

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.422 of 2022

1. Anil Kumar Mishra Son of Late Satyadeo Mishra, Resident of Mohalla- Mishratola, Darbhanga, P.O.- Lalbagh, P.S. and District- Darbhanga, At present residing at Mohalla- Bibiganj, Muzaffarpur, Ward No.- 7, P.S. and District- Muzaffarpur.
2. Sabita Mishra @ Savita Mishra wife of late Kishore Kumar Mishra, resident of Mohalla- Mishratola, Darbhanga, P.O.- Lalbagh, P.S. and District- Darbhanga.
3. Kislay Kumar Mishra, Son of late Kishor Kumar Mishra, resident of Mohalla- Mishratola, Darbhanga, P.O.- Lalbagh, P.S. and District- Darbhanga.
4. Rohit Kumar Mishra, Son of late Kishor Kumar Mishra, resident of Mohalla- Mishratola, Darbhanga, P.O.- Lalbagh, P.S. and District- Darbhanga.
5. Sweta Kumari, Daughter of late Kishor Kumar Mishra, resident of Mohalla- Mishratola, Darbhanga, P.O.- Lalbagh, P.S. and District- Darbhanga.

... ..Defendants-Appellants- Appellant/s
Versus

1. Kanak Lata Mishra @ Kanak Lal Mishra Daughter of late Kedar Nath Mishra, wife of Sri Balram Mishra, resident of 301- Rana Satya Kunj Apartment, Ramkrishna Nagar, Khagoul Road, Danapur, District- Patna.
2. Kaushal Kumar Mishra Son of late Kedar Nath Mishra, resident of Mishratola, Darbhanga, P.O.- Lalbagh, P.S. town Darbhanga District- Darbhanga.
3. Kumud Devi @ Kunud Devi, Daughter of late Kedar Nath Mishra, wife of Sri Ramkumar Mishra, Resident of Kamtoul Bazar, P.O. and P.S.- Kamtoul, District- Darbhanga, At present - C/o Sri Shyama Nand Jha, Mohalla- Mogalpura, P.O.- Lalbagh, P.S.- Laheriyasarai, District- Darbhanga.
4. Kalpana Pandey, Daughter of late Kedar Nath Mishra, wife of Ashutosh Narayan Pandey, resident of Ghandhi Tola, Power House Road, P.O., P.S. Nagar Begusarai and District- Begusarai.
5. Manish Kumar Mishra, Son of late Laxmi Nath Mishra, resident of Mishratola, Darbhanga, P.O.- Lalbagh, P.S. Town Darbhanga and District- Darbhanga.



6. Jyoti Kumari, Daughter of late Keshav Nath Mishra R/O Mohalla Mishratola PS Town Darbhanga Dist. Darbhanga, at present R/o Mohalla- Gokul Patti, Patel Nagar, Town and District- Patna.
7. Rashmi Kumari, Daughter of late Keshav Nath Mishra, R/O Mohalla Mishratola PS Town Darbhanga Dist. Darbhanga, at present R/o Mohalla- Gokul Patti, Patel Nagar, Town and District- Patna.
8. Roopam Kumari, Daughter of late Keshav Nath Mishra, R/O Mohalla Mishratola PS Town Darbhanga Dist. Darbhanga, at present R/o Mohalla- Gokul Patti, Patel Nagar, Town and District- Patna.
9. Prabha Shukla, Wife of Manoj Kumar Mishra, Daughter of late Keshav Nath Mishra, R/O Mohalla Mishratola PS Town Darbhanga Dist. Darbhanga, at present R/o Mohalla- Gokul Patti, Patel Nagar, Town and District- Patna.

..Plaintiffs-Respondents-Respondents 1st set

10. Bam Bholu Mishra, Son of late Jagdish Narayan Mishra, resident of Benta- Laheriyasarai Road, Mohalla- Balbhadrapur, P.O. and P.S.- Laheriyasarai, Town and District- Darbhanga.
11. Reeta Devi, Daughter of Late Jagdish Narayan Mishra, wife of Mithlesh Shukla, resident of Benta- Laheriyasarai Road, Mohalla- Balbhadrapur, P.O. and P.S.- Laheriyasarai, Town and District- Darbhanga.
12. Baidyanath Mishra @ Baiju son of Late Satish Shankar Mishra, Resident of Village- Chhipliya, P.O.- Milkichak, Via- Laxmisagar, P.S.- Bahadurpur, District- Darbhanga.
13. Bishnu Shankar Mishra son of Late Satish Shankar Mishra, Resident of Village- Chhipliya, P.O.- Milkichak, Via- Laxmisagar, P.S.- Bahadurpur, District- Darbhanga.
14. Beena Devi @ Baby, Wife of Prabhat Kumar Pandey, Daughter of Satish Shankar Mishra, Pandey Sewa Sadan, Near Civil Court, Patna, Mohalla- Sabjibagh, P.S.- Pirbahor, District- Patna.
15. Dinesh Mishra son of late Ganga Prasad Mishra @ Gaya Prasad Mishra and Late Laxmi Devi, Resident of Tedhi Ghat, P.S.- Khajekalan, Patna City, District- Patna.
16. Ramesh Mishra son of late Ganga Prasad Mishra @ Gaya Prasad Mishra and late Laxmi Devi, Resident of Tedhi Ghat, P.S.- Khajekalan, Patna City, District- Patna.
17. Divakar Mishra son of son of late Ganga Prasad Mishra @ Gaya Prasad



Mishra and late Laxmi Devi, Resident of Tedhi Ghat, P.S.- Khajekalan, Patna City, District- Patna.

18. Prabhakar Mishra son of late Ganga Prasad Mishra @ Gaya Prasad Mishra and late Laxmi Devi, Resident of Tedhi Ghat, P.S.- Khajekalan, Patna City, District- Patna.
19. Neeta Mishra, Daughter of late Gaya Prasad Mishra and late Laxmi Devi, Resident of Gumti No. 2, Durga Sthan, Bhikhanpur, PS Bhagalpur District- Bhagalpur.

---- Defendants-respondents- respondents 2nd Set.

20. Karuna Devi, wife of Umesh Mishra, Daughter of late Satyadeo Mishra, Resident of Village- Muja, P.O. and P.S.- Jaitpur Estate, District- Muzaffarpur.

... ... Defendants- Respondents -Respondent/s 3rd set

Appearance :

For the Appellant/s	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Sanjay Kumar Mishra, Advocate Mr. Manish Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate Ms. Sheshadri Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

6 14-08-2025 Heard Mr. Ganpati Trivedi, learned senior counsel for the appellants, and Mr. Ranjan Kumar Dubey, learned counsel for the respondents.

Interlocutory Application No.02 of 2025

2. This interlocutory application has been filed under Section 5 of the Limitation Act for condoning the delay of five days in filing the present appeal.

3. Learned counsel for the appellants submits that



under wrong impression the time was calculated and, thus, delay of five days has occurred in filing the appeal.

4. Learned counsel for the respondents submits that there is no plausible explanation in the interlocutory application for condoning the delay.

5. Having regard to the facts and circumstances of the cases and the averments made in the interlocutory application, same is allowed. Delay in filing the appeal is condoned.

6. Interlocutory Application No.02 of 2025 stands allowed.

Second Appeal No.422 of 2022

7. The present Second Appeal has been preferred by the defendant-appellants against the judgment of affirmance dated 12-09-2022 passed by the learned Additional District Judge-I, Darbhanga, in Title Appeal No. 12 of 2011, whereby the judgment and decree dated 11-03-2011 passed in Title Suit No. 20 of 1986 by the learned Sub-Judge, V, Darbhanga, has been upheld.

8. The plaintiffs-respondents filed the suit for a declaration of their title over the suit property and asserting that defendants 1 to 4 have no right, title, interest, or possession in it. The plaintiffs also prayed for a declaration that the deed of gift



dated 15-09-1980 (Ext.B), executed by Maina Devi in favour of defendant nos. 2 and 3, is void, and further sought eviction of defendant nos. 2 to 5 from the suit premises together with costs of the suit against the defendants.

9. The case of the plaintiffs, in brief, is that the sons of Daya Shankar Mishra, namely Moti Mishra and Gokhul Mishra, separated from each other in the year 1921. After this separation, Moti Mishra, who was a renowned '*Vaidya*', acquired several properties in his name or in the name of his two wives, from his separate earnings. It is further pleaded that Moti Mishra subsequently purchased the suit land from his own income, as shown by a registered sale deed dated 10-01-1929 (Ext.4), and took possession thereof. It is further pleaded that the land so purchased by him *vide* the aforesaid registered sale deed was actually encumbered with a mortgage, which subsequent to the purchase was discharged by said Moti Mishra, and the land was thus rendered unencumbered. It is further pleaded that, in course of time, said Moti Mishra sold 2 katha 17½ dhur of land out of the said purchased land by him vide two sale deeds dated 01.04.1929 and 02.05.1929 (Ext.1), respectively.

10. It is further pleaded that an earthquake occurred in



the year 1934, in which the ancestral house of Gokhul Mishra and Moti Mishra was damaged. Subsequent to the said earthquake, Moti Mishra constructed a house on the suit property, wherein he reshifted some family members and also used the premises to accommodate occasional guests, staff, and patients. Meanwhile, Moti Mishra himself, along with other family members, resided in another house situated west of the newly constructed house on a different land. The plaintiffs further state that in the year 1939, when Gokhul Mishra required accommodation, Moti Mishra allowed him to occupy the house on the suit land upon his request, until Gokhul Mishra could make alternative arrangements for separate dwelling. The said permission was granted to Gokhul Mishra on the condition that the municipal taxes and other charges encumbering on the dwelling house would be borne by Gokhul Mishra himself. On this condition, Gokhul Mishra began residing in the house constructed by Moti Mishra on the suit land. Thereafter, Gokhul Mishra got the holding assessed in his name through his son, Sriman Narayan Mishra, who was then employed with the Darbhanga Municipality. Gokhul Mishra subsequently died in the year 1946, leaving behind his only son, Sriman Narayan Mishra, and two daughters, Bimla Devi and Nirmala Devi. It is



stated that after Gokhul Mishra's death, Moti Mishra allowed his nephew to continue residing in the house where his brother had passed away. It is further pleaded that there was no final partition; therefore, Gokhul Mishra occasionally claimed Moti Mishra's properties. However, good sense prevailed, and he executed a registered deed of *ladavi* (relinquishment) dated 09.06.1936 (Ext.5) in favour of Moti Mishra, including the properties that were part of the sale deed dated 10.01.1929 (Ext.4). The said Sriman Narayan Mishra died issueless in 1978, leaving behind his wife, Maina Devi, who was defendant no. 1 in the suit. The said Maina Devi subsequently executed a deed of gift dated 15.09.1980 (Ext.B) in favour of Anil Kumar Mishra and Kishore Kumar Mishra without any right, title, or interest in the suit property. Thereafter, the donees got their names mutated against the house situated on the suit land based on the alleged deed of gift. Hence, the necessity of filing of the suit arose against the defendants.

11. On summons, defendant no. 1 appeared and filed her written statement but did not adduce evidence before the Court. The said Maina Devi pleaded in her written statement that the plaintiffs filed the suit to deprive the defendants of their legal rights and the suit property was her exclusive property



before she gifted the same to Anil Kumar Mishra and Kishore Kumar Mishra *vide* registered deed of gift dated 15.09.1980 (Ext.B). She further pleaded that the suit property was purchased by Gokhul Mishra from his separate nucleus of funds, which he acquired through his practice as a '*Vaidya*'. It is further pleaded that not only this, but he was also earning by working in the Railway Department. Gokhul Mishra subsequently got engaged in the Office of *Darbhangra Raj*, and after earning money through his vocation, he purchased several properties, including the suit property, in the name of his younger brother, Moti Mishra. It is further pleaded that, on account of compelling circumstances, he could not have purchased the properties in his own name and, therefore, used to purchase the same in the name of his younger brother. In paragraph 6 of her written statement, it is pleaded that it is not true that the husband of defendant no. 1, namely Sriman Narayan Mishra, had employment in the Municipality during the lifetime of his father and that he fraudulently got the property mutated in his name. She further states in the same paragraph that it is not true that at the time of his death in 1978, Sriman Narayan Mishra was working in the Municipality. It is further pleaded that after the death of Gokhul Mishra, his only



son, Sriman Narayan Mishra, came into possession of the property so purchased by him and thereafter started paying municipal tax in exchange for receipts issued for the same. After the death of Sriman Narayan Mishra, defendant no. 1, being the only successor left behind by him became the owner of the suit property and, in that capacity, started paying municipal tax and obtaining receipts.

12. Defendant nos. 2 and 3 are the *Bhagina* (nephews) of the husband of defendant no. 1 and they were taking good care of her and attending to all her needs. It is stated that being pleased with the services so rendered by them, the defendant No.1 offered to transfer the deed of the suit property to them, and upon their acceptance, she executed the registered deed of gift dated 15-09-1980 (Ext. B) in their favour and delivered possession thereof to them. After the acceptance of the deed of gift, the donees became full owners of the property so gifted to them and acquired perfect right, title, and interest therein. It is further pleaded that her father-in-law was never the licensee of the suit property, as alleged, and the plaintiffs' contention that the said Gokhul Mishra executed the registered deed of *ladavi* dated 09-06-1936 (Ext.5) is wrong; in fact, the said *ladavi* does not cover the suit property. She further stated that the suit



property was purchased from the own earning of Gokhul Mishra, and the same was purchased in the name of Moti Mishra merely for the reason that he was employed with the Indian Railway, and as such, purchasing the property in his name was not conducive under these circumstances.

13. Defendant nos. 2 and 3 also appeared and filed their separate written statements supporting the case of defendant no. 1. It is further pleaded that since it was conducive for him to purchase property in his name, he used to acquire properties either in the name of his younger brother, Moti Mishra, or in the name of the wife of Moti Mishra. The said Gokhul Mishra purchased 5 katha 17½ dhur land *vide* registered sale deed dated 09-01-1929 (Ext.4) from one Jagarnath Pandey of Mishra Tola and came into possession of the land so purchased by him. The defendants further pleaded that out of the said 5 kattha 17½ dhur land, three kattha land was his exclusively purchased land, whereon he subsequently constructed his house and started living therein with his family members. The said property was mutated in the name of Gokhul Mishra. It is not true that the properties are part and parcel of the registered sale deed dated 10-01-1929 (Ext.4). It is further pleaded that Gokhul Mishra and Sriman Narayan Mishra always



remained in possession of the suit properties in their own title, and that Gokhul Mishra, Sriman Narayan Mishra, and Maina Devi had never been licensees of the suit property. It is also not true that the ancestral house of Gokhul Mishra was damaged in the earthquake. The reality is that after the partition between the two brothers in May 1936, on account of shortage of space in the ancestral house, he constructed his own house on the suit land and started residing therein, while letting the ancestral house on rent to tenants. Subsequent to his death, his son Sriman Narayan Mishra sold the ancestral house. The plea of partition in the year 1921, as alleged by the plaintiffs, is vehemently denied; the said partition took place in 1936. Moti Mishra has never come into possession of the suit property measuring three katha with the house appurtenant thereto. The house and land always remained in possession of Gokhul Mishra and his successors. Defendant no. 1, Maina Devi, gifted the suit property to defendants nos. 2 and 3, who have since come into possession thereof, holding right, title, and interest over the same. They, therefore, prayed that the suit filed by the plaintiffs be dismissed.

14. The learned Trial Court after considering the pleadings, evidence adduced by the parties, and materials on



record, decreed the suit in favour of the plaintiffs against the defendants.

15. Being aggrieved by and dissatisfied with the said judgment and decree, the defendants-appellants filed Title Appeal No. 12 of 2011. After hearing the parties and considering the materials on record, the learned lower Appellate Court affirmed the judgment of the Trial Court and dismissed the appeal filed by the defendants-appellants.

16. After hearing the submissions made on behalf of the parties and perusal of the materials on record, including the judgments of the lower courts, it appears that the learned Court of Appeal, being the final Court of facts, after considering the pleadings of the parties and the evidence adduced by them came to a clear finding that the suit land was purchased *vide* registered sale deed dated 09/10.01.1929 (Ext.4) in the name of Moti Mishra, with regard to total area of 5 katha 17½ dhur. The land, so purchased by the aforesaid sale deed, was encumbered with a mortgage at the time of purchase, and the amount of encumbrance was paid by Moti Mishra to the mortgagor *vide* Exhibit-2/B, thereby redeeming the land and rendering it unencumbered. The said Moti Mishra further sold about 2 kattha 17½ dhur land out of the said total 5 kattha 17½ dhur land *vide*



two registered sale deeds dated 01.04.1929 (Ext. 2/A) and 02.05.1929 (Exhibit-2). The purchasers from Moti Mishra, out of the land being the subject matter of the sale deed dated 09/10.01.1936, have duly come into possession of their respective purchased land. This fact has been established through Ext. 7 and 7/A. Ext. 3 shows that the suit land was registered in the revisional town survey parcha in the name of Kedarnath Mishra and others. The Exhibit-B, being the deed of gift dated 15-09-1980 executed by Maina Devi in favour of defendant nos. 2 and 3 under challenge, states that the economic condition of Gokhul Mishra and Sriman Narayan Mishra was not sound and they faced the threat of auction sale from their creditors. The Exhibit-5, deed of *ladavi* dated 09-06-1936 (Ext.5), despite being alleged as not executed by Gokhul Mishra, stood unchallenged by any subsequent action. The said document is a registered document executed in 1936, and as such, there is a presumption of its validity attached thereto. The testimonies of the witnesses produced by the defendants are mostly related to possession of the suit property, and in the event of the plaintiffs' contention that the possession of Gokhul Mishra and his successors was only permissive possession, the same does not confer any right on the point in dispute between



the parties. In view of the aforesaid findings, the learned lower appellate court decided the issue framed by it in favour of the plaintiffs and against the defendants. The plaintiffs appeared to be entitled to the decree of declaration over the Schedule-A land of the plaint and further held that they are entitled to obtain the relief of eviction of Defendant nos. 1 to 5 from the house appertaining to Schedule-A land of the plaint. The deed of gift dated 15.09.1980 executed by Maina Devi is void as it was executed without any right, title, or interest in the property so conveyed thereby. The learned Trial Court came to the conclusion that the plaintiffs-respondents have successfully established their title and constructive possession over the suit property mentioned in Schedule-A of the plaint. The judgment and findings arrived at by the learned court below are just and proper, and accordingly, the Title Appeal has been dismissed.

17. In the facts and circumstances of the case coupled with the materials available on the record, this Court finds that it is an admitted fact that the disputed properties, bearing a total area of 5 katha 17½ dhur of land, were originally purchased *vide* registered sale deed dated 09/10-01-1929 (Ext.4) in favour of Moti Mishra for a consideration of Rs. 700/-. Out of the said consideration money, the vendor Jagarnath Pandey received



only Rs. 100/-, whereas the remaining amount of Rs. 600/- was agreed between the parties to be left in the possession of the purchaser for enabling him to pay the amount of encumbrance standing against the land so sold by the aforesaid sale deed. However, the registered sale deed dated 09/10-01-1929 (Ext. 4) was encumbered with debt by creating a mortgage of the nature of *Tamasuk Sudbharna*. Both the learned Courts below held that Ext. 4, in reference to the purchaser, states the occupation of said Moti Mishra to be a '*Vaidya*'. The said deed is an undisputed deed, and both parties hold the same to be the source of their respective title. There is a specific finding with regard to the registered *Ladavi* deed dated 09-06-1926 (Ext. 5) executed by Gokhul Mishra in favour of Moti Mishra. Nowhere, in the said deed it is mentioned that the suit land was originally purchased by Gokhul Mishra in the name of Moti Mishra. The learned Appellate Court has further held that the sale deed dated 09/10-01-1929 (Ext. 4) mentions the registered deed of mortgage dated 17-05-1926 (Ext. 2/B). The said mortgage deed was executed by Jagarnath Pandey in favour of Mathura Prasad with respect to the land subsequently sold by him *vide* the aforesaid sale deed. The original mortgage deed has also been produced by the plaintiffs. The learned Appellate Court further



observed that after perusal of the back of the front page of the said mortgage deed, it transpires that the mortgagee, Mathura Pathak, made an endorsement thereon regarding receipt of both the principal and the amount of interest from Moti Mishra, and upon satisfaction of the encumbrance, the original mortgage deed was returned to him. Since there is no dispute pertaining to the sale deed dated 09/10-01-1929 (Ext.4), there arises no question regarding the validity of the registered deed of mortgage dated 17-05-1926 (Ext. 2/B). Ext. 2 is the certified copy of the registered sale deed dated 02.05.1929 executed by Moti Mishra in favour of Jainath Choudhary for an area of 1 katha 7½ dhur of land. So far as Ext. 2/A is concerned, it is the certified copy of the registered sale deed dated 01.04.1929 executed by Moti Mishra in favour of Harinath Choudhary for an area of 1 katha 10 dhur of land. Both the sale deeds are part of the registered sale deed dated 09/10-01-1929 (Ext.4). It is apparent from the records that defendant no. 1, Maina Devi, filed her written statement but did not appear before the Court to prove her pleadings. Defendant nos. 2 and 3 appeared but have not produced any chit of paper with regard to the source of earning of Gokhul Mishra, nor is there any document to establish that the joint family of Gokhul Mishra and Moti



Mishra had any resources to acquire any property for the joint family with the same.

18. Both the Courts below have concurrently held that the defendants have failed to establish or prove that the registered sale deed dated 09/10.01.1929 (Ext. 4) was originally purchased by Gokhul Mishra in the name of Moti Mishra as a name lender. The two aforesaid sale deeds executed by Moti Mishra with regard to 2 katha and 17½ dhur, and the original deed of Ladavi dated 09-06-1936 (Ext. 5), have not been challenged by the defendants, nor have they filed any counter-claim with regard to the suit land. Both the Courts rightly held that the gift deed dated 15-09-1980, executed by Maina Devi, is void having been executed without any right, title, or interest.

19. From the preceding paragraphs, it is quite apparent that the judgment and decree of the learned Courts below are covered by the findings of fact, and no question of law, much less a substantial question of law, arises for consideration in this Second Appeal.

20. Accordingly, the present Second Appeal is dismissed at the stage of hearing under Order XLI, Rule 11 of the CPC.



21. Pending interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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