

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.133 of 2024

1. Arun Kumar, aged about 64 years (M), son of Late Raghunath Prasad,
2. Kumar Rajeev Ranjan, aged about 57 years, Male, son of Late Raghunath Prasad,
3. Sanjay Kumar, aged about 55years, Male, son of Late Raghunath Prasad,
4. Sourav, aged about 40 years, Male, son of Late Ashok Kumar,
5. Utkarsh Aradhya Bachchan, aged about 24 years, Male, son of Late Ashok Kumar,
All resident of Mohalla- Balkishunganj, P.S.- Alamaganj, District- Patna
... .. Appellant/s

Versus

1. Sushil Kumar Singh, son of Late Bijay Ram Bahadur,
2. Arun Kumar Singh, son of Late Bijay Ram Bahadur,
3. Ranjan Kumar Singh, son of Late Bijay Ram Bahadur,
4. Sudha Singh, wife of Late Ajay Kumar Singh,
5. Chandan Kumar Singh, son of Late Ajay Kumar Singh,
6. Saurabh Kumar Singh, son of Late Ajay Kumar Singh,
7. Raj Kumar Singh, son of Late Brij Nandan Singh,
All resident of K/57/4, Nawapure, Varanasi (U.P.)
8. Krishna Kumari Kuer, wife of Late Mathura Prasad Singh,
9. Ajit Kumar Singh, son of Late Bal Bahadur Singh,
10. Dilip Kumar Singh, son of Late Bal Bahadur Singh,
All resident of K/57/4 Nawapura, Varanasi.
11. Sunil Kumar Singh, son of Parasnath Singh,
12. Vijay Kumar Singh, son of Parasnath Singh,
Both resident of Village- Kaitha, P.S.-Chandi, District- Nalanda
13. Ram Swarath Prasad Singh, son of Babu Bhola Prasad Singh (deceased),
resident of Village- Kaitha, P.S.- Chandi, District- Nalanda.
14. Ram Sohaban Singh, son of Shri Ram Kishun Singh, resident of Village-
Telwar, P.S.- Harnaut, District- Nalanda.
15. Sanjay Kumar Singh, son of Rajendra Prasad Singh,
16. Hari Prasad Singh, son of Dip Narain Singh,
Both resident of Village- Sindhaura, P.S.- Chandi, District- Nalanda.
17. Monakia Devi, wife of Mahendra Singh (deceased), resident of Village-
Amat, P.S.- Hilsa, District- Nalanda
18. Kanti Devi, wife of Late Rajeshwar Prasad Singh, resident of Village- Amat,
P.S.- Hilsa, District- Nalanda
19. Akhileshwar Prasad Singh, son of late Mahendra Singh, resident of Village-



Amat, P.S.- Hilsa, District- Nalanda

20. Sarabjit Kumar Singh, son of late Mahendra Singh, resident of Village- Amat, P.S.- Hilsa, District- Nalanda
21. Santosh Kumar, minor under guardianship of his mother Monakia Devi, resident of Village- Amat, P.S.- Hilsa, District- Nalanda
22. Dharmendra Kumar, minor, son of Rajeshwar Singh, under guardianship of his father and well wisher, resident of Village- Amat, P.S.- Hilsa, District- Nalanda
23. Narendra Kumar, minor, son of Rajeshwar Singh, under guardianship of his father, resident of Village- Amat, P.S.- Hilsa, District- Nalanda
24. Kulendra Kumar, minor, son of Rajeshwar Singh, under guardianship of his father, resident of Village- Amat, P.S.- Hilsa, District- Nalanda
25. Sikander Singh, son of Babu Harakh Singh, resident of Village- Amat, P.S.- Hilsa, District- Nalanda.
26. Sheo Bahadur Singh, son of Babu Doman Singh (deceased), resident of Village- Diripar, P.S.- Hilsa, District- Nalanda.
27. Bhim Kumar, minor Son of Jantri Yadav
28. Chandra Dip Kumar, minor son of Jantri Yadav, father guardian and next friend
29. Mewa Lal Yadav, son of Hagari Lal Yadav
30. Jagdish Prasad Yadav, son of Mewa Lal Yadav,
31. Anil Kumar Yadav @ Binod Kumar Yadav, son of Late Shyam Deo Yadav
32. Pramod Kumar Yadav, son of Late Shyam Deo Yadav,
33. Shivnandan Yadav, son of Ramtahal Yadav,
34. Gauri Lal Yadav, son of Ganga Yadav, all resident of Village- Nayatola, Kumhrar, Pargana- Azimabad, P.S.- Sultanganj, District-Patna
35. Upendra Prasad Singh, son of Baijnath Prasad Singh, resident of Village- Mohanpur, P.S.-Punpun, District- Patna.
36. Rambilash Singh, son of Rambriksh Singh, resident of Village- Parsa, P.S.- Phulwari, District- Patna
37. Rammurti Yadav, son of Srinath Yadav, resident of Panapur, P.S.-Dinapur, District- Patna
38. Kamaldeo Pandit, son of Biphan Pandit, resident of Village- Ghurahua, P.S.- Masaurhi, at present resident of Nayatola, Kumhrar, P.S.-Sultanganj, District-Patna
39. Tarkeshwar Nath Choudhary, son of Bishwanath Prasad Choudhary, resident of Mohalla-Balkishunganj, P.S.- Alamaganj, District-Patna.
40. Gopal Prasad Choudhary, son of Bishwanath Prasad Choudhary, resident of Mohalla- Balkishunganj, P.S.- Alamaganj, District-Patna.
41. Bhola Prasad Choudhary, son of Harinath Prasad Choudhary, resident of Mohalla- Balkishunganj, P.S.- Alamaganj, District-Patna
42. Prem Narayan Sahu, son of Haridas Sahu,



- 43. Ram Narayan Sahu, son of Haridas Sahu,
- 44. Om Prakash Narayan Sahu, son of Haridas Sahu,
- 45. Raj Kumar Sahu, son of Haridas Sahu,
- 46. Nand Kishore, son of Haridas Sahu,
- 47. M/s Anto Distribution Ltd., Exhibition Road, Patna
- 48. The Additional Director, Health Services, I/C Family Planning, Secretariat, Bihar
- 49. The B.D.O., Sadar, Patna, through the Collector of Patna
- 50. Sheela Mohan Prasad, wife of Krishna Mohan Prasad, resident of Bhikhna Pahadi, Saidpur, P.S.-Kadamkuan, Patna
- 51. Sobha Gupta, wife of Vijay Gupta, resident of Panchmandir Road, Mosihan, PS- Town, District-East Champaran
- 52. Shiv Shambhu, son of Late Balimi Prasad, resident of Flat No. 408, Bhagwat Nagar, P.S.-Agamkuan, District-Patna
- 53. Julee Kumari, wife of Sri Deepak Kumar, resident of Bhikhna Pahadi, P.S.-Pirbahore, District- Patna
- 54. Vikash Rahi, son of Late Balmukund Rahi, resident of Late Balmukund Rahi, Paradise Apartment, Flat No. B-203, New Area, Kadamkuan, PS-Kadamkuan, District- Patna
- 55. Emrita Devi, wife of Sri Datyendra Kumar, resident of Dev Kutir, Block-A, Flat No. 301, Jagat Narayan Road, PS- Kadamkuan, Patna
- 56. Satyendra Kumar, son of Sri Bhagwan Das, resident of Dev Kutir, Block-A, Flat No. 301, Jagat Narayan Road, PS- Kadamkuan, Patna
- 57. Honey Bachchan, son of Late Ashok Kumar,
- 58. Priyanka Bachchan, daughter of Late Ashok Kumar,
- 59. Kalpana, wife of late Ashok Kumar,
All resident of Mohalla- Balkishunganj, P.S.- Alamaganj, District-Patna

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Jitendra Kishore Verma, Advocate Mr. Sudhanshu Trivedi, Advocate Mr. Vivek Anand Amritesh, Advocate
For the Respondent Nos. : 53 and 56	:	Mr. J. S. Arora, Senior Advocate Mr. Ravi Bhatia, Advocate Mr. Rakesh Kumar, Advocate Mr. Himanshu Shekhar, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

13 28-04-2025 Heard Mr. Jitendra Kishore Verma, learned counsel

for the appellants and Mr. J. S. Arora, learned senior counsel for



the respondent nos. 53 and 56.

2. This second appeal is against the judgment of affirmance and has been filed against the judgment and decree dated 15.12.2023 passed by the learned Additional District Judge-XXVI, Patna, in Title Appeal No.112 of 2006 whereby judgment and decree dated 15.07.2006 passed by the Sub-Judge-VI, Patna, in Title Suit No.113 of 1965 has been affirmed.

3. This appeal as well as Title Appeal has/had been filed by the heirs of original defendant no.7. The plaintiffs filed Title Suit for declaration of title of the suit property and also for cancellation of the sale deeds dated 01.08.1961 and 08.03.1963. Co-plaintiff nos.06 to 21 were the purchasers from the original plaintiff no.1 and co-plaintiff nos. 22 to 24 were also purchasers from original plaintiff no.1 and his heirs. During pendency of Title suit No.113 of 1965, co-plaintiff nos. 06 to 21 and defendant no.07 entered into compromise with regard to 15 *Katthas* and 5 *Katthas* total 20 *Katthas* of land of Scheduled-IA, Lot I and II and the same was decreed in terms of compromise between the plaintiff no.06 to 21 and defendant no.07. Finally, the suit was decreed with regard to rest of the parties and in favour of the co-plaintiff nos. 22 to 24 in respect of 5½ *Kattha* land of Plot No.935 Part, which was purchased through sale



deed dated 01.08.1961.

4. Against that, defendant no.07 filed Title Appeal No.112 of 2006 which was dismissed. Against the aforesaid judgment and decree of the appellate Court, the instant second appeal has been filed.

5. Learned appellate court below, which is the final court of facts, after considering the materials on record as well as the judgment of the lower court has held that suit has rightly been decreed by the trial court and dismissed the appeal. The appellate Court also held in paragraph no. 20 of the judgment that compromise took place between the co-plaintiff nos. 06 to 21 and defendant no. 07. The said compromise decree is the development during the course of hearing of the title suit and there is no formal objection or appeal against that compromise decree from either sides. It is further held that the contents of the compromise petition dated 01.08.1994, 22/25.05.1995 and 25.07.1997 which culminated to the passing of the compromise decree dated 14.08.1996/19.08.1996, wherein one set of the parties (co-plaintiffs) have received consideration amount from the defendant no. 07 to admit her claim and to relinquish their own claim over the suit land. As this compromise decree is unregistered one, thus in the circumstances no effect can be



given to such compromise decree.

6. Learned counsel for the appellants has submitted that the compromise decree passed on 14.08.1996 between the co-plaintiff nos. 06 to 21 and defendant no.07 was never challenged by any of the parties. The lower appellate Court while deciding the appeal held that since the compromise petition is not registered one, thus, in the circumstances, no effect can be given to such compromise decree. This finding, as per learned counsel for the appellants, amounts to annulment of the compromise decree or setting aside the compromise decree. Learned counsel for the appellants further submits that since compromise decree has not been challenged by any of the parties, the first Appellate Court had no occasion to annul the compromise decree. Learned lower Appellate Court presumed that there would be another aspect of the matter as to whether at the time of that compromise those co-plaintiffs had transferred their acquired interest in the suit land to third party as in that case the said compromise decree would not adversely affect the interest of such third person. Learned counsel for the appellants further submits that the learned first appellate Court has gone beyond the scope of the appeal. None had challenged the compromise decree and there was no occasion for such



observation/finding. This finding of the learned appellate Court is against the principle and provision of law as well as beyond the scope of Order XLI and amounts to reopening the compromise decree passed by the learned trial Court.

7. On the other hand, Mr. J. S. Arora, learned senior counsel for the respondent nos. 53 and 56 submits that this second appeal is not maintainable in view of the fact that the appellants have challenged the findings of the learned lower appellate Court which is against the settled provision of law. He has placed reliance on the judgment of the Hon'ble Apex Court in the case of *Banarsi & Ors. Vs. Ram Phal* reported in (2003) **9 Supreme Court Cases 606**, wherein, the Hon'ble Apex Court has held that the appeal lies against the decree and not against judgment or any findings. Only the person aggrieved by such decree is entitled to file appeal.

8. Having heard learned counsel for both sides, I am not inclined to interfere with the concurrent findings of the Courts below since the Title Appeal was only against the decree passed in respect of sale deed dated 01.08.1961 with regard to 5½ Kathas of land of Plot No.935 (Part). The appellants of the Title Appeal never challenged the compromise decree. Further, the compromise decree was not the subject matter of the Title



Appeal despite that the learned lower appellate Court had gone into the matter and entered into the merits or the validity of the compromise decree based on the terms of compromise entered between co-plaintiff nos. 06 to 21 and defendant no.07 and it amounts to interference with the compromise decree which has attained finality in the year 1996 itself.

9. Considering all aspects of the matter, this appeal is dismissed at the stage of Order XLI Rule 11 of the Code of Civil Procedure itself.

10. However, with regard to observation of learned first appellate Court with regard to compromise decree in paragraph no.20 of the judgment dated 15.12.2023 passed by the learned Additional District Judge-XXVI, Patna, in Title Appeal No.112 of 2006, the same is beyond the scope of Order XLI and uncalled for. Accordingly, the same is hereby expunged.

11. Pending Interlocutory application(s), if any, shall stand disposed of.

J. Alam/-

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(Khatim Reza, J)

