

IN THE HIGH COURT OF JHARKHAND AT RANCHI**S.A. No. 72 of 2025**

Pawan Kumar Jaiswal, S/o late Rajendra Chaudhary, aged about
59 years, R/o Plot No.239/B, Road No-02, Ashok Nagar, P.O. and
P.S. – Argora, District – Ranchi

... ... **Defendant/Appellant/Appellant**

Versus

Smt. Krishna Sinha, W/o late Satendra Kumar Sinha, aged about
88 years, R/o – Mahabir Sadan, Jai Prakash Nagar, P.O., P.S. –
Siwari, District – Siwan (Bihar)

... ... **Plaintiff/Respondent/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

CAV on 07.01.2026**Pronounced on 06.04.2026**

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.10 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. **Case of plaintiff**

As per the case of the plaintiff, the husband of the plaintiff, had inducted the defendant as tenant over the suit property as back as on 15.01.2001 and her husband expired on 10.03.2009. Thereafter, the suit was filed alleging that the monthly rent was Rs.15,000/- and the defendant was habitual defaulter in payment of rent and paid the rent only up to December 2003 and thereafter, in spite of repeated requests, neither paid rent nor validly tendered the same by taking advantage of ill health of her husband Satendra Kumar Sinha. The plaintiff sent legal notice to the defendant on 23.10.2009 under registered cover and thereafter the suit for eviction was filed on account of default in rent and personal necessity.

5. **Case of defendant**

The defendant contested the suit denying the relationship of landlord and tenant and asserted that the defendant was inducted as monthly tenant by husband of the plaintiff since 15.01.2001 at rent of Rs. 3,500/- per month and her husband entered into Memorandum of Understanding dated 03.09.2007 intending to sell the suit property for Rs.35 lakh and an advance of Rs. 1 lakh by cheque dated 08.10.2007 was issued in the name of Ajit Kumar Sinha, the Power of Attorney holder of Satendra Kumar Sinha (husband of the plaintiff) under the

instruction of Satendra Kumar Sinha. Upon encashment of the cheque, Satendra Kumar Sinha entered into an agreement with the defendant on 30.10.2008 incorporating the terms and conditions of the agreement.

As per the agreement also, Rs.1 lakh was already given in advance at the time of entering into Memorandum of Understanding dated 03.09.2007 and further Rs.4 lakh was paid by the defendant, and consequently, the balance consideration amount of Rs.30 lakh was to be paid and the registered deed of sale was to be executed on or before 03.09.2010. It was the case of the defendant that by virtue of the agreement of sale dated 30.10.2008, the defendant was not required to pay rent and he remained in possession by virtue of part performance of the agreement of sale. The defendant also asserted that a suit for specific performance of the agreement of sale was filed by the defendant being Title Suit No. 474 of 2009 against the plaintiff which was pending.

6. Issues before the trial court.

- “1. Whether the suit as framed is maintainable?*
- 2. Has plaintiff got valid cause of action for the present suit?*
- 3. Whether Satendra Kumar Sinha husband of the plaintiff inducted the defendant as a tenant in respect of the suit premises on a monthly rent of Rs. 15,000/- and after the death of Satendra Kumar Sinha the plaintiff being his widow inherited property as the owner?*
- 4. Whether defendant defaulted in payment of rent from January 2004 in respect of the suit premises?*
- 5. Whether the plaintiff required the suit premises bonafide and in good faith on her own requirement for the purpose of her treatment and social care as there is no good medical treatment in Siwan?*
- 6. Whether Satendra Kumar Sinha intended to sale the property that to the defendant for a consideration of Rs. 35,00,000/- and accordingly memorandum of understanding was executed*

between Satendra Kumar Sinha and the defendant on 3.11.2007 and paid the defendant Rs. 1,00,000/- (One lac) as advance?

7. Whether after the agreement the defendant was not required to pay rent of the premises to Satendra Kumar Sinha?

8. Whether the plaintiff is entitled for relief as prayed for in the plaint?

9. To what relief or reliefs which the plaintiff is entitled for?"

7. The trial court decreed the suit by holding that there was landlord tenant relationship between the parties and on ground of personal necessity and also on the ground of default in payment of rent with a direction upon the defendant to vacate the suit premises within 2 months.

8. Point for determination before the 1st appellate court was 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".

9. The learned 1st appellate court dismissed the appeal. The appellate court observed/ held that –

- a. *It appears that the plaintiff/ respondent has claimed that the rent of the suit property was Rs.15,000/- whereas the defendant/appellant has claimed that the rent of the suit premises was Rs. 3,500/- per month. However the admitted position is that there is no documentary evidence available to show the rent fixed. From perusal of plaint, it appears that the respondent has not claimed arrears of rent, in such position, the quantum of rent, whether it was Rs. 3,500/- as has been claimed by the appellant or it was Rs. 15,000/- as has been claimed by the respondent is of least relevance.*
- b. *It is clear that the husband of the plaintiff was the owner of the suit premises and after his death the plaintiff is the owner of the suit premises. It is also admitted that the husband of the plaintiff had inducted the defendant as a tenant in the suit premises.*
- c. ***The defendant relied upon*** *the agreement of sale between the defendant and the husband of the plaintiff and as per the terms of the agreement, the appellant had paid Rs.1,00,000/- by cheque and also*

*gave Rs.4,00,000/- in cash. As such, the defendant being the prospective purchaser, the relation of the landlord and tenant ceased. The memorandum of understanding, dated 03.09.07 and agreement of sale, dated 30.10.08 as Exhibit A and E respectively. It was the case of the defendant that in view of Sec. 53 A of Transfer of Property Act, the plaintiff is not entitled for a decree of eviction. **Reliance was placed** by the defendant on a decision of the Hon'ble Supreme Court, reported in (2000) 9 SCC 339 and it was submitted that it has been held that once there is agreement of sale between a landlord and a tenant, the old relationship as such comes to an end and even after the cancellation of such agreement of sale the status of tenant is not restored as such. In other words, on the date of execution of the aforesaid agreement of sale their status as that of landlord and tenant changed into a new status as that of a purchaser and a seller. Placing reliance on the aforesaid judgment it was submitted that since there is no relation of landlord and tenant between the respondent and the appellant the suit for eviction under the Jharkhand Building (Lease, Rent & Eviction) Control Act. 2001 is not maintainable.*

- d. **On the other hand, it was argued by the plaintiff** that the alleged agreement Exhibit E is an unregistered document and in view of Section 49 in The Registration Act, 1908 the said document is inadmissible in evidence and no reliance can be placed on the said document. Reliance was placed on the judgment reported in 2010(1)PLJR, 317 to submit that it has been held that any document containing contracts to transfer for consideration, any immovable property for deriving the benefit under Section 53A of the Transfer of Property Act must be registered if it has been executed after the commencement of the Amending Act of 2001 and in case, such document is not registered on or after such commencement it will have no effect for the purpose of invoking the doctrine of part performance under Section 53A. The doctrine of part performance protects the right of a transferee of an agreement for sale if he has been put in possession or continues in possession in part performance of the contract or has done some act in furtherance of the contract. Prior to the Amending Act of 2001 a party could claim the benefit of such possession on the basis of the doctrine of part performance even if the agreement for sale was not registered but the same has now been specifically debarred by the Amending Act.*

- e. *The appellant has disputed the landlord and tenant relationship between the husband of the respondent and himself on the strength of an unregistered agreement to sale. However, a sale agreement is compulsorily required to be registered and if the same is not registered, then as per Section 49 of the Registration Act, it cannot be received as evidence of any transaction affecting such property or conferring such power. Though it may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877. In above position the unregistered agreement Ext. E can not be read in evidence in the present proceeding. Accordingly, in absence of evidence the relationship of respondent and the appellant remained as that of landlord and tenant. In above view of the matter the ratio of the judgement of the Hon'ble Apex Court reported in (2009) 9 SCC 339 is not applicable to the present case.*
- f. *The respondent in his written statement has stated that he had regularly paid rent to Sri Satendra Kumar Sinha prior to execution of agreement to sale dated 30.10.2008 whereas when he deposed in Court as D.W.5, in his cross examination at para 42 had stated that after September 2007 he stopped paying rent. However, he has nowhere stated till which Month and Year he had paid rent. In above position if the version of the appellant is believed to be true in that case also it could be said that he is defaulter in payment of rent since September 2007.*
- g. *Another ground in which the respondent had sought eviction of the appellant is personal necessity. The respondent has claimed that she needs the suit premises for her personal necessity for her medical needs. The witnesses of the appellant have stated categorically that the respondent is in need of medical attention at Ranchi. The appellant though disputed the claim of the respondent but admittedly the respondent being an old lady she has got her medical needs and it is her wish where she wants get her medical treatment. There is no evidence available on record to suggest that the respondent is having any other house at Ranchi.*
- h. *The judgement of the learned trial court directing eviction was sustained both on account of default in payment of rent from September 2007 and on account of bonafide personal necessity of the plaintiff.*

10. Arguments of the appellant (defendant)

- A. 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.
- B. 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.
- C. 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.
- D. 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.

- E. 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.
- F. 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.

- G. 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.
- H. 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.
- I. 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.
- J. 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.
- K. 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.

L. 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.

M. 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.

11. Arguments of the Respondent (Plaintiff)

- I. 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.
- II. 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.

III. Learned counsel for the respondent 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.

IV. 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.

V. 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.

- VI. 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.

- VII. The learned counsel has referred to paragraph 17 of the appellate court's 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.
- VIII. 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.)**.
- IX. 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.

- X. 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.
- XI. 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.
- XII. 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.

12. Rejoinder arguments of the appellant

- a) 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.”

- b) 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.
- c) 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.
- d) 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.

- e) 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.
- f) 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.
- g) 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.
- h) 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.

- i) 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.
- j) 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.

Findings of this Court

13. 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.

14. As per the defendant, one Memorandum of Understanding 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 lakh 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.

15. 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.

16. There are concurrent findings of both the courts that the defendant did not pay rent at least from September 2007 and the plaintiff was in bonafide need of the suit premises and the suit was decreed both on account of default in payment of rent and on bonafide necessity of the plaintiff. No substantial question of law has been framed on these two points and essentially the substantial questions of law relate to admissibility and relevance of the unregistered agreement of sale (Exhibit- E) and as to whether the relationship between the parties continued to be that of land lord and tenant after the agreement dated 30.10.2008 (Exhibit- E). If it is held that there was no relationship of land lord and tenant, there would naturally be no question of default in payment of rent and no question of personal necessity of the plaintiff and in such circumstances, the decree of eviction has to be set-aside. If it is held otherwise, the decree has to be sustained as no substantial question of law has been framed with respect to default and personal necessity.

17. It is not in dispute that Satendra Kumar Sinha, the husband of the plaintiff, had inducted the defendant as tenant over the suit property as back as on 15.01.2001. Satendra Kumar Sinha expired on 10.03.2009. Thereafter, his wife filed the suit alleging that the

monthly rent was Rs.15,000/- and the defendant was habitual defaulter in payment of rent and paid the rent up to December 2003 and thereafter, in spite of repeated requests, neither paid rent nor validly tendered the same by taking advantage of ill health of her husband Satendra Kumar Sinha.

18. The plaintiff claimed to have sent legal notice to the defendant on 23.10.2009 under registered cover, stating that the defendant had defaulted in payment of rent and that she required the suit property for her personal necessity. It was specifically asserted that the defendant had rendered himself liable for eviction for non-payment of rent since January 2004.

19. The defendant contested the suit denying the relationship of landlord and tenant and asserted that the defendant was inducted as monthly tenant by Satendra Kumar Sinha since 15.01.2001 at rent of Rs. 3,500/- per month. Satendra Kumar Sinha entered into Memorandum of Understanding dated 03.09.2007 intending to sell the suit property for Rs.35 lakh and an advance of Rs. 1 lakh by cheque dated 08.10.2007 was issued in the name of Ajit Kumar Sinha, the Power of Attorney holder of Satendra Kumar Sinha under the instruction of Satendra Kumar Sinha. Upon encashment of the cheque, Satendra Kumar Sinha entered into an agreement with the defendant on 30.10.2008 incorporating the terms and conditions of the agreement.

20. As per the agreement, Rs.1 lakh was already given in advance at the time of entering into Memorandum of Understanding dated 03.09.2007 and further Rs.4 lakh was paid by the defendant, and consequently, the balance consideration amount of Rs.30 lakh was to be paid and the registered deed of sale was to be executed on or before 03.09.2010. It was the case of the defendant that by virtue of the agreement of sale dated 30.10.2008, the defendant was not required to pay rent and he remained in possession by virtue of part performance of the agreement dated 30.10.2008 (Exhibit- E). The terms and conditions of the agreement relevant for the present case in the light of the substantial question of law are quoted as under:

“Whereas, the terms and expression

Where as the first party has constructed one pucca house over the said plot as such the said plot no. 239/B which is also known and called house No. 239/B and handed over the said house to the second party on 15.01.2001 on monthly rent of Rs. 3500/- verbally as tenant.

Whereas, the second party is residing and maintaining the house and regularly paid the monthly rent in cash to the first party till September 2007 without obtaining any receipt from the first party, however, this fact has been admitted and accepted herewith.

Whereas on 03.09.2007 first party made an MOU and expressed the desire to sell the said plot with house and fixtures at the total cost of Rs. 35,00,000/- (Rs. Thirty five Lakhs) only, to the second party and second party accepting the proposal on 03.09.07 handed over an account payee cheque no. 297779 dt. 08.10.2007 of Rs. one Lakh of Bank of Maharashtra on the direction of first party, payable to one Ajit Kumar Sinha, a faithful person of First party, who incashed the said cheque on 08.10.2007 itself and withdrawn Rs. one Lakh from the CCA account no 39 of the second party and handed over the said amount to the first party, is an admitted fact and affirmed by the first party, herewith too.

*Whereas, as per terms of the MOU dt. 03.09.2007, the MOU shall prevail further, only after encashment of Rs. One Lakh from the account of second before 15.10.2007, since the said terms has been fulfilled by the second party within prescribed time and further terms of payment of 10% of total cost agreed between the parties has been subsequently paid Rs.4,00,000/- (Four lakh Rupees) only as advance by the second party to the first party in cash and said amount has been received by the first party from Ajit Kumar Sinha, it is accepted and affirmed herewith. **it is made clear that after September 2007 the monthly rent of the said premises shall not be chargeable from the second party as the advance amount against the total cost of the premises of plot No. 239/B with house and fixtures has been received by the first party, and the second party has made maintenance cost to the services housing Co-operative society by A/C payee cheque in the account of the said Co-operative standing in the name of first party.***

After accepting the aforesaid facts, both parties agreed to execute this agreement to sell on the following terms and conditions:-

- 1. That the remaining amount Rs. 30 Lakhs against the total cost Rs. 35 Lakhs of plot no. 230/B with building and fixtures must be paid on or before 03.09.2010 to the first party by the second party and the properties shall be legally transferred on the payment of full and final payment, immediately, thereafter.***
- 2. That the second party shall remain in possession over the properties and shall maintain the building and its fixture in well manner, no alteration or demolition of any part or portion shall be done by the second party without prior written permission of the first party.***
- 3. That the prescribed maintenance charges, electricity, telephone bills etc. shall be borne by the second party.*
- 4. That the second party shall have no right to transfer or make any 'type of title deed in favour of anybody nor will have right to give on rent to anybody.***

- 5. That if any party have no interest in selling or purchasing the properties in question, in that case, at least three months notice must be served to other party, in advance.*
- 6. That, if the first party declines to sell, he will returned the accepted amount with 18% interest per annum to the second party and if the second party declines to purchase the properties, then he has to pay monthly rent @ Rs. 10,000/- per month to the first party, form October 2007 till the date of vacation of the building in question.*
- 7.*

21. However, before the cut-off date for execution of the registered deed of sale, i.e. 03.09.2010 could be reached, Satendra Kumar Sinha died on 10.03.2009. It was the case of the defendant that the defendant repeatedly requested the plaintiff (wife of late Satendra Kumar Sinha) to receive balance consideration amount and to execute the registered deed of sale in their favour, but the plaintiff refused and ultimately a suit for specific performance of agreement was instituted, which was numbered as Title Suit No.474 of 2009, which was pending.

22. The defendant denied being a habitual defaulter in payment of rent and that he had paid rent only up to December 2003. The defendant denied the receipt of legal notice dated 23.10.2009, and asserted that prior to November 2008, the rent with respect to the suit premises was received by the husband of the plaintiff. Meaning thereby, as per the case of the defendant, prior to execution of agreement of sale dated 30.10.2008, the entire rent had already been paid till the month of October 2008. By referring to the agreement of sale and its terms and conditions, it was asserted by the defendant that by virtue of the agreement, the defendant was not required to pay rent of the suit premises to Satendra Kumar Sinha. The defendant further asserted that there never existed any relationship of landlord and tenant between the plaintiff on one hand and the defendant on the other and that the rent of the suit premises was never Rs.15,000/- per month and the plaintiff be put to strict proof of the allegations made in the plaint.

23. This Court finds that the plaintiff did not mention about the memorandum of agreement of the year 2007, receipt of payment and cheque of Rs.1 lakh in the year 2007 and also the agreement of sale

dated 30.10.2008 and these facts were brought on record by the defendant.

24. It is important to note that in spite of the fact that memorandum of understanding and the agreement of sale were clearly mentioned by the defendant in the written statement, the plaintiff did not take any steps to amend the plaint and challenge these documents. But during the course of evidence, the plaintiff claimed that these documents are forged and fabricated. However, the learned court has not recorded any finding that memorandum of understanding or the agreement of sale were forged and fabricated and no such substantial question of law has been framed. The fact also remains that a suit for specific performance of agreement of sale dated 30.10.2008 has been filed by the defendant against the present plaintiff which is pending.

1st substantial question of law. - 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?

25. Section 17 of the Registration Act deals with the documents for which registration is compulsory. Section 17 (1 – A) was introduced vide Act 48 of 2001, w.e.f. 24.09.2001, which provides that the documents containing contract to transfer for consideration, any immovable property for the purposes of Section 53A of Transfer of Property Act is required to be registered and if such documents are not registered, they shall have no effect for the purposes of Section 53A.

17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a);

4 [(1-A) The documents containing contracts to transfer for consideration, any immovable property for the

purpose of section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

26. Section 49 of the Registration Act deals with effect of non-registration of documents required to be registered, which reads as under:

“49. Effect of non-registration of documents required to be registered.—No document required by section 17 1 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall— (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) , the words, figures and letter “or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882 (4 of 1882)” omitted by Act 48 of 2001 or as evidence of any collateral transaction not required to be effected by registered instrument. ”

27. Upon conjoint reading of Sections 17 and 49 of the Transfer of Property Act, it is clear that for the purposes of claiming benefit under Section 53A of Transfer of Property Act, the contract to transfer immovable property for consideration is required to be registered and if it is not registered, it may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by a registered instrument.

28. Section 53-A of Transfer of Property Act reads as under:

“53-A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the words “the contract though required to be registered, has not been registered, or” omitted by Act 48 of 2001, s. 10 (w.e.f. 24-9-2001)., or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

29. In the judgement passed by Hon’ble Supreme Court reported in **(2002) 3 SCC 676 (supra)**, the Hon’ble Supreme Court has considered the necessary conditions required to be fulfilled if a transferee wants to defend or protect his possession under Section 53A of the Transfer of Property Act. The Hon’ble Supreme Court has further held that if the conditions enumerated under Section 53A of the Transfer of Property Act are satisfied, then the law of limitation does not come in the way of the defendant taking the plea under Section 53A of Transfer of Property Act, even though a suit for specific performance of contract is barred by limitation. Paragraphs 16 and 17 of the aforesaid judgement is quoted as under:

“16. But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are:

(1) there must be a contract to transfer for consideration of any immovable property;

(2) the contract must be in writing, signed by the transferor, or by someone on his behalf;

(3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;

(4) the transferee must in part-performance of the contract take possession of the property, or of any part thereof;

(5) the transferee must have done some act in furtherance of the contract; and

(6) the transferee must have performed or be willing to perform his part of the contract.

17. We are, therefore, of the opinion that if the conditions enumerated above are complied with, the law of limitation does not come in the way of a defendant taking plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract is barred by limitation.”

30. In the judgement passed by the Hon’ble Supreme Court in the case of ***Suraj Lamp (supra)***, it has been clearly held in paragraph 16 that Section 54 of the Transfer of Property Act makes it clear that a contract of sale i.e. an agreement of sale does not of itself creates any interest in or charge on such property and the title over the property passes only on execution of conveyance. It has also been held that protection provided under Section 53A of the Transfer of Property Act to the proposed transferee arising out of agreement of sale is a shield only against the transferor and it disentitles the transferor from disturbing the possession of the proposed transferee, who is put in possession in pursuant to such agreement. It has nothing to do with the ownership as the proposed transferor remains the owner of the property till it is legally conveyed by executing a registered deed in favour of the transferee. The conclusion drawn by the Hon’ble Supreme Court in paragraphs 18 and 19 is quoted as under:

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and

registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.

31. In the judgement passed by Hon'ble Supreme Court in the case of *Vinod Infra Developers Ltd. -vs- Mahaveer Lunia and Others reported in 2025 SCC OnLine SC 1208*, the Hon'ble Supreme Court held that Sections 17 and 49 of the Registration Act clearly states that un-registered documents required to be registered are inadmissible in evidence for the purpose of conveying title or completing the sale transaction and can only be admitted for collateral purposes or in a suit for specific performance of contract.

32. Upon considering the aforesaid judgments and upon conjoint reading of the provisions of Sections 17, 49 of the Registration Act and Section 53A of Transfer of Property Act as it stands with effect from 24.09.2001, there can be no doubt that if a person seeks to protect his possession against the true owner pursuant to a contract for sale and if the other conditions prescribed under Section 53A is satisfied, then the agreement to sale is compulsorily registrable, failing which, the protection granted under Section 53A of Transfer of Property Act to the defendant is not available.

33. Admittedly, in the present case, the agreement of sale is after 24.09.2001 and in order to seek protection under Section 53A of Transfer of Property Act, the same was required to be compulsorily registrable in view of the aforesaid provisions of Section 17 of the Registration Act. However, the consequence of non-registration is required to be seen in the light of Section 49 of the Registration Act.

This is in view of the fact that the defendant is seeking to protect his possession by claiming part performance of agreement of sale which is referable to Section 53A of Transfer of Property Act.

34. In view of the aforesaid provisions of law, there can be no doubt that the defendant in the present case cannot seek protection under Section 53A of Transfer of Property Act for want of registration of the agreement of sale.

35. However, at the same time, it cannot be said that the agreement of sale is of no consequence in the present case.

36. The present case arises out of a suit for eviction under the Special Act dealing with the landlord-tenant relationship under the JBC Act, and therefore, the consequence of the agreement of sale, which was exhibited without any objection, is required to be seen for the purpose as to whether the same can be looked into for collateral purposes, that is for ascertaining as to whether the relationship between the parties changed from that of land lord and tenant to seller and buyer pursuant to the agreement of sale (Exhibit-E).

37. There is no doubt that by virtue of agreement of sale, no title is created, declared, assigned limited or extinguished either in the present or in future. The agreement of sale generally contains a recital as to the pre-existing title and also a promise to execute a sale deed in future so as to confer title by such sale deeds which are yet to be executed. However, the consequence of agreement of sale has to be ascertained from the terms and conditions of the agreement and can certainly be taken into consideration for collateral purposes to determine the change in the nature of relationship between the parties.

38. The proceeding under *Jharkhand Buildings (Lease, Rent and Eviction) Control Act, 2000 (JBC Act)* is essentially a dispute with respect to land lord tenant relationship under the JBC Act and is not a title suit and the materials are to be primarily considered to arrive at a finding on the point of landlord-tenant relationship, if such a relationship is in dispute. The point to be considered is whether the unregistered agreement of sale dated 30.10.2008 (Exhibit-E) could have been taken into consideration by the learned court and if

considered, what will be the bearing of such agreement of sale dated 30.10.2008 (Exhibit-E). The 1st appellate court has refused to consider the agreement of sale dated 30.10.2008 (Exhibit-E) for want of registration.

39. *In the judgement passed by the Hon'ble Supreme Court in Mool Chand v. Nanagram, (2007) 15 SCC 783*, it has been held that the agreement of sale is not compulsorily registrable and it can be admitted in evidence. Paragraph 5 of the said judgement is quoted as under:-

“5. Such a document does not fall within the category of any of the documents listed in clauses (a) to (e) of sub-section (1) of Section 17 of the Registration Act, 1908. No title is created, declared, assigned, limited or extinguished, whether in the present or in future, by the said document dated 7-12-1991. The document merely contains a recital as to a pre-existent title and also a promise to execute sale deeds in future so as to confer title by such sale deeds which are yet to be executed consistently with the share of the brothers in the property. The trial court clearly erred in holding the document to be compulsorily registrable. The refusal of the trial court to admit the document in evidence has occasioned a failure of justice insofar as the appellants are concerned.”

The said judgement relates to the agreement of sale pre-2001. However, by virtue of amendment in Registration Act and Transfer of Property Act in 2001, the agreement of sale became inadmissible for claiming protection under Section 53A of the Transfer of Property Act but still remained admissible for collateral purposes.

40. This Court is also of the considered view that the agreement of sale as such is not compulsorily registrable as the same neither creates nor extinguishes any right or title over the property, but is required to be registered in order to claim benefit of part performance of contract under Section 53A of the Transfer of Property Act. The unregistered agreement of sale could not be looked into to give protection to the defendant under Section 53 A of Transfer of Property Act, but was certainly required to be looked into for the purposes of finding out as to whether the relationship between the parties changed from *land lord and tenant* to *seller and buyer* so as to exclude the very applicability of the JBC Act seeking remedy of eviction on account of

default in payment of rent and bonafide personal necessity of the plaintiff.

41. There is no dispute that from 24.09.2001 by virtue of amendment in Sections 17, 49 of the Registration Act and Section 53A of the Transfer of Property Act, the agreement of sale with respect to immoveable properties are compulsorily registerable in order to claim protection of part performance of the agreement under Section 53A of Transfer of Property Act.

42. Admittedly, the agreement of sale involved in this case is post 24.09.2001, i.e., 30.10.2008. Further, the defendant was taking a plea of protection under Section 53A of the Transfer of Property Act to resist eviction, but the same being unregistered could not be taken into consideration to seek protection under Section 53A of the Transfer of Property Act. However, the same can certainly be looked into and ought to have been looked into from the point of view of finding out the nature of possession so as to arrive at a finding as to whether the relationship between the parties continued as land lord and tenant or became that of seller and purchaser after agreement of sale dated 30.10.2008 (Exhibit-E).

43. Thus, the learned 1st appellate court while confirming the judgement of the learned trial court was justified in not taking the agreement of sale dated 30.10.2008 (Exhibit-E) into consideration for giving protection to the defendant under Section 53A of the Transfer of Property Act for want of registration but ought to have considered the same for collateral purpose of finding out as to whether the relationship between the parties continued as *land lord and tenant* or had become that of *seller and purchaser* after agreement of sale dated 30.10.2008 (Exhibit-E).

44. *The 1st substantial question of law is accordingly answered in favour of the appellant (defendant) and against the respondent (plaintiff) in the aforesaid manner. The impact of the Exhibit E will be considered while answering the 2nd substantial question of law.*

2nd substantial question of law. - Whether the appellant ceased to be a tenant after the agreement of sale dated 30.10.2008?

45. Now, having held as aforesaid, it has to be examined taking into consideration the materials on record and also the unregistered agreement of sale dated 30.10.2008 (Exhibit-E) as to the nature of possession of the defendant and as to whether there existed a relationship of land lord and tenant between the parties inspite of agreement of sale dated 30.10.2008 (Exhibit-E) or their relationship changed into that of a seller and buyer.

46. Upon perusal of the Agreement of Sale dated 30.10.2008 (Exhibit E), this Court finds that as per agreement, the rent was not to be paid after September 2007 as the advance amount against total cost of suit premises was received by Satendra Kumar Sinha (husband of the plaintiff), and the defendant had paid maintenance cost to the Services Housing Cooperative Society through the said account payee cheque. The extract from the agreement is quoted as under:-

it is made clear that after September 2007 the monthly rent of the said premises shall not be chargeable from the second party as the advance amount against the total cost of the premises of plot No. 239/B with house and fixtures has been received by the first party, and the second party has made maintenance cost to the services housing Co-operative society by A/C payee cheque in the account of the said Co-operative standing in the name of first party

47. As per the terms and conditions of the Agreement of Sale dated 30.10.2008 (Exhibit E), in case, Satendra Kumar Sinha, declined to sell, he was to return the accepted amount with 18% interest per annum to the defendant, and in case, the defendant declined to purchase the property, then he had to pay monthly rent at the rate of Rs. 10,000/- per month to Satyendra Kumar Sinha from October 2007 till the date of eviction of the building in question. The extract from the agreement is quoted as under:-

6. That, if the first party declines to sell, he will returned the accepted amount with 18% interest per annum to the second party and if the second party declines to purchase the properties, then he has to pay monthly rent @ Rs. 10,000/- per month to the first party, form October 2007 till the date of vacation of the building in question.

48. So far as the judgment relied upon by the appellant reported in **(2000) 9 SCC 339 (Supra)** is concerned, the point for consideration in the said case was, whether on the execution of agreement of sale by the landlord with the tenant and the landlord having received substantial portion of sale consideration, the relationship of landlord-tenant inter se between them ceased and fresh rights and obligations flow from the said agreement.

In the said case, the terms and conditions of the agreement of sale have been quoted in the said judgment itself wherein it was clearly mentioned that the balance consideration will be paid at the time of registration and the landlady shall complete the transaction of sale and conveyance and the property demised was already been surrendered to possession of the tenant. It was the case of the tenant that after entering into the agreement, the landlady accepted Rs. 20,000/- confirming delivery of possession and in this context, there was clear intent of the landlady to change the nature of relationship between the parties and much emphasis was laid on the words “already been surrendered” which found place in the agreement involved in the said case.

In this background, the Hon'ble Supreme Court held that any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. The Hon'ble Supreme Court further noted that earlier when the appellants were inducted into tenancy it only meant that both agreed for a relationship of landlord and tenant and later on, when the landlord decided to sell the property to the tenant and the tenant agreed by entering into agreement, they by their positive act changed their relationship as purchaser and seller.

Paragraphs 6 to 9 of the aforesaid judgment are quoted as under:

“6. Any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. Earlier when the appellants were inducted into tenancy it only means both agreed that their relationship was to be that of landlord and tenant. Later when the landlord

decided to sell this property to the tenant and the tenant agreed by entering into agreement, they by their positive act changed their relationship as purchaser and seller. When the seller-landlord accepts the sum, he actually acts under this agreement. This acceptance preceded by agreement of sale changes their relationship. This is how they intended. Once accepting such a change, their relationship of landlord-tenant ceases.

7. This Court in *Arjunlal Bhatt Mall Gothani v. Girish Chandra Dutta* (1973) 2 SCC 197 held as under:

“The appellants were tenants in the premises of the respondent landlord and three suits, including an eviction suit, were pending against them. By an agreement between the appellants and the respondent, the respondent agreed to sell the whole property to the appellants for a certain sum to be paid to him by equal instalments. Clause (5) of the agreement provided that in case of default of any instalment, the agreement for sale would stand cancelled and if the purchasers failed to pay the defaulted instalments within one month's notice the payments made would stand forfeited and purchasers would make over possession of the property to the vendor.”

“Under clause (5) of the agreement the question of giving notice arises only if the vendor wanted to forfeit the instalments paid by the purchaser. Not even one instalment having been paid the question of forfeiture does not arise and no notice was necessary for cancelling agreement. It stood automatically cancelled. It was sought to be argued before us that once the agreement stood cancelled the appellants stood restored to their original position as tenants and the suit could not be filed without giving notice under the Transfer of Property Act. We are of opinion that when the agreement, dated June 7, 1959, was entered into the old relationship of landlord and tenant came to an end. The rights and liabilities of the parties have to be worked out on the basis of that agreement.”

8. This decision clearly spells out that once there is agreement of sale between a landlord and a tenant, the old relationship as such comes to an end. It goes on to record that even after the cancellation of such agreement of sale

the status of tenant is not restored as such. In other words, on the date of execution of the aforesaid agreement of sale their status as that of landlord and tenant changed into a new status as that of a purchaser and a seller.

*9. Thus, within this legal premises, the submission by learned counsel for the respondent for revival of their old relationship of landlord and tenant when she repudiates this agreement by sending back to the tenant Rs. 20,000 through a cheque (which according to the appellant was not encashed) cannot be accepted. So, we have no hesitation to reject the same. **Every conduct of the landlady right from the date of entering into agreement of sale, accepting money towards the sale consideration, delivering possession in lieu of such agreement all clearly indicates and has to be construed in law that she repudiated her old relationship of landlord and tenant.** Thus, after this parties enter into a new cloak of seller and purchaser and their relationship is to be governed under the said terms of the agreement. Every right and obligation thereafter would flow from it. Even if parties under the agreement of sale do not perform their obligations, remedy may be availed in law as permissible under in law. Hence, we have no hesitation to hold that the courts below including the High Court committed error in holding that the tenant committed wilful default. When the appellant is no more the tenant how can non-payment be construed as wilful default?" **(emphasis supplied)***

49. After considering the conduct of the landlady and also the agreement of sale involved in the said case, it has been held in the aforesaid judgment that once accepting the change of relationship, the relationship of landlord and tenant ceases.

50. Thus, even as per the aforesaid judgement the fact as to whether the relationship of landlord and tenant changed to that of seller and buyer depends upon the terms of the agreement of sale and also conduct of the parties.

51. The said judgement does not help the appellant (defendant) in any manner. Upon perusal of the terms and conditions of the agreement, this Court is of the considered view that Satyendra Kumar

Sinha and the defendant never intended to permanently sever their relationship as landlord and tenant and acquire the status as seller and purchaser. The agreement revealed that inspite of the agreement of sale (Exhibit-E) the husband of the plaintiff had the option not to sell the property and the defendant had the option not to buy the property and consequences for their respective option was also prescribed in the agreement itself. If the defendant refused to buy the property, defendant had to pay monthly rent @ Rs.10,000/- per month to the husband of the plaintiff from October 2007 and if the husband of the plaintiff refused to sell, he was to return the part paid money with interest @ 18% per annum. This Court is of the considered view that considering the terms of the agreement, the relationship between the parties did not change into that of buyer and seller from that of tenant and landlord. This Court is of the considered view that the learned courts have rightly held that there was relationship of land lord and tenant between the parties and this would be the position in law in the facts of this case even when seen particularly in the light of the agreement of sale dated 30.10.2008 (Exhibit-E).

52. *The 2nd substantial question of law is accordingly answered against the appellant (defendant) and in favour of the respondent (plaintiff).*

53. The agreement of sale was not taken into evidence by the learned 1st appellate court for want of registration and this Court while answering the 1st substantial question of law has already held that the agreement of sale certainly could not be taken into consideration for giving any protection to the defendant under Section 53A of the Transfer of property Act, but was required to be considered for collateral purpose to examine as to whether the relationship changed from landlord and tenant to seller and purchaser pursuant to the agreement. While answering the 2nd substantial question of law, this Court has also taken into consideration the agreement of sale (Exhibit-E) and has recorded a finding that the learned courts have rightly held that there was relationship of land lord and tenant between the parties and this would be the position in law in the facts of this case even

when seen particularly in the light of the agreement of sale dated 30.10.2008 (Exhibit-E).

54. The suit was decreed not only on account of default, but also on account of personal necessity. Even if it is taken for a moment that as per the agreement of sale dated 30.10.2008 (Exhibit-E), the defendant was not supposed to pay rent till he refused to buy the property and cannot be a defaulter, the same does not help the defendant (appellant) in any manner as the fact remains that the suit was also decreed on account of bonafide personal necessity of the plaintiff and no substantial question of law has been framed on the point of personal necessity. Therefore, the decree of eviction would still be sustainable.

Summary: -

55. The unregistered agreement of sale dated 30.10.2008 (Exhibit - E) cannot be taken into evidence for claiming protection under Section 53A of Transfer of Property Act but the learned 1st appellate court ought to have considered the agreement of sale dated 30.10.2008 (Exhibit-E) for collateral purpose of ascertaining as to whether the relationship between the parties continued to be that of landlord and tenant or that had changed into seller and buyer. ***Accordingly, the 1st substantial question of law is answered in favour of the appellant-defendant.***

Upon considering the agreement of sale dated 30.10.2008 (Exhibit-E) while answering the 2nd substantial question of law, it is held that the defendant did not cease to be a tenant even after the agreement of sale deed dated 30.10.2008. ***The 2nd substantial question of law is answered in favour of the respondent-plaintiff.***

56. Consequently, the decree for eviction under the JBC Act which was passed by the learned trial court and sustained by the learned 1st appellate court does not call for any interference.

57. It is an admitted fact that a suit for specific performance of contract has been filed by the defendant with respect to the agreement of sale (Exhibit-E) and the suit has been numbered as Title Suit No.474 of 2009 which is pending. It is sufficient to observe that if the suit for specific performance is decided in favour of the defendant, it

will still be possible for the defendant to seek recovery of possession as per law.

58. This appeal is accordingly dismissed.

(Anubha Rawat Choudhary, J.)

CAV on 07.01.2026

Uploaded on 06.04.2026

Saurav/-