर लाल स्याही से पुष्टि करने को आदेश पारित किया जाता है। तदनुसार हल्का पटवारी/राजस्व निरीक्षक नक्शा दुरुस्त करें। प्रकरण की कार्यवाही से ऐसा प्रतीत होता है कि तत्कालीन हल्का पटवारी श्री युवराज पटेल द्वारा पूर्व में हुए भूमि की खरीद बिक्री व जारी चौहद्दी को ध्यान दिये बिना व मौका जांच किये बिना अनावेदकगण को विधि विरुद्ध लाभ पहुंचाने त्रुटिपूर्ण चौहद्दी/नजरी नक्शा जारी किया गया है इसके लिये संबंधित तत्कालीन पटवारी के विरुद्ध पृथक से विभागीय जाँच संस्थित किया जावे। प्रकरण में दोनों पक्ष प्रायवेट पक्षकार है। अतः पिडित पक्षकार चाहे तो तत्कालीन हल्का पटवारी के विरुद्ध पुलिस में मामला भी दर्ज कराने के लिये स्वतंत्र है। उभय पक्षकार आदेश टीप करें। अभिलेख दुरुस्ती प्रतिवेदन प्राप्त होने पर प्रकरण नस्तीबद्ध होकर दा०द० हो।

”

25. The learned Senior Advocate for the appellants contended that the order dated 26.07.2021 (Ex.P-34) is not binding upon defendant No.1, Dayamati, and the other defendants, as they were not parties before the Revenue Court. However, it is evident from the record that the said order was duly filed and exhibited by the plaintiffs before the



learned Trial Court, while the defendants failed to appear and did not adduce any oral or documentary evidence in rebuttal.

26. It is not in dispute that defendant No.1, Dayamati, had purchased land measuring 0.31 acre out of Khasra No.1485/1 from one Omprakash Dewangan and thereafter transferred the said land in favour of defendant Nos. 2 to 8 by executing separate registered sale deeds. In her written statement, defendant No.1 asserted that the said transfers were effected with the knowledge, consent, and permission of the plaintiffs. However, she failed to produce any documentary evidence whatsoever in support of such plea. Moreover, defendant No.1 did not enter the witness box nor did she adduce any oral evidence before the learned Trial Court to substantiate her assertions, thereby leaving her pleadings uncorroborated and unsupported by proof.

27. The Hon'ble Apex Court in the matter of **Chowdamma (supra)** held in para 43 to 59 as under :-

43. This Court in **Anil Rishi v. Gurbaksh Singh**⁷ observed thus:

"19. There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof. The right to begin follows onus probandi. It assumes



importance in the early stage of a case. The question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways (1) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later, (ii) to make that of establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule in Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."

44. Also, in **Addagada Raghavamma and Anr. v. Addagada Chenchamma and Anr.**⁸, this Court observed as follows:

"12.... There is an essential distinction between burden of proof and onus of proof: burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts.... Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence...."

45. As it is seen that the plaintiffs have successfully discharged their burden of proof regarding the factum of marriage, the onus now shifts to the defendants to rebut the same.

46. The defendants, except for denying the



marriage between the deceased Dasabovi and the plaintiffs' mother, have not produced any oral or documentary evidence to challenge the legal sanctity of the said marriage. The contention that the plaintiffs' mother did not belong to the same caste as the deceased Dasabovi, is wholly bereft of any proof or material. In the absence of the same, the said assertion collapses merely into speculation.

47. The defendants have produced a genealogical chart marked as Ex.D-2, which refers only to themselves and the deceased Dasabovi, while omitting the plaintiffs and their mother. In contrast, Ex-P-7, produced by the plaintiffs, includes both the plaintiffs and the defendants, presenting a more consistent family structure. The defendants' failure to justify the exclusion of the plaintiffs in Ex.D-2 undermines the credibility of their denial.

48. It is also noted that it is not the case of the defendants that the plaintiffs were born from a marriage between the first wife, Bheemakka, and any other man. In view of the same, it can be conclusively held that the defendants failed to discharge their onus to disprove the factum of a valid marriage between the plaintiffs' mother and the deceased Dasabovi.

REVENUE RECORDS NOT PROOF OF TITLE

49. In the absence of any substantive rebuttal, the defendants seek refuge in the revenue



records. However, their reliance on the revenue records (Ex P1-P6) is of no avail, as such records only hold presumptive value and don't confer title. This Court in Suraj Bhan and Ors. v. Financial Commissioner and Ors.⁹ observed thus.

"9.... It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of rights. It is settled law that entries in the revenue records or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court (vide Jattu Ram v. Hakam Singh, (1993) 4 SCC 403)...."

PARTIES FAILURE TO ENTER WITNESS BOX:
CONSEQUENCES

50. The failure of the defendants to substantiate their claims through documentary evidence is eclipsed by a more consequential omission in a case where the principal controversy turns on matters lying within her exclusive personal knowledge, the silence of defendant No.1, her absence from the witness box, is not a procedural lapse but a calculated withdrawal from scrutiny.

51. The conspicuous silence of defendant no.1 strikes not merely as omission but as deliberate evasion. Defendant No. 1, who lies at the heart of the controversy, chose not to step into the



witness box and depose regarding the relationship between the plaintiffs' mother and her husband. Her testimony bore direct relevance not only to the status of plaintiffs' mother but also her own position. The only justification advanced was that defendant No. 1, being an octogenarian and suffering from arthritis, was unable to attend the Court proceedings.

52. However, this defence is conclusively dismantled by the record itself. The deposition of D.W.1 (Balachandrappa) clearly indicates that defendant No. 1 was physically present in the Court during the examination of D.W.2 (G.V. Venkatappa), D.W.3 (Thimmappa) and D.W.4 (V. Thimmappa). It further emerges that defendant No.1 was also present in the Court when the evidence of P.W.1 (Venkatappa) was being recorded. If defendant No. 1 was capable of attending the Court on multiple occasions, no explanation remains for her failure to offer her own testimony, except for calculated restraint.

53. This inference is inescapable. This is not a case of medical inability but of deliberate silence. In civil proceedings, particularly where the facts lie exclusively within the personal knowledge of the party, the refusal to enter the witness box carries grave evidentiary consequences.

54. This principle is neither novel nor uncertain. This Court in **Vidhyadhar v. Manikrao and Anr.**

¹⁰ held thus:



17. Where a party to the suit does not appear in the witnessbox and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.....”

55. The present case is a compelling invocation of the above principle. Defendant No.1, though physically present in the Court during the trial, abstained from stepping into the witness box to rebut the plaintiffs' assertions that strike at the very core of the dispute. In the absence of cogent medical evidence to support her alleged incapacity, her abstention from the witness box constitutes deliberate circumvention of the evidentiary burden resting upon her.

56. In the present factual matrix, the adverse presumption under Section 114(g) of the Evidence Act is inevitable.

57. This Court cannot overlook that defendant No. 1, while central to the controversy, chose not only to abstain from entering the witness box but also wilfully bypassed the statutory remedy available to those pleading physical incapacity

58. Order XXVI, Rule 1 of the Code of Civil Procedure, 1908, permits the recording of evidence through a commission in cases of age or infirmity. Yet, no application was filed invoking the said provision, nor was any explanation tendered for its non-invocation. In a dispute where the foundational facts lie squarely within



her exclusive knowledge, such omission assumes critical significance. Her refusal to depose, despite the existence of a procedural safeguard specifically tailored to her alleged condition, cannot be dismissed as inadvertent. Rather, it reflects a conscious evasion from the evidentiary process, compounded by her unexplained failure to avail an accessible legal alternative, is not a neutral act. It constitutes wilful shielding from judicial scrutiny.

59. A Court of law cannot offer refuge to studied silence where a duty to disclose exists. The plaintiffs anchored their claim in measured and unwavering testimony of P.W.2 (Hanumanthappa), an account rooted in personal knowledge and long-standing familiarity, which withstood the rigours of cross-examination. His evidence, unshaken and consistent, found further corroboration in the genealogical chart presented by the plaintiffs. It, therefore, stands established that the plaintiffs have discharged the evidentiary burden imposed upon them by law. In contrast, the defendants, bereft of probative material or candour, resorted solely to denials. When measured against the touchstone of preponderance of probabilities, the scales unambiguously tilt in favour of the plaintiffs.”

28. Further, Hon’ble Apex Court in ***M.K. Kunhikannan (supra)*** held in para 7 as under :-



“7. It is not necessary for us to go into the merits of the case. We are of the view that the order passed inter partes in CRP No. 3440 of 1977 dated 2-11-1977, has become final, and it concludes the matter. The observations made in the proceedings, at the instance of the first respondent regarding the validity of the order of the Board, in CRP No. 3696 of 1977, will not, in any way, affect the legality and validity of the proceedings declining to implead Respondents 3 and 4 or the order passed in revision therefrom CRP No. 3440 of 1977. It is true that the proceedings dated 28-6-1977 were observed to be void in law in CRP No. 3696 of 1977, filed by the first respondent. In our opinion, even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum. Mere use of the word 'void' is not determinative of its legal impact. The word 'void' has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise and in this case, the only complaint about the initiation of the suo motu proceedings by the Board was, that it was not initiated on intimation by the State Land Board about the



non-filing of the statement as required by Section 85(7) of the Kerala Land Reforms Act. In our opinion, this is not a case where the infirmity is fundamental. It is unnecessary to consider the matter further.”

29. In **Arulmigu (supra)**, the Hon'ble Apex Court held in para 27 and 28 as under :-

“27. Thus virtually, the suit has been decreed by the High Court for Survey No. 188/2, whereas, Survey No. 188/2 was admittedly recorded in the name of Janaki Ammal, who was not impleaded in the suit nor was any relief claimed against Janaki Ammal or for Survey No. 188/2. In this context, it is useful to refer to the evidence of the plaintiff himself i.e. PW 1. PW 1, in his deposition before the Court, has admitted the fact that Survey No. 188/2 is in the name of Janaki Ammal and he has not initiated any action against her nor was she impleaded in the suit. Following statement was made by PW 1 in his statement:

"It is correct to say that Survey No. 188/2 stands in the name of Janaki Ammal. Now the said Janaki Ammal sold that property to third person. I have not initiated any action to include Janaki Ammal as a party to this suit."

28. In view of the statement of the plaintiff himself that Survey No. 188/2 is in the name of Janaki



Ammal, the observations of the High Court that no documentary evidence was filed for the purpose of establishing that Survey No. 188/2 stands in the name of Janaki Ammal are erroneous and misplaced. When the plaintiff himself admitted that Survey No. 188/2 is recorded in the name of Janaki Ammal, there was no basis for the High Court to come to the conclusion that the plaintiff is entitled for the area apart from 5 acres and 10 cents, which belonged to the Temple.”

30. In the light of above guidelines of Hon'ble Apex Court, upon careful consideration of the pleadings, evidence, and submissions advanced on behalf of the parties, it is clear that after completion of mutation proceedings, the respective purchasers were allotted sub-divided Khasra numbers, namely, Khasra Nos.1485/15, 1485/16, 1485/17 and 1485/19 in favour of plaintiff Nos.1 to 4, and Khasra No.1485/18 in favour of defendant No.1–Dayamati. The plaintiffs specifically pleaded that while defendant No.1 sold her land to defendant Nos.2 to 8, possession beyond her entitlement was wrongfully delivered and the subsequent purchasers raised constructions by encroaching upon the plaintiffs' land. Consequently, the plaintiffs instituted the caption suit accompanied by Schedule 'A' and Schedule 'B'



maps, clearly depicting their portion and the encroached portions in red ink. The Defendant No.1 did not dispute the plaintiffs' title but sought to justify the transactions in favour of defendant Nos.2 to 8 on the basis of an alleged agreement to sell in between 08.05.2016 to 04.01.2020, contending that the land was sold with the consent and permission of the plaintiffs and substantial amounts were expended for levelling and development of the land pursuant to the said agreement. However, despite such pleadings, defendant No.1 neither produced a copy of the alleged agreement nor entered the witness box to substantiate her assertions. The Plaintiff No.1 by examining himself as PW-1 proved the plaintiffs' case by producing their respective registered sale deeds and revenue records showing their title. It is evident from the record that the sale deeds in favour of defendant Nos.2 to 8 were executed more than two decades after the plaintiffs had acquired title over their respective lands.

31. The plaintiffs also placed reliance upon the order dated 26.07.2021 (Ex.P-34) passed by the Revenue Court, whereby the revenue map was corrected after detailed examination of the original records. The said order categorically records that although defendant No.1 had sold



her own land, possession of the plaintiffs' land was wrongfully delivered to the purchasers due to incorrect demarcation, and constructions were raised on land not corresponding with the original boundaries. The Revenue Court further directed correction of the computerised map in conformity with the original map and observed that the error was not clerical but substantive. The said order has attained finality, as it was neither challenged nor rebutted by the defendants.

32. The contention advanced on behalf of the appellants that the said revenue order is not binding upon them is devoid of merit. The order was duly exhibited before the Trial Court and remained unrebutted. Moreover, as held by the Hon'ble Supreme Court in ***M.K. Kunhikannan (supra)***, even an order alleged to be void remains effective inter partes unless set aside by a competent forum. In the present case, the defendants neither challenged the said order nor adduced any evidence to dislodge its findings.
33. It is further significant that defendant No.1, despite raising specific pleas resting exclusively within her personal knowledge, chose not to enter the witness box. In view of the settled law laid down in *Vidhyadhar v. Manikrao* and reiterated in ***Chowdamma (supra)***, such deliberate



abstention warrants drawing of an adverse inference under Section 114(g) of the Evidence Act. The alleged agreement to sell, which formed the very foundation of the defence, was neither produced nor proved. The burden, which had clearly shifted upon the defendants after the plaintiffs discharged their initial onus, remained undischarged.

34. The maps appended as Schedule 'A' and 'B' to the plaint clearly identify the encroached portions, and the identity of the suit land stands firmly established. Defendant Nos.2 to 8 neither denied the encroachment nor led any evidence to show that their constructions were confined within the land lawfully purchased by them. Their silence further fortifies the plaintiffs' case.
35. The case laws relied upon by learned Sr. Advocate for defendant Nos. 1 to 8 would be of no help to them being distinguishable on the ground of facts.
36. The learned Trial Court, upon due appreciation of oral and documentary evidence, rightly held that defendant No.1 was competent to alienate only her land admeasuring 0.31 acre and that the sale deeds executed by her in favour of defendant Nos.2 to 8 are valid to that extent. At the same time, the learned Trial Court correctly concluded that defendant Nos.2 to 8 had encroached upon the plaintiffs'



land and were liable to remove the encroachment and restore possession to the plaintiffs. The partial decree passed by the Trial Court thus strikes a just balance between competing rights and does not suffer from any perversity or illegality.

37. The cross-appeal filed by the plaintiffs seeking cancellation of the sale deeds is also devoid of merit, as defendant No.1 had full authority to sell her own land and no evidence has been led to invalidate the sale deeds in their entirety. However, in order to bring greater clarity and precision to the operative portion of the decree, this Court deems it appropriate to modify the relief clause by explicitly declaring the sale deeds to be valid, while directing defendant Nos.2 to 8 to hand over vacant possession of the encroached portions, as shown in red ink – A, B, C, D, E, F and G in Schedule 'A' of the plaint, after removal of the superstructure. Schedule 'A' shall form part of the decree.
38. In the result, both the appeals and cross-appeal are dismissed. Parties shall bear their respective costs. Let decree be accordingly drawn.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Amitendra Kishore Prasad)
Judge