

IN THE HIGH COURT OF JHARKHAND AT RANCHI**S.A. No. 102 of 2025**

Subhash Chandra Poddar, aged about 69 years, S/o Late Kishan Lal Poddar, R/o North Market Road, Upper Bazar, P.S.- Kotwali Town, P.O.- GPO, District- Ranchi ... **Defendant/Appellant/Appellant**

-Versus-

Anant Prakash Gupta S/o Sri Om Prakash Gupta, aged about not known to the Appellant, Upper Bazar, P.S.- Kotwali Town, P.O.- GPO, District- Ranchi ... **Plaintiff/Respondent/Respondent**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant	: Mr. Sumit Kumar Chatterjee, Advocate Ms. Amrita Singh, Advocate Mr. Parth Jalan, Advocate Mr. Aryan Anurag, Advocate
For the Respondent	: Mr. Rahul Kumar Gupta, Advocate Mr. Shubham Kumar, Advocate Mr. Surya Prakash, Advocate Ms. Swati Singh, Advocate Mr. Rakesh Kumar Singh, Advocate

C.A.V. on 19.01.2026**Pronounced on 20.04.2026**

This second appeal has been filed against the Judgment and Decree dated 26.06.2025 (Decree sealed and signed on 04.07.2025) passed by the learned Additional Judicial Commissioner-I-cum-Special Judge, PMLA, Ranchi in Civil Appeal No.43 of 2019 whereby and whereunder the appeal has been dismissed, confirming the Judgment and Decree passed by the learned trial court. Accordingly, the defendant is the appellant before this Court against the concurrent findings recorded by both the courts.

2. The learned trial court vide Judgment and Decree dated 07.01.2019 (Decree sealed and signed on 21.01.2019) passed by the learned Munsif, Ranchi in Eviction Title Suit No.22 of 1999 had decreed the suit in favour of the plaintiff and directed the defendant to handover the vacant possession of the schedule suit property to the plaintiff and to pay the arrear of rent of Rs. 2,160 to the plaintiff within sixty days.

3. This second appeal was admitted vide order dated 12.08.2025 on the following substantial questions of law: -

- (i) *Whether the judgements passed by the learned Courts is vitiated on account of courts travelling beyond the pleadings of the respective parties?*
- (ii) *Whether the judgment of Title Suit No.125 of 1989 could be used to rely on the evidence of the Defendant (Appellant) in absence of certified copy of the deposition and whether statements recorded in the judgment can be treated to be an admission?*
- (iii) *Whether the learned courts have erred in relying upon the unregistered compromise decree passed in F.A. No.268 of 1995 (R) and holding that there is no need of attornment of tenancy without properly considering that the deed of compromise was hit by Section 17 of the Registration Act and inadmissible in evidence?*

4. The plaintiff, namely, Anant Prakash Gupta had filed Eviction Title Suit No.22 of 1999 on account of personal necessity and also default in payment of rent and also prayed for recovery of arrears rent amounting to Rs.2,160/- for the months of May 1996 to April 1999 at the rate of Rs.60/- only per month. The suit property is a shop being Municipal Holding No.930 within Ward No.3 of the Ranchi Municipal Corporation situated at Gandhi Chawk, Upper Bazar in the town of Ranchi, P.S.- Kotwali, District- Ranchi fully described in the schedule to the plaint.

Judgment of the learned trial court

5. On the basis of the pleadings of the parties, the learned trial court framed the following issues for consideration:

- I. *Whether the suit is maintainable in its present form?*
- II. *Has the plaintiff any valid cause of action for this suit?*
- III. *Whether defendant has defaulted in payment of monthly rent to plaintiff from the month of April 1990 till filing of the suit?*

IV. Whether the plaintiff required the suit premises on the ground of personal necessity?

V. Whether plaintiff entitled to any their relief?

*VI. **Whether there exists relationship of landlord and tenant between the plaintiff and defendant with respect to the suit premises?***

VII. Whether the partial eviction of the suit premises satisfy all the purpose of the plaintiff?

VIII. Whether plaintiff is entitled for arrears of rent of Rs.2160/-?

6. In course of trial, the plaintiff examined 07 witnesses in support of his case and the plaintiff was examined as P.W-6. The plaintiff exhibited the following documents: -

Exhibit-1	Copy of Advocate notice dated 23.11.1998 given on behalf of the plaintiff to the defendant
Exhibit-1/a	Receipt of Under Certificate of Posting of the Advocate notice given on behalf of the plaintiff to the defendant
Exhibit-1/b	Postal Receipt
Exhibit-2	Original Municipal Tax Receipt dated 08.01.1999 standing in the name of plaintiff
Exhibit-3	C.C. of Judgment dated 29.09.1995 passed by Sub-Judge-VII, Ranchi in T.S. No.125/1979
Exhibit-4	C.C. of Municipal Survey Khatian in the name of Rupa Ram Choudhary and Others
Exhibit-5	C.C. of order dated 30.07.1998 passed by Hon'ble Patna High Court, Ranchi Bench in F.A. No.268 of 1995
Exhibit-6	Original registered sale deed dated 04.04.1990 executed by Byaso Devi in favour of plaintiff.
Exhibit-7	C.C. of decree alongwith compromise petition forming part of decree passed by the Hon'ble

	Patna High Court, Ranchi Bench in F.A. No.268 of 1995 (R).
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7. The Defendant examined 08 witnesses in support of his case and the defendant was examined as D.W-8. The defendant exhibited the following documents on his behalf: -

Exhibit-A to A/2	03 Photographs of Hari Om Jewellers
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8. The learned trial court held that there exists the relationship of landlord and tenant between the plaintiff and defendant with respect to the suit property and decided the same in favour of the plaintiff vide paragraph 13 onwards. The learned trial court was conscious of the fact that under the suit filed under tenancy law of B.B.C. Act, the question of title is not required to be adjudicated or decided in full-fledged manner rather it is required to be considered incidentally for adjudicating the relationship between tenant and landlord. After having observed as aforesaid, the learned trial court, in short, observed/held as under: -

- a) *In the present suit plaintiff has claimed himself to be the owner and landlord on the basis of registered deed of sale no. 3925 dated 04.04.1990 executed by Byaso Devi with respect to the suit property marked as Ext 6 and also relied his claim on the basis of the decree passed in Title appeal no. 268/ 1995 before Hon'ble High Court of Patna marked as Ext 7.*
- b) *Defendant denied the relationship and also denied the title of the plaintiff and defended showing himself to be the hostile owner having adverse possession over the suit property. It is also stated that suit property originally belonged to one Dutta Ram Punjabi and there was series of litigation between his legal heirs. The alleged deed of gift executed by Pratapi Devi was cancelled by her. In this manner defendant denied the title of plaintiff. Admittedly in support of the case defendant has not adduced any documentary evidence.*
- c) *It appears from the Ext 3 which is the certified copy of judgment dated 29.09.1995 passed in Title Suit No.125 of 1989 that there was litigation and dispute between the legal*

heirs of one Dutta Ram Choudhary and in that suit the vendor of the plaintiff namely Byaso Devi was party as defendant no. 4. In that suit the claim of the title made against the defendants was dismissed. Further it transpires from the decree dated 30.07.1998 passed in Title Appeal No. 268 of 1995 that appeal was disposed in terms of compromise petition and the said compromise petition was the part of Appellate Court decree. From perusal of the said decree marked as Ext 7, it was agreed between the parties to that appeal that the purchaser Anant Prakash Gupta along with other purchaser shall have absolute right, title, interest and possession over their respective properties purchased by them through registered deed of sale executed by Byaso Devi and Gauri Devi.

- d) *From perusal of the Ext 3, 6 and 7 in totality, it clearly suggests that suit property was transferred in favour of the plaintiff which has duly been recognized by all the parties of title suit 125/ 1989 and Title appeal no. 268/ 1995. Further the ownership of plaintiff is supported by the Ext 2 which is tax receipt of holding no. 930.*
- e) ***Contention has been raised as to the validity of the compromise decree stating that it does not bear the signature of Byaso Devi.***

Such argument raised is not maintainable on the point that no evidence has been brought on record to show that said compromise decree has been set aside. Until and unless it is set aside said compromise decree will have the same binding effect as that of decree passed on contest. Further no material has been brought on record to show that any point of time objection has been raised by the Byaso Devi or her legal heirs as to the validity of compromise decree.

Moreover, the claim of defendant is of hostile and adverse possession, therefore there is deemed admission on the part of defendant as to title of other, there appears no locus standi of defendant to raise such objections in disputing the title.

- f) ***It is also argued that unless and until the compromise decree is registered it cannot be taken into evidence.***

From perusal of compromise decree marked as Ext-7, it appears that no new right was created through the decree in favour of the parties rather such decree only confers the

validity to the pre-existing right of the plaintiff which he has acquired through registered deed of sale marked as Exhibit 6, therefore, it is not necessary all to get the said compromise decree registered.

g) *It has also been repeatedly stated that sale deed in question is false and fabricated document.*

h) *In case of registered deed, whether it is original or certified copy, it has presumptive value of correctness u/s. 114(e), 79 of Evidence Act and sec 60 of the Registration Act. A registered document carries presumption of correctness of the endorsement made therein. Witnesses examined on behalf of the defendant, from the evidence of D. W. 1 in para 11 and 15, D. W. 2 in para 19, 27 to 30, D. W. 3 in para 15, D. W. 4 in para 36, 41 and 69, D.W. 5 in para 18, D. W. 6 in para 13 to 15, D. W. 7 in para 27 it appears that that none of the witnesses has ever seen the document with respect to the disputed property or even if they have seen the document they did not remember any relevant content. In such circumstances their evidence of false and fabrication of sale deed does not attach much importance. D. W. 8 who is the defendant also stated the Byaso Devi had never any connection with the suit property and the sale deed is false and fabricated. No specific oral evidence is led nor any cogent documentary evidence is led to dispute the fact of ownership of plaintiff. At this stage full-fledged adjudication on the point of title is not required to be done but from documentary evidence as discussed plaintiff has shown his prima facie ownership over the suit premises.*

i) *Even if the plaintiff proves his title but fails to prove the existence of relationship of landlord and tenant suit for eviction will fail. Plaintiff is bound to prove himself as landlord within the meaning of Section 2(f) of the Act of 1982 showing his entitlement to receive the rent. Admittedly, no written document with respect to the tenancy has been brought on record.*

j) *The evidences of P.W-1 to 5 and 7 are not direct to prove the fact of tenancy, their evidence in support of the tenancy is of hearsay in nature. All the witnesses examined on behalf of defendant denied the relationship of landlord and tenant, it is quiet that fact plaintiff has failed to elicit anything substantial to establish the relationship between*

the parties during cross-examination of defendant witnesses.

However, the learned trial court referred to the evidence of P.W. 5 who in para 7 stated that Byaso Devi disclosed him about her relationship with Subhash Poddar and the learned trial court observed that evidence of this witness is relevant to show the conduct of said Byaso Devi, who stated that Subhash Poddar as her tenant.

Plaintiff in his plaint as well as in his evidence as P.W. 6 stated that immediately after purchasing the land he intimated the defendant to attorn him as landlord and also immediately his vendor Byaso Devi requested the defendant to attorn the plaintiff as landlord and pay the rent. Plaintiff remain intact in his cross examination and no question has been put forward to dispute such conduct. This fact is also relevant to show the conduct of the vendor Byaso Devi who treated the defendant as her landlord and made verbal request. It has been argued that said Byaso Devi has not been examined in the suit to prove the tenancy, it appears from the evidence of P.W. 6 in para 6 of his cross-examination that Byaso Devi has already died, therefore, it is quite reasonable that her evidence could not be adduced in the suit.

Moreover, plaintiff has purchased the suit in the year 1990, therefore, he will account for all the events which took place after the purchase of suit land and will give evidence prior to that period only on the basis of conduct and information received from the earlier owner.

- k) **Apart from the above evidence,** it appears from the judgment of Title suit No.125 of 1989, in page 49 Para 22 while discussing the evidence it was observed by the Court as ***"(22) Now let us turn to the oral evidence adduced on behalf of plaintiffs in support of their case. P.W. 1 Subash Chandra Poddar claims to be a tenant in a portion of holding no. 930 i.e. in a portion of schedule (1b) properties. He has stated in his examination in chief that he pays rent to Guru Bux and Dilawar Singh and he remitted rent through money orders. He has proved as many as 28 money orders coupon marked Exhibit 1 series. ...".*** Above discussed evidence made in Title suit No.125/1989 clearly shows that the present defendant Subhash Chandra Poddar who was examined as P.W. 1 in Title suit

125/ 1989 claimed himself to be the tenant of Guru Bux and Dilawar Singh. In the present suit defendant has claimed himself as hostile owner having in adverse possession over the suit property for the last 60 (Sixty) years but his admission made in T. S. 125 of 1989 clearly falsifies his position. Even though the said Title Suit was dismissed but it could not take away the admissions made through evidence by the said Subhash Chandra Poddar and also the said judgment passed in Title Suit No.125/ 1989 is not final and it has been modified in terms of compromise decree in Title Appeal No. 268 of 1995.

- l) The claimed/ admitted landlord of Subhash Chandra Poddar namely Guru Bux was plaintiff no. 2 and Dilawar Singh was defendant no. 1 and the vendor of plaintiff Byaso Devi was defendant no. 4 in the one and same suit i.e. T.S. 125/1989. Further suit property was transferred by Byaso Devi in favour of plaintiff through registered deed of sale dated 04.04.1990. As appears from Ext 7 which is the decree of Appellate Court that said Guru Bux was the appellant no. 1 and on account of death of Dilawar Singh his legal heirs were respondent nos. 1A and 1B and the vendor Byaso Devi was respondent no.2 and present plaintiff was respondent no. 5. The said appeal no. 268 of 1995 was disposed of in terms of compromise petition which was made the part of decree. Compromise petition suggest that it was agreed between all the parties to that appeal that purchaser of Byaso Devi will have absolute right, title and interest and possession over the properties purchased by them through registered deed of sale. It was also agreed that neither the appellants, nor the heirs of deceased respondent no. 1 Dilawar Singh shall have any right, title and interest with respect to the property in suit.*
- m) Therefore, it is clearly evident from the decree passed by Appellate Court the title of the plaintiff over the suit property purchased through Byaso Devi has duly been recognized and admitted by the landlord of defendant namely Guru Bux and Dilawar Singh. In light above discussed fact, it can also be said that any defect which was attached with the title of plaintiff purchased through the sale deed dated 04.04.1990 has been removed and his title becomes absolute through the compromise decree passed in appeal on 30.07.1998. Inference of relation between defendant and Guru Bux & Dilawar Singh can also be drawn from the cross-examination para-11 of PW5 and*

para 9 of PW 6 which shows that it was well within the knowledge of defendant that Dilawar Singh and Guru Bux Kaur were also claiming interest over the suit property. After the transfer and acquiring the title transferee steps into the shoes of the earlier landlord Guru Bux and Dilawar Singh and transferee gets all the right and liability of the earlier landlord in respect to the suit premises and tenancy. Evidence on record suggest that thereafter a written notice dated 23.11.1998 was also issued to the defendant by the plaintiff, intimating him regarding the purchase made on 04.04.1990 and also the judgment and decree dated 30.07.1998 and request was made to defendant to attorn the plaintiff as landlord. Ext 1/b shows that said notice was issued through registered post. In such circumstance there is always presumption of due service of notice. Even if such notice would not have been issued then also attornment is not necessary condition to create landlord tenant relationship between the parties. It is clear from the evidence on record that plaintiff has established his title and also issued notice to defendant about the purchase. It is also not the case of the defendant that earlier landlord is demanding rent from him. It is not necessary that tenant must accept plaintiff as landlord and then alone he is liable to pay the rent. Rather after establishment of tile by new landlord the tenant is bound to pay the rent to the new landlord. It is also argued that in Ext 7 name of only one of the purchaser Shiv Kumar Gupta was mentioned for his entitlement to realize the rent from the tenant. Such argument is not tenable on the admitted note of defendant Subhash Chandra Poddar accepting himself as tenant and on the point of transfer of suit property in favour of the plaintiff through Byaso Devi, even if no right of plaintiff is mentioned in that compromise agreement, it is not in any way derogate the right of plaintiff as landlord to recover rent and sue for eviction.

n) Considering all the facts and circumstance evidence on record it can be said that there exists the relationship of landlord and tenant between the plaintiff and defendant with respect to the suit property. Hence this issue is decided in favour of the plaintiff.

9. The learned trial court considered Issue Nos. (III) & (VIII) together with regard to default in payment of rent by the defendant and entitlement of the plaintiff for arrears of rent from the defendant

and decided both the issues in favour of the plaintiff and against the defendant. The findings of the learned trial court are as under: -

“21. Once the relationship of landlord and tenant between the parties is proved the only thing is to be considered is default in payment of rent for two or more months.

Defendant in his W. S. as well as in his evidence as D. W. 8 stated himself to be in the hostile title and adverse possession over the suit land since 60 years. Meaning thereby defendant is denying any permissive possession. Defendant in para 20 of W. S. categorically denied the relationship and entitlement of plaintiff for any rent from defendant. This fact itself shows that after the purchase of property by plaintiff defendant has never paid any rent. More over once the relationship of landlord and tenant is established, tenant is under the obligation to pay the rent. Even to show his bonafide defendant has neither pleaded nor show any document that even after the sale of property he was giving rent to his earlier landlord. Even after issuance of notice in writing to him on dated 23.11.1998 no rent was paid. In such circumstance, it can be said that defendant has never paid any rent of the suit property after the same was acquired by the plaintiff on 04.04.1990 and thereby defaulted in payment of monthly rent for two or more months.

22. It is the case of plaintiff that monthly rent was Rs.60/-, defendant in W.S. has categorically denied the relationship and refused to admit the plaintiff even as owner. But no specific denial has been made regarding the rate of rent. Once the claim of defendant has been denied and it is established that there exists relationship of landlord and tenant, the entire defence of defendant fails. Further both P.W. 5 who is the brother of plaintiff and P.W. 6 who is the plaintiff himself in their respective deposition stated the rate of rent to be Rs.60/- per month. None of the witnesses has been specifically cross examined by the defendant on the point of rate of rent, hence, it can be said that plaintiff has been able to show beyond preponderance of probability that the monthly rent of suit premises was Rs.60/- per month. As discussed above, defendant has not paid the rent of suit premises since April 1990. Even if the decree in appeal was passed on 30.07.1998 on the basis of compromise but it is also the fact that no title can be created or extinguished by the compromise between the parties. Title can only be created by valid transfer recognized by law. Transfer through sale deed took place on 04.04.1990 and even if the disputing parties recognize the title of plaintiff through the compromise agreement, which is part of the decree dated 30.07.1998, the parties only recognize the

right of the plaintiff which he acquired on 04.04.1990, on the said date his title was created through registered document. Therefore, upon non-payment of the rent plaintiff will be entitled to recover the same subject to the period of limitation of three years. Present suit filed on 31.05.1999, therefore, plaintiff will be entitled to recover the rent from May 1996 to April 1999 which amounts to Rs.2160/- only.

Hence, both the issues are decided in favour of plaintiff and against the defendant.”

10. The learned trial court considered the Issue No. (IV) with regard to requirement of the suit premises by the plaintiff on the ground of personal necessity and decided this issue in favour of the plaintiff and against the defendant.

11. The learned trial court decreed the suit on contest in favour of plaintiff and against the defendant and directed the defendant to handover the vacant possession of schedule suit property to the plaintiff within sixty days from the date of the order and to pay the arrear of rent of Rs.2,160/- to plaintiff within sixty days and further observed that failing to comply the above orders, plaintiff will have the right to get the same enforced through process of law.

Judgement of the learned 1st appellate court

12. The learned 1st appellate court framed the following three points for determination: -

- (I) *Whether the learned Trial Court has erred in holding that the plaintiff / respondent has succeeded in establishing the relationship of landlord and tenant between him and the defendant, which is sine qua non in a suit for eviction under the Bihar Building (lease, rent and eviction) Control Act?*
- (II) *Whether the learned Trial Court has erred in holding that the plaintiff / respondent has established the grounds for eviction of the defendant on the composite ground of default of payment of rent as well as personal bonafide necessity as envisaged U/s. 11(1)(d) and 11(1)(c) of the Bihar Building (lease, rent and eviction) Control Act?*

(III) Whether the judgment of the trial court of decreeing the suit in favour of the plaintiff is correct on the facts and circumstances of the case and as per principles of established law?

13. The learned 1st appellate court decided all the three points of determination in favour of the plaintiff and against the defendant. However, for the purposes of this 2nd appeal only point of determination no. I would be relevant.

14. The learned 1st appellate court decided the point of determination No. (I) vide paragraph 11 onwards and the findings in short are as under:-

- i. *In the present suit, plaintiff has claimed himself to be owner and landlord on the basis of registered deed of sale no. 3925 dated 04.04.90 executed by Byaso Devi with respect to the suit property. The sale deed has been marked Ext.-6 and has further relied upon the decree passed in Title Appeal No. 268/1995 by the Hon'ble High Court of Judicature at Patna marked as Ext.-7 and has contended that his pre-existing right, title and interest upon the suit property upon its purchase through the sale deed dated 04.04.1990 was confirmed through a compromise decree passed in Title Appeal, preferred against the judgment and decree passed in Title Suit No.125/89 by the court of Sub-Judge VII, Ranchi. The judgment and decree of Title Suit No.125/89 has been proved and exhibited as Ext.-3.*
- ii. *Defendant denied the relationship as also denied title of the plaintiff and has himself claimed to be hostile owner having adverse possession over the suit property.*
.....
- iii. *The evidence of the defendant as D.W-8 has been discussed as under:-*
 - a. *However, during his evidence, when specifically asked about the descriptions of the property, he failed to give exact Khata Number, plot numbers and Municipality holding number. On the contrary he stated that he did not think it necessary to get such details while in possession of the property.*
 - b. *On being questioned during cross-examination that after the purchase of the property, plaintiff obtained municipality holding number in his name, he expressed ignorance of such facts.*

- c. *The defendant has claimed that the suit property originally belonged to one Dutta Ram Punjabi and there was series of litigation between his legal heirs.*
 - d. *Though the defendant denied the title of the plaintiff but has not adduced any documentary evidence to show that if the plaintiff was not having the title over the property, then who was the owner of the property.*
 - e. *Here it is important to mention that when a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge. These material averments are completely absent in the written statement of the defendant and therefore, there is no proper foundation for the plea of adverse possession.*
- iv. *Upon perusal of **Ext.-3**, certified copy of judgment dated 29.09.95 passed in Title Suit No.125/89, it appears that litigation was the result of dispute between the legal heirs of one Dutta Ram Choudhary. The descendants of Dutta Ram Choudhary had filed that suit for declaration that the properties described in the schedule of the plaint were the joint family property and in that suit the vendor of the plaintiff namely Byaso Devi was defendant no. 4 and her sister Gauri Devi was defendant no. 5. Both these defendants had contested the suit by contending that the schedule property in that suit was not joint family property of the descendants of Dutta Ram Choudhary, rather it was the exclusive property of defendant no. 4 and 5 only. In that suit, the relief for declaration of the schedule property of that suit as the joint family property was rejected by the court and the suit was dismissed. The plaintiff of that suit namely Satpal and others had filed First Appeal No. 268 of 1995(R) in the High Court of Judicature at Patna, Ranchi Bench and the same was disposed on the basis of compromise and a decree was prepared making the joint compromise petition as the part of the decree. The compromise decree along with compromise petition has been proved and exhibited on behalf of the plaintiff as Ext.-7. In the said compromise petition, it was recorded that the entire property in the suit of Title Suit No.125/89 had already been sold by Smt. Byaso Devi (respondent no.2) to different persons including Anant Prakash Gupta (plaintiff*

of the suit) as also by Gauri Devi to Smt. Duli Devi through registered deeds of sale and it was acknowledged that the said purchasers had absolute right, title, interest and possession over the respective properties purchased by them. It was also acknowledged that the purchasers from Byaso Devi and Gauri Devi would continue to hold and possess respective properties acquired by them through registered deeds of sale and use the same in any manner they like without any hindrance, interruption, claim or demand by the appellants. The plaintiff of the suit namely Anant Prakash Gupta has claimed to have acquired title after purchasing the suit property from Byaso Devi. The sale deed dated 04.04.90 has been proved and exhibited as Ext.-6. Plaintiff (PW6) stated that immediately after the purchase of the property, he intimated the defendant to attorn him as landlord and that his vendor Byaso Devi had also requested the defendant to attorn him as landlord and pay rent of the premises to the plaintiff.

- v. *PW 5 Satya Prakash Gupta, brother of the plaintiff also stated in his evidence that Byaso Devi had disclosed to him that the defendant was her tenant in the suit property. In the evidence of the plaintiff (PW6), it has come that Byaso Devi has already died. Therefore, plaintiff's vendor Byaso Devi could not have been brought in the witness box to prove that there was relationship of landlord and tenant between her and defendant Subhash Chandra Poddar.*
- vi. *From perusal of the documents Ext. 3, 6, and 7 placed on record on behalf of the plaintiff, it has been established that the suit property was purchased by the plaintiff from Byaso Devi and the acquisition of right, title and interest on the strength of the sale deed dated 04.04.90 has also been acknowledged and confirmed through a compromise decree passed Title Appeal No. 268 of 1995. The ownership of the plaintiff also gets substantiated by Ext.-2, which is original Municipal Tax Receipt dated 08.01.1999 in the name of the plaintiff with respect to the municipal holding no. 930.*
- vii. *While rejecting the plea of the defendant that the compromise decree was compulsorily registrable, the learned court considered the provisions of law and the judgement cited including the case of **Bhoop Singh (supra)** and ultimately held that from the perusal of the*

compromise decree marked Ext.-7, of which joint compromise petition is also a part, it appears that no new right was created through the decree in favour of the parties rather through that compromise the parties agreed to give recognition of pre-existing right, title, interest created by different sale deeds executed by Byaso Devi and her sister Gauri Devi in favour of different purchasers, which included the plaintiff.

It was also held that the plaintiff of that suit had filed the title suit in the court of Sub-Judge VII, Ranchi for the declaration that the properties in the suit were the joint family property and the same was dismissed and after the dismissal of the suit, the plaintiffs during hearing of the appeal amicably settled the matter by the intervention of the well-wisher and in the compromise decree, they acknowledged and confirmed the right, title and interest of Byaso Devi and her sister Gauri Devi as also pre-existing right, title, interest of different purchasers from Byaso Devi and Gauri Devi and held that the said compromise decree did not require registration.

viii. While referring to the recording of the statement of the defendant of the present case who deposed as a witness in the earlier Title Suit No.125/89 the learned 1st appellate court recorded the finding as follows:-

*So far as this contention of the appellant is concerned, I find that the statement given by the defendant in the earlier suit that he used to pay rent to Gurubux Kaur and Dilawar Singh qualifies his statement as admission of his possession as a tenant in the suit property in view of Section 17 of the Evidence Act and this admission is relevant and may be proved as against the person who makes them in view of Section 21 of the Evidence Act and in a civil suit, a party producing a document containing admission by the opponent is sufficient to prove fact in issue, if the admission relates to the fact in issue. Here in this case, the judgment wherein the evidence of defendant was discussed has been proved and exhibited as Ext.-3 before the examination of the defendant in this case. In the case of **Ayodhya Prasad Bhargava vs. Bhawani Shankar Bhargava and another AIR 1957 All 1**, it was held that where in a civil suit, a party produces*

document containing admission by his opponent and opponent enters in the witness box, it is not obligatory on the party who produces those documents to draw in cross-examination the attention of the opponent to the said admission before he can be permitted to use them for the purpose of contradicting him. The court held that the party produces the document can be permitted u/s 21 of the Evidence Act to use them as substantive evidence in the case without drawing in cross-examination the attention of the opponent to the admission in that document.

- ix. ***The plea of the defendant that the learned trial court has made out a 3rd case beyond the pleadings was rejected by observing that where one party of the suit claim that the defendant's possession in the suit property was the result of creation of tenancy and the party claims relationship of landlord and tenant on the basis of his derivative title and ownership and on the other hand the 2nd party/defendant claim his possession in open assertion of title and hostile possession, if evidence is led to establish such relationship and in particularly if evidence is led to prove the nature of possession of the defendant and the same have not been considered by the court to give finding on the nature of possession, it does not amount to making a third case. It is established principle of law that in a legal pleading, evidence is not to be pleaded, pleading should only contain the material facts upon which a party relies on their claim or defence and not the evidence that will be used to prove those facts.***
- x. *It is the case of the defendant itself that there was series of litigation between the descendants of Dutta Ram Punjabi @ Dutta Ram Choudhary with respect to their respective claim of right, title, interest upon the suit property. I find that the plaintiff's document Ext.-3 and Ext.-7 are example of such litigation. In the earlier litigation filed by Satpal Singh and another, Gurubux Kaur was plaintiff no. 2 and Dilawar Singh was defendant no. 1, whom this defendant Subhash Chandra Poddar admitted as landlord. The vendor of the plaintiff namely Byaso Devi was also defendant in that suit, which culminated with a decree on the basis of compromise in the Hon'ble High Court of Patna at Ranchi Bench and in that appeal Gurubux Kaur was appellant no.1 and by filing compromise petition, absolute right, title, interest and possession over the suit*

property of the purchaser from Byaso Devi was acknowledged and as such the purchaser i.e. the plaintiff stepped into shoes of landlord with all rights and liabilities of the transferor landlord in respect of the subsisting tenancy by virtue of Section 109 of the Transfer of Property Act.

- xi. This section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's right. Since attornment by the tenant is not required, a notice u/s 106 by the transferee would be proper and so also the suit for ejectment. Evidence on record suggests that after the confirmation or acknowledgment of pre-existing right and title through purchase by sale deed, the plaintiff gave written notice dated 23.11.98 to the defendant intimating him regarding purchase made on 04.04.90 as also regarding the judgment and decree dated 30.07.1998 and requested him to attorn him as landlord. Ext.-1/B shows that the said notice was issued through registered post on the correct admitted address of the defendant and therefore, there is presumption of due service of notice.*
- xii. The court ultimately held that the learned court has rightly held that there was relationship of land lord and tenant between the parties and the defendant was a defaulter.*

Arguments of the appellant on 3rd substantial question of law

Whether the learned courts have erred in relying upon the unregistered compromise decree passed in F.A. No.268 of 1995 (R) and holding that there is no need of attornment of tenancy without properly considering that the deed of compromise was hit by Section 17 of the Registration Act and inadmissible in evidence?

15. The learned counsel for the appellant, at the threshold, has addressed this Court with respect to **3rd substantial question of law** and has submitted that the unregistered compromise decree passed in F.A. No. 268/1995(R) was compulsorily registrable under Section 17 of the Registration Act and the same having not been registered was inadmissible in evidence. He submits that the compromise decree was one of the materials which was taken into consideration to hold that

the plaintiff had title over the property, while deciding the issue on the point of landlord-tenant relationship.

16. The learned counsel has placed the compromise decree passed in F.A. No. 268/1995 (R) which was marked as Exhibit-7 before the learned trial court. He has referred to the terms of compromise and has submitted that by virtue of the compromise, there has been certain monetary transaction between the plaintiff and the purchasers of the property from one Smt. Byaso Devi who was respondent no. 2 in the First Appeal. The learned counsel submits that by virtue of this compromise decree, there is transfer of title and therefore the same was compulsorily registrable. He has referred to the judgment passed by the Hon'ble Supreme Court in the case of ***Bhoop Singh vs. Ram Singh Major & others*** reported in (1995) 5 SCC 709 and has referred to paragraph 17 thereof.

17. The learned counsel for the appellant, while advancing his argument on the point of attornment of tenancy and also landlord-tenant relationship, has referred to the compromise decree and submits that although there were several purchasers including Anant Prakash Gupta (the alleged landlord in the present case) from Byaso Devi, but it was only in connection with one of the purchasers, namely, Shiv Kumar Gupta. It was specifically mentioned that Shiv Kumar Gupta will be entitled to realize rent from the tenants in occupation of the properties in suit including all arrears of rent and he shall also be entitled to file suits and proceedings for their ejectment. He has referred to clause-2(f) of the joint compromise petition which ended in compromise. Clause 2 (f) of the terms of compromise is quoted as under: -

“(f) That the purchaser Shiv Kumar Gupta from respondent nos. 2 and 3 shall also be entitled to realise rent from the tenants in occupation of the properties in suit including all arrears of rent and shall also be entitled to file suits and proceedings for their ejectment and for determination of fair rent without any let, hinderance, interruption claim or demand by or from the appellants and the respondent no. 1, 1(a), 2 and 3 or any person claiming through or under them.”

18. The learned counsel for the appellant has submitted that had there being any tenant over the suit property involved in this case, it would have been definitely mentioned in the joint compromise petition itself that Anant Prakash Gupta would also be entitled to realize rent from the defendant of the case, namely, Subhash Chandra Poddar. He submits that this itself goes to show that there was never any landlord-tenant relationship between Anant Prakash Gupta and Subhash Chandra Poddar.

19. The learned counsel for the appellant has then referred to *exhibit-6*, which is the sale-deed executed by Byaso Devi in favour of plaintiff-Anant Prakash Gupta, which involves the suit premises involved in the present case and has referred to internal page-6 of the sale-deed to submit that it was specifically mentioned therein that the property so transferred through the sale-deed was free from all encumbrances, trusts, liens, lis-pendence, tenancies. He submits that this itself indicate that the defendant in the present case was never a tenant of Byaso Devi and therefore was not a tenant of Anant Prakash Gupta who had purchased the suit property from Byaso Devi. The relevant extract of the aforesaid clause of the sale deed is quoted as under:-

“AND the VENDOR do hereby covenants with the PURCHASER that the properties hereby conveyed, sold and transferred absolutely and forever are free from all encumbrances, trusts, liens, lispendence, tenancies, attachments, demands and executions, charges, claims, whatsoever, and the VENDOR has not done anything whereby the property may be subject to attachments or liens of any kind of court or person and that the VENDOR has indefeasible right and title to sell the same to the PURCHASER.....”

Arguments of the respondent on 3rd substantial question of law

20. The learned counsel for the respondent, while opposing the argument of the learned counsel for the appellant on the 3rd substantial question of law, has submitted that by virtue of compromise, no title is created in favor of the purchasers from Byaso Devi, inasmuch as, the recital of the compromise itself reveals that the suit property was

already transferred by Byaso Devi in favour of various purchasers through registered deeds and the said purchasers already had the absolute right, title, interest and possession with respect to the properties purchased by them. He submits that since there was no transfer of title by virtue of compromise decree, the same was not compulsorily registerable and that the aforesaid judgment cited by the learned counsel for the appellant in fact is in favor of the respondent. The learned counsel submits that the compromise decree was not creating any right for the first time in favor of the purchasers from Byaso Devi.

21. On the point of attornment of tenancy, the learned counsel for the respondent has submitted that the plaintiff issued legal notice to the defendant to pay the rent and Byaso Devi also informed and requested the defendant to pay the rent but the defendant did not pay the rent. The law is well-settled that attornment by tenant is not necessary.

Findings of this court on 3rd substantial question of law

22. After hearing the learned counsel for the parties on the point of 3rd substantial question of law and upon going through the compromise decree, which was marked exhibit-7, this Court finds that the compromise decree itself reveals that the property was already sold by Byaso Devi by way of registered sale-deed and thus there was no creation of any fresh title in favor of the purchasers from Byaso Devi by virtue of compromise decree. The deeds in favour of the purchasers were already registered. Clause-A of the terms of Compromise is quoted as under:-

“(A) That the entire properties in suit have already been sold by Smt. Byso Devi respondent no. 2 to Smt. Sumitra Gupta Sri Satya Prakash Gupta, Shri Anant Prakash Gupta, Shri Ved Prakash Gupta and Smt. Indu Gupta and Shri Sheo Kumar Gupta through registered deeds of sale as well as by Gauri Devi respondent no. 3 to Smt. Dulli Devi through registered deeds of sale and the said purchasers have absolute right and title, interest and possession over the respective properties purchased by them. The said purchasers shall continue to hold and possess the properties acquired by them through registered deeds of sale executed by

respondent no. 2 and 3 and neither the plaintiffs/appellants nor the heirs of the deceased respondent no. 1 Dilawar Singh, namely, Smt. Harbans Kaur widow of late Dilawar Singh and Harjit Singh son of Late Dilawar Singh nor his heirs, successors and legal representatives shall have any right, title, interest and any manner of concern with respect to the properties in suit.”

23. In the judgment passed by the Hon’ble Supreme Court in the case of ***Bhoop Singh (Supra)***, it has been observed in paragraph-17 that it would be the duty of the court to examine in each case whether the parties have pre-existing right in the immovable property or whether under the order or decree of the Court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property for the first time through compromise. Paragraph 17 of the aforesaid judgement is quoted as under: -

“17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs 100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.”

24. This Court finds, from perusal of the terms of compromise including that clause in the compromise as quoted above, that the property was already transferred prior to the compromise by way of registered deeds. The property having already been transferred in favor of the purchasers, the compromise decree was not creating any right, title, interest in favor of the purchasers for the first time through compromise decree. Accordingly, this Court is of the considered view that the compromise decree (exhibit-7) *neither* extinguished *nor* created any right, title or interest in praesenti in immovable property for the first time through compromise and accordingly it is held that the compromise decree was not compulsorily registrable.

25. This Court also finds that both the learned courts after considering the compromise decree have rightly come to concurrent

findings that in the compromise decree, the parties acknowledged and confirmed the right, title and interest of Byaso Devi and her sister Gauri Devi as also pre-existing right, title, interest of different purchasers from Byaso Devi and Gauri Devi and held that the said compromise decree did not require registration.

On the point of attornment of tenancy

26. In the latter part of this judgment, this court has upheld the finding of land lord tenant relationship between the parties. Thus, having upheld the finding of land lord tenant relationship between the parties there can be no doubt that attornment of tenancy by the defendant-tenant was not required. The learned courts have rightly held that Evidence on record suggest that a written notice dated 23.11.1998 was also issued to the defendant by the plaintiff, intimating him regarding the purchase made on 04.04.1990 and also the judgment and decree dated 30.07.1998 and request was made to defendant to attorn the plaintiff as landlord. Ext 1/b shows that said notice was issued through registered post. In such circumstance there is always presumption of due service of notice. Even if such notice would not have been issued then also attornment is not necessary condition to create landlord tenant relationship between the parties. It is clear from the evidence on record that plaintiff has established his title and also issued notice to defendant about the purchase. It is also not the case of the defendant that earlier landlord is demanding rent from him. It is not necessary that tenant must accept plaintiff as landlord and then alone he is liable to pay the rent. Rather after establishment of title by new landlord the tenant is bound to pay the rent to the new landlord.

27. The 3rd substantial question of law is accordingly answered/decided against the appellant-defendant and in favor of the respondent-plaintiff.

Arguments of the appellant with respect to 1st and 2nd substantial questions of law

28. With respect of 2nd substantial question of law, the learned counsel for the appellant has referred to paragraph 22 of the judgment passed in Title Suit No. 125/1989 which ultimately ended in compromise at the 1st appellate stage. He submits that the learned trial court in the present case has selectively quoted from paragraph 22 of the said judgment and upon reading of the entire evidence as recorded by the court in Title Suit No. 125/1989 to the extent it discusses the evidence of Subhash Chandra Poddar, the evidence of Subhash Chandra Poddar (the defendant of the present case) was not accepted by the court in Title Suit No. 125/1989. The learned counsel submits that if the plaintiff of the present case wanted to rely upon the evidence of Subhash Chandra Poddar (the defendant of the present case) deposed in the said Title Suit No. 125/1989, then the certified copy of the deposition ought to have been brought on record and the defendant ought to have been confronted with such statement. The learned counsel has referred to Section 145 of the Evidence Act. The learned counsel submits that recording of the learned trial court in Title Suit No. 125/1989, that too selectively, without bringing on record the actual deposition, the same cannot be held to be an admission on the part of Subhash Chandra Poddar (the defendant of the present case) that he was a tenant under Guru Bux Kaur and Dilawar Singh.

29. While referring to the 1st substantial question of law, the learned counsel has submitted that the defendant never pleaded in the written statement that he was the tenant of Guru Bux Kaur and Dilawar Singh and no such pleading was there in the plaint also. Such discussion and finding of the learned trial court in relation to the aforesaid is beyond the pleadings of the parties and such evidence was not admissible in law. It is submitted that on this count, the 1st substantial question of law is fit to be answered in favour of the appellant.

Arguments of the respondent (plaintiff)

30. The learned counsel for the respondent has fully placed the evidence of the plaintiff Anant Prasad Gupta and submitted that the point, as to who was the title holder of the suit property including Byaso Devi and consequently the plaintiff, was directly in issue and the dispute involved in connection with Title Suit No. 125/1989 which ended in a compromise was also under consideration. He has submitted that in eviction suit under tenancy laws, only *prima-facie* title of the plaintiff -landlord is required to be seen.

31. The learned counsel for the respondent has submitted that there was sufficient pleading from the side of the plaintiff that the defendant was a tenant in the suit property and further that the plaintiff had purchased the suit property from Byaso Devi and he was already in the property in the capacity of a tenant. He has further submitted that in the earlier suit being Title Suit No. 125/1989, the defendant herein was a witness in the capacity of a tenant.

32. The learned counsel has further submitted that the defendant in the present case denied the relationship of landlord and tenant and claimed adverse possession with respect to the suit property without even disclosing that according to him, who was the true owner of the property. He further submits that since the defendant claimed adverse possession, admittedly, he was not claiming title otherwise and the title was with somebody else even as per the written statement of the defendant, both the learned courts have rejected the plea of the defendant with respect to adverse possession.

33. Thus, admittedly, title was not with the defendant. Consequently, the plaintiff proved the title over the suit property through Byaso Devi by virtue of registered sale deed of the year 1990 and claimed that the defendant was a tenant on the property. This was followed by issuance of notice to the defendant to pay the rent to the plaintiff and Byaso Devi also verbally informed the defendant to pay the rent to the plaintiff. Byaso Devi could not be examined as she had already expired.

34. The learned counsel has then placed the evidence of the plaintiff Anant Prakash Gupta and submitted that although there is no documentary evidence with respect to tenancy, but there is sufficient oral evidence that the defendant was a tenant under Byaso Devi. The learned counsel has further submitted that irrespective of whether the defendant was a tenant under Byaso Devi or under Guru Bux Kaur / Dilawar Singh, the fact that the defendant was a tenant over the suit property has been fully established through evidence.

35. The learned counsel has then referred to the judgment passed by the Hon'ble Supreme Court reported in **(2024) 18 SCC 677 [Ramathal & Others vs. K. Rajamani (dead) through legal representatives & Anr.]** and referred to paragraph 25 and 26 thereof to submit that even if it was not specifically pleaded in the plaint that the plaintiff was a tenant under Guru Bux Kaur /Dilwar Singh/Byaso Devi, but the fact that the defendant was a tenant over the suit property was specifically pleaded and hence it cannot be said that there was no sufficient pleading. He submits that the parties knew that the status of the plaintiff over the suit property was involved in the trial and they have led their respective evidence. The defendant claimed adverse possession and did not otherwise claim title in himself and simply denied the relationship of landlord and tenant between the parties. In such circumstances, it cannot be said that the learned court has gone beyond the pleadings and accordingly, he submits that the 1st substantial question of law be decided in favour of the respondent.

36. ***With respect to 2nd substantial question of law***, it is not in dispute that the evidence of the defendant as recorded in the capacity of witness in Title Suit No. 125/1989 was *neither* placed in the present Title Suit proceedings *nor* the defendant was confronted with any of his previous statement during his evidence with regard to the status of the defendant over the suit property. Even, the recording of the evidence of the defendant as a witness in Title Suit No. 125/1989, was not confronted to the defendant in this case and that ultimately the

learned trial court in Title Suit No. 125/1989 also did not believe the evidence of the present defendant as witness.

37. The learned counsel has fairly submitted that the discussions with regard to evidence of the defendant in the capacity of a witness, as recorded in the judgment passed in Title Suit No. 125/1989, cannot be taken into account particularly in view of the fact that the suit itself ended in a compromise at the appellate stage. However, he submits that the stand of the defendant in the previous Title Suit No. 125/1989 in his evidence that he was a tenant over the suit property cannot be ignored. It is immaterial as to whether he was the tenant under Byaso Devi or he was a tenant under Guru Bux Kaur / Dilawar Singh.

38. The learned counsel submits that the plaintiff has been sufficiently able to prove that the defendant was a tenant over the suit property and it is immaterial as to who was the original landlord whether Byaso Devi or Guru Bux Kaur or Dilawar Singh.

39. The learned counsel submits that, once the status of the defendant is proved that he was a tenant, the plaintiff, being the title holder of the suit property, by way of registered deed of sale executed by Byaso Devi in the year 1990 and that her title over the suit property was confirmed in compromise at appellate stage, the impugned judgment holding that there was relationship of landlord and tenant between the plaintiff and the defendant does not call for interference and such finding cannot be said to be beyond the pleading even if the evidence of the defendant as recorded in Title Suit No. 125/1989 is not taken into account.

40. The learned counsel has fully placed the evidence of the plaintiff Anant Prakash Gupta and has submitted that it was specifically stated in his evidence that the defendant was the tenant of Byaso Devi at monthly rent of Rs. 60/- and the other witness has been sufficiently cross-examined by putting question relating to Guru Bux Kaur/Satpal Singh/Dilawar Singh. He has also submitted that in the Special Act relating to landlord tenant relationship, the court has to

only prima-facie see the title once it is disputed and the finding with regard to title under Special Act and record findings.

41. The learned counsel for the respondent has submitted that the learned courts have rightly considered the materials on record and have held that there was landlord tenant relationship between the parties and the law is well-settled that attornment of tenancy is not required under law. The learned counsel has also submitted that the appeal be dismissed.

Findings of this Court on substantial question of law no. 1 and 2

42. It was the specific case of the plaintiff that -

- (a) the suit property along with others was obtained by Rupa Ram Choudhary in family partition in the year 1925 who got his name mutated.
- (b) Rupa Ram Choudhary executed registered deed of gift dated 14.12.1935 in favour of Smt. Pratapi Devi who got her name mutated.
- (c) Smt. Pratapi Devi executed registered deed of gift in favour of her daughter Smt. Byaso Devi vide registered gift deed dated 13.04.1954 who got her name mutated.
- (d) Smt. Byaso Devi sold 8 karies of land, on which the suit property is situated, to the plaintiff vide registered sale deed dated 04.04.1990 and the plaintiff came in possession.
- (e) Earlier there was a Title Suit No. 125/1979, in which Byaso Devi was one of the defendants and the suit was decided in her favour vide judgment dated 29th September 1995, against which First Appeal No. 268/1995(R) was filed before the High Court at Patna, Ranchi Bench, in which Byaso Devi as well as the plaintiff of this case was party. The appeal was disposed of in terms of compromise on 30.07.1998, according to which, the plaintiff became the absolute owner with respect to the suit property through registered sale deed dated 04.04.1990.

- (f) So far as the tenancy is concerned, it was mentioned in the plaint that the defendant is a month-to-month tenant on monthly rent of Rs. 60/- and on account of purchase by the plaintiff vide sale deed dated 04.04.1990, the defendant became the tenant of the plaintiff. However, the plaintiff verbally and through legal notice asked the defendant to pay rent. Similar request was also made by Smt. Byaso Devi, the vendor of the plaintiff, to the defendant. In spite of request by the plaintiff and also request by the vendor of the plaintiff, no rent was tendered by the defendant.
- (g) A plea was also raised with regard to personal necessity.
- (h) Legal notice was sent by registered post with acknowledgement due as well as under certificate of posting to the correct address of the defendant on 23rd October 1998 determining the tenancy and asking the defendant to quit the premises by 31.12.1998, but the defendant did not evict and ultimately the suit was filed.

43. The defendant filed written statement asserting that the suit itself was not maintainable and there was no relationship of landlord and tenant between the parties. It was further asserted that -

- i. The property belonged to one Dutta Ram Panjabi and there was series of litigation between his descendants.
- ii. The title of MS Plot No. 1461 and 1463 which was being claimed by one Pratapi Devi, who had made deed of gift, but cancelled the same.
- iii. The defendant was not a party in any dealing and transaction made by Rupa Ram Choudhary and the same was not binding on the defendant.
- iv. It was denied that any deed of gift was ever executed and registered in favour of Pratapi Devi or that she was ever in possession.

- v. On account of cancellation of alleged deed of gift in favour of Byaso Devi, the gift deed was *non-est* on account of cancellation.
- vi. Several deeds of gift purported to have been executed by Pratapi Devi were cancelled and several subsequent deeds purported to have been executed by her were in existence and the defendant was not bound by any of the alleged dispossession and dealings of Pratapi Devi.
- vii. It was denied that Byaso Devi ever accepted any gift deed and ever came in possession of any portion of plot no. 1461 and/or 1463 and any plot, which was subject matter of gift deed to her, nor she got mutated in Ranchi Municipality or pay taxes in her name. It was also denied that any sale deed was ever executed by Byaso Devi in favour of the plaintiff, which is sale deed dated 04.04.1990.
- viii. The orders, judgments etc. in the litigation does not affect the defendant's right and possession over the suit premises where business was being carried out since past several decades in open assertion of right to the knowledge and exclusion of all concerned.
- ix. However, the defendant denied the title of the suit property with Byaso Devi or Pratapi Devi or even Rupa Ram Choudary and claimed adverse possession and also asserted that the plaintiff never informed the defendant about the alleged purchase and even the vendor of the plaintiff Byaso Devi never informed the defendant about the sale deed. It was asserted that the title which was being claimed by one Pratapi Devi through a registered deed of gift was cancelled and on account of such cancellation, the alleged registered deed of gift said to have been executed by Pratapi Devi in favour of Byaso Devi was *non-est* on account of aforesaid cancellation.

- x. The defendant also asserted that the story that the plaintiff or Byaso Devi asked the defendant to attorn that the plaintiff was the landlord or to pay rent to him was false and the suit itself was not maintainable in view of the fact that the suit was essentially one for declaration of title and recovery of possession and it was barred by limitation and prescription.
- xi. Since there was no relationship of landlord and tenant between the parties, the liability to pay rent or evicting the property on account of personal necessity was completely denied.
- xii. However, it was also asserted that the plaintiff and his family members have several properties and the plea of personal necessity was denied.

44. The perusal of the plaint and the written statement reveal that *neither* the plaintiff nor the defendant has referred to Guru Bux Kaur or Dilawar Singh. However, the plaintiff claimed the title through Rupa Ram Choudhary who is said to have got the property in family partition in the year 1925 and got the property mutated and followed by the registered gift to Pratapi Devi and then gift by Pratapi Devi to Byaso Devi and sale from Byaso Devi to the plaintiff. ***On the other hand***, the defendant claimed title by prescription/adverse possession, but there was no foundational pleadings with respect to claim of adverse possession. The defendant did not acknowledge the title of Rupa Ram Choudhary and stated that the property belonged to Dutta Ram Punjabi and there were litigations amongst his descendants and also claimed that the registered gift deed in favour of Pratapi Devi was cancelled and therefore the gift deed executed by Pratapi Devi in favour of Byaso Devi was *non-est*.

45. In Title Suit No. 125/1989, which was decided on 29th September 1995 and was subject-matter of First Appeal No. 268/1995(R), Guru Bux Kaur, Dilawar Singh and Byaso Devi as well as the plaintiff Anant Prakash Gupta and many others were parties

which ended in a compromise at appellate stage and *inter-alia* title of Byaso devi with respect to the suit property involved in this case was acknowledged as Byaso Devi had earlier sold the suit property in the year 1990 to the plaintiff of the present case. Admittedly, the present plaintiff was a party in Title Suit No. 125/1989 and the defendant of the present suit was not a party in Title Suit No. 125/1989, but a witness. The Title Suit No. 125/1989 was dismissed and at the appellate stage it ended in a compromise and the compromise decree is exhibit 7 in this suit and the title of Byaso Devi, interalia, with respect to the present suit property was acknowledged and Byaso Devi had prior to the compromise itself had sold the suit property of this case to the present plaintiff in the year 1990 and on the strength of the sale deed read with the compromise decree the plaintiff claims to be the owner of the suit property and claims that the defendant was the tenant over the suit property and now the present plaintiff is the land lord.

46. In order to show that the defendant is not a tenant, the defendant has argued that in the compromise arising out of Title Suit No. 125/1989, with respect to one of the purchasers of property involved in the said suit, namely, Shiv Kumar Gupta, it was specifically mentioned that he could realize rent from the tenant of his vendor, but so far as the present plaintiff is concerned, no such stipulation was made regarding his right to claim rent from the defendant. This Court is of the considered view that merely because no such stipulation was made, the same is not enough to hold that the defendant was not the tenant over the suit property.

47. The core issue is as to whether the defendant of the present case was a tenant over the suit property and in what capacity he was in possession of the suit property involved in this case.

48. Further the dispute amongst the parties is apparent from the perusal of the judgement passed in Title Suit No. 125/1989, in which Guru Bux Kaur was one of the plaintiffs and Dilawar Singh was one of the defendants and it was claimed that the plaintiffs of the said case

were descendants of Dutta Ram Choudhary, who had two sons, namely, Basant Ram Choudhary and Rupa Ram Choudhary; Basant Ram Choudhary died in 1925 leaving behind his descendants and one of the descendants was Dilawar Singh. Further Guru Bux Kaur, a party to the Title Suit No. 125/1989 was the wife of Moti Ram son and grand-son of Basant Ram Choudhary. The Title Suit No. 125/1989 was filed seeking a declaration that the suit was a joint family property. The suit was contested and Byaso Devi claimed that the suit was not maintainable and the suit properties were jointly acquired by Basant Ram Choudhary and Rupa Ram Choudhary.

49. The defendant of the present case was examined in the said Title Suit No. 125/1989 as witness from the side of the plaintiff (P.W-1) and his oral evidence has been, interalia, recorded/discussed in paragraph 22 of the trial court’s judgment passed in Title Suit No. 125/1989, which is quoted as under: -

“22. Now let us turn to the oral evidence adduced on behalf of the plaintiffs in support of their case. P.W-1 Subhash Chandra Poddar claims to be a tenant in a portion of holding no. 930 i.e. in a portion of Schedule-B properties. He has stated in his examination-in-chief that he pays rent to Guru Bux and Dilawar Singh and he remitted rent through money orders. He has proved as many as 28 money order coupons marked Exhibit 1 series. In his cross-examination, he has admitted that there is no seal of the post office in any of the money order coupons. He has further stated that the corresponding plot number of holding no. 930 is 1361. This part of his evidence is incorrect. There is no disputed plot no. 1361 in the schedule to the plaint. This document has not produced document of tenancy. He has also not produced any counterfoil of the rent receipts. The money order coupons proved by him do not bear the seal of the post office which has been admitted by this witness. The name and address of the addressee do not find place in the money order coupons. The money order coupons are not supported by the postal money order receipts. Not even a single postal money order receipt has been produced on behalf of the plaintiffs and such money order coupons can be prepared at any time. Although he claims to have made payment of rent to Dilawar Singh but it is curious enough that Dilawar Singh has not come forward to support the case of the plaintiffs. The evidence of this witness is of no assistance whatsoever in proving title and possession of the plaintiffs with respect to the suit properties. ”

50. This court finds that the learned trial court in this case has considered only the examination-in-chief of the present defendant in Title Suit No. 125/1989 as mentioned in paragraph 22 of the judgment passed in Title Suit No. 125/1989 to come to a finding that it was the admission of the present defendant that he was the tenant over the suit property involved in this case. Such an approach is erroneous on account of following reasons: -

- a. The deposition of the present defendant as recorded in Title Suit No. 125/1989 as a witness has not been exhibited.
- b. The learned trial court has referred to the paragraph 22 of the judgement passed in Title Suit No. 125/1989 selectively.
- c. The defendant was never confronted with his previous statement or even with paragraph 22 of the judgement passed in Title Suit No. 125/1989.
- d. The judgement in the Title Suit No. 125/1989 did not survive as the suit ended in a compromise at the 1st appellate stage.
- e. The judgement passed in the case of Ayodhya Prasad Bhargava vs. Bhawani Shankar Bhargava and another AIR 1957 All 1 does not apply to this case as the primary document, that is, the deposition of the defendant in the previous suit being Title Suit No. 125/1989, has not been exhibited in the present case.

51. This Court is of the considered view that in the absence of the deposition of the defendant, who was examined as P.W-1 in the Title Suit No. 125/1989, the discussion of his evidence as recorded in Title Suit No. 125/1989 could not be taken as admission of his status as a tenant under Guru Bux and Dilawar Singh. The fact also remains that the Title Suit No. 125/1989 did not survive as ended in a compromise at the appellate stage and the present defendant was admittedly not a party in the Title Suit No. 125/1989.

52. Accordingly, the 2nd substantial question of law is decided in favour of the appellant (defendant) and against the respondent (plaintiff).

53. However, the matter does not end here. It has to be examined as to whether the impugned judgement holding that there was land lord tenant relationship between the parties would still survive, even if the recording of evidence of the present defendant as witness in Title Suit No. 125/1989 that he was the tenant under Guru Bux and Dilawar Singh, where he is alleged to have admitted to be a tenant over the suit property, is excluded from consideration. This aspect of the matter is examined as under.

54. The learned trial court after having recorded the conduct of Byaso Devi, the vendor of the plaintiff, as it transpired on the basis of the evidence of the plaintiff PW-6 (**plaintiff**) that Byaso Devi had also informed the defendant to pay rent to the plaintiff and also the evidence of P.W.-5 wherein P.W.-5 had also stated in his evidence that Byaso Devi had disclosed him about her relationship with the present defendant as her tenant. The learned court also recorded that since the plaintiff had purchased the suit property in the year 1990, he would only account for all the events which took place after the purchase of the suit property and would give evidence prior to his purchase only on the basis of the conduct and information received from the earlier owner, The learned court also recorded that admittedly Byaso Devi had already expired and it was quite reasonable that her evidence could not be adduced in the suit.

55. The learned court additionally took into consideration paragraph 22 of the judgment passed in Title Suit No. 125/1989 and quoted only a portion of the same which recorded that P.W.-1 of the said case, that is, the defendant of the present case, Subhash Chandra Poddar, claimed to be a tenant in a portion of holding no. 930 and he had exhibited 28 money order coupons which were marked Exhiit-1 series in the said case. The learned trial court on the basis of recording of a portion of paragraph 22 of the judgment passed in Title Suit No.

125/1989 recorded that it was the admission of the present defendant as witness in the Title Suit No. 125/1989 that he was the tenant of Guru Bux and Dilawar Singh.

56. This court finds that the learned trial court has relied upon the Title Suit No. 125/1989 only additionally to come to a finding that the defendant was the tenant under Guru Bux and prior to this the learned trial court had believed the evidence of P.W-6 and P.W-5 that the defendant was the tenant under Byaso Devi who could not come to depose in the trial as she had already expired and the status of Byaso Devi and the present defendant was based on the information received from Byaso Devi.

57. In the aforesaid circumstances, even if the recording of evidence of the present defendant as witness in Title Suit No. 125/1989 is excluded from consideration, the finding of the learned court that the defendant was the tenant under Byaso Devi does not call for any interference. Further, the perusal of the plaint and written statement does not reveal that it was ever the case of either party that the present defendant Subhash Chandra Poddar was the tenant under Guru Bux or Dilawar Singh. The defendant disputed the relationship of landlord and tenant and claimed adverse possession, though the foundational pleadings for adverse possession were not pleaded by the defendant. The defendant was not claiming title to the suit property nor could prove adverse possession over the suit property. The defendant also claimed that the registered gift deed, by virtue of which Byaso Devi / her donee claimed title was itself cancelled but he could not prove this fact. On the other hand, the plaintiff proved the title over the suit property and also proved that the defendant was a tenant over the suit property under Byaso Devi and upon purchase the plaintiff became the land lord.

58. *Accordingly, in spite of the fact that the 2nd substantial question of law is answered in favour of the defendant, the finding of the learned court, that the defendant was the tenant under Byaso Devi and hence a tenant under the plaintiff and there existed land*

lord tenant relationship between the parties, does not call for any interference.

59. This takes us to the **1st substantial question of law** which is :-

Whether the judgements passed by the learned Courts is vitiated on account of courts travelling beyond the pleadings of the respective parties?

60. So far as 1st substantial question of law is concerned, it is the case of the appellant that the finding of the learned court that the defendant was a tenant under Guru Bux and consequently a tenant of Byaso Devi is vitiated as no specific pleading was there in the plaint as well as in the written statement with respect to this fact, and on that count, it has been submitted that the learned courts have travelled beyond the pleadings of the respective parties.

61. This Court is of the considered view that the specific case of the plaintiff was that the defendant was a tenant under Byaso Devi and the plaintiff became the landlord by virtue of purchase of the property by registered deed from Byaso Devi in the year 1990. The learned court has categorically recorded a finding that Byaso Devi had expired and therefore could not depose before the court. It has also been recorded that the plaintiff came into picture only after he purchased the property from Byaso Devi and consequently the relationship of Byaso Devi and the defendant could be gathered by the plaintiff from Byaso Devi. The learned court has recorded the fact that Byaso Devi had asked the defendant to pay rent to the plaintiff has been proved by evidence of the plaintiff as well as P.W.-5, who has stated that Byaso Devi had told him about the relationship of the defendant and Byaso Devi and that the defendant was the tenant of Byaso Devi. These oral evidences of P.W.-5 and P.W.-6 remained unrebutted and, on this basis, the learned court recorded a clear finding that the defendant was the tenant under Byaso Devi. While recording such finding, the learned court has also considered the fact that Title Suit No. 125/1989 ended in a compromise at appellate stage where the title of Byaso Devi was duly acknowledged by the parties to the suit including Guru Bux and Dilawar Singh. There is no dispute in this 2nd appeal with

respect to the finding that Byaso Devi had the title over the suit property and the plaintiff purchased the same from Byaso Devi in the year 1990 through registered deed. The finding of the learned court that the defendant was tenant under Byaso Devi is clearly sustained by virtue of the discussions and consideration of the evidence of the P.W-5 who stated in his cross examination that Byaso Devi had disclosed that the defendant was her tenant and also the evidence of the P.W-6 (the plaintiff) that Byaso devi had told him that the defendant was her tenant and this was coupled with the fact that Byaso Devi could not have deposed before the court as she had expired.

62. It is important to note that the defendant had taken a specific plea that the gift deed in favour of Byaso Devi which was in turn based on the gift deed in favour of her donor was cancelled and therefore Byaso Devi had not title and she could not be the landlord. However, the defendant failed to substantiate this plea before the learned court. The defendant denied the relationship of land lord and tenant but did not disclose as to how and when he came in possession of the suit property and his claim of adverse possession was declined by the learned courts. The defendant denied the title of Byaso Devi but the learned courts have giving concurrent findings that Byaso Devi had title over the property and she sold the same to the plaintiff by registered deed in the year 1990.

63. In the aforesaid circumstances, even if the discussions of the learned trial court in connection with the alleged admission of the defendant as recorded in judgement passed in Title Suit No. 125/1989 that he was a tenant under Guru Bux and Dilawar Singh, is excluded for want of his deposition in the said suit as exhibit in this suit and in view of the answer to the 2nd substantial question of law as answered by this court, then also there was substantial evidence before the learned court to come to a finding that Byaso Devi was the owner of the property and the defendant was the tenant over the property and the plaintiff became the owner and land lord of the defendant by virtue of registered deed of the year 1990. This Court is of the

considered view that there is enough foundational pleading from the side of the plaintiff that the defendant was the tenant over the property and the plaintiff became the owner and land lord of the defendant by virtue of registered deed of the year 1990.

64. The fact remains that the defendant never claimed ownership of the suit property, but was claiming adverse possession that too without foundational pleadings of adverse possession and the plaintiff claimed that the defendant was a tenant over the suit property.

65. The defendant having failed to prove his status as claimed in the written statement and the plaintiff having succeeded to prove the status of the defendant as a tenant, this Court is of the considered view that the findings of the learned courts is not beyond the pleadings of the respective parties. The parties were certainly put to notice as to the relationship between them and their relationship with respect to the suit property which the plaintiff has been able to prove as claimed by the plaintiff in the plaint and the defendant has failed to prove his claim as stated in the written statement.

66. In the judgement passed by the Hon'ble Supreme Court as relied upon by the learned counsel for the appellant (defendant) in *Union of India v. Ibrahim Uddin (2012) 8 SCC 148* it has been held that the court cannot travel beyond the pleadings and any evidence led beyond pleadings has to be ignored. At the same time, Hon'ble Supreme Court in the case of *Ramathal v. K. Rajamani (2024) 18 SCC 677*, has held that the settled legal position is that the question for the courts to consider in such matters is whether the parties knew that the matter in question was involved and whether they led evidence about it. In the present case the parties knew that the defendant denied the title of Byaso Devi and hence the title of the plaintiff who purchased the property from Byaso Devi and the parties also knew that there was a dispute regarding relationship of land lord and tenant between the parties. The parties have led evidence on both the points. In view of the aforesaid facts and circumstances, it cannot be said that the learned courts travelled beyond the pleading of

the parties while ultimately recording a finding that the title of the suit property was with Byaso Devi and then with the plaintiff and there was land lord tenant relationship between Byaso Devi and the defendant and then with the plaintiff and the defendant due to purchase by the plaintiff.

67. As a cumulative effect of the aforesaid discussions/findings, it is held that the learned courts have not travelled beyond the pleadings of the respective parties to come to a finding that there was landlord tenant relationship between the parties. In the aforesaid circumstances, the findings of the learned court that the defendant was a tenant in the suit property does not call for any interference.

68. *Accordingly, the 1st substantial question of law is answered against the appellant-defendant and in favour of the respondent-plaintiff.*

69. **Summary**

- A. *While answering the 2nd substantial question of law in favour of the appellant (defendant- tenant) and against the respondent (plaintiff- landlord) it is held that the judgment of Title Suit No.125 of 1989 could not be used to rely on the evidence of the Defendant (Appellant) as he deposed as P.W-1 in Title Suit No.125 of 1989 in absence of certified copy of the deposition and the statements recorded in the judgment could not be treated to be an admission without bringing on record the certified copy of his deposition. The fact remains that Title Suit No. 125/1989 ended in a compromise at the appellate stage and the defendant of the present case was not a party to the said title suit.*
- B. *While answering the 3rd substantial question of law against the appellant (defendant- tenant) and in favour of the respondent (plaintiff- landlord) it is held that the learned court by concurrent findings have rightly held that the compromise decree passed in F.A. No.268 of 1995 (R) arising out of Title Suit No. 125/1989 was not compulsorily registrable and was not hit by section 17 of the Registration Act as it neither created nor extinguished any title or right of the parties to the suit property involved in the said*

case but it only acknowledged the title of Byaso Devi who had earlier transferred the present suit property to the present plaintiff way back in the year 1990 by registered deed.

C. While answering the 1st substantial question of law in favour of the respondent (plaintiff- landlord) and against the appellant (defendant- tenant) it is held that the learned courts have not travelled beyond the pleadings while passing the judgements and holding that the plaintiff being the purchaser from Byaso Devi acquired the status of land lord of the defendant and that there was a relationship of land lord and tenant between the defendant and Byaso Devi.

D. Both the learned court by concurrent findings have rightly held that there is no need of attornment of tenancy by the defendant of the present case.

70. This appeal is hereby ***dismissed***.

71. Pending interlocutory application, if any, is closed.

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

(Anubha Rawat Choudhary, J.)

Dated: 20.04.2026

Uploaded On: 22.04.2026

Mukul