IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 1189 of 2013

1. Kusumi Devi, wife of late Nuneswar Mandal
2. Khageshwar Mandal, son of late Nuneswar Mandal
3. Keshav Mandal, son of late Nuneswar Mandal
4. Fuleshwar Mandal @ Praful Kumar, son of late Nuneswar Mandal
   All residents of Ambapaghar, P.O. Rondiah, P.S. Sariyahat, District-Dumka

……. Petitioners

-Versus-

1. The State of Jharkhand through the Secretary, Revenue Department, State of Jharkhand, Project Building, P.O. Dhurwa, P.S. Jaganathpur, District-Ranchi
2. The Commissioner, Santhal Pargana Division, P.O. and P.S. Dumka, District-Dumka
3. The Charge Officer, Dumka, Settlement Court, P.O. and P.S. and District-Dumka
4. The Assistant Settlement Officer, Dumka, Settlement Court, P.O. and P.S. and District-Dumka
5. (A). Suguba Devi wife of late Arjun Mandal
6. Kirpali Mandal son of late Jiwan Mandal
   Both residents of village Nawadih, P.O. Dighi, P.S. Saraiyahat, District-Dumka
7. Most. Bhangia Devi, wife of late Sobha Mandal
8. Manoj Mandal son of late Sobha Mandal
9. (A) Karuna Devi wife of late Dipty Mandal,
   9. (B)Govardhan Mandal, son of late Dipty Mandal
   10. Prabhu Mandal, sonof late Sobha Mandal
   All residents of village Kumarsal, P.O. Sahara, P.S. Taljhari, District-Dumka
   11. Most. Bimli Devi wife of late Purshottam Mandal
   12. Narayan Mandal, son of late Purshottam Mandal
   All residents of village Ambapaghar, P.O. Rondiah, P.S. Sariayahat, District-Dumka
   13. Jhunki Mandal, daughter of Purshottam Mandal, wife of Jiteshwar Mandal, resident of village Pokharia, P.S. Hansdiah, P.O. Kenduwa, District-Dumka
   14. Dorpa Devi, daughter of late Purshottam Mandal, wife of Niwas Mandal, resident of village Jamunwa, P.O. Saraiyahat, P.S. Saraiyahat, District-Dumka
   15. Sukumani Devi, daughter of late Purushottam Mandal, wife of Tufan Mandal, resident of village Birajpur, P.O. Sahara, P.S. Taljhari, District-Dumka
   16. Fulmani Devi daughter of late Purshottam Mandal, wife of Suresh Mandal, resident of Tinghara, P.O. Ryan Ambakunda, P.S. Jarmundi, District-Dumka
   17. Muna Mandal son of late Lobin Mandal
   18. Santosh Mandal, son of late Lobin Mandal
   19. Gobin Mandal, son of late Andu Mandal
   20. Shambhu Mandal, son of late Andu Mandal
   21. Haradhan Mandal, son of late Andu Mandal
   22. Kamalkant Mandal, son of late Makhan Mandal

23. Baramdeo Mandal son of late Makhan Mandal
24. Umashankar Mandal, son of late Ganesh Mandal
25. Harikinkar Mandal son of late Ganesh Mandal
26. Dhaneshwar Mandal, son of late Kaislash Mandal
27. Rajeshwar Mandal, son of late Kaislash Mandal
28. (A) Manikant Mandal, son of late Gangadhar Mandal
29. (A) Gurudeo Mandal son of late Tarni Mandal
29. (B) Naresh Mandal son of late Tarni Mandal
30. (A) Srikanta Mandal son of late Ramsewak Mandal
31. (a) Rajendra Mandal son of late Bhola Mandal resident of village Amba Paghar, P.O. Rondiah, P.S. Sariayahat, District-Dumka
32. (A) Shankar Mandal son of Indradeo Mandal,
32. (B) Prabhu Mandal son of late Indradeo Mandal
32.(B)(i) Sarita Devi wife of late Prabhu Mandal
32(B)(ii) Golu Mandal son of late Prabhu Mandal
Both residents of village Patharia P.O. and P.S. Saraiyahat, District-Dumka
33. Most. Goria Devi, wife of late Chandra Deo Mandal
34. Binod Mandal, son of late Chandra Deo Mandal
35. Thakur Mandal, son of late Chandra Deo Mandal
36. Subhash Mandal, son of late Chandra Deo Mandal
37. Surendra Mandal, son of late Chandra Deo Mandal
38. Most. Sugia Devi, wife of late Jamun Mandal
39. Dilip Mandal, son of late Jamun Mandal
40. (A). Birbal Mandal, son of late Ramsewak Mandal
40.(B) Rajesh Mandal, son of late Ramsewak Mandal
41. Lutru Mandal, son of late Nakul Mandal
All residents of village Patharia, P.O. Sariyahat, P.S. Sariyahat, District-Dumka
42. Upendra Mandal, son of late Basant Mandal
43. Deepnarayan Mandal, son of late Basant Mandal
44. Ratneshwar Mandal, son of late Sitaram Mandal
45. Navesh Mandal, son of late Sitaram Mandal
46. Pitambar Mandal, son of late Sitaram Mandal
47. Dubraj Mandal, son of late Khewlal Mandal
All residents of village Ambapaghar, P.O. Rondiah, P.S. Sariayahat, District-Dumka

…….Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners :Mr. Vishal Kumar Tiwary, Advocate
: Mr. Manjeet Kumar Chaudhary, Advocate
: Mr. Imran Beig, Advocate
For the State : Mr. Prashant Kr. Rai, Advocate
For the Resp. Nos. 49, 51, 52, 53, 5A, 6, 11 & 12
:-Mr. Deepak Kumar Bharati, Advocate
: Mr. Maninda Kr. Sinha, Advocate
: Mr. Amit Kumar, Advocate

19/ 27.10.2026: Heard Mr. Vishal Kumar Tiwary learned counsel for

the petitioners, Mr. Prashant Kr. Rai, learned counsel for the respondent-State and Mr. Deepak Kumar Bharati, learned counsel for the respondent nos. 49, 51, 52, 53, 5A, 6, 11 & 12.

2. Notice upon rest of the respondents have been effected which has been noted in order dated 24.08.2026. Notices were directed to be issued upon the respondent nos.31(a), 32(B) (i), 32(B) (ii) and they have received the notice and by order dated 24.08.2026 the matter was adjourned with a view to provide one more opportunity to rest of the respondents who have not appeared and on that adjournment was granted by way of last indulgence and inspite of aforesaid opportunity rest of the respondents have chosen not to appear. As such this writ petition is being heard and disposed of in absence of those respondents who have not appeared though they have been validly served notice.

3. This writ petition has been filed under Article 226 of the Constitution of India challenging the order of the learned Commissioner, Santhal Pargana Division, Dumka, dated 23/6/2012 passed in Title Appeal no. 1/1989-90 by which he has been pleased to set aside the judgement and decree of the learned Charge Officer, Number 1, Dumka, in Title Appeal no. 10/1987 dated 11/10/1988 and thereby affirmed the judgement and decree of learned Assistant Settlement Officer, dated 27/11/1986 in Title suit no. 25/1977.

4. Mr. Vishal Kumar Tiwary, learned counsel for the petitioners submits that Hemia Devi daughter of Dalali Mandal instituted the Title Partition Suit No. 25 of 1977 in the Court of learned Sub-Judge, Dumka

praying therein to provide 1/3rd share in schedule B property and 1/12th share in schedule C and D properties and further on declaration of 1/3rd share of the plaintiff in Schedule B properties and 1/12th share in schedule C and D properties, a preliminary decree may be passed and thereafter separate patti of 1/3rd share in schedule B and 1/12th share in schedule C and D properties after making partition by metes and bound by appointing a survey knowing commissioner.

5. Mr. Tiwary, learned counsel further submits that one Sadhu Mandal had three sons namely Jageshar Mandal, Bhuwan Mandal and Dalali Mandal and all the three sons had succeeded their father Sadhu Mandal much before the last survey settlement of 1935. He submits that in the plaint it is stated that the landed property situated in village Ambapaghar mentioned in schedule B and C of the plaint under Jamabandi no. 32 and the landed property situated in Jamabandi no. 14 of village Kolharia contained in schedule D were all succeeded by the aforesaid three sons and the name of the property contained in schedule B of the plaint were recorded jointly in the name of Jageshwar Bhuwan and Dalali Mandal in the remarks column of the parcha. Similarly, the landed property in schedule B under Jamabandi no. 32 also stood jointly recorded in the name of all sons of Sadhu Mandal and the other co sharers who were sons and grandsons of the brothers of Sadhu Mandal. He submits that it was contended that Jageshar, Bhuwan and Dalali Mandal were the members of joint Hindu Mitakshara family and the suit property under schedule B of the plaint was joint family property and each of them had the 1/3rd share in the said

property. He submits it was also contended that the heirs of Sadhu Mandal after the last settlement namely Jageshar Bhuwan and Dalali Mandal separated in mess and status and began to cultivate their joint family lands according to their convenience but there was no physical Division of the suit property by metes and bounds. He next submits that it was stated further in the plaint that, Dalali Mandal died in separate mess about 30 years ago leaving behind her widow Sajanwa Mandlian and a daughter Hemia Devi (plaintiff) as his legal heirs. Similarly, Bhuwan also died in separate mess about 18 years ago leaving behind her widow two daughters, Jageshar Mandal also died 16 years ago leaving behind his only son Nuneshwar Mandal who is one of the defendant in the said suit. He next submits that it was also contended that after the death of her father and mother Hemia Devi (daughter) had inherited all the movable and immovable property of the share of Dalali Mandal.

6. In the aforesaid background, Mr. Tiwary submits that in the light of Santhal Pargana Provision the suit was transferred in the Court of Settlement Officer and finally it was decided by Assistant Settlement Officer by judgment dated 27.11.1986. He submits that said judgment was challenged by the petitioners herein before the learned Charge Officer. No.1, Dumka in Title Appeal No. 10/1987 which was decided by judgment dated 11.10.1988 reversing the judgment of the learned Assistant Settlement Officer. He next submits that against the said judgment of the First Appellate Court the plaintiff/respondent moved before the learned Commissioner, Santhal Pargana in Title Appeal No.

1/89-90. He next submits that by judgment dated 23.06.2012 the learned Commissioner has been pleased to reverse the judgement of learned First Appellate Court and restored the judgment of the Assistant Settlement Officer dated 27.11.1986 passed in Title Suit No.25/1977.

7. Mr. Tiwary, learned counsel for the petitioners submits that the learned Commissioner has erred in deciding the case and has wrongly reversed the finding of First Appellate Court. According to Mr. Tiwary, death time of Dalali Mandal has not been proved. He submits that learned commissioner has erred in not accepting the death certificate brought in the First Appellate Court by the petitioners herein issued by the Saraiyahat Police Station. He further submits that no proper question of law has been formulated by the learned Commissioner and in view of that reversal order of the learned commissioner may kindly be set aside.

8. On the other hand Mr. Prashant Kumar Rai, learned counsel for the respondent-State submits that learned Assistant Settlement Officer has dealt with all the aspects minutely and has discussed the evidences made by both the sides and has passed the judgment. According to him there is no error in the first court judgement however, the learned first appellate court has reversed the said finding. According to him learned Commissioner has rightly reversed the finding and the document issued by the police station with regard to death certificate of Dalali Mandal. He submits that the writ petition is misconceived one and the writ petition may kindly be dismissed.

9. Mr. Deepak Kumar Bharati, learned counsel appearing for

some of the respondents as noted hereinabove submits that the provisions are made under Sections 5 and 11 of the Santhal Parganas Settlement and Regulation 1872 whereby civil court jurisdiction has been barred and in view of that the power has been provided to the Revenue Authority to decide the case arising out of Santhal Parganas Settlement and Regulation 1872. He submits that the learned Assistant Settlement Officer has rightly decided the case and allowed 1/3rd share to each of the parties including plaintiffs and defendants. He next submits that issue with regard to death of Dalali Mandal has also been framed which has been decided by the learned Assistant Settlement Officer. According to him the learned first appellate court has wrongly reversed the finding of the learned Assistant Settlement Officer and learned Commissioner has rightly reversed the judgement of the learned first appellate court. He submits that the issue regarding the power of the commissioner has been dealt with by the Two Judges Bench of Patna High Court in the case of ***"Sufal Chandra Sahu Vs. Satla Bala Dasi"*** wherein (Regulation V of 1893), Section 15 (1) of Santhal Parganas Act, 1855 has been considered and it has been held that the Commissioners are deemed to be the High Court for the Santhal Pargana and they are not required to follow C.P.C. He next submits that in the garb of Article 226 of the Constitution of India the petitioners herein are trying to make out a case of 3rd appeal which is barred under Regulation 1872. He also submits that disputed question of fact cannot be subject matter before the High Court under Article 226 of the Constitution of India and to buttress this argument he relied

the Constitution Bench judgment of the Hon'ble Supreme Court in the case of ***"Syed Yakoob Vs. K.S. Radhakrishnan and others"*** reported in ***1963 SCC Online SC 24***. He refers to para 7 of the said judgment which is quoted hereinbelow:-

> *"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam[2] and Kaushalya Devi v. Bachittar Singh."*

10. Relying on above judgment, he submits that three

courts have already decided the case and in view of that dispute regarding the death of Dalali Mandal has rightly been decided which has been affirmed by the learned Commissioner and as such there is no illegality in the judgment of the learned Commissioner and disputed question of fact cannot be subject matter of the writ petition and in view of that this writ petition may kindly be dismissed.

11. In view of above submissions of the learned counsel for the parties, the Court has gone through the materials on record including the judgment of the learned Assistant Settlement Officer dated 27.11.1986, judgment of the Charge Officer dated 11.10.1988 and judgment of the learned Commissioner dated 23.06.2012.

12. Admittedly the relationship has not been denied by either of the parties in course of argument before this Court. Thus, the relationship of the plaintiffs and defendants are established. The only issue has been argued by Mr. Tiwary that law point has not been framed and the death of Dalali Mandal has not been proved and the document has not been considered at the appellate stage.

13. On perusal of judgment of the learned Assistant Settlement Officer, the Court finds that there is specific issue regarding the death of Dalali Mandal was framed as Issue No. V and that has been dealt with by the learned Assistant Settlement Officer. The learned Assistant Settlement Officer has considered the submission of the plaintiff and defendant. The P.W.2 aged about 65 years was examined in 1982 and the learned Assistant Settlement Officer found that he was born in 1917. He has stated in cross-examination that at the time of death of

Dalali he was 40 years old. Thus, Dalai died in 1957 and Dalali's daughter Hemia was 30-35 years old. He has further considered that if she was 35 years old she must be born in 1952. That witness has later on stated that Hemia daughter of Dalali was 8 years old at the time of death of Dalali. Learned court has further found that in the light of evidence of D.W.1 (defendant 1st party) it was evident that Dalali died much after the passing of Hindu Women Right to Property Act, 1937. The learned Court has further found that if Dalai died after 1937 then his widow would take step in his place and she would inherit the interest which her husband had in the coparcenary property on the assumption that Dalali died in a status of jointness.

14. The learned Charge Officer by judgment dated 11.10.1988 has been pleased to reverse the said finding only on the certificate issued by Saraiyahat Police Station. On query made by this Court, Mr. Tiwary is not in a position when the said certificate has been issued by the Sariayahat Police Station. However, the Charge Officer has been pleased to set aside the judgment of the Assistant Settlement Officer, which has been challenged by the legal heirs of the plaintiff before the learned Commissioner of Santhal Pargana Division, Dumka in Title Appeal No. 10/1987. The learned Commissioner while deciding the said appeal taking into consideration the submission of both the sides has been pleased to further reverse the finding of the learned Charge Officer.

15. In view of Section 15 Clause (1) of Regulation V of 1893 of Santhal Parganas Act, 1855 which has been taken into consideration by

the Two Judges Bench of Patna High Court in the case of ***"Sufal Chandra Sahu" (supra)***, how the commissioner has got the jurisdiction that has come in the said judgment that is as under:-

> *"Subject to the provisions of the first proviso to section 2 of Act XXXVII of 1855 and of section 10 of this Regulation with respect to the jurisdiction of the High Court of Judicature at Fort William in Bengal in relation to suits cognizable of Courts established under the Bengal, Agra and Assam Civil Courts Act, 1887, and subject also to the provisions of sub-section (2) and of any other enactment for the time being in force, the Court of the Commissioner shall, for the purposes of all enactments relating to civil jurisdiction for the time being in force, be deemed to be the High Court for the Santal Parganas."*

16. Framing of law point is not necessary in the light of Regulation, 1893. How the Assistant Settlement Officer has come to conclusion of death of Dalali Mandal, has already been dealt with by this Court hereinabove. The learned Charge Officer on the certificate of police station has been pleased to reverse the said finding and the date of said certificate is not known. The learned Commissioner has reversed the said finding taking into consideration of submission of both the sides. In terms of statutes three courts have considered the matter and have decided the case as noted hereinabove.

17. In the writ court apparent error can be considered in such a situation and even the writ court is not required to re-appreciate the evidence and reverse the finding of the authorities who have been provided power under the statues to decide the case. Further nobody is looser in the light of judgment of Assistant Settlement Officer and 1/3rd share has been provided to each of legal heirs and successors by the said judgment which has been affirmed by the learned Commissioner.

18. In view of above facts, reasons and analysis the Court finds that no interference is required in the order passed by the Commissioner, Santhal Pargana Division, Dumka, dated 23/6/2012 in Title Appeal no. 1/1989-90. As such this writ petition is dismissed. Pending, I.A, if any, stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Dt.27.10.2026
*Satyarthi/**A.F.R***