

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.651 of 1983

**Against the Judgment and Decree dated 12.11.1983 passed by
Subordinate Judge, Sitamarhi in Title Suit No.45 of 1981.**

=====

Pramila Devi & Ors

.....Plaintiffs-Appellants

Versus

Rambilash Seksaria & Ors

.....Defendants-Respondents

=====

Appearance :

For the Appellant/s : Mr. Dhruv Narain, Sr. Advocate
Mr. Mahesh Prasad No.II Advocate with him.

For the Respondent/s : Mr. Keshav Shrivastava, Sr. Advocate
Mr. Bhubneshwar Prasad, Advocate with him.

=====

Dated : 17th day of March, 2015

P R E S E N T

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV J U D G M E N T

1. The plaintiffs have filed this First Appeal against the Judgment and Decree dated 12.11.1983 passed by the learned Subordinate Judge, Sitamarhi in Title Suit No.45 of 1981 whereby the Court below dismissed the plaintiff appellant's suit for declaration of title and recovery of possession with respect

to Schedule II property measuring 2 decimal and confirmation of possession with respect to Schedule III property.

2. The plaintiffs appellants filed the aforesaid suit for declaration of title over 2 decimal of land comprised within R.S. plot No.474 khata No.304 more fully described in Schedule IV of the plaint. The Schedule No.IV includes land described in Schedule II and III also. The plaintiff further prayed for recovery of possession regarding Schedule II property and confirmation of possession regarding Schedule III property.

3. The plaintiff prayed the aforesaid relief alleging that one Anhauti Chaudhary died leaving behind his two sons, namely, Ramashish Rai, the plaintiff No.1 and Dhalo Rai. Dhalo Rai had separated from his father long long ago without taking any share because of the fact that Anhauti Chaudhary had only residential house and the properties in plot No.1395 and 1095 were his self acquired property. Anhauti Chaudary had acquired 3 ¼ decimal out of plot No.1049 from the ex. landlord in 1354 Fasli. In the revisional survey, plot No.474 measuring 4 decimal has been carved out from this plot No.1049. Anhauti Chaudahry had constructed paccka house on a part of the same plot and had inducted tenants. The defendant No.1 was inducted as tenant on monthly rent of Rs.60/- in January, 1963. He defaulted in payment since June, 1981. In June, 1981, the plaintiff learnt that the defendant No.1 got executed a registered deed dated 27.6.1972 from defendant No.2. After obtaining the certified copy of the sale deed, the plaintiff found that it is a fraudulent sale

deed without consideration executed with respect to Schedule II lands which includes Schedule II and III. In the sale deed, it is mentioned that there was prior agreement to sell dated 9.12.1969 which is false.

4. The further case of the plaintiff is that Anhauti Chaudahry died in 1964 in the state of jointness with the plaintiffs. Dhalo Rai, the father of defendant No.1 had already separated from his father because there was good relation with defendant No.2, the plaintiff No.1 gave some land to defendant No.2 by registered family arrangement deed. The remaining land came in exclusive possession of the plaintiff No.1. The defendant No.1 had no right title over the property but because of good relation, the plaintiff had given the land to the defendant No.2. The defendant No.3 and plaintiff No.5 did not take any share rather they gave up their share in favour of the plaintiff No.1 and in lieu of their share, ornaments were taken. In this manner, the plaintiff became the owner of the property of Anhauti Chaudhary. The defendant No.2 had no right, title or interest over the suit property but he sold the property by registered sale deed dated 27.6.1972, therefore, the defendant No.1 had not acquired any right, title and interest on the suit land. The defendant No.1 is denying the title of the plaintiff and is not paying the rent. Hence the suit.

5. The defendant No.1 appeared and filed contesting written statement. The defendant No.2 although filed a separate written statement, he supported the defendant No.1. Their main case is that Dhalo Rai never separated from his father Anhauti Chaudahry. In fact Anhauti Chudhary died in the state of

jointness with his son Dhalo Rai, Ramashish Rai and other family members.

After death of Anhauti Chaudhary, the plaintiff No.1 and Dhalo Rai separated for their convenience and then the lands were also divided by private partition.

In the partition, the Schedule IV land was given in the share of defendant No.2

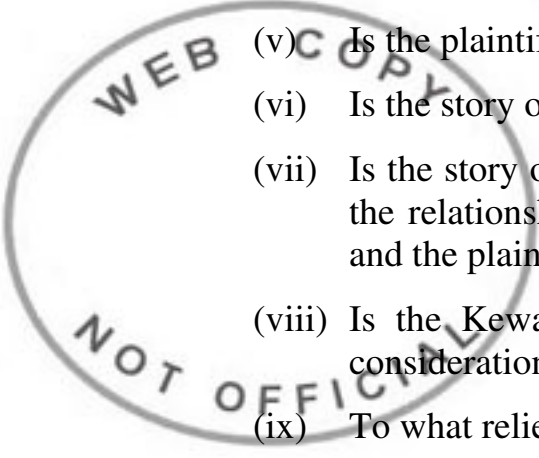
For satisfaction of and *Shradh* ceremony of Dhalo Rai, the defendant No.2 was in need of money, so executed agreement to sell on 9.12.69. Out of the consideration, the defendant No.2 had already received Rs.10,000/- from

defendant No.1 and the remaining Rs.1000/- was to be paid at the time of registration of the sale deed and it was paid on 27.6.1972, the date when the sale deed was registered. The family arrangement deed is false and fabricated.

The defendant No.2 never executed any deed. The plaintiff No.1 taking undue advantage of illiteracy of the defendant No.2 got a partition deed dated 15.1.1970. Mahendra Rai never executed the deed of partition after understanding the content of the deed and moreover the said partition registered deed was never acted upon. After the agreement to sell, the defendant stopped payment of rent and then on execution of sale deed, the defendant No.1 became the absolute owner, therefore, there is no relationship of landlord land tenant between the parties.

6. On the basis of the aforesaid pleadings of the parties, the following issues were framed by the Court below :

- (i) Have the plaintiffs got any cause of action or right to sue?
- (ii) Is the suit as framed maintainable?

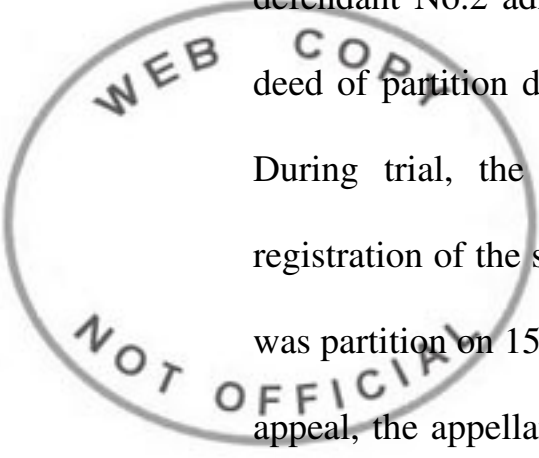
- 
- (iii) Is the suit barred by law of limitation, estoppel, waiver and acquiescence?
 - (iv) Is the suit properly valued and the Court fee paid sufficient?
 - (v) Is the plaintiffs got right to the disputed land?
 - (vi) Is the story of possession as set up by the plaintiffs correct?
 - (vii) Is the story of Kiryanama as set up by the plaintiffs correct and whether the relationship of landlord and tenant existing between the defendants and the plaintiffs?
 - (viii) Is the Kewala relied upon by the defendant genuine, valid and for consideration?
 - (ix) To what relief or reliefs if any are the plaintiff entitled?

7. The learned senior counsel, Mr. Dhruv Narain appearing on behalf of the appellant submitted that the learned Court below has dismissed the plaintiff's suit on presumption and assumption and without properly discussing the evidences oral and documentary in their right perspective. The registered partition deed was produced by the plaintiff which is dated 15th January, 1970. There was family arrangement between the parties and in this family arrangement, the suit property was allotted in favour of the plaintiff but the learned trial Court disbelieved this registered document wrongly. The learned counsel submitted that it is not the case of the defendant also that Dhalo Rai was joint with the plaintiff. According to the defendant No.1, after death of Anhauti Chaudhary, plaintiff No.1, Dhalo Rai separated. Therefore, according to the plaintiff, there was partition and according to the defendant also, there was separation. The only dispute according to plaintiff is the suit land was given in the share of plaintiff whereas according to the defendant, the suit land was given in the share of defendant No.2. The plaintiff produced the registered

partition deed whereas no reliable evidence has been produced by the defendant in support of the case pleaded by the defendant No.1. However, the Court below relied upon the case of the defendant discarding the registered document, i.e., registered partition deed ext.3.

8. The learned senior counsel for the appellant further submitted that since the suit property was allotted in the share of the plaintiff, the defendant No.2 had no right to sell the property, as such the defendant No.1 has not acquired any title on the basis of the sale deed. The learned Court below disbelieved the case also on the ground that the plaintiff never paid rent of the suit land after 1960-70 and that the plaintiff failed to prove that he performed *Shradh* of Anhauti Chaudhry. According to the learned counsel, even if the plaintiff failed to prove that Dhalo Rai was separate from his father after the death of their father, Anhuati Chudhary, there was partition by ext.3, the registered deed of partition and in that partition, the suit property fell in the share of the plaintiff. On these grounds, the learned counsel submitted that the impugned Judgment and Decree are liable to be set aside and the plaintiff's suit be decreed.

9. It may be mentioned here that an application under Order 41 Rule 27 CPC being I.A. No.6228 of 2014 has been filed by the appellants on 25th August, 2014. It was directed that this interlocutory application shall be heard at the time of hearing of the First Appeal. I heard the parties on this interlocutory application also.



10. The learned senior counsel, Mr. Dhruv Narain, submitted that the defendant No.2 admitted that there was partition between them by registered deed of partition dated 15.1.1970 and executed various registered sale deeds. During trial, the plaintiffs had no knowledge about the execution and registration of the sale deeds by defendant No.2 wherein he admitted that there was partition on 15.1.1970. However, subsequently during the pendency of the appeal, the appellant after searching obtained certified copy of registered sale deeds executed by defendant No.2 and in almost all the registered sale deeds, he admitted that there was partition between them by ext.3. Therefore, the plaintiff has filed the interlocutory application for permission to adduce additional evidence. According to the learned counsel for doing substantial justice, the appellant be permitted to adduce certified copy of registered sale deeds which are certified copy of the public document as additional evidence to enable the Court to pronounce the Judgment more satisfactorily. Moreover, the said sale deeds were not within knowledge of the appellant, and therefore, it could not be produced at the time of trial. The learned counsel further submitted that the appellate Court has the jurisdiction to allow the evidences to be produced for substantial cause also. In support of his contention, the learned counsel relied upon *AIR 1963 SC 1526 K. Venkataramiah Vs. A. Seetharama Reddy and 2013 (1) PLJR 48 SC Union of India vs. Ibrahim Uddin and another*

11. On the other hand, the learned senior counsel, Mr. Keshav Srivastava, appearing for the respondent submitted that none of the clause of Order 41 Rule 27 CPC is applicable in this present case, therefore, the appellant cannot be permitted to adduce additional evidence at this stage. The suit is of the year 1981 and this First Appeal itself is of the year 1983 but the interlocutory application has been filed in the year 2014, therefore, it is filed at a very belated stage. On this score alone, the interlocutory application is liable to be rejected. During the trial, the appellant could have exercised due diligence but he did not do so and held over the matter for such a long period and now at this stage, he has filed the application, therefore, this discretionary jurisdiction should not be exercised in favour of such a person who is guilty of negligence and laches of his own.

12. So far the merit of First Appeal is concerned, the learned senior counsel submitted that the so called registered partition deed was never signed by the defendant No.2 and it is forged document. It was never acted upon. The plaintiff never paid any rent. The general rule is that the Hindu family is presumed to be joint till the contrary is proved. In this case, therefore, the burden was on the plaintiff to prove the fact that there was partition but the plaintiff produced ext.3 which is a forged and fabricated document. Accordingly, the trial Court considering the evidences held that there had been no partition.

13. The learned counsel for the respondent further submitted that even according to the plaintiff the two plots were the self acquired property of Anhauti Chaudhary, therefore, after death of Anhauti Chaudahry Dhalo Rai also had a share in the property but plaintiff wrongly pleaded that Dhalo Rai had separated from his father and Anhauti Chaudahry died in the year 1965 in separation. When there was no property in the family then why Dhalo Rai should have separated from his father and if there had been separation then where is the question of subsequent partition arises. It appears that the plaintiff has filed the suit only to grab the share of Dhalo Rai. The learned Court below has rightly after appreciation of the evidences of the parties has recorded the finding that the plaintiff failed to prove his case. Accordingly, this First Appeal has got no merit. Both the parties, i.e., appellant as well as respondents have filed their respective written arguments.

14. In view of the above rival contentions of the parties, the points arises for consideration in this First Appeal is as to whether the plaintiff has been able to prove that there was partition and the disputed suit property fell in the share of the plaintiff in the partition or it fell in the share of the defendant No.2 as claimed by the defendant and whether the impugned Judgment and Decree are sustainable in the eye of law.

15. The specific case of the plaintiff is that Dhalo Rai separated from his father as there was no property. The lands comprised within two plots, i.e., 1395 and 1049 were self acquired property of Anhauti Chaudhary. Out of

those plots, R.S. plot No.474 measuring 4 decimal was carved out whereon the defendant No.1 was inducted as tenant by Anhauti Chaudhary after constructing house thereon. Further although defendant No.2 had no share in the said land, the plaintiff by family arrangement gave some portion of the land to the defendant No.2 by registered family arrangement deed ext.3. On the contrary, the defendant's case is that this ext.3 was never acted upon. It was not signed by the defendant No.2. Subsequently, there was private partition and in that partition, the suit land fell in the share of defendant No.2. Now, therefore, it becomes admitted fact that both the parties approached the Court on the same fact that there was partition between them. The only dispute appears to be as to whether there was partition effected by ext.3 or there was partition as alleged by the defendant. From perusal of ext.3, it appears that it is registered document and the disputed land has been allotted in the share of the plaintiff. This document is dated 15.01.1970. So far this ext.3 is concerned, the only case of the defendant is that it was not signed by defendant No.2.

16. In the case of *Prem Singh Vs. Birbal* 2006 (5) SCC 353, the Hon'ble Supreme Court at paragraph 28 has held that **'there is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof thus would be on a person who leads evidence to rebut the presumption.'** This decision has been followed by this Court in the case of *Sitasharan Prasad Vs. Manorama Devi* 2012 (2) BLJ 165 paragraph 13.

17. The specific pleading of the defendant is that the family arrangement deed is false and fabricated. The pleading is that plaintiff No.1 fraudulently without the knowledge of defendant No.2 and taking advantage of his illiteracy got a deed of partition dated 15.1.1970 executed. Now, therefore, in view of this pleading according to the defendant, the deed was created by the plaintiff No.1 fraudulently. If this is the fact as alleged by defendants then on the ground of fraud, the defendant No.2 could have got the partition deed set aside or cancelled but no action was taken by the defendant No.2. It may be mentioned here that he also filed written statement in the suit.

18. The Hon'ble Supreme Court in the case of **Noorul Hoda Vs. Bibi Raifunnisa 1996 (7) SCC 767**, has held that '**when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise bind him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded.**'

19. The Hon'ble Supreme Court in the case of **Abdul Rahim Vs. Abdul Zabbar A.I.R. 2010 SC 211** has held that '**a suit for cancellation of transaction whether on ground of being void or voidable would be governed by Article 59 of the Limitation Act.**' In view of this settled proposition of law, the defendant No.2 could have avoided this partition deed ext.3 within three years from the date of the execution thereof. It is not the

case of the defendants that defendant No.2 was not knowing the existence of this ext.3. Even after institution of the suit disclosing this ext.3, the defendant took no step. Now, therefore, by way of defence only on the basis of pleading, this registered document cannot be presumed or said that it was a fraudulent document.

20. The most important fact in this case is that the defendant No.2 himself admitted the execution and registration of this partition deed dated 15th January, 1970 ext.3. Admitting the partition dated 15.01.1970 the defendant No.2 has executed 11 registered sale deeds which are sought to be adduced as additional evidence. The question is whether the plaintiff appellant be allowed to adduce additional evidence at appellate stage or not. The Hon'ble Supreme Court in the case of **K. Venkataramiah Vs. A. Seetharama Reddy and others AIR 1963 SC 1526**, the five Judges Bench of the Apex Court at paragraph 10 and 13 has held as follows :

“(10) Section 107 of the Code of Civil Procedure empowers the appellate court “to take additional evidence or to require such evidence to be taken,” “subject to such conditions and limitations as may be prescribed.” Rule 27 of O. 41 of the Code of Civil Procedure prescribes the conditions and limitations in the matter. The rule first lays down that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. It then proceeds to lay down two classes of cases where the appellate court may allow additional evidence to be produced. One class is where the Court appealed from has refused to admit evidence which ought to have been admitted. The other class is whether the appellate court requires such additional evidence for itself either to enable it to pronounce judgment or for any other substantial cause. The second class of the rule

requires that when additional evidence is allowed to be produced by an appellate Court the Court shall record the reason for its admission.

(13) It is very much to be desired that the courts of appeal should not overlook the provisions of cl. (2) of the Rule and should record their reasons for admitting additional evidence. We are not prepared, however, to accept the contention of the appellant that the omission to record the reason vitiates the admission of the evidence. Clearly, the object of the provision is to keep a clear record of what weighed with the appellate court in allowing the additional evidence to be produced—whether this was done on the ground (i) that the court appealed from had refused to admit evidence which ought to have been admitted, or (ii) it allowed it because it required it to enable it to pronounce judgment in the appeal or (iii) it allowed this for any other substantial cause. Where a further appeal lies from the decision of the appellate court such recording of the reasons is necessary and useful also to the court of further appeal for deciding whether the discretion under the rule has been judicially exercised by the court below. The omission to record the reason must therefore be treated as a serious defect. Even so, we are unable to persuade ourselves that this provision is mandatory. For, it does not seem reasonable to think that the legislature intended that even though in the circumstances of a particular case it could be definitely ascertained from the record why the appellate court allowed additional evidence and it is clear that the power was properly exercised within the limitation imposed by the first clause of the Rule all that should be set at naught merely because the provision in the second clause was not complied with. It may be mentioned that as early as 1885, when considering a similar provision in the corresponding section of the Code of 1882, viz., S. 586, the High Court of Calcutta held that this provision for recording reasons is merely directory and not imperative, *Gopal Singh v. Jhakri Rai*, ILR 12 Cal 37. We are aware of no case in which the correctness of this view has been doubted. It is worth noticing that when the 1908 Code was framed and O. 41 R. 27 took the place of the old S. 568, the legislature was content to leave the provision as it was and did not think it necessary to say anything to make the requirement of recording reasons imperative. It is true that the word “shall” is used in R. 27(2), but that by itself does not make it mandatory. We are

therefore of opinion that the omission of the High Court to record reasons for allowing additional evidence does not vitiate such admission.

21. In the said decision at paragraph 16, it has been held by the Apex Court that **“Apart from this, it is well to remember that the appellate court has the power to allow additional evidence not only if it requires such evidence “to enable it to pronounce judgment” but also for “any other substantial cause”. There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence “to enable it to pronounce judgment”, it still considers that in the interest of justice, something remain obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner”.**

22. In the said decision at paragraph 17 and 18 the Apex Court has held as follows :

“(17) It is easy to see that such requirement of the Court to enable it to pronounce judgment or for any other substantial cause is not likely to arise ordinarily unless some inherent lacuna or defect becomes apparent on an examination of the evidence. That is why in Parsotim Thakur v. Lal Mohar Thakur, 53 Ind App 254: (AIR 1931 PC 143) the Privy Council while discussing whether additional evidence can be admitted observed:

“It may be required to enable the Court to pronounce judgment, or for any other substantial cause, but in either case it must be the Court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but “when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent.”

(18) As the Privy Council proceeded to point out:

“It may well be that the defect may be pointed out by a party, or that a party may move the Court to supply the defect, but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands.”

23. In **2008 (8) SCC 511 North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (dead) By LRs.** the Apex Court at paragraph 14 and 15 has held as follows :

“14. It is plain that under Clause (b) of sub-rule (1) of Rule 27 Order 41 CPC, with which we are concerned in the instant case, evidence may be admitted by an appellate authority if it “requires” to enable it to pronounce judgment “or for any other substantial cause”. The scope of the Rule, in particular of clause (b) was examined way back in 1931 by the Privy Council in *Parsotim Thakur v. Lal Mohar Thakur*. While observing that the provisions of Section 107 as elucidated by Order 41 Rule 27 are clearly not intended to allow litigant, who has been unsuccessful in the lower court, to patch up the weak parts of his case and fill up omissions in the court of appeal, it was observed as follows: (AIR p.148).

“... Under clause (1)(b) it is only where the appellate court „requires” it (i.e. finds it needful) that additional evidence can be admitted. It may be required to enable the court to pronounce judgment or for any other substantial cause, but in either case it must be the court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but

‘When on examining the evidence as it stands some inherent lacuna or defect becomes apparent’.”

15. Again in *K. Venkataramiah v. A Seetharama Reddy* a Constitution Bench of this Court while reiterating the aforementioned observations in *Parsotim* case pointed out that the appellate court has the power to allow additional evidence not only if it requires such evidence “to enable it to pronounce judgment” but also for “any other substantial cause”. There

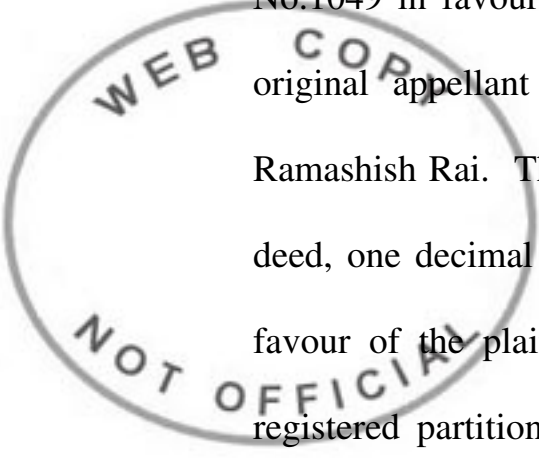
may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence “to enable it to pronounce judgment”, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Thus, the question whether looking into the documents, sought to be filed as additional evidence, would be necessary to pronounce judgment in a more satisfactory manner, has to be considered by the Court at the time of hearing of the appeal on merits.”

24. All these decisions have been reiterated by the Hon’ble Supreme Court recently in the case of **Union of India vs. Ibrahim Uddin and another** **2013 (1) PLJR 48 (SC).**

25. In view of the above settled principle of law laid down by the Apex Court, now it becomes clear that if the documents are necessary for pronouncing the Judgment in more satisfactory manner, the case will be one for allowing additional evidence for any other substantial cause provided under Order 41 Rule 27 (1) (b) CPC.

26. In the present case, the main dispute between the parties is whether there was partition or no partition. The genuineness or otherwise of the certified copies of the registered sale deeds produced by the appellant along with the interlocutory applications have not been challenged by the defendants. Now, therefore, it is admitted position that the sale deeds have been executed by defendant No.1.

27. From perusal of the registered sale deeds produced by the appellants by way of additional evidence, it appears that the registered sale deed dated



19.11.1986 is executed by defendant No.2 regarding one decimal land of plot No.1049 in favour of Pramila Devi w/o late Dinesh Rai. Dinesh Rai is the original appellant No.2 who is son of original plaintiff appellant No.1, Ramashish Rai. Therefore, this sale deed is intersee transaction. By this sale deed, one decimal land of plot No.1049 has been sold by defendant No.2 in favour of the plaintiffs. In this sale deed it is clearly mentioned that by registered partition deed on 15.1.1970, the property was partitioned. Now, therefore, the defendant No.2 admitted this fact of partition by registered deed on 15.1.1970. It is settled principle of law that admission is the best evidence and it needs no further proof. Further a Division Bench of this Court in the case of *Ram Bahadur Nath Tiwary Vs. Kedar Nath Tiwari (AIR 1977 Patna 59)* has held that **‘intersee transaction provides strong circumstances to show that there had been partition between the parties.’**

28. The learned counsel appearing on behalf of the respondent submitted that since there was no property, there is no question of partition arises because according to the plaintiff, the defendant No.2 had no share in the property. In such circumstances doubt is created as to how the registered deed of partition came in existence. Why some property was given by the plaintiff through this ext.3 partition deed. So far this submission is concerned, it may be mentioned here that from perusal of the pleadings of the parties, it appears that Anhauti Chaudhary had married four wives, one after the other. Dhalo Rai was the son from first wife. From second wife, he has a daughter Munna Devi who is

plaintiff No.4. After the death of second wife, he married Kewal Devi from whom the plaintiff No.1, Ramashish Rai was born and a daughter Laxmi Devi who is plaintiff No.5. After death of third wife, he married Lalwati Devi, plaintiff No.3 from whom he has two daughters, Shakunti Devi defendant No.5 and Fula Devi defendant No.6. From the above facts, it appears that the plaintiffs and defendant No.2 are descendents of Anhauti Chaudhary, no doubt but the defendant No.2 is the grand son of first wife. The case of the plaintiff is that because there was strain relation between the defendant No.2 and other plaintiff and defendant family arrangement / partition deed was executed and registered on 15.1.1970. Now, therefore, even if it is held that defendant No.2 had no right in the property then also by way of family arrangement, some property can be given to him.

29. The Hon'ble Supreme Court in the case of *Smt. Badami (deceased) by her legal representatives Vs. Bhali* 2012 (4) PLJR 25 SC has held that 'family arrangement need not construed and it need not be registered but it must prima-facie appear to be genuine. The Supreme Court following the earlier decision in the case of *Kale and Others Vs. Deputy Director of Consolidation and Others*, AIR 1976 SC 807 further held that the object of the arrangement is to protect family from filing long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Their Lordships opined that the family is to be understood in the wider

sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of claim or even if they have a spes successionis so that future disputes are sealed for ever and litigation are avoided.'

30. In view of the above settled proposition of law, even if ext.3 is held to be family arrangement then also it has got binding effect, particularly when the defendant No.2 admitted the execution of this ext.3 and pursuant to this ext.3, he had dealt with the property given in his share through this partition / family arrangement. As stated above, in this partition, the suit property was never allotted in favour of defendant No.2. Whatever property was allotted in favour of defendant No.2, he has already sold by executing different sale deeds. He by the impugned sale deed sold the property which was allotted in the share of the plaintiff.

31. The learned counsel for the respondent submitted that the sale deed was executed because there was agreement to sell in the year 1969 prior to existence of this partition deed ext.3. So far this submission is concerned, it appears that there is no such reference of any agreement said to have been executed by defendant No.2 in ext.3. In fact the agreement was executed then the defendant No.2 could have pointed out this matter and could have got the said portion allotted in his favour but there is nothing mentioned in ext.3 which is registered document. Moreover the Hon'ble Supreme Court in the case of *Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble 2009 (4) PLJR 225*

SC has held that ‘a purchaser has no right to claim exclusive possession of the property purchased. The purchaser has also no right to claim joint possession. He has only a right to file a suit.’ Further in the present case, it may be mentioned that the so called agreement was never produced before the Court. Therefore, it appears that only with a view to overreach, ext.3, this case has been pleaded by the defendant.

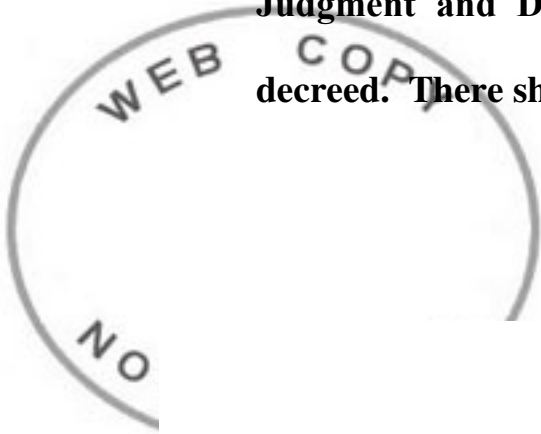
32. In view of my above discussion, it appears that the point raised by the parties can be very well disposed of on the basis of the documentary evidences, and therefore, it is not necessary here to discuss the oral evidences.

33. Now, it becomes clear that the defendant No.2 admitted the fact that there had been partition on 15.1.1970 through ext.3. This ext.3 was acted upon and defendant No.2 sold the properties allotted to him by executing registered sale deeds. There is even intersee transaction, i.e., defendant No.2 sold part of the plot in favour of the plaintiff. In the partition, the suit plot was allotted in the share of plaintiff. Therefore, the defendant No.2 had no right, title or interest to sell the property to the defendant No.1 who was admittedly a tenant. Since defendant No.2 had no title, he could not have conveyed valid title to the defendant No.1 by the registered sale deed executed by him. Accordingly, the defendant No.1 did not derive any title by the registered sale deed. It is admitted fact that as has been admitted by him that from the date of the agreement to sell, he never paid rent to the plaintiff. Therefore, the relationship of landlord and tenant is admitted by defendant No.2. However, subsequently,

the defendant No.2 on the basis of the sale deed in question was claiming title which I have already held that without title, the defendant No.2 sold the suit property. Now, therefore, the relationship of landlord and tenant will not seize because of this ext.3, and therefore, it continued and because of non-payment of rent, he became the defaulter in the eye of law as such is liable to be evicted.

34. From perusal of the Judgment of the Court below, it appears that the learned Court below has not considered all these aspects of the matter and has also not considered the well settled principle of law laid down by the Hon'ble Supreme Court. It further appears that the learned Court below heavily relied upon the fact that the defendant No.2 supported the case of defendant No.1. This defendant No.2 has been examined as D.W.39. The sale deed in favour of defendant No.1 has been marked as ext.'E'. The learned Court below considered as to whether consideration through this sale deed passed or not. The learned Court below also doubted ext.3 without considering the fact that there is no challenge within the stipulated period of limitation, and therefore, held that the plaintiff is required to prove the genuineness or otherwise of this ext.3. In my opinion, therefore, the Court below has approached the case in wrong angle and wrongly dismissed the plaintiff's suit. Therefore, the finding of the Court below on this question is hereby reversed. The point formulated is answered in favour of the plaintiff appellant and against the defendant respondent. Plaintiff has been able to prove his case pleaded.

35. In the result, this First Appeal is allowed. The impugned Judgment and Decree are set aside and the plaintiff's suit is hereby decreed. There shall be no order as to cost.



(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--