

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**S.A. No. 111 of 2006**

Harjit Singh, son of late Gurubachan Singh resident of Station Road, Chaibasa, Ward No.1 of Chaibasa Municipality, P.O. and P.S. Chaibasa, District Singhbhum (West)

... .. **Defendant/Respondent no.1 1 (a)/Appellant**

Versus

1. Puran Chandra Putrty son of Arjun Purty, by caste Ho, (Scheduled Tribe), by occupation cultivation and Service, Resident of Station Road, Chaibasa, Ward No.1 of Chaibasa Municipality, P.O. and P.S. Cahibasa, District Singhbhum (West)

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

2. Deputy Commissioner Singhbhum (West) at Chaibasa, P.S. and P.O. Chaibasa, District West Singhbhum

... .. **Defendant/respondent/respondent**

3. Guru Tui, son of late Bania Tui, by caste Ho (Member of Schedule Tribe), by occupation cultivation, resident of village Dilimarcha, P.S. Chaibasa Muffasil, P.O. Chaibasa, District West Singhbhum

...**Proforma Defendant/Proforma respondent/Respondent**

4. Baljit Singh son of late Gurubachan Singh resident of Station Road, Chaibasa, Ward No.1 of Chaibasa Municipality, P.O. and P.S. Chaibasa, District Singhbhum (West)

.. **Defendant/Respondent nos.1 1 (b)/Proforma Respondent**

5. Kala Singh son of late Gurubachan Singh resident of station road, Chaibasa, Ward No.1 of Chibasa Municipality, P.O. and P.S. Chaibasa, District Singhbhum (West)

.....**Defendant/Respondent no.1 1 (c) / Proforma Respondent**

6. Dalbir Singh, son of late Gurubachan Singh resident of Station Road, Chaibasa, Ward No.1 of Chaibasa Municipality, P.O. and P.S. Chaibasa, District Singhbhum (West)

... **Defendant/Respondent no.1 1 (d)/ proforma respondent**

7. Jogendar daughter of late Gurubachan Singh resident of station road, Chaibasa, Ward No.1 of Chaibasa Municipality, P.O. and P.S. Chaibasa, District Singhbhum (West)

...**Defendant / respondent no. 1 1(e) /proforma respondent**

8. Dalbira, daughter of late Gurubachan Singh resident of Station Road, Chaibasa, Ward No.1 of Chaibasa Municipality, P.O. and P.S. Chaibasa, District Singhbhum (West)

... **defendant/respondent no.1.1 /Proforma Respondent**

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**CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

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For the Appellant	: Mr. Indrajit Sinha, Advocate
	: Mr. Ankit Vishal, Advocate
	: Ms. Ashwini Priya, Advocate

For the Respondents : Mr. Zaid Imam, Advocate  
 : Mr. Zeeshan Ahmad Khan, Advocate  
 : Mr. Anjan Kumar, Advocate

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**CAV on 30.01.2026**

**Pronounced on 06.05.2026**

This appeal has been filed against the judgment and decree dated 08.03.2006 (decree signed on 28.03.2006) passed by the learned Additional District Judge, Fast Track Court, V, Chaibasa, in Title Appeal No. 29 of 1995/R. No. 12 of 2003 whereby the learned 1<sup>st</sup> appellate court has allowed the appeal preferred by the plaintiff and has set aside the judgement and decree dated 17 June, 1995 (decree signed on 12.07.1995) passed by learned Munsif Chaibasa in Title Suit No. 6 of 1992. The Title Suit was dismissed by the learned Munsif. The appeal was allowed and consequently the defendant no.1, who is the contesting defendant, is the appellant before this court.

2. The suit was filed for declaration of plaintiff's right, title, interest over the Schedule A property and for confirmation of plaintiff's possession over the suit land and if the plaintiff was found dispossessed from the suit land, a prayer was made for delivery of possession to the plaintiff after evicting the defendant therefrom.

3. This appeal was admitted for final hearing vide order dated 05.03.2009 on the following substantial question of law: -

(i) *Whether the court of appeal below has committed error of law in reversing the findings recorded by the trial court without complying the provisions under Order 41 Rule 33 CPC?*

(ii) *Whether the findings recorded by the appellate court suffers from serious perversity in as much as for non-consideration of the evidence in its true perspective?*

4. **Submissions of the appellant (defendant no.1)**

A. So far as the 2<sup>nd</sup> *substantial question of law* is concerned, the same is very widely worded and there is no mention as to non-consideration of which evidence in true perspective has made the appellate court's judgment perverse. Faced with this situation, when the matter was taken up on 27.01.2026, the

learned counsel for the appellant had submitted that for the 2<sup>nd</sup> substantial question of law only the evidence of two witnesses would be relevant i.e. P.W. 3 and P.W.7 and he would be referring to exhibit 1, exhibit 8, exhibit 8/a and exhibit-C.

Exhibit 1 is the sale deed executed by proforma defendant no.3 in the name of the plaintiff; Exhibit 8 is the Khatian of the year 1917 and Exhibit 8/a is the Khatian of the year 1964 and exhibit-C is the sale deed relied upon by the defendant no.1 in the light of the pleadings of the respective parties. The submission of the learned counsel for the appellant as recorded in order dated 27.01.2026 is quoted as under:

*“Upon perusal of the second substantial question of law, which is widely worded, the learned counsel for the appellant has submitted that only evidences of two witnesses would be relevant i.e. P.W.3 and P.W. 7 and he shall also be placing Exhibit 1, which is the sale deed relied upon by the plaintiffs. These three evidences on record would be sufficient to dispose of the substantial question of law no.2.*

*2. The learned counsel submits that he shall also rely upon Exhibit C which is the sale deed of the defendants, exhibits 8 and 8/A, which are the two khatians exhibited by the plaintiffs. He also submits that these evidences are to be considered in the light of the pleadings of the respective parties.”*

On the said date, the petition seeking early hearing of the appeal was allowed and the matter was posted for hearing on 29.01.2026 and judgement was reserved on 30.01.2026.

- B. The plaintiff had purchased the property from defendant no. 3 by registered sale deed dated 23.11.1990 after obtaining permission from the Deputy Commissioner. The sale deed is marked as Exhibit-1. Exhibit-4 is the order sheet granting permission of the competent authority for executing the sale deed dated 23.11.1990. The plaintiff and defendant no.3 are tribals, therefore defendant no. 2, Deputy Commissioner being a necessary party has been made party in the proceedings.

- C. It was the case of the plaintiff that recorded tenant with respect to the suit property is Chhota Pandu Ho whose name was recorded in the survey settlement of the year 1917 (exhibit-8/a) and thereafter in the year 1964 survey settlement (exhibit-8) the name of defendant no.3 and others appeared as co-sharer and defendant no.3 claims to be the descendant of Chhota Pandu Ho.
- D. It was alleged that Bamia Ho and Sumi Kui, who were the vendor and purchaser respectively with respect to the registered sale deed of the year 1961, the sale deed was executed by fictitious person.
- E. The evidence of P.W. 3, namely Pandvir Tiu, reveals that at paragraph 12, he deposed that the sale deed dated 13.10.1961 (exhibit C) was executed in his presence and he identified his signature in the deed. He further deposed in paragraph 17 that Bamia Ho, son of Ranku Ho executed the registered sale deed in favour of Sumi Kui and thus acknowledged the sale deed executed by Bamia Ho, son of Ranku Ho in favour of Sumi Kui.
- F. Exhibit C was executed by Bamia Ho, son of Ranku Ho and both their names have been recorded in survey settlement of the year 1964, and therefore, they were heirs of Chota Pandu Ho. Thus, the execution of sale deed by Bamia Ho, son of Ranku Ho in favour of Sumi Kui was duly proved as P.W. 3 was the person in whose presence the sale deed was executed and he has identified his signature in the deed. Therefore, the argument of the plaintiff that Sumi Kui and Bamia Ho, the purchaser and seller of sale deed dated 13.10.1961 were fictitious persons, does not hold good.
- G. It is submitted that the genealogy was not proved; consequently, the relationship of defendant no. 3 with Chhota Pandu Ho is not proved, and therefore, the sale deed executed by defendant no.3 in favour of the plaintiff with respect to the property of Chhota Pandu Ho is not proved. The learned court has not appreciated this aspect of the matter.

- H. However, so far as the case of the appellant (defendant no. 1) is concerned, the learned counsel submits that defendant no.1 was in possession of the property since 1950. The specific case of the defendant no.1 was that the 2<sup>nd</sup> wife of defendant no.1 was Sumi Kui, who purchased the property from Bamia Ho, son of Ranku Ho vide registered sale deed dated 13.10.1961 (Exhibit-C) after taking permission from the competent authority in T.A. Misc Case No.130 of 1961-62 (exhibit- G/8). However, the 2<sup>nd</sup> wife expired on 12.01.1966. Consequently, defendant no.1 inherited the property, and accordingly, his name was also entered in municipal survey published in the year 1972 (Exhibits-I and I/1).
- I. The learned counsel for the appellant has placed the judgements passed by learned trial court as well as the learned 1<sup>st</sup> appellate court. He has submitted that though the defendant has not been able to prove his title with respect to the property nor the defendant could prove adverse possession over it, the burden was on the plaintiff to prove his case, which the plaintiff failed to do so.
- J. The learned counsel submits that neither the plaintiff could prove partition in the family of the recorded tenant nor the plaintiff could prove title of the vendor of the sale deed executed in favour of the plaintiff. He has also submitted that the survey settlement of 1964 by itself is not a document of title.
- K. The learned counsel has also submitted that merely because the 2<sup>nd</sup> marriage of defendant no.1 was found to be void, the same cannot be a reason to hold that the title of the vendor of Sumi Kui was bad. He submits that once the title with respect to the suit property had already passed, there was no occasion for a 2<sup>nd</sup> sale deed with respect to the same property in favour of the plaintiff by defendant no.3.
- L. With respect to the *1<sup>st</sup> substantial question of law*, the learned counsel has referred to Order XLI Rule 33 of Code of Civil

Procedure, 1908 to submit that relief beyond pleadings could not have been granted. It is submitted that the relief granted by the learned 1<sup>st</sup> appellate court that the plaintiff would have right, title and interest over the suit land to the extent of 1/18<sup>th</sup> of his share and that he will be entitled to joint possession of the suit land along with other co-sharers, is also beyond the frame of the suit and pleadings of the parties, inasmuch as no such relief was sought for by the plaintiff and also there was no pleading to that effect. The case of the plaintiff was that after partition, the suit land fell in the share of his vendor, who subsequently sold to the plaintiff.

5. The learned counsel has relied upon the following judgements, which are quoted as under:

- (i) *(2014) 2 SCC 269 (Union of India and Ors. Vs. Vasavi Cooperative Housing Society Limited and Ors.) Paragraphs 15 to 19*
- (ii) *2022 SCC OnLine SC 928 (Akella Lalitha Vs. Konda Hanumantha Rao and Anr.) paragraph 16, 17 and 18*
- (iii) *(1977) 3 SCC 532 (Siddu Venkappa Devadiga Vs. Smt. Rangu S. Devadiga and Ors.) Paragraph 8*
- (iv) *(2024) 13 SCC 553 (P. Kishore Kumar Vs. Vittal Kr. Patkar) Paragraph 22, 31 to 33*
- (v) *(2019) 10 SCC 259 (Prahlad Pradhan and Others Vs. Sonu Kumhar and others) paragraph 5*

6. **Arguments of the Respondents**

- I. The learned counsel for the respondents has referred to the schedule of the plaint and submitted that in the schedule, the description of the property refers to old plot no.2188 corresponding to new khata no.29 and new plot no.2968 and new municipal survey no.483 under Khata no.19 measuring an area of only 0.06 decimal which was just a part of the property which was recorded in the name of the recorded tenant way back in the year 1917, whose title is not in dispute. He submits that in the survey record of 1964, the share of the vendor of the

plaintiff was recorded only to the extent of 1/18 and the name of other co-sharers was also recorded.

- II. That there was enough material on record to say that there was partition and submitted that the plea of partition has been rejected only on the ground that defendant no.3 had not deposed before the court. On the point of partition in the family of the recorded tenant, the evidences have not been properly considered while recording the finding.
- III. The learned counsel has submitted that 1/18<sup>th</sup> share was already recorded in the record of rights of 1964. He has referred to Section 84 of the Chotanagpur Tenancy Act, 1908 to submit that as per sub-section (3), every entry in the record of rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved by evidence to be incorrect.
- IV. The learned counsel has submitted that irrespective of the aforesaid arguments, the plaintiff has been able to prove his title to the extent of 1/18<sup>th</sup> share in old plot no.2188 corresponding to new khata no.29 and new plot no.2968. The learned counsel has submitted that the substantial question of law is widely worded to cover any perversity which is found in the judgement and the finding of the learned court that partition could not be proved is perverse.
- V. On the point of adverse possession as claimed by the defendant no.1 and to oppose such a plea, the learned counsel for the respondent has relied upon the judgement passed by Hon'ble Supreme Court reported in *(2020) 15 SCC 218 (Narasamma and Ors. Vs. A. Krishnappa (dead) through Legal representatives)* paragraph 33, and the judgement passed by this Court *SA No.132 of 1985 [(Phoda Devi and Ors. Vs. Ganesh Mahto (Yadav)]* page 11 to submit that it was not open to the defendant no. 1 to claim title as well as adverse possession simultaneously.

VI. The learned counsel has then referred to the judgement passed by the Hon'ble Supreme Court reported in *(2006) 5 SCC 353 (Prem Singh and Others Vs. Birbal and Others)* paragraph 27 and also the judgement reported in *(2021) 15 SCC 300 (Rattan Singh and Ors. Vs. Nirmal Gill and others)* paragraph 33, to submit that there is presumption in connection with the registered documents and the plaintiff is claiming title by virtue of registered document executed by one of the legal heirs of the recorded tenant and the name of legal heirs, as per the finding of the learned court, is found in the record of right of 1964 showing the share of the vendor of the plaintiff to the extent of 1/18 of the property which stood recorded in the name of only one ancestor Chhota Pandu Ho.

VII. It has been submitted that the name of the vendor of the appellant, Bamia Ho *as stated in exhibit -C*, was not recorded in the survey settlement (exhibit-8 and 8/1) and accordingly, he had no right to sell the property. The Khaitan of the year 1964 does not reflect the name of Sumi Kui even though as per exhibit C was executed in the year 1961.

**7. Rejoinder arguments of the appellant**

- a. The learned counsel for the appellant, in response, has submitted that even the contesting defendant was claiming title in favour of Sumi Kui by virtue of registered sale deed and both the plaintiff and the contesting defendant were referring to registered sale deed and both were executed after permission of the Deputy Commissioner.
- b. The learned counsel submits that in spite of the provision of Chotanagpur Tenancy Act, 1908, the revenue record are not documents of title and revenue records cannot be the sole basis to claim title and has referred to the judgements cited above and relied by the appellant.

**Findings of this Court.**

8. Title Suit No.6 of 1992 was filed by Puran Chandra Purty, a person belonging to Schedule Tribe "Ho" community against

Gurubachan Singh (defendant no.1- Sikh by caste) and Deputy Commissioner, West Singhbhum, Chaibasa. Defendant No.3 was Gura Tiu, son of late Bamia Tiu, also belonging to Schedule Tribe.

9. The Schedule A of the plaint was as follows:

*“Schedule of the land – ‘A’*

*The land is situated in Mouza – Deliamarcha, Thana No.108, Estate No.163, Thana – Kolhan, Singhbhum, under Old Khata no.29, bearing old plot no.2188, corresponding to New Khata no.29, and New Plot No.2968, now Municipal Survey plot no.483, under Khata No.19, measuring an area of 0.06 decimals and bounded by: -*

*North - Road, South – Bamiya,*

*East – Mangta, West – Bhagwan Das Rungta & Niz.”*

10. During the course of argument, it is not in dispute that the property belonged to Chhota Pandu Ho, whose name was recorded in the record of rights of the year 1917 (exhibit-8/a). The plaintiff claimed that the suit property was sold by defendant no.3 (Gura Tiu, son of Late Bamia Tiu claiming to be the descendant of Chhota Pandu Ho-the recorded tenant) to the plaintiff by registered sale deed dated 23.11.1990. Defendant no.1 also claimed that the suit property was sold by registered sale deed dated 13.10.1961 to Sumi Kui by the alleged legal heir of the recorded tenant, namely, Bamia Ho, s/o Ranku Ho. Both the sale deeds were executed by taking due permission from the competent authority.

11. The *case of the plaintiff* was that the suit land was originally recorded in the name of Chhota Pandu Ho, the grandfather of proforma defendant no.3 in the finally published Survey Settlement Operation Record of Rights of the year 1917. It was their further case that the suit land was thereafter recorded in the name of proforma defendant no.3 and his co-sharers in finally published Record of Rights of the year 1964. It was also stated that at the time of filing of the suit, the suit property was recorded in Town Chaibasa Municipal Survey Settlement of 1970-71 in the name of defendant no.1.

**12.** It was alleged that defendant no.1 managed a forged sale deed to get the suit land recorded in his name under Khata no.19 bearing new plot no.483 in Municipal Survey Settlement of 1970-71. It was asserted that defendant no.1 allegedly purchased the suit land from one Bamiya Ho, son of Ranku Ho in the name of a fictitious woman named Sumi Kui, describing her as wife of defendant no.1, vide registered sale deed dated 13.10.1961.

**13.** It was asserted that Sumi Kui was never the wife of defendant no.1, and the defendant could not have acquired any title or interest or possession over the suit land in the capacity of the husband of Sumi Kui. It was asserted that after getting the sale deed and getting the same recorded in Municipal Survey Settlement in the year 1970-1971, the defendant showed Sumi Kui dead in 1966 and thereafter got the land recorded in his name in Municipal Survey Settlement.

One Manjeet Kaur was the wife of defendant no.1 having sons and daughters and Sumi Kui was not the wife of defendant no.1.

**14.** It was further asserted that Bamiya Ho, son of Ranku Ho, had no right to sell the suit property in favour of Sumi Kui as the old plot no.2188 was recorded in the name of Chhota Pandu Ho, the grandfather of proforma defendant no.3 in Survey Settlement of 1917, and Bamiya Ho was neither the owner of the land nor he had any right to sell the property to Sumi Kui, and Bamiya Ho had no saleable interest in the property and he was not the son of Chhota Pandu Ho, rather he was the son of Ranku Ho.

**15.** It was asserted that the land was thereafter recorded in the name of Gura Ho and his brothers and other co-sharers as plot no.2968 under khata no.29 in survey settlement of 1964 and the suit land fell in the share of Gura Tiu, the proforma defendant, who was the rightful owner of the suit land and was in exclusive possession over the same. It was asserted that it was clear that both the vendor and purchaser i.e. Bamia Ho and Sumi Kui were fictitious persons, and therefore, the defendant could not have acquired any right, title or interest over the suit land.

A reference was also made to the necessary permission under Section 46 of the Chota Nagpur Tenancy Act in T.A. Miscellaneous Case No.216 of 1990-91 by the Additional Deputy Commissioner, who gave permission to sell the suit property after necessary local enquiries about the right of the applicant-defendant no.3.

**16.** It was also asserted that the suit land was mutated in the name of the plaintiff vide Mutation Case No.105 of 1990-91 vide order dated 20.02.1990. Against this, the defendant had preferred an appeal, which was registered as Mutation Appeal No.6 of 1990-91, and the order of the Anchal Adhikari was set aside. Thereafter, the plaintiff had preferred Revision which was registered as Mutation Revision No.1 of 1991-92 and was pending for disposal.

**17.** A proceeding was also initiated under Section 144 Cr.P.C, numbered as Miscellaneous Case No.41 of 1991 and another Miscellaneous Case No.45 of 1991 was also initiated under Section 107 Cr.P.C, but both were dropped and the claim of defendant no.1 could not be sustained. Thereafter, the defendant had instituted a proceeding under Section 144 Cr.P.C numbered as Miscellaneous Case No.177 of 1991 against the plaintiff. The proceeding was converted in a proceeding under Section 145 Cr.P.C and was pending for disposal.

**18.** *Defendant no.3* has filed a written statement supporting the case of the plaintiff.

**19.** The *contesting defendant no.1* filed a written statement opposing the prayer and asserted that the sale deed executed by the proforma defendant in favour of the plaintiff was fake, alleging that the plaintiff and proforma defendant had entered into a clandestine sale transaction. It was asserted that the plaintiff had not stated as to in which survey settlement, the name of Chhota Pandu Ho, was mentioned and it was also denied that proforma defendant no.3 was the son of the alleged recorded tenant Chhota Pandu Ho.

**20.** It was also denied that subsequently the property was recorded in the name of Gura Tiu and his co-sharer under Khata No.29, plot

No.2968 in Hal survey settlement and the plaintiff was called upon to strict proof of the facts.

**21.** It was admitted that the property was recorded in the name of defendant no.1 in Chaibasa Municipal Survey Settlement Operation of the year 1970-71 and the allegation in connection with the said recording was denied. It was asserted that the plot number of the suit property was originally numbered as 2188 and defendant no.1 claimed that the same was legally purchased by his wife from the rightful owner, namely Bamia Ho, by a registered sale deed dated 13.10.1961, after obtaining due permission under Section 46 of the Chotanagpur Tenancy Act from the Additional Deputy Commissioner, Chaibasa in TA Miscellaneous Case No.130 of 1961-62, vide order dated 07.10.1961.

**22.** It was also asserted that the permission was granted after due inquiry and identity of the proposed purchaser. Therefore, it was incorrect to say that the purchaser, Sumi Kui, was a fictitious lady. It was asserted that Sumi Kui, wife of defendant no.1 got her name mutated in Anchal Case No. 37 of 1961-62 and thereafter has been paying rent in her own name.

**23.** It was also asserted that it was significant to mention that alleged vendor of the plaintiff, namely Gura Ho, admits and claims himself to be son of Bamia Ho.

**24.** It was asserted that the land in question was in possession of defendant no.1 since 1950 and the defendant had been running a sawmill over the plot in question without any objection or obstruction and his possession has been opened and overt and within the knowledge of all concerned. While the defendant was in peaceful possession of the plot, the defendant married Sumi Kui and plot in question was acquired by her. Defendant no.1 claimed adverse possession and asserted that the suit was barred by limitation and such plea was taken by amending the written statement.

**25.** It was asserted that his wife Sumi Kui expired on 12.01.1966 and defendant no.1 became the successor in interest. It was also asserted that Bamia Ho, vendor of the wife of the defendant had also

expired in 1963. The suit plot was originally numbered as 2188 under khata no.29, and was renumbered as plot no.483 under khata number 19, and the name of the defendant was shown after final publication of the record of rights.

26. It was denied that the land in question fell in the share of Gura Tiu and he acquired exclusive possession over the same. Rather, it was defendant no.1 who was in possession since 1950. The defendant has referred to the various procedures initiated under Sections 144, 145/107 of Cr.P.C and such proceedings were not disputed. A reference was also made to proceeding under Section 71A of the Chota Nagpur Tenancy Act and the defendant asserted that in the said proceeding, the defendant was found in possession.

27. The learned trial court framed the following issues for consideration:

1. *Is the suit maintainable?*
2. *Is the suit barred under the law limitation?*
3. *Has the plaintiff acquired any right, title, interest in suit property by virtue of deed of sale dated 23.11.1990?*
4. *Has the defendant No. 1 perfected right, title and interest over the suit property by way of adverse possession?*
5. *Has the plaintiff any cause of action for the suit?*
6. *Is the plaintiff entitled to any relief or the relief as claimed?*

28. Both the parties led oral and documentary evidences.

#### **Trial court's judgement**

29. *Issue no.4* was taken up by the learned trial court vide paragraph no. 28 onwards. The learned trial court recorded a finding that defendant no.1 is a Sikh and governed by Hindu Marriage Act, and he was married to Manjit Kaur in the year 1940 and claims to have married another lady, namely Sumi Kui, in the year 1960, and that during the lifetime of 1<sup>st</sup> wife, the 2<sup>nd</sup> marriage would be treated as void, and recorded that in the present suit, Sumi Kui or her illegitimate son or daughter were not claiming any right over the property. The court recorded a finding that the plaintiff kept another

lady, Sumi Kui, in the year 1960 and purchased the suit land in the name of Sumi Kui through registered sale deed dated 13.10.1961 (Exhibit C). The court recorded that there was no bar according to the provisions of law.

**30.** The court also recorded that the plaintiff's witness P.W.3 clearly stated that Exhibit C, the sale deed dated 13.10.1961, was executed by Bamiya Ho, son of Ranku Ho, and P.W.3 had identified Bamiya Ho during the execution of the sale deed 'Exhibit C' in the year 1961. P.W.3 had identified his signature as 'Exhibit B' on the sale deed (Exhibit C).

**31.** The court then recorded that it was stated in the plaint that the suit land had been recorded in the name of Gura Ho and his brothers and other co-sharers as plot no. 2968 under khata no. 29, (according to Survey Settlement of 1964 (Exhibit 8), in mouza Diliamarcha, and that the suit land had fallen in the share of Gura Tiu, the proforma defendant. P.W.3 also stated in paragraph 6 of his evidence that about 50 years back, the partition took place in the family members of Chhota Pandu Ho. However, the khatian Exhibit 8, clarified that in the year 1964, the property of Chhota Pandu Ho, son of Damu Ho, devolved upon his heirs. The plaintiff did not prove the genealogical table of the heirs of Chhota Pandu Ho.

**32.** The court further referred to Hal survey settlement of Mauza Diliamarcha which was published in the year 1964 (exhibit-8), which revealed that the property of Chhota Pandu Ho, son of Damu Ho, bearing Khata no.29 were in possession of the aforesaid persons mentioned therein, all members of Ho community. The court observed that it is very common that there are two or three persons of the same name in one family.

**33.** The court thereafter recorded that the sale deed (Exhibit C) dated 13.10.1961 was executed by Bamiya Ho, son of Ranku Ho, and none of them were recorded in Hal Survey Settlement of 1964. It was held that Exhibit 8/a, being the survey settlement Khatian of the year 1917 clarified that the land under khata no.29 was recorded in the name of *Chhota Pandu Ho, son of Damu Ho*. On the other hand, the

survey settlement *Khatian* of the year 1964 [Exhibit 8] showed ***Damu Ho as the son of Chhota Pandu Ho*** with respect to the same Khata No.29. Exhibit 8 further clarified that ***another Damu Ho is son of Bamiya Ho.***

**34.** With the aforesaid discussion with respect to Exhibits 8 and 8/A, the court recorded that in absence of genealogical table of the recorded tenant, Chhota Pandu Ho, son of Damu Ho, whose name was recorded in the year 1917, it could not be believed that Bamiya Ho, son of Ranku Ho was not the heir of Chhota Pandu Ho. The court recorded a finding that Bamiya Ho, son of Ranku Ho, was also the heir of Chhota Pandu Ho, son of Damu Ho.

**35.** The court further recorded that it is an admitted fact that Khata No.29 bearing plot No. 2188, area 6 decimal land which was recorded in the year 1917 *Khatian* Exhibit 8/a is the same land which has been recorded in Hal Survey Settlement, 1964 (Exhibit 8) under Khata No.29, plot No.2968, area 6 decimal, and it is the suit land. Further, Exhibit 8 clarified that the suit land has been shown in the possession of Bara Bamiya Ho. The court recorded a finding that Bara Bamiya Ho is no one but he is son of Ranku Ho, and being old man, he has been named as Bara Bamiya Ho.

**36.** Having held that Bara Bamiya Ho was son of Ranku Ho and was called Bara Bamia Ho because he was an old man, the court recorded that the sale deed dated 13.10.1961 (Exhibit C) was executed by the right person, who is the heir of Chhota Pandu Ho. The court further observed that this finding is strengthened because of the fact that the plaintiff did not examine any witness, who are the heirs of Chhota Pandu Ho, and non-examination of any family member of Chhota Pandu Ho falsified all the claims of the plaintiff mentioned in paragraphs 6, 15 and 16 of the plaint.

**37.** The court further recorded that during argument, the learned counsel for the defendant had submitted that the name of Sumi Kui could not find mention in Survey Settlement of 1964 because the defendant could not get the registered sale deed and the error was

rectified during municipal survey settlement which was published in the year 1971-72.

**38.** The learned trial court thereafter observed that the aforesaid fact that Bamiya Ho, son of Ranku Ho, had a right to execute the sale deed (Exhibit C) in favour of Sumi Kui, as the certified copy of the SAR Case No.3 of 1995 (Exhibit G/1), SAR Case No. 1 of 1986 (Exhibit G/2), and SAR Case No.2 of 1986-1987, were filed by different scheduled tribe members to get back the property which was in possession of defendant No.1. Those different tribe members never raised the issue which has been raised by the present plaintiff that Sumi Kui was a fictitious lady and Bamiya Ho, son of Ranku Ho, did not have any right, title and interest over the property to execute the sale deed Exhibit C.

**39.** The court ultimately held that in the light of the aforesaid documents, the plaintiff was estopped under law to challenge the genuineness of the sale deed dated 13.10.1961 executed by Bamiya Ho, son of Ranku Ho, in favour of Sumi Kui.

**40.** The court observed that in absence of any evidence that Sumi Kui was just a mistress of defendant No.1, the suit property could easily be said to be succeeded by the occupier, defendant No. 1. The court further held that the plaintiff could not succeed, as the property had been purchased in the name of Sumi Kui vide registered sale deed of the year 1961, Exhibit C, and this fact was corroborated by defendant No. 1 in paragraph 14 of his cross-examination. ***The court recorded that all the documents from 1961 to 1991 were favoring defendant No. 1 and held that the aforesaid documents established that defendant No. 1 was rightful owner of the suit property by virtue of sale deed dated 13.10.1961 (Exhibit C) and decided issue No. 4 in favour of defendant No. 1.***

**41.** Having held that defendant No.1 was rightful owner of the suit property by virtue of sale deed dated 13.10.1961 (Exhibit C) executed by Bamiya Ho, son of Ranku Ho, the court took up the matter with regard to **issue nos. 5 and 2** on the point of adverse possession. The court recorded that both the oral and documentary evidence clarified

that defendant no.1 was the occupier of the suit land since 1960 and his possession over the suit plot was also established through these documents. The court held that the possession was open and continuous and also hostile to the interest of Gura Ho also, who is the vendor of the suit plot to the plaintiff. The court recorded that Exhibit 8, which is certified copy of Khatian published in the year 1964, also clarified that said Gura Ho, son of Bamiya Ho, was not in possession of the suit plot no.2968 of Khata no.29. ***The court declared that defendant no.1 had perfected his title over the suit property by way of adverse possession and the suit was barred by limitation, having been filed in the year 1992, and decided the issue in favour of defendant no.1.***

42. Thereafter, the learned court took up ***issue no.3***, title based on a registered sale deed as claimed by the plaintiff being the property purchased from Gura Ho, son of Bamiya Ho, through registered sale deed dated 23.11.1990 after having obtained permission under Section 46 of the Chotanagpur Tenancy Act from the appropriate authority.

43. The court recorded that it was the specific case of the plaintiff that the plaintiff had purchased the suit land from the rightful owner namely Gura Tiu, who had exclusive possession of the suit land according to Hal survey settlement published in the year 1964. However, on perusal of the *Khatian* of the year 1964 (Exhibit 8), it was clear that the suit land was in possession of Bara Bamiya Ho and hence the aforesaid statement of the plaintiff stood falsified. The court further recorded that Bamia Ho, son of Ranku Ho, had already sold the suit land in the year 1961 vide sale deed dated 13.10.1961, who was also the heir of Chhota Pandu Ho, and the vendor of the plaintiff Gura Tiu is also the son of Bamiya Ho. The court recorded that in tribe 'Ho', there are many persons of one name in one family. The court recorded that this fact clarified that predecessor of Gura Ho had already sold the suit land in the year 1961 to Sumi Kui, and therefore, Gura Tiu did not have a right to sell the same property to the plaintiff. Therefore, the court held that Gura Tiu, son of Bamiya Ho, was not

the rightful owner to sell the suit property again in the name of the plaintiff.

44. The court also recorded that the evidence of *P.W.3 (Pandvir Tiu)* itself clarified that the present plaintiff never came in possession of the suit land. The court recorded that the plaintiff has clarified that he is literate person and employed in Punjab National Bank and he must have knowledge that the suit land is under municipal area as clarified by the Government notification dated 29.01.1961 and the suit land came under the Chaibasa Municipality. The court further recorded that the plaintiff ought to have been aware of the municipal survey operations conducted in the year 1970-71, and it was for the plaintiff to verify as to in whose name the property was recorded in the said municipal survey before purchasing the property in the year 1990. The court also observed that *Khatian* (Exhibit I) which was published in the year 1970 after Chaibasa municipal survey settlement clarified that the name of defendant no.1 was recorded as 'Basari Hak' and the court recorded that defendant no.1 has already proved that he was rightful owner of the property and has perfected his right, title and interest over the suit property.

*The learned trial court dismissed the suit.*

**1<sup>st</sup> Appellate court's judgement**

45. The plaintiff filed an appeal before the learned 1<sup>st</sup> Appellate Court, and the learned 1<sup>st</sup> Appellate Court also took up the same issues as were framed by the learned trial court.

46. With respect to *issue nos.2 and 4* relating to limitation and adverse possession of defendant no.1, the learned 1<sup>st</sup> Appellate Court discussed the same from paragraph 15 onwards and recorded that Sumi Kui was not the legally wedded wife of defendant no.1, as defendant no.1 was already having a wife, namely Manjit Kaur, and defendant no.1, being governed by Hindu Marriage Act, was not entitled for a 2<sup>nd</sup> marriage. The court found that defendant no.1 claimed to be the owner of the property by virtue of husband of Sumi Kui, and since the alleged marriage with Sumi Kui was not valid and she being not the legally wedded wife of defendant no. 1, therefore the

possession of Sumi Kui over the suit land cannot be held to be in possession of defendant no. 1 and that defendant no. 1 did not acquire any right with respect to the property through Sumi Kui.

47. So far as the plea of adverse possession is concerned, the court considered the documents and materials on record and observed that even as per the case of the defendant, the property belonged to Sumi Kui, who had died in the year 1966, and therefore, the question of defendant No. 1 being in possession prior to 1966, and claiming possession from any date prior to 1966 was not acceptable and if his possession is taken from the year 1966, 30 years had not elapsed on the date of filing the suit, i.e., 06.03.1992. The Court recorded that for the purposes of property involved in this case, the period of limitation under Section 65 of the Limitation Act is 30 years. This was apparently on view of the amendment in Limitation Act so far as it is applicable to the members of Scheduled Tribe.

**48. *The learned court rejected the claim of title of the defendant through Sumi Kui and also rejected the claim of adverse possession and decided issue nos. 2 and 4 against the defendant and in favour of the plaintiff, who was the appellant and finding of the learned trial court on the point of issue nos.2 and 4 was reversed by the learned 1<sup>st</sup> appellate court.***

49. Thereafter, the learned court took up *issue no.3*, i.e. as to whether the plaintiff acquired right, title and interest with respect to the suit property by virtue of sale deed dated 23.11.1990 (Exhibit 1), which was executed by Gura Tiu, son of late Bamiya Tiu, and observed that admittedly, the property was purchased after getting due permission from the Deputy Commissioner in Miscellaneous Case No.216 of 1990-1991 (Exhibit 4). The signature of Gura Tiu on the sale deed was duly proved by PW9 (plaintiff) who had also stated that the disputed property came in the share of Gura Tiu after partition and that the suit land was recorded in the year 1913-1914 settlement in the name of Chhota Pandu Ho, who was the grandfather of Gura Tiu and also asserted that after purchase, the plaintiff came in possession of

the property. There were also proceedings under Sections 144 Cr.P.C and also 107 Cr.P.C but the cases were dropped.

**50.** The Court ultimately recorded that the Court had already held while deciding issue nos. 2 and 4 that Exhibit C did not confer any right, title and interest to defendant no. 1 since Sumi Kui was not the legally wedded wife. The Court further recorded that Exhibit C showed that Sumi Kui purchased the land of Khata no. 29 belonging to Plot no. 2188 from Bamia Ho, son of Ranku Ho, but surprisingly the plot no. 2188, Khata no. 29, was not recorded in the name of Bamia Ho, son of Ranku Ho, in the survey settlement of 1917 nor any other later survey settlement.

**51.** Therefore, the court held that it was doubtful that Bamia Ho, son of Ranku Ho, had any right, title or interest in Plot No. 2188. The court recorded that Exhibit 1, which was given a new no. 483 in Survey Settlement of the year 1972, was wrongly recorded in the name of defendant No. 1. The court thereafter observed that Exhibit 1 was duly proved and it was executed after taking permission from the authority concerned. Therefore, transfer through this deed amounts to transferring right, title and interest in the property to the extent of the share of the vendor of Exhibit 1. The court was of the view that Gura Tiu and any of his brothers or co-sharers of Khata No. 29 had not been examined to prove the partition amongst them, and even Gura Tiu, who was party to the suit, has not been examined. The court held that the testimony of other witnesses at this point, including the plaintiff, was not reliable on the point of partition between the co-sharers of Khata No. 29, and thereafter went on to hold that each plot of Khata No. 29 of the co-sharers had a right, title and interest as per share mentioned in the Khatian and held that Gura Tiu had 1/18 share in plot no.2968 which he could pass to the plaintiff vide sale deed (Exhibit 1). The court recorded that the plaintiff had failed to prove his possession over the suit land and that he had the right to possess the same jointly with other co-sharers and the issue was decided accordingly.

52. Consequently, the appeal was allowed and the decree passed by the learned court in Title Suit No.6 of 1992 dated 17.06.1995 was set aside and following relief was granted to the plaintiff:

*“1. The plaintiff has the right, title and interest over the suit land described in schedule A to the extent of his share, i.e. 1/18.*

*2. The plaintiff is also entitled to jointly possess the suit land along with other co-sharers.”*

**Findings on 1<sup>st</sup> substantial question of law.**

*Whether the court of appeal below has committed error of law in reversing the findings recorded by the trial court without complying the provisions under Order 41 Rule 33 CPC?*

53. Order 41 Rule 33 of the Code of Civil Procedure is quoted as under:

*“33. Power of Court of Appeal. – The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or make and to pass or made such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [any may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:*

*Provided that the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.”*

54. It has been vehemently argued by the learned counsel for the appellant that the relief granted to the plaintiff by the learned 1<sup>st</sup> appellate court is beyond the scope of the suit as it was never the case of the plaintiff that the plaintiff had title over the suit property along with the co-sharers. For this, the learned counsel has relied upon the judgment reported in **2022 SCC Online 928 (Akella Lalitha Vs.**

*Konda Hanumantha Rao and Anr.*) paragraphs 16, 17 and 18 to submit that the Court cannot grant relief for which no prayer or pleading was made, depriving the respondents to an opportunity to oppose or resist such relief and relief not found on pleadings should not be granted.

55. For the same point, he has earlier relied upon the judgment reported in (1977) 3 SCC 532 (*Siddu Venkappa Devadiga Vs. Smt. Rangu S. Devadiga and Ors.*) paragraph 8 to submit that a case cannot be based on grounds outside the plea of the parties, which is the basic principle of law.

56. This Court finds that the plaintiff had taken a specific plea in paragraph 7 of the plaint that the suit land was recorded in the name of Gura Ho and his brothers and other co-sharers, and upon partition, the suit land had fallen in the share of Gura Tiu, the proforma defendant and consequently, Gura Tiu, the vendor of the plaintiff was the exclusive and rightful owner of the suit land and was in exclusive possession.

57. On the other hand, it was the case of the contesting defendant, while responding with regard to paragraph 7 of the plaint that the alleged recording of name of Gura Ho and others with respect to plot no.2968 under khata no.29 in the survey settlement of 1964, even if found to be correct, the same does not bestow the alleged recorded tenants with any right, title, interest and possession over the suit property as none of the alleged persons were rightful owner of the property nor they ever enjoyed possession over the same at any point of time, more particularly the fact that defendant no.1 was in possession in or about 1950. It was also denied that the suit land had fallen in the share of one Gura Tiu or that he was the rightful owner of the plot and was in possession. The defendant in para 10 of the written statement has stated that it was significant to note that the alleged vendor of the plaintiff, Gura Ho, admitted and claimed himself to be the son of Bamia Ho. The contesting defendant claimed that the property was sold by Bamia Ho by a registered sale deed in favour of the wife of defendant no.1, Sumi Kui.

**58.** This Court finds that neither the suit was a partition suit nor any such issue was framed as to whether the property was partitioned amongst the descendants of Chotta Pandu Ho nor the other descendants of Chotta Pandu Ho were made party in the suit except defendant no.3, Gura Tiu son of Late Bamia Tiu, who filed a written statement in support of the plaintiff, but never participated in the proceedings.

**59.** In absence of any foundational plea as to the extent the vendor of defendant no.1 had the title over the property, there was no scope for the learned 1<sup>st</sup> appellate court to enter into the share of the co-sharers including that of defendant no.3 to decree the suit. Further, in absence of partition having been proved, the learned 1<sup>st</sup> appellate court could at best declare that the plaintiff was the purchaser from one of the co-sharers of the suit property but could not have determined his share. It is important to note that the suit property was only one of the properties which were recorded in the name of Chotta Pandu Ho in the year 1917.

**60.** In view of the aforesaid, this Court is of the view that the learned 1<sup>st</sup> appellate court has certainly travelled beyond the scope of the suit while declaring the share of the vendor of the plaintiff over the suit property and accordingly the relief granted to the plaintiff as per the impugned judgement that the plaintiff would be entitled to 1/18<sup>th</sup> share of the suit property cannot be sustained in the eyes of law.

**61.** While answering the 1<sup>st</sup> substantial question of law, this Court is of the considered view that the learned 1<sup>st</sup> appellate court has gone beyond the powers conferred under Order XLI Rule 33 of the Code of Civil Procedure while holding the extent of share the vendor of the plaintiff with respect to the suit property. After having held that the plaintiff failed to prove partition amongst the descendants of recorded tenant, Chhota Pandu Ho, as recorded in the Khaitan of 1917, (exhibit-8/a), there was no scope for the 1<sup>st</sup> appellate court to declare the undivided share of the vendor of the plaintiff, namely, Gura Tiu son of Late Bamia Tiu, that too in the absence of other co-sharers of the properties left by late Chotta Pandu Ho, including the suit property.

**62.** *The 1<sup>st</sup> substantial question of law is accordingly decided in favour of the appellant (defendant no.1) and against the respondent (plaintiff).* So far as the conflicting claim of respective parties, each based on registered sale deeds is concerned, the same will be considered while answering the substantial question of law no.(ii).

**Findings on 2<sup>nd</sup> substantial question of law.**

*Whether the findings recorded by the appellate court suffers from serious perversity in as much as for non-consideration of the evidence in its true perspective?*

**63.** The findings of the learned 1<sup>st</sup> appellate court rejecting the claim of adverse possession of defendant no.1 and reversing the finding of the learned trial court on this point is based on appreciation of materials on record and no perversity with respect to such finding has been pointed out by the learned counsel for the appellant (defendant no.1). Further, defendant no.1 was claiming title by virtue of the husband of Sumi Kui but it has been held that Sumi Kui was not the legally wedded wife of defendant no.1 as he already had a wife. This finding is also not in dispute. In such circumstances, the finding of the learned 1<sup>st</sup> appellate court rejecting the plea of adverse possession as claimed by defendant no. 1 does not call for any interference even when seen in the light of 2<sup>nd</sup> substantial question of law.

**64.** *Thus, the finding of the learned court that defendant no.1 neither had any title through Sumi Kui the purchaser of the suit property through exhibit C in the year 1961 nor had perfected his title through adverse possession does not call for interference.*

**65.** So far as the title of the suit property is concerned, the crux of argument of the appellant (defendant no.1) is that the plaintiff ought to have proved his title through exhibit-1 of the year 1990 to claim recovery of possession from defendant no.1 as the suit property was already sold vide *registered sale deed of the year 1961(exhibit-C)* to Sumi Kui. It has been argued that merely because defendant no.1 has failed to prove his title through Sumi Kui or through adverse

possession, the same cannot be a reason to decree the suit in favour of the plaintiff. It has also been argued that the plaintiff has to stand on his own legs to prove his title through the vendor, defendant no.3 through *registered sale deed of the year 1990 (exhibit-1)*.

**66.** It was the case of the plaintiff that the vendor of the plaintiff, defendant no.3 was the co-sharer of the properties left by Chotta Pandu Ho and defendant no.3 upon partition had sold his exclusive share to the plaintiff. It was asserted that father of defendant no.3 [*Gura Tiu son of Bamia Ho and grandson of Chotta Pandu Ho*], namely Bamia Ho, received the suit property upon partition and defendant no.3 had exclusive right, title and interest over the suit property which he sold to the plaintiff vide registered deed of the year 1990 (exhibit-1). It was asserted that the suit property (plot no. 2968) was recorded in the year 1964 [exhibit-8], exclusively in the name of Bara Bamia Ho. Since the plaintiff claimed that the suit property was exclusive property of defendant no.3 pursuant to partition, the plaintiff denied the title of Bamia Ho s/o Ranku Ho, the vendor of Sumi Kui with respect to registered sale deed of the year 1961(exhibit-C). The plaintiff further claimed that Sumi Kui was a fictitious lady. The learned court has recorded that in 'Ho community' at times, persons in different generation had the same name.

**67.** This Court also finds that the learned 1<sup>st</sup> appellate court has rejected the plea of the plaintiff regarding previous partition and has also rejected the plea of the plaintiff that the suit property was the exclusive property of defendant no.3 as a result of partition after having recorded that defendant no.3, who was alive did not participate in the suit. However, the learned 1<sup>st</sup> appellate court has recorded a clear finding that defendant no.3 was the co-sharer of the property and has held that defendant no.3 had sold the undivided interest in the property to the plaintiff and his share was to the extent of 1/18<sup>th</sup> of the suit property.

**68.** With respect to exhibit-C the findings of the learned 1<sup>st</sup> appellate court are as under:-

*“ I have already found that Ext.C does not confer any right, title and interest to defendant since Sumi Kui was not legally wedded wife and therefore he could not inherit any property further Ext. C shows that Sumi purchased land of Khat no. 29 belonging to plot no. 2188 from Bamia Ho, s/o Rankua Ho but surprisingly plot no. 2188 of was not khata no. 29 was not recorded in the name of Bamia Ho son of Ranku in the survey settlement of 1917 not any other later survey settlement. Therefore, it becomes doubtful that Bamia son of Ranku has right, title and interest in the plot no. 2188 of khata no 29. I find that Ext 8 and 8/A shows that such plot and khata no. was recorded in the name of Chotta Pandu Ho. On this ground Ext.C does not confer any right, title and interest in the suit land. But any how in Ext.I the said plot which has been given a new no. 483 in the survey settlement of the year 1972 has been wrongly recorded in the name of Gura Bachan Singh.”*

**69.** Thus, while considering exhibit-C, the learned 1<sup>st</sup> appellate court held as follows: -

- a. *Exhibit-C does not confer any right, title and interest to defendant since Sumi Kui was not legally wedded wife and therefore the defendant could not inherit any property.*
- b. *Exhibit-C shows that Sumi Kui purchased land of Khat no. 29 belonging to plot no. 2188 from Bamia Ho, s/o Rankua Ho but surprisingly plot no. 2188 of khata no. 29 was not recorded in the name of Bamia Ho son of Ranku in the survey settlement of 1917 nor in any other later survey settlement.*
- c. *On the aforesaid basis it was held that therefore, it became doubtful that Bamia son of Ranku had right, title and interest in the plot no. 2188 of khata no 29.*
- d. *Ext 8 and 8/A shows that such plot and khata no. was recorded in the name of Chotta Pandu Ho.*
- e. *On aforesaid ground Ext.C does not confer any right, title and interest in the suit land.*

**70.** *In Union of India v. Vasavi Coop. Housing Society Ltd. (2014) 2 SCC 269*, it has been observed that it is trite law that, in a

suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. A reference has been made to earlier judgement wherein it was held that in a suit for declaration if the plaintiffs are to succeed they must do so on the strength of their own title and that in a suit for ejection based on title, it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit. The court observed the legal position as under: -

“19. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against (*sic* them), in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.”

**71.** *In P. Kishore Kumar v. Vittal K. Patkar, (2024) 13 SCC 553*, it has been held that in a dispute with respect to determination of title, merely pointing out the lacunae in the defendant's title would not suffice. Having instituted the suit for declaration, the burden of proof rested on the shoulders of the plaintiff to reasonably establish the probability of better title.

**72.** It is not in dispute that 2188 is the old plot number with respect to the suit property as recorded in the year 1917 (exhibit-8/a) and the corresponding plot in survey record of 1964 (exhibit-8) is 2968. It is also not in dispute during the course of arguments that the entire khata no.29 including plot no. 2188 has been exclusively recorded in the name of Chotta Pandu Ho and in the subsequent survey of the year 1964, the same is recorded in the name of descendants of Chotta

Pandu Ho and the suit plot is numbered as 2968 and further exhibit- 8 reveals that the suit plot is recorded in possession of Bara Bamia Ho. The entries in exhibit-8 have been discussed by the learned 1<sup>st</sup> appellate court and upon perusal of the same, it is apparent that the entries have been recorded with respect to Khata no.29 are as follows:-

- a. in the name of Pandu Ho, Singh Rai Ho, Ranku Ho, Gura, Rajnara and Damu Ho, all sons of Bamia Ho *one share each and equal share;*
- b. Damu Ho s/o Chotta Pandu Ho *one share;*
- c. Lakshman Ho s/o Ranku Ho *one share.*

*Plot No.2968 has been mentioned in the exhibit 8 in possession of Bara Bamia Ho.*

73. The exhibit- 8 reveals that one of the recorded tenants in 1964 khaitan was Ranku Ho and exhibit-C was executed by Bamia Ho s/o Ranku Ho. Further, there is no question of recording of name of Ranku Ho in survey settlement of 1917 as the survey settlement of 1917 (exhibit-8/a) was exclusively recorded in the name of Chotta Pandu Ho. Further, the suit plot no.2188 in Khaitan of 1917 (exhibit-8/a) was recorded in the name of Chhota Pandu Ho and the corresponding plot was plot no.2968 in Khaitan of the year 1964 (exhibit- 8) and was shown in the possession of Bara Bamia Ho.

74. In *Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259*, a case arising out of partition suit, the contention raised by the appellants that since as per the Survey Settlement of 1964 the suit property was exclusively recorded in the name of a tenant, the suit property was his self-acquired property, was rejected by observing that the entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question. As a consequence, it was held that merely because name was recorded in the Survey Settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property.

75. Since the plea of previous partition amongst the descendants of Chhota Pandu Ho has been rejected by the learned 1<sup>st</sup> appellate court, therefore plot no.2968 in Khaitan of the year 1964 (exhibit- 8) shown in the possession of Bara Bamia Ho was certainly a joint family undivided property.

***76. The finding of the learned 1<sup>st</sup> appellate court to hold that it was doubtful that Bamia son of Ranku had right, title and interest in the plot no. 2188 of khata no. 29 based on entries in the record of rights is perverse and cannot be sustained in the eyes of law.***

77. The case of the plaintiff was that there was partition amongst the descendants of Chhota Pandu Ho and the suit property was exclusively allotted to defendant no.3 and hence the vendor of Sumi Kui namely, Bamia Ho s/o Ranku Ho had no saleable interest over the suit property and it was their case that Sumi Kui was a fictitious lady. However, the fact that the vendor of Sumi Kui i.e. Bamia Ho s/o Ranku Ho was the descendant of Chhota Pandu Ho was not in dispute.

78. It is important to note that the plea of the plaintiff that Sumi Kui was a fictitious lady was falsified by the cross examination of P.W-3.

P.W. 3 in his cross-examination at paragraph 12 has stated that the sale deed dated 13.10.1961 was written by one Chandan and this witness has put his signature on the sale deed as witness and exhibited his signature as Exhibit B. Further, in paragraph 19, he has stated that Bamia Ho is son of Ranku Ho and he had sold the property to Sumi Kui after taking due permission and he had put his signature in the sale deed as exhibit B after being duly satisfied. He has also stated that in the registry office, he had identified Bamia Ho, son of Ranku Ho and consideration amount was paid then and there.

79. From cross examination of P.W-3, it is clear that this witness had identified the vendor of Sumi Kui, that is, Bamia Ho s/o Ranku Ho. Thus, the witness of the plaintiff in cross-examination has supported the due execution of exhibit- C, and therefore, the case of the plaintiff that the sale deed (exhibit-C) was fictitious stood falsified by non-less than the witness of the plaintiff, P.W-3.

**80.** *In Prem Singh v. Birbal, (2006) 5 SCC 353*, it has been held that there is a presumption that a registered document is validly executed. Paragraph 27 of the said judgement is quoted as under: -

*“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”*

**81.** *In Rattan Singh v. Nirmal Gill, (2021) 15 SCC 300*, the Hon’ble Supreme Court observed that when the disputed documents are registered, while examining as to upon whom the onus of proof would lie, the courts would be guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in *Prem Singh v. Birbal (supra)*. The Hon’ble Supreme court held that in view of aforesaid proposition, the initial onus was on the plaintiff, who had challenged the registered document.

**82.** Further, it was never the case of the plaintiff that Bamia Ho son of Ranku Ho, vendor of exhibit-C was not one of the descendants of Chotta Pandu Ho. Rather their case was that on account of partition, the suit property fell in exclusive share of Defendant no.3 which was rightfully sold by defendant no.3 to the plaintiff in the year 1990 (exhibit-1). The learned 1<sup>st</sup> appellate court rejected the plea of partition and also held that the genealogy could not be proved as even defendant no.3 was not examined although he was alive. In such circumstances, the execution of exhibit- C having been proved by the P.W-3, the right of Bamia Ho s/o Ranku Ho, one of the descendants of Chhota Pandu Ho, could not have been completely discarded and the suit property was a part of the undivided share of properties of Chotta Pandu Ho which was sold by Bamia Ho s/o Ranku Ho in favour of the Sumi Kui. Thus, the suit property having been sold in the year 1961 through exhibit-C could not have been sold again in the year 1990 (exhibit 1) by another co-sharer to the plaintiff.

**83.** It is important to note that plaintiff never prayed for a declaration that exhibit- C was illegal or otherwise null and void on account of any other reason except that it was challenged in the plaint that it was executed by fictitious persons which was falsified by the evidence of P.W-3.

**84.** It is also important to note that *neither* previous partition amongst the co-sharers of Chhota Pandu Ho *nor* the genealogy of Chhota Pandu Ho was proved by the plaintiff. The plaintiff failed to prove that exhibit-C was executed in favour of fictitious person or was executed by person who had no title. The plaintiff miserably failed to prove his title on the basis of registered sale deed of the year 1990 (exhibit-1) as the property was already sold vide exhibit- C to Sumi Kui. Though defendant no.1 could not prove his title through Sumi Kui or through adverse possession, but the same cannot be a ground to decree the suit as the plaintiff has to prove his title through cogent evidence, which the plaintiff has failed to prove.

**85.** *While answering the 2<sup>nd</sup> substantial question of law, it is held that –*

- a. The finding of the learned court that defendant no.1 neither had any title through Sumi Kui, the purchaser of the suit property through exhibit C in the year 1961 nor had perfected his title through adverse possession, does not call for interference.*
- b. The finding of the learned 1<sup>st</sup> appellate court in holding that it was doubtful that Bamia son of Ranku (vendor of registered exhibit-C) had right, title and interest in the plot no. 2188 of khata no 29 based on entries in the record of rights, is perverse and cannot be sustained in the eyes of law.*
- c. Consequently, the plaintiff has failed to prove his title based on registered sale deed of the year 1990 (exhibit-1) as the suit property was already sold by his co-sharer to Sumi Kui vide exhibit- C of the year 1961.*

**86.** In view of the answers to both the substantial questions of law, this appeal is allowed.

**87.** Pending interlocutory application, if any, is dismissed as not pressed.

**(Anubha Rawat Choudhary, J.)**

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*Saurav/-*

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