

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 200 of 2024

Dilip Malakar, aged about 35 years, son of Baban Malakar, resident of Sector-8/C, Shivan More, P.O. and P.S. Harla, B.S. City, District Bokaro (Jharkhand) **Plaintiff/Appellant**

Versus

Santosh Malakar son of Baban Malakar, resident of Telidih, P.O. and P.S. Chas, District Bokaro (Jharkhand)

... .. **Defendant/Respondent**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Mr. Kanishka Deo, Advocate

: Ms. Nirupama, Advocate

For the Respondent : Mr. Santosh Kumar Jha, Advocate

16/06.05.2026

Heard the learned counsels appearing on behalf of the parties.

2. This appeal has been filed against the judgment and decree dated 16.01.2024 (decree signed on 25.01.2024) passed by the learned Civil Judge (Sr. Div)-I, Bokaro whereby Original Suit No. 68 of 2021 seeking partition of the suit property has been dismissed.

3. Learned counsel for the appellant, while referring to the plaint, has submitted that it was the specific case of the plaintiff that the suit property was purchased by the plaintiff and the defendant in the year 2011 vide registered sale-deed no. 568 dated 20.01.2011 registered at Registry Office, Chas, Bokaro and thereafter, both the parties constructed four shops on the 1st Floor and residential house on 2nd Floor and are presently running the shop and residing with their family members.

4. It was further case of the plaintiff that the total area of the property was 4 decimals under Plot No. 1366 and out of purchased property, 1 ½ decimal was acquired by National Highway Authority and all compensation amount was invested in the building work over the said property.

5. It was the specific case of the plaintiff that the plaintiff is entitled to half portion of the property which was remaining after deducing 1 ½ decimals of land. There was some dispute between the

parties and the defendant denied partition. Ultimately, the suit was filed seeking partition of property in Khata No. 21 of Plot No. 1366 area 2 ½ decimal.

6. The suit was contested by the sole defendant and he opposed the prayer of the plaintiff. However, it was not in dispute that the property was purchased in the name of the plaintiff and the defendant. Further, it was alleged in the written statement that the plaintiff had suppressed in the plaint that the suit property was purchased from the amount of the father and other brothers and the plaintiff had not mentioned regarding payment of consideration amount of the land and as to who paid the consideration amount to the vendor of the property. It was asserted that in absence of any proof regarding payment of consideration by the plaintiff, the plaintiff failed to establish his case. It was further asserted that the entire construction was done by the defendant and his father and there was no question of giving any share over the suit property to the plaintiff.

7. The defendant also referred to acquisition of 1 ½ decimals of land by National Highway Authority and asserted that the entire amount of compensation was credited in the account of the defendant and that by itself shows that the defendant was the *bona fide* purchaser of the suit property as the entire amount of consideration was paid by the defendant and his father. It was asserted that the plaintiff had not given any document regarding the payment of consideration of the sale-deed in favour of the vendor and therefore, the entire contention of the plaintiff to claim half share is nullified.

8. The following issues were framed by the learned trial court:

“(1) Whether the suit is maintainable in its present form?

(2) Whether the plaintiff has a valid cause of action in the suit?

(3) Whether the present suit is bad for mis-joinder and non-joinder of necessary party?

(4) Whether the plaintiff and defendant had purchased the suit property jointly vide sale deed no. 568 dated 20.01.2011?

(5) Whether plaintiff is entitled for 1/2 of share in the schedule A property?

(6) Whether the National Highway Department paid any compensation in account of acquisition and compensation amount to plaintiff?

(7) Whether the plaintiff is entitled to get relief as claim in the plaint?"

9. Both the parties led oral and documentary evidences. The sale-deed in question being registered sale-deed no. 568 dated 20.01.2011 was exhibited as exhibit 1 in which Ramesh Chandra Ghoshal, Ravindra Nath Ghoshal and Amit Kumar Ghoshal were the vendors and the property was sold in favour of Santosh Malakar (the defendant) and Dilip Malakar (the plaintiff). The plaintiff has examined four witnesses.

10. The plaintiff has been examined as P.W. 4 and the defendant has been examined as D.W. 3. The father of the plaintiff and the defendant has been examined as D.W. 1. D.W. 2 is the brother of the plaintiff and the defendant and so far as P.W. 2 is concerned, she is Puja Devi (wife of the plaintiff). P.W. 3 namely, Shiv Kumar Malakar is the cousin of the plaintiff and the defendant.

11. The sole exhibit from the side of the plaintiff is exhibit 1. So far as the defendants are concerned, they have exhibited exhibit- A which is the bank account statement of the defendant which is the only documentary evidence produced on behalf of the defendant.

12. The learned court decided all the issues against the plaintiff and ultimately, the suit was dismissed.

Arguments of the appellant

13. Learned counsel for the appellant, while challenging the impugned judgment, has submitted that the learned court has failed to take into consideration that the sale-deed itself did not disclose as to who paid the consideration amount, rather the sale-deed indicated that the consideration amount was paid by the purchasers. It is not in dispute that the sale-deed was executed jointly in the name of the plaintiff and the defendant. He has further referred to section 45 of the Transfer of Property Act and has submitted that the case would be

guided by the aforesaid section. Section 45 of the Transfer of Property Act, 1882 is quoted as under:

“45. Joint transfer for consideration. -Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.”

14. Learned counsel for the appellate has further submitted that P.W. 1 has supported the case of the plaintiff and has stated that at the time of payment of the consideration amount, he was present and both the brothers had made payment of consideration amount in equal half portion.

15. He has also submitted that the evidences based on record clearly reveal that when 1 ½ decimals of land was acquired by NHAI, though the entire compensation amount was credited int account of the defendant, but the defendant had transferred, through bank transaction, about 50% of the compensation amount in the name of the wife of the plaintiff. The learned counsel submits that the act of transfer of 50% of the compensation amount to the wife of the plaintiff itself reveals that the defendant acknowledged that the plaintiff had ½ share in the property. He has further submitted that since ½ share of the compensation amount was transferred in the name of wife of the plaintiff, so there was no occasion to challenge the payment of compensation amount from NHAI exclusively in the name of the defendant.

He has further submitted that otherwise also, payment by NHAI to defendant by itself is not arising out of any adjudication and therefore, this action by itself could not have been taken into consideration by the learned court to hold that the defendant was the exclusive owner of the suit property.

He has further submitted that the finding of the learned court in connection with issue no. (6), whereby it has been observed that National Highway Authority, after proper verification, had granted compensation amount in favour of the defendant and since the plaintiff did not raise any claim over the compensation amount or any objection in the matter of payment of compensation amount, adverse inference could be drawn against the plaintiff.

16. The learned counsel for the appellant submits that aforesaid approach of the learned trial court to decide the title of the party on the basis of compensation amount disbursed by National Highway Authority is unknown in law and merely because no objection as such was raised by the plaintiff at the time of disbursement of compensation exclusively in the name of the defendant, the same has no bearing in the matter in the light of the admitted fact that almost half of the compensation amount was credited in the name of the wife of the plaintiff. He submits that once the plaintiff had received half of the compensation amount through his wife, there was no occasion to raise any dispute on the apportionment of compensation amount received from NHAI.

17. The learned counsel for the appellant has also submitted the evidence of the father of the plaintiff and the defendant is also of no consequence, inasmuch as, he was not present at the time of execution of the sale-deed and it has come in evidence that the father was himself was paralyzed and bed-ridden.

18. The learned counsel for the appellant has referred to the examination-in-chief and the cross-examination of the witnesses examined on behalf of the plaintiff and the defendant and has submitted that in view of the exhibit- 1 and the materials placed on record, the plaintiff had proved $\frac{1}{2}$ share over the suit property and

therefore, the impugned judgment dismissing the suit on the ground that it was only the defendant who had paid the consideration amount cannot be sustained in the eyes of law. He submits that such findings are perverse.

Arguments of the respondent

19. Learned counsel for the respondent, on the other hand, has referred to issue no. (6) and has submitted that the compensation amount of portion of the acquired property having been credited by National Highway Authority only in the account of the defendant without any objection from the side of the plaintiff, itself reveals that the plaintiff had no claim over the purchased property in the name of the plaintiff and defendant including the suit property and the plaintiff was just a name lender. He submits that such non-action on the part of the plaintiff, inasmuch as, he neither claimed any compensation with respect to the acquired 1 ½ decimals of land nor raised any objection to the payment of compensation exclusively in the name of the sole defendant, has been rightly considered by the learned court to hold that the plaintiff was not entitled to any partition as the plaintiff had not made any payment of consideration amount, though his name was included in the registered sale-deed along with the defendant.

20. Arguments concluded.

21. Judgment is reserved.

22. Learned counsel for the parties have undertaken to provide a short synopsis by referring to the materials which have been argued during the course of hearing by tomorrow i.e., 07th May, 2026.

(Anubha Rawat Choudhary, J.)

Pankaj