

IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No. 143 of 2012

1. a. Santosh Kumar Jaiswal, S/o Late Kripa Shankar Jaiswal
b. Sunil Kumar Jaiswal, S/o Late Kripa Shankar Jaiswal
c. Sanjay Kumar Jaiswal, S/o Late Kripa Shankar Jaiswal
All are residents of House No. 1064, Hazaribagh Road, Lalpur, P.O. & P.S. Lalpur, District-Ranchi, Jharkhand
 2. Deo Narayan Jaiswal, S/o Late Ram Narayan Jaiswal
 3. Jagat Narayan Jaiswal, S/o Rai Saheb Laxmi Narayan Jaiswal
 4. Shailendra Jaiswal, S/o Late Sagram Singh Jaiswal
- All residents of Hazaribagh Road, P.O. & P.S.-Lalpur, District-Ranchi, Jharkhand.

..... Appellants

Versus

1. Sri Kunal, S/o Shri Gyanchand Pandey, By Caste-Bhumihar, by Profession-business, R/o Station Road, Mohalla-Nawatoli, P.O. & P.S.-Daltonganj, District-Palamau Jharkhand, General Power of Attorney Holder of Sri Girija Shankar Jaiswal, S/o Late Ram Narayan Jaiswal, R/o Lalpur Chowk, P.O. & P.S.-Lalpur, District-Ranchi.
 2. a. Nutan Pandey, W/o Late Nilesh Kumar Pandey
b. Abhinav Kumar, S/o Late Nilesh Kumar Pandey
c. Disha, D/o Late Nilesh Kumar Pandey
d. Drishti, D/o Late Nilesh Kumar Pandey
All resident of station road, mohalla Nawatoli, PO & PS Daltonganj, District-Palamu, Jharkhand
 3. a. Suman Devi. W/o Late Sanjay Kumar
b. Rahul Kumar, S/o Late Sanjay Kumar
c. Anshu Kumar, S/o Late Sanjay Kumar
d. Ayush Kumar, S/o Late Sanjay Kumar
e. Sumitra Kuer, W/o Late Nanhku Ram and Mother of Late Sanjay Kumar.
All residents of Nai Mohalla, Town, P.O. & P.S.-Daltonganj, District-Palamau Jharkhand
 4. Uma Shankar Jaiswal (Died), S/o Late Rai Saheb Laxmi Narayan Jaiswal
 5. Kuldeep Narayan Jaiswal (Died), S/o Late Rai Saheb Laxmi Narayan Jaiswal
 6. Rashmani Jaiswal, widow of Late Ranjit Singh Jaiswal
 7. Prabhu Shankar Jaiswal (Died), S/o Late Rai Saheb Laxmi Narayan Jaiswal
 8. Girija Shankar Jaiswal (Died), S/o Rani Narayan Jaiswal
- Sl. No. 4 to 8 all residents of Hazaribagh Road, P.O. & P.S.-Lalpur, District-Ranchi (Jharkhand)

... Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellants	: Mr. Rahul Kr. Gupta, Advocate Ms. Swati Singh, Advocate Mr. Surya Prakash, Advocate Mr. Shubham Kumar, Advocate Mr. Rakesh Kr. Singh, Advocate
For the Respondents	: Mr. Om Prakash Tiwari, Advocate

Mr. Mukul Kr. Singh, Advocate

Order No. 34 / Dated : 21.01.2026.

1. The instant First Appeal has been preferred against the judgment and decree passed in Title Suit No.117 of 2005 by which the Suit has been dismissed.
2. The parties shall be referred to by their original place in the suit and will include the heirs and descendants of the original parties who were substituted from time to time.
3. Plaintiff [Awadhesh Narayan Sinha], Power of attorney holder of plaintiff Nos.1 to 9 filed the suit for declaration that Uma Shankar Jaiswal and eight others, as fully detailed in the cause title of the plaint have joint right, title and interest over Schedule –A land which they acquired on the basis of a compromise decree dated 28.11.1980 passed in Title Suit No.49 of 1977. A further prayer was made for removing the construction made by defendant Nos.1 and 2 over Schedule –B land and to hand-over the vacant possession to the plaintiff.
4. As per the case of the plaintiff, the suit land was owned, acquired and was in possession of Sri Rai Saheb Laxmi Narayan Jaiswal, the common ancestor of Power of Attorney givers of plaintiff which he acquired by auction-sale made in Title Suit No.34 of 1937 on 31.08.1954 by the order of Sub-Judge-III, Gaya.
5. The power of attorney givers claims title and possession over the suit land including other properties based upon compromise decree in Title Suit No.49 of 1977 which was disposed of, on the basis of a compromise vide judgment and decree dated 28.11.1980.
6. Plaintiff Nos.1 to 9 claims to be the heirs and descendants of Rai Saheb Laxmi Narayan Jaiswal. Sri Girja Shankar Jaiswal acquired 1/9th share in the suit land as per the compromise decree, and entered into a registered agreement of sale for extreme northern part of the suit land in favour of Sanjay Kumar and he is in permissive possession over 0.09 acre of land.
7. It is also admitted that Girja Prasad Jaiswal (Plaintiff No.4) executed a General Power of Attorney dated 09.04.2005 in favour of Defendant No.1, who on his part entered into an agreement to sell in favour of Defendant

- No.2. It is pleaded that Plaintiff No.4 had no exclusive right to execute the said registered power of attorney in favour of Defendant No.1.
8. Both defendant Nos.1 and 2 entered into appearance before the learned Trial Court and contested the suit by filing their written statement separately.
 9. Suit has been contested inter-alia on the ground that there is mis-description of property so far Schedule-B land was concerned, and no relief was claimed in Para-1 of the plaint with regard to it.
 10. It is not disputed that common ancestor, namely, Rai Saheb Laxmi Narayan Jaiswal had acquired the suit property on the basis of auction-purchase in the year, 1954. The joint family property was not partitioned by the compromise decree passed in Title Suit No.49 of 1977, rather Girja Prasad Jaiswal acquired the right, title over the suit property by way of memorandum of partition dated 01.04.1988. It is contended that in Title Suit No.49 of 1977, there had been no partition rather it was only for dissolution of the partnership firm.
 11. Having acquired exclusive right, title and interest by way of memorandum of partition, Girja Prasad Jaiswal executed a registered power of attorney in favour of defendant No.1 true on his part entered into agreement of sale in favour of defendant No.2 executed on 20.04.2005.
 12. It is further pleaded that the plaintiffs had no right to execute the power of attorney with respect to the suit land in favour of the plaintiff (Awadhesh Narayan Sinha) as it was exclusive property of plaintiff No.4 who had already executed a registered power of attorney in favour of defendant No.1.
 13. On the basis of pleadings of the parties, the following main issues were framed: -
 - (iv) *Whether the plaintiff acquired any right with respect to the suit lands on the basis of the unregistered Power of Attorney dated 30.07.2003?*
 - (v) *Whether the defendant No.1 acquired any right with respect to the suit lands on the basis of registered Power of Attorney executed by Girja Shankar Jaiswal dated 09.04.2005?*
 - (vi) *Is the plaintiff entitled to the reliefs as sought?*
 14. Learned Trial Court dismissed the suit by answering both the main issues being Issue Nos.(iv) and (v) in negative and held that the plaintiff had not

acquired any right with respect to the suit land on the basis of the unregistered power of attorney dated 30.07.2003 executed by plaintiff Nos.1 to 9 in their favour and that defendant No.1 had acquired title on the basis of registered power of attorney executed by Plaintiff No.4 on 09.04.2005 in his favour followed by agreement to sale.

15. It is argued by the learned counsel on behalf of the plaintiffs/ appellants that the suit was filed not for the declaration of right, title and interest of the plaintiff Awadhesh Narayan Sinha, rather it had been filed for the declaration of right and title of plaintiff nos. 1 to 9 represented through the power of attorney holder, Awadhesh Narayan Sinha.
16. Learned Trial Court completely misdirected itself to frame issue(s) with regard to the individual title of the plaintiff(s) on the basis of the power of attorney executed in his favour. The claim of title of plaintiff nos. 1 to 9 was based on a compromise decree of Title Suit No. 49 of 1977 which was neither made any issue nor any finding was recorded with respect to it. There is no finding with respect to the relief for which the suit was filed.
17. It is argued by the learned counsel on behalf of the defendants/ respondents that learned Trial Court recorded a specific finding in para-10 of the impugned judgment that the suit property had been partitioned by way of memorandum of partition dated 01.04.1988 (Ext.-F) and the suit land had been allotted in favour of plaintiff no. 4 by which he came in settled possession of the same. Having come in the said possession on the basis of memorandum of partition, the other plaintiff(s) had no right to execute the power of attorney with respect to the suit land in favour of the plaintiff-Awadhesh Narayan Sinha. On the other hand, plaintiff no. 4 had executed a registered power of attorney on the basis of which the defendant no. 1 entered into an agreement to sale with defendant no. 2 who came in settled possession of the same and cannot be dispossessed in view of Section 53 A of Transfer of Property Act.

FINDING

18. From bare perusal of the judgment it is manifest that learned trial court appears to have lost sight of some of the fundamental cannons of civil adjudication. In this case suit was filed by the power of attorney holder for declaration of right title and interest over the suit property of Plaintiff

no.1 to Plaintiff No.9. Claim of title was based on compromise decree of Title Suit No. 49 of 1977 which was contested by the defendants.

19. The duty of raising the issues rests on the court. Under order 14 issue arises when a material proposition of fact or law is affirmed by the one party and denied by the other. Material propositions are those propositions of law and fact which plaintiff must allege in order to show a right to sue, or a defendant must allege in order to constitute the defence. Framing of issues is an important stage at which the scope of the trial is determined.

Main issues raised on the pleadings of the parties was as follows:

- I. Whether Plaintiff no.1-9 had acquired right title interest on the basis of the compromise decree in Title Suit No. 49 of 1977.
- II. Whether Plaintiff no.4 had exclusive right title and interest over the suit property, to execute the registered power of attorney in favour of Defendant No.1.

20. Learned trial Court neither framed these issues nor recorded any finding on these issues, and instead of adjudicating the title of the Plaintiff no.1 to 9 embarked on adjudication of title of Plaintiff Sri Awadesh Narayan Sinha on the basis of power of attorney executed in his favour. This was an exercise beyond the pleading of the parties and the relief for which the suit was filed.

21. Under the circumstance, the impugned Judgment and decree is set aside and the matter is remanded to the learned trial Court to decide the suit afresh within six months of the order after recasting the issue on the basis of the pleadings of the parties. Both the sides are directed to appear before the learned trial Court on 16th February, 2026 and in the event of the non-appearance of any of the party, the learned trial Court shall proceed as per the provisions contained in Order XVII of the CPC.

22. Office to forthwith communicate the order to the learned trial Court along with the lower court record well in advance before 16th February.

This First Appeal stands disposed of.

I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)