IN THE HIGH COURT OF JHARKHAND AT RANCHI
Second Appeal No. 394 of 2015

1. Nagen Mahato, son of Badan Mahato

2. Smt. Sandhya Mahatani, wife of Late Partılad Mahato, daughter of Late Purni Mahatani.
3. Gita Mahatani, wife of Sri Aditya Mahato, daughter of Late Purni Mahatani, Petitioner No.1 is the resident of village- Lengdih, P.O. & P.S. Chandil, District Seraikella-Kharsawan. Petitioner No.2 is the resident of village- Dungridih, P.O. & P.S. Chandil, District Seraikella-Kharsawan. Petitioner No.3 is the resident of village- Horodih, P.O. & P.S. Chandil, District Seraikella-Kharsawan.

.....Appellants

-Versus-

1. Haradhan Mahato, son of Late Banshi Mahato @ Bengshi Mahato, resident of Village Burudungri, P.O.-Ton Kocha, P.S.- Nimdih, District - Seraikella-Kharsawan.

.....Respondent/Respondent/plaintiff

2. Bijoy Mahato, son of Prahlad Mahto, daughter of Late Purni Mahatani, resident of Village-Lakragarha Bansa, P.O.-Bansa, P.S.-Chandil, District Seraikella- Kharsawan.
3. Baisakhi Mahatani, wife of Sri Shyam Pada Mahatani, son of Late Purni Mahatani, resident of Village- Bansa, P.O.-Bansa,. P.S.-Chandil, District Seraikella- Kharsawan
4. Kamina Mahatani, wife of Sri Raja Ram Mahato, son of daughter of Late Purni Mahatani, resident of Village-Lengdih, P.O. & P.S.-Chandil, District Seraikella- Kharsawan.

5. Nirupa Mahatani, wife of Late Dhoblu Mahato, resident of Village-Lengdih, P.O. & P.S.-Chandil, District Seraikella-Kharsawan.

6. Most. Shakuntala Mahatani, wife of Late Bharat Mahato

7. Gangadhar Mahato, son of Late Bharat Mahato

8. Usha Ranjan Mahato, son of Late Bharat Mahato

Respondent No. 6 to 8 are the resident of Village-Lengdih, P.O. & P.S.-Chandil, District Kharsawan. Seraikella-

Dead Substituled v/o dt 10/1/23 (* Substitution at Pre-Pag)

9. (a) Ahallya Mahato wife of Late Narayan Mahato

(b) Rothu Mahato son of Late Narayan Mahato
(c) Namami Mahato daughter of Late Narayan Mahato

(d) Prathami Mahato, daughter of Late Narayan Mahato wife of Sri Nirmal Mahto

Respondent nos.9 (a) to 9 (c) are resident of Village-Lengdih, P.O. &

P.S.-Chandil, District-Seraikella-Kharsawan and Respondent No.-9 (d) is the resident of village Purulia Namopara, P.O., P.S. & District- Purulia, State- West Bengal.

9. (e). Budhni Devi wife of late Gautam Mahato
(f). Pankaj Mahato minor son of late Gautam Mahato
(g) Pabita Mahato, minor daughter of late Gautam Mahato
9(f) to 9 (g) both represented through their mother/natural guardian Budhni Devi
9 (e) to 9 (f) All are residents of village Burudungu, P.O. Tonkocho, P.S. Nimdih, District Seraikella Kharsawan

10. Laru Mahatani, wife of Late Amrit Mahato
11. Bhamar Mahato, son of Late Amrit Mahato

Respondent No. 10 and 11 are the resident of Village- Lengdih, P.O. & P.S.-Chandil, District Seraikella-Kharsawan.

12. Smt. Manju Mahatani, daughter of Late Akshay Mahato and wife of Sri Mathura Mahato, resident of Village-Diadih, P.O.-Tamari, P.S.-Ichagarh, District Seraikella-Kharsawan.

13. Benami Mahatani, daughter of Late Akshay Mahato and wife of Sri Kartik Mahato, resident of Village- Rosunia, P.O. & P.S.-Chandil, District Seraikella-Kharsawan, at present resides at Village- Lengdih, P.O. & P.S.-Chandil, District - Seraikella-Kharsawan.

14. Bodo Mahatani, daughter of Late Akshay Mahato, resident of Village-Lengdih, P.O. & P.S.-Chandil, District - Seraikella-Kharsawan.

15. Kiriti Mahato, son of Late Prahalad Mahato, resident of Village-Pathrakhum, P.O.-Kasidih, P.S.-Chandil, District -Seraikella-Kharsawan.
16. Kartik Mahato, son of Lalu Mahato, through his wife Bijli Mahatani, resident of Village- Bulandih, P.O.-Bansa, P.S.-Chandil, District - Seraikella-Kharsawan. ……Respondents

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CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellants : Mr. R.C.P. Sah, Advocate

For the Respondents :

13/Dated: 17.06.2026

Heard Mr. R.C.P. Sah, learned counsel for the appellants.

2. This second appeal has been filed being aggrieved and dissatisfied with judgment and decree dated 25.03.2015 (Decree signed on 07.04.2015) passed by learned District Judge-1st, Seraikella-Kharsawan in Title Appeal No. 24 of 2006, dismissing the appeal and affirming the judgment and decree dated 29.06.2006 (Decree singed on 13.07.2006) passed by the learned Munsif, Seraikella in Title Suit No. 05 of 2001 dismissing the suit.

3. Mr. R.C.P. Sah, learned counsel for the appellants submits that Title Suit No. 05 of 2001 was instituted by the appellants for declaration that the registered gift no. 1534 dated 14.06.1999 executed by late Karni Mahatani in favour of defendant no.1 is void, illegal and not binding on the plaintiff the same is fit to be cancelled and also for eviction of defendants no. 1 from the suit premises. For cancellation the suit was valued at Rs. 9,000/- and for eviction the suit was valued at Rs. 600/-

4. As recorded in judgment of learned court the case of the plaintiff was that the Plaintiff/respondent has instituted the Title Suit No. 05 of 2001 stating therein that subject matter of his suit is a registered gift No.1534 dated 14/06/99 executed by one Karni Mahatani (since dead) in favour of defendant No.1 with respect to a portion of lands of khata No. 94, portion of plot No. 221/A, total area 0.12 decimal out of which 0.03 decimal including a room situated in mauza Brudungri with one "Khapra Pos" house morefully described in schedule A of this plaint, is lying within the jurisdiction of this Court and the same is here and after described as the suit lands including the said registered gift deed which is also the subject matter of this suit. The plaintiff alongwith one Dhobal Mahato (Proforma defendant No.7) Purni Mahatani grand mother of defendant No.2 to 6 and Prahalad Mahato Bharat Mahato (the father of the proforma defendant No.9 to 12 and husband of the proforma defendants No.8) and one Baneshwar Mahato father of the proforma defendant No.13 and grand father, son and daughters of proforma defendant No.17.18 & 19). And defendant No.14 & 16 are sons wife of said Baneshwar Mahato have owned and possessed lands of mauza Burudungri, Thana No.224 P.S..Chandil Distt. Singhbhum (West) under R.S. khata No.94 and all the four branches have not equal shares through wrongly recorded as Prahalad and Bharat Mahato having two shares and Baneshwar Mahato having two shares. Similarly, the remarks column of 221 is equally wrong as plaintiffs and his brother Dhubo have one

share and Purni have one share. All the lands of R.S. khata No.94 through jointly recorded but the recorded owner of the said khata have amicably partitioned long back and the same of the recorded owners have sold portion or full shares to various persons without any objection from other co-sharers and the said purchasers are paying rents after getting their name mutated. About 30 years back, the plaintiffs had constructed two residential house over sharers of lands of plot No.221 and since then the plaintiffs are possessing at his own right where in other co-sharers have no right over the same. It is worthwhile to mention here that out of the said residential house of the plaintiffs situated in portion R.S. portion No.221/P one is constructed towards the road sides of the lands of said plot consisting two rooms having one Khapra pos chala over which no other co-sharers have any right. The two residential houses constructed by the plaintiff alone is very much known to as all the co-sharers of plot No.221 of khata No.94 including the heirs of Purni and the said house of the Anganas and the plaintiffs are situated within the area of his share and Karni Mahatani had no right over the said two houses constructed by plaintiffs alone as she never came to village Burudungri for exercising any Act of possession over the any lands of khata No.94 including over plot No. 221 specifically over the house having two rooms the plaintiff was exercising all the Acts of possession over the house constructed by him, out of the house situated towards road sides of area of plot No.221 having two rooms. The defendant No.1 requested the plaintiff to allow to him to occupy one room out of two rooms for business purpose of the defendant No.1 and also agreed to pay a sum of Rs. 50 per month and he will pay the same rent as per English calander month on the first week subsequent month and this is very facts is equally known to the co-sharers of khata No.94, as the defendants No.1 was very much known to the plaintiff and their relation was cordial the plaintiffs in the year 1998 in the month of March last day i. e. 31/03/98 allowed the defendant No.1 to occupy one room as per the said

stipulated rent. As stated above the defendant No.1 is occupying the said one room as a monthly a tenant under the plaintiff and the defendant No.1 used to pay the aforesaid rent after completion of one months regularly up to the months of January 2000. As a matter of fact defendant No.1 for initial stage of his occupation as a monthly tenant under the plaintiff for business purpose has started Cycle repairing shops over the said tenanted room (Eastern portion of room) and Western portion of room was being used by the plaintiff for residential purpose which is still under occupation of the plaintiff who alone constructed the said house consisting of two rooms out his own funds, bearing said tenanted premises, the defendant No.1 have no other lands or house in mauza Burudungri while the defendant No.1 was in occupation of the eastern portion room of the plaintiff's house on a monthly rental basis as refer to above with an ill motive to grab and occupying the said tenanted room and its adjacent Anganas landing of the plaintiff had entered into an own holy alliance and influenced Purni Mahatani the aged and inform grand mother of defendant No.3 to 6 and got a registered deed executed on 14/06/99 vide registered gift deed No.1534 without the knowledge and consent of other heirs of Purni Mahatani and other co-sharers. She never even delivered possession to defendant No.1 as he was a monthly tenant under plaintiff. As a matter of fact the land of khata No.94 of plot No.221 having an area 0.12 dec. was joint land of the recorded raiyat Haradhan Mahato plaintiffs Dhubal Mahato and said Purni Mahatani and as Purni Mahatani remained in village Lengdih, Dhublu and the plaintiff alone possessed the said plot as per convenience. Even a Purni Mahatani had right over the said plot to she had not right to transfer as 0.03 dec. of lands of plot No.221 to the alleged deed of gift as the aforesaid lands and one room inserted in the allege deed of gift is exclusive property of the plaintiff who constructed the said rooms that other adjacent room under one chala long back out of his own funds having unconcerned that with other co-

sharers. Purni Mahatani at no point of time ever resides of possession over any portion of plot No.221. Further the Purni Mahatani had number of grand sons and grand daughters who were taking care of her till her death. Portion of a transferred of 0.03 dec. of land including one room through gift is a deliberate fraud of Purni and it is the defendant No.1 who is practicing fraud and under influenced managed to execute the alleged deed of gift without consent of her other heirs and sharers. As a matter of fact Purni Mahatani who was quite old and inform and lost her mental equilibrium, never transferred in the lands or room at her own volition and hence the alleged transfer in favour of the defendant No.1 is void and not binding on the plaintiff as the room and the Anganas land are the exclusive property of the plaintiff who built the said house having two rooms and one room which has been incorporated in the gift deed as a tenanted room under occupation of the defendant No.1 as a monthly tenant who used to pay Rs.50/- per month Right from the order 1998 and even after execution of alleged gift deed the defendant No.1 has paid rent up to January 2000 and there after he stopped payment of monthly rent to the plaintiff, Hence said Purni Mahatani never exercised any Act of possession over any portion of the room and the Anganas lands all found mention in the alleged gift deed which were managed to execute in favour of the defendant No.1 without the consent of the other heirs of said Purni Mahatani. As stated above and as the lands and the room never fell under the share of Purni Mahatani nor she ever exercised any Act of possession over the same, she had no authority to transfer in favour of the defendant No.1 and until now the entire area of allege gift deed is the exclusive share and the property of the plaintiff under whom the defendant No.1 is tenant and the defendant No.1 never derived any right, title or interest over the same. The plaintiff on coming to know of the execution of the allege fabricated and illegal gift deed in favour of the defendant No.1, being preplexed with he consulted a lawyer at Seraikella who

advice him to obtained certified copy for filing a case under section 16 of L.C.Act for restoration of the said room and the lands. Accordingly the plaintiffs after obtaining the certified copy have filed L.C. Case No.1/2000-01 after performing all the formalities in the matter but no case under section 16(C) of the L.C Act was maintainable, the same was dismissed. Even after the prior to institution of L.C. Case the defendant 1 has paid rent in presence of the heirs and successors of the said Purni Mahatani who were also present in village Burudungri after disposal of L.C. Case No.1/2000-01 the plaintiff requested the heirs of the Purni where the defendant No.2 to 6 of the suit to interfere the matter to all of them requested the defendant No.1 to vacate the room and its adjacent lands alleged to have obtained from Purni Mahatani by practicing fraud who had no authority to transfer the room to it the adjacent land which is under actual physical possession of the plaintiff since more than 30 years and specifically when he is occupying the room as monthly tenant under the plaintiff. The said panchayati was took place on February 2000 in village Burudungri but the defendant No.1 flatly denied to vacate the same and hence this suit. notice through lawyer also certified on the defendant No.1 to that effect by registered post dated 21/02/2000. The alleged deed of gift in favour of the defendant No.1 executed by Purni Mahatani was illegal and inoperative transaction as the lands incorporated in the deed of gift are the exclusive property of the plaintiff under whom the defendant No. 1 was a tenant who stop monthly rent from the month of February 2000 and his occupation over the same is illegal and he is liable to be evicted under the law. For such Misc. deed and for non payment of rent from February 2000. Cause of action of this suit arose on and from 14/06/99 when the defendant No.1 manage to get the alleged gift deed executed in his favour from a person (Purni Mahatani), who have no authority to transfer the said room and it is adjacent Angana lands under occupation of the plaintiff. The further cause of action also arose on

month of February when the defendant No.1 flatly denied to vacate the said premise in presence of principal defendant No.2 to 6. For the purpose of the jurisdiction of Court and cancellation the suit valued at Rs.9,000/-(as a valuation of deed gift) and Rs. 600/- for the purpose of eviction of the defendant No.1 from the tenanted room being the one months rent of the said room and accordingly the advolorum Court fee was filed. The plaintiff prayed for following reliefs -a) For a declaration that the registered deed of gift No.1534 dt.14/06/99 executed by the deceased Purni Mahatani in favour of the defendants No.1, is without any valid right, title and interest and possession over the room and rest lands and thereby the defendant No.1 did not acquire any right over the same and the said deed is inoperative and not binding on the plaintiff and the same is fit to be cancelled.

For eviction of the defendant No.1 over the suit premises as deliberately failed to pay the stipulated rent from the month of February 2000. c) For cost of the suit.

d) For any other relief or reliefs which the plaintiff may be found entitled under law and equity. Schedule of land-Thana No. 244 Halka 8, R.S. Khata No. 94, R.S. Plot No. 221/Andar, Area 0.03 decimals, formed part of registered gift deed no. 1534 dated 14.06.1999.

5. The case of the defendant as recorded in the judgment of the learned court is that the suit is not maintainable in its present form and prayer. The plaintiff has got no cause of action for this suit. The suit in barred by limitation, estoppel, waiver and acquiescence as well as provision of the the specific relief Act, the suit is barred under section 43 of the B.L.R. Act, 1961 and suit is bad for the non-joinder of necessary parties.

Further case of the defendant is that plaintiff have filed this suit for eviction of defendant No.1 and for cancellation of gift deed dt.14/06/99 on the basis of which alleged exclusive right, title, interest and possession of the suit

property of the plaintiff having sought no relief for declaration is alleged right, title, and interest over the suit land the relief sought by the plaintiff in para-20 of the plaint is not maintainable under the law. And barred under the provision of section 34 of specific relief Act, The description of the suit property as mentioned in the schedule is vague, plaintiff having alleged that the Dhubal Mahato and plain-tiff allegedly alone possessed the suit plot as per convenience and there being no averments any where in the plaint and where was any partition between the said two brothers by metes and bounds. No gift deed No.1534 dt.14/06/99 executed by Karni Mahatani as falsely alleged. The said gift deed was executed by recorded owner Purni Mahatani in favour of defendant No.1 with respects to 0.3 dec, including a room with Khapra roof within plot No. 221 out of total area 12 dec. of R.S. khatian No.94 of mauza Burudungri. The said property has not fully described in the schedule (A) of the plaint, Purni Mahatani was the mother of the answering defendant No. 6, Prahalad Mahato was living with his family members at village Pathrakhun P. S, Chandil to the full knowledge of the plaintiff and all the co-sharers and he was not trace less since last 8-9 years as falsely alleged the said Prahalad died on 05/08/01 leaving behind his only son Kiriti Mahato as his only legal heirs. Dibakar, Maheshwar, Baneshwar and Ram were the full brothers all being sons of late Chunaram Mahato and out of them Ram died intestate. Debakar left behind two sons viz Bansi and Sristi. The plaintiff and Dhobal the proforma defendant No.7 are only son of Bansi, Purni Mahatani was the widow of Sristi, Maheshwar died left behind two sons Prahalad and Bharat. The defendant No. 8 to 12 are descendants of Bharat, Baneshwar left behind 3 sons viz Askshay, Amrit and Narayan the proforma defendants No.13, proforma defendant No. 14 and 15 are the descendants of Amrit. The proforma defendant No.16 to 19 are the descendants of Askshay, So, the persons mentioned in para-2 of the plaint are the representatives of 3 branches only, and not four branch having equal

shares as falsely alleged in the said paras Nos. 2 of plaint. The sharers mentioned in the remarks column of the suit R.S. Plot No. 221 has been correctly prepared. Two residential house were never constructed over any portion of the suit plot and the plaintiff never constructed any house over the suit plot about 30 years back alone and as such question of his such exclusive possession over his alleged house does not arise at all as falsely alleged para 4 of the plaint, One residential house was constructed towards the road sides consisting of two rooms with Khaprail roof in a portion of 221 is correct. The said residential house was neither ever constructed by the plaintiff alone nor he was in exclusive possession of the said entire house the said residential house was constructed jointly by the Purni Mahatani and the plaintiff from their respective personal funds equally incurred by them and Purni Mahatani was in occupation of the eastern room and the plaintiff was and has coming in the possession of western room of the said house. The plaintiff never constructed two residential houses in the said plot as falsely alleged, Mauza Burudingri and mauza Lengdih are contiguous to one another Sristi Mahato son of Debakar Mahato was the husband of the Purni Mahatani the mother of the principal defendant No.6 said Sristi Mahato died some time before the year 1956 son less leaving his widow Purni Mahatani and two daughters viz Peli the mother of the principal defendants No.2 to 5 and Geeta the Principal defendants no. 6 but according to the then existing Hindu Law only Purni inherited the property of Sristi left behind him at mauza Lengdih and Burudingri including his half share in the suit plot No. 221 as a limited owner and after passing of the Hindu Succession Act, 1956, she became the absolute owner of the same and was in possession, of the same and in the recent survey her name was rightly recorded in the name of R.S. khatian No.94 of mauza Burudingri as well as in the khatian prepared with respects to the properties of mauza Lengdih. The suit plot No. 221 as a result of final partition amongst the co-sharers of khata

No.94 of mauza Burudungri fell in the share of the Bansi Mahato and Sristi Mahato and the said two brothers were in possession of the same in equal share. After the death of the Sristi Mahato his widow Purni Mahatani inherited the half share of Sristi Mahato in the said suit plot and in the possession of the same. Originally the suit plot No. 221 was a Don-II paddy growing lands. Sometimes after the recent survey has Purni Mahatani and plaintiff who has own husband of full brothers son of the said Purni Mahatani were facing difficulties in residential accommodation and Purni was son less and her two daughters married them and were living in their respective husband places. Said Purni and the plaintiff both jointly by filing of the land constructed a house consisting of two rooms with Khaparal roof by incurring the respective equal expenses in the South Eastern portion of the suit plot by the side of the village road. And said Purni Mahatani started living in the Eastern room of the said house and was possessing the adjoining land of the said room as her Angana all covering an area of 0.03 dec. and her rest share land in the said plot for exercising her all rights, title and interest there in. The aforesaid Eastern room of the above house and its adjoining land within the suit plot all in total area of 0.03 dec. of Purni Mahatani is the suit property of this suit the western room of the above house was and in possession of the plaintiff. Purni Mahatani was son-less and became old age and her daughters were married and she was the Aunt and (mother's full sisters) of the the defendant No. 1, he used to look after the nourish said Purni Mahatani so said Purni Mahatani out of love and affection and being satisfied with the duties and behaviour of the defendant No.1 she with the full consent of her all the legal heirs with some sound health free state of mind gifted the suit property covered by the fixed boundary to the defendant No.1 by registered gift deed No.1536 dt. 14/06/99 and the defendant No.1 has accepted the same gifted on the same day and he was delivered possession over the said gifted properties since when he is coming in

actual physical possession of the entire gifted properties as the absolute owner of the same by exercising his right, title and interest there in and by repairing the walls of the roofs of the suit room. Purni Mahatani on the same day on 14/06/99 has also sold land in area 0.02 dec. out of her share in the above said plot No.221 to the full knowledge of the plaintiff to one Gangadhar Mahato by registered sale deed put him in possession of the same. Said Gangadhar after purchased has Constructed his as residential house over his said purchased land and has been coming and living there. The proforma defendant No.7 Dhubalu Mahato has also sold the entire 0.03 dec of the land within the plot no.221 to the wife of Narayan Mahatani the proforma defendant No.13 by registered sale deed and put her in possession of the same. Since then the said purchaser has been coming in possession of the same by constructing house. The plaintiff has also sold land in area 0.02 dec. out of his share within the suit plot No.221 to Nimai Mahato, Budhu Mahato and Jadu Mahato jointly by registered sale deed dt.11/09/1973 and the said purchaser being put in possession over the same had constructed their residential house over their said purchased land and they are living therein. It is further mentioned that plaintiff and his above brother in the suit plot No. 221 only one dec. land remains in the share of the plaintiff and plaintiff is in possession of the one dec. land i.e. the Western room and its adjoining small Angana within the suit plot as stated Plaintiff admitting the registered gift deed No.1534 dt.14/06/99 of the defendant No.1 as a valid and legal, filed L.C. Case No. 01/2000 under section 16(3) of BLR(Act in the Court of learned DCLR, Seraikella against the defendant No.1 and Purni Mahatani who was then alive claiming right of pre-emption in the said L.C. Case the defendant No.1 appeared and filed his show cause challenging the claim of the plaintiff. In the said L.C. Case the plaintiff also filed petition, praying interim delivery of possession. The learned DCLR Seraikella after hearing the parties by his final order dt. 27/06/00 was pleased to reject

the said prayer for deliver of interim possession and also rejected the petition under section16 (3) BLRC Act of the plaintiff as not maintainable and dropped the proceeding, And against which the plaintiff did not file any appeal or revision before any Superior Court. The plaintiff being defeated in the said case under section 16(3) BLRC Act had filed the present suit by false and concocted story only to harassed the defendant No.1 sole petitioner to grab the suit property of the defendant No.1. The question of the defendant No.1 is one alleged requested to the plaintiff for allegedly letting out the same to him on a monthly rent of 50/- for business purpose would never had arisen. And no relationship of land lord and tenant in between the plaintiff and defendant No.1. The house consisting of two rooms was neither constructed by the plaintiff alone out of his own fund nor he was in possession of the said two rooms alone neither the defendant No.1 ever started in cycle repairing shop in the Eastern room as the said house as alleged monthly tenant under the plaintiff all as falsely alleged in the said paragraph 10 of the plaint. The said house consisting of two rooms was constructed jointly by Purni Mahatani and the plaintiff out of their respective personal funds and Purni Mahatani was all living in the Eastern room as absolutely owner of the same and after the same have gifted to the defendant No.1 by said Purni Mahatani, by registered gift deed No.1534 dt. 14/06/99 and possession being delivered to him the defendant No.1 is coming in possession of the same in his own right. The remark column of the plot no. 221 of khata No.94 of mauza Burudungri the total area of which is 12 dec. of the possession of the plaintiff Dhubal and the Burni Mahatani was recorded jointly. But the said co-sharers soon after the recent survey amicably divided the said plot amongst them according to their respective sharers and they begin possessing the same. Accordingly and dealings with their respective share separately by said gifts. Purni was living both at village Lengdih and Burudingri both with in the P.S. Chandil in the suit

plot Purni Mahatani had half share i.e. 0.06 decimal. Full consent of her daughter defendant No.6 and his legal heirs the defendant No.2 to 5 and to the full knowledge of the plaintiff and other co-sharers gifted the suit property in favour of the defendant No.1. Gift deed is completely legal valid and binding upon the plaintiff. The plaintiff knowing full sale about the validity of the registered gift deed in year to claim of right of presumption under section 16(3) of the BLR C, Act, obtained the copy of the gift deed. A notice through lawyer dt. 21/12/2000 was served upon this defendant No.1 through registered post. And prayed that plaintiff is entitled to get any relief and the suit is liable to be dismissed with cost to these defendants.

6. That the written statement filed on behalf of the proforma defendant 7,8,9,10,11,12 & 15 and these defendants have adopted the entire statement contains in paragraphs 1 to 36 of the written statement filed on 24/11/01 on behalf of the principal defendant No.1,2 & 5 in this suit as their written statement in this suit also.

7. That written statement filed on behalf of the defendant No.20 and defendant No.21 these answering defendants admitted the entire claims of plaintiff Haradhan Mahato in toto.

8. Mr. R.C.P. Sah, learned counsel for the appellants submits that the Title Suit No. 05 of 2001 has been dismissed by the judgment dated 29.06.2006 by the learned Munsif, Seraikella-Kharsawan and aggrieved with the said judgment the appellants/defendants filed title appeal numbered as Title Appeal No. 24 of 2006 which was also dismissed by judgment dated 25.03.2015. He submits that both the learned courts have not appreciated the facts and law in right perspective and have given wrong finding and in view of that this is one of the law point to admit the second appeal. He next submits that learned courts wrongly have declared the properties as joint properties when admittedly plaintiff/respondent admitted in para 3 of the plaints that they

have amicably partitioned the same long back and some of them sold some portions or full shares to various persons without objection of co-sharers, he submits that this is second law point and in view of that this second appeal may kindly be admitted on the two substantial question of law.

9. The learned trial court in Title Suit No. 05 of 2001 has framed 11 issues to decide the suit. The Issue No. 8 was with regard to gift deed bearing no. 1534 dated 14.06.1999. By deciding the said issue, the learned trial court has considered that R.S. khata No.94 through jointly recorded but the recorded owners of the said khata have amicably partitioned long back and some of the recorded owners have sold portion or full shares to various persons without any objection from other co-sharers and the said purchasers were paying rent after getting their name mutated and about 30 years back plaintiff/respondent had constructed two residential house over his sharer of land of plot No.221 and since then the plaintiff/respondent is possessing at his own right wherein other co-sharers have no right over the same. Defendant No.1 was in occupation of Eastern portion of the room on the monthly rent basis and Purni Mahatani informed grand mother of defendant No.3 to 6 and got a registered gift deed executed on 14/06/99 vide registered gift deed No. 1534 without knowledge of the consent of the other heirs of Purni Mahatani and her co-sharers. She never even delivered possession to defendant No.1 as he was a monthly tenant under the plaintiff. It has been contended that the land of khata No.99 of plot No.221 having an area of 12.0 decimal was joint land of recorded raiyat Haradhan Mahato (plaintiff), Dhublal Mahato and said Purni Mahatani and Purni Mahatani remained in village Lengdih, Dhublu and the plaintiff alone possession and said plot as per convenience. It was also contended that even if Purni Mahatani had right over the said plot but she had no right to transfer 0.03 decimal of lands of plot No. 221 of the alleged deed of gift as the aforesaid lands and one room inserted in the alleged deed of gift is

the next exclusive property of the plaintiff/respondent who constructed the said rooms with other adjacent room and long back of his own funds having unconcerned that other co-sharers.

10. The learned trial court has further found that the defendant nos. 1 to 6 in para 17 of written statement have specifically stated that Sristi died before 1956 and that fact was not challenged by the appellants/defendants and view of that Purni Mahatani has inherited the separate share of property of her husband as per special Act i.e. the Hindu women's right to property Act 1937 and the said property became separate property and the same cannot be blended with the ancestral properties or the coparcenary property and after 1956 said Purni became to absolute owner of the same. The plaintiff/respondent filed presumption application under section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 and in the said case the plaintiff/respondent admitted the registered gift deed as a valid document.

11. The P.W.3 in his cross examination in para 5 stated that Sristi died 47-48 years back. D.W.3-Gita Mahatani daughter of Purni Mahatani stated in his examination that when her age was 4 years then her father died and that witnesses examined on 12.08.2002 and in view of that the learned court has found that Sristi died in the year 1942 however, in para 9 of cross examination she has stated that she had never seen his father as well as her uncle and that was found by the learned trial court in view of para 9 and para 3 of examination-in-chief contradictory to each other. Further other witnesses have not stated a single word regarding death of Sristi Mahato and in view of that the learned trial court has found that the defendants' case that no residential house was ever constructed on the plot no. 221 was correct.

12. The learned trial court has considered that both parties have admitted that soon after survey Haradhan, Purni and Dhubal amicably

partitioned but there was no partition by metes and bounds. The learned trial court has further found that that some of the plots in the same khata remained in joint and there was no partitioned by metes and bounds and when there were no partition by metes and bounds then only for convenience possession has been recorded in respect of the some plots in favour of the particular share holder then the legal inference is that the property remained joint between co-sharers and it would remain so, untill and unless proper partition is there either through Court or by amicably between the co-sharers. In this background the learned trial court has held that the plaintiff/respondent and Purni Mahatani have jointly constructed two rooms after survey Haradhan, Purni and Dhublu have amicably partitioned but no partition to metes and bounds between the parties was done and the suit land is joint property and according to that the sale deed is not maintainable and in view of that the said issue was decided in favour of the plaintiff/respondent and against the appellants/defendants.

13. After deciding the other issues the suit was decreed in favour of the plaintiff/respondent. Aggrieved with that the appellants herein preferred the Title Appeal No. 24 of 2006 and the said appeal was decided by judgment dated 25.03.2015 by the learned District Judge-1, Seraikella Kharsawan.

14. The learned appellate court has further reconsidered the documentary as well as oral evidence and has formulated points to decide the appeal and has found that there was partition and has affirmed the judgment of the learned trial court and dismissed the appeal.

15. In view of above, it appears that what has been argued by Mr. Sah, learned counsel for the appellants for admitting the present second appeal on the substantial question of law, has been dealt with by both the learned courts in its right perspective and in deciding the same have minutely considered the oral as well as documentary evidence. In course of argument,

further no perversity has been shown in the judgments of the learned courts by the learned counsel for the appellants. It is well settled that in the second appeal the evidences are not required to be appreciated and only on substantial question of law, the second appeal can be admitted. There is no perversity in the judgements of both the learned courts. No substantial question of law is involved in this second appeal and sitting under section 100 of the C.P.C., the High Court is not required to admit this second appeal in absence of any substantial question of law and accordingly, this second appeal is dismissed. Pending, I.A., if any, stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Dt. 17.06.2026
Satyarthi/-