

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.331 of 1987

2. Suresh Kumar Shukla, Son of Late Baidyanath Shukla Resident of Village Matuk Chapra P.S. and District Siwan
- 3.1. Sarswati Kuar W/o Late Indu Sharan Shukla @ Indu Bhushan Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 3.2. Sushil Kr. Shukla S/o Late Indu Sharan Shukla @ Indu Bhushan Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 3.3. Atul Kr. Shukla S/o late Indu Sharan Shukla @ Indu Bhushan Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 3.4. Mirdul Kr. Shukla Son of Late Indu Sharan Shukla @ Indu Bhushan Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 3.5. Punam Devi Daughter of Late Indu Sharan Shukla @ Indu Bhushan Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 3.6. Purnima Devi Daughter of Late Indu Sharan Shukla @ Indu Bhushan Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 3.7. Susma Kumari Daughter of Late Indu Sharan Shukla @ Indu Bhushan Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 4.1. Sishir Kumar Shukla S/o Late Vidya Sharan Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 4.2. Rakesh Kumar Shukla S/o Late Vidya Sharan Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 4.3. Sunita Devi Daughter of Late Vidya Sharan Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
5. Shushil Kumar Shukla, Son of Indrashan Shukla Resident of Village Matuk Chapra P.S. and District Siwan
6. Sunil Shukla @ Sunil Dutta Shukla, Son of Vidya Sharan Shukla Resident of Village Matuk Chapra P.S. and District Siwan
- 7.1. Ranju Devi Wife of Late Sumit Shukla @ Sumit Kumar Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 7.2. Stuti Kumari D/o Late Sumit Shukla @ Sumit Kumar Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 7.3. Kshity Kumar S/o Late Sumit Shukla @ Sumit Kumar Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 7.4. Kartik Kumar S/o Sumit Shukla @ Sumit Kumar Shukla Resident of Village- Matuk Chapra, P.S. and District Siwan.

... .. Appellant/s

Versus

- 3.1. Uma Devi D/o late Jagdish Mishra Resident of Village- Matuk Chapra, P.S. and District Siwan.
4. Madho Mishra, Son of Jagdish Mishra Resident of Village Matuk Chapra, P.S. and District Siwan



- 5.1. Kamla Devi Wife of Late Udho Mishra Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 5.2. Ranjit Mishra S/o Late Udho Mishra Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 5.3. Premjit Mishra S/o Udho Mishra Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 5.4. Sanjit Mishra S/o Late Udho Mishra Resident of Village- Matuk Chapra, P.S. and District Siwan.
- 5.5. Santosh Mishra S/o Late Udho Mishra Resident of Village- Matuk Chapra, P.S. and District Siwan.
6. Duldul Mishra, Son of Jagdish Mishra Resident of Village Matuk Chapra, P.S. and District Siwan

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shashi Shekhar Dvivedi, Sr. Advocate Mr. Ashutosh Kumar Pandey, Adv. Mr. Parth Gaurav, Adv. Mr. Swayamparaph, Adv. Ms. Shalini, Adv.
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 06-01-2026

The present appeal has been filed by the appellants against the judgment and decree dated 09.07.1987 and 22.07.1987 passed and prepared respectively in Title Appeal No. 33 of 1975 by Mr. P. L. Kaungari, 5th Addl. District Judge, Siwan, reversing and setting aside the judgment dated 11.08.1975 and decree dated 28.08.1975 passed and prepared respectively by Mr. Prem Narain Shukla, First Munsif, Siwan, in Title Suit No. 2 of 1966.



2. The original appellant No. 1 to 7 were the plaintiffs of the title suit in which respondent No. 1 to 6 of present appeal were defendants and after decree of the title suit No. 2 of 1966 in favour of the original plaintiffs, original respondent Nos. 1 to 3 preferred Title Appeal No. 33 of 1975 in which the original appellants of memo of second appeal were respondents first set and original defendant Nos. 4 to 6 were respondent second set. The said appeal was allowed. Thereafter, the original plaintiffs-respondents first set had preferred the present second appeal which was numbered as Second Appeal No. 331 of 1987. But with the span of time, parties died and at their place, heirs and legal representatives of the respective parties were substituted at the place respective appellants and respondents whose name are shown in the present judgment.

3. Initially, the present appeal was admitted vide order dated 01.05.1989, in which one substantial question of law was framed, but subsequently, vide order No. 24 dated 24.09.2024, three more substantial questions of law have been framed. Those substantial questions of law are as follows:-

“(i) Whether in view of the fact that the original return was called for from the office of the Circle Officer and was admittedly not produced, the appellant could lead secondary



evidence to prove the certified copy of the said return in terms of section 65(e) of the Evidence Act ?

(ii) Whether Khatian entry is a document of title and/or such recorded person has to prove his title independently?

(iii) Whether the Appellate Court Judgment not being in accordance with Order XLI Rule 31 of the Code of Civil Procedure, 1908 and passed without independent on consideration of the entire material on record, is unsustainable in law?

(iv) Whether daughtership of Halimani (heirs of present respondent), having been categorically denied by the plaintiff (present appellant), heavily onus lie on the defendants (respondents) to prove it according to Section 50 and 60 of the Evidence Act, which they have failed to do it?"

4. It is made clear that vide order No. 25 dated 28.01.2025, due to non-appearance of the respondents or their counsel, the present appeal has been fixed 'For Hearing' *ex parte* against the respondents in the light of the provisions made in Order XLI Rule 17(2) of the Code of Civil Procedure, 1908, and subsequently, after hearing *ex parte*, the present appeal has been fixed for judgment.



5. Prior to deciding the substantial questions of law, it is necessary to place the case of the parties in brief.

Plaintiffs' Case

6. The Plaintiffs' case is that the ancestors of them were the Maliks of Tauzi No. 1342 before Revisional Survey. Ancestor of the Plaintiffs came in its possession over C.S. Plot No. 491 as Malik of village Matook Chapra, C.S. Plot No. 491 and 492 belonging to Bhajan Mishra and Mangal Shukla were of this Tauzi. These two plots were recorded in the Revisional survey as one plot no. 837 of Khata No. 96. Since Bhajan Mishra and Mangal Shukla died issueless before R.S. ancestor of the Plaintiffs came in its possession over C.S. Plot No. 491 and 492 as malik and began to cultivate them, after amalgamating the same. These two plots were recorded in R.S. as R.S. Plot No. 837 and R.S. Plot No. 838 also belonged to Mangal shukla but after the death of Mangal Shukla, Malik Achuta Nand Shukla came in its possession and later on this Achutanand Shukla settled it to Mukha Kamkar who is having his Nad, Khunta and Palani etc. over it and C.S. Plot No. 491 and 492 came in possession of the plaintiffs who are in its possession. There was one Chulahi Mian who had his house in R.S. Plot No. 832 but he had no concern with 837 and 838. This Chulahi Mian worked



with the officials of Survey department and got his name entered into R.S. records over plot no. 837 and 838 in collusion with the survey officials. This was done by him secretly for taking advantage of the death of Mangal Shukla and Bhajan Mishra and without knowledge of Mahabir Shukla and his son Sheobachan Shukla on 4.02.60 defendants 1 to 3 began to interfere with the peaceful possession of the plaintiffs over R.S. Plot No. 837 and in collusion with Dafadar of the Halka get a false and collusive report submitted at the P.S. Siwan, who started one proceeding under section 144 Cr.P.C. between the plaintiff and defendants 1 to 3. This 144 Cr.P.C. proceeding later on was converted into 145 Cr.P.C. proceeding and was decided by Mr. Onkar Nath, Magistrate, 1st Class, Siwan. Both the parties, according to the plaintiff's case submitted their documents and the plaintiff was found to be in possession of the land still then because the defendants 1 to 3 had filed a sale deed in their name executed by one Halimani. Mr. Onkar Nath the Magistrate decided this case against the plaintiff on 20.04.1963 and in favour of the defendant and hence the necessity of this suit.

Defendants' Case

7. Defendant nos. 1 to 3 have contested the suit after filing of a joint written statement. In which they had raise



question of maintainability, further stated that the plaintiffs have got no cause of action or right to sue and that the suit is barred by law of limitation. Defendant further contented that the plaintiffs have no subsisting title over the suit land. Defendants have also challenged the suit as bad for non-joinder of the parties because Indrawati and others, according to them, are necessary party to the Suit. The further case of the defendants is that the suit land is not the same as C.S. Plot No. 491 and 492 Bhajan Mishra and Mangal Shukla, according to them had no concern with the suit land. According to them Mangal Shukla and Bhajan Mishra did not die issueless neither after their death the Plaintiff came in possession of the suit land. The plaintiffs and their ancestors never amalgamated plot nos. 491 and 492 into 837 and did not cultivate these plots. R.S. Plot No. 838. They further denied the possession of the Plaintiffs. As per their further pleading land in question belonged to one Chulhai Mian Most.Rojhani and Most. Halimani and at present these lands are in possession of the defendants. They further stated that they never came in possession of these lands as Malik. R.S. Plot No. 837 and 838 were Dih Basgit land of Chulahi Mian who did not work with the officials of Survey Department nor, did he pull the chain and carry their papers. Chulahi did not get his name entered in these lands in collusion with these instead entries of



these lands are correct and were in the knowledge of Mahabir Shukla and Sheobachan Shukla ancestor of the plaintiffs. On 04.02.1960, defendants did not interfere with the possession of the plaintiff Same because there was no occasion for the name nor, did the defendants get a collusive report filed by the Dafadar rather, Dafadar correctly reported to the police who started a proceeding under Section 144 Cr.P.C. which was later on converted into 145 Cr.P.C. proceeding. At the time of Section 145 Cr.P.C. proceeding the plaintiff had no potato and brinjal in the suit land, nor they were in possession, The defendant since their show cause had correctly given in 145 Cr.P.C. proceeding that the suit land belonged to Chulhai Mian who executed a deed of gift in favour of Most. Rojhani and after her death Most. Halimani came in its possession. The deed of gift was not fraudulent one, but legal and was acted upon. Most. Rojhani did not die issueless neither Bachoo Jolaha remarried himself with Matijan and Most. Halimani was not born with Ali Hussain and Matijan. She is the daughter of Rojhani and Bachoo Jolaha. Most Halimani came in possession of the entire land of Chulahi Mia. It has been denied that the learned Magistrate, decided the 145 Cr.P.C. proceeding without going into its merit. True facts are that R.S. Plot Nos. 837 and 838 were Dih Basgit land of Chulahi and were in his possession. Chulhai used to grow



vegetable on those land at the time of R.S. the Survey office found them in possession of the Maliks and the entries were made in the name of Chulahi Mian. This Chulahi had a daughter Most. Rojhani and Chulahi Mian orally gifted his entire properties to Most. Rojhani and put her in possession thereof. Most Rojhani came in possession of this land in the life time of Chulahi. Most. Halimani after the death of Rojhani came in possession of the properties of Rojhani and used to grow vegetables over the suit land. Since, Halimani was married in different village which was at a distance from Matook Chapra. She sold R.S. Plot Nos.837 and 838 to these defendants on 11.01.1960 at the sum of cost of Rs. 300/- and after receiving consideration money put them in possession thereof on the day of execution of the sale deed. Halimani had grown vegetable in the suit land and they were given to the defendants. The plaintiffs, according to the further case of the defendants wanted to purchase the suit land from Halimani but after defendants purchased them the plaintiffs were annoyed and began to interfere with the possession resulting in 144 and 145 Cr.P.C. proceeding which was later on decided in favour of the defendants. The defendants have, therefore, acquired title over the suit land by adverse possession to the knowledge of all since they are in its possession for more than 12 years and on these



grounds it is prayed that the suit be dismissed with cost.

8. As per the pleading of the both parties Ld. Trial Court framed issues for decision in the Suit i.e.

- i. Is the suit as framed maintainable?
- ii. Have the plaintiff got cause of action or right to sue?
- iii. Is the suit barred by law of limitation?
- iv. Is the R.S. entry correct?
- v. Does the suit suffer from defect of parties?
- vi. Were the Plaintiffs and their ancestors in possession of the suit land within 12 years of the suit?
- vii. Is the sale deed of the defendants valid genuine and for consideration?
- viii. Have the plaintiffs got any subsisting title over the suit land?
- ix. To what relief, if any, are plaintiffs entitled?

9. On the basis of the above-mentioned issues, the learned Trial Court recorded its findings and decreed the suit bearing No. 02/1966 in favour of the plaintiffs on 11.08.1975.

10. Being aggrieved and dissatisfied with the



judgment and decree dated 11.08.1975 and 28.08.1975 passed by Shri Prem Narayan Shukla, 1st Munsif, Siwan, in T.S. No. 02/1966, the defendant of the said suit preferred a Title Appeal bearing No. 33/1975, in which the following points of consideration were raised:-

i. Whether finding of the learned lower court that the plaintiffs and their ancestors were in possession of the Suit land is correct?

ii. Whether the finding of the learned lower court, that the plaintiff 's claim that R.S. entry relating to the suit or plot is wrong incorrect?

iii. Whether the impugned judgement and decree are fit to be set aside?

11. That on the basis of the above-mentioned points of consideration, the learned Appellate Court recorded its findings in Title Appeal No. 33/1975, passed the judgment and decree on 09.07.1987 and 22.07.1987, and set aside the judgment and decree passed and prepared by the learned Trial Court in T.S. No. 02/1966 on 11.08.1975 and 28.08.1975 respectively.

12. Being aggrieved and dissatisfied with the judgment and decree dated 09.07.1987 and 22.07.1987 passed



by Shri P. L. Kaurgari, 5th learned Additional District Judge, Siwan, in Title Appeal No. 33/1975, the plaintiffs/respondents of Suit No. 02/1966 and Title Appeal No. 33/1975 preferred a Second Appeal bearing No. S.A. 331/1987 before the Hon'ble Patna High Court.

13. In the background of the above-said facts and circumstances, this Court is hereby deciding the substantial questions of law one by one.

(i) Whether in view of the fact that the original return was called for from the office of the Circle Officer and was admittedly not produced, the appellant could lead secondary evidence to prove the certified copy of the said return in terms of section 65(e) of the Evidence Act ?

14. With regard to deciding this substantial question of law, Exhibit 8 is most crucial, which is basically the certified copy of the "Awedan Patra." In support of Exhibit 8, the depositions of PW10 and PW15 have been relied upon. According to them, this Awedan Patra was filed in Pachrukhi Block and was to be recorded in the Records of Rights. However, after its deposit, the Trial Court sent a letter to the B.D.O., Pachrukhi Block, for production of the record, i.e., the Return Register, which was to be prepared on the basis of the



said Awedan Patra. Despite this, the record was not sent, even though the envelope had been dispatched to the Pachrukhi Block.

15. Counsel for the appellant submits that when the certified copy of the return was filed before the Court and the original was called from the office of Pachrukhi Block but was not produced before the Court, the said certified copy should, in that view of the matter, be treated as secondary evidence in terms of Section 65(e) of the Indian Evidence Act. No one appeared on behalf of the respondent to contest this issue, whereas the contention of counsel for the appellant is that the certified copy is a public document and is admissible in the absence of the original record, as the State is the custodian of the records and it is the duty of the State to maintain such records.

16. In support of his argument, counsel for the appellant relied on the judgment of *J. Yashoda v. K. Sobha Rani*, reported in *(2007) 5 SCC 730*, and submits that it clarifies the circumstances under which the admissibility of secondary evidence in the absence of the primary document is permissible. Counsel further submits that the certified copy is a public document and is therefore admissible. Accordingly, he contends that when the said certified copy, Exhibit-8, is placed on record,



and upon calling for the original record, the concerned official failed to produce it, the certified copy should be treated as secondary evidence, and its admissibility should be recognized in light of Section 65(e) of the Indian Evidence Act.

17. In this regard, the question of the applicability of Section 65(e) of the Indian Evidence Act arises only when Exhibit-8 is treated as a public document. When the Exhibit-8 shall be treated as public document then only question of admissibility shall take place, and in the absence of the original record, this public document may be treated and accepted as secondary evidence.

18. On the point of whether the document is a public document or not, this Hon'ble Court has recently decided a case, namely, ***Abdul Rashid v. Iftakhar Hussain @ Dablu & Ors.***, passed in CWJC No. 1651 of 2019, dated 21.05.2025, in which all the judgments regarding whether a certified copy is a public document under the Indian Evidence Act were discussed.

19. A Three-Judge Bench of the Hon'ble Supreme Court of India, in the case of ***Deccan Paper Mills Company Limited vs. Regency Mahavir Properties & Ors.***, reported in ***(2021) 4 SCC 786***, referred to the decision of ***Gopal Das vs. Sri Thakurji***, reported in ***AIR 1943 PC 83***. Additionally, a Division



Bench of the Hon'ble Supreme Court in *Appaiya vs. Andimuthu @ Thangapandi & Ors. [Civil Appeal No. 14630 of 2015 {SLP (C) No. 10031 of 2015}]*, *Smt. Rekha Rani & Ors. vs. Smt. Ratnashree Jain*, reported in *AIR 2006 MP 107*, *N.N. Global Mercantile (P) Ltd. vs. Indo Unique Flame Ltd.*, reported in *(2023) 7 SCC 1*, *Ram Briksha Singh & Ors. vs. Ramashray Singh & Ors. (Civil Misc. No. 1824 of 2018)*, and *Umashankar Singh & Anr. vs. Keshwa Singh & Ors.*, reported in *(2014) 3 PLJR 121*, have also considered this issue.

20. All the above-mentioned cases were discussed in detail, and it has been held that a certified copy of a sale deed could be produced as secondary evidence of the public document and could be produced in proof of contents of the public document or part of public document which it purports to be a copy. A certified copy is, therefore, admissible in evidence both under Sections 65(e) and 65(f) of the Indian Evidence Act. However, these judgments relate specifically to certified copies of sale deeds obtained from entries made in Book-1. The Hon'ble Court held in those cases that if a sale deed is registered, a certified copy can be obtained since it pertains to a public record kept by the State, or a private document maintained as a public document.



21. In the present case, the situation is quite different. The appellant's case is that an application, along with details and Khata, was filed before the Circle Officer, and a certified copy was obtained from the records of the BDO/Revenue Office. The appellant claims that the certified copy should be treated as a public document, and since it is a certified copy, it should be considered secondary evidence.

22. However, the document in the present case is not a registered document. It is merely a certified copy of an application in which other documents have been annexed, and the appellant seeks to derive benefit from it. It has not been established on record under which provision or law the said application is required to be registered in the records.

23. In view of the Court, the present Exhibit-8 does not come within the purview of the public document under Section 74 of the Indian Evidence Act and since it does not come within the purview of public document, therefore, the question of applicability of Section 65(e) of the Indian Evidence Act shall not arise and hence the present substantial question of law is hereby decided against the appellant.

(ii) Whether Khatian entry is a document of title and/or such recorded person has



to prove his title independently?

24. The present appellant himself admits that it is a settled principle of law that a Khatian entry does not confer title upon any person, rather, an entry in the Khatian does not create or confer any title. In view of this, the appellant, or any person claiming by virtue of a Khatian entry, must prove his title independently.

25. In the present litigation, in the 145 CrPC proceeding, possession was found against him, and this result of the 145 CrPC proceeding has not been challenged anywhere on the point of possession. However, it was subsequently treated as a cause of action. The dispute between the parties arises from 144 CrPC proceedings, which were later converted into 145 CrPC proceedings.

26. It is also important to note that it is a suit in which a declaration of possession, declaration of title, and recovery of possession have been demanded. It is not a suit for possessory title alone. Therefore, documents and material relating to title are necessary to be discussed in the arguments.

27. Counsel for the appellant emphasized the presumption in favor of the correctness of the survey entry. However, it is true that by virtue of Exhibit-7, C.S. Plot Nos. 491



and 492 were recorded in the names of Bhajan Mishra and Mangal Shukla, which is supported by the Awedan Patra. There was, however, no entry of Chulai Miyan in the Revisional Survey, and it is not clear as to how his name was recorded in the RS survey records of rights. No one appeared on behalf of the respondent to defend their stand, as the matter is fixed ex parte.

28. In the present appeal, Exhibit-7, i.e., the entry in the CS plot, is undisputed, and there is no pleading regarding the entry of Chulai Miyan in the RS. Another surprising point is that in the old survey records, some persons lost their possessions, while those whose names appear in the revised survey records obtained possession, yet they are not in a position to explain to the Court how their names were entered.

29. As such, in the absence of any pleading regarding how the names of Chulai Miyan were entered in the Revisional Survey, this Court finds that the persons who are claiming through Bhajan Mishra and Mangal Sukla (the original plaintiffs) of CS survey have a better title than those claiming through Chulai Miyan in the RS survey. Even if Chulai Miyan and the persons claiming through him obtained possession, the persons claiming through Bhajan Mishra and Mangal Shukla



(the original plaintiffs) shall be entitled to possession, which shall be recovered through the process of the Court. Therefore, this substantial question of law has been decided accordingly.

(iii) Whether the Appellate Court Judgment not being in accordance with Order XLI Rule 31 of the Code of Civil Procedure, 1908 and passed without independent consideration of the entire material on record, is unsustainable in law?

30. The Scheme of Order XLI Rule 31 of the Code of Civil Procedure, 1908 is as follows:

Contents, date and signature of judgment.- The judgment of the Appellate Court shall be in writing and shall state-

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

31. As per the provision contained in Order XLI Clauses (a), (b) and (c) of Rule 31 of the Code of Civil Procedure, 1908, the judgment of Ld. Appellate Court ought to



have its independent findings and should not have been relied on the findings of Ld. Trial Court. No independent finding with regard to any of the points for consideration in the said Judgment of Appellate Court is based on the findings of Trial Court which ought to have been given independently.

32. The Appellate Court, at the time of deciding a title appeal, is required to strictly follow the guidelines laid down under Order XLI Rule 31 of the CPC, 1908.

33. In the present appeal, there is a lack of compliance with these requirements. No reasons have been discussed as to why the judgment of the Trial Court is erroneous or unacceptable. Likewise, no reasons have been assigned as to why the decision passed by the Trial Court was reversed. In view of this absolute lack of compliance with the provisions of Order XLI Rule 31 of the CPC, 1908, the judgment and decree of the Appellate Court are not sustainable in law and are hereby set aside.

(iv) Whether daughtership of Halimani (heirs of present respondent), having been categorically denied by the plaintiff (present appellant), heavily onus lie on the defendants (respondents) to prove it according to Section 50 and 60 of the Evidence Act, which they have failed



to do it?

34. That in furtherance of the aforementioned question it is submitted that the whole case of the Defendant is based on the sale deed executed by Halimani, who is the so-called/alleged daughter of Mos. Rojhini who is the daughter of Chulhai Mia. The said daughtership of Halimani has been categorically denied by the Plaintiff. In such a scenario, Onus of proving daughtership lies upon defendant. In this regard, only oral statement has been adduced by the Defendant which the Trial Court has not considered as those statements were made by witnesses residing at a distant village and were not reliable and Ld. trial Court rightly doubted the relationship/daughtership of Halimani as such evidences were not adduced as per mandatory provisions of Section 50 and Section 60 of the Evidence Act.

35. Section 50 of the Indian Evidence Act clearly states that when the Court has to form an opinion as to relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact.

36. On this point, the Trial Court, at the time of deciding the title suit, after full discussion, rightly determined



the relationship/daughtership of Halimani, as no evidence to the contrary had been adduced in accordance with the provisions of the Indian Evidence Act. Therefore, it is clear that in order to decide the relationship of one person to another, the applicability of Sections 50 and 60 of the Evidence Act is required and on this point the Appellate Court has failed to consider and not discussed in his judgment as to why finding of the Trial Court has been discarded by the Appellate Court. This Court hereby supports the contention and discussion of the Trial Court on this issue and the finding of the Appellate Court on this point specified in para 17 is discarded, in result the judgment and decree dated 09.07.1987 and 22.07.1987 passed and prepared by the First Appellate Court in Title Appeal No. 33 of 1975 is hereby set aside.

37. Accordingly, the present second appeal is hereby decreed *ex parte*. The findings given by the Trial Court are hereby affirmed. The office is directed to return back the lower Court records to the Trial Court.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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