

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13601 of 2023

1. Most. Kiran Devi Wife of Late Janardan Prasad Sah, Resident of Village - Harda, Ward No. 4, P.S. K. Hat, District - Purnia.
2. Umesh Gupta @ Umesh Kumar Gupta, Son of Late Prahlad Sah, Resident of Village - Harda, Ward No. 4, P.S. K. Hat, District - Purnia.
3. Mukesh Gupta @ Mukesh Kumar Gupta, Son of Late Prahlad Sah, Resident of Village - Harda, Ward No. 4, P.S. K. Hat, District - Purnia.
4. Sunil Gupta @ Sunil Kumar Sah, Son of Late Prahlad Sah, Resident of Village - Harda, Ward No. 4, P.S. K. Hat, District - Purnia.

... .. Petitioner/s

Versus

1. Baby Devi W/o Sri Mahendra Bhagat, Resident of Village- Tulsipur, P.S. Naugachhia, District- Bhagalpur.
2. Seema Devi, W/o Mahendra Bhagat, Resident of Mohalla - Bus Stand, Purnia, P.S. K.Hat, District - Purnia.
3. Ramchandra Sah, Son of Late Premchandra Sah and Late Girija Devi, Resident of Mohalla - Court Station Road, Purnia, P.S. K.Hat, District Purnia.
4. Shiv Kumar Sah, Son of Late Premchandra Sah and Late Girija Devi, Resident of Mohalla - Court Station Road, Purnia, P.S. K.Hat, District Purnia.
5. Rajesh Kumar Sah, Son of Late Premchandra Sah and Late Girija Devi, Resident of Mohalla - Court Station Road, Purnia, P.S. K.Hat, District Purnia.
6. Kamla Devi, W/o Late Chhedi Lal Sah, Daughter-in-law of Late Girija Devi, Resident of Mohalla - Court Station Road, Purnia, P.S. K.Hat, District Purnia.
7. Anchala Devi, W/o Pradeep Kumar Sah, D/o Late Girija Devi, Resident of House No. 11868, Gali No. 48E/I, Bholarbad Bister Badarpur, New Delhi-110044.
8. Kiran Devi, W/o Suresh Kumar Sah, D/o Late Girija Devi, Resident of Village - Harishchandrapur, P.S. Jalalgarh, District - Purnia.
9. Radha Devi, W/o Birendra Sah, D/o Late Girija Devi, Resident of Village - Chakla, P.O. and P.S. Barmanthi, District - Purnia.
10. Yogendra Prasad Sah, Sonof Shivpujan Sah, Resident of Mohalla - Sant Kabir Nagar, P.S. K.Hat, District- Purnia.
11. Priti Kumari, D/o Yogendra Prasad Sah, Resident of Mohalla - Sant Kabir Nagar, P.S. K.Hat, District- Purnia.
12. Naina Kumari, D/o Yogendra Prasad Sah, Resident of Mohalla - Sant Kabir Nagar, P.S. K.Hat, District- Purnia.
13. Deepak Kumar, Son of Yogendra Prasad Sah, Resident of Mohalla - Sant Kabir Nagar, P.S. K.Hat, District- Purnia.



14. Gauri Devi, W/o Shankar Prasad Sah, D/o Late Girija Devi, Resident of Mohalla - Bari Hat, P.S. K. Hat, District - Purnia.
15. Lakshmi Devi, W/o Sanjay Kumar, D/o Late Girija Devi, Resident of House No. 1186/B, Gali No. 48E/I, Bholarbad Bister Badarpur, New Delhi - 110044.
16. Lakshman Prasad Sah, Son of Late Jagdish Sah and Late Samrathi Devi, Resident of Village - Harda Bazar, P.S. K.Hat, District Purnia.
17. Ganga Prasad Sah, Son of Late Jagdish Sah and Late Samrathi Devi, Resident of Village - Harda Bazar, P.S. K.Hat, District Purnia.
18. Rajeshwar Prasad Sah, Son of Jangi Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.
19. Sitaram Sah, Son of Late Ramanand Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.
20. Upendra Sah @ Upendra Gupta, Son of Late Dinanath Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.
21. Madan Prasad Sah, Son of Late Baleshwar Prasad Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.
22. Dilip Sah, Son of Late Rup Narayan Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.
23. Shambhu Sah, Son of Late Rup Narayan Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.
24. Kailash Sah, Son of Late Rup Narayan Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.
25. Ashok Sah, Son of Late Rup Narayan Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.
26. Nand Kishore Sah, Son of Late Rup Narayan Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.
27. Mithilesh Sah, Son of Late Rup Narayan Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.
28. Raj Kumar Sah, Son of Late Tarni Sah, Resident of Village - Harda Bazar P.O. Harda, P.S. Marnga, District - Purnia.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 08-04-2024

Heard the parties.

2. The petitioners have prayed for following



relief(s) in paragraph no. 1 of the writ petition:

"(i) For issuance of writ in the appropriate nature for quashing of the judgment and decree dated 10.06.2010 passed by a full bench of the Gram Katchahry, Panchayat Raj Harda, Purnia in Case No. 14/2009 whereby and where under the full bench of the Gram Katchahry has passed a decree of partition ex-parte exceeding jurisdiction without considering that there was no amicable settlement between the parties and it was complicated question should have been referred to the Civil Court and also usurping the power of appellate forum.

(ii) Also for quashing of the judgment and order dated 28.06.2023 passed by the Sub-Judge-I, Purnia in Gram Panchayat Appeal No. 01/2011 whereby and where under the Sub Judge-I, Purnia has dismissed the appeal without considering that the order passed by the Gram Katchahry is without jurisdiction and also without considering that the appellate court has not framed an issue without considering the Sections 112 and 110(B) of the Act and has affirmed the judgment and decree passed by the full bench of the Gram Katchahry.

(iii) After quashing of both the order the Gram Katchahry, Gram Panchayat Raj, Harda, Purnia be directed to send the matter to the civil competent court for adjudication and partition.

(iv) And for any other relief/reliefs for which the petitioners are found to be entitled in the eye of law."

3. The petitioners are aggrieved by the order dated 28.05.2010 passed by a Full Bench of Gram Katchahry under Sections 110 of the Panchayati Raj Act, 2006, had preferred appeal before the Sub Judge I, Purnea as provided under Section 112 of the Act, 2006. The appeal of the petitioners was decided on merits. The Sub Judge I, Purnea vide order dated 28.06.2023, affirmed the order dated 28.05.2010, passed by the full bench of Gram Katchahry. Learned counsel has questioned the jurisdiction of the Gram Katchahry on the ground that the application dated 06.06.2009 cannot be considered as a proper petition for entertaining the suit considering the fact that suit has



been defined in Section 16 and 26 of the Code of Civil Procedure. Learned counsel further submitted that the question of limitation would not arise taking into consideration that the Full Bench of the Gram Katchahry had already passed order on merits. Learned counsel further submitted that the initial order dated 28.05.2010 as contained in 'Annexure-1 series' has been passed by the nine *Panches*, however, the requirement of Section 112 (2) provides for not less than seven *Panches* shall form the quorum for purpose of constituting a Full Bench for hearing an appeal under Sub-Section (1). Learned counsel further submitted that the appellate order was passed by the equal number of *Panches*, who had passed the original order dated 28.06.2010 as contained in 'Annexure-1 series'. In these backgrounds, learned counsel submitted that the petitioners had no alternative then to file Gram Panchayat Appeal No. 01 of 2011 before Sub-Judge-I, Purnia. Learned counsel assailing the judgment dated 28.06.2023 passed in Gram Panchayat Appeal No. 01 of 2011 submitted that though the fact of the respective parties has been discussed in the judgement, however, the case has been decided without taking into consideration that the Application dated 06.06.2009 submitted by Late Girija Devi cannot be treated as a plaint as prescribed under Section 16 r/w



Section 26 Order IV of the Code of Civil Procedure. Learned counsel further submitted that taking into consideration that the petitioners were not made party to the defective suit filed before the Gram Katchahry could not have been entertained in absence of specific pleading and genealogical table with respect to the entire family taking into consideration that in a partition suit, even a cross objection was not allowed to be filed by the petitioner and in absence of the same, the order passed by the Sub-Judge-I, Prunia, dated 28.06.2023 is without consideration of the provision of the Act, as well as, the prescribed procedure as contained in Code of Civil Procedure. In these backgrounds, learned counsel seeks that the orders dated 28.05.2010 and 28.06.2023 being without jurisdiction can be held to be nullified at any stage by this Court.

4. Learned counsel appearing on behalf of the petitioners submitted that the application dated 06.06.2009 filed by one Late Girija Devi, whose heirs have been made party respondents no. 1 to 8. Learned counsel submitted that the provisions of Section 110 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act, 2006') provides for exclusive civil jurisdiction of a Bench of Gram Katchahry. Sub-Clause b of Section 110 provides for all suits of partition except wherein



complicated question of law or title is involved. The Gram Katchahry shall transfer such suit to the Court of competent jurisdiction. The Gram Katchahry instead of following the provisions contained in Section 110, had proceeded to decide the complicated question of title involved with respect to deciding the share of the applicant, namely, Late Girija Devi. The petitioners were not made party or the Gram Katchahry had not taken any action to issue notice to the petitioners and without calling for the genealogical table had proceeded to pass *ex-parte* order dated 28.05.2010.

5. Heard the parties.

6. Issue which falls for consideration in the present writ petition is to examine the extent and scope and jurisdiction of the Gram Katchahry in exercise of powers conferred under Sections 110 and 112 of the Bihar Panchayat Raj Act, 2006 has passed the impugned order dated 28.05.2010, and can the subsequent order passed by the learned Sub-Judge 1 dated 28.06.2023 in Appeal No. 01 of 2021 be upheld in accordance with law.

7. The case of the writ petitioners, in nutshell, is that Late Girja Devi, whose heirs have been made respondents in the present writ petition, filed petition dated 06.06.2009, in



Gram Katchehry Case No. 14/2009, alleging therein that she is the sole daughter of Patia Devi @ Radhiya Devi, who had died in the year 1996 and is the grand daughter (Natni) of Late Shankar Sah, who had died in the year 1956. It has been alleged in the petition that the petitioners and Late Girja Devi share a common lineage through Late Raghunandan Sah. It is the claim of Late Girja Devi that she being the sole daughter and legal heir of Late Patia Devi @ Radhiya Devi, is entitled to 1/4th share in the suit land.

8. According to the writ petitioners, the full bench of Gram Kutchery, has passed the decree of partition *ex-parte* vide order dated 28.05.2010, exceeding its jurisdiction under Section 110 and Section 112 and in contravention of provisions under Section 111 of Bihar Panchayat Raj Act, 2006.

9. The writ petition was registered on 19.09.2023 and was heard on 01.02.2024 and a prayer was made by the petitioner seeking to issue notice to the private respondents, however, taking into consideration the provisions of Chapter-VI, which relates to establishment, powers, duties and procedure of Gram Katchahry and Benches thereof and Section 101 of the Act, 2006 specifically relates to the institution and hearing of suits and cases. The provisions are *inter alia* reproduced



hereinafter:-

“101. Institution and hearing of suits and cases -

(1) Every suit or case instituted under this Act shall be instituted before the Sarpanch or where the services of Sarpanch are not available before the Up-Sarpanch and shall be heard and determined by a bench of the Gram Katchahry consisting of the Sarpanch and two Panches from amongst the Panches of the Gram Katchahry to be named by the respective parties to the suit or case and two other Panches selected by the Sarpanch in such manner as may be prescribed :

Provided that

(i) if a party does not nominate a Panch within such time as may be prescribed, the Sarpanch, or in the case of his non-availability, the Up-Sarpanch shall nominate Panch from amongst the Panches of the Gram Katchahry;

(ii) If in any suit or case, the Sarpanch is precluded from taking part in the proceedings, the Up-Sarpanch, or if he is also so disqualified in the opinion of the Sarpanch, another Panch shall be selected by the Panches from amongst its own number and the Up-Sarpanch or as the case may be the Panch so selected shall discharge all the functions of the Sarpanch for the purposes of the said suit or case;

(iii) If the services of the Sarpanch are not available at any time after the institution, but before the determination of the suit or case, the Up-Sarpanch or if the Up-Sarpanch is either precluded under section 100 from taking part in the proceedings or has been nominated by any party to the suit in case, a Panch to be nominated by the panel of Panches or where no such nomination has been made, the senior most Panch of the Gram Katchahry shall act for the Sarpanch; and

(iv) If the services of a Panch ceases to be available at any time after the institution but before the determination of the suit or case or he is precluded under section 100 from taking part in the proceedings, another Panch shall be nominated by the Party concerned or selected by the Sarpanch, as the case may be.

(2) Not less than three Panches including the Sarpanch and the two Panches named by the respective parties shall form a quorum for the purpose of hearing and determining a suit or case under sub-section (1).

Explanation- For the purposes of this sub-section, the expression "Sarpanch" includes the Up-Sarpanch or any other Panch acting for the Sarpanch and the expression "Panches" named by the respective parties, includes Panches nominated under clause (i) of the provision to sub-section(1).”

10. Section 102 relates to Duty of a bench of the Gram Katchahry to bring about amicable settlement of dispute, which inter alia is reproduced hereinafter:

“102. Duty of a bench of the Gram Katchahry to



bring about amicable settlement of dispute - A bench of the Gram Katchahry, while hearing a suit or trying a case under the provisions of this Act, shall after giving such notice to the parties and in such manner as it thinks fit, endeavour to bring about an amicable settlement between the parties, and for this purpose the bench shall, in such manner as it thinks fit and without delay, investigate the suit or case and all matters affecting the merits thereof and the right settlement thereof and in so doing may do all such lawful things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement, and where such a settlement is brought about, the bench shall record the same and give its decision accordingly.”

11. Section 103 relates to “A bench of the Gram Ktchahry to inquire into and decide the dispute in case no amicable settlement is reached”, which inter alia is reproduced hereinafter:

“103. A bench of the Gram Ktchahry to inquire into and decide the dispute in case no amicable settlement is reached - Where a bench of Gram Katchahry does not succeed in bringing about an amicable settlement under the preceding section or otherwise takes up the hearing or trial of a suit or case, it shall make an enquiry, receive such evidence as it considers necessary and record its judgment and in the event of the members of the bench disagreeing, the decision of the majority shall prevail; Provided that nothing herein before contained shall be deemed to prevent any member of the bench from placing on record in writing his dissent against such decision.”

12. Section 104 relates to “Proceeding to be followed by a bench of the Gram Katchahry”, which inter alia is reproduced hereinafter:

“104. Proceeding to be followed by a bench of the Gram Katchahry - Subject to the provisions of this Act and to any rules or directions that may be issued by the Government in this behalf the procedure to be followed by a bench of the Gram Katchahry shall be such as it considers just and convenient and the bench shall not be bound to follow any laws of evidence or procedure; other than the procedure prescribed by or under this Act.”



13. Section 105 provides for “Form of decision”,
which *inter alia* is reproduced hereinafter:

*“105. **Form of decision** - The decision of a bench of the Gram Katchahry shall be in writing and shall be signed by all members of such bench. It shall contain such particulars as may be prescribed by rules made by the Government in this behalf:*

Provided that the failure on the part of any member of the bench to sign the decision shall not affect the validity of such decision.”

14. Section 106 of the Act, 2006 provides for
“Criminal Jurisdiction”, which *inter alia* is reproduced
hereinafter:

*“106. **Criminal Jurisdiction** - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) and subject to the provisions of this Act a bench of the Gram Katchahry shall have jurisdiction within the local limits of the Gram Panchayat for the trial of the following offences as well as abetment of and attempts to commit any such offence if committed within the local limits of its jurisdiction, namely :-*

(a) offences under the Indian Penal Code, 1860 (45 of 1860), sections 140, 142, 143, 145, 147, 151, 153, 160, 172, 174, 178, 179, 269, 277, 283, 285, 286, 289, 290, 294, 294A, 323, 334, 336, 341, 352, 356, 357, 358, 374, 403, 426, 428, 430, 447, 448, 502, 504, 506, 510;

(b) offences under the Bengal Public Gambling Act, 1867 (Ben. Act 2 of 1867);

(c) offences under sections 24 and 26 of the Cattle Trespass Act, 1871 (1 of 1871)

(d) except as otherwise provided offences under this Act; or under any rule or bye-law made there under, and

(e) any other offence under any other enactment, if empowered in this behalf by the Government: Provided further that the Gram Katchahry shall not take cognizance of any offence in respect of which any proceeding is pending before a court of competent jurisdiction prior to the coming into effect of this Act.

Provided that the bench shall not take cognizance of any offence under section, 379, 380, 381 or 411 of the Indian Penal Code, 1860 (45 of 1860) in which the value of the property alleged to be stolen exceeds ten thousand rupees or in which the accused-

(i) has been previously convicted of an offence punishable under Chapter XVII of the Indian Penal Code, 1860 (45 of 1860) with imprisonment of either description for a term of three years or up-wards; or

(ii) has been previously fined for theft by any bench



of the Gram Katchahry;

(iii) has been bound over to be of good behaviour in proceedings instituted under sections 109 or 110 of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided further that the Gram Katchahry shall not take cognizance of any offence in respect of which a complaint has been filed against the Gram Panchayat a Mukhiya or any other member of the Executive Committee, Sarpanch or a Panch."

15. Section 110 of the Act, 2006 provides for
“Exclusive civil jurisdiction of a bench of the Gram Katchahry”.

The said provisions *inter alia* is a subject matter while deciding
the issue, which is reproduced hereinafter:

“110. Exclusive civil jurisdiction of a bench of the Gram Katchahry - Notwithstanding anything contained in the Bengal, Agra and Assam Civil Courts Acts, 1887 (13 of 1887), the Provincial Small Cause Courts Act, 1887 (9 of 1887) and the Code of Civil Procedure, 1908 (5 of 1908) and subject to the provisions of this Act a bench of the Gram Katchahry shall have jurisdiction to hear and determine the following classes of suits :-

(a) When the value of the suit does not exceed ten thousand rupees, namely -

(i) suits for money due on contracts;

(ii) suits for the recovery of movable property or the value of such property ;

(iii) suits for the recovery of rent; and

(iv) suits for compensation for wrongfully taking or injuring movable property, or for damaged property caused by cattle trespass; (b) All suits of partition except wherein complicated question of law or title is involved;

But where the Gram Katchahry is of the view that where in a suit for partition, complicated question of law or title is involved, Gram Katchahry shall transfer such suit to the court of competent jurisdiction :

Provided that the parties to a suit of the above description under clauses (a) and (b) may by a written agreement refer the suit to the bench for decision irrespective of the value of the suit and the bench shall, subject to such rules as may be prescribed as to court-fees and other matters, have jurisdiction to hear and determine the said suit under this Act:”

16. Section 111 of the Act, 2006 provides for “Certain
suits not to be heard by a bench of the Gram Katchahry”, which



inter alia is reproduced hereinafter:

“111. Certain suits not to be heard by a bench of the Gram Katchahry - Notwithstanding anything to the contrary contained in section 110, no suit shall lie in any bench of the Gram Katchahry –

- (a) on a balance of partnership account, or
- (b) for a share or part of a share under an intestacy or for a legacy or part of a legacy under a will, or
- (c) by or against the Central or State Government or servants of such Government in their official capacity or
- (d) by or against minors or persons of unsound mind, or
- (e) for the assessment, enhancement, reduction, abatement or apportionment of rent of immovable property, or
- (f) of a mortgagee of immovable property for the enforcement of the mortgage by foreclosure or sale of the property for the redemption of the mortgage or
- (g) for determining the right, title and interest in immovable property,
- (h) with regard to any matter in which proceeding is pending before a court of competent jurisdiction prior to coming into effect of this Act.
- (i) against the Gram Panchayat Mukhiya or any other member of the Executive Committee, a Sarpanch or a Panch.”

17. Section 112 provides for “Appeals”, which inter alia is reproduced hereinafter:

“112. Appeals - (1) An appeal against any order or decision of a bench of the Gram Katchahry shall be preferred within the period of thirty days after the date of the passing of such order or decision to the full bench of the Gram Katchahry and shall be heard by it in the prescribed manner.

(2) Not less than seven Panches shall form the quorum for the purpose of constituting a full bench for hearing an appeal under sub-section (1):

(3) An appeal against any order or decision of a full bench of the Gram Katchahry shall be preferred within a period of 30 days after the date of the passing of such order or decision to a Sub-Judge in case of civil cases and to a District and Session Judge in case of criminal cases.

(4) The order under challenge in appeal shall be not given effect to till the appeal is finally disposed of in the manner prescribed ,

(5) A copy of the order passed by the full bench of Gram Katchahry shall be made available free of cost to the parties within one week from the date of passing of such order in the manner prescribed for this purpose.”



18. Sub-Section (ah) of Section 2 defines suit that “Suit” means a suit triable by a bench of the Gram Katchahry’. The Act, 2006 does not provide definition of plaint.

19. Suit is prescribed under Sections 16 and 26 read with order IV of the C.P.C., 1908. Both the Sections are reproduced hereinafter:

Section 16 Suits to be instituted where subject-matter situate.

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) or the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Section 26 Institution of suits.

¹[(1)] Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

²[(2)] In every plaint, facts shall be proved by affidavit.]

*[Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of Rule 15A.]

20. The provisions of Section 110 of the Act, 2006 starts with notwithstanding clause subject to the condition that



Sub-Section-b of Section 110 of the Act, 2006 provides that “all suits of partition except wherein complicated question of law or title is involved” but where the Gram Katchahry is of the view that where in a suit for partition, complicated question of law or title is involved, Gram Katchahry shall transfer such suit to the court of competent jurisdiction.

21. It is thus apparent, that the Gram Katchahry could not have entertained the applications, which is not in the form prescribed under the Act for instituting the suit filed by Late Girija Devi for claiming her share in suit land. Section 110 of the Act confers jurisdiction on Gram Katchahary to decide disputes of such nature as mentioned therein whereas Section 111 restricts its jurisdiction even in respect of such matter referred to in Section 110. Section 111 of the Act, as a matter of fact carves an exception out of the matters enumerated in Section 110 of the Act. Section 111 begins with "notwithstanding anything to the contrary contained in Section 110" which means that even if nature of suit is covered by Section 110, if either of the conditions prescribed under Section 111 is present, a suit cannot be entertained by Gram Katchahry under Section 110 of the Act.

22. From perusal of the application dated 06.06.2009



‘Annexure-2’ it appears that the same cannot be said to be a plaint. The provisions of Section 110 of the Act, 2006, specifically provides that a suit can be maintained subject to the condition that the complicated question of law or title is not involved. On perusal of the impugned order passed by the Sub-Judge-I, Purnia, it appears that he has enlarged the scope of jurisdiction of Gram Kutchery, by proceeding to treat the Title Appeal No. 01 of 2011 without considering the fact that no pleading was made in the application dated 06.06.2009, which was filed without giving the family genealogy. The Application being defective having not fulfilled the requirement of the content of pleadings, which were required to be in the form of the plaint. The Sub-Judge-I has exceeded his jurisdiction by not treating the fact that no such amendment was prayed on behalf of the respondent. On merits also, the judgment dated 28.06.2023, is devoid of cogent reasoning for accepting the flagrant disregard of statutory rules and procedures in the institution and proceedings of the Gram Kutchery Case No. 14/2009. The full bench of the Gram Kutchery Case No. 14/2009, consisting of nine members, which passed the order dated 28.05.2010, has usurped and exceeded the statutory powers by surpassing the requirement of first deciding the case



in the Court of lowest grade as per Section Section 16 CPC which is provided for in Section 101(2) of Bihar Panchayat Raj Act, 2006 . The quorum of not less than seven Panches, is required for constituting the full bench to hear an appeal as per Section 112(2), from any order or decision of the Gram Kutchery. However, in the facts of the present case, a nine member bench, in excess of its jurisdictional power, usurped the Court of lowest grade and took up the matter for adjudication before it.

23. Rule 21 (1) of Bihar Gram Katchahry Conduct Rules, 2007 provides that “all suits shall be filed by giving application in writing under the Panchayat Act. The application shall contain name of parties concerned amount of claim, short statement of main points on which the parties concerned depend and the relief claimed.” The learned Sub-Judge-I, Purnia, has not taken into consideration that in the application dated 06.06.2009, the property has not been defined, nor the necessary parties were impleaded and no notice was given to the concerned parties.

24. The Sub-Judge I, Purnea and the full bench of Gram Katchery had *suo-moto*, without any jurisdiction, power or authority and in complete violation of the Bihar Panchayat



Raj Act, 2006, had converted an application filed by late Girja Devi for share in suit land as plaint, when in fact the application was devoid of the very essentials necessary in a plaint as per the provisions of CPC. There was inherent lack of jurisdiction in the full bench of Gram Kutchery to do so as is evident from the provisions of Section 110 and 111 of Act, 2006.

25. It appears that the Full Bench of Gram Kutchery lost sight of the fact that in exercise of the powers conferred by the Act, 2006, it got swayed only by the issue of deciding the share of Late Girja Devi in the suit land and did not toil over the issue of title though the dispute pertaining thereto loomed large.

26. It is to be noted that Gram kutchery is not substitute for the Civil Courts competent to try complex questions of law or title. Needless to state Gram Katchery, which is not bound to follow any laws of evidence or procedure as stated under Section 104 of Act, 2006, would not be capable of deciding complicated questions of title. By its very nature, the dispute raised complicated questions of fact and law. The subject land was alleged to be ancestral property and the parties herein have common lineage. As such, the property classified as ancestral property cannot be claimed by any individual where complex questions of disputes of title exists. Such questions



would require to be tried and tested by way of adducing of evidence in a regular trail before a competent Civil Court.

27. The very exercise of power by Gram Katchahry in the facts and circumstances of the case was illegal beyond jurisdiction against statutory provisions under Section 110 of the Bihar Panchayat Raj Act, 2006 and, therefore, hit by the doctrine of *coram non judice*.

28. The Apex Court in the case of **Kiran Singh & others Vs. Chaman Paswan** reported in **AIR 1954 SC 340**, has *inter alia* made following observation with respect to an order or decree passed without inherent jurisdiction:-

“6. The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was *coram non judice*, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.”

29. The order dated 28.05.2010 passed by the Full Bench of the Gram Katchahry, Panchayati Raj Harda, Purnia,



and the order dated 28.06.2023 passed by the learned Sub-Judge-I, Purnia, in Gram Panchayat Appeal No. 01 of 2011, having passed without jurisdiction are set aside and quashed with a liberty to the respective parties to file partition suit before the competent Civil Court.

30. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
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