IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 124 of 2023

Satyanand Mohan Raju, aged about 81 years, **(died and substituted vide order dt. 17.11.2025)**

1. Kamala Raju, aged about 77 years, w/o late Satyanand Mohan Raju, resident of 2D, 3rd Floor, GNS Tower, Near Brijdham Ramdad Bhatta, VTC, Sakchi, P.O. and P.S. Bistupur, Town Jamshedpur, District East Singhbhum
2. Shiva Ram Mohan Raju, aged about 74 years, Son of Late D. Satyanarayan Mohan Raju, resident of Sundernagar Mill area by the side of perfect electricals, P.O. and P.S. Sundernagar, Town, Jamshedpur, District East Singhbhum **… …Plaintiffs/Appellants**

Versus

Shivjee Sharma, son of late Jagannath Sharma, resident of Muiguttu, Masjid Road, Kitadih, P.O. Tatanagar, P.S. Parsudih, Town Jamshedpur, District East Singhbhum **… Defendant/Respondent**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants	: Mr. Rahul Kumar Gupta, Advocate
	: Mr. Vipul Poddar, Advocate
	: Ms. Sugandha Jaiswal Poddar, Advocate
For the Respondent	: Mr. Pandey Neeraj Rai, Advocate
	: Mr. Navneet Sahay, Advocate

35/**11.12.2025** This appeal has been filed against the judgment dated 31.05.2023 (decree signed on 09.06.2023) passed by learned Civil Judge (Sr. Div.) III at Jamshedpur in Original Title Suit No. 212 of 2016 whereby the suit has been dismissed.

2. A petition being I.A. No. 1111 of 2025 has been filed seeking to adduce additional evidence before this Court under Section 107(1) (d) read with Order 41 Rule 27 of CPC. However, the learned counsel for the appellants on instructions does not want to press the interlocutory application. ***Accordingly, I.A. No. 1111 of 2025 seeking to adduce additional evidence is dismissed as not pressed.***

3. The Suit was filed for the following reliefs:-

> ***"(a) The appropriate order directing the defendant to return Original copy of registered Sale Deeds as mentioned above to the plaintiff as because the aforementioned two Sale Deeds No. 705/508 dated 07.02.2014 and no. 2736/2125 dated 17.05.2014 are itself Null and Void.***

(b) For Cost.

(C) Your any other relief or reliefs to which the Plaint is found entitled there to according to law & equity."

4. The details of the properties have been mentioned in four schedules and the disputed property is relatable to Schedule-II and III and both are admittedly part of Schedule-I property. Schedule III relates to sale deed no. 705/508 dated 07.02.2014 and Schedule III relates to sale deed no. 2736/2125 dated 17.05.2014.

5. It is not in dispute that the plaintiffs were the owner of Schedule I property and it is also not in dispute that aforesaid sale deeds dated 07.02.2014 and 17.05.2014 were executed by the plaintiffs in favour of the sole defendant.

6. The suit was valued at Rs. 36 crores**.** The documents in connection with the title of the plaintiffs have been detailed in paragraph 2 of the plaint which being not in dispute need not be discussed in connection with which it has already been recorded that Schedule-I was admittedly the property of the plaintiffs.

7. **The plaint.**

a. It was the case of the plaintiffs that schedule-I property was recorded in last survey settlement in record of rights vide New Khata No. 158 bearing new plot no.-27 and 27/1718 of Mouza Byangbil in the name of State of Bihar and was shown in possession of the State. Consequently, a Title Suit No.-18/2003 of 1973 was filed by the father of the plaintiffs against the State of Bihar, which was decreed in their favour in the year 1976. Subsequently, the appellate decree was also passed in favour of the plaintiffs. Thereafter, the plaintiffs applied for fixation of rent numbered as Rent Fixation Case No.- 15(KA)/1991 & 1992. The plaintiffs were four brothers and they all were in possession of the property with full right, title and interest over the property. The four brothers were: -

(i) Satyanand Mohan Raju

(ii) Shivram Mohan Raju

(iii) Krishna Mohan Raju

(iv) Lakshman Mohan Raju

b. The plaintiffs, namely, Satyanand Mohan Raju and Shivram Mohan Raju transferred the Schedule II & III Lands in favour of Defendant by executing two registered sale deeds vide Registered Sale Deeds dated 07.02.2014 and dated-17.05.2014 which is the subject matter of dispute in the present case. It is not in dispute that schedule II and III properties are part of schedule I property.

c. The specific case of the plaintiffs is that at the time of execution of ***registered Sale Deed dated 07.02.2014***, total consideration amount of Rs 62,70,000/- was paid through four cheques, the details of which has been mentioned in paragraph 8 of the plaint and also in the registered sale deeds. This aspect of the matter is also not in dispute. Their further case was that the cheques which are mentioned in sale deed dated 07.02.2014 was never encashed by the plaintiffs and it remained in their custody. It was their further case that on 22.02.2014, defendant gave a letter to the plaintiffs stating that the property registered in favor of defendant for total consideration amount as mentioned above shall be paid to plaintiffs by defendant only after mutation is done in his favor. The defendant also mentioned that he was informed that the mutation of the land cannot be done as the land is recorded in the name of State of Jharkhand although the lands were subject matter of decree in Title Suit filed by the plaintiffs against the State of Bihar/Jharkhand. Thereafter the defendant directed the plaintiffs to return all the cheques mentioned in the sale deed dated 07.02.2014 and also asked the plaintiffs to take step for the cancelation of Sale deed. It was also stated that mutation was not the pre-condition for execution of registration and payment of sale consideration by the defendant. However, the defendant again issued a letter dated 28.03.2014 by referring to his earlier letter dated 22.02.2014 asking the plaintiffs to arrange return of all the cheques issued in favor of the plaintiffs immediately, otherwise the defendant shall take necessary legal action against the plaintiffs. Consequently, the plaintiffs returned all the cheques to the defendant vide letter dated-08.04.2014 on which the defendant had put his signature in token of proof of the receipt of all the four cheques.

d. It is further case of the plaintiffs that similarly, so far as ***other registered sale deed dated 17.05.2014*** is concerned, total consideration amount of Rs. 39,60,000/- was also paid through four cheques as mentioned in the sale deed itself. The plaintiffs similarly at the instance of the defendant returned all the four cheques on 01.07.2014 for a total amount of Rs. 39,60,000/- amounting to Rs. 9,90,000/- each to the defendant, which the defendant had given to plaintiffs on the day of executing the second sale deed No. 2736/2125 dated 17.05.2014. The defendant had put his signature in token of proof of the receipt of four numbers of cheques, mentioned above.

e. ***The two sale deeds dated 07.02.2014 and 17.05.2014 were annexed as Annexure-1) and 1/1. The aforesaid letters /receipt dated 22.02.2014, 28.03.2014 and 08.04.2014 in connection with sale deed dated 07.02.2014 and all the letters/receipts dated 01.06.2014, 15.06.2014 and 01.07.2014 in connection with sale deed dated 17.05.2014 were annexed as Annexure-2 series to the plaint.***

f. Further case of the plaintiffs was that the defendant after receipt of his cheques from plaintiffs, which were not encashed, managed to obtain the sale deeds from the office of the Registrar at Jamshedpur in clandestine manner without giving information to the plaintiffs on the basis of registration slip, which was handed over to the defendant in good faith by the plaintiffs.

g. It was also stated that the possession of the property in schedule II & III was not delivered to the defendant by the plaintiffs, although the registration slip was handed over on the basis of the earlier cheques received by the plaintiffs.

h. The plaintiffs thereafter issued a legal notice dated 23.08.2016 asking the defendant to return both the registered sale deeds. The defendants responded the legal notice vide reply dated-09.09.2016, whereby the defendant claimed to be the owner of two registered sale deeds. It was the case of the plaintiffs that the defendant had intentionally and deliberately cheated the plaintiffs by taking back all his eight cheques and after getting the Sale Deed registered in his favor.

i. The case of the plaintiffs was that the two registered sale deeds did not convey any title to the defendant and it was repudiated by the plaintiffs vide notice dated 23.08.2016 and therefore the defendant was not entitled to claim any right, title or interest or possession with respect to schedule II & III land.

j. It was further case of the plaintiffs that they have instituted another agreement in favor of another person for transfer of lands mentioned in schedule IV, the possession of the same was also delivered to said person for construction of building.

k. The case of the plaintiffs was that the two registered sale deeds dated 07.02.2014 and dated 17.05.2014, executed in favor of defendant has no legal value in the eyes of law, because sale consideration was not paid to the plaintiffs and delivery of possession were also not given to defendant even after registration and execution of registered sale deeds. Consequently, the case of the plaintiffs was that the two registered sale deeds have no value in the eyes of the Law, being without consideration and both the sale deeds were required to be declared null and void on this count.

l. It was asserted that only fixed court fee of Rs. 250/- was payable as the suit was of declaratory nature.

8. **<u>The written statement of the defendant</u>**

i. The sole defendant contested the suit by filing a written statement. It was asserted that the suit was not maintainable in the present form; there was no valid cause of action; it was barred under the provisions of Transfer of Property Act; suit was barred by the principles of estoppels, waiver and acquiescence; the suit was bad for mis-joinder and non-joinder of necessary parties and causes of action for the suit and the suit was barred under the provisions of Specific Relief Act and the suit was grossly under-valued.

ii. It was asserted that the plaintiffs have prayed for return of two sale deeds whose value was Rs. 62.70 lacs and 39.60 lacs respectively total being Rs. 1,02,30,000/- but the suit was valid for Rs. 36 crore only. It was also asserted that the plaintiffs assume that the Sale deeds were null and void and avoided to make a prayer of cancellation of Sale deeds and this was done evidently to evade payment of full ad-valorem Court fee.

iii. Another objection was taken by stating that the plaintiffs had filed one Title Suit No. 74/2015 against the defendant seeking cancellation for aforesaid two Sale deeds by paying ad-valorem court fee of Rs.50,000/-. Later on, the plaintiffs withdrew the said Title suit unconditionally but this vital fact was suppressed by the plaintiffs before the court. It was asserted that the plaintiffs are estopped from assuming and alleging that the said two sale deeds were null and void and the same were not acted upon.

iv. The fact regarding ownership of the property and the sale deeds were executed and the cheques were issued were not in dispute in the written statement. However, it was stated that although it was agreed between the parties that the cheques issued by the defendant and mentioned in the sale deeds dated 07.02.14 and 17.05.14 will be encashed by the plaintiff only after mutation in respect of the lands mentioned in the said two sale deeds and in pursuance thereof the plaintiffs retained those cheques with them.

v. However, it was also mentioned that still the defendant paid the entire consideration amount of Rs. 1,02,30,000/- to the plaintiffs and/or their relatives as per their requirement and direction, partly by cash and partly by bank transaction on receipt of the aforesaid cheques mentioned in the two sale deeds and therefore, it was asserted by the defendant that the entire consideration amount with respect to the two deeds were duly paid, even though the cheques were not encashed.

vi. It was also asserted that in the aforesaid circumstances the plaintiffs neither filed any money suit claiming consideration amount mentioned in the sale deed nor proceeded with the earlier Title Suit No. 74 of 2015 which was filed seeking cancellation of the two registered sale deeds.

vii. It was further case of the defendant that the plaintiffs voluntarily gave the registration slips in respect of the two sale deeds and also delivered physical possession of the lands mentioned in the schedules (Schedule-II and III).

viii. The defendant admitted to have collected original sale deeds from the registration office on completion of registration of the same and they even applied for mutation of the land.

ix. It was asserted that having received the full consideration amount with respect to the two sale deeds, the plaintiffs were estopped from challenging the validity of the same.

x. With regard to the statements made in paragraph 18 and 19 of the plaint, it was submitted that repudiation of any Agreement for sale by the defendant is totally baseless and that the plaintiffs had not disclosed the particulars of any such agreement for sale. Having received the full consideration money according to their own requirement and direction in lieu of the enchashment of the cheques mentioned in the Sale deeds, the plaintiffs are estopped from challenging the validity of those sale dees what to speak of return of the original two sale deeds to them. Accordingly, the notice of the plaintiffs was replied properly by the defendant. The defendant having paid the full consideration money as per direction of the plaintiffs and also taken physical possession of the suit (purchased) lands, there is no question of cheating in any way. As a matter of fact, after taking possession of the lands purchased by him through two sale deeds the defendant commenced construction of several residential premises thereon after levelling the same by expending huge amount money. Out of greed to grab those premises or alternatively to extort money illegally, the present suit has been filed by the plaintiffs at the instigation of some mischief mongers.

xi. It was reiterated that the plaintiffs are not entitled to get the original sale deeds. The same were not obtained by the defendant in a clandestine manner. Rather the plaintiffs themselves have handed over the registration receipt in respect of the sale deeds in question and made necessary endorsement in the registration receipt on the basis of which the defendant had collected the original registered sale deeds after completion of registration.

xii. With respect to the transaction with another person, it was asserted that upon careful perusal of Schedule I and IV of the plaint, it would be evident that land mentioned in schedule IV was never in possession of the plaintiffs. The major part of Schedule IV is in possession of the defendant since the date of execution and registration of the two sale deeds in question and that the defendant was raising construction of the buildings in Schedule II & III lands which he had purchased by the two sale deeds. It was also asserted that admittedly schedule IV includes major Schedule II & III purchased by the defendant and asserted that except the defendant, no other person is making any construction on any part of Schedule I land.

xiii. It was asserted that the plaintiffs had no cause of action and was not entitled to any relief. However, along with the written statement, no document as such was annexed.

9. After examination of the materials on record, following issues were framed by the learned Trial Court:-

i. *Whether the suit is maintainable in its present form?*
ii. *Whether the plaintiff has any valid cause of action for the suit ?*

iii. *Whether suit is barred by principle of waiver, estoppel an acquiescence?*
iv. *Whether suit is barred under the provisions of T.P. Act and Specific Relief Act?*
v. *Whether the suit is undervalued or properly valued?*
vi. *Whether the present suit is bad in law owing to withdrawal of Title Suit No. 74 of 2015 allegedly filed earlier by the plaintiff?*
vii. *Whether plaintiffs were entitled to sell the property in question?*
viii. *Whether two sale deeds bearing no. 705/508 dt.7.2.2014 and 2736 /2125 dt. 17.5.2014 executed by the plaintiff were with proper consideration payment resulting into transfer of valid title in favour of defendant?*
ix. *Whether plaintiffs are entitled for decree of declaration prayed without claiming possession or who is in actual physical possession?*
x. *Whether the plaintiff is entitled to any other relief or reliefs?*

10. On behalf of the plaintiffs, altogether three witnesses were examined including both the plaintiffs. Plaintiff no. 1 has been examined as P.W. 1 and son of plaintiff no. 2 was examined as P.W. 3 and claims to be aware of all the transactions. P.W. 2. is Arun Kumar Thakur who is said to be the general power of attorney holder with whom the plaintiffs have entered into an agreement with respect to Schedule-IV of the property. Plaintiffs exhibited the following documents:-

X	Photo copy of notice dt. 23.8.2016 marked for identification
X/1	Photo copy reply to notice dated 9.9.2016 marked for identification
Ext. 1	Certified copy of sale deed no. 705/508 dated 7.2.2014
Ext.1/1	Certified copy of sale deed no. 2736/2125 dated 17.5.2014
Ext.2	Letter dt. 22.2.2014

Ext.2/1	Letter dt. 28.3.2014
Ext.2/2	Letter dt. 8.4.2014
Ext.2/3	Letter dt. 1.6.2014
Ext.2/4	Letter dated 15.06.2014
Ext.2/5	Letter dated 01.07.2014
Ext. 3	Agreement for sale dated 12.08.2016
Ext.4	General power of attorney dated 05.04.2017
Ext.5	Notice under Section 142(1) of Income Tax Act, 1961
Ext.6	Certified copy of order passed in ABA No. 103 of 2019

11. On behalf of the defendant, altogether two witnesses were examined. The sole defendant was examined as D.W. 1 and D.W. 2 is the son of the sole defendant.

12. Following documents were exhibited on behalf of the defendant: -

Ext. A	Letter dated 16.02.2015
Ext. B	Letter dated 30.08.2018
Ext. C	Bank statement from 23.01.2014 to 23.01.2015
Ext. D	Certified copy of order passed by Civil Judge, Senior Division I dated 20.08.2016 in T.S. No. 74 of 2018
Ext. E	Certified copy of Plaint of T.S. No. 74 of 2016
Ext. F	Certified copy of order passed by the Hon'ble High Court in A.B.P. No. 4166 of 2016
Ext. G	Receipt of Kalyani Dey issued on behalf of Shree Balaji Heritage

<u>Findings of the learned court below</u>

13. **Issue No. I** Whether the suit is maintainable in its present form was decided against the plaintiffs by citing the following reasons: -

a. By referring to the judgment of the Hon'ble Supreme Court reported in ***2012 JLJR 197*** and judgement of Hon'ble Patna High Court reported in ***PLJR 2014 (2) 336***, the learned trial court observed that the Supreme Court specifically refers to the prevalent practise in Bihar known as *"ta khubzul badlain"*, the practise of the title passing only when there is exchange of equivalents and observed that it was held that this practice specifically proved that a duly executed sale deed will not operate as transfer in preasanti but postpones actual transfer of title, from the time of execution and registration of deed, to the time of exchange of equivalents, that is registration receipt and the sale consideration. The trial court observed that the practice is prevalent only in Bihar that until and unless the duly executed and registered sale deed comes to the possession of the purchaser, or until the right to receive the original sale deed is secured by the purchaser by obtaining the registration receipt, the deed of sale merely remains an agreement to be performed and will not be a completed sale and the same practice was recognised by the Hon'ble High Court of Patna in its decision passed in Md. Asim v. Ram Khelawan.

b. The learned trial court observed that the facts of the present case are different. The learned court observed that in the present case, it is admitted that the defendant has the possession of the sale deeds as well as the registration slips and further it is not the case of the plaintiffs that the practice of ‘ta khubzul badlain’ was recognised in Jharkhand. The trial court recorded that moreover, to prove that the registration of sale deeds (Exhibit 1 and 1/1) had not passed the title even though the recitals in the sale deed mentioned the transfer of possession and payment of consideration amount, the practice of "ta khubzul badlain" required retention of at least the registration slips (chirkut) and sale deeds with the seller. The learned trial court recorded that in the present case, admittedly both the sale deeds, and their registration slips were with the defendant and held that hence the aforesaid case laws do not help the case of the plaintiffs. The court held that the facts of the present case clearly provide the possession of the sale deeds and the registration slips with the defendant. Further it is a settled principle of law that courts are generally restricted to interpreting the contract within the four corners of the written document and referred to section 92 of the Evidence Act and observed that both sale deeds, exhibit 1 and 1/1, provide that the possession of the lands described in the

Schedule of the sale deeds [Schedule II and III of the plaint] had been transferred to the defendant.

c. The learned trial court then referred to Section 55(3) of the Transfer to Property which provides that where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power. The court held that the sale deeds were given to the buyer only on payment of full consideration amount.

d. The court further observed that even though the mode of payment of the sale consideration has been admitted to have been by way of payment to the creditors of the plaintiffs and their relatives by the defendant, the fact remains that any oral evidence contrary to the sale deeds (Exhibit 1 and 1/1) documenting the payment of sale consideration is excluded by the documentary evidence.

e. Further the plaintiffs have brought on record Exhibit 3 and 4 to show that the possession of the lands in the Schedule of the plaint had been transferred in favour of one Arun Kumar Thakur by way of Agreement for Sale dated 12.08.2016 and the registered general power of attorney dt. 5.4.2017. The plaintiffs cited judgement reported in ***2018 (3) CCC 272 (SC)*** wherein the Hon'ble Supreme Court had held that an unregistered agreement for sale can be admitted as evidence of contract in a suit for specific performance as well as on the decision of the Supreme Court in its decision reported in ***2004(4) JLJR (SC) 215***. The learned trial court held that in the present case, as was evident from the date of the agreement for sale itself that the sale agreement was entered into after the sale deeds marked as Exhibit 1 and 1/1 and held that by referring to Section 48 of the Transfer of Property Act, that any right of subsequent transferee shall be subject to the right of earlier transferees. The court also observed by referring to the agreement of sale that it showed that sale deed was to be registered within one month but no registered deed pursuant to the agreement of sale with third party was brought on record and rejected the contention of the plaintiffs that possession of the suit land had been transferred into the possession of Arun Kumar Thakur, the second party of agreement for sale marked as Exhibit 3 and that in pursuance of the agreement of sale he was carrying on construction.

f. Moreover, no instrument of cancellation of sale deeds (exhibit-1 and 1/ 1) has been brought on record by the plaintiffs.

g. The Exhibit D and E show that a title suit for cancelation of the two sale deeds (Exhibit 1 and 1/2) was filed but the same was withdrawn with permission to file a fresh suit. However, no decree or cancellation deeds cancelling the two sale deeds has been brought on record.

h. It is a settled proposition of law that a transfer of immovable property of a value of Rs.100 or upwards is to be made by way of a registered instrument and such sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In the present case the Exhibit 1 and 1/1 itself provide that payment of consideration was made and same was acknowledged and the plaintiffs' right, title, interest vested with the defendant on the date of the execution of the sale deed.

i. A reference was made to section 8 of the Specific Relief Act and the learned trial court was of the view that it cannot be held that the plaintiffs were entitled to the lawful possession of the sale deeds since the plaintiffs have not been able to establish the same had been wrongfully transferred from them to the defendant and hence no relief of return of sale deeds can be granted to the plaintiffs.

14. **ISSUE NO. II** <u>Whether the plaintiff has any valid cause of action for the present suit?</u>

It has been pleaded that the cause of action of the present suit arose when the defendant denied to return the sale deeds marked as Exhibits 1 and 1/1 through their reply dated 09.09.2016. The purported reply marked as X/1 for identification has not been proved by the plaintiffs by way of primary evidence. Moreover, in light of the fact that the suit itself for the relief claimed is not maintainable and the cause of action remaining unproved, it cannot be held that the plaintiffs had any cause of action for the present suit, since there is nothing on record to show that the sale deeds sought to be recovered from the defendant had been cancelled or had been wrongfully taken from the possession of the plaintiffs and that they were entitled to it. Moreover, the Limitation Act provides under Article 68 and 69 that suit relating to movable property which have been wrongfully taken from the possession of the person claiming the right of possession have to be filed within three years from the date of knowledge of the possession with somebody else and three years from the date of which it was wrongfully taken respectively. In the suit, it has been alleged that the sale deeds had been wrongfully retained since 9.9.2016 that is the date on which the defendant had purportedly denied returning the document. Further the plaintiffs had pleaded that the return of the documents have been sought because they have no legal value and are void ab initio. However, the plaintiffs have not been able to show as to why seek return of a documents which they themselves have pleaded had no value. Hence in light of the issue of maintainability discussed above, the present issue is decided against the defendant.

15. **ISSUE NO. III:** Whether the suit is barred by principle of waiver, estoppel and acquiescence?

ISSUE NO. IV: Whether the suit is barred under the provisions of Transfer of Property Act and Specific Relief Act?

ISSUE NO. IX: Whether plaintiffs are entitled for decree of declaration prayed without claiming or who is in actual physical possession?

Issue nos. III, IV and IX were taken together by the learned trial court and were decided against the plaintiffs in the following manner: -

A. In the present case the plaintiffs have submitted that since the sale deeds Exhibit 1 and 1/1 are void documents, the same should be returned to the plaintiffs. It is pertinent to mention that the plaintiffs have not sought the declaration that the sale deeds were void and not binding on them or have claimed the relief for their cancellation. The plaintiffs have submitted that in light of the fact that no consideration was paid, the entire sale deed was a sham transaction. Hence the plaintiffs being the executant of the sale deeds was denying the fact of it being so executed as was recited in the sale deeds which provided that the sale consideration had been paid and possession had been delivered to the defendant consequent thereto. Hence, the fact that the sale deeds existing in favour of the defendant showed that the right, title and interest in property had been transferred in favour of the defendant, the plaintiffs being executants of the same cannot deny the recital of the same since the principle of estoppel is based on the principle of equity i.e. when one person has included the other person by his act, omission or declaration to believe something and the other person had taken some steps on believing that statement, it would be unjust and inequitable to allow the former to deny from his former statement. Therefore, where two parties enter into an agreement by way of a deed as to certain facts, this implies that neither he nor his representatives or any person claiming under him can deny the facts mentioned and agreed in the deed. Hence, the plaintiffs as executants of the sale deeds cannot claim the same to be null and void.

B. Further the defendant has submitted that in absence of prayer for recovery of possession, no suit for return of the sale deeds will be maintainable since it is barred under Section 34 of the Specific Relief Act. In the present suit, the plaintiffs being the executants of the sale deeds have prayed that the same be returned since they are null and void. However, they have submitted that the possession of the lands described in the sale deeds was with them and they had transferred the possession of those lands for development in favour of one Arun Kumar Thakur from 12.08.2016, however the present pleading is in contradiction to that as is recited in the sale deeds marked as Exhibit 1 and 1/1. Further the defendant submitted that he was in possession of the lands described in the Schedule of the sale deeds. It was submitted on behalf of the defendant that without seeking the relief for recovery of possession, relief for declaration would not be maintainable. In support of the aforesaid contention, the defendant has cited certain case laws passed by the Hon'ble High Court of Patna reported ***1990 BBCJ 674*** and the other is of the Hon'ble Supreme Court reported in ***2007 (1) SCR 1108***. The aforesaid case laws cited does not help the case of defendant since in the present case the plaintiffs has not sought a declaration but has only sought a relief of return of the two sale deeds.

C. Further the fact that any transfer of immovable property can only be made by way of registered deed as well as the fact that the stipulation of a registered deed of sale being executed by the plaintiffs had been made within one month of the execution of the agreement of sale dated 12.08.2016 and the fact of the plaintiffs not bringing on record the same i.e. the registered sale deed in favour of Arun Kumar Thakur shows that the agreement for sale had not been complied with by the plaintiffs themselves. The plaintiffs claimed that the possession is with Arun Kumar Thakur who has been put in possession of the schedule lands in pursuance of the agreement to sale dated 12.8.2016. However, the defendant has averred in his written statement that the possession of the land described in schedule II and III are in possession of the defendant. Both plaintiffs and defendant by way of oral evidence have submitted that they are in possession of the lands described in the schedule of the plaint. Hence, documentary evidence adduced on behalf of both sides have to be looked into since it is a settled proposition of law that documentary, evidence excludes oral evidence. The two sale deeds marked as Ext. 1 and 1/1 which are registered show that the possession of schedule II and III lands were with the defendant whereas the agreement to sale marked as exhibit 3 which have not been registered shows delivery of the property to Arun Kumar Thakur who was adduced as P.W. 2 in pursuance of which a general power of attorney dt. 5.4.2017 marked as Ext. 4. Further Section 54 of Transfer of Property Act which defines sale provides that an immovable property of the Value of Rs. 100/- and upwards can only be transferred by way of a registered /instrument of sale. An unregistered agreement to sale can only be given as evidence to enforce specific performance of a contract whereas a general power of attorney in favour of any person only creates a right of agency and does not create any right and interest over the immovable properties.

D. It is the case of the plaintiffs that since the deeds were without consideration the same ought to be returned to them as it was submitted that the defendant was in wrongful possession of the sale deeds. Hence in absence of the declaration to the effect that the same were invalid being sought, the prayer that they ought to be returned is not maintainable in light of the reasons as already discussed under ISSUE NO. I. The learned trail court decided the aforesaid three issues against the plaintiffs.

16. **ISSUE NO. VI**: Whether the present suit is bad in law owing to withdrawal of Title Suit No. 74 of 2015 allegedly filed earlier by the plaintiff was decided in favour of the plaintiffs.

17. **ISSUE NO. VII:** Whether plaintiffs were entitled to sell the property in question was decided by observing that even the defendant has not denied the capacity of the plaintiffs to make a valid transfer of the lands described in Schedules of the plaint.

ISSUE NO VIII: Whether two sale deeds bearing no. 705/508 dt.7.2.2014 and 2736 /2125 dt. 17.5.2014 executed by the plaintiffs were with proper consideration payment resulting into transfer of valid title in favour of defendant? was decided by observing that the defendant have pleaded that the plaintiffs, to save themselves from paying income tax, had instead of being paid by cheque, preferred to take payment by way of payment to their creditors, their relatives and security personnel as sale consideration. It has been held that even though the defendant has admitted that the payment of consideration was made by way of other modes than specified in the sale deed marked as Ext. 1 and 1/1 in light of the discussion as made under issue no. I, the sale deeds could not be held to be void on the ground that no sale consideration had passed to the plaintiffs. The trial court observed that it is a settled principle of law that a registered instrument of transfer providing for sale of immovable property shall be held to be a valid transfer on sale and consideration amount may be part paid or completely paid or may even may be promised to pay and the issue was decided against the plaintiffs.

18. **ISSUE NO. V**: Whether the suit is undervalued or properly valued? was decided by observing that in the present suit, the plaintiffs had valued the suit to be Rs. 36 Crores. Further the sale deed marked as Ext. 1 and 1/1 were executed for a total consideration amount of Rs. 1,02,30,000/- as is provided in the sale deeds. Hence the suit does not appear to have been undervalued. The trial court observed that since only return of aforesaid sale deeds was sought and no recovery of possession was sought, a total of only Rs. 250/- as court fees has been paid. The learned trial court also observed that the defendant has brought no evidence on record to show that the suit as valued was undervalued but have submitted that since the plaintiff was an executant of the sale deeds ad volrem Court fees should have been paid. The court further observed that the suit has been held to be not maintainable in light of decision on ISSUE No. I and decided issue no. V accordingly.

19. **ISSUE NO. X**: Whether the plaintiff is entitled to any other relief or reliefs? was decided by observing that the suit has been held to be not maintainable and the plaintiffs are not entitled to any other relief.

20. **Arguments of the appellants.**

I. It has been argued by the learned counsel for the appellants that the learned Trial Court has travelled beyond the pleadings while deciding the suit which is not permissible under law.

II. He submits that the learned Trial Court has failed to consider that when sale consideration amount has not passed, then there is no requirement of seeking cancellation of the sale deed as such sale deed is already null and void. This aspect has been dealt by the Hon'ble Supreme Court in the case of ***Kewal Krishan v Rajesh Kumar & Ors.*** reported in ***2021 SCC Online SC 1097***. The learned trial court has also failed to consider that as the sale consideration through cheques mentioned in the sale deeds were not encashed and were returned to the defendant.

III. The learned Trial Court has wrongly construed the fact that as one of the firms, namely, Shree Balajee Heritage, in which the son of the defendant is the Director, has transferred certain amount to the plaintiffs and his family members could be said to be a part of the sale consideration.

IV. The learned trial court has also failed to consider that title does not pass on mere registration of the sale deed, rather the title passes only after exchange of registration receipt and the sale consideration and has referred to the judgment passed by the Hon'ble Supreme Court in the case of ***Janak Dulari Devi & Anr. v. Kapildeo Rai & Anr.*** reported in ***(2011) 6 SCC 555***.

V. The learned counsel has also submitted that the learned Trial Court has failed to consider that in Jharkhand the practice of registration receipt is prevalent and the laws of Bihar have been adopted in terms with the Bihar Reorganization Act, 2000 and therefore, the practice in

Bihar known as 'ta khubzul badlain', is also prevalent in the State of Jharkhand.

VI. The learned counsel has also submitted that the learned trial court has failed to consider that an unregistered agreement for sale can be admitted as evidence of contract in a suit for specific performance as per the Provison of Section 49 of the Registration Act and has referred to the judgement passed by the Hon'ble Supreme court in the case of ***R. Hemalatha v. Kashthuri*** reported in ***2023 SCC Online SC 381*** and submits that the learned Trial Court has failed to consider the unregistered agreement for sale dated 12.08.2016 (Exhibit-3) from where it is evident that the land in question is in possession of one Arun Kumar Thakur. The learned counsel submits that a valid transfer of title is complete only when entire sale consideration is paid and if sale consideration is not paid, then even if in the recital of the sale deed it is mentioned about possession, the possession will be deemed to be in favour of the plaintiffs.

VII. The learned Trial Court has failed to properly appreciate Section 54 of the Transfer of Property Act and that it is settled that if sale deed is executed without consideration, then such sale is not at all valid in the eyes of law and the same is null and void. The learned Trial Court has failed to appreciate that documents marked as Exhibit-A and B were not brought on record by the defendant by way of pleadings and could not be relied upon.

21. The learned counsel for the appellants has also relied upon the following judgments: -

(i) ***1951 SCC 1189 (Kedar Lal Seal & Anr. Vs. Har Lal Seal) para 39 and 40***

(ii) ***(2022) 18 SCC 489 (Kewal Krishan vs. Rajesh Kumar and Others) para 18-21;***

(iii) ***2025 SCC Online SC 1961 para 29,34,35,36,37,38 [Shanti Devi (since deceased) through Lrs. Goran versus Jagan Devi and Others]***

22. The learned counsel for the respondent has commenced the argument. Without admitting that the consideration with respect to the two sale deed (exhibit-1 and 1/ 2) was not paid, the sale deeds show passing of possession to the defendant, therefore the suit was barred by Section 34 of the Specific Relief Act.

23. As the court's time is over, post this case tomorrow i.e. 12.12.2025.

(Anubha Rawat Choudhary, J.)

Dt. 11.12.2025

Binit/Mukul