

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 57 of 2021

1. Most. Kaushiya Devi aged about 70 years wife of Late Sahdeo Kumar
2. Badhe Prajapati aged about 62 years
3. Mohan Kumhar aged about 64 years
4. Bedo Kumhar aged about 60 years
All sons of Late Thanu Kumhar
5. Baleshwar Kumhar aged about 42 years
6. Kameshwar Kumhar aged about 38 years
Both sons of Sahdeo Kumhar all residents of village Hunkar Khap, P.O. Jabra, P.S. Simaria, District Chatra
7. Kabulia Devi aged about 65 years daughter of Late Thanu Prajapati and wife of Dewa Prajapati resident of village Lambua, P.O. Dhagada, P.S. Tandwa, District Chatra
8. Bhulani Devi aged about 38 years daughter of Late Sahdeo Kumhar wife of Sitaram Prajapati resident of village Patrangi, P.O. Balsagra, P.S. Mandu, District Hazaribagh
9. Sitwa Kumhain aged about 90 years wife of Late Bodhan Kumhar
10. Prem Kumhar aged about 55 years
11. Badrup Kumhar aged about 56 years both sons of Late Bodhan Kumhar
No. 9 to 11 residents of village Hunkar Khap, P.O. and P.S. Simaria, District Chatra
12. Bhikani Devi aged about 70 years daughter of Late Bodhan Kumhar and wife of Aato Prajapati resident of village Phulsu, P.O. and P.S. Balumath, District Latehar
13. Hemni Devi aged about 65 years daughter of late Bodhan Kumhar and wife of Bansi Prajapati resident of village Bachara, P.O. Darha, P.S. Balumath, District Latehar
14. Gendo Devi aged about 55 years daughter of Late Bodhan Kumhar and wife of Arjun Prajapati resident of village Chatra Line Mohalla, P.O., P.S. and District Chatra.
15. Bhulwa Devi aged about 42 years daughter of Late Bodhan Kumhar and wife of Santosh Prajapati resident of village Pahara, P.O. and P.S. Gidhour, District Chatra
16. Sugiya Devi aged about 36 years daughter of Late Bodhan Kumhar and wife of Mahendra Prajapati resident of village Godhai, P.O. Hapua, P.S. and District Chatra

17. Makhul Prajapati, S/o Late Bodhan Kumhar, R/o Hunkarkhap, P.O. & P.S. Simariya, District Chatra

... .. **Defendants/Appellants/Appellants**

-Versus-

1. Sohrai Kumhar son of Late Tilak Kumhar

2. Most. Fuliya Devi wife of Late Prabhu Kumhar

3. Ganesh Ram @ Kumhar son of Late Prabhu Kumhar

All residents of village Hunkarkhap P.O. Jabda, P.S. Simaria, District Chatra

4. Malti Devi daughter of Late Prabhu Kumhar and wife of Guddu Prajapati resident of village Hethluto, P.O. Kura, P.S. and District Latehar

5. Soni Devi daughter of Late Prabhu Kumhar and wife of Sri Jiwan Prajapati resident of village Role, P.O. and P.S. Simaria, District Chatra

... .. **Plaintiffs/Respondents/Respondents**

6. Girwa Devi daughter of Late Tilak Kumhar and wife of Gujnath Prajapati resident of village Kurumdari, P.O. and P.S. Simaria, District Chatra

7. Kalo Devi daughter of Late Tilak Kumhar and wife of Pairam Prajapati resident of village Kurumdari, P.S. Jabra, P.S. Simaria, District Chatra

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

8. Nageshwar Prajapati, Son of Bodhan Kumhar, resident of Village Hunkarkhap, P.O. & P.S. Simariya, District Chatra

... .. **Defendants/Appellants/Proforma Respondents**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants : Mr. Sandeep Verma, Advocate

For the Respondents :

10/28th January 2026

1. Heard the learned counsel for the appellants.

2. This appeal has been filed against the judgment dated 26.02.2021 (decree signed on 09.03.2021) passed by the learned District Judge VI, Chatra in Civil Appeal No. 07 of 2019, whereby the appeal has been dismissed. The trial court's judgment is dated 31.01.2019 (decree signed on 14.02.2019) passed by the learned Civil Judge (Senior Division) III,

Chatra in Original Suit No. 09 of 2013. The suit was decreed in favor of the plaintiffs.

3. The learned counsel for the appellants has submitted that the learned court has wrongly disbelieved the previous partition and misconstrued Exhibit-A i.e. memorandum of partition dated 11.04.1954. The learned counsel has referred to the judgment passed by the Hon'ble Supreme Court reported in **(2022) 3 SCC 757 (K. Arumuga Velaiah vs. P.R. Ramasamy & Anr.)** and has submitted that when a document itself is not creating any right on the immovable property, the same does not require registration. Paragraph 45 of the aforesaid judgment is quoted as under: -

*“45. Having regard to the aforesaid provisions of law it can be safely concluded that the said award was a mere arrangement to divide the properties in future by metes and bounds as distinguished from an actual deed of partition under which there is not only a severance of status but also division of joint family properties by metes and bounds in specific properties. Hence it was exempted from registration under Section 17 (2) (v) of the Act. A document of partition which provides for effectuating a division of properties in future would be exempt from registration under section 17 (2) (v). The test in such a case is whether the document itself creates an interest in a specific immovable property or merely creates a right to obtain another document of title. If a document does not by itself create a right or interest in immovable property, but merely creates a right to obtain another document, which will, when executed create a right in the person claiming relief, the former document does not require registration and is accordingly admissible in evidence vide *Ranjangam Ayyar v. Ranjangam Ayyar.*”*

4. The learned counsel has further raised the second point that the sale deed no. 1124 dated 10.09.1957 was also challenged to be a fraudulent, illegal and void document, but the sale deed having been challenged in the year 2013, its challenge was barred by limitation. He submits that the point of limitation has also not been properly considered by the learned

court. The learned counsel further submits that the sale deed is a public document and therefore the challenge to the sale deed was barred by limitation.

5. After hearing the learned counsel for the appellants, this Court finds that the suit was filed for partition of half share of Schedule-B property and also for a declaration that sale deed no. 1124 dated 10.09.1957 was fraudulent, illegal and void document.

6. It was the case of the plaintiffs that Sainath Kumhar, Sobran Kumhar and Choho Kumhar were full brothers and had acquired 13.36 acres of land within khata no. 04 of village Hunkarkhap P.S. Simariya and they died before survey settlement. In the record of rights, there were three recorded tenants having equal share, namely, **Jhaman Kumhar** S/o Late Shainath Kumhar, **Butwa Kumhar** S/o Late Sobran Kumhar and **Chulhan Kumhar** S/o Late Choho Kumhar. Amongst them, Jhaman Kumhar died issueless in the year 1956 in jointness with Butwa Kumhar and Chulhan Kumhar. The genealogy of the parties and description of the suit property have been given in Schedule-A and Schedule-B respectively of the plaint.

7. It was their further case that when Jhaman Kumhar died issueless, last rituals was performed jointly by Butwa Kumhar and Chulhan Kumhar and the share of Jhaman Kumhar devolved upon both surviving brothers. According to the plaintiffs, there was a house over plot no. 135 in which aforesaid Sainath, Butwa and Choho Kumhar jointly resided. Further, recorded tenant Chulhan Kumhar died in the year 1960 leaving behind three sons and Butwa Kumhar died in the year 1962 leaving behind one son and they jointly used to cultivate the lands of khata no. 04. Later on, due to increase in strength of family, they separated in mess and business, but started cultivating the land as per choice and convenience and there was no partition by metes and bounds.

8. It was asserted that on 26.07.2012, plaintiff no. 1 went to Halka Karamchari to pay rent, but he refused to accept the same and told that

6.63 acres of land had been deducted and advised the plaintiff to raise the matter before Anchal Adhikari and when the plaintiff raised the matter before the Anchal Adhikari, a miscellaneous case was opened, in which the opposite party appeared and presented the sale deed no. 1124 dated 10.09.1957 and then the plaintiffs came to know about the fraudulent act on 21.08.2012. According to the plaintiffs, Jhaman Kumhar died issueless and his share devolved upon both brother Chulhan Kumhar and Butwa Kumhar and Chulhan Kumhar had no right to transfer the land. The application of the plaintiffs was rejected by the Anchal Adhikar vide order dated 06.11.2012 and thereafter they obtained the certified copy of the sale deed and then cause action arose and the suit was filed.

9. The *defendant nos. 1 to 19* appeared and filed their written statement challenging the suit on the ground of limitation and denying the cause of action. The defendants asserted that the plaintiffs had no valid cause of action to present the suit and that there is no unity of title and possession between the parties. The defendants admitted the entries made in the record of rights, but denied the joint possession. It was admitted that Jhaman Kumhar died issueless, but it was denied that he died in jointness with Butwa Kumhar and Chulhan Kumhar. It was also denied that after the death of Jhaman Kumhar his share devolved upon Butwa Kumhar and Chulhan Kumhar. It was denied that Butwa, Jhaman and Chulhan Kumhar were full brothers.

10. It was further the case of the defendants that Jhaman Kumhar was alone at last time of his life and he was looked after by Chulhan Kumhar and when Jhaman Kumhar died last rituals were done by Chulhan Kumhar. It was also asserted that in between Jhaman Kumhar, Chulhan Kumhar on one side and Butwa Kumhar on the other, the property was divided by way of family arrangement dated 11.04.1954. However, Butwa Kumhar refused to take share of Jhaman Kumhar and in the family arrangement, 2/3rd share allotted to Jhaman Kumhar and Chulhan Kumhar and 1/3rd property was allotted to Butwa Kumhar and family arrangement

was reduced in writing on 11.05.1954. Accordingly, the share of Jhaman Kumhar was amalgamated with the share of Chulhan Kumhar.

11. It was the case of the defendants that Chulhan Kumhar was in urgent need of money and consequently he sold the property to the extent of 8.84 acres to Mosomat Nemiya Kumhain, Mosomat Mohni Kumhain and Mosomat Sitwa Kumhain vide sale deed no. 1124 dated 10.09.1957 and they came in physical possession over the property and applied for mutation which was allowed and they had been paying rent to the government regularly.

12. It was their further case that there was complete disruption of mess and property after 11.04.1954 and the plaintiffs had no right, title and interest over the suit land and that the plaintiffs had every knowledge about the sale deed no. 1124 dated 10.09.1957. However, they admitted the order passed by the Anchal Adhikari dated 06.11.2012.

13. Both the parties led oral and documentary evidences and following issues were framed by the learned trial court: -

- “I. Is the suit as framed maintainable in its present form?*
- II. Whether plaintiffs have any valid cause of action for the suit or right to sue?*
- III. Whether the suit suffer from non-joinder and mis-joinder of necessary parties?*
- IV. Is the suit barred by law of limitation?*
- V. Is there unity of title and unity of possession between the parties?*
- VI. Whether plaintiffs are entitled for decree of partition of half share of the properties mentioned in the schedule “B” of the plaint?*
- VII. Whether amicable memorandum of partition dated 11.04.1954 in between Butwa Kumhar and Chulhan Kumhar is fabricated?*
- VIII. Whether sale deed no. 1124 dated 10.09.1957 executed by Chulhan Kumhar excess to the extent of his share in favour of Most. Nemiya Kumhain and others is illegal, void and not binding upon the plaintiffs?*
- IX. Whether plaintiffs are entitled for any other relief or reliefs as prayed in the suit?”*

14. Issue nos. V to VIII were considered by the learned trial court together and the court recorded that the main issue was as to whether a family partition as alleged by the defendants dated 11.04.1954 allegedly reduced in writing on 11.05.1954 was a legal and valid document or not and whether there was any previous partition by metes and bounds. The learned trial court considered oral evidences of both the parties and found that there was material contradiction in the oral evidences with respect to the memorandum of partition and that the defendants also though asserted that there was partition by measurement through amin, but even this aspect was not supported by oral evidence adduced by the defendants. The learned trial court recorded that the plea of partition was not supported by the evidence. Thereafter, the learned court considered the oral evidence *vis-à-vis* documentary evidence and recorded that the memorandum of partition is Exhibit-A and if the defendants were relying upon previous partition, they were also required to prove that it was acted upon and also as to whether the memorandum of partition was required to be registered or not. The learned trial court ultimately recorded a finding in paragraph 7 that there were conflicting evidences on record and the document did not show that the property was partitioned by metes and bounds.

15. Thereafter, the learned trial court considered the point as to whether Exhibit-A, the memorandum of partition, was required to be registered or not. The learned court recorded that Exhibit-A was not a legal document and not binding upon the plaintiffs and held that it was a fabricated document.

16. Thereafter, the learned court considered as to whether there was unity of title and unity of possession between the parties and recorded that the document relating to partition has been declared fabricated and there was no evidence on record to show that the alleged partition was acted upon. The rent receipts and the sale deed was not a proof of partition and ultimately the learned court held that the plaintiffs were entitled for partition.

17. Further, the learned trial court also considered the legality and genuineness of the registered sale deed No. 1124 dated 10.09.1957 in paragraph 10 and declared the document as illegal, null and void and also not binding upon plaintiffs. Paragraph 10 of the trial court's judgment is quoted as under: -

“10. Now I come to the point of legality and genuineness of alleged registered sale deed no. 1124 dated 10.09.1957. At first I would like say to that when title did not pass to Jhaman Kumhar and later on Chulhan Kumhar, how he entitled to execute sale deed. As I earlier discussed while deciding issue no. VII that exclusive partition in favour of Jhaman Kumhar was not done then obviously title does not pass to Chulhan Kumhar. Exhibit-1 shows that vendee name as Mosomat meaning there by Nemiya Kumhain, Mohni Kumhain and Sitwa Kumhain were widow at the time of execution of sale deed. It is also pleading of defendants in para 21 of written statement that Chulhan Kumhar sold the property to aforesaid ladies who was widow. But the story is different as stated by witness of defendants. DW-4 Ramanand Singh who is very important witness of defendants who proved the alleged memorandum of partition, stated in para 22 of cross examination that at the time of execution of sale deed sons of Chulhan Kumhar was alive. It is also evident from exhibit-B/1, B/8 to B/10 i.e. rent receipts in which name of rent payer has been mentioned as Bodhan Kumhar. In exhibit B/6 name of rent payer has been mentioned Thanu Kumhar. These Bodhan Kumhar and Thanu Kumhar are sons of Chulhan Kumhar. The aforesaid rent receipts are of the year 1964, 1979, 1983 and 1986. Meaning there by the sons of Chulhan Kumhar were alive at least up to year 1996 then how their wives become widow in the year 1957 ? Meaning there by the defendants are telling white lie. The pleading of defendants are not supported with oral and documentary evidence. Now I am of the firm view and hold the sale deed no. 1124 dated 10.09.1957 is illegal, null and void and also not binding upon plaintiffs. Accordingly this issue no. VIII is here by decided in favour of plaintiffs and against defendants.”

18. The point of limitation was also considered thereafter under issue nos. I to IV and the learned court considered that the plaintiffs made the date 06.11.2012 and 12.09.2012 as the date of cause of action and on

06.11.2012, the Anchal Adhikari has refused the prayer of the plaintiffs and this fact has been admitted by the defendants, then there is no question arises for limitation. The learned trial court ultimately held that the suit was not barred by limitation.

19. The learned **1st appellate court** also considered the materials on record and considered the details with regard to previous partition and also point of limitation and recorded the finding in paragraph 18 to 20 as under: -

“18. It is well settled that a Hindu family is deemed to be joint and the right is created by virtue of birth and it is also well settled that there is presumption of jointness unless and until contrary is proved. In this case in hand the defendants came with a case that there is prior partition and memorandum of partition has been prepared. As discussed above it is apparent that the memorandum of partition deed dt. 11.04.1954 is not a registered deed and as the share of Jhaman Kumhar was alleged to have been given in the share of Chulhan Kumhar in my view registration is mandatory and in absence of registration this deed has no value. Further from the perusal of said memorandum of partition it is apparent that no share has been given to jhaman Kumhar, hence in my view this memorandum of partition is not reliable document. Further none mention about this memorandum of partition in the alleged sale deed and also the transfer to own widowed daughter-in-law also showed that this partition deed is a forge and fabricated document.

After considering the above-mentioned fact it is apparent that the defendant has based his claim on two documents one is memorandum partition (Ext.-A) is dated 11-04-1954 and the second is sale deed dt. 10-09-1957 (Ext.-1). From the perusal of the recitals of these two documents it is apparent that in Ext.-A only two schedules, schedule-1 deals with the property Butwa Kumhar and the schedule-II dealt with the property allotted to Chulhan Kumhar, it is also apparent that no share was allotted to Jhaman Kumhar, although admittedly he is the owner of 4 acre 42 decimals. Although there are alleged thumb impressions of the panches and the parties. This memorandum of partition is the foundation of the defendants, but in my view this alleged memorandum of partition did not create any right as this document is unregistered document and as share of Jhaman was

given in the share of Chulhan Kumhar it requires mandatory registration. From the perusal of Ext.-1 it is further apparent that no reference of memorandum of partition has been given rather only the statement has been made that Chulhan Kumhar has performed the Shradh Ceremony of Jhaman Kumhar hence he is in debt hence he sold entire property. The sale was made to his own widow daughter-in-laws which also create a doubt, similarly no mutation order was brought on record to show that after the partition in the year 1954 mutation were done. As it is not been proved by the defendants that the memorandum of deed dt. 11.04.1954 is a valid documents, hence Chulhan Kumhar has no right to sold out the entire area of 08 acres 84 decimal and he has sold excess land. After considering the above mentioned fact I am of the view that the plaintiffs and defendants are joint and no partition by metes and bounds has been took place in the family and plaintiffs are entitled for 1/2 share in schedule-B of the plaint, hence both the point for determination are decided against the defendants/appellants and it is hold that there is no prior partition by metes and bound and the memorandum of partition dt. 11.04.1954 is not a reliable documents.

19. The last point for determination relates to the point of limitation. The plaintiffs has seeks a relief No-C by which he prayed that deed No- 1124 dt. 10.09.1957 executed by Chulhan Kumhar excess to his share and the same be declared fraudulent, illegal, without consideration , shame void ab initio. The Ld. Counsel for the appellants has submitted that the suit is barred by law of limitation as the sale deed was executed on 10.09.1957 and the suit was filed in the year-2013 although they have every knowledge about the sale deed and as per Article 59 of the Limitation Act the suit must be filed within three years and the suit is not maintainable and the finding of the Ld. Court below is erroneous and the same is barred by law of limitation. He relied in the judgment referred in 2006(3) J.L.J.R. S.C. Page64 and also 2008 (1) J.L.J.R. S.C. Page- 85. In the first judgment it was held that even under a void transaction right by way of adverse possession can be claimed and limitation Act would have applicable even in the event of a void transaction. In the second judgment it was held that suit filed hopelessly time barred cleverly drafted to get over the bar of limitation cannot be entertained.

On the other hand Ld. Counsel for the plaintiffs/respondents has submitted that the question of limitation will not attract in this

case as the plaintiffs firstly got knowledge about the sale deed of the year 1957 in on 2012 when the defendants in mutation case stated about the sale deed and from the date of knowledge the suit was immediately filed in the year 2012 he relied on the judgment referred in 2006 (1) Civ. C. R.-589 (Ori) it was held in this case that when no material on record to show that the plaintiff had any knowledge about execution of sale deed prior to accrual of cause of action, suit filed within three years from the date of knowledge is not barred by law of limitation.

20. On the consideration of pleading and the evidence it is apparent that the defendants have not brought any material on record which will show that the plaintiffs has knowledge about the sale deed dt. 10-09-1957 and from the perusal of order-sheet passed by Ld. C.O. (Ext.-2), dt. 21-08-2012 it is apparent that the defendant has filed xerox copy of sale deed, dt. 10-09-1957 along with rent receipts before the Ld. C.O. and the suit was filed on 14-02-2013, which is well within the period of three years from the date of knowledge, hence this point for determination is also decided against the defendants/appellants”

20. This Court finds that the learned trial court has considered every aspect of the matter and has disbelieved the story of previous partition. So far as the limitation is concerned, the learned court has considered that the suit was filed within three years from the date of knowledge and the defendants had not brought any material on record to show that the plaintiffs had any knowledge about the sale deed dated 10.09.1957.

21. This Court finds that both the learned courts have given concurrent findings not only on the point of limitation but also on the point of previous partition.

22. So far as the judgment passed by the Hon’ble Supreme Court reported in **(2022) 3 SCC 757 (supra)** is concerned, the same does not apply to the facts and circumstances of this case, inasmuch as, the defendants, on merits, had failed to prove that there was previous partition by metes and bounds and such findings have been recorded by both the learned courts after considering the materials on record. It is the position of facts of this case that previous partition by metes and bounds was neither proved nor the alleged partition was proved to have been acted

upon. This is irrespective of whether, the memorandum of partition was registered or not registered.

23. Considering the totality of the facts and circumstances of this case, there is no substantial question of law involved in this second appeal, which is hereby ***dismissed***.

24. Pending I.A., if any, is closed.

25. Let a copy of this order be communicated to the court concerned through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Dated: 28.01.2026

Mukul/-

Uploaded On: 09.03.2026