

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No. 71 of 2011

=====

Mamta Jha, wife of Shri Rajnikant Jha, Caste-Brahmin, Religion-Hindu, Profession-Housewife, Resident of Village-Maheshpur, P.S. Pathrgama, District-Godda(Jharkhand)

... .. Appellant/s

Versus

Bibi Mehnaj Begum, wife of late Md. Jiyaudin, Caste-Musalma, Religion-Muslim, Profession-Housewife, Resident of village-Barahpura, P.S-Ishakchak Kotwali, District-Bhagalpur

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ranjan Kumar Jha, Advocate
For the Respondent/s : Mr. Vivekanand Vivek, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

Date: 26-11-2025

This First Appeal has been filed against the Judgment & order dated 14.03.2011 and decree dated 28.03.2011 passed by the learned Sub-Judge 1st, Bhagalpur in Title Suit No. 454 of 2009 whereby the plaintiff-appellant's suit was dismissed with cost.

2. For the sake of convenience, the parties where required shall be referred to in terms of their status before the learned trial court.

3. The plaintiff/appellant filed the suit praying for the declaration of their title, rights, and interest over the



disputed land as listed in Schedule 1 of the plaint. They also sought a decree against the defendant for recovery of possession of the property in Schedule 2 of the plaint. Additionally, the plaintiff/appellant sought an order of permanent injunction against the disputed land and requested compensation for the expenses of the case, among other reliefs.

4. The plaintiff/appellant claimed the aforesaid relief alleging that the plaintiff-appellant purchased the suit land with a total area of 11 kathas 18 dhurs, equivalent to 8,568 sq. ft., situated at Mohalla Barahpura, Pranwati Lane, P.S. Kotwali (Ishaquechak), District Bhagalpur, from its absolute owner Md. Jiyauddin, son of Late Moinuddin, by a registered sale deed dated 12.03.2003 executed for valuable consideration. It was further averred that the said Md. Jiyauddin was the husband of the sole defendant-respondent, Bibi Mehnaj Begum, and that the plaintiff-appellant was duly placed in peaceful possession of the property upon registration of the deed.

5. The plaintiff/appellant asserted that the disputed land formed part of the ancestral estate of Md. Jiyauddin, who had acquired it upon an amicable family partition and also through an oral hiba (gift) from his maternal aunt, Bibi Najmun Nisha. The said Md. Jiyauddin, being in



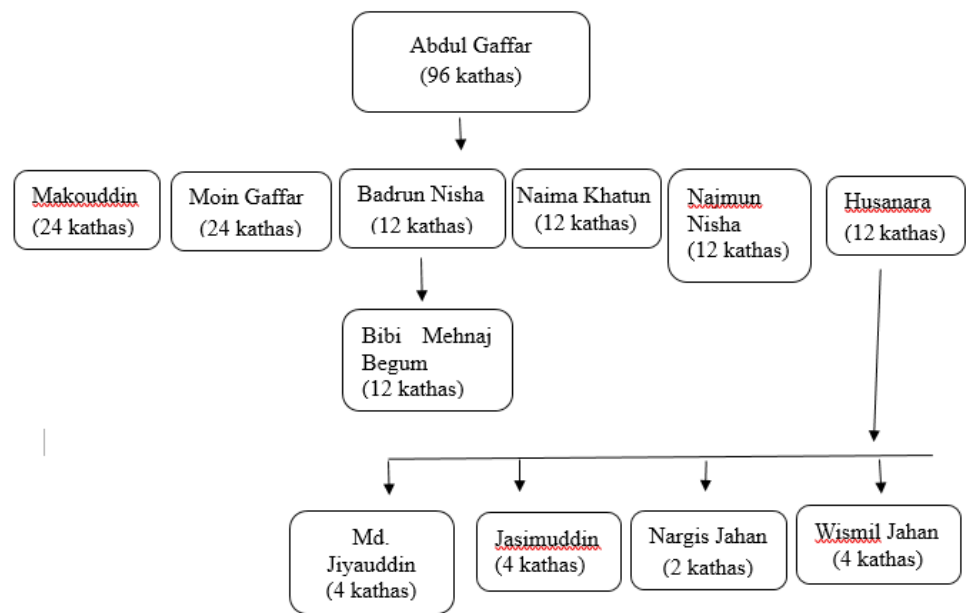
absolute ownership and possession of the property, executed a registered sale deed dated 12.03.2003 in favour of the plaintiff-appellant for valuable consideration, and possession of the property was duly delivered to her upon registration of the deed. However, the learned counsel for the defendant-respondent opposed this version of the facts, contending that Bibi Najmun Nisha never transferred the land to Md. Jiyauddin, and instead, it was Bibi Mehnaj Begum, the sole defendant in this case, who had acquired the said land from Bibi Najmun Nisha by way of an oral hiba. According to the defendant's case, Md. Jiyauddin had no title or ownership in respect of the disputed property, and therefore, the sale deed executed in favour of the plaintiff-appellant conveyed no valid right or interest. The competing arguments concerning the mode of acquisition of Bibi Najmun Nisha's property form an essential issue in this case because it is necessary to see whether Mohammad Jiyauddin had received the disputed property as heir and through oral gifts from Najmun Nisha or not.

6. As recorded in paragraph 13 of the impugned judgment, the undisputed facts of the case reveal that the common ancestor, Abdul Gaffar, was the absolute owner of 96 kathas of land, each katha measuring 720 sq. ft. Upon his



demise, the property devolved upon his heirs: two sons, Makouddin and Moin Gaffar, and four daughters, Bibi Badrun Nisha, Bibi Naima Khatun, Bibi Najmun Nisha, and Bibi Husnara. Their respective shares are as follows: Makouddin received 24 kathas, Moin Gaffar received 24 kathas, and each of the four daughters received 12 kathas. It further appears that Bibi Badrun Nisha had only one child, Bibi Mehnaj Begum, who is the sole defendant-respondent in this case. Bibi Husnara, on the other hand, had two sons, Md. Jiyauddin and Md. Jasimuddin, and two daughters, Nargis Jahan and Wismil Jahan. Bibi Mehnaj Begum was married to Md. Jiyauddin, the son of Bibi Husnara. It is pertinent to note that Bibi Najmun Nisha did not have any children, and she died, leaving behind no direct heir. This factual matrix concerning ownership and inheritance is further illustrated below by way of a family chart relating to the disputed property:





7. Furthermore, the plaintiff/appellant alleged that after the execution and registration of the sale deed dated 12.03.2003 (Exhibit 12), her name was duly recorded in Mutation Case No. 939 of 2002-2003 by an order dated 28.03.2003. This order allowed her to begin paying rent and receiving rent receipts from the revenue authorities. However, an initial clerical omission in the mutation order resulted in only Khasra No. 2600 (Khata No. 1818) being mentioned, despite the purchased land comprising portions of both Khasra Nos. 2599 and 2600 (Khata Nos. 1819 and 1818). Upon discovering this error, the plaintiff/appellant filed an application for Jamabandi correction in Misc. Case No. 3/2007-08. The Circle Officer forwarded this application to the Senior D.C.L.R., Sadar Bhagalpur, where the correction was duly confirmed by decree dated 04.07.2007. The plaintiff/appellant also stated that she



peacefully occupied the suit property, fenced the disputed property with a boundary wall, and had the land measured by Anchal Amin in Measurement Case No. 1 of 2007-2008. Amin's Report confirmed that the property in her possession corresponded to the boundaries and dimensions described in her sale deed.

8. According to the plaintiff/appellant, following the death of the vendor, Md. Jiyauddin, in 2005, his widow, Bibi Mehnaj Begum, began unlawfully interfering with her possession. On April 27, 2007, the defendant, accompanied by several others, trespassed upon the suit land, demolished portions of the existing boundary wall, and attempted to raise illegal structures thereon. In response, the plaintiff/appellant lodged FIR in Kotwali (Ishaquechak), P.S. Case No. 364 of 2007 under Sections 323, 427, 504, and 506 read with 34 of the Indian Penal Code, 1860. She produced the First Information Report and related documents as Exhibits 6 and 6/A. The plaintiff/appellant further alleged that the defendant fraudulently obtained an ex parte mutation in Lok Adalat Case No. 166 of 2006-2007, decided on 12.02.2007. This mutation entered her name over Plot No. 2599 (Khata No. 1819), covering approximately 1,762 sq. ft. of her purchased land. The plaintiff-



appellant was not aware of this entry and had no opportunity to hear about it. Upon hearing of this, she preferred Misc. Case No. 38 of 2007-08 before the Deputy Collector, Land Reforms, Bhagalpur, and the Anchal Adhikari, Jagdishpur. She sought cancellation of the illegal entry and restoration of her lawful mutation. The plaintiff/appellant also alleged that on 07.10.2009, the defendant, along with her family members and other associates, forcibly entered the suit property. They assaulted the plaintiff-appellant and her husband, snatched money amounting Rs. 5000 from her purse, and demanded extortion tax (or protection money). The matter was immediately reported to the Superintendent of Police, Bhagalpur, on 08.10.2009. This report was forwarded to the Deputy Superintendent of Police for enquiry. Subsequently, the plaintiff-appellant filed Complaint Case No. 2292 of 2009 under Sections 418, 419, 467, 468, 471, 120B, 323, 384, and 386 of the Indian Penal Code. This complaint was produced as Exhibit-5.

9. The defendant-respondent entered appearance and filed a written statement contesting all material averments of the plaint. She denied the validity of the sale deed dated 12.03.2003, questioned its execution and consideration, and



contended that the plaintiff-appellant had never acquired possession of the land described therein. It was pleaded that the plaintiff's claim was false, barred by limitation, and otherwise untenable in law by virtue of waiver, acquiescence, and adverse possession. The defendant maintained that she and her predecessors-in-interest had been in continuous, peaceful, and lawful possession of the disputed property, having derived title partly by oral gifts (hiba) made in the years 1985 and 15.08.1990, and partly by inheritance under personal law. She further asserted that the entry of her name through Lok Adalat Case No. 166 of 2006-07 was lawfully made and merely reflected her pre-existing possession and ownership. According to her, the plaintiff's documents were fabricated, sham, and unsupported by actual possession or consideration, and the suit deserved dismissal with costs.

10. In view of the above pleadings of the parties, the learned trial Court framed the following issues:-

- (i) Is the plaint of the plaintiff motivated or tenable in the eye of law?*
- (ii) Whether the plaintiffs have sufficient cause of action to file the suit?*
- (iii) Whether the suit is barred by limitation?*
- (iv) The suit of the plaintiff is defective due to non-joinder of the parties?*



(v) Whether the suit is not maintainable on account of breach, indiscriminate renunciation and tacit acceptance?

(vi) Whether Mohammed Jiyauddin had inherited the disputed property by way of oral gifts from Najmun Nisha and was in possession of the same?

(vii) Whether Abdul Gaffar has got total property of 96 Kathas and defendant Mehnaj Begum has got total land of 24 Katha which includes disputed land?

(viii) Whether the sale deed (Kevala) document executed by Mohd. Jiyauddin on 12-03-2003 in favour of Mamta Jha is valid?

(ix) Whether on the basis of the deed executed on 12-03-2003, plaintiff Mamta Jha has got the rightful possession and possession of the disputed land?

(x) Was Mohammed Jiyauddin's mental condition not sound, meaning was he insane?

(xi) Whether the plaintiff is entitled to get decree as she has claimed?

(xii) Whether the plaintiff has any other reliefs or rights to reliefs?

11. In support of their respective cases, the parties have adduced oral as well as documentary evidence. The plaintiff have examined eight witnesses, namely PW1 Gopal Mandal, PW-2 Md. Makroor Wahidi, PW-3 Kamlesh Kumar Jha, PW-4 Babita Devi, PW-5 Mamta Jha (the plaintiff herself), PW-6 Ram Charitra Mandal, PW-7 Jang Bahadur Rai (formal), and PW-8 Sakhi Chand Paswan (formal). Apart from this, some



documents and evidence have also been presented on behalf of the plaintiff, which have been marked as Exhibits 1 to 12 which are mentioned below:-

Exhibit 1- Original copy of the information application.

Exhibit 1/A- original. Information application dated 9-7-07 in x

Exhibit 2/A- Katha No.- 1818 Khasra No. 2600 Rakba-8568 for the year 2002-2003 and 2004-2005, receipt of Mal Gujari which are in the name of Mamta Jha.

Exhibit 2/B and 2/C- The Mal Gujari receipt (Revenue) of Khasra No. 2600 and 2599 of Khata No. 1818 and 1819 total Rakba is 8568 Sq. Ft. for the year 2009-10, has been deducted in the name of Mamta Jha.

Exhibit 3 and 3/A- Tax receipt of Bhagalpur Municipality drawn in the name of Mamta Jha.

Exhibit 4- Original copy of agreement to sale dated 21/11/1999 executed by Md. Jiyauddin in the name of Md. Mawroor Wahidi.

Exhibit 4/A- Original copy of agreement to sale dated 21.11.99 executed by Mohd. Khalid Khan in the name of Mohd. Mawroor Wahidi.

Exhibit 4/B- Original copy of Agreement to sale dated 27/11/1999 executed by Bibi Mehnaz Begum in the name of Md. Mawroor Wahidi.

Exhibit 4/C- Original copy of Agreement to



sale dated 5.1.2000 executed by Moinuddin. Mohd. Jiauddin, Mohd. Jasmuddin, Bibi Nargis Jahan, Bibi Bilkish Jahan all daughters of Md. Moinuddin in favour of Mawroor Wahidi.

Exhibit 5- Certified copy to the complaint petition of complaint case number 2292 of 2009.

*Exhibit 6- The Certified copy of The First Information Report given by Mamta Jha
Exhibit 6/A: - Certified copy of FIR of Kotwali Police Station Case No. 364 of 2007*

Exhibit 7- Report of measurements made by the Circle Officer (Amin) on the complaint along with map.

Exhibit 8- Certified copy of the charge sheet filed in Kotwali Ishakchak Police Station Case No. 364 of 2007

Exhibit 9- Certified copy of Khata No. 1818 and 1819.

Exhibit 10- Certified copy of the order passed by the Circle Officer, Jagdishpur Circle in the Mutation case number 939(9)/02-03.

Exhibit 10/A- certified copy of orders passed by Circle Officer, Jagdishpur Circle in Miscellaneous Case No. 3 of 2007 dated 29-2006-2007 and 02.2007.2007 in case number 307 and the order passed on 04-07-2007 by Bhumi Sudhar Sub-Divisional Magistrate, (DCLR) Bhagalpur.

Exhibit 10/B- Certified copy of the order passed on 31-7-07 in Mutation case no. 12/07-08 by Sub-Divisional Magistrate,



Land Reforms, Bhagalpur.

Exhibit 11- Original correction letter dated 28.03.2003 issued by the Government of Bihar regarding mutation.

Exhibit 11/A- Photocopy of correction letter dated 16.01.2004 issued in respect of mutation by Municipal Corporation, Bhagalpur.

Exhibit 12- Original copy of the Kevala (Sale Deed) dated 12.03.2003 executed by Mohd. Jiyauddin in favour of Mamta Jha in respect of 8568sq.ft. land.

12. On behalf of the defendant-respondent, a total of seven witnesses have been examined: D.W.-1 Md. Jashimuddin, D.W.-2 Md. Moinuddin, D.W.-3 Sagufta Prawin (daughter of the defendant-respondent), D.W.-4 Bibi Mehnaj Begum (the defendant-respondent), D.W.-5 Md. Quddus, D.W.-6 Samir Kumar, and D.W.-7 Abusalam. They have also produced various documents marked as Exhibits A to which are mentioned as follow:-

Exhibit A- Original copy of Oral gift dated 25.4.1991 executed by Bibi Najmun Nisha in favour of Bibi Mehnaz Begum.

Exhibit B- Revenue tax receipt of Khata No.- 1819, Khasra No.- 2599, land measuring T-8640 sq. ft., for the year 2009-10, was in the name of Mehnaj Begum.

Exhibit C- Certified copy of the deed executed by Mohd. Jiyauddin and Mohd. Jsimuddin in favour of Babita Jha on 12-3-



03.

Exhibit C/1- A copy of the deed dated 31.1.2003 executed by Bibi Nargis Jahan and Md. Jiyauddin in favour of Smt. Janki Mishra.

Exhibit C/2- certified Deed executed by Md. Jiyauddin and Nargis Jahan in favour of Sikandar Prasad Rajak, on 2.07.02

Exhibit C/3- certified Deed executed by Mohd. Jasimuddin and Bibi Bilkis Jahan in favour of Smt. Poonita Mishra, on 31-1-03.

Exhibit C/4- Certified copy of the deed dated 12-3-03 executed by Mr. Jiyauddin in favour of Mrs. Rachna Jha.

Exhibit C/5- Certified copy of Kevala deed dated 31.01.2023 executed by Md. Jasimuddin and Bibi Bilkis Jahan in favour of Smt. Janki Mishra.

Exhibit C/6- Certified copy of Kevala dated 12.3.03 executed by Md. Jiyauddin in favor of Mrs. Punam Sinha.

Exhibit C/7- Certified copy of the deed dated 12-3-03 executed by Mohd. Jiyauddin in favour of Sudarshan Upadhyay.

Exhibit C/8- Certified copy of Kevala deed dated 12.03.03 executed by Mohd. Jiyauddin and Mohd. Jasimuddin in favour of Mrs. Babita.

Exhibit C/9- Certified copy of the deed dated 12.3.03 executed by Mohd. Jiyauddin in favour of Smt. Mamta Jha.

Exhibit D- Original copy of the death certificate of Ch. Mohd. Jiyauddin's son of Late Mohd. Muinuddin.

Exhibit E- Photocopy of the letter sent by



the Sub-Divisional Agriculture Office, Sahebganj to the District Fisheries Officer, Santhal Pargana, Dushka.

Exhibit F- Treatment slip of Md. Jiyauddin by Dr. S.A. Saheb

Exhibit G- Certified copy of the recent survey Khata no. 1818 and 1819.

Exhibit H- Original copy of the mutation correction letter dated 12-2-2007 issued by the Government of Bihar.

Exhibit I- Certified copy of the measurement report passed in Napi Case No. 59/06-07 by Circled Officer (Amin).

Exhibit J- Certified copy of the order dated 12.2.07 passed in Lok Adalat Mutation Suit No. 166/06-07.

13. The learned trial court, after hearing the parties and considering the evidence and materials on record, decided the issues in favour of the defendants, holding the registered sale deed dated 12.3.2003 executed in favour of the plaintiff by Md. Jiyauddin as *void ab initio*.

14. Aggrieved by and dissatisfied with the said decree, the appellant challenged the same in First Appeal No. 71 of 2011.

15. Learned counsel on the behalf of the plaintiff/appellant submitted that the impugned order is bad in law as well as on facts. He further submitted that it is settled proposition of law that the registered deed is the best evidence



and the recitals in the deed will have precedence over oral statements in terms of section 91 and 92 of the Indian Evidence Act, 1872. He further submitted that the Learned Trial Court failed to consider the agreement to sale between PW-2 Mawroor Wahidi and vendor of the plaintiff-appellant, culminating in the sale deed dated 12.03.2003 therefore, all the contents of the agreement to sale are deemed to have merged with the sale deed and therefore, ought to have been treated as recital of the sale deed. The recital in the agreement to sale is very clear that how the suit land by way of oral hiba and family partition vested upon the vendor of the plaintiff. He further submitted that the evidence led by the defendant (DW-4) regarding oral hiba to her is self-contradictory which the Learned Trial Court failed to consider. DW-4 in her examination in chief stated that oral hiba in her favour was given by Bibi Najmuh Nisha in 1990 and on the same day a memo of gift was created but the date of the memo of gift is 25.04.1991 therefore, the statement is entirely false. He further submitted that that during the entire mutation and other proceedings the said hibanama was never produced and bring forth only during the suit proceedings which also casts serious doubt over the document, and the document is a totally forged and fabricated document created as an afterthought.



15.i. He further submitted that the actual facts is that said Bibi Nazmun Nisha gave Hiba of the suit land to Md. Jiyauddin (husband of the defendant-respondent) which is evident from the agreement dated 21.11.1999 (Ext.-4) executed by Md. Jiyauddin in favour of Md. Mawroor Wahidi in the suit witnessed by one Md. Khalid Khan one of the cousin (Mouser) brothers of Md. Jiyauddin (the vendor of the plaintiff) which is been accepted by Md. Jiyauddin. He further submitted that the evidence led by the defendant is completely forged and fabricated but the learned Trial Court completely overlooked these aspects and passed the judgment and decree in favour of the defendant and the same deserves to be set aside. He further submitted that the defendants have mislead the court below and fraudulently relied on the order of mutation in their favour of the suit land vide Lok Adalat case No. 166 of 2006-2007 vide order dated 12.02.2007 before the trial court, however, upon enquiry under the Right to Information it was informed that no such case is mentioned in the list of mutation cases in the lok Adalat on 12.02.2007.

15.ii. He further submitted that the DCLR Bhagalpur vide order dated 31-07-2007 (Ext-10/B) had already set aside the said mutation order and also noted about the



forgery committed by the defendant but this fact was not taken into consideration by the Learned Trial Court this in itself is a very good ground for granting judgment and decree in favor of the plaintiff. The very non consideration of this vital fact makes the judgment and decree perverse and liable to be set aside. He further submitted that insanity of the vendor of the plaintiff is completely based on wrong premise. The evidence on which the finding of insanity is based is unattainable. The defendant-respondent produced a prescription issued by Dr. S. A. Hasib which is without date and signature of the said Dr. S. A. Hasib and also there is nothing mentioned about the disease of Md. Jiyauddin in the said prescription. Moreover the defendant had produced photocopies of documents to prove insanity of the vendor of plaintiff and the documents which have been provided in support of insanity are photocopies of a prescription and a letter by one of the ex-employers of the vendor of the petitioner and those persons were not called to prove those documents and those documents perse doesn't establish insanity upon which the trial court placed reliance which is totally illegal and perverse and also good ground for setting aside the case of the defendant. The Learned Trial Court has relied upon the evidence of the daughter of the vendor of the plaintiff who is giving evidence



regarding facts and incidents which has occurred prior to her birth but still that evidence has been given credence to arrive at a finding of insanity of the vendor of the plaintiff which is completely illegal. He further submitted that the Learned Trial Court failed to consider the fact that vendor of the plaintiff was father of 8 children, and it is practically impossible for an insane man to uprise 8 children. It is further surprising that the defendant has claimed that she knowingly married an insane man but still had 8 children with him.

15.iii. He further submitted that Md. Jiyauddin was also witness in zarbeyana dated 27.11.1999 (Ext.-4/B) executed by his wife Bibi Mehnaz Begum (defendant-respondent) in favour of Md. Mawroor Wahid and he also received Rs. 10,000/- on 21.3.2001 & Rs. 2000/- on 18.03.2002 which is evident on the back page of Ext.-4/B. Defendant has also admitted during cross examination that for executing sale deeds a person has to be physically present before the registrar if that is the case the registrar/sub registrar could never have allowed an insane man to execute deed who has executed number of sale deeds apart from the deed with the plaintiff and in some of the deeds even the defendant is also the co-vendor. He further submitted that insanity is not a permanent feature and



in order to declare a document void on the ground of insanity it has to be established that at the time of execution of that document the person executing was insane. There is no evidence on record to show that Md. Jiyauddin was not in sound mind while executing the sale deed dated 12.03.2003. The Learned Trial Court committed a grave error in giving a finding to that effect that the vendor of the plaintiff could not have executed the sale deed since he was insane. It is stated that none of the evidence proves that on 12.03.2003 the vendor of the plaintiff was insane. It is a trite law that even a person who is generally of unsound mind but occasionally sound may contract only when they are of sound mind. The validity of a contract depends on the person's mental state at the exact time the contract is made. For this he relied on the judgement of *Inder Singh v. Parmeshwardhari Singh (1957)* in which it has been held that contracts made during periods of sanity are valid, even if the person is generally of unsound mind.

15.iv. He lastly submitted that burden of proof lies on the party alleging unsoundness to prove incapacity at the material time. The witnesses on behalf of Defendant-respondent have failed to prove that Md. Jiyauddin was mad at the time of executing the sale deed in favour of the plaintiff-appellant. For



this he relied on the judgment of *Mohamed Yakub v. Abdus Quddus* (AIR 1923 Pat 187) and *Mst. Lakshmi v. Dr. Ajay Kumar and others* (AIR 2006 P&H 77) (para 6, 13 and 14) in which it has been held that burden of proof lies upon the party alleging unsoundness to prove incapacity at the material time and the point of insanity must be proved at the time of formation of the contract. The witnesses on behalf of Defendant -respondent have failed to prove that Md. Jiyauddin was insane at the time of executing the sale deed in favour of the plaintiff-appellant.

16. Learned counsel on the behalf of the respondent submitted that the appeal is not maintainable and bad for defect of parties. The suit is barred under the provision of Specific Relief Act. The suit is barred under the principles of waiver, estoppel, acquiescence. The suit is barred by law of adverse possession. The plaintiff-appellant has got no cause of action and cause of action alleged in Para- 16 of the plaint are totally false, fabricated and mischievous.

16.i. He further submitted that the defendant in paragraph No-9 has stated that the statements made in Para- 1 and 2 of the plaint are totally false and fabricated. The alleged sale-deeds are illegal false and fabricated. The alleged sale-deed



are illegal, void, sham, in-operative and not binding upon the defendant. The plaintiff-appellant has never come in possession over the suit land at any material time. Further he submitted that the suit land was never the ancestral property of Jiyauddin and the same was never allotted to Md. Jiyauddin in any amicable family partition. Further, Jiyauddin had been found insane and this defendant had no any concerned with her husband. The plaintiff/appellant has obtained the alleged order from the court of DCLR, Bhagalpur and also from the office of Bhagalpur Municipal Corporation under fraud and illegal and on wrong report. Whereas the defendant is coming in possession since more than twelve years over the suit land.

16.ii. He further submitted that defendant is in possession over the suit lands as absolute owner having perfect right, title, interest over the same as such, the question of disturbing the peaceful possession of the plaintiff/appellant does not arise at all, as the plaintiff/appellant has never come over the suit lands. Further the defendant possessed the disputed land since before 15.8.1990. It is totally false to allege that on 27.4.2007 the defendant constructed a tin shade hut with bamboo khuta on some portion of the suit land with an area of 1 katha 10 dhurs at the measurement of 720 Sq. ft. per Katha with



the help of her daughters and son-in-law. He further submitted that the disputed land 8640 sq. ft. equivalent to 0.803 hector part of 0.6970 hectares recorded under khesra No-2599 of Khata No-1919 in the municipal khatian prepared and published in the year 1985 was originally held and possessed by Abdul Gaffar and he remained in possession over the same till his death. Abdul Gaffar died leaving behind two sons Makiuddin and Moin Gaffari and four daughters Badrunisa, Bibi Najmun Nisa, Bibi Nayeema Khatoon and Bibi Husn-e-Ara who inherited and succeeded the properties held by Abdul Gaffar recorded under Khesra No- 2600 of khata No- 1818 having an area of 0.6035 hector and under khesra No- 2599 Khata No-1819.

16.iii. He further submitted that the Badrunisa transferred the entire interest of her property to the defendant by way of oral hiba in the year 1985. Bibi Najmun Nisa also transferred her entire allotted interest in the lands to this defendant by means of oral gift on 15.08.1990 and the defendant accepted the said gift and came in possession over the gifted lands. He further submitted that the plaintiff-appellant in the month of July 2007 had threatened this defendant with some unsocial persons and criminal to dispossess this defendant from the suit property and the plaintiff-appellant stated that she has



purchased the suit property by means of sale deed dated 12.03.2003. It is further submitted that the defendant thereafter got an information from Registry office at Bhagalpur and it transpired that the plaintiff-appellant illegally managed to get the kewala executed and registered making Md. Jiyauddin without any consideration of all six sale deeds. The said Jiyauddin had no right, title and possession over the suit property nor he was in possession over it. Ziyauddin had never received any amount towards consideration. The alleged six sale deeds are illegal, void and sham and the same has never acted upon. The defendant has got perfect right, title, interest over the suit property. He further submitted that the allegation mentioned in para 13, 14 and 15 of the plaint are totally false, concocted and mischievous.

16.iv. He further submitted that from reading of plaint it is evident that there is no specific averment with regard to payment of consideration money to the vendor. He further submitted that the deposition of PW-1 to PW-8, reveal that suit property is not the ancestral property of the vendor Md. Ziyauddin rather he got only 4 Katha land of his share after the death of his mother namely Husna-e-Ara from nanihal side and not from his father's property. Md. Ziyauddin himself sold his



own share 4 Katha (2880 Sq. ft.) vide sale deed Ext. C/4, C/6 and C/7 and more than his share with his brother and sisters jointly vide Ext. C, C/1, C/2, C/3, C/5 and C/8 except C/9 (total 9975 Sq. ft.). As such the suit property is not the property of the vendor Md. Ziyauddin and he has no right, title, interest and possession over the suit property. As previously mentioned, the 4 Katha land from his mother's side, which he sold to various individuals through various sale deeds, is more than his share. The plaintiff-appellant has not asserted in the plaint that the property in question is the property that was given by Nazmun Nisha through oral hiba to Md. Jiyauddin. Still the plaintiff-appellant attempted to adduce some oral evidence to that effect but no specific date and year of alleged Hibinama was stated by those witnesses. Accordingly, this part of evidence is beyond the pleading which is liable to be rejected as per settled principle that "Party cannot be allowed to travel beyond pleadings"

16.v. He further submitted that Md. Ziyauddin was suffering from insanity and he was sent for treatment. The oral and documentary evidence was also produced to corroborate the version of insanity. He further submitted that the plaint and witnesses of plaintiff-appellant claimed that Md. Jiyauddin died in 2005, but the death certificate (Exhibit D)



records his death as 17 October 2006, issued on 8 June 2007, which is before the suit was filed. Since documentary evidence prevails over oral statements under Section 92 of the Evidence Act, '17 October 2006' is accepted as the correct date of death. Hence, the plaintiff-appellant failed to substantiate the date of death mentioned in her pleadings. He further submitted that regarding the vendor's insanity, the plaintiff-appellant gave no reference to it, whereas the defendant submitted documentary evidence (Exhibits E and F) and corroborating oral testimony showing that Md. Ziauddin was mentally ill and received treatment. He further submitted that the plaintiff-appellant has not proved the fact that her vendor, Md. Ziauddin is the absolute owner of the suit property as such sale-deed executed by him in her favour Ext-12 corresponding to Ext- C/9 is void and illegal which did not pass any title to her. Another point for consideration is that the defendant has categorically stated and adduced evidence that no consideration was paid of the suit property to the vendor. This fact is also proved by the fact that the plaintiff-appellant has neither made any averments in her plaint nor adduced any documentary and oral evidence to prove the actual payment of consideration money in terms of section 54 of the Transfer of Property Act, 1888.



16.vi. He further submitted that section 7 of Transfer of Property Act 1882, the person who is competent to transfer has been described. Taking into consideration of such a provision, in the case of ***P. Kishore Kumar Vs. Vittal Patkar*** decided by the apex court and ***Sita Devi Vs. Prabhunath Singh*** reported in ***PLJR 2012 (4) Page No- 32 in Para- 33***, this court has held as follows:- *“If a person had no right, title or interest in the property, he cannot transfer anything which he himself was not possessing, a sale deed executed by such a person is a void sale deed and it is not necessary to institute a suit for setting aside or for declaring it as a void document.”*

16.vii. He further submitted that section 54 of the Transfer of Property Act defines 'sale' as the transfer of ownership in exchange for a price paid or promised, or partly paid and promised. The Supreme Court in ***Kewal Krishan v. Rajesh Kumar*** (2022 18 SC) in page 489 para 15 clarified that payment of the price is essential under Section 54; a sale deed executed without payment of the price or any provision for future payment is not considered a valid sale and has no legal effect. He further submitted that regarding the validity of Hiba (gift) under Mohammedan Law, both oral and written gifts are valid if three conditions are fulfilled: (1) a declaration of the gift



by the donor, (2) acceptance by the donee, and (3) delivery of possession. The Supreme Court in *Hafeeza Bibi v. Shaikh Farid* (2011) in page 1695 at para 29 reaffirmed these requirements. In this case, the defendant established that Najmun Nisa gave an oral Hiba of her entire share to Mehanz Begum, later supported by a written memorandum (yaddast hiba), and possession was delivered. Exhibit A, dated 25.04.1991, evidences the valid transfer of the disputed property by way of gift, consistent with legal principles, and supports the defendant's possession and acceptance of the gift.

16.viii. The plaintiff's claim of possession based on mutation entries, rent receipts, and other documents is legally insufficient, as the Supreme Court in *P. Kishore Kumar v. Vittal Patkar* (supra) held that entries in revenue records do not extinguish ownership rights nor carry presumptive value for title. While the defendant has been found in possession of the suit property, a fact admitted by the plaintiff, who acknowledged that the defendant forcibly took part possession, the claim that the plaintiff was dispossessed is incorrect. He further submitted that the trial court's findings are neither perverse nor legally flawed, and thus do not warrant interference. Consequently, the plaintiff's appeal is liable to be dismissed, given that the vendor



had no right, title, or interest in the property, and no consideration was paid for it. Therefore, the sale deed executed by the vendor in favour of the plaintiff is void, passing no title or rights to her.

17. In view of the above contentions of the learned counsels for both the parties, the following points arise for consideration:

(i) Whether the disputed property was validly accepted and received by Jiyauddin through an oral gift (hiba) from Najmun Nisha?

(ii) Whether Jiyauddin was of unsound mind or otherwise mentally incapacitated at the relevant time?

(iii) Whether the sale deed (Kevala) dated 12.03.2003 executed by Jiyauddin in favour of Mamta Jha was valid, subsisting, and legally enforceable?

On the point no.(i)

18. In the present case the plaintiff stated that the disputed land 11 Kattha, 18 dhura 720 Sq. ft. was in the possession of Mohammad Jiyauddin, which Jiyauddin had received through family partition and from Najmun Nisha through oral gifts, which the plaintiff has purchased through registered sale deed executed by Md. Jiyauddin. Per contra the defendant has opposed the plaintiff's statement in this regard and has said that the disputed land is not ancestral property of



Jiyauddin nor did he get it through partition, nor did the Najmun Nisha gave her share to Jiyauddin. Plaintiff in order to prove her case presented numerous documentary evidence and defendant-respondent has also presented oral and documentary evidence in order to substantiate her case. It is well settled law that documentary evidence always overrides the oral testimony and in the instant case the agreement dated 21.11.1999 (Exht.-4) executed by Md. Jiyauddin in favour of Md. Mawroor Wahidi, clearly established the factum of hiba in favour of the vendor of the plaintiff. At this point of time I would also laid emphasis on the definition of hiba; Ameer Ali defines 'hiba' in Syed Ameer Ali's Commentaries on Mahommedan Law page no. 52 (5th ed., Hind Pub. House 2004). in the following terms: "A hiba is a voluntary gift without consideration of property or the substance of thing by one person to another so as to constitute the donee the proprietor of the subject matter of the gift." and three essential elements of valid hiba these are as follow:

- (a) manifestation of the wish to give on the part of the donor;
- (b) the acceptance of the donee, either impliedly or expressly;
- and
- (c) the taking of possession of the subject-matter of the gift by the donee, either actually or constructively.



19. The Hon'ble Apex Court in the case of *Jamila Begum v. Shami Mohd (2019) 2 SCC 727*, reiterated the essentials of valid and complete gift as laid down in *Abdul Rahim & Ors. v. Sk. Abdul Zabbar (2009) 6 SCC 160* relevant para are as follow;

“23. Under the Mohammedan law, no doubt, making oral gift is permissible. ... 13. The conditions to make a valid and complete gift under the Mohammadan law are as under:

(a) The donor should be sane and major and must be the owner of the property which he is gifting.

(b) The thing gifted should be in existence at the time of hiba.

(c) If the thing gifted is divisible, it should be separated and made distinct.

(d) The thing gifted should be such property to benefit from which is lawful under the Shariat.

(e) The thing gifted should not be accompanied by things not gifted i.e. should be free from things which have not been gifted.

(f) The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor.”

20. In the case where no direct evidence of the essential ingredient of hiba can be established the court draw the inference from the circumstances with respect to the existence of hiba and decide in whose favour the right and authorized person



has concluded hiba. In the instant case the plaintiff adduced the documentary evidence of the existence of hiba in the favour of the vendor of the plaintiff Md. Jiyauddin that is the agreement to sale dated 21.11.1999. since, there is no proof of direct taking of possession it can be inferred from the circumstances that the possession has constructively been taken by the vendor of the plaintiff and also by his legal representative. It can be inferred from the fact that the vendor of the plaintiff the said Md. Jiyauddin executed the sale agreement in favour of other person also and on the same day the defendant had also executed some sale deed in favor of the other person, therefore it can be said that she was aware of the fact that sale deed has been executed by the vendor of the Plaintiff the said Md. Jiyauddin and not objected the same at the instant time so, she impliedly consented on the existence of hiba in favour of his deceased husband (Md. Jiyauddin, the vendor of the plaintiff).

21. The Learned Trial Court overlooked this documents and relied upon an order of mutation in their favour of the suit land vide Lok Adalat case No. 166 of 2006-2007 vide order dated 12.02.2007 which has already been set aside by the DCLR Bhagalpur vide order dated 31-07-2007 (Ext-10/B) and captivated at incorrect finding that plaintiff failed to established



hiba in favour of the vendor of the plaintiff that is said Md. Jiyauddin (deceased). Further DW-4 in her examination in chief stated that oral hiba in her favour was given by Bibi Najmuh Nisha in 15.08.1990 and on the same day a memo of gift was executed but the date of the memo of gift is 25.04.1991 therefore, the statement is entirely false. Further the defendant (DW-4) in her deposition stated that she would not be able to recall the exact date on which the memo of hiba was created, subsequently this create suspicion on the memo of gift and it appears that the memo of gift is false and fabricated, created only for the purpose to defraud the plaintiff. As, during the entire mutation and other proceedings the said hibanama was never produced and bring forth only during the suit proceedings which also casts serious doubt over the document, and the document is a totally forged and fabricated document created as an afterthought. This proves that hiba in favour of defendant is suspicious and not reliable. Moreover, the defendant alleged that the sale deed executed by the vendor of the plaintiff under duress and he was also in the state of unsoundness of time at the time of formation of contract these facts shows that the defendant were well aware of the fact that sale deed had been executed by the vendor in favour of the plaintiff since 2003 from



the date of execution itself. Then why only after the death of vendor she disturbed the possession of the plaintiff over the disputed land and also not initiated any legal proceeding to declare the sale deed canceled. Death Certificate of the vendor of the plaintiff was issued on 08.02.2007 which was soon before the initiation of disturbing the peaceful possession of the plaintiff-appellant. Indeed the death certificate was issued after two years from the death of Md. Jiyauddin which shows the malafide intention of the defendant-respondent. Death of the vendor of the plaintiff in the year 2005 is stated by PW-2 in para 4, PW-3 in para 3, PW-4 in para 3, and PW-5 in para 10 of their deposition respectively. Further these PWs were consistent in their cross-examination as well. Death of the vendor of the plaintiff in the year 2005 is also admitted by the defendant-respondent (Mehnaj Begum, the wife of the vendor) in para no 22 of her deposition. The defendant had the special knowledge regarding the death of the vendor of the plaintiff (Md. Jiyauddin). According to these factual circumstances, the death of vendor in the year 2005 is precise and true and the death certificate is under the cloud of suspicion. Subsequently, Md. Jiyauddin died in the year 2005 and the defendant created the chaotic situation over the right possession of the plaintiff-



appellant on the disputed land. With a view to regarding this matter the defendant would have objected and instituted the suit for declaring the sale deed which was executed by vendor in favour of plaintiff is without any right title, interest and ownership. Further on the basis of this, the doctrine of estoppel which prevents a person from denying a previous statement, promise, or action that another person has relied upon to their detriment. It is based on fairness and good faith, stopping someone from contradicting themselves if it would cause unfair loss to another party who acted on their word or conduct will also applied against the defendant.

22. Moreover, oral hiba in favour of the vendor of the plaintiff by his aunt Najmun Nisha has been established by the agreement of sale deed executed by Md. Jiyauddin in the name of Md. Mawroor Wahidi marked as Exht. 4. Further, from the observation of the conduct of the defendant there is clear manifestation that defendant is occupied with the malafide intention as after the death of the vendor of the plaintiff Md. Jiyauddin his widow sole defendant/respondent begun to disturb the peaceful possession of the plaintiff/appellant over the disputed land. The agreement to sale deed executed by defendant in favour of Mawroor wahidi on 27/11/1999 (Exht-



4/B) had no contention regarding hiba. Defendant had not stated that she acquired the ownership by way of oral hiba in the agreement to sale deed executed in favour of Mawroor wahidi. Further, the defendant claimed that oral hiba in her favour was made by the Badrunisa, transferring the entire interest of her property to the defendant in the year 1985. Bibi Najmun Nisa also transferred her entire allotted interest in the lands to this defendant by means of oral gift on 15.08.1990 and the defendant accepted the said gift and came in possession over the gifted lands. Despite that the defendant had not mentioned about oral hiba in agreement to sale deed executed in favour of Mawoor Wahidhi(Exht.-4/B). The claim of the defendant that there was no oral hiba in favour of Md. Jiyauddin (vendor of the plaintiff) was not reliable and tenable only because of the fact that the contention of oral hiba had not been mentioned in the sale deed executed by Md. Jiyauddin in favor of plaintiff-appellant (Mamta Jha.). Moreover, she claimed on the portion of disputed land and not on the entire suit property. The defendant has failed to establish that the said land in question was acquired by her through hiba from Najmun Nisha her aunt.

23. Further all the PWs stated in their respective depositions that they have not seen any document which



establishes the existence of hiba and they came to know about the existence of hiba in favour of Md. Jiyauddin only due to the fact that the vendor of plaintiff (Md. Jiyauddin), himself stated them about the hiba in his favour by his aunt Najmun Nisha. All the PWs are reliable as the best person who can throw light on the fact of oral gift in favour of Md. Jiyauddin was the Md. Jiyauddin himself. If they stated that they know about the existence of hiba on their own that would be unreliable. It would be wrongful act to state the fact which they had not witnessed and was beyond their knowledge. DW-1 executed the sale deed along with the vendor of the plaintiff/appellant in favour of Babita Jha on the same day when Md. Jiyauddin executed the sale deed in favour of the plaintiff. While executing the sale deed in favour of Babita Jha this witness has no any objection regarding the insanity of the vendor of the plaintiff. Moreover, DW-1 (own brother of the vendor) in his deposition stated that the vendor of the plaintiff was of unsound mind and not in a position to execute the deed in favour of the plaintiff which create unreliability in his deposition. Subsequently, it cannot be said that the deposition of DW-1 is truthful and reliable. which part will believable and truth cannot be stated. So, the observation of Learned Trial Court regarding the non-existence



of hiba in favour of vendor of the plaintiff is not reliable and sustainable. Further, the contention of the defendant that the consideration money had not been paid by the plaintiff-appellant to the vendor is absolutely baseless because it was clearly mentioned in sale deed (Exht. 12) that the vendor had received consideration money in sale of disputed property.

24. The trial Court to fails to consider the evidence and material on record to reach on the said findings and the non-consideration of the above mentioned fact by the Learned Trial Court lead towards the perverse finding. This court on meticulous examination of the above evidence and the law, establishes that the plaintiff- appellant is the absolute and exclusive owner of the disputed land described in Schedule I of the plaint having all manner of right, title and interest therein which was obtained by the registered sale deed executed by absolute owner Md. Jiyauddin in favour of the plaintiff-appellant valuable consideration. Hence, the point for determination no. (i) is decided against the defendant and in favour of plaintiff.

On the Point no. (ii):-

25. Defendant who is the wife of the vendor of plaintiff (Md. Jiyauddin) claimed that her husband was insane at



the time of executing the sale deed in favour of the plaintiff and due to this the sale deed is void ab initio. In order to substantiate her claim she adduced oral as well as documentary evidence. DW 3 the daughter of the vendor of plaintiff (Md. Jiyauddin) in her deposition stated about the insanity of the vendor of plaintiff and also stating the facts which has occurred prior to her birth. This is absolutely inadmissible and not reliable as the law on this point is well established that oral evidence must be direct and not hearsay which means must be given by the person who saw it, which has been provided under section 60 of Indian Evidence Act, 1872. Section 60 of the Act of 1872 read as follow:

*“Section 60. oral evidence must be direct-
Oral evidence must, in all cases, whatever,
be direct; that is to say;*

*If it refers to a fact which could be seen, it
must be the evidence of a witness who says
he saw it;*

*If it refers to a fact which could be heard, it
must be the evidence of a witness who says
he heard it;*

*If it refers to a fact which could be
perceived by any other sense or in any other
manner, it must be the evidence of a witness
who says he perceived it by that sense or in
that manner;*

*If it refers to an opinions or to the grounds
in which that opinion is held, it must be the
evidence of the person who holds that*



opinion on those grounds -

Provided that the opinion of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found or has become incapable of giving evidence or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection".

26. All other DWs stated in their respective deposition that the vendor of the plaintiff worked in the Fisheries Department and due to his mental illness he was sent to Ranchi, Patna and other places by the government for the treatment and due to no improvement in his mental condition he was dismissed from the job in 1968-1969 due to insanity. After dismissal the vendor of the plaintiff was married to the defendant in the state of insanity on the advice of doctor that after marriage his mental condition can be improved. To substantiate her claim defendant produced some document also that is photocopy of the letter sent by the Sub-Divisional Agriculture Office, Sahebganj to the District Fisheries Officer,



Santhal Pargana, Dushka Exht. E. Treatment Slip dated 1960
Exht. F.

27. The law is well settled that the burden of proof lies on the person who asserted the fact of insanity and law in this regard based on the presumption that the person is sane. As the defendant has asserted the fact that the vendor of the plaintiff (Md. Jiyauddin) was insane at the time of entering into the contract. As far as oral testimony of DWs is concerned all of them has stated that Md. Jiyauddin was insane and due to mental illness he was dismissed from his job after that in state of insanity he was married to defendant. Besides, no witnesses has specified that at the particular time when the sale deed was executed the vendor was insane so, the oral evidence produced by the defendant to prove the insanity was not corresponding to discharge the burden of proving insanity at the time of execution of sale deed.

28. To shift this burden the defendant has produced the prescription which is of without date and signature of authorized person the and the photocopies document which is not reliable. The date of execution of sale deed is 12.03.2003 but there is no document on record which consistently prove that the vendor of the plaintiff the said Md. Jiyauddin The defendant



clearly failed to prove the insanity of the vendor of the plaintiff (Md. Jiyauddin) therefore, the onus has not been sifted to the plaintiff. At this stage it is imperative to draw the attention on section 12 of Indian Contract Act, 1872 which are read as follow:

Section 12. what is a sound mind for the purposes of contracting; A person is said to be of sound mind for the propose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interest. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

29. The test of soundness of mind is that he is capable of understanding the business and of forming a rational judgement as to its effect upon his interest. There being a presumption in favour of sanity, the person who relies on the unsoundness of mind must prove it sufficiently to satisfy this test. The Hon'ble Apex Court in the case of ***Mohanlal Madangopal Marwadi v. Sadasheo Sonak*** (AIR 1941 Nag 251) held that "a lunatic is not a person who is continuously in a state of unsoundness of mind and once it has been established that a



person is a lunatic, the burden of proof is on the party who alleges that a document he relies on as having been executed by the alleged lunatic was executed by him during a lucid interval". In case where person is usually in a sound state of mind the burden of proving that he was in an unsound state of mind lies upon the person who challenges the validity of contract. The onus lies on the party who sets up that disability to prove that it existed at the time of the contract and it has to prove that the party was suffering from unsoundness of mind and unable to comprehend the meaning and an effects of an agreement. In the instant case the defendant asserted that the vendor of plaintiff Md. Jiyauddin is insane so the burden of proof is on the defendant to prove the insanity of the vendor of the plaintiff as initially the presumption in favour of sanity and the onus of proving the insanity is on the person who alleged it. The defendant has produced the prescription of insanity without the signature of any authorised person and also has not mentioned about the description of disease.

30. From the analysis of evidence and circumstances of the case, this court finds that defendants/opposite party have failed to prove that the vendor of the plaintiff was of unsound mind at the time the sale deed was



entered into. Hence, the point for determination no. (ii) is decided against the defendant and in favour of plaintiff.

On the point no. (iii):-

31. In the instant case the sale deed executed on 12.03.2003 in favour of the plaintiff-appellant which the plaintiff got mutated her name in the Serista of State of Bihar in Anchal Office, Jagdishpur vide mutation order dated 28.03.2003 in mutation case no. 939(9) of 2002 and obtaining rent receipts thereof. The plaintiff-appellant also mutated her name in the Office of the Municipal Corporation, Bhagalpur in A.D. Case no. 547 of 2003-04 with respect to the suit and obtained tax receipts. To substantiate its case plaintiff presented numerous documentary evidence all of them are relevant and admissible.

32. Further the defendant constructed a tin shade on some portion of the suit land of an area about 1 khatha 10 dhurs description of the land provided in schedule II of the plaint after breaking some part of the boundary wall in the southern and western side forcibly for which the plaintiff-appellant lodged an FIR against the defendant- respondent and other bearing kotwali (Ishaquechak) p.s. case no. 364 of 2007 under section 323, 427, 564, 506 read with 34 of IPC and after investigation of the case the police submitted the chargesheet



against the defendant-respondent, this clearly shows the malafide intention of the defendant on the fact of initially illegally acquiring the some portion of disputed land.

33. The settled law is that a registered sale deed is presumed to be valid in all respect unless it is proved otherwise by the person who asserts that the sale deed is forged and fabricated. No evidence to this effect had been adduced by the defendant.

34. Moreover, Section 34 of the Registration Act, 1908, mandates the Registering Officer to satisfy himself as to the identity of the executant and inquire whether the document was executed by the person by whom it purports to have been executed. The Hon'ble Apex Court in the case of ***Damodhar Narayan Sawale (D) through LRs. Vs. Shri Tejrao Bajirao Mhaske & Ors. (2023 SCC Online SC 566)*** held that;

45. "The first appellate Court was right in holding that since the execution and registration of sale deed (Exh.128) was not in dispute and the dispute was only for nature of the transaction, the registered sale deed having recitals for transfer of right, title and interest in favour of the recipient along with recitals of sale considerations, shall give a presumption of valid title. Therefore, it is entirely upon the defendants to establish otherwise and to prove that it did not reflect the true nature of



transaction. No doubt, parol evidence is admissible to show that a contract embodied in a document was never intended to be acted upon but was made for some collateral purpose. The question is as to whether the second defendant had discharged the burden."

35. In the present case, it was noted that the execution and registration of the Sale Deed were not in dispute; however, the dispute was only for the nature of the transaction. It was noted that a registered Sale Deed having recitals for transfer of right, title and interest in favour of the recipient, along with recitals of sale considerations, shall give a presumption of a valid title. Therefore, it is entirely upon the Defendants to establish otherwise and to prove that it did not reflect the true nature of the transaction.

36. In view of the above settled principles of law and fact, this Court is of the view that the hiba in the favour of vendor of the plaintiff is well established so, vendor of the plaintiff had the actual right, title and interest over the disputed land and the fact that vendor was insane at the time of execution of sale deed has not been established therefore, the vendor has the capacity to transfer the disputed land to the plaintiff. Henceforth the sale deed executed on 12.03.2003 by the vendor of the plaintiff in favor of the plaintiff is valid, subsisting, and



legally enforceable. So, verdict of the Learned Trial Court with respect to the sale deed in question in favour of the plaintiff-appellant Mamta Jha void ab initio has no force of law and not tenable.

37. As the point for determination no. (i) and (ii) is culminated with the point no. (iii) and point for determination no. (i) and (ii) decided against the defendant-respondant and in favour of plaintiff hence, certainly and inevitably the point no. (iii) also decided in favour of plaintiff-appellant against the defendant-respondant. On the basis of the above three points of determinations which have been decided and established that the plaintiff has valid cause of action and the suit is maintainable. The vendor of the plaintiff has the right title, interest and ownership over the disputed land. Consequently, the plaintiff-appellant must acquire the right title, interest, ownership and rightful possession of the disputed land on the basis of the sale deed executed by vendor of the plaintiff in favor of Mamta Jha (plaintiff-defendant). Hence, the plaintiff is entitled to obtain decree in her favour which she has claimed.

38. Having regard to the observation of the aforesaid facts, circumstances, and law coupled with the mandate of law as enumerated by the Hon'ble Apex Court, the



impugned judgment and decree is not sustainable, therefore, the instant appeal is allowed and impugned judgment and decree passed by the learned trial court is set aside. Accordingly any Interlocutory Application pending shall be deemed to be disposed off.

39. Let the trial court records be sent back to the concerned Court forthwith.

(Ramesh Chand Malviya, J)

Harshita/-

AFR/NAFR	AFR
CAV DATE	16.10.2025
Uploading Date	26.11.2025
Transmission Date	NA

