

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**First Appeal No.351 of 1982**

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Smt.Shyam Pati Devi through his legal representatives & Ors

.... Defendants/Appellants.

Versus

Dangleshwar Sharma through his legal representatives & Ors

.... Plaintiffs/Respondents.

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**Appearance:**

For the Appellant/s : Mr. Hemendra Prasad Singh, Adv.  
Mr. Vishwanand Upadhyay, Adv.

For the Respondent/s : Mr. Ramakant Sharma, Sr. Adv.  
Mr. Rajesh Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

CAV JUDGMENT

**Date: 15-10-2015**

Defendants-appellants have preferred instant appeal challenging the judgment dated 27.05.1982 and decree dated 04.06.1982 passed by Sub-judge, Ist, Patna in Title Suit No.268 of 1978 decreeing the suit on contest with cost.

**2.** Asking for declaration of title over the land under dispute detailed under Schedule-I of the plaint, a decree for realization of Rs.960/- on account of arrears of rent against the defendants in an alternative, decree for damages on account of use and occupations of the premises till the date of delivery of possession against the defendants, defendants be evicted from the premises followed with possession to be given to the plaintiffs, defendants be restrained from changing the status quo of the suit land during pendency of the suit, cost of the suit, any

other relief or reliefs which the plaintiffs is found entitled for and for that, apart from identifying the individual status of plaintiffs as well as defendants, have pleaded that in Mohalla-Purandarpur, Survey Plot No.28 corresponding to Khata No.17, Area 26 decimal along with other survey plot numbers were owned and possessed by five sons of Jagu Paswan, namely, Fakira Ram, Pragash Ram, Gulab Ram, Durbeni Ram, Tribeni Ram who have had constituted a joint Hindu family, were coparcener and in possession thereof. It has further been averred that continuing in state of jointness Fakira died leaving behind his son Tetan who also died in same state of affair leaving behind his son Parmeshwar Darbeni also died leaving behind his none in same state of affair. In due course of time, Parmeshwar filed Title Partition Suit No.25 of 1932 wherein Pragash, Tribeni Ram, Gulab Ram and sons of Durbeni were party with regard to properties possessed by the family including Survey Plot No.28. Furthermore, on account of death of Tribeni his sons Barho, Dahu, Ramdev, Ugrasen stood as defendant no.2 to 6. While the partition suit was pending, Parmeshwar died and on account thereof, he was substituted by his wife Chathiya. The suit was contested, decreed, preliminary decree as well as final decree was prepared and parties were put under possession through DP on 04.05.1948 through the process of the court wherein Survey Plot No.28 was allotted to the share of sons of Tribeni (defendant no.2 to 6) who came over property in execution of decree and since

then, they have exclusive title and possession.

**3.** It has further been averred that in the year 1950-51 they have had disposed of 20 decimals out of 26 decimal of Survey Plot No.28 in favour of different persons namely Udheshwar Prasad, Jugal Prasad, Sidheshwari Devi and the purchasers came over the land to the extent of their purchased area. It has also been disclosed that later on, Sidheshwari Devi transferred the land in favour of one Rajendra Prasad Verma vide sale deed dated 26.12.1967 and since then he is over the land.

**4.** It has also been averred that aforesaid area 20 decimal was sold from eastern side running North to South. The remaining six decimals lying at western side, coming in need of money, the sons of Tribeni Ram sold it in favour of Sadri on 19.12.1951 and handed over possession who continued till transfer by him in favour of Akhilanand Srivastava on 29.05.1956 and put him in possession thereof. Akhilanand Srivastava was mutated. He got house plan sanctioned from Patna Improvement Trust. Although due to paucity of fund he could not get the building completed as per plan however, constructed two pucca rooms and two kaccha rooms, latrine. Subsequently thereof, as he came in short of money, he let out the pucca room on North-Western side to Smt. Shyampati Devi at a monthly rental of Rs.20/- while the remaining rooms were let out to Janki Devi and Bhago Devi at Rs.20/- per month respectively, according to English calendar and accordingly, the

tenancy was to begin from 10<sup>th</sup> of every month and was to end on 9<sup>th</sup> of succeeding month. Room No.4 was let out to one Suresh Kumar but as he vacated in due course of time, his presence in the instant suit is no more required. It has further been asserted that defendants have paid rent however from May, 1977, they stopped payment.

**5.** In due course of time, Akhilanand Srivastava came in need of money whereupon shown his intention to sale the land along with house standing over it. After coming to know about the same, plaintiffs approached and accordingly, negotiation was finalized in between Akhilanand Srivastava as well as plaintiffs and on account thereof, sale deed was executed on 27.04.1978, in favour of plaintiffs, possession was handed over. As the house was coming under tenancy, hence continued therewith. Thereafter, plaintiffs repeatedly requested the defendants to pay rent including the arrear which was deferred by them on one pretext or other. Lastly, plaintiffs served an advocate notice disclosing termination of tenancy, directing to deliver physical possession as well as to clear the arrear. In its reply, the defendants denied their status to be tenant rather they claimed to be owner of the property. They tried to change the physical feature of the land which was resisted and on account thereof, a proceeding under Section, 144 Cr.P.C. was initiated wherein, by way of show cause defendants have claimed to have purchased the land in question vide sale deed dated 15.06.1972. It has also

been asserted that the land exclusively belonged to Pragash Rai. In the background of aforesaid averments, it has been stated that although details of the sale deed has not been disclosed but, in the facts and circumstances of the case, the same happens to be a collusive sham, forged and fabricated document on the basis of which the defendants could not resist the legal right of the plaintiffs. It has also been submitted that from the facts and circumstances as detailed, it is apparent that plaintiffs happens to be the rightful owner of the property and further, status of the defendants to be that of tenant and further, after their reply they happens to be a trespasser. Furthermore, apart from coming in personal need of the house, on account of default, defendants are liable for eviction. Then, after complying with the legal requirements suit has been filed wherein detailed the disputed land under Schedule-I and the same is incorporated below:-

**Schedule-I**

Property in dispute.

“2 katha jamin main bana hua do room pokhta chhatdar wo do room khapraposh ek room.

2 septic paikhana mohalla Purandarpur pergana Azimabad survey thana phulwri thana no.21 hal thana Jakkanpur sahar Patna sub wo sadar registry wo zila Patna touzi No.247, khata no.37, Khasra No.28, under P.M.C. Jiska ward no.37, circle no.260, Mawaji 2 katha malguzari- 1 rupya salana.

Jiska chauhadi nimn likhit hai:-

Uttar:- Makan Smt. Sidheshwari Devi, wife of Nawal Kishore Prasad.

Dakhin : - 2 ft. chora rasta wanumber haja badhu makan Gopal Sharma.

Purab:- Makan Sri Udeswar Prasad.

Fachim:- Rasta badhu Makan Lalji Chaudhary wo Bhola Chodhary wo Chalitar Chaudhary.”

**6.** Defendants have appeared and they have filed joint W.S. wherein apart from raising ornamental objection, it has also been pleaded that as there happens to be no relationship of landlord and tenant, on account thereof, plaintiffs were required to pay advalorem court fee.

**7.** It has also been pleaded that plaintiffs are not at all owner of the house rather it happens to be the defendants, the owner of the house which they purchased under three different registered sale deeds on 14.06.1972 from Ram Kishun Ram @ Husaini Ram and Ram Narain Ram in names of Shyampati Devi, Janki Devi, Bhago Devi respectively and since then, the defendants are over the land according to their purchased area having no interference from any corner. Furthermore, it has also been submitted that defendants are coming over the land since many twelve years individually as well as through their vendors Ram Kishun Ram @ Husaini Ram, original owner Pragash Ram who was maternal uncle (Mama) of Ram Kishun Ram @ Husaini Ram within the full knowledge of the plaintiffs as well as their vendors. It has also been pleaded that Barho Ram, one of sons of Trivedi Ram had deposed in Title Suit No.50 of 1953 pending before Munsif-III, Patna on 25.09.1953 wherein he had admitted that wife and daughter of Pragash and his Bhagina Ram Kishun Ram @ Husaini Ram are heirs. Accordingly, title of defendants perfected by the law of adverse possession as well as also pleaded plea of ouster relating to the suit land.



**8.** Then, it has been submitted that the story propounded by the plaintiffs happens to be false and frivolous. Land under dispute was never possessed by the five sons of Jaggu Ram. As per Survey Entry, the land happened to be recorded in names of Vishram Mahto as well as Shivram who were stranger to the family of Jaggu Ram. It has also been submitted that the aforesaid land was sold in execution of rent decree brought at the instance of landlord and was purchased by the landlord himself who, in due course of time, settled the land in favour of Pragash Ram, who at that very time, was separate from his brothers and came in exclusive possession thereof. It has also been disclosed that Pragash Ram being issueless kept Ram Kishun Ram @ Husaini Ram since his childhood and adopted him as his son who also reciprocate in same manner. It has also been disclosed that Pragash Ram was murdered by his enemies at the instance of his Gotiya in the year 1947, 1948 and since then Ram Kishun Ram @ Husaini Ram came over property left by Pragash Ram and has been managing the property without any hitch and hindrance. In the aforesaid background, it has been pleaded that the averments whatsoever been made in the plaint happens to be false, frivolous, collusive assertion and in likewise manner, the event of institution of Partition Suit No.25 Of 1932 as well as the story of D.P. having effected in pursuance thereof.

**9.** It has also been submitted that on account of forged

document having in favour of Udheshwar Prasad Yugal and Sidheshwari Devi, dispute had arisen and on account thereof, a proceeding under Section 144, 145 Cr.P.C. was initiated in between Ram Kishun Ram @ Husaini Ram as well as aforesaid purchasers wherein the matter was compromised. It has also been stated that Ram Kishun Ram @ Husaini Ram was taken into collusion by way of making sumptuous payment by the purchaser and on account thereof, during course of compromise Ram Kishun Ram @ Husaini Ram gave up his claim with regard to 20 decimal of land purchased by them while six decimal, possessed by Ram Kishun Ram @ Husaini Ram was admitted by them. It has also been submitted that neither the heirs of Tribeni Ram nor Sadri, Akhilanand Srivastava, plaintiffs got title nor possession over the land. That being so, the defendant stoutly refuted the disclosure made by the plaintiffs regarding inter se relationship as landlord and tenant on a monthly rental of Rs.20/- having been inducted by Akhilanand Srivastava. It has also been submitted that defendants have been mutated, are paying rent and are in possession of rent receipt. They have also been mutated in Patna Municipal Corporation. It has also been submitted that map for construction of house relating to Sampati Devi had already been sanctioned by the Patna PRDA while the house planned belonging to defendant no.2 and 3 are pending before PRDA. It has also been averred that they have constructed the existing structure and are residing therein.

**10.** It has also been averred that in a proceeding under Section 145 Cr.P.C. the learned Magistrate had rightly directed the parties to have their right and possession declared by the competent court. In the aforesaid facts and circumstances of the case, it has been prayed for dismissal of the suit.

**11.** After considering rival pleadings the learned lower court had framed following issues:-

“Issue No.I - Is the suit, as framed, maintainable?

Issue No.II – Is the suit barred by limitation?

Issue No.III – Is the suit barred by estoppel, waiver and acquiescence?

Issue No.IV – Has the suit been properly valued and the court fee paid sufficient?

Issue No.V – Is the suit bad for defect of parties?

Issue No.VI – Are the plaintiffs entitled for eviction of the defendants?

Issue No.VII – Are the plaintiffs entitled for a decree of arrears of rent?

Issue No.VIII – To what other relief or reliefs, if any, are the plaintiffs entitled?

Issue No.IX – Does the relationship of landlord and tenant exist between the parties?

Issue No.X – Has the plaintiffs personal necessity of the suit premises?

Issue No.XI – Are the defendants defaulter of payment of rent?

Issue No.XII – Have the defendants acquired title of adverse possession in respect of suit premises?”

And decided issue no.6, 7, 9, 10, 11 and 12 jointly in favour of plaintiffs against the defendant coupled with remaining

issues whereupon the suit has been decreed with cost on contest, hence this appeal.

**12.** Manifold argument has been raised on behalf of defendants-appellants during course of assailing the judgment and decree impugned. The first and foremost ground has been taken on the point of identification of the land under dispute. In order to impress upon, it has been submitted that from the Khatiyani, Ext.-'P', it is apparent that land happens to be recorded in name of Vishram as well as Shivram. Furthermore, Ext.-'T', it is apparent that land under reference has been procured by Pragash Ram long-long ago. Because of the fact that even considering status of joint family, a co-sharer is entitled for self-acquisition, on account thereof, it was incumbent upon the plaintiffs-respondents to have asserted and proved with positive, concrete, definite evidence that the land under dispute was ever treated as joint family property. Because of the fact that presence of Ram Kishun Ram @ Husaini Ram as Bhagina of Pragash Rai is there and further, he had properly been identified over his status relating to the properties left by deceased Pragash Rai on account thereof, inherited title as well as possession, and on account thereof, the sale deed of the year 1972 executed by aforesaid Ram Kishun Ram @ Husaini Ram is legal, just and proper and further, is for consideration and on account thereof, defendants-appellants found title and possession over the land.

**13.** It has also been submitted that, that happens to be

the reason behind that neither the plaintiffs-respondents nor his vendor Akhilanand Srivastava who came as PW.6 happens to be consistent over letting the house in question to the defendants-appellants and in the aforesaid background, the inter se relationship as claimed as landlord and tenant is found completely garotted. Then in that event, instant suit would have been framed as a regular title suit having different kinds of reliefs as the suit in present form on account of aforesaid deformity would not survive.

**14.** On this score, it has been submitted that though not clearly but impliedly, plaintiffs have had admitted status of Pragash Ram to be the owner of the land. In the aforesaid background, unless and until there happens to be conclusive evidence on their score with regard to title and possession having been serried by their vendors, the plaintiffs-respondents would not succeed and for that, the sheet anchor of plaintiffs-respondents plea is the partition suit no.25 of 1932. These defendants have by cogent and reliable evidence succeeded in proving that DP was never effected at the spot rather it happens to be a Balawala, collusive one which has been consistently held by earlier judicial pronouncement upto by the Hon'ble High Court brought up under 'M' Series. Once, a competent court has doubted over the genuineness of DP, on account thereof, the effect of aforesaid collusive DP relating to Partition Suit No.25 of 1932 loses its authenticity and that being so, neither the sons of

Tribeni Ram nor the subsequent transferee could claim title as well as possession nor the sale deed could be treated as legal, valid.

**15.** Apart from this, it has also been submitted that right from pleading, the plaintiffs-respondents have admitted possession of the defendants-appellants and further, in the background of aforesaid eventualities, there happens to be no scope left for accepting their permissive possession in token of tenancy rather probablizes their absolute possession coupled with title on the basis of the sale deeds executed in the year 1972 and that happens to be reason behind that no step was taken by the vendor of the plaintiffs, namely, Akhilanand Srivastava during his tenure, to take any legal recourse.

**16.** The prospect of defendants-appellants as a owner of property as well as having continuous possession as owner of the property is further found corroborated with the effect of mutation, sanction of house plan, having water connection, electric connection, an exhibit of the record supported with consistent oral evidence, hence, the judgment and decree impugned is fit to be set aside.

**17.** It has also been submitted on behalf of appellant that not only plaintiffs-respondents failed to substantiate their title, they also failed to bring on record by cogent and reliable evidence the factum of tenancy, default, as well as substantiating their plea for eviction on the ground of default as well as personal

necessity hence suit is fit to be dismissed.

**18.** Learned counsel on behalf of plaintiffs-respondents while supporting the judgment and decree impugned has submitted that learned lower court had taken into consideration the evidence, exhibits as well as legal proposition and on account thereof, did not attract any sort of interference. Furthermore, it has been submitted that on behalf of defendant-respondent, some of judgments have been exhibited in order to dilute the effect of Partition Suit No.25 of 1932 as well as DP having effected in pursuance thereof but the aforesaid judgments are not at all relevant over the point in issue in the background of the fact that in the aforesaid judgments, no issue was framed on that very score nor was matter of haggle. Therefore, having a casual reference will give no adverse impact even, the judgment is found concurred by the higher court including the High Court where, no such point was formulated and decided. It has also been argued that aforesaid litigation was not with regard to Survey Plot No.28, the land under dispute rather it was relating to Survey Plot No.26, having different kinds of pleading having no bearing over the present controversy.

**19.** It has also been submitted that the claim of the party relating to Survey Plot No.26 as well as 28 are quite distinct to each other and in likewise manner, is distinguishable. Therefore, the finding recorded at an earlier count while adjudicating upon the issue relating to Survey Plot No.26 will not be applicable

under present controversy.

**20.** It has been submitted that in terms of Section 114(e) of the Evidence Act presumption will lie in favour of having the judgment followed with DP effected in connection with Partition Suit No.25 of 1932 in proper, legal way and, being the presumption rebuttable one, onus lies upon the defendants-appellants to have it properly discharged wherein they failed. That being so, it would be presumed that judgment followed with DP was duly effected in accordance with law.

**21.** Furthermore, it has also been submitted that none of the parties are recorded tenant nor they are original tenant. Defendants-appellants have claimed by virtue of sale deed of the year 1972 from Husaini Ram and Ram Baran who claimed to have been adopted by Pragash Ram and on the basis thereof, inherited the property left by Pragash Ram, the original tenant. Neither Pragash nor Husaini, Ram Baran came forward to support the case of the defendant nor the defendants-appellants brought reliable evidence to rebut the DP relating to Survey Plot No.28, the disputed plot. Contrary to it, plaintiffs-respondents who came over the land by virtue of sale deed of the year 1978 executed by Akhilanand Srivastava who had purchased from Sadir in whose favour sale deed was executed by the heirs of Tribeni, in whose share the land under dispute was allotted and followed with DP and further, having the evidence of Akhilanand Srivastava establishing not only title rather possession coupled

with over tenancy had properly been considered by the learned lower court while negativating the plea of the defendants-appellants.

**22.** It has also been submitted that vendee is liable to inherit same interest which his vendor had. Therefore, unless and until there happens to be conclusive evidence at the end of defendants-appellants that land under dispute remained exclusive property of Pragash Ram and Husaini Ram as well as Ram Baran have had inherited the property or were entitled to inherit the property left by deceased Pragash Ram, then in that event only, the alleged sale deed of the year 1972 executed by them in favour of defendants-appellants will be legally recognizable. From the evidence available on the record, it is apparent that defendants-appellants failed on that very score and on account thereof, alleged sale deed of the year 1972 will not attract any sort of legal recognition whereunder it could be validated. So submitted that in the aforesaid background neither the title of defendants-appellants could be acknowledged nor their possession over disputed area of Survey Plot No.28, could be affirmed. Contrary to it, the plaintiffs-respondents have substantiated their plea relating to title and possession coupled with acknowledging possession of defendants-appellants being permissive one, on account of having been inducted as a tenant by the vendor of the plaintiffs-respondents and further, being a defaulter on account of which became that of trespasser and

therefore, are liable to be evicted.

**23.** After consideration of the rival contentions as well as going through the rival pleadings, the following points have been perceived to be necessary for just decision of this appeal:-

- a) Is the suit framed as maintainable?
- b) Is the suit barred by limitation?
- c) Is the suit barred by estoppel, waiver and acquiescence?
- d) Has the suit been properly valued and the court fee paid sufficient?
- e) Whether plaintiffs-respondents could be acknowledged as rightful owner having title relating the land under dispute?
- f) Whether inter se relationship subsist as landlord and tenant?
- g) Whether eviction could be permitted on the ground of default as well as personal necessity?
- h) Whatever relief or reliefs plaintiffs-respondents are entitled for?

**24.** Before coming to the points, the status of the lower court record should be taken note of on behalf of plaintiffs-respondents altogether eleven PWs have been examined out of whom PW.1 is Brij Nandan Singh, PW.2 is Salesh Prasad, PW.3 is Prabhu Mistry, PW.4 is Sheo Das, PW.5 is Faguni Srivastava, PW.6 is Akhilanand Srivastava, PW.7 is Ram Sevak Singh one of the plaintiffs, PW.8 is Bedi Sah, PW.9 is Ram Chandra Prasad, PW.10 is Bacchu Narain Lal and PW.11 is Laxman Upadhyay. Side by side also exhibited Ext.1 Sereis –Rent Receipt, Ext.2 Series- Sale deed, executed by sons of Tribeni in name of Sadri,



Sadri in name of Akhilanand Srivastava, Akhilanand Srivastava in favour of plaintiffs, sale deed executed by Lilapati Devi in favour of Narayan Ram, Sale deed executed by sons of Tribeni in favour of Udheshwar Prasad, Ext.3 Series-Four office copies of advocate notice, Ext.4- execution report of summon served against another plaintiffs, Ext.5-Map, sanctioned by Patna Improvement Trust for construction of house of Akhilanand Srivastava, Ext.6 DP, Ext.7-Receipt of possession, Ext.8- CC of final decree of 25 of 1935.

**25.** On the other hand defendants-appellants have examined altogether twenty-eight DWs out of whom DW.1 is Laxmi Mistry, DW.2 Deo Narain Lal, DW.3 Shi Kumar Prasad, DW.4 is Ram Lakhan Prasad, DW.5 is Gyani Paswan, DW.6 is Bhagwan Mistry, DW.7 is Arun Mistry, DW.8 is Ramchandra Prasad, DW.9 is Ragho Saran Singh, DW.10 is Deep Narayan Singh, DW.11 is Anil Kumar Prasad, DW.12 is Deoki Dushad, DW.13 is Rajendra Prasad, DW.14 is Ram Jatan Rai, DW.15 is Ram Prasad, DW.16 is Janki Devi one of the defendant, DW.17 Ramdeo Prasad, DW.18 Sampatti Devi one of the defendant, DW.19 Bhago Devi one of the defendant, DW.20 Ranjeet Kumar, DW.21 Ramashish Singh, DW.22 Daroga Mahto, DW.23 Ramchandra Ram one of the defendant, DW.24 Brahamdeo Prasad, DW.25 Sukhdeo Prasad Singh, DW.26 Akhilesh Prasad, DW.27 Ram Briksh Ram one of the defendant, DW.28 Raghunandan Pandey and have also exhibited Ext.A Series-



Municipal Rent Receipt, Ext.B Series-Different receipt granted by shopkeepers, Ext.C- Reply notice, Ext.D-Postal receipt , Ext.E Series Sale deed standing in name of defendant Janki Devi, Sampatti Devi and Bhago Devi, Ext.F Series-Rent receipt granted by the State, Ext.G-Notice issued by the corporation, Ext.H Series-Electric bills, Ext.I Series-Rent granted by brick kiln owner, Ext.J Series-Map, Ext.K-Letter issued by Executive Officer of Water Board, Ext.L-Endorsement over exhibit J/1, Ext.M Series-Different Judgments of Title Suit No.50/53, Ext.N Series-Different Orders, Ext.O- C.C. of decree of Title Suit No.86 of 1970, Ext.P-C.C. of Khatiyani, Ext.Q Series-C.C. of order sheet, Ext.R-C.C. of order of mutation, Ext.S-C.C. of compromise petition, Ext.T-C.C. of compromise order.

**26.** Because of the fact that plaintiffs-respondents had prayed for declaration of title at first instance relating to the land detailed under Schedule-I of the plaint followed with other kinds of reliefs identifying the inter se relationship amongst the parties but basically, as the plaintiffs-respondents had prayed for declaration of title, on account thereof the nature of suit could be a declaratory title suit. Taking into account the aforesaid nature of the suit, it happens to be an obligation over the shoulder of the plaintiffs-respondent to substantiate its case in the background of having endowed with a burden. The aforesaid application has been elaborately considered by the **Hon'ble Apex Court in Union of India v. Vasavi Coop. Housing Society Ltd.** reported in **AIR**

**2014 SC 937.**

“**14.** At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in *Moran Mar Basselios Catholicos v. Thukalan Paulo Avira* reported in *AIR 1959 SC 31* observed that:

“... in a suit for declaration if the plaintiffs are to succeed, they must do so on the strength of their own title.” In *Nagar Palika, Jind v. Jagat Singh Advocate* (1995) 3 SCC 426 (*AIR 1995 SC 1377*) this Court held as under: (SCC p. 427c)

“The onus to prove title to the property in question was on the plaintiffs-respondent. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiffs. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit.”

**15.** The legal position, therefore, is clear that the plaintiffs in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.”

**27.** In civil suit, whenever primary obligation in form of burden of proof is found substantially discharged, then in that event the onus comes into play whereunder adversary, if comes forward with a positive case, is expected to discharge his obligation. In ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple*** reported in ***AIR 2003 SC 4548***, it has been held:

“**29.** In a suit for recovery of possession based on title it is for the plaintiffs to prove his title and satisfy the court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored to him. However, as held in *A. Raghavamma v. A. Chenchamma* and another *AIR 1964 SC 136*, there



is an essential distinction between burden of proof and onus of proof: burden of proof lies upon a person who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In our opinion, in a suit for possession based on title once the plaintiffs has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiffs shall be held to have been discharged so as to amount to proof of the plaintiffs's title."

**28.** In the background of aforesaid settled principle of law, now one should march ahead to decide the points as formulated above and for that point number 'E', 'F' is taken up as it will play crucial role in deciding this appeal.

**29.** In order to substantiate such plea two kinds of documents have been adduced by the plaintiffs-respondent. The first kind happens to be Ext.6,7, and 8, certified copy of the final decree, DP and receipt of possession relating to P.S. No.25/32. While other happens to be Ext.2 Series, Ext.2/D sale deed executed by Bagho and others (sons of Tribeni) in favour of Sadari, Ext.2/A sale deed executed by Sadari in favour of Akhilanand Srivastava and Ext.2/B sale deed executed by Akhilanand Srivastava in favour of plaintiffs.

**30.** At a glance, the completion of the judicial paraphernalia whereunder Survey Plot No.28 has been allotted in the share of the Bagho and others, followed with DP is found admissible in the eye of law in terms of Section 114(e) of the Evidence Act, but that happens to be subject to rebuttal. In case,



the opponent succeeds in proving that the whole event has been manipulated and been collusive one, then its admissibility in terms of Section 114(e) of the Evidence Act goes out of consideration, which will be subject to consideration subsequently. Therefore, keeping the authenticity of Ext.6,7,8 opened to be taken up later on, the documents coming under Ext.2 Series is taken together with Ext.6,7,8, it allow devolvement of title and possession over plaintiffs-respondents duly acknowledgeable.

**31.** However, after going through the averments of the plaint as well as deposition of the witnesses more particularly PW.6, Akhilanand Srivastava and PW.7 Ram Sevak Singh, plaintiffs, it is apparent that they are completely silent with regard to nature of the land as well as the mode of acquisition either by Pragash Ram exclusively or by all the brothers of Pragash Ram. The origin of title and possession has been identified on the basis of judgment of Partition Suit No.25/1932, followed by preparation of final decree, delivery of possession and subsequent thereof, having the land allotted to the share of Tribeni's sons who had sold it in favour of Sadri, who also transferred in favour of Akhilanand and then to plaintiffs and in likewise manner transfer of title and possession. Furthermore, the plaintiffs-respondent have admitted possession of defendants-appellants since before execution of sale deed in their favour by Akhilanand as a tenant having been inducted by

Akhilanand as well as was coming defaulter since May, 1977.

**32.** Therefore, the primary obligation of burden of proof is found duly discharged at the end of plaintiffs-respondents and on account thereof, the counter version so asserted by the defendants-appellants has to be seen in order to trace out whether onus, having been shifted over the defendants-appellants, has properly been discharged whereunder the story as flashed by the plaintiffs-respondent regarding devolving of title and possession could be found mere a jabber.

In order to discharge the onus, two kinds of assertion has been made on behalf of defendants-appellants. The first happens to be identifying Pragash to be the sole owner of the land who had obtained it from the ex-landlord in a rent suit brought up against recorded tenant Vishram and Shivram and for that had exhibited apart from C.C. of Khatiyani, Ext.P the compromise petition Ext.T as well as judgment passed in connection with Rent Suit No.2504, 2508 to 2513/1937 of the rent suit.

**33.** Although, there happens to be absence of any kind of document to justify devolvment of title and possession over Ram Kishun Ram @ Husaini Ram as well as Ram Baran from Pragash Ram, after his death, and for that, a story has been advanced that Pragash Ram was separate from his brother in mess and business and was issueless, therefore he had kept Ram Kishun Ram @ Husaini Ram, his Bhagina since his childhood and

adopted him as son who, after death of Pragash Ram succeeded the property and accordingly, the sale deed executed in the year 1972 by the aforesaid Ram Kishun Ram @ Husaini Ram (Ext.E Series) allowed devolvment of title and possession over the defendants-appellants and on account thereof, are over the land as exclusive owner.

**34.** Another kind of document under M-Series has been brought up in order to challenge Ext.6,7 & 8 and further to suggest that the Partition Suit No.25/1932 was collusive one and in likewise manner its judgment, preliminary decree, final decree as well as the mode of delivery of possession. Because of the fact that all event happens to be collusive one and no DP was effected in accordance with law hence, allotment of disputed land to the share of Tribeni Ram would not be accepted and in likewise manner devolvment title and possession on the basis of the sale deed executed by sons of Tribeni Ram and so on. Furthermore, dispute amongst purchasers of twenty decimals of the disputed land with Ram Kishun and order passed upon compromise petition in a proceeding under Section 145 Cr.P.C. has also been brought up on record as Q/1, S respectively. Apart from this, presence of revenue entries having in favour of defendants-appellants have also been placed in its corroboration. It is needless to say that revenue records does not confer title nor it happens to be a document of title. The aforesaid view is also having duly supported in ***Union of India v. Vasavi Coop.***

***Housing Society Ltd.*** (Supra).

**"17.** This Court in several judgments has held that the revenue records do not confer title. In *Corpn. of the City of Bangalore v. M. Papaiah and another* (1989) 3 SCC 612 (AIR 1989 SC 1809) held that " it is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law." In *Guru Amarjit Singh v. Rattan Chand and others* (1993) 4 SCC 349 : (AIR 1994 SC 227) this Court has held that "that entries in the Jamabandi are not proof of title." In *State of H.P. v. Keshav Ram and others* (1996) 11 SCC 257 : (AIR 1997 SC 2181) this Court held that " the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs."

**35.** In ***Surinder Pal Kaur v. Satpal*** reported in **2015 CR.L.J. 3821** whereunder the order passed under Section 145 Cr.P.C. and its impact over civil suit has been taken note of and further has been explained:

"11. We have considered the rival submissions of the parties on the above point. It is settled position of law that the observations made in the proceedings drawn under Section 145, Cr.P.C. do not bind the competent court in a legal proceedings initiated before it. A decision given under Section, 145, Cr.P.C. has relevance in evidence to show one or more of the following facts:

- (a) that there was a dispute relating to a particular property;
- (b) that the dispute was between the parties;
- (c) that such dispute led to the passing of a preliminary order under Section, 145(1), Cr.P.C. or

an order of attachment issued under Section 146(1), Cr.P.C.; and

(d) that the Magistrate found particular party or parties in possession or fictional possession of the disputed property.

12. In *Shanti Kumar Panda v. Shakuntala Devi* reported in AIR 2004 SC 115, this Court has held, in paragraph 15, that the reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court (except for the limited purposes enumerated above). Also, it was further held in said case that the words “competent court” as used in sub-section (1) of Section 146 of the Code do not necessarily mean a civil court only. A competent court is one which has the jurisdictional competence to determine the question of title or the rights of the parties with regard to the entitlement as to possession over the property forming the subject matter of proceedings before the Executive Magistrate.”

**36.** Now reverting back to first kind of documents as referred in forgoing paragraph, the origin as pleaded by the defendants-appellants happens to be the rent suit which was brought by the ex-landlord against the Pragash Dusadh & others. From Ext.T compromise petition filed in Suit No.1396/1924, which happens to be in “Kaithi” vernacular and its translation in ‘Dev Nagari’ has been placed by the defendants-appellants clearly suggested presence of Triveni Dusadh, Pragash Dusadh, on their own as well as guardian of Permeshwar Dusadh, Baua Dusadh,

he himself as well as guardian of Ramdeo Dusadh and Raghani Dusadh he himself as well as guardian of Ishwar Dusadh, and the lands so incorporated therein, apart from others, also includes disputed plot no.28.

**37.** Furthermore, from Ext.M/4, which happens to be judgment of Suit No.2504,2508 to 2513/1937 divulges that rent suit no.2508 of 1937 was drawn up against Pragas Dusadh & others. While deciding issue no.3, wherein it was pleaded that the different plots have been under different possession of tenants, was not accepted and was negatived by the court, and accordingly suit was decreed. Though from Ext.P, Khatiyan presence of Vishram as well as Shivam is there, but no document has been filed to show that there was rent suit drawn up against Shivam and Vishram, Moreover, from Ext.T, it is evident that compromise petition was filed in a rent suit no.1396 of 1924 which was drawn against Pragas and others, wherein presence of other brothers were and further apart from others disputed land also lies.

**38.** The other exhibits, adduced on behalf of defendants-appellants on this score are of no use because of the fact that Ext.M is the judgment dated 03.10.1953 passed by Illrd Munsif at Patna in T.s. No.50/53 wherein plaintiffs was Harihar Prasad Sao and defendant was Bagho Dushad and others. From the facts of the case, it is apparent that it relates with Survey Plot No.26, which was purchased by Manogi Sao, grand father of

Harihar Prasad Sao vide sale deed dated 19.02.1927 from Pragash Ram. Furthermore, Harihar Prasad Sao claimed to have obtained under gift in the year 1950 from Manogi Sao. They have identified the defendant Bago Dushad as tenant who controverted his status and further claimed having the land allotted in their favour under partition suit no.25 of 1932.

**39.** While adjudicating upon the issue, coming across with the factual aspect that Pragash Ram had sold away different area of Plot No.26 to different persons who were over the land, the final decree, followed with DP which happens to be Ext.I, J/1, K, the learned lower court held that the subject matter was never under the partition suit as well as there happens to be no conclusive proof that DP was effected with regard thereto. As such, Ext.M is not going to give any kind of due support. Ext.M/1 is the judgment of the High Court dated 02.05.1958 whereunder the aforesaid contention was not taken up for consideration rather the plea was raised in the background of Full Bench decision of this Court reported in AIR 1950 Pat.50 which was negatived.

**40.** Ext.M/2 is the judgment dated 31.10.1989 passed in Title Suit No.86 of 1970 which was fought in between Ram Kishun Ram Vs. Most. Chatiya & Ors. From plaint, it is evident that Ram Kishun Ram purchased one kattha of land out of Survey No.26 in name of his Bhabhi, Parwati Kunwar vide sale dated 23.05.1928 from Pragash Ram and came in possession



thereof, the house was constructed thereupon. Subsequently, the aforesaid land was put under auction sale at the instance of landlord which was challenged by the plaintiffs through Parwati Kunwar under Title Suit No.139 of 1943 which was allowed. Furthermore, the house was let out and tenants were evicted later on vide Title Suit No.58 of 1975. Then it has been submitted that as Defendant No.1 had executed collusive sale deed in favour of defendant no.2, eclipsing title, interest of the plaintiffs and on account thereof, suit was filed for declaration that the sale deed was not binding upon the plaintiffs which was contested though on the ground of having of the land allotted to her share under Partition Suit No.25 of 1932 at the end of defendant. After going through the judgment impugned, it is evident that learned court had not questioned the propriety of decree rather had held that on account of discrepancy in the map prepared at the time of delivery of possession it was not clear identifying the status of the plaintiffs whose sale deed was much prior to the institution of the suit and on account thereof, the suit was decreed. Hence, this exhibit is also not found favourable to the defendants-appellants.

**41.** Ext.M/3 is the judgment of Title Suit No.90 of 1965 fought in between Bigal Bansi Nonia & Ors. Vs. Ram Kishun Ram and Ors. The aforesaid suit was drawn up at the behest of plaintiffs Bigal Banshi Nonia & Ors. for declaration of title and confirmation of possession over 1 Kattha 3 dhur 8 Dhurki of



Survey Plot No.26 through registered sale deed dated 01.09.1958 from Chatiha, performa defendant no.4. The aforesaid pleading was contested by defendant no.1, 2 & 3 wherein they have stated that plot no.26 happens to be the self acquisition of Pragash Ram and after his death, his daughter Lilawati, defendant no.3 succeeded him. The aforesaid suit was dismissed taking into account the deficiency in the pleading that plaintiffs could not be able to substantiate the land under dispute coupled with the fact that no map specifying the delivery of possession during course of effecting of delivery of possession in relation to Partition Suit No.25 of 1932, like Ext.M/2. As such this exhibit also failed to substantiate plea of defendants-appellants.

**42.** From Ext.M/3 the assertion of the defendants-appellants became suspicious over theme of Pragash Ram to be issueless and further Pragash had kept Ram Kishun Ram @ Husaini Ram and Ram Baran and adopted as his son and on account thereof, after the death of Pragash Ram, Ram Kishun Ram @ Husaini Ram and Ram Baran succeeded the property on account of having an admission at the end of Ram Kishun Ram @ Husaini with regard to presence of Lilapati as daught of Pragash Ram. Furthermore, as per Ext.M/2, Ram Kishun Ram, apart from purchasing certain area of Survey Plot No.26 from Pragash Ram had also claimed that Pragash Ram had made gift in his favour. This episode has got hearing over the fate of instant suit, when Ram Kishun was being caressing and cherishing by Ram

Pragas since his childhood, what was occasion whereunder Ram Kishun had purchased the land in name of Bhabhi. In likewise manner, when gift was executed in favour of Ram Kishun @ Husaini by Pragas, why not same was produced and exhibited during trial. That being so, without having a document of devolution of title and possession ignoring Lilawati over Ram Kishun Ram and Ram Baran must be there whereupon title and possession of Ram Kishun Ram, Ram Baran could be identified. So, the story of adoption be came doubtful. Moreover, none of the witnesses have ever deposed that adoption was effected in accordance with law. Not only this, in terms of Section 12 Proviso(c) of the Hindu Adoption and Maintenance Act, the defendants-appellants were under obligation to explain on account of having presence of Lilapati, daughter of Pragas Ram.

**43.** From Ext.8, final decree of Partition Suit No.25 of 1932, it is apparent that Pragash Ram had contested the suit and further, discloses the lands having been allotted to the respective parties including Pragash Ram followed with decree. In the suits, launched earlier and its judgments, having been exhibited at the end of defendants-appellants under M-Series did not show that Pragash was ever examined to controvert that he never appeared in the suit, nor his share was defined, nay lands were allotted and in likewise manner DP was not effected. Moreover, the suits were contested on the basis of the documents which were executed by Pragash much before institution of the Title



(Partition) Suit No.25 of 1932 relating to plot no.26 only and certain area of plot no.26 is also found allotted to the share of Pragash. The other aspect which is apparent from the W.S. is that much stress has been put over Ram Kishun Ram @ Husaini Ram but nothing has been said with regard to another vendor Ram Narayan Ram. It has also been suggested in the W.S. that Ram Kishun Ram @ Husaini Ram succeeded the property as he was kept by Pragash Ram, being issueless and adopted him as his son however, on account of presence of Lilapati, the aforesaid story became doubtful as discussed under forgoing paragraph. Once, devolvment of property over Ram Kishun Ram @ Husaini Ram became doubtful, then in that event any document executed by Ram Kishun Ram @ Husaini Ram relating to the properties belonging to Pragash Ram would not legally allow transfer of title as well as possession.

**44.** Furthermore, having presence of Pragash Ram in Title Suit No.25 of 1932 and having absence at his end to raise an objection by filing an appeal or putting objection during course of preparation of final decree as well as delivery of possession, would certainly acknowledge the effect of waiver and estoppel not only for Pragash Ram but his successor in interest and on account thereof, neither the Ram Kishun Ram @ Husaini Ram or Ram Baran against whom nothing has been said at the end of defendants-appellants, nay their substitute would be allowed to raise an objection.



**45.** Coming to the oral evidence none other than the evidence of parties are required to be looked into. PW.6 is Akhilanand, vendor of the plaintiffs who had stated that disputed land belonged to Sadri who had sold it in his favour. He came over the land. He had got map sanctioned from improvement trust for construction of house. He had constructed two pucca rooms and two thatched huts, latrine. His son, who was residing as was student, let it out in favour of defendants on monthly tenancy of 20/-. His son died in the year 1969. Subsequently, he sold the land in favour of plaintiffs and handed over possession including the arrear of rent. During cross-examination he had stated that Bagho and others had sold the land in favour of Sadri, his vendor. He is unaware regarding entry in the Khatiyani. He had further admitted that save and except sanction plan, he has got no documentary evidence relating to construction of the building and in likewise manner, there happens to be no document relating to tenancy. He had further stated that map was sanctioned in the year 1965. Then had denied the suggestion given by the defendant that they were owner of the property and were never inducted as tenant.

**46.** PW.7 is plaintiffs himself. In his examination-in-chief he had stated that the disputed area of six decimal lies at the western flank of the land. Remaining area of the plot is in possession of Sidheshwar Devi and others who after purchasing the same from Barho Ram, have constructed respective



residential houses and are residing therein. Barho had sold six decimal to Sadri, Sadri to Akhilanand and Akhilanand to him. Akhilanand had constructed two pucca rooms and two thatched rooms. All the documents had been handed over to him by Akhilanand. The defendants are tenant since the time of Akhilanand on monthly rent of Rs.20/- who subsequently failed to pay rent, regularly. Demand was made for payment of arrear as well as monthly rent which the defendant declined. On service of advocate notice, they challenged his title and on account thereof, 144 proceeding was initiated. Then, thereafter instant suit has been filed. He had denied the pleading of the defendant. During cross-examination he had admitted that Khatiyani stood in name of Vishram Mahto relating to disputed land from whom Pragash along with his all brothers purchased. He had denied the suggestion that aforesaid land happens to be exclusive acquisition of Pragash Ram. He had shown ignorance regarding rent suit. He had denied the suggestion that DP was collusive one. He had admitted that he has got no paper to support that the defendants are tenant. He had not realized the rent. He had denied the suggestion that there was no default of rent as defendants were owner of the property as well as there was no personal need.

**47.** DW.16 is Janki Devi, defendant no.2 who had deposed that she along with Rampati and Bhago purchased the disputed land from Husaini Ram, independently. Lands are

separate. She paid the consideration amount after getting it from her father. She had inquired about the land before purchasing which was in possession of Husaini Ram. She had seen the document. She had constructed one thatched room, safe tic latrine, done electrification, got mutation, deposited the fee for water connection. She had further stated that Pragash was the real owner of the land and was his self acquisition. He was issueless. He had kept Husaini Ram as 'Poshput'. Accordingly, Husaini Ram inherited the property. Since 50-55 years Pragash, Husaini Ram and she got continuous possession over the land. She had denied the assertion of the plaint. She had also disclosed that their possession happen to be within full conscious knowledge of the concerned. She had further challenge genuineness of document in favour of Sadri, Akhilanand, plaintiffs. She had also denied her status to be tenant of Akhiland as well as also challenged the factum of being defaulter as well as plea of personal necessity. During cross-examination she had stated that Husaini Ram is alive but she will not examine him. She had further disclosed that her husband does pairvi in the suit. She had further stated that her husband had inspected the documents. At that very time land was cultivable. She was further stated that she had seen the document which was a registered document. She had seen document standing in name of Pragash as well as Husaini Ram. Again corrected as no document stood in name of Husaini Ram. She further stated that

she heard about adoption. She had further stated that Sadri and Akhil and all the fictitious person. She had further stated that she inquired about the name of Pragash who had three brothers only. She also inquired from court regarding case and came to know that no case was instituted relating to the land. She had further deposed that she is unable to say since the time the land under dispute happens to be in possession of Pragash or Husaini Ram. She had further stated that rest portion of Plot No.28 lies east to her house. She is unaware with the fact that these persons after purchasing from Barho have constructed house but Ragho, Sidheshwari etc. have got their residential house. Again she disclosed that they are not over Plot No.28. She was unaware with the actual area but she is aware with the plot. She had also denied presence of Lilapati.

**48.** DW.18 is Rampati, defendant no.1. In her examination-in-chief she had reiterated the same version as stated by DW.16. She had also admitted Janki Devi to be her Nanad. She had also denied the assertion made in the plaint as well as also denied her status that of tenant. However, she had asserted that she had seen Pragash. He was issueless. He had adopted Husaini and on account thereof, Husaini inherited the property left by Pragash. She had further controverted the theme of delivery of possession through court. No delivery of possession was ever affected. There was no drumbeating. Her name was mutated and all the documents have been produced by them.

She had further stated that all the documents possessed by plaintiffs happens to be forged, fabricated. During cross-examination had stated that she is unable to disclose the total area of disputed land. She had seen the documents relating to Husaini Ram. She had further stated that her husband knows better who will depose in this case. She had further denied the suggestion.

**49.** DW.19 is Bhago Devi, another defendant. She had stated that after purchase she was to construct building for that bricks were collected. As case has been instituted, therefore could not succeed in constructing the building. She had further stated that she is residing at mohalla-Purandarpur for the last 45 years. She had seen possession of Husaini Ram over the land and then thereafter she has got. Pragash was issueless. He had adopted Husaini Ram. She had denied Lilapati to be the daughter of Pragash. She had also denied the pleadings of the plaintiffs. During cross-examination she had stated that she is unable to disclose the boundary of the house wherein she resided at rent. For the last 8 years she is over the land. The building could not be constructed on account of litigation. Then had stated that she had not seen Pragash. She heard about adoption. She had further stated that Husaini Ram is alive but she would not examine him. She had denied exhibits of Akhilanand, Sardi, Badhu Ram, Daho Ram etc. She had further stated that she is unaware whether any document relating to disputed land was

standing in name of Husaini. Then had denied the suggestion.

**50.** DW.23 is Ramchandra Ram husband of DW.16. He had stated that he had purchased the land from Husaini Ram. Husaini Ram handed over possession. He had constructed one room. Pragash had given the land to Husaini. Pragash had purchased from Umeshdat Tiwari. He had seen the document. Pragash was issueless. Pragash had adopted Husaini. Pragash, then thereafter Husaini and after purchase, they are over the land within the full knowledge of all including Bagho, Daho etc. He had denied the suggestion that Bagho, Daho etc. have got land in their share. He had denied the story of DP having affected in the year 1948. He had also stated that all those documents are collusive, manufactured to grab the property of Pragash. Husaini got decree with regard to lands which he had sold. DP was affected. Then he had denied the assertion of the plaintiffs regarding tenancy, being defaulter and further resisted asking for eviction on that very score as well as on the score of personal necessity. During cross-examination he had stated that he had not seen any document in favour of Husaini relating to land under dispute. Again had stated that at the time of sale deed, Husaini had shown documents issued by the court. Then had stated that he had not seen any document regarding adoption. Then had denied the pleading of the plaintiffs.

**51.** DW.27 is husband of DW.18. During his examination-in-chief he had reiterated the same version. He had

further stated that he had constructed two rooms, one latrine. Janki Devi had also constructed. He had further stated that during course of negotiation he had inquired about the title of the land. Bishram Mahto is recorded tenant. Mahesh Dut Tiwari took it in auction sale and then settled in favour of Pragash. It happens to be exclusive property of Pragash. Pragash came in possession over the land. In the aforesaid case, compromise was filed. Pragash was issueless and on account thereof, he had adopted Husaini and on the basis thereof, title accrued in favour of Husaini. Then had challenged the pleading of the plaintiff including that of tenancy, defaulter and further, asking for eviction on that very score as well as on the score of personal necessity. During cross-examination he had stated that total area of disputed land happens to be 26 decimal out of which all the defendants are claiming over six decimal while remaining 20 decimal is being claimed by Husaini. However, house of Ramdhari, Udheswar, Jago Devi etc. lies over 20 decimal of land. He had also admitted that Pragash had six brothers, Tribeni, Fakira, Gulab and name of remaining two brothers he is not remembering. Bagho, Daho and Ram Narayan were sons of Tribeni. He had further stated that Ram Narain happens to be son of Sala of Pragash. He had further stated that his house lies over survey Plot No.26 but on what basis he is unaware. He had further stated that he will not examine Ram Narayan. He had further stated that he had not seen any document regarding

adoption. He is unaware with the fact whether name of Husaini was entered against the disputed land. He had further stated that negotiation was materialized with the Husaini only. He had executed the sale deed. Consideration money was paid to him. He was in exclusive possession over the land. Others have got no concern. Then had stated that Ram Narayan had also some sort of title as Pragash had also adopted him. Pragash had adopted both of them at two different occasions. He had heard about the same. He had not paid a single farthing to Ram Narayan.

**52.** After analyzing the evidence of respective parties as incorporated above, it is evident that there happens to be complete absence of legal, authentic, reliable evidence with regard to devolvement of property from Pragash to Husaini as well as Ram Narayan and on account thereof, even having sale deed in favour of defendants-appellants executed by Husaini and Ram Narayan is not going to vest with the title and on account thereof, title of plaintiffs-respondent has rightly been identified by the learned lower court. At the present moment non-examination of Husaini as well as Ram Narain by the defendants-appellants and its impact has to be seen. In **Gopal Krishnaji Ketkar v. Mohamed Haji Latif and others** reported in **1968 (3) SCR 862** the Hon'ble Apex Court has held:

“.....Even if the burden of proof does not lie on a party, the Court may draw an adverse inference. If he withholds important documents in his possession which can

throw light on the facts at issue. It is, in or opinion, a sound practice for those desiring to reply upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.....”

53. This view has again been reiterated in ***Punit Rai v. Dinesh Chaudhary reported in (2003) 8 SCC 204, CITI Bank N.A. v. Standard Chartered Bank, (2004) 1 SCC 12*** reported in ***(2004) 1 SCC 12***.

54. In the aforesaid background this point is decided against the defendants-appellants and in favour of plaintiffs-respondent.

55. Now coming to remaining point, it is needless to reiterate the admitted fact of the parties with regard to possession of defendants-appellants over the land under dispute. In the background of finding recorded herein above, their presence over the land under dispute would not be legally acknowledged. Because of the fact that the plaintiffs-appellant have paid advalorem court fee on account thereof, their eviction from the land under dispute is found legally permissible. Though there happens to be minor deficiency persisting in the case of the plaintiffs-appellant on account of absence of document supporting the plea of the tenancy however, is found supported with the evidence of PW.6, Akhilanand as well as having the

house plan sanctioned much before the alleged sale deed of 1972 in favour of appellants-defendants, which the appellants-defendants failed to nullify.

**56.** The remaining points are accordingly decided against the defendants-appellants/ in favour of plaintiffs-respondent.

**57.** As such, instant appeal is found devoid of merit and is accordingly dismissed on contest but, in the facts and circumstances of the case, the parties will bear their own cost.

**(Aditya Kumar Trivedi, J.)**

Patna High Court  
Dated 15<sup>th</sup> day of Oct., 2015  
Prakash Narayan

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