

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.120 of 2009

1 (i) Most. Dhanwanti Devi, wife of late Gupteshwar Singh
(ii) Ashok Singh, son of late Gupteshwar Singh
(iii) Anil Singh, son of late Gupteshwar Singh
(iv) Pramod Singh, son of late Gupteshwar Singh
(v) Sunil Kr. Singh, son of late Gupteshwar Singh, All R/o Kamp Sheonagar, Malwar, Rohtas
(vi) Sarita Devi, D/o late Gupteshwar Singh, W/o Ashok Singh, R/o Nandan, Nauhatta, Balawon, Bhabhua (Kaimur)
(vii) Raj Kumari Devi, D/o late Gupteshwar Singh, Wife of Uma Shankar Singh, R/o Akodha Padari, Sheonagar, Rohtas

... .. Appellant/s

Versus

1(i) Sanjharo Devi, D/o Late Ramayan Mahto, wife of Suresh Singh, resident of Nuranganj, Baulia Road, Sasaram, Rohtas
(ii) Chhato Devi, D/o Late Ramayan Mahto, wife of Raj Kr. Singh, Resident of Barka Gaon Mohan Darawa Belam, Kaimur, Bhabhua
(iii) Dharshila Devi, D/o Late Ramayan Singh, wife of Ravi Shankar Singh, resident of Umapur, Bhagwanpur, Kaimur, Bhabhua
(iv) Dharmjeet Kumar, grandson of Late Ramayan Singh, son of Late Kameshwar Singh, resident of Karup Sheo Nagar, Malwar, Rohtas
2. Anita Devi, wife of Kameshwar Mahto
2(ka) Kalendra Mahto
2(kha) Gurhia, both son and daughter of Kameshwar Mahto, major vide order dated 26.04.2018
3. Mahangu Mahto, son fo Late Deoraj Mahto
4. Surendra Mahto, son of Mahangu Mahto

----Defendants-Respondents-Respondents Ist Set

5(A) Most. Panawa Devi, wife of Late Jai gobind Mahto
5(B) Indradeo Mahto
5(C) Chandradeo Mahto
5(D) Nagendra Mahto, all are sons of Late Jai govind Mahto

---Defendants/Respondents-Respondents-IIInd Set

6(A) Yamuna Singh, son of Late Yodha Mahto
6(B) Nand Kishore Singh @ Musafir Singh, son of Late Yodha Singh
All are residents of village Karup, P.O. Malwar, P.S. Sheosagar, District Rohtas
6(C) Smt. Resmi Devi, wife of Gori Shankar Singh, resident of village and P.S. Raipur Chor, District Rohtas
6(D) Smt. Lachia Devi, wife of Chhedi Singh, resident of village and P.O. Jamuhar, P.S. Dehri, District Rohtas
7. Dolatia Devi, wife of Jodha Mahto, resident of village Karup, P.S. Sheo Sagar, District Rohtas

---Defendants/ Respondents-Respondents III set

... .. Respondent/s

with
SECOND APPEAL No. 121 of 2009



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1 (i) Most. Dhanwanti Devi, wife of late Gupteshwar Singh
(ii) Ashok Singh, son of late Gupteshwar Singh
(iii) Anil Singh, son of late Gupteshwar Singh
(iv) Pramod Singh, son of late Gupteshwar Singh
(v) Sunil Kr. Singh, son of late Gupteshwar Singh, All R/o Kamp Sheonagar, Malwar, Rohtas
(vi) Sarita Devi, D/o late Gupteshwar Singh, W/o Ashok Singh, R/o Nandan, Nauhatta, Balawon, Bhabhua (Kaimur)
(vii) Raj Kumari Devi, D/o late Gupteshwar Singh, Wife of Uma Shankar Singh, R/o Akodha Padari, Sheonagar, Rohtas

... .. Appellant/s

Versus

1(i) Sanjharo Devi, D/o Late Ramayan Mahto, wife of Suresh Singh, resident of Nuranganj, Baulia Road, Sasaram, Rohtas
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(iv) Dharmjeet Kumar, grandson of Late Ramayan Singh, son of Late Kameshwar Singh, resident of Karup Sheo Nagar, Malwar, Rohtas
2. Mahangu Singh, son of Late Deoraj Singh
3(K) Most. Anita Devi, wife of Late Kameshwar Singh
3(Kh) Kalendra Mahto, major vide order dt. 26.04.2018, son of Late Kameshwar Singh
3(G) Guddiya Kumari, major vide order dt. 26.04.2018, D/o Late Kameshwar Singh
4. Surendra Singh, son of Mahangu Singh
Above all are resident of village Karup, P.S. Shiv Sagar, P.O. Malwar, District Rohtas

-----Defendants/Respondents/ Respondents Ist Set

5. Kritrim Prajanan Pranali Officer, Kendriya Shukrakiosh Office, Sasaram

6. The State of Bihar through the Collector, Rohtas

-----Defendants/Respondents/ Respondents 2nd Set

... .. Respondent/s

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Appearance :

(In SECOND APPEAL No. 120 of 2009)

For the Appellant/s : Mr. Shashi Shekhar Dwivedi, Sr. Adv.
Mr. Ashok Kumar, Adv.
For the Respondent/s : Mr. Dhruv Narayan, Sr. Adv.
Mr. Rajani Kant Singh, Adv.

(In SECOND APPEAL No. 121 of 2009)

For the Appellant/s : Mr. Shashi Shekhar Dwivedi, Sr. Adv.
Mr. Ashok Kumar, Adv.
For the Respondent/s : Mr. Dhruv Narayan, Sr. Adv.
Mr. Rajani Kant Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 17-06-2020



These two second appeal arise out of common judgment and decree dated 23.12.2008, passed by learned Additional District Judge (Fast Track Court-III), Rohtas whereby he has affirmed the judgment and decree dated 02.12.1995, passed by learned Sub-Judge-III, Sasaram in Title Suit No. 91 of 1986 and another judgment and decree dated 13.02.1998, passed by learned Sub-Judge-VII, Sasaram in Title Suit No. 88 of 1987. Second Appeal No. 120 of 2009 arises out of Title Appeal No. 04/1996, whereas Second Appeal No. 121 of 2009 arises out of Title Appeal No. 28/1998. Title Appeal No. 04/1996 had arisen out of Title Suit No. 91 of 1986 and Title Appeal No. 28 of 1998 had arisen before the first appellate court out of Title Suit No. 88 of 1987. Both the appeals have been disposed of by the impugned common judgment and decree of the first appellate court below.

2. Be it noted at the outset that parties in both the proceedings are/ were the same and evidently because similar issues had arisen on certain identical set of facts, which were at the root of the dispute that both the title appeals were jointly heard by learned first appellate court, which have been dismissed by the impugned common judgment and decree.

3. In order to appreciate the circumstance in which the two title suits were filed by the appellants/ their predecessor-in-interest, I need to take note of the facts pleaded by the contesting



parties before the trial court first.

4. The dispute between the parties relates to lands bearing Cadastral Khata No. 25, 26, 27 and 19 of Mauza Karup and Cadastral Khata No. 70 of Mauza Mor belonging to R.S. Khata No. 31 (Mauza Karup) and 63 (Mauza Mor).

5. There is no dispute about the genealogy. One Deoraj Mahto of village Beda had four sons, namely, Gopal Mahto, Ram Narayan Mahto, Ramayan Mahto and Mahangu Mahto. Gopal Mahto died leaving behind his widow Maheshwari Kuer. Title Suit No. 91 of 1986 was filed by the heirs of late Gopal Mahto seeking, *inter alia*, a declaration that deed of *Taksimnama* dated 15.03.1986 executed by Ramayan Mahto (Defendant No. 1) and Mahangu Mahto (Defendant No. 2) in favour of defendants second set, namely, Jai Govind Mahto and other two sale-deeds executed on 12.05.1983 by Ramayan Mahto in favour of defendant third set, namely, Jodha Mahto and his wife Daulatiya Devi with respect to the land fully described in Schedule-‘kha’ of the plaint, which was part of Schedule-‘ka’ of the plaint, were collusive, without any authority and not binding against the plaintiffs. The plaintiffs pleaded that plaintiff No. 1 (Gupteshwar Singh, since deceased and being represented by legal heirs and representatives in the present second appeal) was the only son of Gopal Mahto and plaintiff No. 2, the widow of said Gopal Mahto. It was the case of the plaintiffs



that one Pahalwan Mahto of village Karup did not have any male issue and since the very childhood of Gopal Mahto, Pahalwan Mahto had bestowed lots of love and affection on him and had always treated him like his son. Out of love and affection, Pahalwan Mahto had executed a registered deed of gift dated 20.04.1936 in favour of Gopal Mahto in respect of his all lands and house situate at village Karup and Mor. Gopal Mahto had accepted the deed of gift and he accordingly remained exclusive possession of the same till his death whereafter the plaintiffs have been coming in possession continuously. The details of the gifted property is given in Schedule- 'ka' of the plaint. The entire dispute in these two appeals revolves around the effect of execution of the gift deed in respect of the disputed property as described in Schedule- 'ka' of the plaint. It has been further case of the plaintiffs that name of plaintiff no. 1 was mutated in *Sarishta* of the ex-landlords whereafter, rent receipts, after realization of rents were issued in the name of Gopal Mahto before vesting of *Jamindari* and after vesting of estate, rent was regularly realized by the State of Bihar from Gopal Mahto. It was pleaded in the plaint that canal *purcha* also stood in the name of Gopal Mahto, who paid water rent. It is accordingly the plaintiffs' case that Schedule- 'ka' property was self-acquired property of Gopal Mahto over which the plaintiffs enjoyed exclusive title and



possession.

6. Gopal Mahto died in 1979, after which the plaintiffs came in exclusive possession of the gifted land and other properties of Gopal Mahto. It is further case of the plaintiffs that the ancestral as well as purchased lands of the family of Deoraj Mahto of village Beda was recorded in the R.S. *Khatiyan* in the name of Deoraj Mahto and his four sons. According to the plaintiffs, all the ancestral as well as acquired properties of the joint family of the descendants of Deoraj Mahto were partitioned by metes and bounds through a registered deed of partition dated 12.06.1986 executed by plaintiff no. 1, Ramayan Mahto, Mahangu Mahto and Ram Narayan Mahto.

7. The defendants first set filed their written statements. They pleaded, *inter alia*, on behalf of defendants first set that the said Pahalwan Mahto was maternal grand-father of Gopal Mahto and the defendants second set, inasmuch as, his only daughter, who was the sole issue, was married to Deoraj Mahto. The deed of gift, which was executed in favour of Gopal Mahto on 20.04.1936, was for the entire family of Deoraj Mahto including all his four sons. According to them, Pahalwan Mahto did not have any intention to execute the deed of gift exclusively in favour of Gopal Mahto. They pleaded that all the four sons of Deoraj Mahto came in possession of the gifted land as donees from the very beginning



and have been continuing in possession. They further pleaded that Gopal Mahto, being the eldest son of Deoraj Mahto, used to look after the family and the family property and make payment of rent in the nature of land revenue and obtain rent receipts. They also pleaded that even Gopal Mahto had never treated schedule-ka property as his self-acquired property nor did he ever come in its exclusive possession. They also pleaded that the registered deed of family arrangement dated 12.06.1984 executed by plaintiff no. 1, Ramayan Mahto, Mahangu Mahto and Ram Narayan Mahto is legal and valid.

8. They next pleaded that before revisional survey operation had begun, Deoraj Mahto had partitioned the lands of village Beda, Balathua, Karup and Mor amongst his four sons whereby land of village Beda and Balathua was allotted to Ram Narayan Mahto and that of Karup and Mor was allotted to Ramayan Mahto, Mahangu Mahto and Ram Narayan Mahto and accordingly the suit land was recorded in R.S. *Khatiyen* under R.S. Khata No. 31 admeasuring 5 acres 64 decimals of village Karup jointly in the name of Gopal Mahto, Ramayan Mahto and Mahangu Mahto and under Khata No. 63, admeasuring 66 decimals of village Mor in the name of three brothers. They further pleaded that after revisional survey operation in 1970, Gopal Mahto had divided the disputed land amongst his three brothers



and since then they were coming in separate possession. According to the defendants first set, the deed of family arrangement dated 12.06.1984 was executed by the four branches of Deoraj Mahto for satisfaction of Ram Narayan Mahto who was given the ancestral land of village Beda and Balathua. The deed of partition dated 12.06.1986 was genuine and valid, which was in the knowledge of the plaintiffs. In respect of the execution of two registered sale-deeds dated 12.05.1983 in favour of Yodha Singh and wife of Yodha Singh by Ramayan Mahto, it was the case of the defendants that the plot No. 1039 in question admeasuring 4 decimals was allotted to Ramayan Mahto on partition and he has been coming in possession thereof, peacefully and openly.

9. The defendants second set also filed their written statement. On the basis of rival pleadings of the parties in Title Suit No. 91 of 1986 the trial court framed seven issues as under :-

- “(1) Whether the suit is maintainable in the eye of law?”*
- (2) Whether the plaintiff has valid cause of action or not?*
- (3) Whether the plaintiff has paid the advolrum court fee in this case?*
- (4) Whether the case of the plaintiff is hit by survey and Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956?*
- (5) Whether the gifted property detailed in Schedule ‘ka’ of the plaint was the exclusive property of Gopal Mahto and was gifted by Pahalwan Mahto according to the case of*



the plaintiff?

- (6) *Whether the defendant Ist set Ramayan Mahto and Mahngu Mahto had any right title or authority to execute deed of partition dt. 15.3.86 in favour of Jaigovind Mahto deft. 2nd set and deed of sale dated 12.5.83 in favour of Jodha Mahto and his wife Daulatia with respect to Schedule 'kha' land of the plaint which is part of 'ka' land?*
- (7) *What relief and reliefs the plaintiff is entitle for?"*

10. In Title Suit No. 88 of 1987, the plaintiff Gupteshwar Singh sought a declaration that the property detailed in Schedule-'ka' of the plaint was his exclusive property over which the defendants did not have any right, title or interest. He sought for confirmation of possession of the plaintiff over the same and delivery of possession in favour of plaintiffs against the defendants, if the plaintiff was found dispossessed during pendency of the suit. He had also sought for issuance of permanent injunction against the defendants from interfering with the peaceful possession of the plaintiff. The description of the land as given in Schedule- 'ka' of the plaint of Title Suit No. 88 of 1987 is identical with Schedule- 'ka' of the plaint of Title Suit No. 91 of 1986. From the judgment of the trial court and the first appellant court as well as the lower court records it can be seen that the fundamental facts pleaded in both the plaints were the same. It was also pleaded that Gopal Mahto had exchanged some of lands out of gifted property in 1956, which was acted upon, in order to make



out his case that after accepting the gift, Gopal Mahto had been dealing with gifted property, exclusively. He referred in his plaint, the factum of filing of Title Suit No. 91 of 1986 questioning the sale-deeds executed by defendants first set in favour of Jaigovind Mahto and Jodha Mahto, which according to him, had created a cloud in respect of his title which compelled him to file Title Suit No. 88 of 1987. According to him, the defendants first set had somehow or the other managed entry of their names in revisional survey as also in consolidation proceedings. They surreptitiously got their names recorded in respect of property which was subject-matter of the gift. He pleaded that only after reading the written statement in Title Suit No. 91 of 1986, the plaintiff learnt that defendants were setting their title over the exclusive property of the plaintiff. The plaintiff asserted that he learnt about wrong entry in revisional survey and *Chakbandi* (consolidation records) in March 1986, only. Ramayan Mahto and his branch was not impleaded as defendant in Title Suit No. 88 of 1987 on the plea that there was no dispute between the plaintiff and branch of Ram Narayan Mahto.

11. The defendants filed their written statement taking the same stand which was taken by them as defendants first set in Title Suit No. 91 of 1986. In response to the plea of exchange of part of gifted land by Gopal Mahto with one Hariram Mahto, the



defendants pleaded that the same was in respect of his share of the gifted land. They pleaded that the family arrangement was executed on 22.06.1984 in accordance with which Ramayan Mahto, who was residing at village Beda, got total ancestral land of villages Beda and Balathua. Lands of village Mor was recorded in the joint name of all the four brothers. Ram Narayan Mahto had been allotted 1/4th share in the said land at village Karup which was recorded in his name but he did not take his share in village Karup because the lands of village Beda, which were given to him, were more valuable than the lands of village Karup and accordingly family arrangement was executed for avoiding future disputes. Their names were rightly recorded in revisional survey in jointness with Gopal Mahto. The plaintiff had the knowledge about the entries in revisional survey *Khatiyar* which Gopal Mahto had received on behalf of his brothers by putting his signature and they had received all the documents of consolidation proceedings. The defendants controverted the plea of the plaintiff that he did not have any knowledge about the consolidation proceeding.

12. It was specifically pleaded in the written statement that consolidation operation had become final in village Karup and *Chaks* have been allotted in favour of the defendants no. 1 and 2 and the plaintiff and that the plaintiff had actively participated in the consolidation proceeding and did have knowledge about each



and every stage of consolidation. On the basis of rival pleadings, the trial court framed following issues in T.S. No. 88 of 1987:-

- “1. Is the suit as framed maintainable?*
- 2. Is the suit barred by limitation?*
- 3. Is the suit hit by law of acquiescence, waiver, and estoppel?*
- 4. Is the suit barred by res judicata?*
- 5. Is the suit is bad for non-joinder of necessary party?*
- 6. Whether the plff. has got valid cause of action for the suit?”*

13. On comparison of the issues framed in the two suits filed by the plaintiff as noted above, it can be easily discerned that one of the core issues, which the courts below had proceeded to decide, was as to whether the disputed property was exclusive property of the plaintiff or whether the suit property had been blended by the father of plaintiff Gopal Mahto in the common hotchpotch of the joint family property. The legality of execution of sale-deed in favour of Jai Govind Mahto and Jodha Mahto etc. by the defendants first set was dependent upon the finding in respect of the core issue.

14. Before I proceed further, I must note, at this stage, a very significant aspect of the matter, which is relevant for present adjudication. The learned trial court, in Title Suit No. 91 of 1986 had framed issue no. 4 i.e. whether the case of the plaintiff was hit by the provisions of Bihar Consolidation of Holdings and



Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Bihar Consolidation Act'). Learned trial court below in T.S. No. 91 of 1986 dealt with the said issue in paragraphs 16 and 17 as under :-

“16. Issue no. 2, 3 and 7 has not been pressed by the parties in this case. Issue no. 1 and 4 has been pressed by the defendant that the case of the plaintiff is not maintainable at all because the case of the plaintiff is that the R.S. and Consolidation of Holding and Khatiyas have been prepared in the name of defendant. This shows that the plaintiff knows that the survey consolidation has been done and the properties of the gift has been entered according to share in the name of the defendant. Hence the consolidation act debars the plaintiff to file the suit against the defendants as Consolidation Act Section 37 shows that “no Civil court has (sic) entertain any suit or application to vary or set aside any decision or order given or passed under this Act..”. This act debars the jurisdiction of Civil court. Hence the case of the plaintiff is hit under the consolidation Act.

17. After hearing the learned plaintiff's lawyer and after perusing this section of consolidation Act I find that the learned defendant's lawyer's argument has force and the learned plaintiff's lawyer has no rebuttal of it. Hence the case of the plaintiff is not legally maintainable on the basis of consolidation act. Hence these issues have been decided in favour of the defendant against the plaintiff.”

15. As has been noted above, the defendants in Title Suit



No. 88 of 1987 had taken specific plea that consolidation operation had become final in village Karup and *Chaks* had been issued in favour of defendants no. 1 and 2 and the plaintiff. The trial court below in T.S. No. 88 of 1987, however, did not frame any issue on the question of maintainability of the suit in the light of the provisions of Bihar Consolidation Act. The trial court decided issues no. 5 and 6 against the plaintiff in Title Suit No. 91 of 1986, on appreciation of oral and documentary evidence adduced at the trial. In T.S. No. 88 of 1987 also the trial court conclusively held on analyzing and appreciation of evidence that though the property in Schedule- 'ka' was received by Gopal Mahto from Pahalwan Mahto by gift, he did not ever treat the same as self-acquired property and neither did he cultivate his property nor utilize the said property separately. Gopal Mahto allowed revisional survey *Khatiyani* and *Chakbandi Khatiyani* recorded in his name jointly with his brothers and thereafter he partitioned the gifted property with his brothers as if it were his joint family property, the trial court recorded. The court below concluded that there was ample evidence to prove that Schedule- 'ka' property was blended by Gopal Mahto himself in common hotchpotch of the joint family property.

16. It is noteworthy that an objection was taken by the defendants in TS No. 88 of 1987 over maintainability of the suit on



the ground of misjoinder of necessary party, inasmuch as, Ram Narayan Mahto, one of the brothers of Gopal Mahto was not impleaded as defendant. The issue of maintainability of the suit was also decided against the plaintiff on the ground of non-joinder of necessary party.

17. It appears from the judgment of the trial court in T.S. No. 88 of 1987 that during pendency of the suit, Title Appeal No. 04/ 1996/ 57/2007 was preferred against the judgment and decree dated 02.12.1995, passed in T.S. No. 91 of 1986. The judgment and decree dated 13.02.1998, passed by the trial court in T.S. No. 88 of 1987 came to be challenged by way of first appeal giving rise to T.A. No. 28 of 1998.

18. The above are the facts, which are the reasons why two appeals i.e. Title Appeal No. 04/1996/ 57/2007 and T.A. No. 28/1998/ 66/2007 were jointly heard by the first appellate court, which have been dismissed by a common judgment and decree passed by the first appellate court, and is under challenge in the two present second appeals.

19. The first appellate court, after having examined the grounds taken to question the correctness of the decisions of the trial court and appreciating the evidence on record, has affirmed the findings. These two second appeals were admitted by an order dated 01.11.2012 and following substantial questions of law were



framed :-

*“1. Whether the judgment of the lower appellate court is vitiated because of the fact that the lower appellate court recorded the finding that the gifted property was blended to the joint family property by making a third case because there was neither any pleading nor any evidence adduced by the defendants respondents in support of that and the lower appellate court has recorded the findings suo motu without considering the settled principles of law laid down by the Apex Court in the case of **Lakkireddi Chinna Venkata Reddi and other vs. Lakkireddi Lakshmama** AIR 1963 SC 1601?*

2. Whether the terms and conditions of the registered deed of gift Ext. 5 could even varied or alter by mere statements of the witnesses to the effect that in fact the gift was made by Pahalwan Mahto in faovur of all the maternal grandsons and the lower appellate court could have recorded the same finding although it was found that the gift deed was made in the name of Gopal Mahto only?

3. Whether the other brothers of Gopal Mahto or their heirs could have sold the property which were gifted by registered deed of gift Ext.-5 by Pahalwan Mahto as far back as in the year 1936 to Gopal Mahto only?”

20. I have heard Mr. Shashi Shekhar Dwivedi, learned Senior Counsel appearing on behalf of the appellants and Mr. Dhruv Narayan, learned Senior Counsel for the respondents in both the cases.

21. This is to be noted that the matter was earlier heard



and it required rehearing on the limited issue as to whether even the present second appeals should abate in view of the provisions under Bihar Consolidation Act.

22. Written notes of arguments have been filed on behalf of the appellants and the respondents. It has been argued on behalf of the appellants, relying on Supreme Court's decision in case of ***Roop Kumar vs. Mohan Thedani (AIR 2003 SC 2418)***, ***Nanjappan vs. Ramasamy & Anr. (2015(2) PLJR 420(SC))*** that no oral agreement or no amount of evidence can contradict the terms of the registered gift which was executed exclusively in favour of Gopal Mahto. Assailing the findings recorded by the courts below on the issue of blending of the gifted property with the common hotchpotch of the joint family property, reliance has been placed on the decisions of the Supreme Court in case of ***Union of India vs. Ibrahim Uddin and another*** reported in ***(2012) 8 SCC 148***, ***Kashmir Singh vs. Harnam Singh & Anr. (AIR 2008 SC 1749)*** and ***Jagdish Singh vs. Natthu Singh (AIR 1992 SC 1604)*** to contend that the findings of the court below to the effect that Gopal Mahto had voluntarily and willfully blended his gifted property with HUF property, in the wake of the pleading of the defendants that he got executed the deed of gift in his favour dishonestly in 1936. It has been argued with reference to the Supreme Court's decision in case of ***Lakkireddi Chinna Venkata***



Reddi and others vs. Lakkireddi Lakshmama (AIR 1963 SC 1601), G. Narayana Raju vs. G. Chamaraju and others (AIR 1968 SC 1276) and Subramania Reddi (dead) vs. Venkatasubba Reddi(dead) and others (AIR 1999 SC 1116) that separate or self-acquired property of a member of a joint Hindu family may be impressed with the character of a joint family property only if it is voluntarily thrown by the co-owner into the common stock with the intention of abandoning his separate claim therein. It has been argued that merely because other family members were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was not bound to support, abandonment cannot be inferred, for an act of generosity or kindness, should not be regarded as an admission of a legal obligation. It has further been argued that survey and *Chakbandi* are not documents of title, referring to decisions in case of *Smt. Sawarni vs. Smt. Inder Kaur and others (AIR 1996 SC 2823)* and *Nand Kumar Rai and others vs. State of Bihar and others (AIR 1974 Patna 164(FB))*. Such entries do not have any presumptive value on title, especially when the entry is in favour of only two branches leaving out the two branch and the father, who was alive. Reliance has also been placed on an unreported judgment of this Court dated 07.04.2015 passed in First Appeal No. 553 of 1977. On the question as to



whether the suit had abated and whether even the present second appeal would abate, reliance has been placed on behalf of the appellants on another unreported judgment of this Court dated 23.04.2014 rendered in Second Appeal No. 307 of 2005 (***Khakhnu Bind vs. Dharmraj Bind***).

23. Learned Senior Counsel appearing on behalf of the respondents, on the other hand, has submitted that Title Suit No. 91 of 1986 was rightly held as not maintainable in view of bar under Section 37 of the Bihar Consolidation Act. He has contended that in view of specific provisions of Bihar Consolidation Act, neither the suit nor the appeals could have been maintained as has been consistently held by the Supreme Court in a series of decisions.

24. It is not in dispute that village Karup and Mor were notified under the provisions of Bihar Consolidation Act. It is also indisputable that in the revisional survey *Khatiyani* (Exhibit-7 and 7/A of Title Suit No. 88 of 1987), names of the defendants have been entered with the plaintiff. It has been the specific case of the defendants first set, which is not in dispute that in *Chakbandi (consolidation) records* also names of Ramayan Mahto and Mahangu Mahto have been entered (Exhibit-H of T.S. No. 88 of 1987). It has, however, been argued on behalf of the appellants that had the said entries been a consequence of blending of the gifted property with the common hotchpotch of the joint family property,



the name of the other brother of Gopal Mahto, namely, Ram Narayan Mahto should also have been there.

25. Mr. Dhruv Narayan, learned Senior Counsel appearing on behalf of the contesting respondents on the other hand has argued that evidence before the Court below were overwhelming to establish that the suit property was always treated to be common stock of the joint family property and though the gift was executed in the name of Gopal Mahto by his maternal grandfather, he never exercised his separate rights. He has argued that revisional survey right of records as well as consolidation proceedings unequivocally go to show that it was not mere permission of Gopal Mahto based on which the defendant's first set were using and enjoying the fruits of the suit property rather the same was voluntarily thrown into the common stock of the joint family property by Gopal Mahto. This is for the reason that Gopal Mahto had accepted the deed of gift which was executed by Pahalwan Mahto, who happened to be maternal grandfather of Gopal Mahto and his three brothers. He has contended that the plaintiffs/appellants deliberately suppressed a vital fact in the plaint that the donor Pahalwan Mahto was maternal grandfather of Gopal Mahto and his three brothers as if Pahalwan Mahto was in no way related to the defendants first set and was a stranger to the family. This material suppression of fact



by the plaintiffs/appellant has been noticed by the Courts below. He has relied on Supreme Court's decision in case of *Maria Margarida Sequeira Fernandes and Others v. Erasmo Jack De Sequeira* reported in (2012) 5 SCC 370 to contend that the plaintiff made a false claim, suppressing two vital aspects namely viz. the relationship of Pahalwan Mahto with Gopal Mahto and his three brothers and allotment of *Chak* plots in the consolidation proceeding under Bihar Consolidation Act. He has also referred to another Supreme Court's decision in case of *Vinod Kumar Dhall v. Dharampal Dhall* reported in (2018) 16 SCC 645 with reference to paragraph 16 and 17 thereof to contend that the plaintiffs ought not to have suppressed these vital facts in the plaint. According to him, there is no perversity in the concurrent findings of facts recorded by the Courts below in the judgment and decrees under challenge, which would have required this Court's interference in the present second appeal under Section 100 of Civil Procedure Code.

26. On careful reading of the judgment and decrees passed by the Courts below, which are under challenge in these two appeals and lower Courts records. There seems to be no dispute on the fact that consolidation proceeding in the villages concerned was undertaken, in which Gopal Mahto had participated. Consequent upon the said proceedings *Chak* plots



were allotted to Gopal Mahto and his two brothers namely Ramayan Mahto and Mahangu Mahto, in respect of the lands of the suit property, which was subject matter of the gift deed dated 20.04.1936. The suits were filed in 1986 and 1987. The decisions by the authorities under the Bihar Consolidation Act had attained finality, in respect of the suit property. Section 4 of the Bihar Consolidation Act lays down that no suit or other legal proceeding in respect of any land in such areas, notified under the Act for consolidation proceeding, shall be entertained in any Court. Section 37 of the Bihar Consolidation Act reads as under:-

“37. Bar of jurisdiction of civil courts.- No civil court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act.”

27. Specific plea was taken by the defendants first set before the Courts below that the suits were barred by Section 37 of Bihar Consolidation Act. Learned Trial Court has held in its judgment and decree dated 02.12.1995 in T.S. No. 91 of 1986 that the said objection has been specifically sustained by learned Sub Judge-III, while answering issues no. 1 and 4. It has however, been argued on behalf of the appellants that the *Chakbandi* entry cannot be held to be documents of title. As has been noted above, reliance has been placed on Supreme Court's decision in case of



Sawarni Kaur v. Inder Kaur reported in (1996) 6 SCC 223. In the Court's opinion, the Supreme Court's decision in case of ***Sawarni Kaur v. Inder Kaur*** (supra) is distinguishable, where the Court was not dealing with the provisions akin to Sections 4 and Section 37 of the Bihar Consolidation Act. Dealing with the provisions under U.P. Land Revenue Act, 1901, the Supreme Court has held in the said case that mutation of name in revenue records does not create or extinguish the title nor does it have any presumptive value on title. For the same reason the Supreme Court's decision in case of ***Daya Singh v. Gurudev Singh*** reported in (2010) 2 SCC 194, does not support the appellant's contention that the plaintiff could have maintained the suit despite the decisions of the consolidation authorities. There is appreciable difference between the entries in the records of right, based on survey and those in accordance with the provisions under the Bihar Consolidation Act, in view of clear provisions under the said Act. The effect of notification under Section 4(c) of the Bihar Consolidation Act has been lucidly discussed by the Supreme Court in case of ***Parasnath Rai v. State of Bihar*** (AIR 2013 SC 1010). The Supreme Court, in no uncertain terms has laid down in paragraph 30 as under:-

“30. From the aforesaid enunciation of law it is crystal clear that once a notification has been published under Section 3 of the Act, every suit and proceeding in respect of



declaration of rights or interest in any land lying in areas or for declaration or adjudication of any other rights in regard to which proceeding can or ought to be taken under the Act pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on order being passed in that behalf by the court or authority before whom such suit or proceeding is pending shall stand abated with a view to ensure the jurisdiction of the authorities under the Consolidation Act remains unhampered and the said authorities are not obstructed by the proceedings in civil courts and their decisions are not impeded by the decisions of the civil courts. It is also vivid that the purpose of the scheme of consolidation is to avoid conflict of jurisdiction in order to confer jurisdiction on the consolidation authorities who are required to exclusively examine the rival claims of the parties. Apart from that there is conceptual difference between statutory abatement and abatement under the Code of Civil Procedure. On the basis of a statutory abatement, the whole proceeding from its inception stands abated because the local law has provided an effective alternative remedy to be perused before an exclusive forum to remedy the grievance raised before the court. It has been further pronounced by this Court that nothing remains to be adjudicated before the civil court and it is apt to note in the case of Satyanarayan Prasad Sah (supra) this Court had held that the High Court should not have nullified the decree of the trial court but should have declared that the proceedings stood abated which meant that civil proceedings came to a naught, that is to say, the proceedings from its commencement stood abated.”

28. The various provisions of the Bihar Consolidation Act had fallen for consideration before a Special Bench of five



Judges of this court in case of ***Most. Prabhawati Kumari v. The State of Bihar and others*** reported in (2019) 4 PLJR 430.

Paragraph 92 and 93, which record conclusions read as under:-

92. The Supreme Court has further clarified that where a notification is issued, bringing the land involved in a dispute in the civil proceeding under a scheme of consolidation, the proceeding pending before the civil court either in trial court, appeal or revision, shall abate as a consequence ensuing upon the issue of notification and the effect of abatement would be that the civil proceeding as a whole would come to a naught. The Supreme Court has, in no uncertain terms clarified that not only the judgment and decrees would become extinct but the entire civil proceeding would come to a naught. The Supreme Court has further held that the contrary views of the High Court, in the cases of [Jagdish Prasad v. Satya Narain Singh](#) (AIR 1982 Pat 37) and [Raja Mahto v. Mangal Mahto](#), reported in 1982 PLJR 392, were erroneous wherein it was held that an appeal might abate, but the decree would not abate. The Supreme Court proceeded one step further to clarify the consequences of issuance of notification under [Section 3](#) of the Act, by virtue of operation of [Section 4](#) (c) of the Act and held that a suit as well as the appeal would abate and resultantly, the very commencement of the civil proceeding would come to a naught and, therefore, findings recorded in the said proceeding would become extinct.

93. On the basis of what has emerged from the foregoing discussions, in the light of statutory provisions and the authoritative pronouncements made by the Supreme Court in various cases noted above, following is the summary of my conclusions :-

(i) [Sections 4\(c\)](#), and [37](#) of the Act are intra vires and cannot be held to be against the Basic Structure of the Constitution. There



is no conflict between [Section 15](#) and [16](#) of the Act. Whereas under [Section 15](#), the Consolidation Officer is required to grant certificate to every raiyat or under-raiyat, to whom holding/land has been allotted, [Section 16](#) refers to confirmation of the scheme under [Section 13](#) of the Act to be deemed to be the records of right prepared and finally published under Chapter-9 of the Bihar Tenancy Act, 1885.

(ii) In my view, the provision under [Section 15](#) of the Act cannot be said to be against the basic structure of the Constitution. The view taken by S. B. Sinha, J., in the case of Kalika Kuer alias [Kalika Singh v. The State of Bihar](#) (supra), is not acceptable to me because what has been held to be the basic structure of the Constitution by the Supreme Court, in the case of L. Chandra [Kumar v. Union of India and others](#), reported in (1997) 3 SCC 261, is High Court's power of judicial review under Articles 226 and 227 of the Constitution of India. I find it difficult to accept the view taken by his Lordship, in the case of Kalika Kuer alias [Kalika Singh v. The State of Bihar](#) (supra), that [Section 15](#) of the Act is ultra vires the Constitution because it seeks to take away adjudicatory power of other courts. It is to be kept in mind that [Section 37](#) of the Act bars jurisdiction of civil courts only and not the power of judicial review of the constitutional courts under Articles 226, 227, 136 or 32 of the Constitution of India. [Section 37A](#) of the Act, as has been noted, declares authorities under the Act to be deemed courts of competent jurisdiction. The challenge, therefore, to [Sections 15](#) or [37A of the Act](#) cannot be sustained, which, in my view, are intra vires.

(iii) On the point of abatement, under [Section 4](#) (c) of the Act, in my opinion, the law stands well settled, in view of the decision of the Supreme Court, in the case of Paras Nath Rai and Others v. State of Bihar and Others (AIR 2013 SC 1010). The Supreme Court, upon examining the various provisions of the Act



and the judgment rendered in the case of Satyanarayan Prasad Sah (supra), has clearly held that once a notification has been published under [Section 3](#) of the Act, every suit and proceeding in respect of declaration of rights or interest in any land lying in areas or for declaration or adjudication of any other rights in regard to which proceeding can or ought to be taken under the Act pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on order being passed in that behalf by the court or authority before whom such suit or proceeding is pending shall stand abated with a view to (i) ensure that the jurisdiction of the authorities under the Consolidation Act remains unhampered, (ii) the said authorities are not obstructed by the proceedings in civil courts and (iii) their decisions are not impeded by the decisions of the civil courts. The Supreme Court has further held that purpose of such power under the scheme of consolidation is to avoid conflict of jurisdiction in order to confer jurisdiction on the consolidation authorities who are required to exclusively examine the rival claims of the parties.

(iv) What is evident from the decision of the Supreme Court, in the case of Paras Nath Rai (supra), is that it has kept in mind the jurisdiction conferred upon the Consolidation Authorities to examine rival claims of the parties.

(v) Referring to the earlier decision in the case of Satyanarayan Prasad Sah (supra), the Supreme Court has laid down in the case of Paras Nath Rai (supra), that nothing remains to be adjudicated before the 'civil court' after discussing conceptual difference between statutory abatement and abatement under [the Code](#) of Civil Procedure. By operation of statutory abatement, the whole proceeding from its inception stands abated because the Act has provided an effective alternative remedy to be pursued before an exclusive forum to remedy the



grievance which could have been raised before the court.

(vi) In the light of Supreme Court's decision in case of Gorakh Nath Dubey (supra), it is the 'substance of the claim' and not 'its form' which will be decisive to determine whether the consolidation court shall have jurisdiction to determine the dispute or not. As propounded by the Supreme Court in the said case, a document, legal effect of which can only be taken away by setting it aside or by its cancellation, so long as it is cancelled by court having power to cancel, shall be binding on the Consolidation authorities.

(vii) The Consolidation authorities have power to decide the question of title and the decision rendered by them on the question of title is final and the same cannot be challenged in a civil court, in view of the specific provisions contained in [section 37](#) of the Act. However, judgments/orders of the consolidation authorities or the entries made by them in the records in respect of the matters cognizable by it, passed or recorded without complying with the provisions of the Act or against the fundamental principles of judicial procedure or obtained by fraud is amenable to the jurisdiction of the Civil Court. I fully endorse the dissenting opinion of Hon'ble Mr. Justice Nagendra Rai, in case of Sheikh Haider Zan (supra).

29. This is to be noted that the said Special Bench of this Court in case of **Prabhawati Kumari** (supra) approved the minority view taken by a full Bench of this Court in case of **Seikh Haidar Zan v. Md. Yusuf Ansari** reported in **2000 (2) PLJR 338**, paragraphs 21 and 22 of which read as under:-

“21. I am aware of the fact that in some cases this Court has taken the view that after expiry



of the period of 45 days, referred to in section 10(2) of the Act, the objection filed subsequently cannot be entertained in view of the provisions of section 10A. In view of what has been stated above, that interpretation does not appear to be correct. After expiry of the statutory period of 45 days the objection may become time barred and on that ground it may be dismissed. But it cannot be said to be barred by section 10A.

22. After having explained the scope of the provisions of section 10A I would conclude the discussion on this topic holding that the bar created by section 10A is not applicable to the exercise of revisional power under Section 35 of the Consolidation Act and the finding of the Division Bench in Hari Narayan Singh's case (supra), on the point is not correct in law. The answer to question no. 2 is accordingly given in the negative."

Hon'ble Mr. Justice Rajeev Ranjan Prasad, in his conclusion in paragraphs 106 to 108 has recorded as under in the Special Bench decision in case of **Most. Prabahwati Kumari** (supra):-

"106. As regards a question as to whether a suit based on title is maintainable after close of the consolidation operation, I find that in the case of Seikh Haider Zan (supra) speaking for self His Lordship Hon'ble Mr. justice Nagendra Rai (as His Lordship then was) discussed [Section 37](#) of the Act of 1956 as under:

"24. It appears that [section 37](#) of the Act has not been correctly translated into English from the Hindi version of the said section of the Act. The Hindi version of [section 37](#) of the Act reads as follows:-



“कोई भी सिविल न्यायालय इस अधिनियम के अधीन दिए गए या पारित किसी विनिश्चय या आदेश में हेर-फेर या उसे अपस्त करने के लिए अथवा किसी ऐसे अन्य विषय के संबंध में जिसके लिए इस अधिनियम के अधीन कार्यवाही की जा सकती थी या की जानी चाहिए थी, कोई वाद या आदेश ग्रहण नहीं करेगा।”

"The authentic English translation published by the Superintendent of Government Press, Bihar, is as follows:-

"No civil court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act with respect to any other matter for which a proceeding could or ought to have been taken under this Act."

25. It appears that the said English version of [section 37](#) of the Act is not the correct translation of Hindi version of the said section of the Act as the word 'or' is missing therein between the words 'Act' and 'with'. A bare reading of the said provision shows that it is in two parts. The first part provides that the civil court has no jurisdiction to entertain any suit or application to vary or set aside any decision or order passed under the Act and the second part provides that the civil court has no jurisdiction to entertain suit with regard to the matter which could or ought to have been taken under the Act, meaning thereby, that if any person aggrieved by any entry even with regard to question of title has not raised it at the appropriate stage in spite of having a notice or knowledge of the proceeding, he cannot be allowed to agitate the matter in the civil court. In other words, it contains a principle of constructive res judicata."

107. I have noticed that the concept of abatement under [Section 4](#) (c) as enunciated in the case of Ramkrit Singh (Supra) was more based on the submissions of the then learned Advocate General. The Hon'ble Supreme Court in the case of Most. Bibi Rahmani Khatoon (supra) has explained the concept of abatement in a consolidation proceeding which is quite different and distinct from the concept of abatement in the Civil Procedure Code.

108. While agreeing with the interpretation of [Section 37](#) as given by the minority judgment in Seikh Haider Zan (supra), I say that the decision of the consolidation authorities



cannot be re- opened/challenged in a Civil Court by the parties even after closure of notification under [Section 26A](#) of the Act. To that extent Ramkrit Singh (supra) is clarified.

The said view is the unanimous view of the Special Bench of five Judges in case of **Most. Prabhawati Kumari** (supra).

30. In such view of the matter, the Court below has rightly held the suit to be not maintainable, in view of the provisions relating to abatement and bar of suits under the provisions of the Bihar Consolidation Act.

31. After having held that the suit was rightly held to be not maintainable by the Court below, I could have dismissed these appeals on the said limited ground. However, since the matter has been heard at length on other aspects also, I proceed to answer the substantial questions of law, framed by this Court, which have been quoted hereinabove. Before I answer the said substantial questions of law, I need to take note of certain concurrent findings of facts recorded by the Courts below. One such crucial finding of fact is that Pahalwan Mahto was maternal grandfather of Gopal Mahto and his three brothers. Plaintiff no. 1, as a matter of fact, did not disclose relationship of Gopal Mahto with Pahalwan Mahto, as if Pahalwan Mahto was stranger to the family of Gopal Mahto. It is noteworthy that when a question was



put to the plaintiff no. 1 during his cross-examination about relationship of Pahalwan Mahto with Gopal Mahto, he had denied such relationship, which was falsified by the recital of deed of gift dated 20.04.1936 (Exhibit-4) itself, which disclosed that the donee was son of the own daughter of the donor. There is no and could not be a submission that the said finding of fact is incorrect and suffers from any legal infirmity. This is, thus, an admitted fact that Pahalwan Mahto was maternal grandfather of plaintiff no. 1 and three other brothers of said Gopal Mahto. The first substantial question of law, which has been framed in this case is whether the Courts below could have made out a third case that the gifted property was blended to the joint family property, in the absence of any pleading or evidence adduced by the defendants in support thereof, contrary to the law laid down by Supreme Court in case of ***Lakkireddi Chinna Venkata Reddi*** (supra). The Supreme Court in case of ***Lakkireddy Chinna Venkata Reddi*** (supra) enunciated the law of blending of separate property with the joint family property in paragraph 9, relevant portion of which reads as under:-

“Law relating to blending of separate property with joint family property is well settled. Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim



therein: but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation.”

32. In case of **Lakkireddi Chinna Venkata Reddi** (supra) one Butchi Tirupati was one of sixth sons of one Bala Kunda. The son and the widow of Butchi Tirupati had filed a suit for partition and separate possession of their share in the property of the joint family to which they belonged and one-fourth share in certain property devised under the will executed by one Venkata Konda Reddy. The Trial Court had held that the property devised under the said will on account of blending with the joint family estate had been impressed with the character of the joint family property and on that account the widow of said Butchi Tirupati was entitled to 5th share in all property in suit. The High Court in appeal affirmed the finding of the Trial Court. When the matter travelled to the Supreme Court, after a certificate having been granted under Article 133 (1) (a) of the Constitution of India, two questions arose before the Court including, whether the property



devised under will of Venkata Konda Reddy in favour of the defendants and said Butchi Tirupati had been impressed with the character of joint family property because of blending with their joint family estate. In the background of facts of that case as noted in paragraph 8 for answering the aforesaid question of blending, the Supreme Court observed that there was no evidence on record to show that by any conscious act or exercise of volition, Butchi Tirupati had surrendered his interest in the property, devised in his favour under the will.

33. The facts of the present case are entirely different. There were overwhelming evidence on record both oral and documentary to the effect that there had been family arrangement under which three sons of Deoraj were allotted shares in properties situate at village Karup and Mor, including father of the plaintiff Gopal Mahto. Names of the said three brothers were recorded in revisional survey records of rights. The village was notified under Section 3 of the Bihar Consolidation Act. Father of plaintiff no. 1 Gopal Mahto had participated in the consolidation proceedings whereafter *Chaks* were allotted. The decision of the consolidation authorities leading to allotment of *Chak* plots were not questioned by the father of plaintiff no. 1. Evidence was adduced with the support of the revisional survey entries and the documents of proceedings under the Bihar Consolidation Act to



establish that the suit property was part of the joint family property. It had been specific case of the defendants that though the gift deed was executed in the name of Gopal Mahto the gift was meant for the entire family of Deoraj Mahto. There is specific pleading to this effect in the written statement in support of which evidence was also adduced.

34. In my opinion, on careful perusal of the pleadings on record and considering evidence, both oral and documentary adduced before the Courts below, the finding recorded by the Trial Court and affirmed by the Appellate Court cannot be said to be contrary to the law laid down by the Supreme Court in case of ***Lakkireddy Chinna Venkata Reddi*** (supra). Answers to second and third substantial question of law lie in the answer to substantial question no. 1, which is the main question. In my opinion, the findings recorded by the Courts below do not have the effect of altering the terms and conditions of the registered deed of gift. The Courts below have consistently held that though the gift deed was executed in favour of Gopal Mahto only, the suit property was from the very beginning treated to be a joint family property by every member of the family including Gopal Mahto. I must note here that the conclusions arrived at by the consolidation authorities has great bearing for the reason that the Bihar Consolidation Act is a self-contained code and lays down in detail,



step by step, the stages right from the issuance of notification under Section 3 of the Act, till passing of the final order. The provisions under Bihar Consolidation Act from Section 3 to Section 16 prescribe stages for preparation of up-to-date records of right, after entertaining objections from the parties at least at four stages namely viz. Section 10 (2), Section 10 (C), Section 10 (D) and Section 12(2) of the Bihar Consolidation Act. The consolidation records must have apparently been prepared, in the absence of any evidence of challenge, in accordance with the provisions under the Act.

35. Learned Senior Counsel for the appellants has also argued that the defendants first set took contradictory plea in their written statement as on the one hand they asserted that Gopal Mahto had got the registered deed of gift executed in his favour dishonestly and fraudulently and on the other hand they claimed that said Gopal Mahto had thrown the said gifted property in common hotchpotch of the joint family property held by the family of Deoraj Mahto. He has also argued that had that been so, name of the fourth brother namely Ram Narayan Mahto, should also have figured in the revisional survey records of right and the records of the consolidation proceeding. His contention, accordingly, is that the findings recorded by the Courts below, based on contrary plea of the defendants are patently illegal and



require interference. I do not find any force in the said submission, in view of the pleadings and evidence on record and the concurrent findings recorded by the Courts below. The Courts below has rightly recorded that the plaintiffs did not approach the Court with clean hands, inasmuch as they did not disclose rather they suppressed relationship between the donor Pahalwan Mahto and the donee Gopal Mahto. There is finding to the effect that Gopal Mahto had actively participated in revisional survey proceeding and consolidation and, therefore, it is hard to believe the stand of the plaintiff that Gopal Mahto did not have the knowledge about the entries made in revisional survey records and the records of the consolidation proceeding. In the background of nature of pleading put forth by the parties before the Courts below, and the evidences laid on their behalf which have been duly considered and appreciated by the learned Trial Courts and the first Appellate Court, the findings of the Court being concurrent, I do not find any legal infirmity in the impugned judgment and order requiring this Court's interference in exercise of power under Section 100 of Civil Procedure Code.

36. It is reiterated that the defendants, that it is not case of mere allowing the defendants first set to use the suit property conjointly rather it is a case where the parties have been found to be in joint occupation of the suit property as joint family property.



There was adequate evidence on record to show that the defendants 1 and 3 were having control over the joint estate.

37. The substantial questions of law having been answered in aforesaid terms, in my opinion the present appeals fail and are accordingly dismissed.

38. All interlocutory applications stood disposed of.

39. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/Akash

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