IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 200 of 2024

Dilip Malakar, aged about 35 years, son of Baban Malakar, resident of Sector-8/C, Shivan More, P.O. and P.S. Harla, B.S. City, District Bokaro (Jharkhand) **… … Plaintiff/Appellant**

Versus

Santosh Malakar son of Baban Malakar, resident of Telidih, P.O. and P.S. Chas, District Bokaro (Jharkhand)

… … Defendant/Respondent

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Mr. Kanishka Deo, Advocate
: Ms. Nirupama, Advocate
For the Respondent : Mr. Santosh Kumar Jha, Advocate

Reserved on 06.05.2026 **Pronounced on 28.09.2026**

1. This first appeal has been filed against the judgment and decree dated 16.01.2024 (Decree signed on 25.01.2024) passed by the learned Civil Judge (Sr. Div)-I, Bokaro in Original Suit No.68 of 2021 whereby and whereunder the original suit seeking partition of the suit property has been dismissed on contest.

2. The appellant was the plaintiff in Original Suit No.68 of 2021 wherein he had prayed for the following reliefs:

(a) For partition of ½ shares of the plaintiff in the property described in schedule below and for separate possession over the same.
(b) For appointment of a survey knowing pleader commissioner to effect the partition in the locality and prepare separate allotment chart in respect of ½ shares of plaintiff and prepare a map thereof and final decree be passed in terms of the report and map prepared by the pleader commissioner.
(c) For cost of the suit.
(d) For any other relief or reliefs to which plaintiff may be found entitled to.

The suit property as mentioned in ***Schedule-A*** of the plaint is-

The land measuring 2½ decimals bearing Plot No.1366, Khata No.21, Mouza- Telidih, P.S.- Chas under the jurisdiction of Bokaro.

Case of the plaintiff.

3. It was the case of the plaintiff that, the landed property situated within the jurisdiction of District- Bokaro under Mouza Telidih in Khata No. 21 Plot No. 1366 area 04 Decimal was purchased by plaintiff and Defendant in the year of 2011 vide Sale deed No. 568 dated 20.01.2011 from Registry office Chas, Bokaro. After purchasing the said property both persons constructed four shops under 1st Floor and residential house made on 2nd Floor and presently running the shop and reside with their family members. Out of the aforesaid 4 decimals, 1 ½ decimals was acquired by NHAI and all compensation amount was invested under building work of the said property. The plaintiff claimed ½ portion of the building with land (2 ½ decimals). The plaintiff several times requested the defendant to partition the property but defendant always denied. The cause of action arose on 10.11.2021 when plaintiff called some relatives for *Panchayati* but *Panchayati* also failed between both parties and defendant denied to give any share to the plaintiff.

Case of the defendant

4. It was the case of the defendant that the plaintiff has suppressed the material fact that the present suit property was purchased from the amount of the father and other brother and the plaintiff has not mentioned in the plaint regarding the consideration amount of the land who has paid the consideration amount to the vendor of the said property and in absence of such proof the plaintiff has failed to establish his case. It was asserted that the entire construction has been done by the defendant and his father and so no question arises to give any share in the above suit property. The property has been purchased by the father and the defendant from their hard-earned money and mere name in the deed did not create any right over the suit property, ipso facto.

It was also asserted that 1.5 decimals of land have been taken for the highway and compensation amount has been credited in the account of the defendant as because the entire consideration amount regarding the sale deed has been paid by the Defendant and his father. So,

question of partition does not arise and the plaintiff has not given any documents regarding the payment with respect to the sale deed by the plaintiff to the vendor so the entire contention of the plaintiff is nullified. The cause of action was denied. A prayer was made to dismiss the present suit by imposing exemplary cost against the plaintiff.

5. ***The suit was dismissed on contest.***

Arguments of the appellant-plaintiff

6. Learned counsel for the appellant-plaintiff, while giving the facts of the case, has submitted that the case of the plaintiff in brief was that the property consisting of 4 decimals of land was purchased by plaintiff and defendant jointly in the year 2011 vide Sale Deed No.- 568 dated 20.01.2011; Both persons constructed four shops under first floor and residential house made on second floor and presently running the shops and reside with their family members; 1.5 decimals of the said property was acquired for highway by NHAI for which compensation amount was credited in the account of defendant who thereafter transferred almost half of the compensation amount in the account of Plaintiff's wife (Exhibit-A); Plaintiff is entitled to get half portion of building with the land with respect to the remaining property which is the suit property (2 and ½ decimals of land and building thereon). The cause of action arose on 10.11.2021 when the Defendant denied to give share to the Plaintiff.

7. Learned counsel further submits that the defendant filed written statement contesting the suit by taking a stand that the property was purchased from the amount of the father and defendant but the plaintiff has not mentioned in the plaint regarding the consideration amount of the land that who has paid the consideration amount to the vendor of the said property; the entire construction was done by the defendant and his father and so no question arises to give any share in the suit property; The property has been purchased by the father and the defendant and mere name in the deed does not create a right over the suit property; The Defendant further stated that 1.5 decimal land

has been taken by the N.H. Authority and for that, compensation has been given by the N.H. Authority.

8. The learned counsel submits that altogether 7 issues were framed by the learned court including the issue as to whether the plaintiff and defendant had purchased the suit property jointly, vide sale deed no.- 568 dated 20.01.2011; as to whether plaintiff is entitled for 1/2 of share in the schedule A property and as to whether the National Highway Department paid any compensation on account of acquisition to the plaintiff. He submits that all the issues were decided in favour of the defendant and against the plaintiff.

9. While referring to the evidences placed on record, the learned counsel for the appellant-plaintiff has submitted through his written submissions as under: -

A. Four witnesses have been examined on behalf of plaintiff

PW-1 (Amit Kumar) the neighbour.
He stated in his deposition at Para-4 that at the time of registry and at the time of transaction of money he was present there and total consideration amount was paid in-front of me.

In Para-5 he stated that both the brothers have paid half-half amount. Further in Para-6 he stated that the land was purchased in the name of both the brother vide sale deed no.- 568.

In Para-7 it is stated that the matter was sent to mediation center Bokaro and the defendant denied to give any share.

In Para-19 of cross-examination the PW-1 has negated that Santosh Malakar and his father paid the consideration amount.

In Para- 24 he has stated that the compensation amount was deposited in the bank account of Santosh Malakar by N.H.A.I.

In Para- 25 he has stated that total consideration amount of Rs. 2,40,000/- was given to the land owner by Dilip Malakar and Santosh Malakar.;

PW-2 (Puja Devi) the wife of Plaintiff.
In Para- 5 it is stated that half amount was paid by both of them.

In Para 25 she stated that the father is still alive and resides with defendant.

PW-3 (Shiv Kumar Malakar). PW- 3 in Para- 4 has stated that he was present at the time of registry.

In Para- 5 he has stated that both the brothers have paid half-half amount. In Para- 22 of the cross examination he has stated that at the time of registry cash was paid but he has not counted it.

PW-4 (Dilip Malakar) the Plaintiff
In Para- 3 he has stated that the certified copy of the sale deed was exhibited as Exhibit- 1.

In Para- 4 he has stated that half of the consideration amount was paid by him and the rest half was paid by the Defendant.

In Para- 5 he has stated that after purchasing the land both of them constructed shop and house.

In Para- 18 he has stated that the compensation amount was paid in the account of Santosh Malakar by NHAI.

In Para- 23 he has stated that at the time of construction of the house the father was not residing there and only the Plaintiff and Defendant resides there. Further stated that the both of them has paid for the construction material.

B. Three witnesses have been examined on behalf of Defendant,

DW-1 (Baban Malakar) the father of the Plaintiff and Defendant.

In Para-7 it is stated that at the time of registration of the deed all other brothers were minor and due to this, their name was not mentioned in the deed.

In the cross-examination at Para- 12 he himself contradict his statement of Para-7 and stated that he has 5 sons and the eldest among them are Sunil, Anil, Dilip, Santosh and Dinanath Malakar.

Further in Para- 13 he has stated that he is suffering from paralysis since last 15-20 years it means at the time of registry, he was paralytic.

In para 14 he stated that his name is not entered in sale deed neither as purchaser nor as witness.

In para 15 he stated that he has not given the amount through cheque.

In Para- 17 he stated that *Panchayti* was held.

DW- 2 (Dinanath Kumar) is the younger brother of the Plaintiff and Defendant and aged about 22 years in the year 2023, it means at the time of registry of the deed his age was 10 years old.

In Para- 4 he has stated that Santosh Malakar is his elder brother and his father has purchased the property, the name of Dilip Malakar was in sale deed since other brothers were minor.

In the cross-examination at Para- 11 he himself stated that he has 5 brothers and the name of elder brothers are Anil, Sunil, Dilip, Santosh and he himself.

In Para- 17 he stated that at the time of registry of land his age was 10 years.

In Para- 19 he stated that at the time of registry Sunil and Anil were major and having kids.

It is submitted that both the witnesses DW1 and DW2 are hearsay.

DW-3 (Santosh Malakar) the Defendant himself.

In Para- 9 he has stated that he in the year 2017 transferred Rs.1,47,000/- to the wife of the Plaintiff. (Exhibit -A)

In Para- 11 he has stated that he has received Rs. 3,70,729/- as compensation amount from NHAI. (Exhibit- A).

In Para- 22 he stated that it is not written in the sale deed that only Santosh Malakar (Defendant) has deposited the consideration amount.

In Para- 25 he has stated that the father's name was not written in the sale deed.

In Para- 29 of his cross examination he stated that 1.5 decimal of land acquired by NHAI and a compensation amount of Rs. 3,70,729/- was received and I got the total amount deposited into my account.

In Para- 33 he stated that the name of younger brother was not written as he was minor but name of father was there.

It is submitted that None of the vendor or the Witness have been Examined.

C. On behalf of plaintiff only one document, that is, the Certified copy of sale deed no. 568 dated 20.01.2011 has been exhibited and marked as exhibit-1. It is submitted that at page no. 3 of Sale Deed it has been stated that the consideration amount has been received, but no specific name of either the plaintiff or defendant has been mentioned to indicate as to who has made payment of the consideration amount. ***On the other hand,*** *o*n behalf of Defendant only one document has been exhibited and marked exhibit-A which is the Bank statement of Santosh Malakar (Defendant) of Bank of India bearing account no.-11001395.

10. It is submitted that the with regard to acquisition of land by NHAI, compensation amount of Rs. 3,70,729/- was credited into the account of Santosh Malakar (defendant) on 09.03.2017 and total Rs. 1,47,000/- was transferred into the account of Puja Devi (Wife of

Plaintiff) between the period of 15.05.2017 to 21.07.20217 i.e., after receiving the compensation amount from NHAI and the same was utilized for construction of shops and house. The property was jointly constructed by both the parties. Almost half of the amount of compensation was credited into the account of Puja Devi (Wife of the plaintiff) which is evident from exhibit-A.

11. Learned counsel for the appellant, while challenging the impugned judgment, has submitted that the learned court has failed to take into consideration that the sale-deed itself did not disclose as to who paid the consideration amount, rather the sale-deed indicated that the consideration amount was paid by the purchasers. It is not in dispute that the sale-deed was executed jointly in the name of the plaintiff and the defendant. He has further referred to section 45 of the Transfer of Property Act and has submitted that the case would be guided by the aforesaid section.

12. Learned counsel for the appellate further submitted that P.W. 1 has supported the case of the plaintiff and has stated that at the time of payment of the consideration amount, he was present and both the brothers had made payment of consideration amount in equal half portion.

13. The learned counsel also submitted that the evidences placed on record clearly reveal that when 1 ½ decimals of land was acquired by NHAI, though the entire compensation amount was credited into account of the defendant, but the defendant had transferred, through bank transaction, about 50% of the compensation amount in the name of the wife of the plaintiff. The learned counsel submitted that the act of transfer of 50% of the compensation amount to the wife of the plaintiff itself reveals that the defendant acknowledged that the plaintiff had ½ share in the property. He further submitted that since ½ share of the compensation amount was transferred in the name of wife of the plaintiff, so there was no occasion to challenge the payment of compensation amount from NHAI exclusively in the name of the defendant.

14. He further submitted that otherwise also, payment by NHAI to defendant by itself is not arising out of any adjudication and therefore, this action by itself could not have been taken into consideration by the learned court to hold that the defendant was the exclusive owner of the suit property.

15. He further submitted that the finding of the learned court in connection with Issue No.6 is perverse, whereby it has been observed that National Highway Authority, after proper verification, had granted compensation amount in favour of the defendant and since the plaintiff did not raise any claim over the compensation amount or any objection in the matter of payment of compensation amount, adverse inference could be drawn against the plaintiff.

16. The learned counsel for the appellant submitted that aforesaid approach of the learned trial court to decide the title of the party on the basis of compensation amount disbursed by National Highway Authority is unknown in law and merely because no objection as such was raised by the plaintiff at the time of disbursal of compensation exclusively in the name of the defendant, the same has no bearing in the matter in the light of the admitted fact that almost half of the compensation amount was credited in the name of the wife of the plaintiff. He submits that once the plaintiff had received half of the compensation amount through his wife, there was no occasion to raise any dispute on the apportionment of compensation amount received from NHAI.

17. The learned counsel for the appellant has also submitted the evidence of the father of the plaintiff and the defendant is also of no consequence, inasmuch as, he was not present at the time of execution of the sale-deed and it has come in evidence that the father was himself paralyzed and bed-ridden.

18. The learned counsel for the appellant has referred to the examination-in-chief and the cross-examination of the witnesses examined on behalf of the plaintiff and the defendant and has submitted that in view of the exhibit- 1 and the materials placed on record, the plaintiff had proved ½ share over the suit property and

therefore, the impugned judgment dismissing the suit on the ground that it was only the defendant who had paid the consideration amount cannot be sustained in the eyes of law. He submits that such findings are perverse.

Arguments of the respondent-defendant

19. Learned counsel for the respondent, on the other hand, referred to Issue No.6 and submitted that the compensation amount of portion of the acquired property having been credited by National Highway Authority only in the account of the defendant without any objection from the side of the plaintiff, itself reveals that the plaintiff had no claim over the purchased property in the name of the plaintiff and defendant including the suit property and the plaintiff was just a name lender. He submits that such non-action on the part of the plaintiff, inasmuch as, he neither claimed any compensation with respect to the acquired 1 ½ decimals of land nor raised any objection to the payment of compensation exclusively in the name of the sole defendant, has been rightly considered by the learned court to hold that the plaintiff was not entitled to any partition as the plaintiff had not made any payment of consideration amount, though his name was included in the registered sale-deed along with the defendant.

The trial court's judgement

20. On the basis of the pleadings of the parties, the learned trial court framed seven issues for consideration, which are as follows:

(1) Whether the suit is maintainable in its present form?

(2) Whether the plaintiff has a valid cause of action in the suit?

(3) Whether the present suit is bad for mis-joinder and non-joinder of necessary party?

(4) Whether the plaintiff and defendant had purchased the suit property jointly vide sale deed no.568 dated 20.01.2011?

(5) Whether plaintiff is entitled for 1/2 of share in the Schedule-A property?

(6) Whether the National Highway Department paid any compensation on account of acquisition and compensation

amount to plaintiff?

(7) Whether the plaintiff is entitled to get relief as claimed in the plaint?"

21. The learned trial court considered the materials available on record and first took up Issue Nos.4 and 5 together and recorded its findings at Paragraph No.6 which are as under:

> *"**6.** ……*
> *It is evident from Ext. 1 which is a sale deed having no. 568/2011 in which Ramesh Chandra Ghoshal, Rabindra Nath Ghoshal and Amit Kumar Ghoshal jointly executed the sale deed in favour of Santosh Malakar (Plaintiff) and Dilip Malakar (Defendant). On perusal of Ext. 1 it is crystal clear that after receiving of the entire amount the sale deed was executed in favour of both the brothers. After execution of the sale deed plaintiff constructed a double storied building including the shops. In the year 2017 plaintiff also made a payment of Rs. 1,48,000/- to Puja Devi who happens to be the wife of the plaintiff. Although witnesses examined on behalf of the plaintiff has failed to prove the payment made by the plaintiff as a consideration amount in favour of the execution of the sale deed as not a single chit of paper by the plaintiff nor the witnesses examined on behalf of the plaintiff had stated that the consideration amount was paid by the plaintiff. Not only this even the witnesses examined on behalf of the defendant they all have clearly stated that the entire payment was made by defendant through cash as well as cheque to the executant of the sale deed and this factum has been very well deposed by all those witnesses in their examination in chief and the plaintiff has also failed to discard the evidence. Even with regard to the factum of payment to Puja Devi who happens to be the wife of the plaintiff it is well proved by the witnesses. It is evident from Ext. 1 that plaintiff and defendant had purchased a suit property jointly.*
>
> *But the witnesses examined on behalf of the defendant being the father and brothers of the defendant and plaintiff they have deposed that the plaintiff had not paid single penny in the said joint property through which the land was purchased in the name of plaintiff as well as defendant. From perusal of Ext. A i.e. passbook which is in the name of defendant Santosh Malakar in which he had paid Rs. 49,000/- on three different dates i.e. 28.06.17, 06.07.17 and 11.07.17. Puja Devi who happens to be the wife of Dilip Malakar. It is further also evident from Ext. 1 i.e. having sale deed no. 568 dated 20.01.11 in which defendant Santosh Malakar is the first party and Dilip*

Malakar's name in mentioned in serial number 2 in favour of whom the sale deed was executed. Defendant Santosh Malakar had made a payment of more than 1/ 2 of the consideration amount to plaintiff's wife through account payment in the year 2017. Although the land has been purchased in the joint name of plaintiff as well as defendant but plaintiff no were in the case has proved by way of oral or documentary evidence that he had paid 1/ 2 of the consideration amount in purchase of the said suit property. Further defendant has proved by way of oral evidences that he had made the payment of the consideration amount along-with the construction held over the suit land was conducted by the defendant himself and after that he also paid an amount of Rs. 1,47,000/- of three different dates to Puja Devi wife of plaintiff. Plaintiff in this case has failed to prove that the suit property was purchased jointly by payment of equal consideration amount by both the parties as the plaintiff could not established the payment made by him and accordingly, I am not a view plaintiff is not entitled for 1/ 2 share in the schedule A property. Accordingly, both the issues are decided against the plaintiff."

22. The learned trial court took up Issue No.6 and recorded its findings at Paragraph No.7, which are as under:

*"**7.** As discussed in issue no. 4 and 5 that the suit property was purchased in the joint name of plaintiff and defendant but plaintiff was failed to prove that he had also made a equal contribution of consideration amount in purchasing the suit property. Some of the portion i.e. 1 ½ decimals of the suit property went under highway and N.H Authority also gave compensation amount to the defendant. With regard to this fact defendant in his written statement have contended that 1.5 decimal of land had been taken by the highway authority and a compensation amount has been given by the N.H. Authority and the said amount was credited in the account of the defendant. The factum of the compensation provided by the N.H. Authority is well admitted by the defendant and plaintiff did not receive any compensation amount from the N.H. Authority. The N.H. Authority after proper verification had granted the compensation amount in favour of the defendant and plaintiff in this regard could not bring any oral or documentary evidence that the plaintiff was ignored in the grant of the compensation amount. Plaintiff of this case has also neither claimed for the compensation amount or had raised any objection in the payment of the compensation amount to the defendant. Accordingly, this issue is also decided against plaintiff."*

23. The learned trial court took up Issue Nos.1, 2 and 3 and recorded its findings at Paragraph No.8, which are as under:

> "***8.*** *Maintainability and cause of action is bundle of facts as laid down by both parties. On going through the plaint, written statement as well as oral and documentary evidence I find that plaintiff has failed to prove its valid cause of action for filing the suit hence this suit is not maintainable in present form. Accordingly, these issues are decided against plaintiff."*

24. The learned trial court decided Issue No.7 against the plaintiff recording that the plaintiff is not entitled for any relief or reliefs as prayed. Accordingly, the learned trial court decided all the issues against the plaintiff and dismissed the suit on contest with cost.

All the issues were decided against the plaintiff and in favour of the defendant.

Points for determination.

25. After hearing the learned counsels for the parties, the following points of determination arise in the present first appeal:

(i) Whether the plaintiff and defendant had purchased the suit property jointly vide Sale Deed No.568 dated 20.01.2011?

(ii) Whether plaintiff is entitled for 1/2 of share in the Schedule-A property?

Findings of this Court.

26. In course of trial, the plaintiff examined 04 witnesses in support of his case. PW-1 is Amit Kumar, PW-2 is Puja Devi, PW-3 is Shiv Kumar Malakar and PW-4 is Dilip Malakar who is the plaintiff of the case.

27. ***PW-1 (Amit Kumar)*** filed his examination-in-chief on affidavit stating that he knows both the parties. The plaintiff is the elder brother and defendant is the younger brother. He further stated that the plaintiff and defendant have purchased 04 decimals of land bearing Plot No.1366, Khata No.21, Mouza- Telidih from Ramesh Chandra Ghoshal, Ravindra Nath Ghoshal and Amit Kumar Ghoshal through Sale Deed No.568 dated 20.01.2011 and he was present at the time of

registration and payment of money. The entire consideration amount was paid and both brothers had paid half-half amounts and after the purchase, both have jointly constructed house and shop. He further stated that the land was purchased in the names of both the brothers, but the defendant is not willing to give any share to the plaintiff. He further stated that out of 04 decimals, 1½ decimals of land have been acquired for the N.H. and the claim of the plaintiff is true. ***During cross-examination***, he admitted that he is not a witness in Sale Deed No.568 dated 20.01.2011. He further admitted that he does not know the name of the seller of the property. He denied the suggestion that the defendant and his father had paid the substantial amount of the consideration. He further admitted that NHAI has transferred the compensation amount of the acquired land in the bank account of the defendant. He further admitted that the plaintiff and defendant had paid Rs.2,40,000/- @ Rs.60,000/- per decimal as the consideration amount of the land to the land owner. The defendant had paid the amount through cheque and the plaintiff does not know how to do banking transactions.

28. ***PW-2 (Puja Devi)*** is the wife of the plaintiff. She filed her examination-in-chief on affidavit stating that she knows both the parties. She stated the same facts supporting the case of the plaintiff as stated by PW-1. She further stated that she was present at the time of registration and payment of money. She further stated that out of 04 decimals, 1½ decimals of land have been acquired for N.H., but the compensation amount has been taken by the defendant alone and therefore, the claim of the plaintiff is true. ***During cross-examination***, she admitted that the land was registered in the month of January, 2011, but she was not present at the time of payment of money. She also admitted that the plaintiff had given the amount in cash, but there is no document with regard to the payment of the amount. She further admitted that NHAI had transferred the compensation amount of the acquired land in the bank account of the defendant. She also admitted that the plaintiff and defendant are five brothers. She denied the suggestion that the defendant and his father had paid the entire

consideration amount at the time of purchasing the land and the plaintiff had not paid any amount.

29. ***PW-3 (Shiv Kumar Malakar)*** is the cousin of the plaintiff and the defendant. He filed his examination-in-chief on affidavit stating that he knows both the parties. He also stated the same facts as stated by PW-1 and 2 supporting the case of the plaintiff. He further stated that he was present at the time of registration and payment of money. He further stated that out of 04 decimals, 1½ decimals of land have been acquired for N.H., but the compensation amount has been taken by the defendant alone and therefore, the claim of the plaintiff is true. ***During cross-examination***, he admitted that the land was registered in the year 2011. He further admitted that he is not a witness in the sale deed. The plaintiff is five brothers and two sisters.

30. ***PW-4 (Dilip Malakar)*** is the plaintiff of the case. He filed his examination-in-chief on affidavit stating that he is the elder brother and the defendant is the younger brother. He further stated that he and the defendant have purchased 04 decimals of land bearing Plot No.1366, Khata No.21, Mouza- Telidih from Ramesh Chandra Ghoshal, Ravindra Nath Ghoshal and Amit Kumar Ghoshal through Sale Deed No.568 dated 20.01.2011. ***He exhibited the certified copy of Sale Deed No.568 dated 20.01.2011 as Exhibit-1***. He further stated that he had paid the consideration amount to the seller and the entire consideration amount was paid in his presence and he had paid half of the amount and the defendant had paid the half amount. After the purchase, both have jointly constructed house and shop. He further stated that the land was purchased in the names of both brothers which is mentioned in the sale deed, but the defendant is not willing to give his share to him. He further stated that out of 04 decimals, 1½ decimals of land have been acquired for N.H., but the compensation amount has been taken by the defendant alone and therefore, his claim is true. ***During cross-examination***, he admitted that they are five brothers and three sisters. He further admitted that he had paid the amount in cash at the time of purchasing the land, but he has not filed any receiving with regard to the payment. He further admitted that

NHAI had paid the compensation amount in the account of the defendant. He denied the suggestions that the defendant and his father had paid the consideration amount of the land and the defendant and his father and their other brothers have contributed in construction of the house. He also admitted that he was residing at Sector-8, Bokaro at the time of construction of the house and his father was not residing there, but sometimes he had spent the money and sometimes the defendant had spent the amount for construction of the house. He further denied the suggestion that the defendant has paid Rs.2,80,000/- through cheque and Rs.40-50 thousand in cash to his wife namely, Puja Devi.

31. The defendant examined 03 witnesses in support of his case. DW-1 is Baban Malakar, DW-2 is Dinanath Kumar and DW-3 is Santosh Malakar who is the defendant of the case.

32. ***DW-1 (Baban Malakar)*** is the father of both the parties. He filed his examination-in-chief on affidavit stating that he knows both the parties and is well acquainted with all the facts of the case. He further stated that the plaintiff is his elder son and the defendant is his younger son and the defendant is looking after, maintaining and bearing all the expenses of the entire family including him and other brothers. The plaintiff has filed the case against the defendant after concealing the true facts of the case and therefore, the case is not maintainable. He further stated that as his other children were minors, the name of the plaintiff was mentioned in the sale deed, whereas he (DW-1) and the defendant had made the entire payment of the land to the sellers and the plaintiff had not paid a single penny. He (DW-1) and the defendant had paid Rs.2,40,000/- through cash and cheque. The plaintiff was unmarried at that time and therefore, his name was entered in the sale deed. He further stated that the house on the land has been constructed by the defendant only and the plaintiff has not spent a single penny and therefore, his claim is not true and the suit is fit to be dismissed. He further stated that NHAI had made the entire payment in the account of the defendant and has not paid any amount to the plaintiff. He further stated that the defendant has paid of

Rs.2,80,000/- to the plaintiff's wife namely, Puja Devi, out of which Rs.2,67,000/- has been paid through cheque. ***During cross-examination***, he admitted that he is having altogether five children. He also admitted that his name is not mentioned in the sale deed as the purchaser of the land.

33. ***DW-2 (Dinanath Kumar)*** is the youngest brother of both the parties. He filed his examination-in-chief on affidavit stating that he knows both the parties and is well acquainted with the facts of the case. He further stated that the plaintiff has not made any kind of economic assistance in the purchase of the land, rather the defendant and his father has purchased the land from their earnings and the defendant has also constructed the single storied house from his earning and the plaintiff has not contributed a single penny. He further stated that the entire consideration amount of Rs.2,40,000/- has been paid by his father and the defendant in cash and through bank transfer and the plaintiff has not paid a single penny. He also stated that NHAI has transferred the entire compensation amount in the bank account of the defendant. He has stated the remaining facts of the case as stated by DW-1. He stated that the claim of the plaintiff is not true and baseless and the suit is not maintainable. ***During cross-examination***, he admitted that he is five brothers and the land was purchased in the year 2011. He also admitted that he was 10 years old at the time of registration of the land. He further admitted that his father had neither issued any cheque, nor had transferred any money in account of any person in connection with the land. He denied the suggestion that the plaintiff had paid Rs.2,35,000/- to the sellers and that Rs.1,20,000/- was doubled in post office which was paid to the seller.

34. ***DW-3 (Santosh Malakar)*** is the defendant of the case. He filed his examination-in-chief on affidavit stating that the plaintiff is his own brother. He further stated that the plaintiff has filed the case on the basis of false and concocted facts and without any cause of action and he is not entitled for any kind of relief and therefore, the suit is fit to be dismissed. He further stated that he (defendant) and his father had purchased the suit property in the year 2011 from their hard

earnings, but as the other brothers were minors, the name of the plaintiff was entered in the sale deed. The plaintiff has not filed any evidence with regard to payment of money to the sellers. He further stated that under coercion, in lieu of the land, he has given Rs.1,20,000/- in the year 2017 and Rs.1,47,000/- through three cheques to the wife of the plaintiff namely, Puja Devi. He further stated that he (defendant) has constructed a double storied house on the land and the entire expenses for construction of the house have been made by him (defendant). He had made payments of Rs.10,000/- to Satnam Singh, Rs.1,15,000/- to Ganesh Mahto, Rs.15,000/- to Santosh Kumar and Rs.10,000/- to Nitai Chandra Mahto against the sand, cement, rod, etc. and other constructions materials. He exhibited his entire original Passbook bearing Account No.11001395 of Bank of India, Sector-9, B.S. City Branch showing transactions from 28.01.2014 to 27.11.2019 as ***Exhibit-A (with objection)***. He further stated that NHAI has paid compensation amount of Rs.3,70,792/- to him (defendant) against acquisition of 1.5 decimals of land and in this regard, the Bank Passbook has already been exhibited as Exhibit-A. He further stated that the plaintiff has filed the suit with ulterior motive without having cause of action, as his name is mentioned in the sale deed, but he had not paid a single penny for purchasing the land and therefore, the suit of the plaintiff is fit to be dismissed. He also stated that the claim of the plaintiff is false and the plaintiff is not entitled to any kind of relief. ***During cross-examination***, he admitted that they are altogether five brothers namely, Pappu Malakar, Anil Malakar, Dilip Malakar, Santosh Malakar and Prem Kumar. He further admitted that the names of purchasers are mentioned in the sale deed as Santosh Malakar (defendant) and Dilip Malakar (plaintiff), but it is not mentioned in the sale deed that the consideration amount has been paid by Santosh Malakar (defendant) only. He further admitted that the name of his father is not mentioned in the sale deed as a purchaser. He also admitted that no document was prepared with regard to payment of money to the plaintiff in lieu of the land. He further admitted that the entire compensation amount was received in

the account of the defendant. He also admitted that at the time of execution of sale deed, the names of their brothers were not mentioned as they were minors. He further admitted that another 05 decimals of land has been purchased in Telidih in the names of the defendant and plaintiff.

35. It is important to note the following: -

a. Neither in the plaint nor in the written statement the consideration amount of the sale deed no. 568 dated 20.01.2011 has been mentioned.

b. The perusal of the sale deed reveals that the total consideration amount was Rs.60,000/- and the document value is Rs.1,74,000/- as per the circle rate.

c. P.W-1 says in his cross examination that the value of the property was Rs. 60,000/- per decimal and total consideration amount was Rs.2,40,000/-.

d. P.W-2 and P.W-3 have not stated anything about the quantum of consideration for the sale deed.

e. P.W-4, the plaintiff, has also not stated anything about the quantum of consideration for the sale deed.

f. D.W-1 (father of the plaintiff and the defendant) and D.W-2 have stated that the consideration amount of the sale deed was Rs.2,40,000/- which was paid by cash and bank transfer.

g. D.W-3, the defendant has not stated anything regarding the consideration amount of the sale deed.

36. Thus, neither the plaint nor the written-statement mentions about the consideration amount of the sale deed nor the plaintiff /defendant have stated anything about the consideration amount of the sale deed; some of their witnesses, including their father, have stated that the consideration amount was Rs.2,40,000/-. However, the sale deed reveals that the consideration amount was Rs.60,000/- and the document value was Rs.1,74,000/- as per the circle rate.

37. Admittedly, the sale deed is in the name of the plaintiff and the defendant and it is not mentioned as to who paid the consideration amount to the vendors. It is the specific case of the plaintiff that the

plaintiff and the defendant paid the consideration amount ½ and ½ and on the other hand, it is the specific case of the defendant that the consideration amount was jointly paid by the defendant and the father of the parties and no consideration was paid by the plaintiff. The defendant or his father have not mentioned as to what amount was paid by the defendant and what amount was paid by their father and the father is not even aware of the exact consideration amount of the sale deed and he is not a witness to the sale deed nor claims that he was present at the time of execution of the sale deed and has also not stated as to what amount was paid by cheque and what amount was paid by cash to the vendors. It is not the case of the defendant that he had paid the entire consideration amount, but his case is that consideration was partly paid by him and partly by father of the plaintiff and the defendant, and the transaction was made through cheque / cash. Admittedly, the father, who is said to have paid part consideration, is not the vendee of the suit property nor is a witness to the sale deed nor was present at the time of execution of the sale deed. It is further case of the defendant that the portion of the purchased property was acquired by NHAI and the entire compensation was paid to the defendant and hence the remaining property also belongs exclusively to the defendant and the plaintiff is not entitled to its partition in spite of the fact that the sale deed is in the name of the plaintiff and the defendant.

38. The suit seeking partition filed by the plaintiff relates to 4 decimals of land which was covered in sale-deed no. 568 dated 20.01.2011 out of which 1 ½ decimals of land was already acquired by National Highway Authority of India. The property stands in the name of the plaintiff and the defendant, who happen to be full brothers. The deed of the year 2011 has been exhibited as exhibit-1 in which the names of the defendant and the plaintiff have been shown as joint purchasers and the consideration amount of the property as per the deed is Rs. 60,000/-. As per the deed, the consideration amount has been received by the seller while transferring the property upon

receipt of which, he transferred the property to the joint purchasers, that is, the plaintiff and the defendant.

39. It was also the case of the plaintiff in the plaint that after purchasing the property, both persons constructed four shops under 1st floor and residential house was made on the 2nd floor and they are presently running shops and are residing over the property with their family members.

40. It was his further case that 1 ½ decimals of land was acquired by NHAI for which compensation was paid and therefore, suit property was remaining 2 ½ decimals. With respect to the cause of action, it was the case of the plaintiff that on 10.11.2021, the plaintiff had called some relatives for *Panchayati* and asked for partition, but the defendant denied.

41. On the other hand, the case of the defendant was that there was no cause of action, right to sue, etc. The suit was barred by limitation, estoppel, waiver, acquiescence and also suffered from mis-joinder as well as non-joinder of necessary parties. It was the specific case of the defendant in paragraph 12 of the written statement that the suit property was purchased from the amount of the father and other brother, but the plaintiff had not mentioned this fact in the plaint as to who had paid the consideration amount to the vendor of the property and in absence of which, the plaintiff had failed to prove his case. It was his specific case that the suit property was purchased by the father and the defendant from their hard-earned money and mere name in the deed did not create any right over the suit property.

42. Thus, it was never the case of the defendant that the suit property was purchased exclusively from his income or he alone had paid the consideration amount, rather he took a stand that the father of the plaintiff and the defendant and the defendant had paid the consideration amount. It was further admitted by the defendant in the written statement that 1 ½ decimals of land was acquired by NHAI and it was asserted that the entire compensation amount was credited in the account of the defendant and on the strength of payment of such compensation amount, the defendant asserted that the defendant was

bonafide purchaser of the suit property as because the entire amount was paid by the defendant and his father and therefore, no question could arise for partition of the property.

43. Both the parties led oral and documentary evidences.

44. P.W. 4 is the plaintiff of the case and P.W. 2 is the wife of the plaintiff namely, Puja Devi. P.W. 1 is the full brother of the plaintiff and the defendant and P.W. 3 is the cousin brother of the plaintiff and the defendant.

45. P.W. 1 is aged 23 years as on 11.07.2023, on the day he deposed before the learned court, meaning thereby, he was just 12 years of age in the year, 2011 when the property was purchased. However, he has deposed that in the registry office when there was transaction of money, he was present and he was also present at the time of payment of consideration amount and asserted that the consideration amount was paid half-and-half by both the plaintiff and the defendant. He also deposed that both of them had jointly constructed the shops and the house. So far as cause of action is concerned, he has deposed that a *Panchayati* was held, but the defendant refused to give half share of the property. During cross-examination, this witness admitted that he was not the witness to the deed of sale nor he could disclose the name of the vendors. He denied the suggestion that the consideration was paid by the defendant and their father. He has further stated that no document was filed by him with respect to the money spent by the plaintiff to purchase the property. He stated in his cross-examination that the value of the property was Rs. 60,000/- per decimal and total Rs. 2,40,000/- was paid. He also stated that the defendant paid his portion of consideration by cheque, but the plaintiff did not know how to remit amount through bank. He has also stated that the plaintiff had worked in garage for 7 to 8 years. He had no idea as to what work the plaintiff used to do prior to 7 to 8 years.

46. So far as P.W. 3 is concerned, he is the cousin brother of the parties. He has stated that at the time of transaction, the entire money was paid in his presence and both the brothers had paid half-and-half

of the consideration amount and both of them have jointly constructed the house and the shop. The property was purchased in the name of both the brothers. He has also supported the fact that one *Panchayati* was held, but the defendant refused to participate and ultimately, the case was filed.

47. Section 45 of the Transfer of Property Act, 1882 is quoted as under:-

> ***"45. Joint transfer for consideration***. *-Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.*
>
> *In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property."*

48. Section 45 of the Transfer of Property Act clearly provides that when a transfer of immovable property for consideration is made in favour of two or more persons jointly, it makes them co-owner of the property and their interest are in proportion to the share of the consideration that they have advanced. In case the consideration is paid out of a common fund, their interest would be same as their share in the common fund.

49. In the present case, the plaintiff claims to have equally contributed with respect to the purchased property and the defendant claims that the plaintiff did not make any contribution towards payment of consideration, rather the defendant and the father together paid the consideration amount. It is not the case of the defendant that he had exclusively paid the entire consideration amount. Neither the plaintiff nor the defendant in their plaint and written statement

mentioned a word about the consideration amount for the suit property. Some of the other witnesses, including the father, who was examined on behalf of the defendant, has mentioned the consideration amount of the suit property as Rs. 2,40,000/- and claimed that a portion of the consideration amount was paid by him. However, this does not match with the sale deed, inasmuch as, the entire consideration amount in the sale deed is shown as Rs. 60,000/- only, which was much lower than the circle rate, as is apparent from the sale deed itself, as discussed above.

50. It is an admitted fact that a portion of the property covered by the sale deed was acquired by National Highway Authority of India and the defendant claimed that the entire compensation amount was paid in the name of the defendant. It is not clear from the records as to how the entire consideration amount was paid in the name of the defendant when the registered sale deed was standing jointly in the name of the plaintiff and the defendant, and the registered sale deed neither referred to any proportion of share between the two, nor it mentioned anything about the proportion of the consideration paid by each, the plaintiff and the defendant.

51. It is also important to note that the defendant, though has taken a stand in the written statement that part consideration amount was paid by him and partly it was contributed by his father, but in his evidence, he has not stated as to how much was contributed by his father and how much was his own money. The defendant has also stated that the consideration was paid partly by cheque and partly by cash, but the sale deed does not refer to any payment by cheque, nor there is any recital in the sale deed that any portion of the consideration amount would be paid in future.

52. Further, the records of the case reveal that the defendant claimed that an amount of Rs.3,70,792/- was received by the defendant in lieu of acquisition of land to the extent of 1 ½ decimals by NHAI, and it has also come on record that certain amount was transferred by the defendant in the name of the wife of the plaintiff, but during the cross-examination of the wife of the plaintiff, she has

not been put to any question with regard to such transfer in her account. Further, the order of the Land Acquisition Officer or the award passed by the Land Acquisition Officer has also not been placed on record. It is important to note that the defendant in his cross examination has stated that under coercion, in lieu of the land, he has given Rs.1,20,000/- in the year 2017 and Rs.1,47,000/- through three cheques to the wife of the plaintiff namely, Puja Devi.

53. It is not the case of the defendant that plaintiff was not capable of earning or had no independent source of income at the time when the property was purchased way back in the year 2011. Rather, the defendant himself in his cross-examination has stated in paragraph 22 that in the sale deed it has not been mentioned that the consideration amount has been paid only by the defendant. In paragraph 23 of his cross-examination, he has stated that the defendant was doing the work of mechanical and recoding and the plaintiff was also doing the mechanical work. He has also stated that in the sale deed the father is not shown as a purchaser of the property. It is also important to note that in the sale deed the father is neither the purchaser nor the witness to the sale-deed.

54. It is also important to note that the defendant, in his cross-examination as D.W.- 3, has stated in paragraph 29 that pursuant to acquisition of land to the extent of 1 ½ decimals, he received compensation to the extent of Rs.3,70,792/- and in his examination-in-chief he has stated that upon being threatened by the plaintiff, he transferred Rs.1,20,000/- in the year 2017 and given Rs.1,47,000/- through three cheques to the wife of the plaintiff in lieu of the land. However, no counter-claim has been filed by the defendant in the present case nor there has been any cross-examination of the wife of the plaintiff, who has been examined as P.W. 2.

55. Neither the award nor the proceeding before the Land Acquisition Officer has been exhibited before the learned Court. Admittedly, the award passed by the Land Acquisition Officer remained unchallenged. However, the same does not amount to

adjudication of right between the plaintiff and the defendant, who, on the face of the sale deed, are co-owners of the property.

56. Admittedly, the defendant is also not claiming that the entire consideration amount was paid by him. Rather, he is claiming that the consideration amount was jointly paid by him and his father, partly by cheque and partly by cash and to substantiate this also, no document has been placed on record by the defendant and there is no bifurcation regarding cash amount and cheque amount on record.

57. In view of the aforesaid facts and circumstances, there is complete absence of cogent evidence with regard to contribution to the fund utilized for purchase of the property between the plaintiff and the defendant with respect to the sale deed involved in this case. Further the consideration amount as reflecting in the sale deed does not match with the consideration amount of sale deed as claimed by the defendant's witness.

58. Section 45 of the Transfer of Property Act, 1882 clearly provides that where sale consideration is paid out of separate funds belonging to the purchasers, they are, in the absence of a contract to the contrary, entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced. The section 45 also provides that in the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

59. In view of Section 45 of the Transfer of Property Act, there is a presumption that both the purchasers (the plaintiff and the defendant) have equal interest in the property.

60. The learned trial court has failed to consider aforesaid aspects of the matter and was swayed away by the fact that the compensation arising out of the land acquisition to the extent of 1 ½ decimals out of the portion of land of the registered sale deed was credited exclusively in the name of the defendant. The fact remains that the defendant stated in his evidence-in-chief itself that in lieu of the land, he has given Rs.1,20,000/- in the year 2017 and Rs.1,47,000/- through three

cheques to the wife of the plaintiff namely, Puja Devi but at the same time claimed that it was paid under coercion. However, there is no cross examination of Puja Devi (wife of the plaintiff) on this point.

61. This Court is also of the considered view that merely because the name of the defendant appeared in the sale deed prior to the name of the plaintiff, the same has no bearing in the matter, as the sale deed neither bifurcates the proportion of their contribution while purchasing the property nor it bifurcates their share with respect to the suit property.

62. So far as the construction over the suit property is concerned, the plaintiff and the defendant claimed that they have made constructions over the suit property and the learned court has recorded a finding that the defendant had made construction over the suit property.

63. However, from the perusal of the plaint, it has been mentioned by the plaintiff that both the plaintiff and the defendant constructed four shops on the first floor and residential house on the second floor and were presently running the shops and residing with their families. The paragraph 3 of the plaint has been answered in paragraph 13 of the written statement by stating that the entire construction has been done by the defendant and his father and no question arises to give any share in the suit property. Thus, even as per the written statement, it is not the case of the defendant that the entire construction was made exclusively by the defendant. Further, no details have been given either by the plaintiff or the defendant with respect to their investment for the purposes of construction over the suit property.

64. The plaintiff who was examined as P.W. 4, in his cross-examination, has stated in paragraphs 20, 21 and 22 that it was not correct to say that for the purposes of construction of house, the defendant, their father and other brothers had invested money. At the time when the construction was being made, he was residing in Bokaro, Sector 8, and it was not correct to say that he had gone to Mumbai in search of employment. He has further stated in his cross-

examination that sometimes the money required for construction was paid by the plaintiff and sometimes by the defendant.

65. The defendant who was examined as D.W. 3, in his evidence in paragraph 10, has mentioned that he has paid the entire amount for the purposes of construction and in support of this he produced the bank statement showing the payment of Rs.10,000/- to Satnam Singh, Rs.1,15,000/- to Ganesh Mahto (Rs. 60,000/-+ Rs. 40,000/-+ Rs. 15,000/-), Rs.15,000/- to Santosh Kumar and Rs.10,000/- to Nitai Chandra Mahto. During cross-examination with respect to the aforesaid statement, this witness has stated that the bank statement only shows that these persons had received money, but no document with respect to such transaction has been prepared.

66. In view of the aforesaid facts and circumstances, this Court is of the view that merely because certain payment has been made to certain persons in the name of supply of sand, cement and other materials, without any further document to support that the payment was made for such purpose, like bill, receipt, etc., to which the defendant was also subjected to cross-examination wherein he stated that no such document was prepared, it cannot be said that the defendant has proved that the entire construction was made by spending money solely by the defendant. Moreover, there is nothing on record to show as to how much amount was spent for the purposes of construction of building over the suit property.

67. In the aforesaid facts and circumstances, the plaintiff and the defendant are entitled to ½ share each with respect to 2 ½ decimals of land which remained after acquisition of 1 ½ decimals of land in connection with the sale deed involved in the present case.

68. The points for determination are accordingly answered in favour of the plaintiff and against the defendant in the following manner: -

(i) It is held that the plaintiff and defendant had purchased the suit property jointly vide Sale Deed No.568 dated 20.01.2011.

(ii) It is also held that the plaintiff is entitled for 1/2 of share in the Schedule-A property.

69. Consequently, the impugned judgment and decree dated 16.01.2024 (Decree signed on 25.01.2024) passed by the learned Civil Judge (Sr. Div)-I, Bokaro in Original Suit No.68 of 2021 dismissing the suit are set aside and the suit is decreed in favour of the plaintiff in the following terms: -

A. The plaintiff is entitled for partition of ½ share of the plaintiff in the property described in schedule- A and for separate possession over the same.

B. The plaintiff is also entitled for appointment of a Survey Knowing Pleader Commissioner to effect the partition in the locality and prepare separate allotment chart in respect of ½ share of plaintiff and prepare a map thereof and final decree be passed by the learned trial court in terms of the report and map prepared by the pleader commissioner.

70. Office to prepare decree accordingly.

71. This First Appeal is accordingly allowed.

72. Pending interlocutory application, if any, is closed.

73. Let the records received from the learned court concerned be sent back forthwith.

(Anubha Rawat Choudhary, J.)

Date of Judgment:28.09.2026
Pankaj
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