

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.131 of 2014

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1. Smt. Savitri Joshi, C/o Surendra Joshi, House No. K./57/152, Nawab Ki Dyodi, Lohatia, Nawapura, Baranashi U.P.
 2. Aditya Kumar C/o Nagina Paswan R/o Vill.- Basantpur, P.O.- Manwa- Parci, P.S.- Matiyania, West Champaran.
 3. Anish Kumar C/o Nagina Paswan R/o Vill.- Basantpur, P.O.- Manwa- Parci, P.S.- Matiyania, West Champaran.
 4. Raugi Paswan Son of Laxman Paswan R/o Vill.- Basantpur, P.O.- Manwa- Parci, P.S.- Matiyania, West Champaran.
 5. Shankar Mahto Son of Late Shivnandan Mahto R/o Vill.- Naurangia, P.O.- Gurwalia, P.S.- Bettiah Muffasil, West Champaran.
 6. Mahanth Mahto
 7. Birendra Mahto
 8. Dhirendra Mahto All Sons of Late Jhakar Mahto and All resident of R/o Vill.- Parsa, P.O. and P.S.- Bettiah Manuapul, West champaran.
 9. Lalmati Devi W/o Nandlal Yadav R/o Vill.- Gobraura, P.S.- Sathi, West Champaran.
 10. Jhaman Paswan Son of Late Tapsi Paswan R/o Vill.- Basantpur, P.O.- Manwa- Parci, P.S.- Matiyania, West Champaran.
 11. Gadri Paswan Son of Late Tapsi Paswan R/o Vill.- Basantpur, P.O.- Manwa- Parci, P.S.- Matiyania, West Champaran.
 12. Pushpa Mehta W/o Bhola Prasad R/o- Vill. Seswa, Patjirwa, P.O. and P.S. Srinagar, West Champaran.
 13. Lalji Prasad S/o Late Ganga Sah R/o Vill.- Siswa, P.O and P.S. Srinagar, West Champaran.
 14. Ramchandra Prasad S/o Late Mahanth Prasad R/o Vill.- Krishna Nagar, Bauswaria, Bettiah, P.S. Bettiah, Town, West Champaran.
 15. Ranjan Maurya S/o Ramchandra Prasad, Son of Late Tapsi Paswan R/o Vill.- Basantpur, P.O.- Mauna- Parsi, P.S.- Matiyania, West Champaran.
 16. Rajeev Maurya S/o Ramchandra Prasad, Son of Late Tapsi Paswan R/o Vill.- Basantpur, P.O.- Mauna- Parsi, P.S.- Matiyani, West Champaran.
 17. Khobhari Ram
 18. Harwari Ram
 19. Jagjiwan Ram All sons of Ramautar Ram All R/o Vill.- Siswa Patjirwa, P.O. and P.S.- Srinagar, West Champaran.
 20. Dwarkanath Kushwaha Son of Late Gaya Kushwaha R/o Vill.- Alpaha Bairiya, P.O.- Baizuwa, P.S.- Srinagar, West Champaran.
 21. Harihar Prasad Son of Late Shivbachan Prasad New Colony, Baswaria, P.S.- Bettiah Town, West Champaran.
 22. Ajay Kumar Son of Nagendra Prasad R/o I.T.I. Jaiprakash Nagar, Bettiah, P.S.- Bettiah Muffasil, West Champaran.
 23. Munger Lal Son of Rameshwar Prasad R/o New Colony, Baswaria, Bettiah, P.S.- Bettiah Town, District- West Champaran.



24. Shatrughan Sah Son of Late Sitaram Sah R/o Vill.- Ekderwa, P.O.- Mauna-Parsi, P.S.- Matiyania, District- West Champaran.
25. Suman Sonar Son of not known R/o Vill.- Thana Road, Ramnagar, P.O and P.S. Ramnagar, West Champaran.
26. Raifal Ansari Son of Ramzan Ansari R/o- Vill.- Chariyani, P.O.- Mauna-parsi, P.S.- Matiyania, District- West Champaran.
27. Ramanand Kushwaha Son of Late Puran Bhagat resident of Vill.- Chariyani, P.O.- Mauna- Parsi, P.S.- Matiyania, District- West Champaran.
28. Satyendra Singh Son of Late Ram Mitar Singh resident of Vill.- Barnihar, P.S.- Shikarpur, District- West Champaran.
29. Pratima Devi W/o Pramod Tiwary resident of Village- Mushari, P.S. Sathi, West Champaran.
30. Arun Kumar Yagnik Son of Late Durga Shankar Yagnik R/o Rajguru Chowk, Bettiah, P.O.- Bettiah, P.S.- Bettiah Town, District- West Champaran, presently residing at 302, Chanakya Square, 59 Srinagar Main, Indore, District- Indore, M.P..
31. Smt. Sudha Shukla W/o Rajiv Lochannath Shukla, Shukla Sadan, Khaidore, Aligarh U.P..
32. Smt. Shakuntala Dave W/o Harish Dave 163 Srinath Nagar, Sector-9A, Hirau, Magri, Udaipur, Rajasthan.
33. Smt. Shobha Bhatt W/o Anand Shankar Bhatt, 170, S.F.S. Pocket, B- Phase, 1st Sheikh Sarai, New Delhi.
34. Smt. Gayatri Sharma W/o Shashi Mohan Sharma Q.921/2/II/I BHEL, Haridwar, Uttaranchal.

... .. Appellant/s

Versus

1. Rameshwar Yagnik @ Lall Saheb Son of Late Bindhyawasini Yagnik R/o Madhuri Village, Rajguru Chowk, Bettiah, P.O and P.S. Bettiah, District- West Champaran.
- 2(i) Most. Meenakshi Yagnik @ Minu W/o Late Anup Yagnik.
- 2(ii) Bighnesh Yagnik S/o Late Anup Yagnik.
- 2(iii) Sakcham Yagnik (Minor) S/o Late Anup Yagnik.
Under the guardianship of his mother Most. Meenakshi Yagnik @ Minu.
All are Resident of Village Rajguru Chowk, Bettiah, P.O and P.S. Bettiah, District- West Champaran. At present residing at Village P.O. and P.S. Udaipur (Rajasthan).

... .. Respondent/s



Appearance :

For the Appellant/s	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate
For the Respondent/s	:	Mr. Sheshadri Kumari, Advocate Mr. Jitendra Kishore Verma, Advocate Mr. Ravi Raj, Advocate Mr. Abhishek Kumar Srivastava, Advocate Ms. Sweta Raj, Advocate Mr. Achyut Kumar, Advocate Ms. Kumari Shreya, Advocate
	:	Mr. Ayush, Advocate Mr. Shreyash Goyal, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 04-12-2025

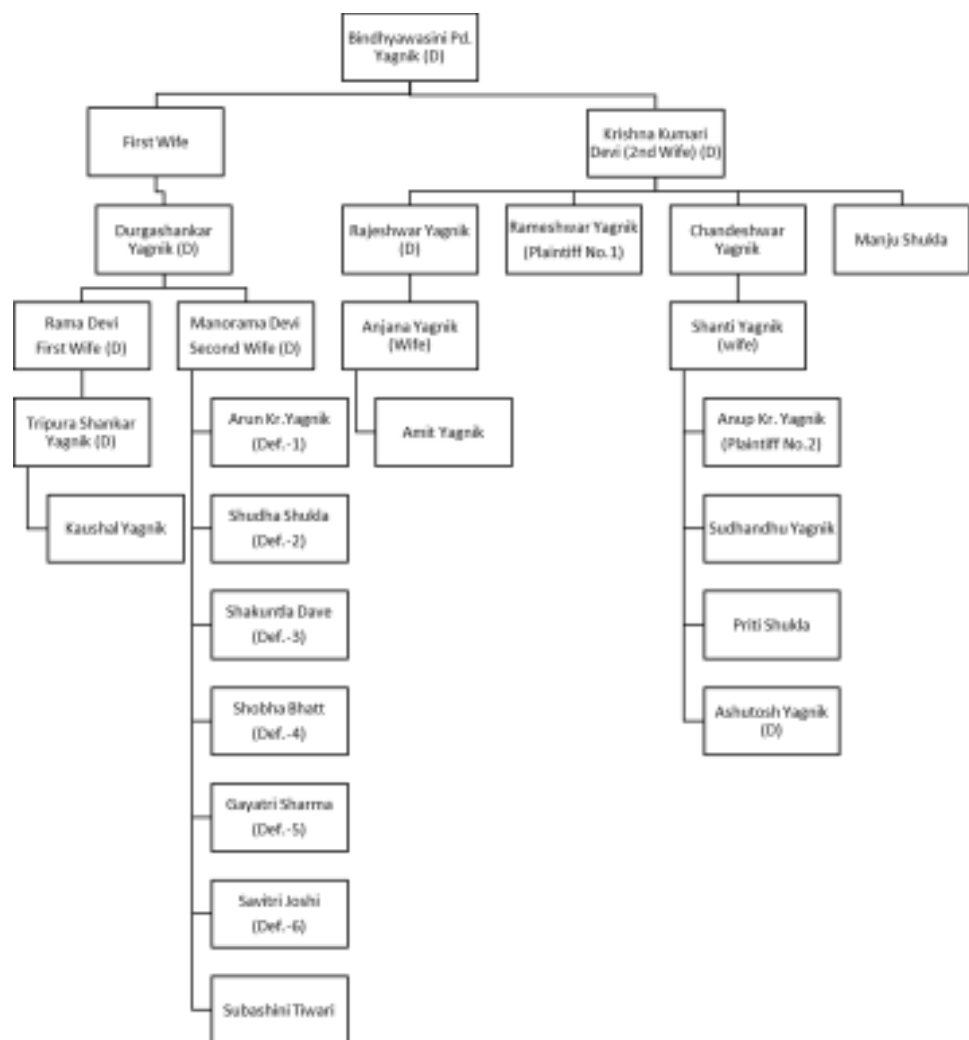
1. Heard Learned counsel for both the parties.

2. The instant First Appeal has been preferred by the appellants against the judgment dated 28.04.2014 and decree dated 23.05.2014 passed by the learned Subordinate Judge IV, Bettiah in Title Suit No. 72 of 2010 wherein the learned Trial Court disposed of the suit on admission and decreed in terms of pronouncement of compromise decree of Partition Suit No. 159 of 1949 and permanently restrained the appellants (defendants) to interfere in peaceful possession of respondents (plaintiffs) over the suit land.

3. For the sake of convenience, the parties are being referred to as defendants-appellants or plaintiffs-respondents.

4. To understand the relationship between the parties to the suit is shown in the Genealogical Table (Schedule 1 of plaint) which is given below:





5. As per the plaint, Bindhyawasini Pd. Yagnik (Jani) @ Bacchan Babu was common ancestor who died leaving behind Smt. Krishna Kumari Devi, his second wife from whom three sons and one daughter namely Rajeshwar Pd. Yagnik @ Babu Saheb, Rameshwar Pd. Yagnik @ Lall Sahab (P-1) and Chandeshwar Pd. Yagnik @ Kunwar Saheb and a daughter Manju Yagnik (Shukla) were born. First wife of Bindhyawasini Pd. Yagnik (Jani) pre-deceased and one son namely Durgashankar Yagnik @ Lala



Maharaj was born who died leaving behind his son Tripura Shankar Yagnik (born through his first wife Rama Devi), second wife Manorma Devi and his son Arun Kumar Yagnik @ Bachhaji and six daughters namely Sudha Shukla, Shobha Bhatt, Subhashini Tiwari, Shakuntala Dave, Gaytri Sharma and Savitri Joshi. Rajeshwar Pd. Yagnik died leaving behind his widow Anjana Devi and a son namely Amit Yagnik. Chandeshwar Pd. Yagnik @ Kunwar Saheb also died leaving behind his wife Shanti Devi @ Renu Devi and three sons namely Anup Yagnik, Sudhanshu Yagnik and Ashutosh Yagnik (died unmarried) and a daughter Priti (Yagnik) Shukla. Bindhyawasini Pd. Yagnik died in 1974 and his second wife Krishna Kumari died in 1996.

6. The case of the plaintiffs-respondents is that a prior partition suit bearing Partition Suit No. 159 of 1949, between the ancestors of the parties was compromised on 03.01.1951. Under the terms of the compromise, Rameshwar Pd. Yagnik (plaintiff no.1) was allotted the entire land of village Charihani, *tauzi* no. 799, and Krishna Kumari Devi (mother of plaintiff no.1) was allotted the entire land of village Basantpur, *tauzi* no. 799. The parties came into possession of their respective shares, and the revenue records were mutated accordingly.

7. The plaintiffs-respondents alleged that during her



lifetime, Krishna Kumari Devi, in order to protect her estate, executed a nominal and non-operative gift deed dated 31.01.1962 in favour of her step-granddaughters Sudha and Sakuntala (daughters of Durgashankar Yagnik), however, possession was never delivered, and the deed was later cancelled by a registered deed of cancellation in 1973. Subsequently, Krishna Kumari Devi executed a will dated 08.07.1978, bequeathing her entire share in village Basantpur to her youngest son Chandeshwar Pd. Yagnik (father of plaintiff no.2 Anup Kumar Yagnik), and upon her death in 1996, Chandeshwar Pd. Yagnik came into possession. After death of Chandeshwar Pd. Yagnik, possession continued with his widow wife.

8. It is alleged that defendant no.1 (son of Durgashankar Yagnik) after almost disposing the properties in his share with dishonest intention in collusion with other defendants and some antisocial elements managed to get their names mutated with respect to lands of Charihani and Basantpur *Mauza* after canceling the names of plaintiffs by showing some void, inoperative and dead papers and concealing the truth, and actual state of papers against which revision petition is pending for disposal before the learned Additional Collector, Bettiah. On the basis of the illegal *Jamabandi*, they are trying to dispose of lands



in Schedule-2 to various persons of that area.

9. Apprehending further alienation and asserting continuous possession based on the 1951 compromise as well as the 1978 Will, the plaintiffs-respondents instituted the suit in question bearing Title Suit No. 72 of 2010 (*Rameshwar Yagnik and Anr. v. Arun Kumar Yagnik and Ors.*) seeking declaration, confirmation of possession, permanent injunction restraining the defendants from interfering in possession of plaintiffs over the suit land as given in Schedule 2 of the plaint as well as restraining the defendants from disposing of the suit land, and other ancillary reliefs.

10. The defendants-appellants appeared and filed their written statements in various sets, wherein it was submitted that the suit, as framed, was not maintainable in law and suffered from absence of a valid cause of action and was further hit by the principles of waiver, acquiescence and estoppel. It was further submitted that the suit was defective for non-joinder of necessary parties and had been under valued with insufficient court fees. Moreover, the genealogy furnished by the plaintiff-respondents in the plaint was incomplete and incorrect inasmuch as the daughter of Krishna Kumari Devi, namely Manju had not been included and several family members are residing outside the state.



11. It is stated that Bindhyawasini Pd. Yagnik had filed a Partition Suit No.159 of 1949 in the Court of Sub-Judge, Motihari, East Champaran in which Bindhyawasini Pd. Yagnik was plaintiff no.1 and Rameshwar Pd. Yagnik, Chandeshwar Prasad Yagnik and Smt. Krishna Kumari Devi were defendants and on the basis of compromise the said suit was decreed but it is denied that total land of Charihani was given in share of Rameshwar Prasad Yagnik or Krishna Kumari Devi got all shares in *Mauza* Basantpur and on that basis they are in possession of the same and the same belongs to them. It is submitted that Yagnik family were big *Zamindars* having lands in *Mauza* Basantpur, Charihani and other villages and at that time abolition of *Zamindari* did not happen, the partition was effected village-wise among the family members, and *Pattidars* had got *Zamindari* rights only, not the land.

12. It is further, the case of the defendants-appellants is that upon the subsequent abolition of *Zamindari*, the earlier partition under Title Suit No. 159 of 1949 became nullified by operation of law. It has been further submitted that the deed of gift dated 31.01.1962 was valid and binding, and the vendees of the land continued in the possession of the gifted land whereas the alleged deed of cancellation has no legal force and could not



adversely affect the said gift deed, the validity of which had been upheld by the competent Civil Court, therefore on these grounds, the plaintiff's suit is devoid of merit and is liable to be dismissed.

13. From the proceeding of the learned Trial Court, it appears that on 01.04.2014, the issues were framed and the next date fixed for plaintiff's evidence was on 07.04.2014, but before the said date, without any information to the defendants, some documents were filed on record on 03.04.2014 on behalf of plaintiffs.

14. The application dated 07.04.2014 was filed by plaintiffs-respondents with prayer to hear the suit in the light of final judgment dated 03.01.1951 passed in Partition Suit No. 159/1949 on the basis of compromise, available documentary evidence and thereby to pass the final judgment. It is stated in the said petition that the plaintiffs have on previous date already filed his original document which comes under the category of public documents which are to be marked as 'Exhibit' in the interest of Justice.

15. On the same day i.e., 07.04.2014 on behalf of intervenor Rustom Ansari, a petition under Order VII Rule 11 C.P.C. was filed praying to reject the plaint. On 07.04.2014, 49 alleged purchaser of the land from defendant no. 1 (Arun Kr.



Yagnik), filed petition under Order I Rule 10 and Section 151 of the C.P.C. for their impleadment as defendants in the suit. It is stated that copy of the said petitions were refused to receive. The next date was fixed on 15.04.2014.

16. Furthermore, rejoinder on behalf of defendant nos. 7 to 30, 34 and 35 was filed on 15.04.2014 to the petition dated 07.04.2014 praying to reject the petition of plaintiffs and to proceed the suit in accordance with law and procedure. The documents filed on behalf of the plaintiffs and copy of sale deeds filed on behalf of intervenors were exhibited and issues were allegedly framed again. The next date was fixed on 21.04.2014 for hearing. On 21.04.2014, after hearing some argument, the next date was fixed on 28.04.2014. Addition was made in the order-sheet dated 28.04.2014 wherein it was recorded in the petition dated 16.03.2012 to delete the names of deceased defendant nos. 32 and 33 was allowed. The record was again put up in the learned Trial Court and it was recorded therein that on oral consent of both parties, the case is disposed of under Order XII Rule 6 of the C.P.C. and all the interlocutory petitions were accordingly disposed of.

17. The learned Trial Court passed a 43 pages judgment on the same day i.e. on 28.04.2014 wherein it has been



held that the suit stand disposed of and the same was decreed in the terms of pronouncement of compromise decree in Partition Suit No. 159 of 1949 and the defendants-appellants have been restrained from interference in peaceful possession of plaintiffs-respondents over the suit land.

18. Learned Trial Court held that in view of admitted documents, there is no scope of oral evidence against Exhibit-15 series. The suit is liable to be disposed of in the light of constructively admitted documents like Exhibit-15 series.

19. The learned Trial Court noted that on the similar footing, between the same parties and in similar cause of action, the said Court already delivered the judgment dated 21.07.2013 in Title Suit No.306 of 2010 which has been quoted entirely in the impugned judgment. It was further observed that under Sections 91 & 92 of Indian Evidence Act in case of contradiction, documentary evidences have a prevailing effect over the oral evidences.

20. Aggrieved thereby, the defendants have preferred the present appeal. Some of the appellants are the legal heirs of Durga Shankar Yagnik from his second wife Manorma Devi and some of the appellants are the purchasers of land through different sale deeds from the defendants claiming that they are coming in



peaceful possession of the disputed land.

21. Mr. Ranjan Kumar Dubey, learned counsel for the appellants, submitted that the impugned judgment is perverse as the learned Trial Court quoted the entire judgment delivered in Title Suit No. 306 of 2010 where parties were also mostly different and question of consideration was also not identical which were not applicable to the facts of the present case. It is further submitted that the learned Trial Court has erred in recording that the counsel for both the parties gave an oral consent to dispose of the suit in accordance with Order-XII Rule-6 of the C.P.C. and thereafter on the same day, a 43 pages ready and typed judgment was delivered, all-in-one continuation. It is submitted that the defendants-appellants have not given any consent oral or written as recorded since both the parties were contesting tooth and nail on all disputed question of facts. The learned Trial Court has not rendered any independent findings in the suit. Moreover, it is submitted that the learned Trial Court did not permit the parties to lead evidence, oral or documentary, despite the fact that defendants were contesting the suit and it has wrongly preempted the parties from leading evidence on their behalf, therefore, the impugned judgment is liable to be set aside.

22. Learned counsel for appellants further



specifically submitted that the learned Trial Court committed a serious error in relying upon the compromise decree passed in Partition Suit No. 159 of 1949, as the said suit was instituted only for adjustment of *Zamindari* interests among different *maliks* who were parties therein. He contends that the decree itself, as quoted by the respondents-plaintiffs, shows that the properties mentioned in the Schedule of the present plaint do not find place in the description of properties covered under that partition. Therefore, the assertion of respondents-plaintiffs that the suit land stand allotted under compromise in Partition Suit No. 159 of 1949 is wholly misconceived. It is further submitted that with respect to Title Suit No.306 of 2010, even the decree of this suit has not been produced by the respondents-plaintiffs. It remains entirely uncertain as to who were the actual parties in that suit. Therefore, drawing any inference in favour of the respondents-plaintiffs in the absence of the decree itself, and the reliance placed by the learned Trial Court on such unproved proceedings is not sustainable and perverse.

23. Learned counsel for the appellants further submitted that on 28.04.2014, the defendant nos. 1 to 5 filed an application praying for adjournment on the ground of pendency of CWJC No. 15592 of 2013 to the Hon'ble High Court against the



order dated 27-06-2013 passed by the learned Trial Court whereby plaintiff's amendment petition was allowed but the said prayer for adjournment was rejected and the learned trial Court simultaneously delivered a 43 pages judgment decreeing the suit. He further submitted that Sections 91 and 92 of the Evidence Act is not applicable in the facts and circumstances of this case.

24. Learned counsel for the appellants also pointed out the biased conduct of the learned Trial Court in passing the impugned judgment and decree. He referred the judgment of the Division Bench of this Court in *Hriday Narayan Pandey v. the State of Bihar & Ors.* reported in *(2020) 1 PLJR 631; 2019 SCC OnLine Pat 1894* wherein the Hon'ble Court came to the conclusion that the petitioner (P.O. of Trial Court) did not conduct himself in the manner befitting a Trial Judge while dealing with a case and unnecessary haste was shown by him in delivering judgment. It was observed therein that timely disposal is important but not in a manner which would render the judgment suspect.

25. Learned counsel for appellants pointed out many lapses on the part of Presiding Officer of the Trial Court in conducting the Title Suit wherein certain interpolations and additions in the order sheet of the record of Title Suit No.72 of 2010 was found. The departmental proceedings were initiated with



charge that in complete disregard of established practice and procedure, inasmuch as, the issues were framed twice on one occasion on 01.04.2014 and later on 15.04.2014. The defendants-appellants were not given reasonable opportunity to produce evidence; also a 43 pages judgment was delivered on 28.04.2014 without fixing any date for passing judgment and when the aforesaid date was fixed for further hearing in the matter. It was alleged that he was pre-determined to pass the judgment in the suit on 28.04 2014. The Enquiry Officer came to the conclusion that P.O. of Trial Court did not frame any issue and wrongly recorded that he had framed issue on 01.04.2014 as well as on 15.04.2014. He had not put his signature on the plaintiff's exhibits and that he delivered final judgment in utter haste. All the charges were found proved.

26. Learned counsel for the appellants, on the merit of the case, has submitted that there was no actual partition of the land between the parties by the said compromise decree, which is evident from the fact that there is no specific area or specific boundary had been mentioned, terminology is used in terms of *Anna* in *Zamindari* and *Zaidad* is used for personal home/house etc. It is further submitted that though the Bihar Land Reforms Act, 1950 came into force on 25.09.1950 but by virtue of the



notification issued under Sub-section 2 of Section 3A of the Act. *Zamindari* of estate in Champaran district has vested in the State of Bihar from 26.01.1955 only.

27. Per contra, Mr. J.K. Verma, learned counsel for the plaintiffs-respondents, submitted that the judgment and decree of the learned Trial Court are based on correct appreciation of the pleadings, evidence and the long standing family arrangement. It is further submitted that the plaintiffs-respondents have clearly established their title and possession over the suit lands on the basis of the compromise decree in Partition Suit No. 159 of 1949, under which Rameshwar Pd. Yagnik and Krishna Kumari Devi were allotted the land of Charihani and Basantpur respectively; the registered deed of cancellation executed in 1973 canceling the earlier gift deed of 1962; and the Will dated 08.07.1978 executed by Krishna Kumari Devi in favour of her youngest son Chandeshwar Pd. Yagnik. It is submitted that the evidence on record demonstrates uninterrupted possession of Chandeshwar Pd. Yagnik during his life time and thereafter of the plaintiffs-respondents. It is further submitted that the alleged mutation obtained by defendant no.1 (Arun Kr. Yagnik) was procured by suppression and manipulation, and in any event, mutation does not confer title, nor does it dislodge the lawful possession or



testamentary disposition of the plaintiffs-respondents. He further submitted that the appellants are not challenging the documents but they are challenging the interpretation of the documents. Learned counsel further submitted that the learned Trial Court rightly held that there is no scope of oral evidence against Ext. 15 series and the suit is within the scope of Order XII Rule 6 of C.P.C. read with Sections 91 and 92 of the Evidence Act. Accordingly, the instant appeal raises no question of law or perversity in the findings of the learned Trial Court, and the judgment and decree in favour of the plaintiffs-respondents is liable to be affirmed.

28. Learned counsel for the plaintiffs-respondents submitted that it appears from the record that in Partition Suit No. 159 of 1949, on the basis of family settlement, the entire landed property of the parties had been partitioned and the suit was decreed on the basis of compromise. An identical Title Suit No. 306 of 2010 had also been decreed on the terms of the aforesaid settlement in Partition Suit No. 159 of 1949 in which judgment was delivered on 21.07.2013. Incidentally, the aforesaid Title Suit was with respect to the residential plots of the parties in dispute whereas in the instant Title Suit No. 72 of 2010, the Schedule of property contained the agricultural plot between the same parties.



Under such circumstances, large part of judgment in Partition Suit No.159 of 1949 and Title Suit No. 306 of 2010 were incorporated in the judgment of Title Suit No. 72 of 2010 which made it very easy to deliver a 43 pages judgment on the day when a date was fixed.

29. He further submitted that clerical errors were corrected and the interpolations could not have any bearing on the final outcome of the case nor could it have impact the judgment in any manner. Even if there is any procedural lapse that did not render the judgment delivered by the P.O. of trial Court suspect in any manner.

30. Learned counsel for the respondents submitted that law is well-settled that it is required in Law to bring a suit for cancellation of the said document or at least seeking necessary declaration that the decree in question was not acted upon in order to avoid its legal effect. Further he submitted that even if decree in question is void ab initio, declaration to that effect has to be obtained by the person aggrieved from the competent Court. More so, such a declaration cannot be obtained in collateral proceedings. In support of the same, he referred para- 21 of the judgment of Hon'ble Supreme Court in *Inderjit Singh Grewal v. State of Punjab and Ors.* reported in (2011) 12 SCC 588. He next



submitted that if the Court has recorded with respect to admission, concession or consent, the course open to the appellants was to file review or clarification by filing affidavit that they have not given consent. It is well established that the factual recitals or observations made in a judgment or order are taken to be correct unless rebutted.

31. He next submitted that the Bihar Land Reforms Act, 1950 came into force on 25.09.1950 whereas the compromise in previous case i.e. T.P.S. No. 159 of 1949 was taken place thereafter on 03.01.1951 which shows that the partition was taken place between the parties by metes and bound, which is evident from the perusal of the decree in the said case where the possession was given to the parties accordingly and the term used as '*Aar Darer*', '*Zaidad*' and '*Estate*' and not *Zamindari*.

32. Learned counsel for the parties submitted that for procedural lapse by the learned Trial Court, administrative action has already been taken against the Presiding Officer of the Trial Court, accordingly, it is not required to give any finding/observation in this appeal with respect to his conduct while dealing with the case except to take note of the procedural lapse in the proceeding in the Trial Court. Learned counsel for the parties submitted that in this appeal, it has to be decided whether the



pronouncement of judgment on alleged admission is legal and merit of the case depends upon the conclusion of the same.

33. In view of the pleadings of the parties, the submissions advanced by learned counsel for the parties, the principal point that arises for determination before this Court is *“whether the learned Trial Court is justified in exercising its jurisdiction under Order-XII Rule-6 of the CPC read with Sections 91 and 92 of the Evidence Act in decreeing the suit on the basis of admitted documents i.e. compromise decree dated 03.01.1951 in Partition Suit No. 159 of 1949?”*

34. In order to appreciate the submissions made by the learned counsel and facts and circumstances of the case, it is relevant to discuss the law with respect to Order-XII Rule-6 C.P.C. and Sections 91 and 92 of Evidence Act, I would like to reproduce Order-XII Rule-6 of C.P.C. which reads as under:

“6. Judgment on admissions.

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced



under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

The bare perusal of the aforesaid provision makes it clear that it confers wide discretion on the Court to pass a judgment at any stage of the suit on the basis of admission of facts made in the pleading or otherwise without waiting for the determination of any other question which arose between the parties. The principle behind Order-XII Rule-6 C.P.C. is to give the plaintiff a right to speedy judgment so that the either party may get rid of the rival claims which are not in controversy.

35. The aforesaid Rule was amended by Act No. 104 of 1976, by which several amendments were made to the Code of Civil Procedure, 1908. Earlier to 1976 amendment, judgment on admissions was confined only on application in writing. By virtue of the amendment whether admissions are oral or in writing, Court is empowered at any stage of the suit to give judgment on such admission.

36. In the case of ***Uttam Singh Duggal & Co. Ltd. v. United Bank of India*** reported in ***(2000) 7 SCC 120***, the Hon'ble Supreme Court observed with respect to the legislative intent of Order XII Rule 6 of the CPC, as under:

“12. As to the object of Order 12 Rule



6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled”. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.”

37. It is now well-settled that Order-XII Rule-6 of the C.P.C. empowers the Court to pronounce judgment on the basis of admission when such admissions are clear, categorical unconditional and capable of establishing the rights of the parties without requiring further evidence. This Court is, therefore, required to examine whether the trial Court correctly appreciated this statutory threshold while decreeing the suit. It must further be evaluated whether the trial Court, in invoking Order-XII Rule-6, overlooked material defences of the defendants.

38. The Hon’ble Supreme Court in ***Vikrant Kapila &***



Anr. v. Pankaja Panda & Ors. reported in **2023 SCC OnLine SC**

1298 has held in paragraphs 31 to 34 which are as under:-

“31. The judicial discretion conferred on the Court is structured on the definition of admission under Section 17 of the Evidence Act, 1872 and Rule 5 of Order VIII, Rule 6 of Order XII and Rules 1 & 2 of Order XV of the CPC.

32. An “admission” means, ‘a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned’.

33. Admission in pleadings means a statement made by a party to the legal proceedings, whether oral, documentary, or contained in an electronic form, and the said statement suggests an inference with respect to a fact in issue between the parties or a relevant fact. It is axiomatic that to constitute an admission, the said statement must be clear, unequivocal and ought not to entertain a different view. Coming to admission in pleadings, these are averments made by a party in the pleading, viz., plaint, written statement, etc., in a pending proceeding of admitting the factual matrix presented by the other side. To constitute a valid admission in pleading, the said admission should be unequivocal, unconditional, and unambiguous, and the admission must be made with an intention to be bound by it. Admission must be valid without being proved by adducing evidence and



enabling the opposite party to succeed without trial. A court, while pronouncing a judgment on admission, keeps in its perspective the requirements in Order VIII Rule 5, Order XII Rule 6 and Order XV Rules 1 & 2, CPC read with Sections 17, 58 and 68 of the Indian Evidence Act.

34. The logic behind such jurisprudential examination of an admission is that a judgment pronounced on admission, not only denies the right of trial on an issue but denies the remedy of appeal. Hence, discretion has to be exercised judiciously and objectively while making a judgment on admission in a pleading. The existence of the power to pronounce a judgment on admission under Rule 6 of Order XII and Rules 1 and 2 of Order XV is not an issue in the appeal but rather the issue is whether pronouncing judgment on alleged admission is valid and legal.”

(Emphasis supplied)

39. If any party brought the statement showing admission of liability by an application filed under Order-XII Rule-6 C.P.C., the other side has to be given sufficient opportunity to explain the said admission.

40. The provisions of Rule 6 are enabling, discretionary and permissive. They are not mandatory, obligatory or peremptory. This is also clear from the use of the word “may” in the Rule. The Hon’ble Supreme Court recently, in the case of *Rajiv Ghosh v. Satya Narayan Jaiswal* reported in **2025 SCC**



OnLine SC 751 observed in its para 29, 30, 31, 42 and 43 as under:

“29. The powers conferred on the court by this rule are untrammelled and cannot be crystallized into any rigid rule of universal application. They can be exercised keeping in view and having regard to the facts and varying circumstances of each case.

30. If the court is of the opinion that it is not safe to pass a judgment on admissions, or that a case involves questions which cannot be appropriately dealt with and decided on the basis of admission, it may, in exercise of its discretion, refuse to pass a judgment and may insist upon clear proof of even admitted facts.

31. To make order or to pronounce judgment on admission is at the discretion of the court. First, the word “may” is used in Rule 6 and not the word “shall” which prima facie shows that the provision is an enabling one. Rule 6 of Order 12 must be read with Rule 5 of Order 8 which is identical to the Proviso to Section 58 of the Evidence Act. Reading all the relevant provisions together, it is manifest that the court is not bound to grant relief to the plaintiff only on the basis of admission of the defendant

42. Since the object of sub-rule (1) is to enable the plaintiff to get judgment on admission of the defendant to the extent of such admission, he must get the benefit thereof immediately without waiting for the determination of “non-admitted claim”. Sub-rule (2) makes it



imperative for the court to draw up a decree in terms of judgment on admission which can be executed by the plaintiff.” [See : Uttam Singh (supra)]. In such cases, there may be two decrees; (i) in respect of admitted claim; and (ii) in respect of “non-admitted” or contested claim. [See : Bai Chanchal v. United Bank of India, (1970) 3 SCC 124 : AIR 1971 SC 1081].

43. A decree under Rule 6 may be either preliminary or final. [See : Sivalinga v. Narayani, AIR 1946 Mad 151].”

41. In the case of **Karan Kapoor v. Madhuri Kumar** reported in **(2022) 10 SCC 496**, the Hon’ble Supreme Court has explicitly clarified the position and application of Order-XII Rule-6 of the C.P.C. The relevant paragraphs from the judgment read as under:-

“23. Order 12 Rule 6 confers discretionary power to a court who “may” at any stage of the suit or suits on the application of any party or in its own motion and without waiting for determination of any other question between the parties makes such order or gives such judgment as it may think fit having regard to such admission.

24. Thus, legislative intent is clear by using the word “may” and “as it may think fit” to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise



*the court can refuse to invoke the power of Order 12 Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by the other, and the court is satisfied to the nature of admission, then the parties are not compelled for full-fledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the court and respective parties, the said provision has been brought in the statute.....
...”*

42. Moreover, the Hon’ble Supreme Court in the case of *Hari Steel and General Industries Ltd. and Anr. v. Daljit Singh and Ors.* reported in (2019) 20 SCC 425 has laid down the principle with respect to disposal of application under Order-XII Rule-6 of C.P.C. which reads as under:-

“33. In view of the serious factual disputes and the defence of the appellants in the suit, it is not permissible for making roving inquiry for disposal of the application filed under Order 12 Rule 6 CPC. When the trial is already commenced, it is desirable to record findings on various contentious issues and disputes in the suit on merits by appreciating evidence but at the same time there is no reason or justification to decree the suit at this stage. For the aforesaid reasons, we are of the view that the impugned judgment [Daljit Singh v. Hari Steel & General



Industries Ltd., 2018 SCC OnLine Del 13327] of the High Court cannot be sustained and is liable to be set aside on this ground alone.”

(Emphasis supplied)

43. The Hon'ble Supreme Court in the case of ***Himani Alloys Limited v. Tata Steel Limited*** reported in ***(2011) 15 SCC 273*** has observed with respect to the use of discretion by the Court in Order-XII Rule-6, in para 11 as under:

“11. It is true that a judgment can be given on an admission contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear admission which can be acted upon. (See also *Uttam Singh Duggal & Co. Ltd. vs. United Bank of India* [2000 (7) SCC 120], *Karam Kapahi vs. Lal Chand Public Charitable Trust* [2010 (4) SCC 753] and *Jeevan Diesels and Electricals Ltd. vs. Jasbir Singh*



Chadha [2010 (6) SCC 601]..... ”
(Emphasis supplied)

44. In law the person on whom the burden of proof lies has to produce the evidence before the Court of Law. The best proof ought to be given. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or points in issue. The Hon'ble Supreme Court in ***Tulsi v. Chandrika Prasad*** reported in **(2006) 8 SCC 322** observed that:

“20. Section 91 of the Evidence Act mainly forbids proving of the contents of a writing otherwise than by writing iteself and merely lays down the best Evidence Rule. It is, however, does not prohibit to parties to adduce evidence in a case, the deed is capable of being construed differently to show how they understood the same.”

45. Sections 91 and 92 are substantive provisions under the Evidence Act, 1872. Unless and until the case falls under one or the other exceptions enabling receipt of oral evidence on a written document, the Court is precluded from entertaining oral evidence.

46. Three Judges bench of Hon'ble Supreme Court in ***Mangala Waman Karandikar (D)th Lrs. v. Prakash Damodaar Ranade*** reported in **(2021) 6 SCC 139** held:-

“15. It is manifest from these two sections



that it is only in cases where the terms of the document leave the question in doubt, then resort could had to the proviso. But when a document is a straight forward one and presents no difficulty in construing it, the proviso does not apply. In this regard, we may state that Section 95 only builds on the proviso 6 of Section 92.

16. If the contrary view is adopted as correct it would render Section 92 of the Evidence Act, otiose and also enlarge the ambit of proviso 6 beyond the main section itself.....”

47. Proviso (1) of Section 92 of the Indian Evidence Act, 1972 provides that any fact may be proved which invalidates any document on the ground that the document suffers from a mistake of law.

48. It is material to note that tendering oral evidence against a written document is not totally barred. The submission that, in wake of Section 92 of the Evidence Act, oral evidence in contradiction with written agreement cannot be given is not applicable in the present case. Section 92 of the Indian Evidence Act, 1872 applies only to the terms of the document not to the facts mentioned in the documents. Even otherwise, as per the proviso to Section 92 oral evidence is admissible to show that the document was never intended to be acted upon or in cases whenever the true character of a document is questioned, extrinsic evidence by way of oral evidence is admissible.



49. If the language of an instrument does not yield clear meaning and is open to two interpretations, extrinsic evidence of surrounding circumstances could be adduced.

50. In any document where there is a statement of fact other than the terms of the contract, oral evidence can be placed to prove or disprove the fact.

51. The learned Trial Court invoked Order-XII Rule-6 of the CPC on the basis of consent recorded in the ordersheet, wherein both parties agreed to proceed under the said provision. Such consent, if voluntarily and unequivocally given, empowers the Court to pass a decree on admitted facts, thereby avoiding unnecessary trial proceedings and expediting disposal of the matter but in the present case, the appellants/defendants disputed that they have given any consent and submitted that they were contesting the suit and there was no occasion or circumstances to show that they had given consent. The principle underlying Order-XII Rule-6 is that where parties admit facts or agree to the admission of facts, the Court may act without examining the disputed issues at length. However, it is equally well settled that the power under Order-XII Rule-6 is discretionary and must be exercised with caution. Even when consent is recorded, the Court must ensure that the admission is clear, unambiguous, and covers



the material facts necessary to justify a decree. Consent alone cannot substitute for proof where significant issues such as title, possession, or the legality of transactions remain disputed.

52. By applying the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgments, it is to be held that there is no categorical and unconditional admission. In case appellants prove that the said documents are not acted upon due to abolition of *Zamindari*, post trial it goes to the root of the case as claim of the respondents-plaintiffs.

53. From a careful reading of the pleadings presented by the parties, there exists a triable issue which are to be decided only after the parties adduce oral and documentary evidence.

54. The scope of admitted judgment in earlier suit was insufficient to justify a decree without a full adjudication on merits, and the matter necessarily required examination of the substantive claims of the parties.

55. For the reasons discussed above and in view of the facts and circumstances of this case, this Court cannot uphold the impugned judgment of the learned Trial Court. The learned Trial Court is not justified in exercising its jurisdiction under Order-XII Rule 6 C.P.C. read with Sections 91 and 92 of the Evidence Act. The point for determination is decided accordingly



in favour of the appellants and against the respondents.

56. This appeal is allowed and the impugned judgment dated 28.04.2014 and decree dated 23.05.2014 passed by the learned Subordinate Judge IV, Bettiah in Title Suit No. 72 of 2010 is set-aside and the petition dated 07.04.2014 filed on behalf of plaintiffs under Order-XII Rule-6 C.P.C. stands dismissed. There will be no order as to costs.

57. The matter is remanded to the learned Trial Court for framing issues and affording an opportunity of trial to the parties, to prove their respective cases and pronounce the judgment in accordance with law expeditiously.

58. Pending Interlocutory Application(s) (if any) including I.A. No.06 of 2024 (under Order-XLI Rule-27 read with Section 151 C.P.C.) are accordingly disposed of.

59. It is made clear that the findings and observations made by this Court are confined only for the purpose of deciding the core issue in this appeal with respect to justification of the learned Trial Court in exercising its jurisdiction under Order-XII Rule-6 of C.P.C. read with Sections 91 and 92 of the Evidence Act. This Court has not made any observation on the merits of the case and all contentions of the parties are left open for the learned Trial Court to record findings on various issues which fall for



consideration in the suit on its own merits in accordance with law.

60. Let the Trial Court records be sent back to the concerned Court forthwith.

(Sunil Dutta Mishra, J)

utkarsh/-

AFR/NAFR	AFR
CAV DATE	19.09.2025
Uploading Date	04.12.2025
Transmission Date	NA

