

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 72 of 2025

Pawan Kumar Jaiswal Appellant
Versus
Smt. Krishna Sinha Respondent

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Mr. Rahul Kr. Gupta, Advocate
: Mr. Parth Jalan, Advocate
For the Respondent : Mr. Shashank Shekhar, Advocate

15/07.01.2026

1. This 2nd appeal has been filed against the judgment dated 15.02.2025 (decree signed on 29.02.2025) passed by learned Additional Judicial Commissioner-XIII, Ranchi in Civil Appeal No.18 of 2018 affirming the judgment and decree both signed on 29.11.2017 passed by learned Civil Judge (Senior Division)-X, Ranchi in Eviction Title Suit No. 09 of 2009.

2. The suit for eviction was filed under the provisions of Bihar Building (Lease, Rent, and Eviction) Control Act (*hereinafter referred to as "the BBC Act"*) on ground of default in payment of rent and also on account of personal necessity. The suit was decreed on both the grounds and the appeal has been dismissed. Consequently, the defendant is the appellant before this Court.

3. The appeal was admitted vide order dated 10.09.2025 by framing substantial question which was slightly modified vide order dated 06.01.2026. Consequently, this 2nd appeal is to be heard on the following substantial questions of law:

"(i) Whether the learned 1st Appellate Court while confirming the judgment was justified in refusing to consider Exhibit-E (the agreement of sale dated 30.10.2008) on the ground that it was an un-registered agreement?"

"(ii) Whether the appellant ceased to be a tenant after the agreement of sale dated 30.10.2008?"

4. It is not in dispute during the course of argument that the defendant was inducted as a tenant sometimes in the year 2001-02 and was in possession of the suit property. The suit for eviction was filed on ground of default in payment of rent and also on account of personal necessity.

5. As per the defendant, one Memorandum of Understanding (*hereinafter referred as MOU*) dated 03.09.2007 was entered into between the parties whereby the landlord agreed to sell the suit property to the defendant for a consideration of Rs.35 lakhs, out of which Rs.1 lac was paid by cheque and upon encashment of the cheque, the MOU was followed by an agreement of sale dated 30.10.2008 and payment of Rs.4 lacs as a part of the consideration amount. As per the defendant, the rent was paid till September, 2007 i.e. till the month of MOU and subsequently, the defendant stopped making payment of rent.

6. So far as the plaintiff is concerned, it was their case that the defendant had paid rent till December, 2003 and the plaintiff neither disclosed about the MOU nor disclosed about the agreement of sale and the defendant contended at the time of evidence that the aforesaid amount of Rs.1 lakh paid through cheque was adjusted against the arrears of rent till December 2003 and the defendant did not pay rent from January, 2004.

7. Further, it transpires that as per the plaintiff, the rent was Rs.15,000/- per month and as per the written statement the rent was Rs.3,500/- per month.

8. Both the learned counsel during the course of arguments have found that, there is no findings of the learned courts with regard to the date of default in payment of rent and further there is no finding as to what was the quantum of rent fixed with respect to the tenancy. However, initial tenancy is not in dispute. Learned counsels have also submitted that the case has been decided primarily on the ground that defendant admittedly stopped making payment of rent from September, 2007 and therefore, non-payment of rent by the defendant stood admitted on record at least beyond September, 2007.

Arguments of the appellant

9. It has been submitted by learned counsel for the appellant that the agreement which was entered into between the parties has not been considered by the learned trial court on ground that there was admission of relationship of landlord and tenant between the parties and such an agreement of sale was irrelevant. He has also submitted that the learned 1st appellate court has recorded that the agreement being an unregistered document could not be relied and consequently, the aforesaid substantial questions of law framed are to be decided by this Court.

10. At this, it has been pointed out by the learned counsel appearing on behalf of the respondent-landlord that as per the written statement, it was the specific case of the defendant that pursuant to the MOU/agreement for sale, the defendant continued in possession of the property in part performance of the contract and therefore, they were not liable to be evicted.

11. It is also an admitted fact that a suit for specific performance of contract has been filed by the defendant with respect to the agreement and the suit has been numbered as Title Suit No. 474 of 2009 which is pending.

12. Learned counsel for the appellant has relied upon the following judgments with respect to the substantial question of law involved in this case.

I. *(2000) 9 SCC 339 [R. Kanthimathi and another vs. Beatrice Xavier (MRS)]* Paragraph Nos.6, 7 and 8.

II. *(2007) 15 SCC 783 [Mool Chand and others vs. Nanagram and another]* Paragraph No.5.

13. Learned counsel for the respondent on the other hand has relied upon the following judgments: -

i. *1999 (2) PLJR 189 [Gajendra Pd. Sinha Man Mohan Pd. Sinha]* Paragraph-4.

ii. *2003 (1) JLJR 592 [Indian Aluminium Co. Ltd. v. Regional Labour Commr.]*

- iii. **2009 (3) JLJR 19, [Munmun Banerjee v. Smt. Manju Devi], Paragraph 5 and 8.**
- iv. **(2012) 1 SCC 656, [Suraj Lamp And Industries Private Limited (2) Through Director v. State of Haryana and Another] Paragraph 16, 18 and 19.**
- v. **2018 (4) JCR 273 (JHR) [Ashwani Kumar Paul @ Goda & Ors. vs. Kamta Prasad & Ors.] paragraph 13, 20 and 32.**
- vi. **(2022) 13 SCC 756 [Mohd. Raza and Another vs. Geeta Alias Geeta Devi], Paragraph 11 and 12.**
- vii. **AIR 2025 SC 2933 [Vinod Infra Developers Ltd. vs. Mahaveer Lunia and Others], Paragraph 9, 9.2, 9.3, 9.4 and 9.5.**
- viii. **Civil Appeal No. 4484 of 2025 [Som Nath vs. Ravinder Kumar] decided on 25th of March, 2025, paragraph 13 and 14.**
- ix. **(2019) 4 SCC 153 [H.K. Sharma vs. Ram Lal], paragraph 22, 23, 29, 30, 31, 32 and 33.**
- x. **(2018) 7 SCC 646 [Shyam Narayan Prasad vs. Krishna Prasad and Others], Paragraph No. 18, 19, 20, 21 and 22.**

14. The learned counsel for the appellant referred to the plaint and the written statement and while referring to the plaint, he submits that the plaintiff claimed to be the owner and landlady of the property and asserted that the defendant was the tenant at monthly rent of Rs.15,000/-. It has also been stated that the defendant was inducted as tenant by her husband, who expired on 10.03.2009. The further case of the plaintiff was that the defendant was a habitual defaulter in payment of rent and he had paid rent only up to December 2003 and in spite of repeated request, he did not pay the rent. However, after the death of her husband, the plaintiff sent a legal notice dated 23.10.2009.

15. The plaintiff in paragraph 9 of the plaint claimed that the defendant rendered himself liable for eviction for non-payment of rent since January 2004. He has then referred to the written statement and

submitted that the defendant had specifically denied the relationship of landlord and tenant and has asserted that the suit itself was not maintainable. However, the defendant had clearly stated that defendant was inducted as a monthly tenant with respect to the suit premises by the husband of the plaintiff since 15.01.2001 but the rent was only Rs.3,500/- per month. The husband of the plaintiff entered into negotiation with respect to the sale of the property to the defendant and the consideration was fixed at Rs.35,00,000/- and a memorandum of understanding was executed on 03.11.2007 by virtue of which the husband of the plaintiff undertook to sell the property for the said consideration and an advance of Rs.1,00,000/- was paid through cheque and as per the memorandum of agreement, upon encashment of cheque, an agreement of sale was to be executed. Consequently, the cheque was encashed and the agreement of sale was executed on 30.10.2008 by referring to the earlier memorandum of agreement dated 03.09.2007, and the sale deed was to be executed on or before 03.09.2010 after receipt of the balance consideration amount of Rs.30,00,000/- but prior to reaching such date, the husband of the plaintiff expired.

16. It was asserted in the written statement that the defendant was not required to pay rent to the plaintiff and it was also asserted that the defendant was in possession of the property in part performance of the agreement. It was further case of the defendant that the defendant was still ready and willing to pay the balance consideration amount and ultimately a title suit was filed seeking specific performance of contract numbered as Title Suit No.474 of 2009.

17. As per the written statement in paragraph 8, it was stated that as per the terms and conditions mentioned in the agreement dated 30.10.2008, the husband of the plaintiff acknowledged receipt of Rs.1,00,000/- only as advance under memorandum of understanding dated 03.09.2007 and received further advance of Rs.3,00,000/- from the defendant and by virtue of the said agreement, the defendant was not required to pay rent of the suit premises to the husband of the

plaintiff and it was stated that the relationship never existed as landlord and tenant between the landlady and the defendant.

18. The learned counsel has then referred to both the memorandum of agreement and the agreement of sale, which were marked as Exhibit A and E respectively, but with objection. He has referred to the terms and clauses of the agreement of the year 2008.

19. The learned counsel then referred to the judgement passed by the learned trial court and submitted that issue nos.3, 4, 6 and 7 are relevant for the purposes of the adjudication of the substantial question of law involved in this case. He has submitted that issue nos.3, 4 and 5 were taken up together and after quoting the provisions of BBC Act, the learned court recorded as under:

“The defendant has admitted in written statement that he was inducted to month to month tenant with respect to the suit premises. Satyendra Kumar Sinha inducted the defendant as tenant on 15-1-2001. The plea of the defendant is that he entered into an agreement with Satyendra Kumar Sinha to purchase the suit premises for a consideration money amounting Rs.35 lakhs. He paid advance money to Ajit Kumar Sinha who was attorney holder of Satyendra Kumar Sinha Rs. One Lakh was given on 8-10-2007. Agreement was executed on 30-10-2008. Satyendra Kumar Sinha acknowledge receipt of Rs. One Lakh. He further took Rs. Four Lakh from the defendant. The defendant file a title suit no.474/2009 against the plaintiff claiming decree for specific performance which is pending in the court.”

20. He then submits that thereafter further Sections of the Act were quoted and the findings have been recorded at internal page 14 and 15 as under:

“The plaintiff has claimed the suit premises for eviction on the ground of personal necessity and default in payment.

The defendant has already admitted in his written statement that he was inducted as tenant by Satyendra Kumar Sinha and he had been paying rent at the rate of Rs. 3500 per month. He

stopped payment after entering in to an agreement with Satyendra Kumar Sinha. Now the question arises whether the present suit and the suit filed by the defendant against the plaintiff bearing Title suit no. 474/2009 be considered together. The matter was already heard by the court, and the court passed order on dated 3-12-2014 that both the suits are different. And the prayer of the defendant to hear and decide both the case together was rejected. The Hon'ble H.C. passed order directing the trial court in W.P. (C.) 5064/15 to dispose of the present suit with in six weeks.

When these two cases are different and in the present suit relationship of landlord and tenant has already been established including the fact that the defendant defaulted payment of rent, the plea of the plaintiff that he requires the suit premises for his personal need on the ground of good climate of Ranchi in comparison with Siwan, appears reliable and bona fide. In this circumstances these issues went in the favour of the plaintiff.

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The fact of payment of Rs. 35 Lakh to Satyendra Kumar Sinha by the defendant under agreement of sale is a matter of fact of title suit no. 474/2009 and this court has got no jurisdiction to embark on this point. And hence, the court restrained him self to comment on this point. The matter of agreement for sale of the suit property between Satyendra Kumar Sinha and defendant is also a fact of Title Suit no. 474/2009 and requires no comment by this court.”

- 21.** The learned counsel while referring to the trial court judgement has submitted that the trial court has not at all decided issue no.7 as to whether after the agreement the defendant was not required to pay rent of the premises to Satyendra Kumar Sinha, the husband of the plaintiff. He has submitted that the learned court has also not considered the impact of the MOU and the agreement of sale.

22. While referring to the judgement passed by the learned 1st appellate court, the learned counsel has submitted that the point for determination has been framed in paragraph 10 which is as follows:

“Whether in view of the alleged unregistered agreement to sale in favour of the appellant there subsists any relationship of landlord and tenant between the respondent and the appellant”.

23. The learned counsel has submitted that the learned 1st appellate court has recorded a finding that there was a relationship of landlord and tenant between the parties by refusing to consider the agreement ‘Exhibit E’ by referring to Sections 17 and 49 of the Registration Act and holding that the agreement is inadmissible in evidence and consequently, the impact of agreement entered into between the parties has not been considered at all.

24. The learned counsel has submitted that the learned 1st appellate court has completely misdirected himself while considering Sections 17 and 49 of the Registration Act and also Section 53A of the Transfer of Property Act. The learned counsel submits that on the basis of the agreement, it was to be examined as to whether there was any relationship of landlord and tenant continued between the parties after the agreement of sale, particularly in the light of the aforesaid clause which provided that by virtue of the agreement, the defendant was not required to pay rent. He has submitted that had the agreement been considered in the light of the judgement which was relied upon by the defendant before the learned 1st appellate court, there would have been no difficulty in holding that the relationship of landlord and tenant between the parties has seized, and consequently, the suit under the Bihar Building (Lease, Rent & Eviction) Control Act itself was not maintainable.

25. He has further submitted that had the plaintiff filed a suit for recovery of possession by claiming title, then the defendant would not have been in a position to claim the protection of Section 53A of Transfer of Property Act as admittedly the agreement was unregistered. The learned counsel submits that the basis of filing the

suit under the BBC Act was the relationship of landlord and tenant between the parties and while deciding the relationship of landlord and tenant between the parties, the agreement has been completely overlooked on the erroneous application of law.

26. The learned counsel has submitted that though both the memorandum of understanding and the agreement were marked with objection, but both the courts have not disbelieved the same and the same has not been considered only on the technical ground that the agreement was an un-registered document.

Submission on behalf of the Respondent (plaintiff)

27. Learned counsel for the respondents while referring to paragraph 7(i), 7(v), 8 and page no. 10 of the written statement has submitted that the relationship of landlord and tenant stood admitted in as much as the defendant admitted that he was inducted as tenant in the suit premises and it was the specific case of the defendant that he was in possession of the suit premises in part performance of the agreement and therefore he was not required to pay rent.

28. The learned counsel for the respondent while referring to the impugned judgement passed by the learned 1st appellate court has in particular referred to the evidence of P.Ws. 1, 2, and 3. He has submitted that P.W. 1 has clearly stated that the tenancy was at Rs.15,000/- per month and it was wrong to say that the tenancy was Rs.3,500/- per month and it was also wrong to say that husband of the plaintiff had entered into an agreement for sale with respect to the suit property and had received Rs.1,00,000/- through cheque and Rs.4,00,000/- in cash. This witness claimed that the agreement of sale with the husband of the plaintiff was forged. During cross-examination, he has stated that the power of attorney holder had told him that the defendant had paid rent till 2003 through cheque of Rs.1,00,000/-. P.W. 2 has been examined, who is the power of attorney, who stated that it was wrong to say that the rent was at Rs.3,500/- and has stated that the defendant had defaulted in payment of rent since January 2004. During his cross-examination to the suggestion that after Memorandum of understanding, the defendant

had paid the witness Rs.1,00,000/- by cheque as a part of consideration amount of Rs.35,00,000/-, the witness stated that the cheque of Rs.1,00,000/- was paid on account of rent from June 2003 to December 2003 and the defendant had assured to give Rs.5,000/- more which he did not pay. By referring to the evidence of P.W. 3, the learned counsel has stated that this witness has also claimed that the agreement of sale was forged.

29. The learned counsel submits that the specific case from evidence of the plaintiff witness was that the agreement of sale as well as the memorandum of agreement were forged and therefore no reliance can be placed upon these documents. This is without prejudice to the submission of the learned counsel for the respondent that the agreement of sale was compulsorily registrable and was not admissible in evidence. The learned counsel has also stated that the defendant had specifically referred to the agreement of sale to seek protection under Section 53A of the Transfer of Property Act by stating that they came in possession of the property as part performance of the agreement and since the agreement of sale was unregistered and was post 2001, no such reliance could be placed by the defendant. He submits that plea based on Section 53A of the Transfer of Property Act has been rightly rejected by the learned court.

30. The learned counsel has referred to paragraph 17 of the appellate court judgement and submitted that the learned court has rightly refused to rely upon the unregistered agreement of sale and has rightly held that the judgement reported in *(2000) 9 SCC 339 (supra)* was not applicable in the present case.

31. The learned counsel has then relied upon the judgement passed by this Court reported in *(1999) 2 PLJR 189 (Gajendra Prasad Sinha & Anr. Vs. Man Mohan Prasad)*; *(2003) 1 JLJR 591 (HC) (Sheikh Sohrab Vs. Md. Kasim Ansari & Anr.)*; *(2009) 3 JLJR 19 (supra)* and has submitted that it has been clearly held that merely because there is an agreement of sale, the same will not terminate the relationship of landlord and tenant between the parties and pendency

of the suit seeking specific performance of contract has no bearing in the matter. Reliance has been placed also on the judgement reported in ***(2018) 4 JCR 273 (Jhr) (Ashwani Kumar Paul @ Goda & Ors. Vs. Kamta Prasad & Ors.)***.

32. The learned counsel has relied upon the judgement reported in ***AIR 2025 SC 2933 (Vinod Infra Developers Ltd. Vs. Mahaveer Lunia and Others)*** and has submitted that it has been clearly held that unregistered agreement of sale cannot under any circumstances create or convey any right, title or interest in favour of a party under Section 54 of the Transfer of Property Act. He has referred, in particular, to paragraph 9 of the aforesaid judgement. He has then referred to paragraph 9.2 of the said judgement to submit that the law is well settled that transfer of any property by way of sale can only be by deed of conveyance and in absence of mere conveyance, no right, title or interest in immovable property can be transferred and it has also been held that any contract of sale which is not deed of conveyance would fall short of the requirement of Sections 54 and 55 of the Transfer of Property Act and will not confer any title nor transfer any interest in any property except to the limited right granted under Section 53 of the Transfer of Property Act. The learned counsel has submitted that unregistered agreement of sale can be used for the purposes of specific performance of contract as well. On the same point, the learned counsel has then referred to the judgement passed by Hon'ble Supreme Court in the case of ***Suraj Lamp (supra)*** and has referred to paragraphs 18 and 19 of the said judgement. On the similar proposition, the learned counsel has then referred to the judgement passed in ***Civil Appeal No.4484 of 2025 (Som Nath VS. Ravinder Kumar)*** decided on 25.03.2025 and has referred to paragraphs 13 and 14.

33. The learned counsel has heavily relied upon the judgement passed by Hon'ble Supreme Court reported in ***(2019) 4 SCC 153 (H.K Sharma Vs. Ram Lal)*** and submitted that the facts involved in the said case was almost similar as that of the present case and the Hon'ble Supreme Court has specifically noted that there was no clause in the

agreement discerning the intention of the parties to surrender the tenancy agreement either expressly or impliedly.

34. He has submitted that the judgement of Hon'ble Supreme Court in the case of *(2019) 4 SCC 153 (Supra)* assumes importance in view of the fact that in the present case also, the terms and conditions of the agreement do not indicate that there would be a termination of tenancy by virtue of the agreement, rather the agreement reveals that the tenancy did not terminate.

35. The learned counsel submits that even if the clause of agreement is taken into consideration, then also there is at best deferment in payment of rent in terms of the agreement, but the learned courts have given concurrent finding on the bonafide requirement of the landlady which is a distinct ground for eviction under the BBC Act. He submits that there being no intention of termination of tenancy between the parties and even if the ground of default is not sustained, the eviction on account of bonafide necessity will still be sustainable to uphold the decree of eviction of the suit property.

Rejoinder arguments of the appellant

36. The learned counsel for the appellant, in response, has referred to the plaint at paragraph 5, which is quoted as under:

“5. That the defendant was a habitual defaulter in payment of rent. He paid rent upto December 2003 and thereafter inspite of repeated request the defendant neither paid the rent nor has he validly tendered the same. As a matter of fact the husband of the plaintiff left Ranchi and taking advantage of his absence and his ill health the defendant completely stopped paying rent.”

37. By referring to the aforesaid statement made in paragraph 5, the learned counsel submits that it was the specific case of the plaintiff that the defendant was a habitual defaulter in payment of rent and he paid the rent only till December 2003 and thereafter inspite of repeated request, the defendant neither paid the rent nor he had validly

tendered the same. The learned counsel submits that when the plaintiff witness was confronted with the payment of Rs.1,00,000/- through cheque in the year 2007, which was a part of the consideration amount, they tried to wriggle out by stating that the payment was made in the year 2007 for the period from June 2003 to December 2003. The learned counsel submits that it was clearly an afterthought.

38. While distinguishing the judgement reported in **1999 (2) PLJR 189 (Gajendra Prasad Sinha & Anr. Vs. Man Mohan Prasad)**, the learned counsel for the appellant has submitted that the judgement passed by Hon'ble Supreme Court reported in **(2000) 9 SCC 339 (R. Kanthimathi and Anr. Vs. Beatrice Xavier)** was not available for consideration at that point of time.

39. The learned counsel has also submitted that the judgement relied upon by the Hon'ble Supreme Court in the judgement reported in **(2000) 9 SCC 339 (supra)** i.e. judgement reported in **(1973) 2 SCC 197 (Arjunlal Bhatt Mall Gothani and Ors. Vs. Girisih Chandra Dutta and Anr.)**, was not placed before the court.

40. With respect to the judgement reported in **(2003) 1 JLJR 591 (HC) (Sheikh Sohrab Vs. Md. Kasim Ansari & Anr.)**, the learned counsel has submitted that in this case also, the aforesaid two judgements of the Hon'ble Supreme Court have not been cited.

41. With respect to the judgement reported in **(2009) 3 JLJR 19 (Munmun Banerjee and Others Vs. Smt. Manju Devi)**, the learned counsel has submitted that the judgement of **Sheikh Sohrab (supra)** has been relied upon in the said judgement and the judgement passed in the case reported in **(2000) 9 SCC 339 (supra)** has been considered but distinguished on facts, holding that the agreement has become unenforceable. Even the judgement passed by Hon'ble Supreme Court reported in **(2002) 3 SCC 676 (Shrimant Shamrao Suryavanshi and Another Vs. Pralhad Bhairoba Suryavanshi and Ors.)** has been distinguished in the said judgement.

42. The learned counsel for the appellant has also referred to the judgement passed by this Court in **SA No.80 of 2011 (Om Prakash Kesri Vs. Chintu Devi and Ors.)** decided on 20.06.2025 and

submitted that though in the facts of the said case, there was a clear stipulation that the tenant would continue to pay rent, and therefore, this Court held that there was a continuation of relationship of landlord and tenant between the parties, but in the present case, there is a clear stipulation in the agreement that the tenant would discontinue to pay rent, and therefore, on this distinguishing fact and on the principles of law, the case would be covered by S.A. No.80 of 2011 on the point of seizure of relationship of landlord and tenant between the parties which was decided under substantial question of law no.(B) in the said case.

43. With respect to the judgement reported in *(2012) 1 SCC 656 (Suraj Lamp and Industries Vs. State of Haryana)*, he has referred to paragraph 19 of the said judgement to submit that there is no dispute that according to Transfer of Property Act, an agreement of sale whether with or without possession is not a conveyance. He submits that accordingly the agreement itself was not compulsorily registrable.

44. With respect to the judgement passed by this Court reported in *(2009) 3 JLJR 19 (supra)*, the learned counsel has referred to paragraph 6 of the said judgement to submit that it was specifically noticed by the learned trial court that there was nothing in the agreement of sale to show that the petitioners of the case were not required to pay rent after the agreement, and therefore, on the basis of such agreement, it could not be held that petitioners of the said case acquired any right, title and interest over the property and their status and possession changed and they continued in possession as tenant and not as owner on the basis of such agreement and there existed a relationship of landlord and tenant between the parties.

45. The learned counsel has referred to the definition of landlord and tenant as defined under the BBC Act and has further submitted that as per clause in the agreement, the defendant was not supposed to pay rent from October 2007 and clause 6 of the agreement would trigger only when the defendant refused to perform in terms of the agreement. He submits that the defendant never refused to perform and before the expiry of the period of agreement a suit for specific

performance of contract was already filed as the husband of the plaintiff, who entered into the agreement had expired and the plaintiff, his wife, refused to convey the property in terms of the agreement.

46. Arguments concluded.

47. Judgement is reserved.

(Anubha Rawat Choudhary, J.)

07.01.2026

Rakesh/Saurav/Binit