

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.108 of 2000

Appeal against judgment and decree of dismissal of suit dated 17.12.1992 passed in Title Suit No. 112 of 1986 by the court of learned Sub Judge, Siwan and the judgment and decree of reversal of Trial Court decree passed in Title Appeal No.07 of 1993 on 22.12.1999 by the court of learned Additional District and Sessions Judge VI, Siwan.

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Ram Pravesh Roy & Four Ors		Defendants/Respondents/Appellants
		Versus
Mostt. Rajmati Devi & Ors		...Plaintiff/Appellants /Respondents

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Appearance :

For the Appellants /s : Mr. Binod Kumar Singh, Adv.
Mr. Kaushalendra Narayan, Adv.
Mr. Kalindra Kumar Rai, Adv.

For the Respondent/s : Mr.S.S.Dwivedi, Sr.Adv.
: Mr. Ranjeet Kumar, Adv.
: Mr. Prem Sheela Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT

Date: 22-03-2018

The plaintiffs-respondents (hereinafter referred as plaintiffs) had brought T.S.No.112 of 1986 for declaration of their title on the suit land fully detailed in the plaint schedule as well as for declaration that the different registered sale deeds executed on different dates (fully detailed in plaint schedule) said to be executed by defendant No.1 Most Tapeshwari (now dead) in favour of defendant Nos. 2 to 6 (who are appellants s herein) are sham and forged transactions without consideration and competency to execute. As such, not binding on the plaintiffs and declaration that no title passed to the defendants in pursuance of those forged sale deeds.



2. The case and claim of the plaintiffs as disclosed in the pleading is that the cadastral survey recorded tenant Kodai Teli died leaving behind his only son Shiv Shankar Sah, the husband of the plaintiff No.3 Gharbharni Devi. During his lifetime, Shiv Shankar Sah alongwith Gharbharni Devi had executed different registered deed of gifts in favour of plaintiff No.1 Rajmati Devi who was granddaughter in relation as well as in favour of plaintiff No.2 Ram Pravesh Sah who was husband of plaintiff Rajmati Devi. The donees accepted the gift and came in possession of the gifted property. In the month of January, 1986, the defendants started threatening the plaintiffs to dispossess from the suit land, subsequently, the plaintiffs, on enquiry, came to know that some fictitious lady pretending herself to be Tapeshwari Devi, (defendant No.1) has created certain forged sale deeds in favour of defendant Nos.2 to 6 to put wrongful claim on the land of the plaintiffs. It is further stated that they started putting claim that Shiv Shankar Sah had a brother Prasad Sah and Most. Tapeshwari is daughter of Prasad Sah . As such, after death of Prasad Sah, she was legal heir and successor of Prasad Sah. In fact, Most Tapeshwari was daughter of Ram Lagan Sah, a co-villager.

3. It is worth to mention here that the learned trial court framed issue No.7 and decided that the plaintiffs were not in possession of the suit land as per the admission of



P.W.5 and no prayer was there, for recovery of possession . Hence, the suit was barred under Section 34 of the Specific Relief Act . In the aforesaid circumstances, the plaintiff-appellants filed a petition at the appellate stage in T.A.No. 17 of 1993 under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint incorporating relief for declaration of title and confirmation of possession and if found dispossessed for recovery of possession on the suit land. The learned lower appellate court refused the prayer on 27.09.1997 for amendment. The plaintiffs challenged the same before this Court in Civil Revision No.1838 of 1997. This Court allowed the prayer for amendment on 06.02.1998 with following observation in para-4 of the order:

“I have gone through the impugned order passed by the learned First appellate court. Addition of relief by the amendment admittedly will not amount to re-trial of the suit rather the appellate court is to decide the appeal on the basis of evidence adduced by the parties. The court below is not correct in law in holding that merely because the relief was available to the plaintiffs at the time when the suit was filed and since the same was not added in the plaint, the subsequent prayer for addition of



relief by amendment cannot be allowed. The proposed amendment also cannot be said to be malafide for the reason that the trial court in its judgment has decided the issue regarding the suit being hit by the provision of Section 34 of the Specific Relief Act which has necessitated the plaintiffs to seek amendment of the plaint. In that view of the matter, the approach of the court below is not correct and the impugned order suffers from serious irregularity”.

4. Accordingly, the plaint was amended.

5. The original defendant No.1 Most Tapeshwari filed a separate written statement refuting and disputing the case and claim of the plaintiffs with specific objection that the plaintiffs have not claimed for relief of recovery of possession and they are not in possession of the suit land. Hence, the suit is barred under Section 34 of the Specific Relief Act. The court fees has also not been properly paid on the market value of the suit land. In fact, Kodai Sah had two sons, namely, Shiv Shankar Sah and Ram Prasad Sah. The gift deed executed by plaintiff Gharbharni in favour of other plaintiffs or the gift deeds executed by her husband Shiv Shankar Sah are fictitious documents. The donees never came in possession of the gifted property. The gift deeds were never came into operation or



existence. The sale deeds executed by this defendant in favour of other defendants are genuine documents, they were executed after receipt of the due consideration money and the purchasers came in possession of the purchased property. None of the sale deeds were executed by any fictitious lady rather by this defendant herself and this fact is known to all including the plaintiffs. It is further pleaded that after death of Kodai Sah his two sons Shiv Shankar Sah and Ram Prasad came in possession of the property left by Kodai Sah and after sometimes, both the brothers separated and in the stage of separation, Ram Prasad Sah died in the year 1940, leaving behind his widow Most Sugeshwari and a daughter Tapeshwari vide paragraph-25 of the written statement. Both Sugeshwari and Tapeshwari came in possession of the property and after death of Sugeshwari, Tapeshwari came in possession of the entire property left by Ram Prasad.

6. Other defendants who entered into the shoes of defendant No.1, Tapeshwari after purchase of the land from Tapeshwari, almost adopted the written statement of Tapeshwari. The only important additional statement in the written statement is that Most Sugeshwari also died in the year 1967, leaving behind her only daughter Most Tapeshwari vide para-26 of the written statement.

7. The learned Trial Court framed 08 issues, the



issues which were raised before the learned trial court and decided are as follows:

Issue No.7:- Whether the suit is hit by S.34 of the Specific Relief Act?

Issue No.4:-Whether Kodai Sah had two sons or one son?

Issue No.5:- Whether Tapeshwari is daughter of Prasad Sah?

Issue No.6:- Whether the sale deeds executed by Most.Tepeshwari in favour of defendants are legal, valid for consideration and binding upon the plaintiffs?

8. While deciding Issue No.7, the learned trial court observed that P.W.5, Yodha Sah has admitted that he was dispossessed by the defendants from his purchased land. In view of his admission of dispossession and no prayer for recovery of possession, the suit is hit by Section 34 of the Specific Relief Act.

9. While deciding issue Nos. 4, 5 and 6 jointly, the learned trial court concluded as follows:

“ I find and hold that the plaintiffs have failed to prove that Kodai Sah had only one son and the defendants have been able to prove that Kodai Sah had two sons Shiv Shankar and



Prasad Sah and Tapeshwari is daughter of Prasad who inherited the property of Kodai Sah. The sale deed executed by Tapeshwari in favour of defendants are legal and valid and for consideration and they are binding upon the plaintiffs. These issues are decided in favour of the defendants and against the plaintiffs.”

10. In the result, the suit was dismissed.

11. The learned lower appellate court did not touch the finding of the learned trial court on the issue of bar of the suit under Specific Relief Act and abruptly granted relief for recovery of possession. The learned lower appellate court considered only one point in the appeal, as to whether Kodai Sah had any son named as Prasad Sah who had a daughter as Tapeshwari Devi who had acquired right, title and interest in the property allegedly left by Prasad Sah. After consideration of the evidence on the record, the lower appellate court concluded as follows :

“ Thus from the abovementioned discussion I am constrained to come to the conclusion that recorded tenant Kodai Sah had no son named as Prasad and, and so, Tapeshwari Devi who claimed to derive right , title and interest in the



suit land from Prasad Sah, had no right, title and interest to transfer the suit land, and consequently the respondent-defendants had not right, title and interest in the suit land on the strength of sale deeds executed by Tapeshwari Devi.”

12. In the result , the judgment and decree of the learned trial court was set aside and the appeal was allowed.

13. This second appeal was admitted for hearing on 11.04.2002 and three following substantial questions of law were formulated for consideration:

- I. Whether or not the suit is hit by the provisions of Section 34 of the Specific Relief Act, and to what extent the position has been salvaged by order dated 06.02.98 in Civil Revision No. 1838 of 1997?
- II. Whether or not the learned court of appeal below has erred in applying the provisions of Section 50 of the Evidence Act while scanning the evidence of the plaintiffs, particularly PWs. No.2 and 12?
- III. To what extent the learned court of appeal below is obliged in law to meet the reasonings of the learned trial court while reversing his



judgment?

14. It was left open to the parties to frame additional question of law at the time of hearing of this appeal.

15. At the time of hearing of the appeal, learned counsel for the appellants raised the substantial question of law is as to whether the learned lower appellate court has erred in law by adopting double standard in appreciation of evidence of the plaintiffs' witnesses and the defendants' witnesses vide paragraph-22 of the judgment impugned.

16. **Question No.1:-** Learned counsel for the appellants submits that the learned trial court after consideration of the evidence on record, (vide P.W.5) has come to the conclusion that the plaintiffs were found dispossessed from the suit land, since prior to institution of the suit. Hence, they should have sought for relief of recovery of possession, otherwise, only declaration cannot be granted in favour of the plaintiffs in view of the specific bar under Section 34 of the Specific Relief Act. According to learned counsel learned, lower appellate court has not dispelled the finding of the Trial Judge by cogent reason rather has not taken up the aforesaid finding and abruptly granted relief of recovery of possession, which is bad in law and on this ground alone, the judgment and decree of the learned lower appellate court is fit to be set aside.

17. To contra , learned counsel for the



respondents referred to the evidence of P.W.5 and submits that the finding of the learned trial court that the plaintiffs were/ are not in possession of the suit land is erroneous one. Hence, there was no need to pray for recovery of possession. Moreover, that technicality was cured by allowance of amendment, the effect whereof would be from the date of the institution of the suit. In the circumstance, no parties raised this issue before the learned lower appellate court for consideration. Hence, the learned lower appellate court did not consider the same.

18. On bare perusal of the judgment of the learned lower appellate court, it appears that the learned lower appellate court has not disturbed the finding of the learned trial court on the issue. Hence, the grant of relief of recovery of possession by the learned lower appellate court is bad in law which cannot be sustained. However, the most important aspect to be considered is whether the finding of the trial court that the suit is hit by the provisions of Section 34 of the Specific Relief Act is sustainable in law and on facts. In other words, whether the same suffers from error of record.

19. It is specifically pleaded by the plaintiffs and all the plaintiffs' witnesses examined on the point, barring P.W.5, have stated that after death of Kodai Sah, Shiv Shankar Sah his sole son came in possession of the suit land and after gift deed executed by Shiv Shankar Sah and his wife, the donees



are in possession of the same. P.W.5 Jodha Sah is purchaser from the donee i.e. plaintiff Rajmati. He further stated that other members of his family had also purchased from Rajmati and purchasers came into possession by constructing a house etc on the portion of the land. In paragraph-6 of his cross examination, the witness stated that when the defendants got sale deed executed in their favour by Tapeshwari, they started quarrelling for possession and ultimately they came in possession. P.W.5 has referred about his dispossession only. P.W.5 is not a party to the suit. He has remedy in law to claim recovery of possession in a separate suit. Only due to his statement to the aforesaid extent, it cannot be said that it is admission of the party plaintiffs or their witnesses that they were dispossessed of, ever by the defendants from the suit land. What is noticeable is that a purchaser i.e. P.W.5 from the plaintiff came in possession after purchase and subsequently he was dispossessed of. P.W.5 is not a party to the suit. In the circumstances, the learned trial court has committed error of record in coming to the conclusion that the suit was barred under Section 34 of the Specific Relief Act. Accordingly, the finding of the learned Trial Court on the aforesaid issue is set aside and this question is decided accordingly.

20. **Question No.2:-** Submission of the learned counsel for the appellants is that the learned lower appellate



court has erred in applying principles of Section 50 of the Evidence Act, while considering the evidence of P.W.2 and P.W.12. According to the learned counsel, the learned lower appellate court has erred in accepting the opinion, on the relationship between Shiv Shankar Sah and Ram Prasad Sah or between Shiv Shankar Sah and Tapeshwari Devi, expressed by P.W.12 and P.W.2 as relevant under Section 50 of the Evidence Act.

21. Learned counsel for the respondents submits that even if it is assumed for the argument sake that the learned court of appeal below has wrongly applied the provisions of Section 50 of the Evidence Act, the final conclusion would be the same.

22. The application of Section 50 of the Evidence Act was considered by the Hon'ble Supreme Court in the case of ***Dolgobinda Paricha Vs. Nimai Charan Misra & Ors.***, reported in ***AIR 1959 SC 914***. Paragraph-6 of the aforesaid judgment is relevant for the purpose, which is being reproduced below:

“6. We proceed to consider the second question first. The Evidence Act states that the expression “facts in issue” means and includes any fact from which either by itself or in connection with other facts the



existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follow; “evidence” means and includes (1) all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry; and (2) all documents produced for the inspection of the court. It further states that one fact is said to be relevant to another when the one is connected with the other in any one of the ways referred to in the provisions of the Evidence Act relating to the relevancy of facts. Section 5 of the Evidence Act lays down that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are declared to be relevant and of no others. It is in the context of these provisions of the Evidence Act that we have to consider Section 50 which occurs in Chapter II, headed “Of the Relevancy of Facts”. Section 50, insofar as it is relevant for our purpose, is in these terms:



“50. When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact.”

On a plain reading of the section it is quite clear that it deals with relevancy of a particular fact. It states in effect that when the court has to form an opinion as to the relationship of one person to another the opinion expressed by conduct as to the existence of such relationship of any person who has special means of knowledge on the subject of that relationship is a relevant fact. The two illustrations appended to the section clearly bring out the true scope and effect of the section. It appears to us that the essential requirements of the section are — (1) there must be a case where the court has to form an opinion as to the relationship of one person to another; (2) in such a case, the opinion expressed by conduct as to the



existence of such relationship is a relevant fact; (3) but the person whose opinion expressed by conduct is relevant must be a person who as a member of the family or otherwise has special means of knowledge on the particular subject of relationship; in other words, the person must fulfill the condition laid down in the latter part of the section. If the person fulfils that condition, then what is relevant is his opinion expressed by conduct. Opinion means something more than mere retailing of gossip or of hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question. Now, the "belief" or conviction may manifest itself in conduct or behaviour which indicates the existence of the belief or opinion. What the section says is that such conduct or outward behaviour as evidence of the opinion held is relevant and may, therefore, be proved. We are of the view that the true scope and effect of Section 50 of the Evidence Act has been correctly and succinctly put in the



following observations made in Chandu Lal Agarwala v. Khalilar Rahman, ILR (1942) 2 Cal 299 at p. 309: (AIR 1943 Cal 76 at p. 80).

“It is only ‘opinion as expressed by conduct’ which is made relevant. This is how the conduct comes in. The offered item of evidence is ‘the conduct’, but what is made admissible in evidence is ‘the opinion’, the opinion as expressed by such conduct. The offered item of evidence thus only moves the court to an intermediate decision: its immediate effect is only to move the court to see if this conduct establishes any ‘opinion’ of the person, whose conduct is in evidence, as to the relationship in question. In order to enable the court to infer ‘the opinion’, the conduct must be of a tenor which cannot well be supposed to have been willed without the inner existence of the ‘opinion’.

When the conduct is of such a tenor, the court only gets to a relevant piece of evidence, namely, the opinion of a person. It still remains for the court to weigh such evidence



and come to its own opinion as to the 'factum probandum'— as to the relationship in question."

We also accept as correct the view that Section 50 does not make evidence of mere general reputation (without conduct) admissible as proof of relationship: Lakshmi Reddi v. Venkata Reddi, AIR 1937 PC 201".

23. The Hon'ble Supreme Court further held, on interpretation of Section 60 of the Evidence Act that oral evidence of conduct under Section 50 of the Act must be direct.

24. On careful perusal of the evidence of P.W.12 Gharbharni Devi who is party plaintiff No.3, it is evident that she has not expressed any opinion on the relationship rather she has disclosed her personal knowledge of the family because she is wife of Shiv Shankar Sah. Therefore, her evidence cannot be treated as opinion. P.W.2 Ram Prit Sah has deposed that he had heard from his uncle about the relationship of the plaintiff and respondent. Thus, apparently, the learned lower appellate court has wrongly applied the provisions of Section 50 of the Evidence Act in the matter of appreciation of evidence of P.W.2 and P.W.12 for the reason that P.W.2 and P.W.12 have not expressed their opinion on the relationship.

25. **Question No.3:-** On scrutiny of the oral and



documentary evidence adduced on behalf of the parties, it is evident that witnesses of the plaintiffs have consistently supported that Prasad Sah was not brother of Shiv Shankar Sah, whereas defendants' witnesses have deposed that Prasad Sah was brother of Shiv Shankar Sah. Learned trial court relied upon the witnesses of the defendants for its conclusion that Prasad Sah was brother of Shiv Shankar Sah. The learned trial court further relied on Ext.D, a written statement filed by Shiv Shankar Sah in a different civil suit bearing T.S.No.171 of 1982, wherein he had initially admitted that Prasad Sah was his brother. However, subsequently by amendment, withdrawn the aforesaid statement. The learned trial court accepted the conduct of Shiv Shankar Sah in admitting Prasad Sah as his brother as relevant fact. The learned trial court further relied on Ext.-E , which is certified copy of the register of death containing name of Prasad Sah Son of Kodai Sah.

26. The learned lower appellate court assigned its own reason for believing the witnesses of the plaintiffs as well as reason for non-acceptance of these documents Exts.-D and E. The learned lower appellate court found that Ext-E is a forged document because original register of entry of death of the said Serial Number was called for which does not contain name of Prasad Sah at the referred column or anywhere. Likewise Ext-D was not accepted as admission of relationship.



27. In **Arumugham & Ors Vs. Sundarambal & Anr**, reported in **(1999) 4 SCC 350**, the Hon'ble Supreme Court observed as follows in para-14 of the judgment.

“14. From the aforesaid Judgment of the three Judges bench in Ramachandra Ayyar's case (AIR 1963 SC 302), it is clear that this Court held that second appellate Court cannot interfere with the Judgment of the first appellate Court on the ground that the first appellate Court had not come to close grips with the reasoning of the trial Court. It is open to the first appellate Court to consider the evidence adduced by the parties and give its own reasons for accepting the evidence on one side or rejecting the evidence on other side. It is not permissible for the second appellate Court to interfere with such findings of the first appellate Court only on the ground that the first appellate Court had not come to grips with the reasoning given by the trial Court. The aforesaid Judgment of this Court in Ramachandra Ayyar's case (AIR 1963 SC 302) specifically distinguished Rani



Hemanta Kumar Debi V/s. Maharaja Jagadindra Nath Roy Bahadur, (1906) 16 Mad LJ 272 (PC) rendered by the Privy Council on the ground that that was a case wherein the High Court was dealing with a first appeal. The observations made by the Privy Council in that context would not be applicable to cases where the second appellate Court was dealing with the correctness of the Judgment of the first appellate court which reversed the trial Court”.

28. On careful consideration of the judgments passed by the courts below, I am of the considered view that the learned lower appellate court has substantially complied the requirement of meeting with the reasons of the learned trial court and the judgment of the learned lower appellate court requires no interference on this score. It is worth to mention that the learned lower appellate court has not adopted any double standard in appreciation of evidence of the parties to materially affect the interest of any of the parties.

29. Learned counsel for the respondents submits that it is admitted case of the defendant-appellants that Shiv Shankar Sah was son of Kodai Sah. Even if it is assumed for the



argument sake that Prasad Sah was also son of Kodai Sah, the defendants have failed to prove a partition of the joint Hindu Mitakshara family property in between Shiv Shankar Sah and Prasad Sah. It is admitted case that Kodai Sah died leaving behind the joint family property. The defendants assert that thereafter partition took place between Shiv Shankar Sah and Prasad Sah. Once the defendant has pleaded partition of the joint Hindu Mitakshara family property, it was burden of the defendants to prove the same. Defendants have miserably failed to prove as to when the property was partitioned by metes and bounds and which property was allotted to the share of Shiv Shankar Sah and which property to the share of Prasad Sah or whether ever that partition was acted upon. According to learned counsel, D.W.15 Tapeshwari who was original defendant No.1, though in her examination-in-chief supported the case disclosed in the written statement regarding partition. However, in paragraph-10 of the cross examination, she stated that Prasad Sah and Shiv Shankar Sah were loving each other. Both were joint in all respects and in the same jointness, Prasad Sah died. If the aforesaid facts stand proved by admission, joint Hindu Mitakshara family property of Prasad Sah would not go to his wife or his daughter when admittedly Prasad Sah had died in the year 1940 or even if his death certificate vide Ext-E is assumed to be correct in the year 1949. Prior to coming into



force of Hindu Succession Act, 1956, a female has no property right in the Mitakshara coparcenary, only widow had limited right of maintenance which is not a case of the defendants herein. Only limited right of a Hindu female matured into absolute right after 1956 in view of provisions of Section 14 of the Hindu Succession Act.

30. Learned counsel submits that the learned trial court has completely ignored this substantial question of law and the learned lower appellate court though has considered the evidence available on the record in this regard. However, did not record any conclusion. In the circumstances, this Court can well decide the issue in view of the powers vested by Section 103 of the Code of Civil Procedure, which reads as follows:

“103. Power of High Court to determine issue of fact.- In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,—

(a) which has not been determined by the lower appellate court or both by the court of first instance and the lower appellate court, or
(b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in section



100.

31. It is evident from the record that it is definite case of the defendants that Prasad Sah died in the year 1940. Defendant No.1 Tapeshwari has admitted that Prasad Sah died in jointness with Shiv Shankar Sah. No other witness of the defendant has deposed that there was partition between Prasad Sah and Shiv Shankar Sah nor any evidence has been brought on the record to substantiate partition and the fact that the partition was acted upon. In the circumstance, the claim of the defendants that after death of Ram Prasad Sah in the year 1940 or 1949, his property was inherited by his wife Sugeshwari Devi and after her death, the property came to her only daughter Tapeshwari as per the Hindu Law prevailing on the date the inheritance opened is not acceptable according to law.

32. Under Section 14 of the Hindu Succession Act, 1956, only property possessed by a female Hindu, whether acquired before or after the commencement of the Act shall be held by her as full owner thereof and not as a limited owner. Herein, it is not the case of the defendants that after death of Ram Prasad Sah, Sugeshwari got the property as limited owner in lieu of her maintenance rather it is definite case that there was partition of the joint family property and after death of Ram Prasad Sah, his wife and thereafter his daughter inherited the property. Moreover, D.W.6 in para-5 stated that Sugeshwari



predeceased Prasad Sah.

33. Since, the defendants failed to prove a case of partition between Shiv Shankar Sah and Ram Prasad Sah they could not, get under the law any right, title or interest in the joint Hindu Mitakshara family property. Therefore, Tapeshwari had no right to transfer the joint Hindu family property by the sale deeds which were under challenge in the suit. For this reason also, the suit of the plaintiffs was fit to be decreed. Accordingly, the same is hereby decreed and the finding and conclusion of the learned lower appellate court to the aforesaid extent stands affirmed.

34. Learned counsel for the appellants has referred to the following judgments of the Hon'ble Apex Court: (I) Case of **U. Manjunath Rao Vs. U. Chandrashekhar**, reported in **2017(3) PLJR (SC) 441**. (II) Case of **Rangammal Vs. Kuppuswami**, reported in **AIR 2011 SC 2344**. (III) Case of **Union of India & Ors Vs. Vasavi Co-operative Housing Society Ltd.& Ors**, reported in **AIR 2014 SC 937**. (IV) Case of **Santosh Hazari Vs. Purushottam Tiwari**, reported in **AIR 2001 SC 965**. (V) Case of **Jaideo Yadav & Ors Vs. Raghunath Yadav & Anr**, reported in **2009(3) PLJR 529**. (VI) Case of **Dukhan Ram & Ors Vs. Ram Nanda Singh & Ors**, reported in **AIR 1961 Patna 425**.

35. The aforesaid judgments are either not



applicable in the facts and circumstances of this case or this Court has taken no contrary view, to the principles laid down therein.

36. Learned counsel for the respondents has referred (I) Case of **Madhusudan Das Vs. Smt. Narayani Bai & Ors** , reported in **AIR 1983 Patna 114**. (II) Case of **B.Sunitha Vs. State of Telangana & Anr** , reported in **(2018) 1 SCC 638**. (III) Case of **R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple & Anr** , reported in **(2003) 8 SCC 752**. (IV) Case of **Gopinath Sarangi & Anr Vs. Ajharrul Haque** , reported in **AIR 1927 Patna 225**. (V) Case of **Subhra Mukharjee & Anr Vs. Bharat Coking Coal Ltd. & Ors** , reported in **AIR 2000 SC 1203**.

37. On consideration of the judgments, I find that the principles laid down therein are not applicable in the facts and circumstance of the case and this Court has not taken any contrary view to distinguish those judgments.

38. This appeal accordingly stands dismissed.

39. The parties shall bear their own costs in the facts and circumstances of this case.

(Birendra Kumar, J)

Nitesh/-

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