

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 391 of 2003

Hiralal Keshari, son of Basuki Prasad Keshari, resident of
Bajinathpur, Dumka Road, P.O. – Jhausagarhi, P.S. Deoghar,
District Deoghar

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

Versus

1. Anant Singh alias Jattu Singh, son of late Dhanu Singh
(Deleted v.o.d. 16.10.2019)
2. Govind Singh, son of Anant Singh alias Jattu Singh
3. Gautam Kumar Singh, son of Anant Singh alias Jattu Singh;
4. Uttam Kumar Singh, son of Anant Singh alias Jattu Singh
5. Ratan Singh, son of Anant Singh alias, Jattu Singh
All are residents of village Simultala, P.O. Simultala, P.S.
Simultala, District Jamui
6. Sanjay Kumar Singh, son of late Sada Nand Singh, resident of
village Chandpura, P.S. + P.O. Sangrampur, District Munger,
(Bihar)
At present Advocate, District Bar Association Building,
Deoghar, P.S. Deoghar Town and District – Deoghar,
Jharkhand

... **Defendants/appellant/respondents**

7. Narandara Raut @ Narendra Nath Rao,
8. Fago Raut @ Dwijendra Kumar Jaiswal
Both sons of Nalmani Jaiswal of Jalsar, Road Deoghar, P.O.
Deoghar, P.S. Deoghar District – Deoghar (Jharkhand)

... **Defendants/Respondents/Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant	: Mr. Rajiv N. Prasad, Advocate
	: Mr. Nilendu Kumar, Advocate
For the Respondent No.6	: Mr. Arvind Kr. Choudhary, Advocate
	: Mr. Shambhu Nath Tiwari, Advocate
	: Ms. Vinita Prakash, Advocate

CAV on 07.08.2025

Pronounced on 27.11.2025

This Second Appeal has been filed by the plaintiff against the judgment dated 26.04.2003 and the decree signed on 13.05.2003 by learned District Judge, Deoghar in Title Appeal No.20 of 2002 and Title Appeal No.18 of 2002, whereby the learned appellate court has allowed the said appeals and has set aside the judgement and decree dated 07.10.2002 passed by learned Sub-ordinate Judge VI, Deoghar

in Title Suit No.677 of 1997. The trial court had decreed the suit and the 1st appellate court has reversed the judgement.

2. The defendant 1st party and defendant no.4 (defendant 3rd party) together had filed Title Appeal No.20 of 2002 and the defendant 2nd party had filed Title Appeal No.18 of 2002. The suit was decreed; the appeals were allowed and accordingly the plaintiff is the appellant before this Court.

3. The suit was filed seeking specific performance of agreement of sale dated 13.03.1997 (Exhibit-1) of immovable property and a for declaration that the subsequent two sale deeds executed by the defendant 1st party in favour of the original defendant 2nd party and one Sanjay Singh [who was subsequently added as defendant no.4 in the suit] with respect to the suit property vide sale deed no.2216 dated 24.09.1997 and sale deed no.2231 dated 27.09.1997 are bogus, sham and illegal, invalid and void.

4. This Court has formulated the following substantial question of law vide order dated 13.08.2004 as under:

“Whether the lower appellate Court has adopted a wrong legal approach in setting aside and reversing the judgement and decree of the trial Court?”

5. The title suit was filed for the following reliefs:

“(i) That a decree be passed for the specific performance of contract dated 13.03.1997 directing the defendant 1st party to execute present and complete the sale deed in favour of the plaintiff regarding the suit property on the basis of the agreement dated 13.03.1997 before the sub-registrar at Deoghar and if the defendant 1st party fails to complete the sale, the sale be executed and completed through the agency of the court.

(ii) for the cost of the suit.

(iii) for temporary and permanent injunction restraining the defendant 1st party not to execute the sale deed in favour of the 2nd party and to restrain the defendant 2nd party & also any other person.

(iv) for any other relief or reliefs to which the court deems fit and proper.

(v) for declaration that the aforesaid two sale deeds vide 2216 dated 24.09.1997 and 2231 dated 27.09.1997 are bogus, sham and illegal, invalid and void.

(vi) for temporary and permanent injunction against the defendants not to disturb the plaintiff in actual use and physical possession of the plaintiff over the suit property.”

6. The case of the plaintiff is as under: -

- a. The suit premises was initially acquired by one Babulal Singh who sold the same to his son's wife Soniya Kumari, wife of Dhanu Singh, vide Sale Deed No.365 for the year 1933. Soniya Kumari and her husband Dhanu Singh died leaving behind three sons namely, Hira Singh, Anant Singh @ Jattu Singh and Dashrath Singh, who inherited the suit property and continued in possession.
- b. Hira Singh and his wife though died issueless, they left behind an adopted son namely Navin Singh;
- c. Dashrath Singh left behind two sons namely Sanjai Singh @ Mangu Singh and Sanjiv Singh @ Shambhu Singh who sold their 1/3rd share and interest in the suit premises to the plaintiff for valuable consideration vide Sale Deed No.702 dated 21.03.1997 of the sub-Registry Office, Deoghar.
- d. Anant Singh @ Jattu Singh, the defendant 1st party agreed to sell his 1/3rd share and interest in the suit property to the plaintiff for valuable consideration of Rs.25,000/-(Twenty five thousand) only and having received payment of Rs.9,000/-(nine thousand) as earnest amount executed an agreement for sale of the suit property on 13.03.1997 in favour of the plaintiff and thereby promised to complete the sale deed and execution and registration of the same by the 12th day of March, 1998 A.D.
- e. After agreement, the plaintiff requested the defendant 1st party several time for completion of the sale deed but he evaded the same on one plea or the other pretext. The defendant 1st party having developed dishonest intention has been planning to sell the suit premises in favour of the defendant 2nd party members

in collusion and conspiracy with the defendant 2nd party members, who were on enimical terms with the plaintiff.

- f. It was asserted that the 1st party was liable to complete the sale after receiving the balance amount Rs.16,000/- only and the plaintiff was ready to pay the remaining consideration amount to the defendant 1st party.
- g. It was asserted that the defendant 1st party was liable to be restrained from executing any kind of paper or document inclusive the agreement and sale with regard to the suit property in favour of anybody including the defendant 2nd party members and the defendant 2nd party members were liable to be restrained to purchase the suit property.
- h. The suit was filed on 24.09.1997 seeking specific performance of contract since the defendant 1st party was taking steps to sell the suit property to defendant 2nd party. However, during the pendency of the suit, the defendant 1st party and the defendant 2nd party being conscious of the filing of the present suit on 24.09.1997 hurriedly entered into a sham transaction and executed and registered the alleged Sale deed no.2216 dated 24.03.1997 without any consideration money although they have falsely shown the same as Rs.25,000/-. Anant Singh alongwith his four sons namely 1. Govind Singh 2. Gotam Singh 3. Utam Singh and 4. Ratan Singh although the four sons of Anant Singh were not entitled to enter into the sale deed.
- i. That similarly the defendant 1st party entered into another sham transaction executed and registered another alleged sale deed no.2231 dt. 27.09.1997 with regard to a portion of about 17'-0 X 10'-0" of the suit land in favour of one Sanjay Singh, son of Sadanand Singh without any consideration amount although in this sale deed also, it has been falsely shown as Rs.25,000/-.
- j. Both the sale deeds were challenged to be bogus, illegal, invalid and void by filing amendment which was allowed. Sanjay Singh was added as defendant no.4 in the suit.

7. The case of the *defendant no.1 Anant Singh @ Jattu Singh and defendant nos.1(a), 1 (b), 1 (c) and 1 (d)* namely Govind Singh, Goutam Singh, Uttam Singh and Ratan Singh was as under: -

- i. These defendants denied that the plaintiff was formerly holding the suit premises with permission of Dasrath Singh and later, on his own. It was asserted that Dasrath Singh had no legal right to allow any body to hold the suit land as the suit premises belong to these defendants and defendant no.1 Anant Singh had given the suit land to the plaintiff on rent with the permission of the remaining defendants [From 1 (a) to 1 (d)].
- ii. These defendants denied the allegation that Hira Singh and his wife left behind an adopted son Navin Singh. It was stated that after the death of Hira Singh and his wife, their interest in the suit land passed on to Hira Singh brother Jattu Singh alias Anant Singh and Dasrath Singh, each of the two becoming entitled to $\frac{1}{2}$ share in the land left by Sonia Kumari and consisting of Basouri Town plot Numbers 468, 469 and 470 contained in Jamabandi No.603 of Mouza Jhousagarhi (No.582) measuring 1 (one) Katha and 10 (Ten) Dhurs situated within Deoghar Municipality area.
- iii. The allegation of an agreement executed by Anant Singh alias Jattu Singh on 13.03.1997 agreeing to his $\frac{1}{3}$ rd share in the suit land to the plaintiff was false. It was asserted that Anant Singh alias Jattu Singh has never executed any agreement with the plaintiff to sell $\frac{1}{3}$ rd share in the suit land and hence the alleged signature of Jattu Singh on the alleged agreement dated 13.03.1997 is a forged one and it all amount to fabricating false evidence to grab other properties and so the allegations made in paragraph 6 of the plaint are denied as false.
- iv. All the four sons of Anant Singh alias Jattu Singh, who have been made party in the suit as Defendant Nos. 1 (a) to 1 (d) are major and they have their shares and interest in the suit as heirs of Sonia Devi, therefore, Defendant No. 1 alone viz., Anant

Singh alias Jattu Singh had no legal right to execute any deed of agreement to sell the suit land to plaintiff.

8. The *defendant nos.2* and *3* in their written statement, *inter alia* took the following points:-

- A. They did not deny the claim of acquisition of the land from Laxamipur Estate by Babulal Singh. However, they stated that subsequently the property vested with Soniya Kumari, who died leaving behind three sons namely Hira Singh, Jattu Singh alias Anant Singh and Dasrath Singh; Hira Singh died without any issue and consequent upon his death, his entire interest devolved upon his surviving brother namely Jattu Singh and Dasrath Singh in equal share and that being so Jattu Singh and Dasrath Singh became entitled to 1/2 share each in the property so left by Sonia Kumari comprising of Basuri land and building within Town Plan Plot No.468, 469 and 470 J.B. No.603 bearing total area of 1 Katha 10 Dhur within mouza Jhousagarhi formerly under Laxamipur Estate. The allegations of Hira Singh having adopted a son namely Navin Singh was denied.
- B. Jattu Singh was separate from his brother and inducted the defendants as tenant in a part of his share for more than about nineteen years as tenant comprising of 17'x8' and the defendants had been in possession as tenant over the same under Jattu Singh for the last more than nineteen years.
- C. Jattu Singh being in need of money transferred the said portion of his property which was in possession of the defendants as tenant, for a valuable consideration of Rs. 25,000/- and executed a Registered Deed of Sale in favour the defendant being Sale Deed No.2216 dt.24.09.1997 against payment of said consideration money of Rs.25,000/-. Jattu Singh while transferring the said property was free from all encumbrances admitting the possession of the defendants as tenants within the said portion.
- D. The defendants are the bonafide purchasers for value and consideration and as such their title is well protected.

- E. The property so purchased by the defendants from Jattu Singh comprises within plot nos.468, 469 and 470 under J.B. No.603 Halka Deoghar within Deoghar Municipality, Ward No.14 measuring a bit more or less 136 Sq. Ft. (17'x8') as delineated in the map attached with the said Registered Deed of Sale and shown in red colour of the map which the defendants are the absolute owner and in possession of the same and the property so purchased by the defendants is free from all encumbrances.
- F. The entire story of agreement was denied and was stated to be forged and fabricated.
9. As per the written statement, the case of *defendant no.4, inter alia*, took the following points: -

- a) Hira Singh and his wife died issueless and their interest in the suit land passed on to Jattu Singh alias Anant Singh and Dasrath Singh, each of the two becoming entitled to $\frac{1}{2}$ share in the land left behind by Sonia Kumari and consisting of Basauri town plot numbers 468, 469 and 470 contained in Jamabandi No.603 of mouza Jhousagarhi (No.582) measuring together 1 (one) katha and 10 (ten) dhurs situated within Deoghar Municipal Area, one katha measuring 1361 square feet.
- b) Defendant no.4 has learnt that the aforesaid Anant Singh alias Jattu Singh and his four sons (defendant nos.1, 1 (a), 1 (b), 1 (c) & 1 (d) have sold away 136 square feet (17 feet x 8 feet) out of their half share in the suit land (measuring together $1 \frac{1}{2}$ kathas or 2042 square feet comprising town plot nos.468, 469 and 470, Jamabandi no.603 situated at mouza Jhousagarhi (No.582), ward no.14, Deoghar Municipal Area) to the defendants Narendra Raut alias Narendra Nath Rao and Fago Raut alias Dwijendra Kumar Jaiswal by dint of registered deed of sale bearing no.2216 executed and registered on 24.09.1997.

- c) That after the execution of the sale-deed on 24.09.1997 in favour of the defendant nos.2 and no.3, Anant Singh alias Jattu Singh and his sons have transferred by sale deed no.2231 on 27.09.1997, 170 square feet (17 feet x 10 feet) of land out of their share in the suit land to this defendant no.4 Sanjay Kumar Singh for a consideration of Rs.30,000/-.
- d) That after the aforesaid sale, the right, title and interests of the vendors (Jattu Singh & his sons) have passed on and become vested in the purchaser (defendant no.4) Sanjay Kumar Singh, who is now in possession of the aforesaid 170 square feet of land.
- e) The agreement allegedly executed between Jattu Singh and the plaintiff Hiralal Keshari on 13.03.1997 is a fabricated document, is evident from the fact that it does not contain correct description of the land which is the subject matter of that agreement; the alleged agreement-document contains imaginary & incorrect plot no.406 at one place and again plot numbers 406 and 479 at another place, suggesting ignorance of the alleged executants of the agreement and this error has naturally crept in because of the haste and ignorance of the plaintiff associated with the preparation of the forged agreement-document.
- f) That the aforesaid purchase of 170 square feet of land by defendant no.4 from the defendants 1 to 1 (d) for valuable consideration is a bonafide one and hence the right, title and interest of the bonafide purchaser, defendant no.4 Sanjay Kumar Singh is fully protected under the provisions of law.
- g) That the alleged document of agreement dated 13.03.1997 being a forged and fabricated document, there remains no claim of the plaintiff for the specific performance of any contract.

Arguments for the Appellant.

10. The learned counsel submits that the entire dispute relates to a portion of half kathas of land which stood jointly in the name of Hira Singh, Dashrath Singh and Anant Singh. So far as Hira Singh and Dashrath Singh are concerned, they have already transferred their respective shares to the plaintiff by registered sale deed and there was an agreement of sale with Anant Singh which is subject matter of dispute in the present case. He has submitted that immediately after entering into an agreement for sale, said Anant Singh and his sons sold 136 sq. ft by registered sale deed on 24.09.1997 to defendant 2nd party and 170 sq. ft. to defendant 3rd party vide registered sale deed dated 27.09.1997. The learned counsel submits that prior to the sale deed, the suit was filed and the aforesaid two sale deeds executed in favour of the 2nd party and 3rd party were challenged by way of amendment. The amendment was allowed and the defendant 2nd party as well as 3rd party had contested the suit.

11. The learned counsel submits that in order to prove the agreement, the relevant witnesses were P.Ws.2, 3, 15 and 17. P.W. 2 was the typist, who had typed the agreement. He has also submitted that so far as D.W. 2 is concerned, he was the son of Anant Singh and he had also identified the signature of Anant Singh on the agreement. He has further submitted that there was another exhibit namely Exhibit - 6 which was the certified copy of the *vakalatnama* executed by Anant Singh in another proceedings under Section 107 Cr.P.C on the same date and the said *vakalatnama* was exhibited at the request of the defendants and upon comparison, it was found that the signature tallied with the signature of Anant Singh on the agreement.

12. The learned counsel submits that the learned trial court after appreciating the materials found that the agreement was valid and ultimately cancelled the two sale deeds dated 24.09.1997 and 27.09.1997 executed in favour of 2nd and 3rd party and directed for specific performance of contract. The learned counsel has in particular referred to the discussion of the learned trial court at paragraph 27 as to how and in what manner, the signature of Anant Singh was

compared and established in the agreement dated 13.03.1997 (Exhibit 1). The learned counsel has also submitted that although Anant Singh was alive at the relevant point of time but he was never produced as witness before the learned court. He has submitted that the written statement was jointly filed by Anant Singh and his sons. He has submitted that the sons of Anant Singh were made party in the proceeding as the sons had sold the property to 2nd party and 3rd party during the lifetime of Anant Singh.

13. The learned counsel has submitted that so far as the learned 1st appellate court is concerned, agreement was held to be void and the learned 1st appellate court refused to grant any relief. The learned 1st appellate court has upset the judgement of the learned trial court by observing that the property having already been sold, no relief under Specific Performance Act can be granted. The learned counsel submits that the entire transaction vide registered sale deeds dated 24.09.1997 and 27.09.1997 were not only subject to *lis pendens* but also subject to the agreement of sale dated 13.03.1997 (Exhibit - 1).

14. The learned counsel for the appellant has submitted that the learned trial court considered each and every aspect of the matter while allowing specific performance of contract in the present case and while holding that the agreement was duly signed by Anant Singh @ Jattu Singh, referred to the evidence of D.W. 2, his son. The learned counsel has also submitted that Anant Singh never appeared before the court for his evidence and did not put his signature at the time of filing written statement.

15. The learned counsel has submitted that the learned 1st appellate court while holding that the agreement did not have the signature of Jattu Singh @ Anant Singh has referred to Exhibit – 6 which was photocopy but has completely ignored the evidence of his son D.W. 2, who had identified the signature of Jattu Singh during his evidence. He has submitted that the evidence of D.W. 2 was enough to hold that the signature of Jattu Singh on the agreement was duly proved and the evidence of D.W. 2 has been, *inter alia*, considered by the learned trial court to hold that the agreement contained the signature of Jattu Singh.

He has also submitted that the signature of Jattu Singh was marked Exhibit 1/A without objection.

Arguments of the Respondents.

16. The learned counsel for the respondents has opposed the prayer and submitted that the learned trial court has extensively relied upon Exhibit – 6 while holding that the signature on the agreement was that of Jattu Singh, but at the same time, the appellate court has considered this aspect of the matter and found that Exhibit – 6 was photocopy of the *Vakalatnama* filed in the proceeding under Section 107 of Cr.P.C and has completely disbelieved the same and found that such evidence could not be taken into consideration for comparison of the signature. The learned counsel has also submitted that the learned trial court had referred to the evidence of D.W. 2 and had recorded that D.W. 2 admitted signature of his father on the agreement of sale Exhibit - 1 but from perusal of paragraph 6 of the evidence, he has clearly stated that his father had not put his signature on the agreement and during his cross-examination also in paragraph 40, D.W. 2 has clearly denied the suggestion about entering into agreement by his father on 13.03.1997. The learned counsel submits that it was for the plaintiff to prove the agreement but the plaintiff having failed to prove the agreement, the specific performance could not be granted to enforce the agreement itself.

Rejoinder arguments of the Appellant.

17. The learned counsel on behalf of the appellant in response, has submitted that Exhibit - 6 was taken into evidence on admission and insistence of the defendants and the D.W. 2 had admitted in paragraph 21 that the *vakalatnama* contained the signature of his father. He also submits that it was at the instance of the respondents themselves the signature was compared by the learned trial court and it was held that the signature in Exhibit 6 was tallying with the signature in the agreement. The learned counsel has also submitted that the signature of Jattu Singh on the agreement was exhibited without any objection and therefore the signature stood admitted by the defendants. He has also submitted that the learned trial court has rightly drawn adverse

inference for non-examination of Jattu Singh and has also taken note of the fact that Jattu Singh had not even put his signature on the written statement filed before the court so as to completely rule out the scope of any comparison of signature. Moreover, Jattu Singh did not appear as a witness before the learned court.

18. The learned counsel for the appellant has relied upon the judgement passed by the Hon'ble Supreme Court reported in *(2008) 5 SCC 796 (Guruswamy Nadar Vs. P. Lakshmi Ammal (dead) through Lrs. And Ors.)* paragraphs 14 and 15 and *(2009) 13 SCC 229 (L.N. Aswathama and Anr. Vs. P. Prakash)* paragraph 8.

Findings of this Court

19. The suit property involved in this case is 1 Katha 10 dhur under Jamabandi no.603, town plot nos.468, 469, and 470 in the district of Deoghar. It is not in dispute that the property was initially acquired by one Babulal Singh by way of settlement from Laxmipur estate and he sold the same to his daughter-in-law, Sonia Kumari, wife of Dhanu Singh, by registered sale dated 14.10.1933. Dhanu and Sonia died leaving behind three sons, namely Hira Singh, Dashrath Singh, and Anant Singh @ Jattu Singh. Hira Singh died issueless, and as per the plaintiff, he had an adopted son, namely Navin Singh. Dasrath Singh died, leaving behind two sons, namely Sanjay Singh @ Mangu Singh and Sanjeev Singh @ Sambhu Singh, who sold 1/3rd interest in the suit property to the plaintiff by registered sale deed dated 07.04.1997 and the alleged adopted son of Hira Singh, namely Navin Singh, also sold 1/3rd interest in the suit property to the plaintiff by registered sale deed dated 21.02.1998. The plaintiff got his name mutated in the revenue records, and rent receipts were issued in his favour.

20. So far as the remaining 1/3rd property is concerned, it was the case of the plaintiff that the third brother, namely, Anant Singh @ Jattu Singh (defendant no.1) entered into agreement dated 13.03.1997 (Exhibit 1) in presence of witnesses (exhibit- 1/A to 1/O were the signatures of the defendant no.1, plaintiff and other persons) with defendant no.1 to sell the suit property in favour of the plaintiff for a total consideration amount of Rs.25,000/- out of which Rs.9,000/- was

paid as advance. The sale deed was to be executed by 12th March 1998 upon payment of the remaining consideration amount. In spite of repeated request, defendant no.1 did not execute the sale deed and was planning to sell the suit property to defendant nos.2 and 3 (defendant 2nd party). In such circumstances, the suit for specific performance of the agreement dated 13.03.1997 was filed on 24.09.1997 with a prayer for injunction. The records of the trial court reveals that on the same day on 24.09.1997 itself, notice was issued in the matter of injunction and the defendants were directed to maintain status quo during the pendency of the suit.

21. However, on 24.09.1997, the defendant 1st party (*consisting of the original defendant no.1 and his four sons who were later added as party in the suit through amendment*) sold 136 square feet of the suit land to defendant 2nd party vide registered sale deed dated 24.09.1997 and further sold 170 square feet of the suit land to defendant 3rd set [defendant no.4] through registered sale deed dated 27.09.1997. Thus, both the sale deeds were executed during the pendency of the suit. Accordingly, the plaint was amended. Through the amendment, the four sons of original defendant no.1 who had executed the aforesaid sale deeds along with the original defendant no.1 and also the buyer of one of the sale deeds, who was not party, were added as defendants and the two sale deeds dated 24.09.1997 and 27.09.1997, were challenged in the suit alleging that the sale deeds were sham transactions and be declared null and void.

22. The defendant 1st party, 2nd party, and 3rd party primarily contested the suit on the ground that the agreement of sale entered into between the plaintiff and the defendant no.1 dated 13.03.1997 (exhibit-1) was forged and fabricated and that defendant 2nd party and defendant 3rd party had no notice of the agreement and were bonafide purchasers for value. They also asserted that brother of defendant no.1, Hira Singh died issueless and Navin Singh was not his adopted son, who had sold 1/3rd interest in the entire property [1/3rd of the entire property was the suit property] to the plaintiff by registered sale deed dated 21.02.1998 and that defendant no.1 did not have the

exclusive right to enter into agreement with respect to the suit property as his sons were major at the relevant point of time. All the defendant 1st set, 2nd set and 3rd set filed their respective written statements.

23. The following issues were framed for consideration by the learned trial court:

- I. *Is the suit as framed maintainable?*
- II. *Has the plaintiff got cause of action for filing the suit?*
- III. *Is the suit barred by any provision of law?*
- IV. *Was an unregistered agreement dt.13.3.97 executed between the plaintiff and defendant Anant Singh @ Jattu Singh for the sale of his 1/3rd share in the suit-property for a consideration of Rs.25,000/-after receiving Rs.9000/-as an earnest money?*
- V. *Is the plaintiff entitled to get the sale-deed registered in his favour with respect to 1/3rd share of Jattu Singh in the suit-property after paying the balance consideration money of Rs. 16,000/-to the defendant in specific performance of the contract and in the event of the defendant No.1 failing to execute the sale-deed can he get the sale-deed registered through the Court after depositing the consideration money?*
- VI. *Did the three sons of Sonia Kumari get the title and possession over 1 and ½ Kattha of suit land after the death of Sonia Kumari in equal shares?*
- VII. *Is Navin Singh the adopted son of Hira Singh and whether he is entitled to the 1/3rd share of Hira Singh in the suit-property and, accordingly, he has validly sold his 1/3rd share by registered sale-deed in favour of the plaintiff?*
- VIII. *Are the sons of Jattu Singh entitled to sell the suit-property in the life time of Anant Singh?*
- IX. *Is the registered sale-deed dt.24.9.97 executed by Anant Singh @ Jattu Singh and his four sons Gobind Singh, Gautam Singh, Uttam Singh and Ratan Singh in favour of the defendant's 2nd set Narendra Nath Rao and Dwijendra Kr. Jaiswal (Sic)with respect to 17ft.x8ft.in the suit-property is a valid document. or the same is a sham, illegal and invalid document?*
- X. *Is the registered sale-deed dt.27.9.97 executed by Anant Singh and his four sons in favour of defendant No.4 Sanjay Singh, a valid document or the same is sham, illegal and invalid?*
- XI. *Is the plaintiff entitled to get the relief of permanent injunction with respect to the suit-property against the defendants? and,*
- XII. *Is the plaintiff entitled to any other relief?*

The trial court's findings.

24. While deciding *issue no.7*, the learned trial court held that the sale deed dated 21.03.1997, executed by sons of Dashrath Singh [brother of defendant no.1] in favour of the plaintiff and sale deed dated 21.02.1998 executed by adopted son of Hira Singh [brother of defendant no.1] to the plaintiff were not under challenge and held that the said sale deeds were valid.

25. Thereafter, the learned trial court, took up *issue nos.4 and 5*, which are the issues relating to validity of the unregistered agreement of sale dated 13.03.1997 and the entitlement of the plaintiff with regard to specific performance of contract. These two issues are the bone of contention between the parties during the course of argument of the present 2nd appeal. The learned trial court while considering issue nos.4 and 5, considered the materials on record. The learned trial court clearly held, on the basis of both documentary and oral evidences, including the evidence of witnesses to the agreement that the signature of defendant no.1 on the agreement was duly proved. The learned trial court also recorded that though there are a few contradictions in the statement of the witnesses, which were natural and not material and considering the totality of evidence placed on record was of the view that the agreement of sale entered into between the plaintiff and defendant no.1 was duly executed and that the agreement was binding on the parties. The learned court also recorded that the suit was filed prior to the expiry of the period mentioned in the agreement as defendant no.1 was taking steps for sale of the property.

26. Thereafter, trial court took up *issue nos.8 and 9*, as to whether the sons of defendant no.1, i.e. defendant no. 1 (a) to 1 (d) were entitled to sell the suit property during the lifetime of defendant no.1, and as to whether the registered sale deed dated 24.09.1997 executed by defendant 1st party i.e. defendant nos. 1 (a) to 1 (d) was valid. The trial court recorded that in view of the valid agreement of sale dated 13.03.1997, the defendants ought not to have executed the registered

sale deed dated 24.09.1997 in favour of defendant 2nd party. The trial court also recorded that defendant 2nd party, in his evidence, had stated that he had gone to see the property, but the court recorded that defendant 2nd party did not make any inquiry from the defendant 1st party and had he made such inquiry, the defendant no.1 would have disclosed about the agreement of sale. During his evidence, this witness has also stated that he had met defendant no.1 for the first time in 1973 and lastly on 24.09.1997 and on the same day, the sale deed was executed. The learned court held that the defendant 2nd party did not make due inquiry in connection with the property. The learned court ultimately held that the sale deed executed in favour of defendant 2nd party (defendant no.2 and 3) during the subsistence of the agreement of sale with the plaintiff was null and void and declared that the possession of defendant 2nd party (defendant nos.2 and 3) over the suit property was illegal and they were bound to deliver the property to the plaintiff.

27. Thereafter, the learned trial court took up *issue no.10*, in connection with the validity of sale deed dated 27.09.1997, executed by the defendant 1st party in favour of defendant 3rd party (defendant no.4). The learned court held that since the agreement of sale (exhibit 1) was held to be valid, the defendant no.1 or his sons i.e. defendant no.1 (a) to 1 (d) did not have the right to sell any portion of the suit property. The court also recorded that though the sale deed, did not contain the signature of defendant no.1, but the sale deed was executed by taking power of attorney from the sons of defendant no.1 but power of attorney was not exhibited before the court and defendant no.1 did not depose in spite of the fact that he was alive. Ultimately, the court held that the defendant 1st party had no right to sale any portion of the suit property which was covered by the agreement of sale Exhibit 1, and therefore, the registered sale deed dated 27.09.1997 was held to be null and void. Thereafter, the trial court took up issue no.9 and issue no.11, and held that except 136 square feet of land, which was in possession of defendant 2nd party, the remaining property was *prima facie* in possession of the plaintiff

and observed that defendant nos.2 and 3 would hand over the possession of 136 square feet to the plaintiff, and so far as the remaining property is concerned, the defendants were restrained from interfering with the possession of the plaintiff.

28. The learned court ultimately held that defendant 2nd party and defendant 3rd party (defendant no.4) have acted in a collusive manner with defendant nos.1 (a) to 1 (d) and got the sale deed executed although defendant no.1 had the exclusive right over the property.

29. Ultimately, the issue ***nos.1, 2, 3 and 12*** were taken and it was held that the plaintiff had a valid cause of action and was entitled for specific performance of contract and defendant no.1 was directed to execute the registered sale deed in favour of the plaintiff, upon deposit of balance consideration of Rs.16,000/- with respect to suit property [one-third share of defendant no.1 which was the suit property] within a period of one month and the sale deed dated 24.09.1997 executed in favour of the defendant nos.2 and 3 and sale deed dated 27.09.1997 in favour of defendant no.4 was held to be null and void and the defendant 2nd party was directed to handover the property covered by the sale deed in favour of the plaintiff immediately upon registration of the sale deed pursuant to specific performance of contract.

The 1st appellate court's findings.

30. The learned 1st appellate court was of the view that ***only issue involved in the case was whether the relief for specific performance of contract could be granted to the plaintiff in the facts and circumstances of this case.*** The court was of the view that the trial court had framed many unnecessary issues with respect to the admitted facts, which were not at all necessary to be decided, and ***observed that issue nos.4 and 5 were the only important issues to be decided in the case.***

31. While considering ***issue nos. 4 and 5***, which were relating to the validity of the unregistered agreement of sale dated 13.03.1997 executed between the plaintiff and the defendant no.1 for sale of his one-third share upon payment of earnest money of Rs.9000/- out of

total consideration amount of Rs.25000/- and as to whether the plaintiff was entitled for specific performance of contract.

32. The learned 1st appellate court in paragraph 9 of the impugned judgement *inter alia* recorded that **PW2** is the typist who has proved the agreement of sale dated 13.03.1997, which was marked Exhibit 1, who had stated that the agreement of sale was typed by him which was entered between the plaintiff and defendant no.1 and he had also stated that he had put signature on the agreement and both the plaintiff and defendant no.1 had also put their signatures on the same and the signature of P.W. 3 and Mohammad Maqsood was also there. He had also stated that the agreement was drafted by Braj Bhushan Dubey, an advocate, who was examined as PW16. This witness also identified the typing and the signature of the agreement of sale, and had also identified the signature of Braj Bhushan Dubey. The learned 1st appellate court observed that this witness had not identified the signature of either plaintiff or the original defendant no.1 and that he had only stated that it contains the signature of these two persons also. The court also observed that in his cross-examination this witness had stated that he did not know defendant no.1. Further, the learned 1st appellate court examined the evidence of **P.W.3**, who identified the signature of the plaintiff and defendant no.1 on each page of the agreement and the signature were marked as Exhibit 1 series. PW3 was the attesting witness to the deed of agreement, and he had also identified his own signature. The 1st appellate court recorded that in his cross-examination this witness had stated that defendant no.1 lived in Simultala and this witness denied the suggestion that the witness did not know Jattu Singh (defendant no.1) and that the signature was forged. The court also recorded that this witness did not know Mohammad Maqsood, who is also an attesting witness to the sale deed. Thereafter, the learned 1st appellate court recorded that **PW15** is Baikunth Pandey, who has also identified the signature of defendant no.1 on the agreement of sale. He identified the agreement of sale, which was earlier marked exhibit. However, in his cross-examination, he stated that he had no concern with Jattu Singh (defendant no.1) and

he had seen him once in the year 1997 in the court premises and once at Simultula when the witness had gone. The court observed that PW15 was not connected with the agreement of sale and he had denied the suggestion that he did not know Jattu Singh (defendant no.1). Thereafter, the learned 1st appellate court considered the evidence of **P.W.16**, who had drafted the agreement, who has also stated that it was typed by P.W. 2 and both the parties had put their signature on the same. In his cross examination, he was not knowing defendant no.1 from before and this witness stated that he had no knowledge whether there was signature of defendant no.1 on the agreement. **PW17** Pradeep Kumar Akela is also an advocate and he had also identified the agreement and had stated that both the sides had put their signature on the agreement in his presence. But in his cross-examination, he has stated that he did not know defendant no.1 from before. **PW19** is the plaintiff himself. He has proved his case and he had also identified his signature on the agreement of sale. In his cross-examination, this witness admitted that Jattu Singh had four sons who were all major, but did not consider it necessary to join them in the agreement of sale. He has admitted that defendant 2nd party were tenants of defendant no.1 for about twenty-four years and when defendant no.1 was in need of money, he sold the suit property and that the sale deed by Jattu Singh was absolutely valid. Thereafter, the court considered the evidence of the defendant witnesses and **DW2 and DW3**, both were sons of defendant no.1, who denied the execution of agreement by their father defendant no.1. The court also observed that DW2 was shown the signature of defendant no.1 on certified copy of *vakalatnama* to which earlier he said that the same was the signature of his father but subsequently he stated that it was not the signature of his father. The court observed that even then the trial court marked the said signature as Exhibit 6. The court also observed that the said signature was not the original signature, but only a photocopy. The records reveal that a certified copy of the *vakalatnama* was filed before the court. The learned 1st appellate court recorded that the trial court on the basis of aforesaid evidences on

record, and upon comparing the signature of defendant no.1 on exhibit 1 with exhibit 6, had come to the conclusion that the agreement of sale bears the signature of defendant no.1, and the same was a genuine signature.

33. Thereafter, the court recorded that it was to be seen as to whether the plaintiff has been able to prove the signature of defendant no.1 on the agreement of sale to be his genuine signature. The learned 1st appellate court in paragraph 9 of the judgment itself recorded the submissions of the respective parties and also further recorded the submissions of the respective parties in paragraph 10 of the judgment and the finding has been ultimately recorded in paragraph no.11 of the appellate court's judgment, which is quoted as under:

*“11. After having heard learned counsels for both the sides and after going through the record I find that none of the witnesses examined on behalf of the plaintiff has stated that he was knowing Jattu Singh and was identifying his writing and signature. The witnesses have only read the name of Jattu Singh on the agreement and have stated that this is the signature of Jattu Singh. It is well settled that the burden is upon the plaintiff to prove the agreement of sale and this cannot be said to be valid identification of the signature of Jattu Singh. The witnesses who have identified the signature of Jattu Singh have specifically admitted that they have no connection with Jattu Singh. **P.W.2** Sushil Kr. Baliyase has not even identified the signature of Jattu Singh and he has admitted that he does not know Jattu Singh. Similarly, **P.W.3** Indra Nath Jajware has not stated that he was knowing the signature and writing of Jattu Singh from before. Though he has identified the signature of Jattu Singh, but he has admitted that he has no connection with Jattu Singh as Jattu Singh lives at Simultala and not at Deoghar and this witness does not go to Simultala. Similarly **P.W.15** Baikunth Pandey, who has identified the signature, of Jattu Singh, has admitted that he had no concern with Jattu Singh and he had seen him only once in 1997 at Deoghar and once at Simultala. He has also not stated that he was knowing the writing and signature of Jattu Singh from before. Similarly, **P.W.16** Braj Bhushan Dubey and **P.W.17** Pradeep Kr. Akela have specifically stated that they were not knowing Jattu Singh from before and **P.W.16** has admitted that he has no knowledge that the signature on the agreement is of Jattu Singh. This apart, the Court below has committed a grave error of law in admitting Ext-6 in evidence, inasmuch as, the same is only the photo copy of the signature which could not be taken as evidence in*

accordance with law. Though objection was raised by the learned counsel for the defendants, but even then Ext-6 was taken as evidence which is contrary to all norms of legal principle and practice. The Court below has committed a grave error in comparing the photostat copy of the signature in Ext-6 with that of signature of Jattu Singh on Ext-1 for coming to the conclusion that the said signature was a genuine one. The finding given by the Court below on this point cannot be sustained in the eyes of law. This apart the law laid down by the Hon'ble Supreme Court of India in L.N David's case(supra) and in Jagan Nath's case (supra) is fully applicable to the facts of this case, inasmuch as, in view of the fact that the suit-property was sold to the defendant 2nd party and 3rd party for valuable consideration, the decree of specific performance of contract could not be granted to the plaintiff, more so in view of the fact that the plaintiff has miserably failed to prove that the agreement of sale was executed in his favour. In these facts and circumstances of this case I am of the considered view that the plaintiff has miserably failed in proving the genuineness and legality of Ext-1, the agreement of sale, allegedly executed in his favour. In that view of the matter, the plaintiff cannot be held entitled to get the sale-deed executed in his favour either from the defendant 1st party or in the event of defendant 1st party failing in executing the same, through the agency of the Court. Accordingly, both these issues are decided against the plaintiff and in favour of the defendants and findings given by the Court below on these issues are reversed."

34. Thus, the learned 1st appellate court recorded that none of the witnesses examined on behalf of the plaintiff had stated that they were knowing defendant no.1 and were identifying his writing and signature. The witnesses had only read the name of defendant no.1 on the agreement and had stated that it was the signature of defendant no.1. The court also recorded that the witnesses, who have identified the signature of defendant no.1 have specifically admitted that they have no connection with Jattu Singh (defendant no.1). The learned 1st appellate court in that connection referred to the evidence of PW2, PW3, PW15, PW16 and PW17 to observe that these witnesses were not knowing the defendant no.1 from before. The court further recorded that apart from the aforesaid witnesses, the trial court had committed grave error of law in admitting Exhibit 6 in evidence inasmuch as the same was only photocopy of the signature, which

could not be taken as evidence as per law and held that the finding of the learned trial court on the point of legality and validity of the agreement of sale was not sustainable in the eyes of the law. The learned 1st appellate court held that the plaintiff miserably failed to prove that the agreement of sale was executed in his favour and miserably failed to prove the genuineness and legality of Exhibit 1 (agreement of sale), and therefore, held that the plaintiff was not entitled for specific performance of contract and the finding on the learned trial court on issue nos.4 and 5 was reversed.

35. As a sequel to the aforesaid, the learned 1st appellate court decided *issue nos. 8, 9 and 10* in favour of the defendants by holding that the registered sale deed dated 24.09.1997 in favour of the defendant 1st party and 27.09.1997 in favour of the defendant 2nd party executed by defendant 1st party were valid. The finding of the learned trial court in connection with issue nos.8, 9 and 10 were reversed and, ultimately, the appeal was allowed, and the judgment and decree granting specific performance of contract in favour of the plaintiff was reversed.

36. This Court finds that the suit was for specific performance of contract and the plaintiff specifically pleaded and stated in evidence that he was throughout ready and willing to perform his part of contract. The readiness and willingness on the part of the plaintiff to perform his part of the contract was not the bone of contention between the parties but the defendants primarily contested the case alleging that the agreement of sale relied upon by the plaintiff was a forged and fabricated document as they disputed the signature of defendant no.1 on the agreement. The defendant 2nd set and 3rd set also took a plea that they had no prior knowledge of the alleged agreement of sale. It is further not in dispute that the sale deed pursuant to the agreement of sale was to be executed on 12.03.1998 but the plaintiff had to file the suit for specific performance of contract much prior to the said date as defendant no.1 was taking steps to sell the property to defendant 2nd set.

37. The suit was filed on 24.09.1997. This Court finds that on 24.09.1997 itself the sale deed in connection with part of the suit property was executed by the defendant 1st set in favour of defendant 2nd set, although the suit was instituted on the same day and an order to maintain status quo was also passed on the same day. Thereafter, sale deed in connection with another part of the suit property was executed by defendant 1st set in favour of defendant 3rd set (defendant no.4). Further, as per explanation to Section 52 of the Transfer of Property Act, the suit is deemed to have commenced from the date the plaintiff presents the suit and such pendency would extend till the final decree is passed and such decree is realised. This Court is of the considered view that in the present case, the alienation of portion of the suit property by defendant 1st set to defendant 2nd set and another portion of the suit property by defendant 1st set to defendant 3rd set would be covered by the principles of *lis pendens*. Thus, even if it is assumed that the subsequent purchasers had purchased the property in good faith and for value, the subsequent sale deeds are hit by the principle of *lis pendens*.

38. A judgement has been cited by the learned counsel for the appellants reported in **(2008) 5 SCC 796 Guruswamy Nadar v. P. Lakshmi Ammal** in which it has been held that for a subsequent purchaser of the same property who has purchased in good faith, the principle of *lis pendens* will certainly be applicable notwithstanding the fact that under Section 19 (b) of the Specific Relief Act his rights could be protected.

39. In the present case, the arguments have been advanced primarily with respect to the point as to whether the agreement of sale (exhibit-1) was at all executed by defendant no.1 and whether the plaintiff has been able to prove the same.

40. It has been held in the judgement passed in the case reported in **L.N. Aswathama v. P. Prakash, (2009) 13 SCC 229** at para 8 that if the appraisal of evidence by the trial court suffers from material irregularity as for example when its decision is based on mere conjectures and surmises, or when its decision relies upon

inadmissible evidence or ignores material evidence or when it draws inferences and conclusions which do not naturally or logically flow from the proved facts, the appellate court is bound to interfere with the findings of the trial court and it is equally well settled that where the trial court has considered the entire evidence and recorded several material findings, the first appellate court would not reverse them on the basis of conjectures and surmises or without analyzing the relevant evidence in entirety. Paragraph 8 of the aforesaid judgment is quoted as under: -

“8. The first appellate court can reappraise evidence and record findings different from those recorded by the trial court. It is well settled that if the appraisal of evidence by the trial court suffers from material irregularity, as for example when its decision is based on mere conjectures and surmises, or when its decision relies upon inadmissible evidence or ignores material evidence or when it draws inferences and conclusions which do not naturally or logically flow from the proved facts, the appellate court is bound to interfere with the findings of the trial court. It is equally well settled that where the trial court has considered the entire evidence and recorded several material findings, the first appellate court would not reverse them on the basis of conjectures and surmises or without analysing the relevant evidence in entirety. As the final court of facts, if the first appellate court is reversing the judgment of the trial court, it is bound to independently consider the entire evidence. The High Court has ignored these well-settled principles. In these peculiar circumstances, we have to examine the correctness of the findings recorded by the High Court.”

41. List of exhibits with respect to the agreement of sale (exhibit-1):

Exhibit 1: Agreement [exhibited by the typist – P.W-2 who had also signed in the agreement.]

Exhibit 1/A to 1/G: Signatures of Jattu Singh [defendant no.1]

Exhibit 1/H to 1/L: Signatures of Hiralal Keshri [plaintiff- P.W-19]

Exhibit 1/M: Indra Nath Jajware (P.W-3), who is witness to the agreement as per the agreement itself.

Exhibit 1/N: Signature of Braj Bhushan Dubey [P.W-16]

Exhibit 1/O: Signature of S.C. Roy, Advocate

Exhibit 3 to 3 (b): Signature of stamp vendor Triveni Rout

Exhibit 4 to 4 (1): Signature of Stamp supplier Manoj Kumar Dubey.

42. This Court finds that the learned trial court had considered the evidences including the evidences of the eye witnesses to the execution of the agreement including the evidence of P.W-3, who was the witness as per the agreement itself and also noted that defendant no.1 did not depose before the court in spite of being alive and ultimately after considering all the materials on record recorded finding that the agreement of sale was validly executed. The learned trial court has recorded that the execution of agreement and signature on the same was duly supported by the witnesses namely PWs 2, 3, 13, 15, 16, and 17. Additionally, the learned trial court took into consideration exhibit-6 which was the certified copy of the *vakalatnama* executed by defendants in another proceedings under Section 107 Cr.P.C executed on the same date, that is 13.03.1997 (the date of execution of the agreement of sale involved in this case) and exhibit 6 was exhibited by the D.W-2 in paragraph 21 of his cross examination and found that the photocopy of the signature in the certified copy of the *vakalatnama* tallied with the signature of defendant no.1 on the agreement of sale. However, the learned 1st appellate court apart from the fact that the witnesses were not acquainted with defendant no.1 so as to identify his signature observed that *“this apart, the Court below has committed a grave error of law in admitting Ext-6 in evidence, inasmuch as, the same is only the photo copy of the signature which could not be taken as evidence in accordance with law. Though objection was raised by the learned counsel for the defendants, but even then, Ext-6 was taken as evidence which is contrary to all norms of legal principle and practice. The Court below has committed a grave error in comparing the photostat copy of the signature in Ext-6 with that of signature of Jattu Singh on Ext-1 for coming to the conclusion that the said signature was a genuine one. The finding given by the Court below on this point cannot be sustained in the eyes of law.”* The consideration of exhibit-6 by the learned trial court has been questioned by the learned 1st

appellate court and this Court is also of the considered view that signature on the exhibit could not have been tallied by photocopy of the signature on exhibit 6 (certified copy of *Vakalatnama* in another case) but the approach of the learned 1st appellate court in dealing with the oral evidence with regard to execution of the agreement by defendant no.1 is certainly not according to law as will be evident from the following discussions.

43. This Court finds that **PW2**, had not only identified Jattu Singh at the time of execution of agreement, but was also an eyewitness to his signature. PW2 is the typist, who had not only typed the agreement, but had also put signature on the agreement. He had also stated that on the agreement, there is signature of Jattu Singh, defendant no.1, and also two witnesses, Indra Nath Jajware and Mohammad Maqsood, and also contains the signature of Brij Bhushan Dubey, the advocate although he had only exhibited his signature as Exhibit 1. During *cross-examination*, he has stated that he did not know Jattu Singh, but he knew the plaintiff for some time and he also knew the witness Indra Nath Jajware (P.W-3-witness as per the agreement) but he did not know Md. Maqsood Alam (the other witness as per the agreement).

44. So far as **PW3** is concerned, he is Indra Nath Jajware. He has also fully supported the case and he has stated that in his presence, the agreement was executed. He has identified the signature of both the plaintiff and defendant no.1 and signatures were exhibited as exhibits 1 (a) and 1 (b). He has exhibited his signature also. During his *cross-examination*, he has stated that he knew Jattu Singh [defendant no.1], who was a resident of Simultala, and that Jattu Singh does not live in Deoghar and he does not visit Simultala frequently and he stated that it was not correct to say that he did not know Jattu Singh [defendant no.1] and that his signature was forged. He has further stated that it was not correct to say that agreement was not executed in his presence and that the parties had not signed in his presence. This witness has emphatically stated that the agreement was executed in his presence and he knew Jattu Singh [defendant no.1] from before and the parties

had also put the signature in his presence. However, he has merely stated that Jattu Singh lives in Simultala and he does not visit Simultala. This witness has fully supported the case and supported the due execution of the agreement of sale and has also supported the fact that he knew Jattu Singh from before and is an eye witness to the agreement of sale [exhibit-1].

45. So far as *PW17* is concerned, he is an advocate, namely Pradeep Kumar Akela. He stated that he had drafted the agreement, and he has asserted that both the parties have put their signature in his presence and that Indra Nath Jajware (P.W-3) and Mohammad Maqsood, had also put their signature on the agreement in his presence. The signatures have already been marked as exhibits. He has stated that he did not know Jattu Singh [defendant no.1] from before and that he did not even know the plaintiff from before. He has also stated that there were two signatures of Jattu Singh [defendant no.1] on the first page of the agreement and since his hands were shaking, he signed again. He denied in the cross-examination that Jattu Singh [defendant no.1] and the plaintiff had not put signature in his presence. This witness has fully supported the case of the plaintiff with respect to due execution of agreement and he is also an eye witness to the parties signing the agreement in his presence.

46. This Court finds that the learned 1st appellate court, while recording the finding in paragraph 11 of the impugned judgment, has primarily gone into the fact as to whether the witnesses, who had deposed in connection with the validity of agreement of sale [Exhibit 1] and were identifying the signature of Jattu Singh [defendant no.1] on the agreement, knew Jattu Singh [defendant no.1] from before or not so as to qualify as a competent witness to identify his signature. However, the learned 1st appellate court has misdirected himself and failed to consider that many of these witnesses as discussed above, had stated that Jattu Singh [defendant no.1] had put his signature on the agreement in their presence and they were the eye witnesses to the execution of the agreement of sale, which included PW3, the witness to the agreement as mentioned in the agreement itself.

47. This Court is of the considered view that if the witnesses including the witnesses mentioned in the agreement of sale itself deposed that Jattu Singh [defendant no.1] had put his signature on the agreement of sale in their presence, it is not necessary for them to know Jattu Singh [defendant no.1] from much before so as to be a competent witness to identify his signature for the purposes of due execution of the agreement. The learned trial court has also recorded that there was no cogent explanation for non-examination of Jattu Singh [defendant no.1] in the trial when the defendant 1st party disputed the signature of Jattu Singh [defendant no.1] on the agreement. This Court is of the view that the entire approach of the learned 1st appellate court while holding that agreement was not proved, is not in accordance with law.

48. Accordingly, the substantial question of law is answered in favour of the plaintiff (appellant) and against the defendants (respondents). Consequently, the impugned judgement passed in Title Appeal No.20 of 2002 and Title Appeal No.18 of 2002 are set aside.

49. This second appeal is allowed.

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

51. Let a soft copy of this order be communicated to the court concerned through FAX/email.

(Anubha Rawat Choudhary, J.)

Pronounced on 27.11.2025

Saurav/

Uploaded on 01.12.2025