

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S. A. No. 190 of 2003

1. Suresh Thakur (**Died and substituted vide order dated 17.07.2025**)
 - 1.i Sumitra Devi, Widow of Late Suresh Thakur.
 - 1.ii Rakhi Kumari, Daughter of Late Suresh Thakur
 - 1.iii Gudiya Kumari, Daughter of Late Suresh Thakur.All resident of Mohalla Ramnagar, P.O. Boddom Bazar, P.S. Sadar, District-Hazaribag.
2. Naresh Thakur
3. Sunil Kumar Thakur
4. Anil Kumar Thakur
5. Puspha Kumari (Devi), Daughter of Late Goberdhan Thakur
6. Pratima Kumari (Devi), Daughter of Late Goberdhan Thakur
7. Anima Kumari (Devi) (**Substituted vide order dated 15.02.2022**)
 - 7.i Atul Kumar, S/O: Sheo Sharan Thakur, Resident of Mohalla Kani Bazar, P.O. Boddom Bazar, P.S. Sadar Town and District-Hazaribagh
8. Sunita Kumari (Devi), Daughter of Late Goberdhan Thakur
All residents of Village-Kadma, P.O. Baddam Bazar, P.S. Katkamsandi, District: Hazaribag.

... ... **Defendants/Respondents/Appellants**
Versus

1. Kusum Lata Devi, Wife of Sri Bijay Kumar Agarwal
2. Smt. Uma Devi, Wife of Sri Shanti Kumar Agarwal
Both resident of Bara Bazar Hazaribagh, P.O., P.S. and District-Hazaribag

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

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Mr. Bhaiya Vishwajeet Kumar, Advocate
For the Respondents : Mr. Ayush Aditya, Advocate

25/11.09.2025

1. Heard the learned counsel appearing on behalf of the parties.
2. This appeal has been filed against the judgment 04.03.2003 (decree signed on 25.03.2003) passed by 6th Additional District and Sessions Judge, Hazaribagh in Title Appeal No. 01 of 1992 whereby the judgment dated 29.02.1992 (decree signed on 10.03.1992) passed by the learned Sub-Ordinate Judge-I, Hazaribagh in Eviction Title Suit No. 25 of 1984 / 04 of 1985 has been set aside.

3. The suit for eviction was on the ground of default in payment of rent and personal necessity was dismissed by the learned trial court and the appeal was allowed by the learned 1st appellate court and consequently the defendant is the appellant before this court.

4. The suit was filed for the following reliefs:-

a) That after adjudication, a decree may be passed in favour of the plaintiffs for eviction of the defendant from the tenanted suit premises described in the schedule- 'A' to the plaint and the plaintiffs be put in khas possession of the same through the process of the court. That a decree for Rs.350.00 being the arrears of rent due and for future rent @Rs.75.00 per month till khas possession is not delivered by passed.

b) That a decree for cost of the suit.

c) That any other relief or reliefs to which the plaintiffs may be found entitled to.

5. This case was admitted for final hearing vide order dated 18.07.2006 on the following substantial questions of law:-

I. Whether in case of the appellants' possession as a prospective purchaser by virtue of the agreement for sale, the defendants-appellants can be said to be the tenant under the plaintiffs-respondents?

II. Whether the nature of possession of the appellants having changed as prospective purchaser in part performance of contract for sale, relationship of landlord and tenant survived between the parties?

Case of the plaintiffs

6. As per the case of the plaintiffs a double storied house which consisted of two parts was originally owned and possessed by Prafulla Chandra Mitra who inducted the defendant in the southern portion of the ground floor in one portion of the holding as month to month tenant. The area put under tenancy has been described in Schedule 'A' of the plaint.

7. The specific case of the plaintiffs was that the defendant paid rent to Prafulla Chandra Mitra who granted rent receipts to the defendant Prafulla Chandra Mitra died in the month of January, 1975 leaving behind son namely Deepak Mitra, two daughters namely Chandra Basu and Smt. Ratna Bhadra and his widow namely Smt. Ira Mitra who jointly inherited the properties.

8. It was further case of the plaintiffs that the defendant started to pay monthly rent to Deepak Mitra against grant rent receipts and the defendant paid rent up to the month of July-1975. Since the month of August-1975 the defendant started remitting rent by money order which was always received by Deepak Mitra up to the month of February, 1984 and the rent for the month of March-1984 was returned to the defendant and it was alleged in the plaint that the return was with a collusive report of refusal.

9. The plaintiffs purchased the southern half portion of the double storied building including the suit property by virtue of registered sale deed dated 06.04.1984 for a consideration of Rs.32,000/- and became absolute owner of the same. Deepak Mitra had informed the defendant and other tenants orally and also in writing and also sent a registered letter dated 26.04.1984 and requested the defendant to make payment of rent with respect to the schedule 'A' premises to the plaintiffs from the date of the sale deed. The defendant in turn responded that Deepak Mitra and his mother Ira Mitra on receipt of earnest money of Rs.5,000/- had executed an agreement of sale on 06.10.1983 with respect of the southern half portion of the holding for a total consideration amount of Rs.30,000/- and since the date of the agreement, the defendant was in possession of the suit premises as owner. It was asserted by the plaintiffs that Deepak Mitra and Smt. Ira Mitra never executed any agreement of sale in favour of the defendant nor received any amount as earnest money and the agreement was forged and fabricated document. It was also asserted that the other tenant on receipt of the intimation referred above made payment of rent to the plaintiffs.

10. Since the rent was not paid and the suit premises was required for the plaintiffs, the suit was filed alleging default in payment of rent and also personal necessity. The cause of action for the suit arose on the date of purchase of the house i.e. 06.04.1984 and on 17.04.1984 the date when the defendant refused to vacate the suit premises.

Case of the defendant.

11. The defendant filed the written statement opposing the prayer and asserting that the suit itself was not maintainable and the suit was filed to counter the act and the effects of the defendant's suit for Specific Performance of Contract with respect to the said agreement entered into between the defendant and the original owner of the property.

12. It was asserted that Deepak Mitra and his mother had cheated the defendant by their illegal action of executing a nominal registered sale deed in favour of the plaintiffs.

13. It was also asserted that the agreement of sale was executed by Deepak Mitra and his mother in favour of the defendant on 06.10.1983 and in part performance of the contract they received Rs.5,000/- from the defendant and the balance amount of Rs.25,000/- was to be paid at the time of execution of the sale deed. Defendant asserted that they were already in possession of the property since the year 1953.

14. It was also asserted that the purchase by the plaintiffs was made with the knowledge of the aforesaid agreement and therefore, the plaintiffs did not acquire any title over the property.

15. The specific case of the defendant was that the plaintiffs did not become the owner of the property by virtue of the sale deed executed by Deepak Mitra and others and therefore, the plaintiffs were not entitled to receive rent from the defendant and an adequate reply was given to the plaintiffs. It was asserted that the question of payment of rent to the plaintiffs or anybody did not arise as there was no relationship of landlord and tenant between the plaintiffs and defendant. The landlord and tenant relationship between the Deepak Mithra ceased from the date of the agreement of sale i.e. 6.10.1983

and a new contract came into existence which was being enforced by the defendant by filing a suit for specific performance of the agreement and the defendant was the prospective owner in possession of the suit property in part performance of the agreement of sale dated 06.10.1983.

16. A plea was also raised that the suit for enforcement of the specific performance of agreement dated 06.10.1983 was filed which was pending at the time of filing of the suit.

17. The learned trial court had framed the following issues for consideration:-

- i. *Whether the suit, as framed, is maintainable?*
- ii. *Whether the plaintiffs have valid cause of action for filing the suit?*
- iii. *Whether the present suit is bad for non-joinder of necessary parties?*
- iv. *Whether there is a landlord and tenant relationship between the plaintiffs and the defendant?*
- v. *Whether the plaintiffs are entitled to get decree by evicting the defendant from the disputed house on the grounds of personal necessity and default in payment of rent?*
- vi. *Whether the plaintiffs are entitled to any other relief?*

18. While considering the issue No. iv as to *whether there was relationship of landlord and tenant*, the learned trial court considered the materials including the agreement of sale dated 06.10.1983 and also the fact that the money order was lastly sent to Deepak Mitra in the month of March, 1984 which he refused to accept. The learned court ultimately recorded the finding that on the basis of the agreement dated 06.10.1983, the suit for specific performance of contract being Title Suit No. 56 of 1984 was already decreed in favour of the defendant, therefore, it was held that there was no relationship of landlord and tenant between the parties.

19. It was also held while deciding the issue No. (v) and (vi) held that even if it is assumed that there was default in payment of rent and there was personal necessity, the agreement of sale dated 06.10.1983 having been found to be valid and binding upon the vendors of the plaintiffs, therefore, no decree of eviction could be passed by treating the plaintiffs as the landlord with respect to the suit property. The learned trial court ultimately dismissed the suit.

20. The learned 1st appellate court has framed the following points for determination: -

Whether the judgment and decree passed by the learned court below are in accordance with law or not?

21. It is important to note that the suit for specific performance of contract which was decreed in favour of the plaintiff of the said case (defendant in this case) was passed on 29.02.1992 which was set aside vide judgment dated 04.03.2003 passed by the learned 1st appellate court in Title Appeal No. 8 of 1992 arising out of the suit for specific performance of agreement dated 06.10.1983 being Title Suit No. 56 of 1984, against which another second appeal has been filed which is the subject matter of Second Appeal No. 178 of 2003, which has been analogously heard with this 2nd appeal.

22. The learned 1st appellate court in the present case has recorded that the result of Title Appeal No. 8 of 1992 arising out of Title Suit No. 56 of 1984 shall automatically affect the result of the 1st appeal involved in the present case. The learned 1st appellate court ultimately recorded that the learned trial court came to a wrong conclusion and against the law that only because the deed of agreement of sale dated 06.10.1983 was found to be valid, the eviction suit shall fail. Learned 1st appellate court further recorded that the learned trial court appears to have fully ignored the important legal aspect of the matter that when the defendant of the present suit did not perform the part of contract by depositing the remaining portion of amount within the stipulated period of six months as required under the deed of agreement dated 06.10.1983, the defendant of the present eviction suit

was not entitled to get the sale deed executed in his favour by the vendors of the suit premises.

23. The learned 1st appellate court thereafter recorded that the learned trial court has not discussed about the subsequent purchase of the suit premises by the plaintiffs on 06.04.1984 by registered sale deed and arrived at a wrong/erroneous conclusion as the trial court completely ignored the ground of eviction taken by the plaintiffs in the present eviction suit. The learned 1st appellate court observed that the present case is well influenced by the other judgment passed in 1st appeal relating to the specific performance of contract arising out of Title Suit No. 56 of 1984 whereby the judgment passed in the Title Suit No. 56 of 1984 in favour of the plaintiff of the said case (defendant in this case) decreeing the suit for specific performance of the agreement dated 06.10.1983 has been set aside.

24. The learned 1st appellate court observed that the finding of the 1st appellate court is appeal arising out of Title Suit No. 56 of 1984, whereby the decree of specific performance of contract was set aside, shall automatically affect the present appeal and the judgment of the trial court in this case cannot be sustained.

25. The learned 1st appellate court further recorded a finding in paragraph 11 of the impugned judgment that the plaintiffs' vendor was admittedly receiving the rent from the defendant and therefore, there was a relationship of landlord and tenant between the plaintiffs' vendor and the defendant. The learned 1st appellate court ultimately held that the plaintiffs were entitled for a decree of eviction and consequently allowed the appeal and one month's time was granted to vacate the suit premises.

Argument of the appellants

26. The learned counsel for the appellants while referring to the substantial question of law has submitted that the appellants were the prospective purchaser of the suit property by virtue of agreement of sale and therefore, it could not be said that there was a relationship of landlord and tenant between the plaintiffs and defendant. Plaintiffs

were the purchasers of the suit property after the agreement of sale dated 06.10.1983 was entered into between the vendors of the plaintiffs and the defendant of the present case.

27. The learned counsel has submitted that the learned 1st appellate court has travelled beyond the scope of the suit inasmuch as the suit was to be decided with respect to the relationship of landlord and tenant and the question of title was totally out of the scope of the suit.

28. Learned counsel for the appellants submits that pursuant to the agreement dated 06.10.1983 the defendant did not pay the rent to the vendor of the plaintiffs as the tenant had become the owner of the suit property and as per the agreement itself the defendant was not required to pay the rent after the agreement of sale. He submits that once there was an agreement, the defendant was not supposed to pay rent after entering into agreement of sale and the relationship of landlord and tenant ceased on and from 06.10.1983 and therefore, the subsequent purchasers of the property, the plaintiffs in the present case, could not assert relationship of landlord and tenant between the parties. He submits that there was no occasion for the defendant to tender any rent to the plaintiffs and the defendant had never tendered rent to the plaintiffs.

29. Learned counsel for the appellants has also submitted that since the defendant had entered into an agreement of sale with the original owner of the suit premises and continued in possession of the suit premises, not as a tenant but as an owner of the premises, therefore, the relationship of landlord and tenant ceased on and from 06.10.1983 and the defendant was in part performance of the contract of sale as a prospective purchaser continued in possession of the suit property .

30. Learned counsel for the appellants has referred to Section 53A of the Transfer of Property Act and has submitted that the possession of the defendant in part performance of agreement of sale is duly protected under the law.

31. Learned counsel has also relied upon the judgment passed by the Hon'ble Supreme Court reported in *(2002) 1 SCC 90 (Rajendra*

Tiwary Vs. Basudeo Prasad and Another) and has submitted that it has been held that in a case dealing with suit for eviction there is no scope for entering into title dispute.

32. Learned counsel has also relied upon the judgment passed by Hon'ble Supreme Court in the case of *R. Kanthimathi And Anr. vs Beatrice Xavier (Mrs)* reported in (2000) 9 SCC 339 to submit that once an agreement of sale is entered into between the tenant and the original landlord the relationship between the parties of that of landlord and tenant ceases to exist. He submits that both the substantial questions of law be answered in favour of the appellants and against the respondents.

Arguments of the respondent

33. Learned counsel for the respondents on the other hand while opposing the prayer has submitted that the learned 1st appellate court has considered every aspect of the matter while coming to a finding that there was a relationship of landlord and tenant between the parties. He submits that since it is not in dispute that the plaintiffs of the present case had requested the defendant to tender rent pursuant to their purchase by way of registered deed and the defendant refused to tender rent to the plaintiffs, therefore, the default in payment of rent is not in dispute.

34. The learned counsel for the respondents has also submitted that attornment of tenancy is not required. Learned counsel for the respondents submits that the suit for specific performance of contract was filed on 21.05.1984 and the suit for eviction was filed on 31.08.1984. He submits that there is no dispute that the defendant was fully aware about the sale deed but inspite of knowledge they did not tender any rent to the plaintiffs.

35. Learned counsel for the respondents has also submitted that the date of agreement was 06.10.1983 and it is admitted from the records of this case that the defendant had tendered rent till March, 1984 through money order to the vendor of the plaintiffs and so far as the

rent of March 1984 was concerned, the same was refused to accept by the vendor of the plaintiffs.

36. Learned counsel for the respondents submits that merely because there is an agreement of sale, the same does not confer title upon the defendant and in the case arising out of Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 what is required to be seen is only the relationship of landlord and tenant. He submits that in view of the fact that the defendant continued to tender rent even after the agreement dated 06.10.1983 itself reveals that the relationship of landlord and tenant continued even after the agreement dated 06.10.1983. The learned counsel has submitted that so far as judgment reported in the case of ***R. Kanthimathi And Anr. vs Beatrice Xavier (Mrs)*** (Supra) is concerned, in the said case the conduct of the landlady right from the date of entering into agreement of sale and accepting money towards the sale consideration, delivering possession in lieu of such agreement indicated that the old relationship of landlord and tenant was repudiated by the land lady and the parties entered into new cloak of seller and purchaser and their relationship was governed by the terms of the agreement. It was held that even if parties under the agreement of sale do not perform their obligations, the remedy as permissible under law may be availed. The relevant clauses of agreement of sale were also quoted and considered to arrive at the finding.

37. The learned counsel for the respondents has submitted that the nature of the agreement of sale in the present case is different and the conduct of the parties is also required to be considered. He has submitted that the said judgment of ***R. Kanthimathi (supra)*** has been considered by the Hon'ble Supreme Court in a subsequent judgment reported in ***(2022) 10 SCC 496 [Karan Kapoor Vs. Madhuri Kumar]*** and by referring to the aforesaid judgment it was argued, as recorded in paragraph 31 of the judgment, that when possession is with the person by virtue of part performance of agreement as prescribed under Section 53 A of Transfer of Property Act, he has a right to defend or

protect his possession. The said judgment was sought to be distinguished by the respondents of the case by stating that in the case of ***R. Kanthimathi And Anr. vs Beatrice Xavier (Mrs)(supra)*** the terms of the agreement was considered and it reflected that the major amount of the sale consideration was paid and only Rs.5,000/- was remained to be paid and by conveyance the possession of the property was already surrendered. Ultimately in the said case of ***Karan Kapoor (supra)*** the payment of rent to be determined was made to be subject to outcome of the pending suit for specific performance of contract and the matter was remitted back to the trial court. Learned counsel has submitted that the judgment relied upon by the appellants in the case of ***R. Kanthimathi And Anr. vs Beatrice Xavier (Mrs)*** does not apply to the facts of the case and ultimately the outcome of this case would also depend upon the outcome of S.A No. 178 of 2003 relating to the suit of specific performance of agreement dated 06.10.1983 arising out of title suit no. 56 of 1984.

38. The learned counsel has also submitted that the personal necessity was also decided in favour of the plaintiffs and the point of partial eviction was also considered and rejected.

39. Arguments Concluded.

40. Post this case for Judgment on 18th September, 2025.

(Anubha Rawat Choudhary, J.)

Rakesh/-