

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.452 of 2017

1. Sudha Devi, wife of Late Kashi Naresh Singh,
2. Sanjiv Kumar Singh,
3. Mrityunjay Kumar Singh, Both sons of Late Kashi Naresh Singh,
- 4.1. Shailendra Kumar Singh, Son of late Ram Naresh Singh, Resident of Village- Bankatwa, Ward no. 19, P.S. Bagaha, District-West Champaran.
- 4.2. Narendra Kumar Singh, Son of late Ram Naresh Singh, Resident of Village-Bankatwa, Ward no. 19, P.S. Bagaha, District-West Champaran.
- 4.3. Madhurendra Kumar Singh, Son of late Ram Naresh Singh, Resident of Village- Bankatwa, Ward no. 19, P.S. Bagaha, District-West Champaran.
- 4.4. Punam Singh, Wife of Brijesh Singh and D/o of late Ram Naresh Singh, Resident of EWS-209, Rapti Nagar 1st Phase, P.O. Arogya Mandir, P.S. Shahpur, (U.P.)-273003.
- 4.5. Madhu Singh, Wife of Rajeev Kumar Singh, D/o of late Ram Naresh Singh, R/o H.N.-144, A Jatepur Colony, Gorakhpur, P.O. and P.S. and District-Gorakhpur (Uttar Pradesh-273001).
5. Awadh Naresh Singh,
6. Kaushal Naresh Singh, Petitioners no.4 to 6 are sons of Late Lalan Singh, All are resident of Village- Bankatwa, P.O. and P.S.- Bagaha, District- West Champaran.

... .. Petitioner/s

Versus

1. Neeraj Kumar
2. Gyanendra Singh,
Both sons of Sri Chandraketu Singh,
3. Archana Singh,
4. Amrita Singh,
Both daughters of Sri Chandraketu Singh, Respondents No.1 to 4 are resident of Village- Sandibuzzura, P.O.- Sindhuwa, District- Kushinagar U.P.
5. Shakuntala Singh, W/o Sri Awadhesh Singh, At Mohalla- Bilandpur, P.O. and District- Gorakhpur U.P.
6. Pushpa Singh, W/o Sri Arvind Shahi, At Mohalla- Shivpur, P.O. and P.S.- Gorakhpur, District- Gorakhpur U.P.
7. Ravi Pratap Singh, S/o Yogendra Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
8. Surya Pratap Singh, S/o Yogendra Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
9. Bhim Pal, S/o Dulal Pal, Resident of Village- Gaunaria, P.O.- Mithhaura, District- Maharajganj U.P.



10. Damodar Pal, S/o Dulal Pal, Resident of Village- Gaunaria, P.O.- Mithaura, District- Maharajganj U.P.
11. Bishun Devi, W/o Late Shivdhani Shahi, Resident of Village- Parwania, P.O. and P.S.- Siswa Bazar, District- Maharajganj U.P.
12. Jashoda Devi, W/o Thakur Singh, Resident at P.O.P.S.- Siswa Bazar, District- Maharajganj U.P.
13. Bijay Kumar Devi @ Jagdamba Devi, D/o Palakdhari Singh, W/o Bhagwan Singh, at Kanauli, P.O.- Kanauli, P.S.- Rudrapur, District- Deoria U.P.
14. Guddi Kumari, D/o Palakdhari Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
15. Ram Pratap Singh, S/o Late Palakdhari Singh @ Pandit Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
16. Shail Devi, Wife of late Rudra Pratap Singh, Resident of Village- Bankatwa, 1. Ward no. 19, P.O. and P.S.-Bagaha, District-West Champaran.
16. Archana Singh, Wife of late Jitendra Singh and D/o late Rudra Pratap Singh, 2. Resident of - Anandpur, Patna.
16. Shakshi Singh, W/o Rajesh Singh and D/o of late Rudra Pratap Singh, R/o 3. Village- Raghunathpur, P.O. Khaira Bazar, District- Chhapra- 841414.
16. Sivangi Singh, W/o Pankaj Singh and D/o of late Rudra Pratap Singh, R/o 4. Village- Raghunathpur, P.O. Khaira Bazar, District- Chhapra-841414.
16. Manoranjan Singh, Son of late Rudra Pratap Singh, Resident of Village- 5. Bankatwa, Ward No. 19, P.O. and P.S.- Bagaha, District- West Champaran.
16. Ravi Ranajn Pratap Singh, Son of late Rudra Pratap Singh, Resident of 6. Village- Bankatwa, Ward No. 19, P.O. and P.S.- Bagaha, District- West Champaran- 845101.
17. Ranvir Singh @ Ekbal Ji Singh, S/o Late Harihar Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
18. Randhir Singh @ Gopal Ji Singh, S/o Late Harihar Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
19. Niranjana Singh, S/o Late Jamindra Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
20. Rajeshwar Singh, S/o Late Jamindra Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
21. Mosmat Sulochana Devi, W/o Late Pashupati Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
22. Ashok Kumar Singh, S/o Late Pashupati Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
23. Manoj Kumar Singh, S/o Late Pashupati Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
24. Sudhir Kumar Singh, S/o Late Budhu Paswan, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
25. Asha Devi, W/o Sri Mrigendra Singh, Resident of village- Pirahni, P.O.P.S.- Barhalganj, District- Gorakhpur U.P.



26. Manorma Chand, W/o Dinesh Chand, Resident of Bhatti, P.O.- Dhakwa Bazar, P.S.- Shikarganj, District- Gorakhpur U.P.
27. Birendra Pathak, S/o Late Rudra Narain Pathak, Resident of Gudari Bazar, P.O.P.S.- Bagaha, District- West Champaran.
28. Umesh Pathak, S/o Late Rudra Narain Pathak, Resident of Gudari Bazar, P.O.P.S.- Bagaha, District- West Champaran.
29. Umesh Singh, S/o Late Sobhat Singh, Resident of Village- Harpur, P.O.- Harpur, P.S.- Pipiganj, District- Gorakhpur U.P.
30. Suresh Singh, S/o Late Sobhat Singh, Resident of Village- Harpur, P.O.- Harpur, P.S.- Pipiganj, District- Gorakhpur U.P.
31. Kishor Chaudhari, S/o Baliraj Chaudhari, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
32. Manager Sah, S/o Late Harihar Sah, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
33. Laltii Devi, D/o Late Parmeshwar Ram, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
34. Paras Singh, S/o Jangi Singh, Resident of Village- Bishwas, P.O.- Turhapatti, P.S.- Chandpatia, District- West Champaran.
35. Krishna Kumari, D/o Rajendra Singh, at present Residing Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
36. Banarasi Devi, W/o Rudra Pratap Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
37. Sumitra Devi, D/o Rudra Pratap Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
38. Pramila Devi, S/o Rudra Pratap Singh, Resident of Village- Bankatwa, P.O.P.S.- Bagaha, District- West Champaran.
39. Ramadhar Chaudhari, S/o Chhedi Chaudhari, Resident of Village- Bagaha, P.O.P.S.- Bagaha, District- West Champaran.
40. Krishna Mohan Sinha, S/o Late Muneshwar Sinha, Resident of Village- Naraipur, P.O.- Naraipur, P.S.- Bagaha, District- West Champaran.
41. Madanji Sinha, S/o Late Muneshwar Sinha, Resident of Village- Naraipur, P.O.- Naraipur, P.S.- Bagaha, District- West Champaran.
42. Rama Shankar Singh, son of Late Jagat Singh,
43. Vijay Bahadur Singh, son of Rama Shankar Singh,
44. Vinay Bahadur Singh, son of Rama Shankar Singh, Respondents no. 42 to 44 are resident of village- Bankatwa, P.O. and P.S.- Bagaha, District- West Champaran.

... .. Respondent/s

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with

CIVIL MISCELLANEOUS JURISDICTION No. 735 of 2023

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1. Most. Sudha Devi Wife of Late Kashi Naresh Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
- 2.1. Shailendra Kumar Singh, Son of late Ram Naresh Singh, Resident of Village- Bankatwa, Ward No. 19, P.S. Bagaha, District- West Champaran.
- 2.2. Narendra Kumar Singh, Son of late Ram Naresh Singh, Resident of Village-Bankatwa, Ward No. 19, P.S. Bagaha, District- West Champaran.
- 2.3. Madhurendra Kumar Singh, Son of late Ram Naresh Singh, Resident of Village- Bankatwa, Ward No. 19, P.S. Bagaha, District- West Champaran.
- 2.4. Punam Singh, Wife of Brijesh Singh and D/o of late Ram Naresh Singh, Resident of -EWS-209, Rapti Nagar, 1st Phase, P.O. Arogya Mandir, P.S. Shahpur, (U.P). 273003.
- 2.5. Madhu Singh, Wife of Rajeev Kumar Singh and D/o of late Ram Naresh Singh, R/o- H.N.-144 A Jatepur Colony, Gorakhpur, P.O. and P.S.and District- Gorakhpur (Uttar Pradesh- 273001).
3. Sanjeev Kumar Singh Son of Late Kashi Naresh Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
4. Mritunjay Kumar Singh Son of Late Kashi Naresh Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
5. Awadh Naresh Singh Son of Late Lallan Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
6. Kaushal Naresh Singh Son of Late Lallan Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.

... .. Petitioner/s

Versus

1. Ravi Pratap Singh Son of Yogendra Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
2. Surya Pratap Singh Son of Yogendra Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
3. Bhim Pal Son of Dulal Pal Resident of Village-Gaunaria, P.S.-Mithaura, District-Maharajganj (U.P.)
4. Damodar Pal Son of Dulal Pal Resident of Village-Gaunaria, P.S.-Mithaura, District-Maharajganj (U.P.)
5. Bishun Devi Wife of Late Shivdhani Shahi Resident of Village-Psarwania, P.O. and P.S. Siswa Bazar, District-Maharajganj (U.P.)
6. Jashoda devi Wife of Thakur Singh At and P.O. and P.S.-Siswa Bazar, District-Maharajganj (U.P.)
7. Bijay Kumari Devi @ Jagdamba Devi Daughter of Late Palakdhari Singh, Wife of Bhagwan Singh At -Kanauli, P.O.-Kanauli, P.S.-Rudrapur, District-Deoria (U.P.)
8. Guddi Kumari D/o Late Palakdhari Singh R/o Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.



9. Ram Pratap Singh Singh of Late Palakdhari Singh R/o Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
10. Shail Devi Wife of Late Rudra Pratap Singh R/o Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
11. Archana Singh Wife of Late Jitendra Singh R/o Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
12. Sakshi Singh Wife of Rajesh Singh Resident of Raghunathpur P.O. Khaira Bazar, District-Chhapra.
13. Sivangi Singh Wife of Pankaj Singh Resident of Raghunathpur P.O. Khaira Bazar, District-Chhapra.
14. Manoranjan Singh Son of Late Rudra Pratap Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
15. Ravi Ranjan Pratap Singh Son of Late Rudra Pratap Singh Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
16. Mosmat Sarala Kuer Wife of Late Bishwanath Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
17. Ranvir Singh @ Ekbal ji Singh Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
18. Randhir Singh @ Gopal Ji Singh Son of Late Harihar Singh Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
19. Krishna Kumari Singh Daughter of Late Harihar Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
20. Shail Kumari Singh Daughter of Late Harihar Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
21. Niranjan Singh Son of Late Jamindar Singh Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
22. Rajeshwar Singh Son of Late Jamindar Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
23. Ashok Kumar Singh Son of Late Pashupati Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
24. Manoj Kumar Singh Son of Late Pashupati Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
25. Sudhir Kumar Singh Son of Late Pashupati Singh Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran.
26. Asha Devi Wife of Sri Mrigendra Singh Resident of Village-Pirhani, P.O. and P.S.-Barhalganj, District-Gorakhpur (U.P.)
27. Manorama Chand Wife of Dinesh Chand Resident of Bhatti, P.O.-Dhakwa Bazar, P.S.-Shikarganj, District-Gorakhpur (U.P.)
28. Birendra Pathak Son of Late Rudra Narain Pathak Resident of Village-Gudari Bazar, P. and P.S.-Bagaha, District-West Champaran
29. Umesh Pathak Son of Late Rudra Narain Pathak Resident of Village- Gudari Bazar, P. and P.S.-Bagaha, District-West Champaran
30. Umesh Singh Son of Sohbat Singh Resident of Village- Harpur, P.O.-Harpur,



P.S.-Pipiganj, District-Gorakhpur (U.P.)

31. Suresh Singh Son of Sohbat Singh Resident of Village- Harpur, P.O.-Harpur, P.S.-Pipiganj, District-Gorakhpur (U.P.)
32. Koshor Chaudhari Son of Baliraj Chaudhari Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran
33. Manager Sah Son of Late Harihar Sah Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran
34. Lalti Devi Daughter of Late Parmeshwar Ram Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran
35. Paras Singh Son of Jangi Singh Resident of Village- Bishwas, P.O.-Turhapatti, P.S.-Chanpatiya, District-West Champaran.
36. Krishna Kumari Daughter of Rajendra Singh At Present Residing at Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran
37. Sumitra Devi Daughter of Rudra Pratap Singh Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran
38. Pramila Devi Daughter of Rudra Pratap Singh Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District-West Champaran
39. Ramdhar Chaudhari Son of Chhedi Chaudhari Resident of Bagaha, P.O. and P.S.-Bagaha, District-West Champaran.
40. Krishna Mohan Sinha Son of Late Muneshwar Sinha Resident of Village- Naraipur, P.O. Naraipur, P.S.-Bagaha, District-West Champaran.
41. Madan Ji Sinha Son of Late Muneshwar Sinha Resident of Village- Naraipur, P.O. Naraipur, P.S.-Bagaha, District-West Champaran.
42. Rama Shankar Singh Son of Late Jagat Singh, Cashier Punjab National Bank, Bagaha, Resident of Village-Bankatwa, P.O. and P.S.-Bagaha, District- West Champaran.
43. Bijay Bahadur Singh Son of Ramashankar Singh Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District- West Champaran.
44. Vinay Bahadur Singh Son of Ramashankar Singh Resident of Village- Bankatwa, P.O. and P.S.-Bagaha, District- West Champaran.
45. Niraj Kumar Singh Son of Late Shanti Devi and Chandra Ketu Singh Resident of Village-Sandi Bazzura, P.O.-Sindhuwa, Distirct-Kushi Nagar (U.P.)
46. Archana Singh Daughter of Late Shanti Singh and Late Chandra Ketu Singh Resident of Village-Sandi Bazzura, P.O.-Sindhuwa, Distirct-Kushi Nagar (U.P.)
47. Gajendra Singh Son of Late Shanti Singh and Late Chandra Ketu Singh Resident of Village-Sandi Bazzura, P.O.-Sindhuwa, Distirct-Kushi Nagar (U.P.)
48. Ranjana Singh Son of Late Shanti Singh and Late Chandra Ketu Singh Resident of Village-Sandi Bazzura, P.O.-Sindhuwa, Distirct-Kushi Nagar (U.P.)

... .. Respondent/s



Appearance :

(In CIVIL MISCELLANEOUS JURISDICTION No. 452 of 2017)

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Mritunjay Kumar, Advocate
Mr. Saurabh Suman, Advocate
Mr. Madan Mohan, Advocate

For the Respondents 42 to 44 : Mr. Khursheed Alam, Advocate
Md. Faiz Ahmad, Advocate

(In CIVIL MISCELLANEOUS JURISDICTION No. 735 of 2023)

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Mritunjay Kumar, Advocate
Mr. Saurabh Suman, Advocate
Mr. Madan Mohan, Advocate

For the Respondents 42 to 44 : Mr. Khursheed Alam, Advocate
Md. Faiz Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 21-08-2025

In both the cases, subject matter is the same and the issues are interrelated, as such, they have been heard together and are being disposed of by this common judgment.

Civil Misc. No.452 of 2017

2. The instant petition is directed against the order dated 04.02.2017 passed in Final Decree Case No. 02/2003 arising out of Title Suit No. 382/1974 by learned Sub Judge-1, Bagaha, West Champaran on applications dated 22.04.2013 and 17.02.2016 filed by the defendant nos. 41 to 43/respondent nos.42 to 44 whereby and whereunder the learned Sub Judge ordered for carving out 2 *katha* 8 *dhur* of land as per the sale deeds of defendant nos. 41 to 43/respondent nos. 42 to 44 within one month by the Survey Knowing Pleader Commissioner.



Civil Misc. No.735 of 2023

3. The instant petition is directed against the order dated 17.04.2023 passed by the learned Sub Judge-1, Bagaha, West Champaran in Final Decree Case No.02/2003 by which the learned Sub Judge rejected the application of the petitioners dated 07.03.2020 and also disposed of the application dated 16.03.2005 on the basis of the order passed in CWJC No. 2286/2013 dated 19.03.2013 wherein it has been directed that right, title, interest and possession of opposite party nos. 41, 42 & 43 should be carved out and protected in Plot Nos.1696 having an area of 2 *katha* 8 *dhur* by measuring the same in presence of local Circle Officer.

4. Shorn of unnecessary details, facts leading to institution of the present civil miscellaneous petitions are that one Title Suit No. 382 of 1974/ 23 of 1978 was filed by the plaintiffs/petitioners for partition of their share in the properties as described in Schedule I, II and III of the plaint. The suit was decreed in part on 24.07.1978 in terms of compromise between the plaintiffs and defendants 1st party and with contest against defendant 2nd party. First Appeal No. 838 of 1978 was filed before this Court by the plaintiffs and during the pendency of this appeal, 2 *katha* and 8 *dhur* of land was sold in favour of



three persons, namely Rama Shankar Singh, Vijay Bahadur Singh and Binay Bahadur Singh appertaining to Plot No.1696. In this first appeal, a compromise petition by way of interlocutory application I.A.No. 1669 of 2000, was filed jointly by the plaintiffs and the defendants first party, submitting therein that though the suit had been disposed of in terms of compromise in the trial court but the parties had agreed to certain changes in the allotment and thus prayer was made for disposal of appeal in terms of compromise indicated in the interlocutory application. All the parties to the appeal accepted the judgment passed in this appeal and none challenged it. The above-named purchasers filed petition seeking impleadment as party respondents in the appeal in order to safeguard their interest in view of fresh compromise between the plaintiffs and defendants first party.

5. A supplementary affidavit to I.A.No. 1669/2000 was filed stating therein that the interest of the caveator/intervener was very much safe and not at all affected by the aforesaid compromise. Vide judgment dated 14.11.2000 , the first appeal was disposed of in terms of compromise as against defendants/respondents 1st set and I.A.No.1669/2000 was made part of the decree. It was further made clear that the



right, title, interest and possession of the aforesaid purchasers in respect of 2 *katha* 8 *dhur* land of Plot No. 1696 would not be affected in any manner and the appeal was dismissed as against the defendants/respondent nos. 9 to 11.

6. The plaintiffs filed a petition for preparation of final decree on the basis of the compromise decree and made a prayer to the learned trial court to prepare a final decree in respect of suit land mentioned in detail in Schedule-II of the petition which also included the land purchased by the present petitioners.

7. Ultimately the Final Decree Case No. 02/2003 proceeded and the Pleader Commissioner had been appointed on two occasions but the reports submitted thereupon before the court concerned were not accepted and further fresh report was called for by the learned trial court where final decree proceeding had been taking place. On 28.09.2007 an application was filed by defendant nos. 41 to 43 to drop the final decree proceeding and to recall the earlier order dated 17.07.2007 in the light of orders of this Court dated 14.11.2000 passed in F.A. No. 838/1978. However, the said application filed by the defendant nos. 41 to 43 was rejected vide order dated 29.07.2008 by the learned Subordinate Court and this order was



challenged by the interveners/defendants before this Court in Civil Revision No. 1671 of 2008 which was disposed of on 27.09.2011 by this Court holding therein that there was no impediment in preparation of final decree pertaining to compromise decree where specific allotments of the plots were yet to be done and direction was given to the court below to proceed in a final decree proceeding while keeping in view the specific direction of this Court in paragraph no. 12 of the judgment in First Appeal No. 838 of 1978 relating to the right, title, interest and possession of the petitioners over their purchased land of plot no. 1696 which was not to be affected in any manner.

8. The final decree proceeding continued, but vide order dated 16.11.2012, the learned trial court, in F.D. Case No. 02 of 2003, held that specific allotment of 2 *katha* 8 *dhur* of Plot No. 1696 could not be granted in favour of the purchasers/interveners because their lands were in several parts and purchased by three separate sale deeds and the plaintiffs had some construction as well as ingress and egress from the land purchased by the interveners/defendants and, accordingly, allotment of 2 *katha* 8 *dhur* of land purchased by them in their favour had been rejected.



9. The order dated 16.11.2012 came to be challenged by the purchasers in CWJC No. 2286 of 2013 which was allowed by this Court vide order dated 19.03.2013 and it was held that considering all aspects, the order dated 16.11.2012 was set aside with direction to the learned Subordinate Court to determine 2 *katha* 8 *dhur* as per sale deeds of the petitioners by appointing another pleader commissioner who could measure the land as per sale deed of the petitioner.

10. Meanwhile, the decree holders/petitioners filed an application under Section 4 of the Partition Act on 16.03.2005 praying to convey the said purchased land of *Khata* No. 5 *Kheshra* No. 1696 measuring 2 *katha* 1 *dhur* after receiving the consideration money. On 26.05.2005, pleader commissioner was appointed. On 05.07.2013, SLP (Civil) No. 19206 of 2013, filed by the decree holders/petitioners against the order dated 19.03.2013 passed in CWJC No. 2286 of 2013, was dismissed. On 18.01.2014, petitioners filed objection on the ground that before determining the land of purchasers purchased during the pendency of the appeal, the court was required to determine the respective share amongst co-sharers and, hence, the claim for determination of purchasers land can only be granted after determination amongst the co-sharers.



11. Thereafter, the purchasers/defendant nos. 41 to 43, filed an application on 22.04.2013 for appointment of survey knowing pleader commissioner to measure and determine 2 *katha* 8 *dhur* of land. The present petitioners filed their rejoinder on 18.01.2014 to the petition dated 22.04.2013 contending therein that the entire petition for exclusion of any portion of the land from the ambit of the final decree is against the settled principle of law and further that the proceeding of the final decree is pending and entire land is to be demarcated and the land of the co-sharer would be fixed as per preliminary decree and the respondents have right to step into shoes of their vendors provided that they paid *ad valorem* court fee and prayed for adjudication of their claim. Under no circumstances, prayer for exclusion of purchased land could be demanded because the land allotted earlier to their vendor is still to be determined and fixed and thereafter right of petitioners would accrue for determination of land. On 17.12.2016, another petition was filed by the respondent nos. 41 to 43 for disposal of their earlier petition dated 22.04.2013.

12. Thereafter, vide order dated 04.02.2017, the learned Subordinate Court allowed the application dated 22.04.2013 of the defendant nos. 41 to 43 in the light of



previous direction of the High Court and directed the Advocate Commissioner to submit his report after measuring the land of the purchasers/ respondent nos. 42 to 44 against their sale deeds. The order dated 04.02.2017 has been assailed by the petitioners in Civil Misc. No. 452 of 2017.

13. On 02.11.2017, the Advocate Commissioner appointed by the order dated 04.02.2017 submitted his report. On 19.05.2018, respondent nos. 41 to 43 filed a rejoinder to the petitioners' application dated 16.03.2005 filed under Section 4 of the Partition Act. In continuation of the earlier petition dated 16.03.2005, the decree holders/petitioners filed a fresh application on 07.03.2020 under Section 4 of the Partition Act, 1896 undertaking to purchase the area of the land sold to the *pendente lite* purchasers which consisted of the *pucca* building, *pucca* kitchen, some trees and passage of ingress and egress belonging to the joint family property. Respondent nos. 42 to 44 did not file rejoinder to the said application but adopted their earlier rejoinder. Vide order dated 17.04.2023, the learned Subordinate Court declined to entertain the application under Section 4 of the Partition Act in the light of previous orders passed by this Court dated 14.11.2002 passed in First Appeal No. 838 of 1978, order dated 27.09.2011 passed in Civil Review



No. 1671 of 2000 and order dated 19.03.2013 passed in CWJC No. 2286 of 2013 and thus dismissed the application of the petitioners filed under Section 4 of the Partition Act.

14. Addressing the Court on both civil miscellaneous petitions, Mr. Ganpati Trivedi, learned senior counsel appearing on behalf of the petitioners, submitted that the impugned orders are erroneous and the learned Subordinate Court did not consider the facts and law in its true perspective. Since final decree proceeding is still pending, application filed by the petitioners under Section 4 of Partition Act is maintainable. Mr. Trivedi further submitted that though the learned Subordinate Court while rejecting the plea took the grounds that the High Court passed a number of orders in favour of the defendant nos. 41 to 43 holding that right, title and interest of the purchasers in respect of 2 *katha* and 8 *dhur* of land of Plot No.1696 is not affected in any manner. But the allotted share of the vendor of the defendant nos. 41 to 43 is yet to be carved out. So, no delivery of possession has taken place. If the vendor has not passed any title to defendant nos. 41 to 43, there is no question of re-conveyance. Mr. Trivedi further submitted that the respondents have yet to acquire title, though they might have right but right and title are having different connotations. A title



contains a number of rights. The respondent nos. 41 to 43 are *pendente lite* purchasers and they only have inchoate right as they have not perfected their title. Mr. Trivedi further submitted that the orders of this Court or any other court cannot prevail over the statutory provision. Section 4 of the Partition Act provides for right of co-sharers and at the same time, also about the rights of purchasers but the purchasers cannot claim a particular piece of land unless that portion is allotted to their vendors. Mr. Trivedi referred to Section 8 of the Transfer of Property Act, which reads as under :

“8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent



thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect”.

15. Thus, Mr. Trivedi submitted that the *pendente lite* purchasers cannot claim title over their purchased property since their right is still born. On the right of *pendente lite* purchasers, Mr. Trivedi referred to the decision of the Hon'ble Supreme Court in the case of ***Ramdas vs. Sitabai and others*** reported in ***(2009) 7 SCC 444*** wherein it has been held that a purchaser cannot have a better title than what his vendor had. It has further been held that without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. The Hon'ble Supreme Court placed



reliance on a decision in the case of ***M.V.S. Manikayala Rao v. M. Narasimhaswami*** reported in ***AIR 1966 SC 470*** wherein in paragraph 5 it has been held as under :

“5. ... Now, it is well settled that the purchaser of a coparcener's undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased.”

16. This finding was recorded placing reliance upon the decision of the Hon’ble Supreme Court in the case of ***Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh*** reported in ***AIR 1953 SC 487*** wherein it has been held in paragraph 11 as under :

“11. ... All that [vendee] purchased at the execution sale was the undivided interest of the coparceners in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work out his rights only by a suit for partition and his right to possession would date from the period when a specific allotment was made in his favour.”



17. Thus, the Hon'ble Supreme Court held that in view of aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject-matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the court.

18. Mr. Trivedi further referred to the decision of the Hon'ble Supreme Court in the case of ***Gajara Vishnu Gosavi vs. Prakash Nanasaheb Kamble and others*** reported in **(2009) 10 SCC 654** wherein relying on the earlier decisions the Hon'ble Supreme Court came to the finding that a purchaser of a coparcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property and further held that an undivided share of a coparcener can be a subject matter of sale/transfer, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds.

19. Thereafter, Mr. Trivedi referred to the decision of the learned Division Bench of this Court in the case of



Harendra Nath Mukharjee vs. Shyam Sunder Kuer & Others

reported in **1973 PLJR 20** wherein it has been held that an undivided family means a family which is undivided *qua* dwelling house in question. Though the dwelling house has been divided by metes and bounds by a Pleader Commissioner who has allotted separate *Takhtas* to different members of the family and also by the court passing the final decree but till actual delivery of possession is not effected and the house divided at the spot in accordance with the report of the Pleader Commissioner and the final decree, the family cannot be said to be divided *qua* the dwelling house. In the eyes of law the dwelling house should be deemed to be undivided amongst the members of the family until they get separate possession over their respective shares in accordance with the report of the Pleader Commissioner and final decree, referring to a decision reported in **74 Calcutta Weekly Notes 871** wherein it has been held that an application under Section 4 of the Act is maintainable before possession is delivered to the stranger purchaser. Thus, it is manifest that the family continues to be undivided *qua* dwelling house till possession is delivered to the members of the family in execution of the final decree for partition and as such the application is maintainable.



20. Mr. Trivedi thus submitted that the same situation prevails here as no delivery of physical possession has taken place and the learned Subordinate Court ought to have taken all these facts into consideration and should not have gone only on the basis of orders passed by this Court which is nothing but an order to protect right, title, interest and possession of the purchasers. But their interest would coincide with their vendor and whatever share is allotted to the vendor, the respondent nos. 42 to 44 could claim only the same and cannot demand carving out a particular portion of their share of 2 *katha* and 8 *dhur*.

21. Mr. Trivedi further submitted that the respondent nos. 42 to 44 have purchased the land from a co-sharer in different transactions and this suit land contains house structure of the plaintiffs/petitioners and the respondent nos. 42 to 44 are claiming the portion of land having ingress and egress of the petitioners. Therefore, this fact is also to be taken into consideration.

22. Mr. Trivedi next submitted that F.A.No.838 of 1978 has been disposed of on 14.11.2000. The matter has been pending for disposal of final decree proceeding, but for one reason or another, the matter is going on. The defendant nos. 41 to 43/respondent nos. 42 to 44 purchased 2 *katha* 8 *dhur* by



three registered sale deeds having area of 17 *dhur*, 17 *dhur* and 14 *dhur*, respectively from Plot No.1696. Further, according to the plaint, total area of Plot No.1696 is 9 *katha* 18 *dhur* and according to the intervenor, it is 8 *katha* 2 *dhur*. According to the compromise petition, the petitioners have been allotted an area of 5 *katha* 15 *dhur* in Plot No. 1696, the respondent no. 2 has been allotted 1 *katha* and respondent no. 6 has been allotted 1 *katha* 5 *dhur* and remaining 1 *katha* 18 *dhur* continued in the share of respondent no.7. The transferred land have been allotted to the share of transferor of the defendant nos. 41 to 43/respondent nos. 42 to 44.

23. Mr. Trivedi further submitted that the Survey Knowing Pleader Commissioner, appending the sketch map, reported that on the disputed Plot No. 1696, the plaintiffs have a big house, latrines, water tanks, kitchen and some other construction and from this plot, the petitioners have ingress and egress to the main road, as such, if a piece of 2 *katha* 8 *dhur* is allotted in one piece as demanded by defendant nos. 41 to 43, then the ingress and egress of the plaintiffs will be closed.

24. Mr. Trivedi further submitted that while passing the order dated 19.03.2013 in CWJC No. 2286/2013, this Court never directed that only the land purchased by the purchasers/



defendant nos. 41 to 43/respondent nos. 42 to 44 to the extent of 2 *katha* 8 *dhur* by three sale deeds having an area of 17 *dhur*, 17 *dhur* and 14 *dhur*, respectively, to be carved out. Rather this Court ordered that land has to be determined to the extent of 2 *katha* and 8 *dhur* as per the sale deeds of the petitioners by appointing another Pleader Commissioner, who should measure the land as per the sale deeds of the purchasers. Only when the share of the vendors is determined and the allotted to them, then only carving out of the shares of the purchasers/defendant nos. 41 to 43 could take place. For this reason, the impugned orders are not sustainable and Mr. Trivedi submitted that the learned trial court has erroneously directed the Pleader Commissioner to measure the lands purchased by the defendant nos. 41 to 43 in terms of their sale deeds. Therefore, the impugned orders could not be sustained in the eyes of law and are liable to be set aside.

25. Mr. Trivedi further submitted that it is settled law that a purchaser of joint family property cannot insist for allotment of the property which he has purchased. He has a right only to sue for partition of the property and ask for allotment of his property in the share of his vendor. At the same time, possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds.



26. Mr. Trivedi further submitted that the decisions of this Court in the present case whether in F.A No.838/1978, Civil Revision No. 167/2008 or CWJC No. 1286/2013 are concerned, direction about protecting the right, title and possession of the vendees, i.e., defendant nos. 41 to 43 is against the settled proposition of law as discussed in the cases of ***MVS Manikayala Rao vs. M. Narasimhaswami & Ors., AIR 1953 SC 470, Gajara Vishnu Gosavi*** (supra) and ***Sidheshwar Mukherjee*** (supra). Therefore, the decisions are *per incuriam*.

27. Mr. Trivedi further submitted that the principle of *per incuriam* has been considered by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Punjab Land Development and Reclamation Corporation Ltd. vs. Presiding Officer, Labour Court and Ors.***, reported in (1990) 3 SCC 682, wherein in paragraph 40 the *latin* expression *per incuriam* has been defined, which reads thus :

“40. ...the *latin* expression *per incuriam* means through inadvertence. A decision can be said generally to be given *per incuriam* when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court...”



28. Mr. Trivedi further submitted that if the fact comes to the notice of this Court, this Court is empowered to declare these decisions *per incurium*. The learned senior counsel referred to the decision of the learned Single Judge of this Court in the case of ***Dr. Mithilesh Kumar vs. State of Bihar & Anr.***, reported in ***1999(2)PLJR 259***, wherein the learned Single Judge considering a Division Bench judgment of this Court in ***Kameshwar Pd. vs. State of Bihar*** in ***CWJC No. 4096/1995*** concluded that the matter was not considered by the Division Bench in its proper perspective and having regard to the law laid down by the Hon'ble Supreme Court, the finding in the judgment of ***Kameshwar*** (supra) was recorded *per incurium* and was not binding precedent. The learned Single Judge further held that in all probabilities, the Division Bench would have followed the Supreme Court's judgments if its attention was drawn to these decisions. Thus, Mr. Trivedi submitted that the aforesaid judgments of three Benches of this Court will not have any binding effect being *per incurium* for not considering the law settled by the Hon'ble Supreme Court.

29. Mr. Trivedi further submitted that the SLP (Civil) No. 19206/2013 preferred against CWJC No.2286/2013 has been dismissed *in limine* and, therefore, the order of this Court



would not merge with the order of the Hon'ble Supreme Court and, in this regard, referred to the decision of the Hon'ble Supreme Court in the case of ***Khoday Distilleries & Ors. vs. Sri Mahadeshwara Sahakara Sakkare*** reported in ***(2019) 4 SCC 376*** wherein it has been held that if the dismissal at the stage of special leave petition is without reasons, then there will be no *res judicata* and no merger. The Hon'ble Supreme Court analyzed a number of cases where orders of different nature were passed and dealt with these judgments by classifying them in the following categories :

- “(i) Dismissal at the stage of special leave petition- without reasons- no res judicata, no merger.*
- (ii) Dismissal of the special leave petition by speaking or reasoned order- no merger, but rule of discipline and Article 141 attracted.*
- (iii) Leave granted- dismissal without reasons- merger results”.*

30. Mr. Trivedi further submitted that in the present case, the Hon'ble Supreme Court noted that the special leave petition was heard and dismissed and no reasons given. Therefore, the decision would not result in merger of the order and would not act as *res judicata*.

31. Mr. Trivedi pointed out that after discussing nature of dismissal before the Hon'ble Supreme Court, it has



been held by the Hon'ble Supreme Court that if it is non-speaking order where no reasons have been assigned and no law has been declared, the dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only and neither doctrine of merger nor Article 141 is attracted.

32. Thus, Mr. Trivedi submitted that the impugned order dated 04.02.2017 suffers from error of jurisdiction as it followed the decisions of this Court which are having no binding effect being *per incurium*.

33. Reiterating the facts and discussing the Section 4 of the Partition Act, 1893, Mr. Trivedi submitted that there is no direction/order/adjudication in the aforementioned three orders of this Court regarding maintainability of the petition filed under Section 4 of the Partition Act, therefore, the order dated 17.04.2023 is illegal. The defendant nos. 41 to 43 are strangers to the family, who purchased part of Plot No. 1696 during pendency of the F.A.No. 838/1978, which is a joint family property. The plaintiffs/decreed holders were not party to the transaction of sale and they filed application on 16.03.2005 followed by petition dated 07.03.2020 under Section 4 of the Partition Act undertaking to purchase the sold area of the



defendant nos. 41 to 43, over which undivided *pucca* building, courtyard, *pucca* latrine, passage of ingress and egress and other appurtenances stands. The learned senior counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Ghanteshwar Ghosh vs. Madan Mohan Ghosh and Ors.*** reported in (1996) 11 SCC 446 wherein it has been held as under :

“...Section 4 of the Partition Act read with Section 44 of the T.P. Act represents a well-knit legislative scheme for insulating the domestic peace of members of undivided family occupying a common dwelling house from the encroachment of a stranger transferee of the share of one undivided co-owner as the remaining co-owners are presumed to follow similar traditions and mode of life and to be accustomed to identical likes and dislikes and identical family traditions...”. It has further been held that “...with a view to seeing that such homogeneous life of co-owners belonging to the same joint family and residing in the joint family dwelling house is not adversely affected by the entry of a stranger to the family, this statutory right of pre-emption is made available to the co-owners who undertake to buy out such undivided share of the stranger co-owner. If such a right flowing from Section 4 of the Act is restricted in its operation only up to the final decree for partition, the very benevolent object of the section would get frustrated as up to final decree stage, the court would only



crystallise the shares of the contesting co-owners but the separation and partition of the shares of respective parties get really affected on spot only by actual division by metes and bounds and delivery of possession of respective shares to respective shareholders...”.

34. Mr. Trivedi reiterated that the aforementioned orders of this Court did not consider this aspect of the matter and the orders are against the statutory provisions as well as the law settled by the Hon’ble Supreme Court.

35. Mr. Trivedi next referred to the case of ***Manick Lal Singh vs. Gauri Shankar Shah***, reported in ***AIR 1968 Calcutta 245*** wherein defining the dwelling house, it has been held that a dwelling house means a house where the members of a family reside or used to reside and it includes all that they use for their convenient enjoyment of the house in question.

36. Mr. Trivedi further submitted that the suit property is dwelling house and this fact is clear from the order sheet of the learned trial court dated 16.11.2012 whereby the learned trial court confirmed the report of learned Survey Knowing Pleader Commissioner. Thus, Plot No. 1996 is homestead land and the suit property is dwelling house along with appurtenance thereto.

37. Thus, Mr. Trivedi submitted that the order passed



by the learned trial court dated 17.04.2023 does not provide for reasons for rejecting the application filed under Section 4 of the Partition Act and is only based on three orders of this Court which did not discuss Section 4 of the Partition Act at all, therefore, the impugned order is not sustainable.

38. *Per contra*, the learned counsel for the respondent nos. 42 to 44 submitted that Title Suit No. 382 of 1974/23 of 1978 was filed by the plaintiffs/petitioners for partition of 1/4th share in the properties of Schedules I, II and III of the plaint. The suit was decreed in part on 24.07.1978 on the basis of compromise between plaintiffs and defendants 1st party and with contest against defendants 2nd party. The Plot Nos. 450 and 350 were in dispute in between the plaintiffs and defendants 2nd party. Since the plaintiffs were aggrieved with the part of the judgment and decree passed by the learned Sub Judge-1st, Munger, they filed F.A.No. 838 of 1978 before this Court. After judgment and decree passed by the learned Sub Judge-1st, Bagha, the respondent nos. 42 to 44 purchased land bearing Plot Nos. 1696 measuring 2 *katha* 8 *dhur* from defendants 1st set. The learned counsel further submitted that the Plot No. 1696 was not subject matter of F.A.No. 838 of 1978 as the said appeal was filed against the part of the judgment



passed on contest against the defendants 2nd set. In the aforesaid first appeal, the respondent nos. 42 to 44 intervened in order to safeguard their interest in the light of the compromise between the plaintiffs and defendants first party. In the said first appeal, a fresh compromise petition was filed by the plaintiffs and defendants 1st set. However, the plaintiffs filed a supplementary affidavit in the appeal stating therein that interest of the intervenors was very much protected and was not affected by the aforesaid compromise. The first appeal came to be disposed of in terms of compromise as against the defendants 1st party and the compromise filed by way of I.A.No. 1669 of 2020 was made part of the decree. The learned counsel further submitted that in the order dated 14.01.2000, the learned first appellate court made it clear that right, title, interest and possession of the aforesaid purchasers in respect of 2 *katha* 8 *dhur* of land of Plot No.1696 was not affected in any manner and the appeal was dismissed against respondent nos. 9 to 11. The learned counsel further submitted that since the matter was disposed of in the light of compromise, no final decree was required and for this reason, the respondent nos. 42 to 44 are not *lis pendens* purchasers. In the Final Decree Case No. 02/2003 filed by the petitioners, the respondent nos. 42 to 44 made a prayer to drop



the final decree proceeding as the proceedings were not maintainable due to compromise decree being passed in the appeal. The prayer was rejected by the learned trial court vide order dated 29.07.2008 and against the said order, the respondent nos. 42 to 44 preferred Civil Revision No. 1671 of 2008. The said civil revision petition was disposed of with direction to the learned trial court to proceed with the final decree proceeding keeping in view of the specific direction of the High Court in paragraph 12 of the judgment in F.A.No.838/1978 relating to right, title, interest and possession of the respondent nos. 42 to 44 over their purchased land of 2 *katha* 8 *dhur* of Plot No. 1696 which was not to be affected in any manner.

39. The learned counsel further submitted that despite these two specific orders, in final decree proceeding, a wrong report of Pleader Commissioner was submitted and being aggrieved by the order of the learned trial court dated 16.11.2012 affirming the report of learned Pleader Commissioner, the respondent nos. 42 to 44 filed CWJC No. 2286 of 2013, which was allowed vide order dated 19.03.2013 wherein the learned Single Judge set aside the order dated 16.11.2012 and directed the learned trial court to determine 2



katha 8 dhur as per the sale deeds of the petitioners by appointing another Pleader Commissioner, who would measure the land as per the sale deeds of the petitioners with further direction stipulating the measurement in presence of the government officials. The order dated 19.03.2013 passed in CWJC No. 2286/2013 was challenged by the petitioners before the Hon'ble Supreme Court in SLP (Civil) No. 19206/2013, which was dismissed on 05.07.2013.

40. The learned counsel further submitted that in the light of the aforesaid facts and circumstances, the respondent nos. 42 to 44 filed a petition before the learned trial court to determine/measure the land and accordingly, the learned trial court, vide the impugned order dated 04.02.2017, appointed an Advocate Commissioner to carve out the land purchased by the respondent nos. 42 to 44. The said order has been impugned in Civil Misc. No.452/2017. The learned Advocate Commissioner has already submitted the report in the year 2017 itself.

41. The learned counsel further submitted that in the light of the aforesaid facts and circumstances, it is very much clear that the petitioners have no case and the present civil miscellaneous petitions have been filed only to harass the respondents. Though the respondents are stated to be *lis*



pendens purchasers but no *lis* was pending when the land was purchased by the petitioners. The petitioners purchased the land from the defendants 1st set who have already entered into compromise and Title Suit No.382/1974 was decreed on the basis of compromise as against defendants 1st set. The defendants 1st set again entered into compromise in F.A.No.838/1978. Since the respondents have purchased the land which did not remain in dispute after compromise before the learned trial court and for that matter, even first appeal was disposed of on the basis of compromise with the petitioner with respondents 1st party who were defendants 1st party in the learned trial court. Then the subsequent orders were passed in F.A.No.838/1978, Civil Revision No.1671/2008 and CWJC No.2286/2013 affirming the possession of the respondent nos. 42 to 44 with regard to their right, title, interest and possession over the property purchased by them. The contention of the petitioners has not been accepted even by the Hon'ble Supreme Court which dismissed the Civil Appeal (Civil) No.19206/2013. The learned trial court proceeded in the matter and has passed a proper order as the said order is in tune with the orders passed by this Court in the aforesaid F.A.No.838/1978, Civil Revision No.1671/2008 and CWJC No.2286/2013. There is no illegality



in the impugned order dated 04.02.2017.

42. So far as challenge to the order dated 17.04.2023 is concerned, learned counsel for the respondents submitted that the same is not assailable before this Court again in the light of the peculiar facts and circumstances of the case that when right, title and interest as well as possession of the respondent nos. 42 to 44 have been protected by this Court and such order was affirmed even by the Hon'ble Supreme Court. Moreover, Plot No. 1696 was not a dwelling house and applicability of Section 4 of the Partition Act is with regard to only a dwelling house and, therefore, there was no occasion for the learned trial court to take a different view and allow the application of the petitioners under Section 4 of the Partition Act. Thus, learned counsel submitted that there is no illegality even in the order dated 17.04.2023 and the same needs to be affirmed.

43. The learned counsel while referring to the decision of the Hon'ble Supreme Court in the case of ***Junior Telecom Officers Forum and Ors. vs. Union of India and Ors.*** reported in ***1993 supp (4) SCC 693*** submitted that even *in limine* dismissal of SLP would act as binding precedent. The learned counsel submitted that the Hon'ble Supreme Court considered the merits of the case and *in limine* dismissal should



not be taken as having no binding force.

44. The learned counsel next referred to the decision of the Hon'ble Supreme Court in the case of ***Byram Pestonji Gariwala vs. Union Bank of India and others*** reported in ***(1992) 1 SCC 31*** wherein the Hon'ble Supreme Court held that a compromise decree creates an estoppel by judgment and is binding upon the parties thereto. The compromise having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed thereon has the binding force of *res judicata*. The learned counsel thus submitted that the petitioners are trying to wriggle out from their compromise as the petitioners and the respondents 1st set are co-parceners and they want to deny the purchased land to the respondents.

45. The learned counsel also submitted that passing of the final decree is not necessary if the rights of the parties have been finally decided by virtue of compromise and relied on the case of ***N. Swaminathan vs. N. Ananttharama Subramanian and others*** reported in ***AIR 2003 Kerala 30***.

46. By way of reply, Mr. Trivedi submitted that the nature of Plot No. 1696 is stated to be *Kast Kaymi Gharari* and this fact finds mention in the sale deed dated 12.12.1989. This



aspect was not considered by any of the learned Benches of this Court that the petitioners have a right under Section 4 of the Transfer of Property Act and the said right could not be taken away by the judicial pronouncements of this Court.

47. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

48. Admittedly, the respondent nos. 42 to 44 are purchasers from defendants 1st party, who have entered into compromise with the plaintiffs/petitioners and suit Plot No.1696 was part of the compromise. The same defendants 1st set and respondents 1st set/plaintiffs/petitioners again entered into compromise in F.A.No.838/1978. In the compromise before the first appellate court, supplementary affidavit in I.A. No. 1669/2000 elucidates the position of the party with regard to the suit property under compromise very clearly and it is useful to extract paragraph 4 for clarity :

“That so far with regard to the claim of Caveator/Intervenor are concern, the deponent begs to states that total area of Plot No. 1696 according to the plaint is 9 Katha 18 Dhur but according to the intervenor it is 8 Katha 2 Dhurs. According to intervenors claim Yogendra Singh Defendant/Respondent No.2 transferred 17 Dhurs, Ram Pratap Singh Defendant/Respondent No.6 transferred 17 Dhurs and Radha Pratap Singh



Defendant/Respondent No.7 transferred 14 Dhurs. Total land comes to 2 Katha 8 Dhurs. According to compromise petition Appellants have been allotted an area of 5 Katha 15 Dhurs in Plot No. 1696, Respondent No.2 has been allotted 1 Katha Respondent No.6 has been allotted 1 Katha 5 Dhurs and remaining 1 Katha 18 Dhurs comes in the share of Respondent No.7 though due to typing mistake it was not shown in the share of Respondent No.7 in the compromise petition. That being the position the transferred land have been allotted to the share of transferer of the intervenor. Hence the interest of the Caveators/intervenors are very much safe and not affected.

(Underlined for emphasis)

49. Therefore, it is the admitted position of the petitioners that the transferred land have been allotted to the share of transferees of the intervenors and their interest was very much protected and not affected. This fact was acknowledged by this Court in FA No.838/1978 when the appeal was disposed of in terms of compromise as against the respondents 1st party and I.A. No.1669/2000 was made part of the decree. Moreover, Plot No.1696 was not the subject matter of F.A.No.838/1978 since the challenge in the appeal was only to the part of the judgment passed on contest against the defendants 2nd set. Once the suit was decreed on the basis of compromise between the plaintiffs and defendants first party, the matter with regard to



Plot No. 1696 did not remain in dispute any more. Therefore, purchase made by the respondent nos. 42 to 44 from Plot No. 1696 is not a purchase *pendente lite*. Moreover, the plaintiffs admitted the status of respondent nos. 42 to 44 in respect of their rights over 2 *katha* 8 *dhur* of land on Plot No. 1696. In this background, the first appellate court held that right, title, interest and possession of the purchasers in respect of 2 *katha* 8 *dhur* of land of Plot No.1669/2000 is not affected in any manner. Thereafter, in Civil Revision No.1671/2008 the position was reiterated by the learned Single Judge who directed the learned trial court to proceed with the final decree proceeding keeping in view the specific direction of this Court in paragraph 12 of its judgment in FA No. 838/1978 relating to the right, title, interest and possession of the petitioners over their purchase of 2 *katha* 8 *dhur* of land of Plot No.1696 which was not to be affected in any manner. Further, in CWJC No.2286/2013, the learned Single Judge considered the prevailing situation and also the boundaries in the sale deeds and considering all aspects directed the learned trial court to determine 2 *katha* 8 *dhur* as per sale deeds of the respondent nos. 42 to 44 by appointing another Pleader Commissioner, who should measure the lands as per the sale deeds of the respondent nos. 42 to 44. This order was



challenged by the petitioners before the Hon'ble Supreme Court which dismissed the same vide order dated 05.07.2013 passed in SLP (Civil) No. 19206/2013. If the impugned orders dated 17.04.2023 and 04.02.2017 have been passed by the learned trial court in the background of the aforesaid three orders of this Court as well as orders of the Hon'ble Supreme Court in SLP (Civil) No. 19206/2013, the orders could not be said to be improper or illegal. Even though the SLP (Civil) No. 19206/2013 filed by the plaintiffs was dismissed *in limine*, the effect of the same is upholding the orders of this Court passed in CWJC No.2286 of 2013 unless any observation to the contrary has been made. Dismissal would, therefore, mean the Hon'ble Supreme Court applied its mind to the facts of the case and finding no merit in the challenge to the orders of this Court passed in CWJC No.2286/2013, dismissed the special leave petition. Thus, the order of the Hon'ble Supreme Court has conferred finality on the orders of this Court passed in CWJC No. 2286/2013.

50. Invoking extra-ordinary jurisdiction of this Court under Article 227 of the Constitution of India, in the aforesaid facts and circumstances of the case, is unwarranted, more so, when the petitioners have challenged the order passed by the learned Single Judge in CWJC No.2286/2013 before the



Hon'ble Supreme Court and lost. Now, they cannot turn the clock back and say that these orders were passed *per incurium* and were against the orders passed in **MVS Manikayala Rao** (supra), **Gajara Vishnu Gosavi** (supra) and **Sidheshwar Mukherjee** (supra). Moreover, the facts are also dissimilar. In the present case, when a compromise has already been taken place, Plot No. 1696 has already been divided between the plaintiffs and defendants 1st set and the transferred land has been given in the share of the defendants 1st party, the petitioners are estopped from claiming otherwise and challenging the allotment of share to the respondent nos. 42 to 44. Therefore, the respondent nos. 42 to 44 are not *pendente lite* purchaser of undivided property rather they are purchasers of defined share of their vendors. For this reason, there could be no applicability of authorities cited by the learned senior counsel for the petitioners and, hence, the earlier decision of this Court cannot be said to be *per incurium*.

51. So far as rejection of petition of the petitioners filed under Section 4 of the Partition Act is concerned, the same would also be covered by the specific directions of this Court and also by the fact that Plot No.1696 was not dwelling house when it was sold. The distinction between dwelling house and



homestead land cannot be lost sight of. The applicability of Section 4 of Partition Act is only when share of dwelling house belonging to an undivided family has been transferred to a stranger, who is not a member of family and when such transferee sues for partition, then option could be given to the members of the family to purchase share of such transferee.

52. In the present case, admittedly Plot No.1696 was a homestead land and not a dwelling house, hence, there could be no application of Section 4 of Partition Act in these circumstances.

53. In the light of aforesaid facts and circumstances of the case and discussion made and considering the peculiar and distinguishable facts of the case in hand, the authorities cited by the learned senior counsel for the petitioners would not come to the rescue of the petitioners.

54. In view of discussion made here-in-above, I have no hesitation in holding that the learned trial court has not committed any illegality or irregularity and there appears no error of jurisdiction so as to interfere with the impugned orders and hence, the impugned orders dated 04.02.2017 & 17.04.2023 passed by learned Sub Judge-1, Bagaha, West Champaran in F.D. Case No. 02/2023 are affirmed.



55. As a result, both the petitions are dismissed.

56. Pending interlocutory applications, if any, also stand disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	10.07.2025
Uploading Date	21.08.2025
Transmission Date	NA

