IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 322 of 2023

Anil Kumar Upadhyay, aged about 61 Years, son of Late Ambika Upadhyay, Resident of Qtr. No.349, Sector-III/A, P.O. & P.S.- Bokaro Steel City, District- Bokaro, Jharkhand

… … Defendant No.1/Appellant

-Versus-

1. Arun Kumar Srivasatava, son of Late Harish Chandra Lal Srivastava, Resident of Plot No.07, Co-operative Colony, P.O. & P.S.- Bokaro Steel City, District- Bokaro, Jharkhand - an agent and authorized representative of Biramdeo Roy Choudhary, son of Late Sheo Prasad Roy Choudhary, Resident of Plot No.07, Co-operative Colony, P.O. & P.S.- Bokaro Steel City, District- Bokaro, Jharkhand **… … Plaintiff/Respondent**
2. The Deputy Commissioner, Bokaro, P.O. & P.S. -Bokaro, District- Bokaro
3. The S.D.O., Chas, P.O. & P.S.- Chas, District- Bokaro
4. The Officer-in-charge, Sector-XII P.S., P.O. & P.S.- Sector-XII, District- Bokaro **… … Defendants/Proforma Respondents**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Mr. Pawan Kumar Choudhary, Advocate
For the plaintiff : Mr. Harsh Vardhan, Advocate
For the State : Mr. Shashank Kumar, Advocate

C.A.V. on 15.06.2026 **Pronounced on 26.10.2026**

This appeal has been filed against the judgment and decree dated 12.10.2023 (decree sealed and signed on 18.10.2023) passed by the learned Sub-Judge-IV, Bokaro in Original Suit No. 96/2016, whereby the suit seeking specific performance of contract has been decreed. The appellant was the defendant no.1 in the suit.

2. The plaint was filed by Arun Kumar Srivasatava, who claimed to be an agent and authorized representative of Biramdeo Roy Choudhary. Defendant no. 1, Anil Kumar Upadhyay, was the contesting defendant. So far as defendant nos. 2 to 4 are concerned, they were Deputy Commissioner, Bokaro, Sub-Divisional Officer, Chas, Bokaro and the Officer-in-charge, Sector-XII P.S., Bokaro respectively.

3. The plaintiff had prayed for the following reliefs: -

(i) For specific performance of contract directing the defendant who took back the deed from the office of the district Sub-Registrar, Bokaro at Chas to refile or to represent the said deed of transfer of sub-lease hold interest which was signed by the defendant and plaintiff and counter signed by the Secretary of Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited before the District Sub-Registrar, Bokaro (Chas) for registration and execute the same, failing which the plaintiff be given liberty to get the deed of transfer of sub-lease hold interest executed and registered in his favour in respect of co-operative plot no. 83 described in schedule below through the process of court, the cost of which will be borne by the defendant.

(ii) For confirmation of possession of the property described in schedule below with direction to the officer in-charge of Sector-XII PS to open the lock or hand over the key of the lock of the entrance gate of the concerned building over the said property to the plaintiff and if it is found that during pendency of the present suit, Defendant No.1 has come in possession of the suit premises (described in schedule of the plaint) at the facit support of Defendant No.2, 3 and 4, the officers of local administration, restore possession of the suit premises to plaintiff.

(iii) In alternatively of the relief (i) & (ii), a direction may kindly be issued to the defendant to pay the current market value of the concerned building prevailing at the time of passing the decree on assessment of the same made by the property valuer appointed by the court.

(iv) For interest on the said amount from the date of decree till payment.

(v) For any other relief or reliefs which plaintiff may be found entitled to.

4. The suit property as mentioned in Schedule of the plaint is a plot of land being Plot No.83 of Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited situated at Lohanchal Colony, Bokaro Steel City, Circle- Chas, P.S.- Sector-XII, District- Bokaro, bounded as North: Co-operative Plot No.82, South: Co-operative Plot No.84, East: Road, thereafter Shiv Durga Mandir and West: Vacant.

5. The suit was decreed and relief was granted in the following terms: -

> *"**Relief:***
>
> *Plaintiff successfully proved its case. Since contract was valid & evasive denial by defendant successfully proved.*
>
> *Defendant no.1 is hereby given 3 months to perform his part of contract and get the deed of transfer of sub-lease hold interest executed and register in favour of plaintiff in respect of plot no.83 of co-operative society & in case of failure plaintiff will be at liberty to get the register deed executed through agency of court as per law.*
>
> *This court further observes that – The contract was mutual and hence plaintiff should get the plot no. 186 of co-operative society register in the name of defendant no. 01 within reasonable time or else it will lead to miscarriage of justice."*

6. Thus, the learned court has directed the Defendant no.1 to perform his part of contract and get the deed of transfer of sub-lease hold interest executed and register in favour of plaintiff in respect of plot no.83 of co-operative society and also directed that the plaintiff should get the plot no. 186 of co-operative society registered in the name of defendant no. 1 within reasonable time or else it will lead to miscarriage of justice.

7. **<u>Case of the Plaintiff/Respondent No.1 as per the plaint</u>**

(a) The plaintiff, Arun Kumar Srivasatava is an authorized agent of Biramdeo Roy Choudhary, who by issuing letter of authorization on 04.01.2000 and executing a power of attorney on 05.12.2016 authorized him to look after day-to-day work, to make correspondence and represent him as his authorized representative in relation to his firm M/s. Choudhary Engineering Syndicate, Plot No.200(P), 201(P), 202(P), 243(P) & 248(P), Bokaro Industrial Area, Balidih, Bokaro and also for all affairs relating to construction and other incidental acts with regard to Plot No.83, Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited,

Bokaro Steel City. In the capacity of authorised representative, plaintiff has filed the suit related to Plot No.83, Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited, Bokaro Steel City on behalf of Biramdeo Roy Choudhary.

(b) Biramdeo Roy Choudhary ***(plaintiff)*** and Anil Kumar Upadhyay ***(Defendant No.1)*** were doing business on partnership in the names of two firms namely, M/s. Anil Udyog and M/s. Choudhary Engineering Syndicate. The Bokaro Industrial Area Development Authority allotted and leased lands to a registered Co-operative Society namely, ***Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited (hereinafter referred to as Co-operative Society)*** for development of Housing standard size of plots for the members for construction of residential house for themselves.

(c) The defendant and plaintiff both were allotted Housing plots by the said Co-operative Society. Co-operative Plot No.83 was allotted to Anil Kumar Upadhyay (Defendant No.1) vide Allotment Letter dated 04.10.1992 and Co-operative Plot No.186 was allotted to Biramdeo Roy Choudhary (Plaintiff) vide Allotment letter dated 25.08.1993. The lease deed of the plot of the Defendant No.1 was registered by the Co-operative Society on 04.08.1995, but the registration of lease deed of the plot of the plaintiff remained under process and remained awaited.

(d) After registration of the lease deed, it became incumbent duty of the Defendant No.1 to start and complete construction of the building on his plot, but he found himself financially unable to start construction of the building. It was agreed between the plaintiff and the defendant no. 1 that they should exchange the plots by mutual agreement and accordingly, both agreed that Plot

No.83 of the Defendant No.1 would be transferred to the plaintiff and Plot No.186 of the plaintiff would be transferred to the Defendant No.1 and they executed a memorandum of agreement on 19.03.1997 and exchanged their plots and both took possession over their respective exchanged plots. Accordingly, Plot No.186 came under possession of the Defendant No.1 and Plot No.83 came under possession of the plaintiff.

(e) It was further agreed in the memorandum of agreement that they would request the cooperative society to allow them to exchange their plots and they would apply jointly. Accordingly, both submitted a joint application to the Co-operative Society on 20.03.1997 requesting to allow them to mutually exchange their plots. Thereafter, as per the direction of the Secretary of the Co-operative Society, both submitted their affidavits sworn on 02.06.2003 alongwith a joint application dated 10.06.2003 requesting to allow the mutual exchange of their plots. The Defendant No.1 in his affidavit affirmed that on the basis of the agreement dated 19.03.1997, the plaintiff had started construction on Plot No.83 and had made all expenditures by himself and the Defendant No.1 has not invested a single pie in the construction of the building over Plot No.83. When both submitted another request letter on 25.07.2014, they were directed to pay the transfer fee of Rs.11,000/- and accordingly, both paid the transfer fee of Rs.11,000/- through separate cheques to the Co-operative Society alongwith their Letter dated 28.05.2015. Accordingly, both fulfil all the requirements made by the Co-operative Society and the Co-operative Society issued letter of permission vide Letter dated 10.06.2015 for mutual transfer of Plot Nos.186 to the plaintiff and also issued another letter to the Defendant No.1 for mutual transfer of Plot No.83. The Co-

operative Society also issued Letter No. dated 11.06.2015 to the District Sub-Registrar, Bokaro (addressed as the Registrar, Chas, Bokaro) requesting the said authority to transfer Sub-Lease No.3569 of Plot No.83 in favour of the plaintiff.

(f) After grant of permission, both parties prepared a deed of transfer of lease hold interest duly signed by both the parties and countersigned by the Secretary of the Co-operative Society and presented the same before the District Sub-Registrar, Bokaro, Chas on 03.08.2015 for registration and they also presented themselves before the Registrar and all the formalities for execution of deed, photography of finger print, scanning, etc. were completed. On 04.08.2015, the Registry Office informed the plaintiff that due to failure of the departmental server, the registration process of transfer of sub-lease deed could not completed and they were directed to visit on any other date. The plaintiff further stated that while the matter of registration of deed of transfer was pending, it was decided that the electric connection in the house standing in the name of the Defendant No.1 would be changed in the name of the plaintiff and accordingly, the plaintiff submitted application on 11.08.2015 alongwith two affidavits executed by the plaintiff and Defendant No.1 to the Assistant Electrical Engineer, Electric Supply Sub-Division, Chas. The Defendant No.1 in his affidavit admitted and acknowledged the mutual exchange of Plot No.83 standing in his name with Plot No.186 standing in the name of the plaintiff and he also accepted the transfer of ownership of Plot No.83 by the Co-operative Society in the name of the plaintiff and handing over of physical possession of Plot No.83 to the plaintiff and he has no concern with Plot No.83. Accordingly, the electric connection of the house was

changed in the name of the plaintiff by the Jharkhand State Electricity Board.

(g) The plaintiff further stated that in the meantime, the Defendant No.1 changed his mind and evaded to get the transfer deed registered. On 09.08.2016, the Defendant No.1 alongwith some anti-social elements broke open the lock of the house and tried to take possession of the house. When the plaintiff reported the matter to the police, the police intervened and locked the entrance door of the house and kept the key in its possession and submitted a report to the S.D.M., Chas. On the report of the police, the S.D.M., Chas initiated a proceeding under Section 144 of Cr.P.C. vide Case No.430/2016. Subsequently, the plaintiff got information vide Letter No.1117 dated 17.10.2016 that the Defendant No.1 has unilaterally withdrawn the deed of transfer of sub-lease hold interest presented for registration on 03.08.2015 from the office of the District Sub-Registrar, Bokaro at Chas by submitting an application for withdrawal of the deed on 31.08.2015. Thereafter, the S.D.M., Chas vide order dated 06.10.2016, dropped the proceeding under Section 144 of Cr.P.C. with observation that the parties should take shelter of the competent court for specific relief, as because to give decision in the matter related to right and title is beyond the jurisdiction of the court.

(h) The plaintiff claimed that he has performed his part of contract by handing over possession of Co-operative Plot No.186 to the Defendant No.1 and was ready to attend the office of the District Sub-Registrar at Chas to execute the deed of transfer and he has already paid the required stamp duty of around Rs.11,000/- alongwith the stamp papers purchased in the name of the Defendant No.1 and he is ready to bear the ancillary cost. He further claimed that the Defendant No.1 had willingly handed over his Plot No.83 to

the plaintiff in performance of contract and had allowed the plaintiff to carry out construction of the building and the plaintiff invested Rs.35,00,000/- or above for construction of the building and therefore, the Defendant No.1 cannot be allowed to withdraw from his contractual obligation to execute the deed of transfer of lease hold interest, which he unilaterally took back from the office of the District Sub-Registrar, Bokaro at Chas.

(i) The plaintiff stated that the cause of action for the suit arose on 19.03.1997 when the parties entered into agreement; on 03.08.2015 when deed of transfer was presented before the District Sub-Registrar, Bokaro; on 31.08.2015 when it was taken back by the Defendant No.1; on 09.08.2016 when the Defendant No.1 tried to enter in the house on Plot No.83 and on other several dates within the jurisdiction of the learned court at Bokaro Steel City.

(j) The plaintiff valued the suit at Rs.50,00,000/- for the purpose of court fees and jurisdiction and paid the ad-valorem court fees.

(k) During pendency of the suit, amendment of the plaint was allowed vide order dated 12.02.2019 and vide Para-19A, the plaintiff further stated that during pendency of the suit under illegal and extra-jurisdictional order or direction of the Deputy Commissioner, Bokaro and S.D.O., Chas, the local police handed over the key of the house to Defendant No.1 and the defendant no.1 had come in possession of the suit property.

8. <u>Case of the Defendant No.1 (Appellant) as per the written statement</u>

(i) On receiving summons, the Defendant No.1 appeared in the suit on 24.03.2017 and filed his written statement stating that the suit is not maintainable, barred by the principle of estoppel, waiver and acquiescence, barred under Section 34

of the Specific Relief Act, the plaintiff is not in possession of the suit property and the plaintiff has not paid the ad-valorem court fees over the actual valuation of the suit property and the structures standing thereon. He further stated that no cause of action arose to the plaintiff for instituting the suit and the suit is liable to be dismissed. He further stated that the valuation of the suit property given in Para-25 of the plaint is very low and in fact, actual valuation of the suit property is Rs.1,00,00,000/-.

(ii) While giving para-wise reply to the plaint, the Defendant No.1 stated that it is upon the plaintiff to prove the facts and allegations mentioned in Para-1. He stated that the statement made in Para-2 of the plaint is incorrect and the plaintiff has no locus standi to file any suit with respect to Plot No.83 of the Co-operative Society. He admitted the statements made in Para-3, 4, 5 and 6 of the plaint as a matter of record. He denied the statements regarding agreement of the year 1997 to exchange the plots and the entire story put by the plaintiff regarding exchange of plots and alleged that the case of the plaintiff was based on forged and fabricated documents. It was alleged that the case of the plaintiff was based on incorrect, baseless, unfounded and imaginary facts.

(iii) The Defendant No.1 stated that when he came to know about the forgery committed by the plaintiff after taking his signatures on several papers as a witness and creating several concocted documents, the defendant no.1 immediately withdrew the documents from the Sub-Registrar, Chas. Defendant No.1 stated that he is in possession over Plot No. 83; the police had locked the house over Plot No.83 at the instance of the plaintiff and handing over its possession to the plaintiff. The Defendant No.1 further stated that the suit property over Plot No.83 is his

exclusive property and he had never exchanged the suit property in favour of the plaintiff.

(iv) ***The Defendant Nos.2 and 3*** appeared in the suit on 16.08.2019, but did not file any written statement, whereas the ***Defendant No.4*** did not appear in the suit and vide order dated 04.03.2022, the case proceeded ex-parte against Defendant No.4.

9. On the basis of the pleadings of the parties, the learned trial court framed the following issues for consideration: -

(1) *Whether the suit as framed is maintainable?*

(2) *Whether the plaintiff has got valid cause of action for the suit?*

(3) *Whether the suit is barred by law of limitation?*

(4) *Whether the suit is barred u/s 34 of Specific Relief Act?*

(5) *Whether the suit is barred by principles of estoppel, waiver and acquiescence?*

(6) *Whether the suit has been properly valued?*

(7) *Whether the plaintiff and the defendant had mutually entered into an agreement on 19.03.1997 to exchange their plots?*

(8) *Whether there exists any valid contract between the parties?*

(9) *Whether the plaintiff had performed his part of the contract?*

(10) *Whether the plaintiff is entitled for the reliefs?*

<u>Findings of the learned trial court</u>

10. The learned trial court first took up Issue Nos. (1), (2) and (3) together and decided these issues in favour of the plaintiff.

11. The learned trial court took up ***Issue Nos. (4), (5) and (6)*** together and recorded its findings in Paragraph-12, which are as under:

*"**12.** Issue no.4 and 5 are related to each other and are taking together.*

***Issue no.4** "Whether the suit is barred u/s 34 of the specific Relief Act"*

***Issue no.5** "Whether the suit is barred by principles of estoppel, waiver and acquiescence"*

So far as section 34 of Specific Relief Act is concerned it is read *"as any person entitled to any legal character or to any right as to any property may institute a suit against any person denying or interested to deny his title to such character or right and the court may in its discretion make their in a declaration that he is so entitled and the plaintiff need not in such suit"*

Here in this case as admitted by the defendant he has put his signature in the agreement dated 19.03.97 which has subsequently been denied by the defendant and submitted that signature was obtained on blank paper. Therefore, the plaintiff is entitled to his legal right as to the property.

So far as principal of estoppel, waiver and acquiescence are concerned the onus to prove it lies on the defendant but nothing on record has come to suggest that the suit is barred u/s 34 of SR Act or by principal of estoppel, waiver and acquiescence. Accordingly, these two issues are decided in favour of the plaintiff."

***Issue No.6** relating to court fees was decided in favour of the plaintiff.*

12. The learned trial court took up ***Issue Nos. (7), (8), (9) and (10)*** together and recorded its findings in Paragraph No.13, which are as under:

*"**13.** Issue No 7, 8, 9 are the core issues and are co-related and therefore they are taken together for discussion, examination and finding.*

……...

Ld. Counsel on behalf of plaintiff has submitted that EXT-4 is Memorandum of Agreement dated 19.03.1997. Both

parties have admitted that Anil Kumar Upadhyay (defendant no.1) and Biramdeo Roy Choudhary (Plaintiff) have signed on each page of it. Both of them clearly admit therein that for their mutual convenience they have decided or agreed to exchange their plots i.e. plot no. 83 in the name of Sri Biramdeo Roy Choudhary and Plot no. 186 in the name of Sri Anil Kumar Upadhyay, that both of them have accordingly decided to request the society to exchange their plots for which they applied jointly an application mentioning that as per the agreement they have exchanged own plots and have taken possession accordingly from each other.

Ld. Counsel on behalf of the defendant has submitted that the Ext.4 is forged and it has been prepared under complete deception. He has further stated that the stamp paper valued 50 rupees have been purchased in the name of defendant but on 19.03.97 and the stamp paper itself is forged.

Ld. Counsel on behalf of the defendant has further submitted that the sign of the defendant no.1 has been obtained on blank page and subsequently it was typed and which has been misused.

EXT-5 – Joint application dated 20.03.1997 addressed to Secretary. From this document it transpires that enclosing a photostat copy of agreement dt. 19.03.1997, both of the parties sent a letter to the Secretary of the Co-operative Society to allow mutual exchange of plots. Ld. Counsel on behalf of the defendant has simply denied it.

EXT-6 and EXT-6/1 are affidavits of both the parties admitting the Agreement for mutual exchange of plots and applying for permission for exchange of plots to the secretary.

Ld. Counsel on behalf of the defendant has submitted that the content of the Ext.6 and 6/1 is completely baseless and the signature of the Biramdeo Roy Choudhary and defendant no. 1 has been completely forged since it does not contain the date when it has been prepared in front of Damodar Prasad and his testimony has also not been adduced before the court.

EXT-7 is the letter addressed to the Secretary of the Co-operative Society by both the parties for permission for mutual change of plots.

Ld. Counsel on behalf of the defendant has stated that the signature of defendant no.1 and Biramdeo Roy Choudhary has been obtained on blank paper and the letter was prepared. He further stated that the signature of defendant

no.1 has been done differently and the clerk has not been examined.

EXT-8 is the letter addressed to the President of the said Co-operative Society for the same purpose of allowing mutual change of plots. EXT - Y, Y/1, Z & Z/1 – Both the parties as per Direction of the society paid transfer fee of Rs.11,000/- each. Plaintiff has filed the copy of letters and banker's cheque for Rs.11,000/- which for purpose of identification have been marked as Y, Y/1 and Z, Z/1.

EXT-9, is the letter from the Secretary of the society informing to the Plaintiff about permission for mutual transfer of plots no. 186 to plot no. 83 by the co-operative society.

Ld. Counsel on behalf of the defendant has submitted that on the Ext.9 only contained the signature of the Secretary Pradeep Kr. Singh and it does not contain the signature of President and Cashier of the Lohanchal Society.

EXT-12, 12/1 and 12/2 , are the documents received from District Sub Registrar cum Public Information Officer, where under it is disclosed that deed of Transfer of sub-lease hold interest filed for registration by Anil Kumar Upadhyay and Biramdeo Roy Choudhary was taken back by Anil Kumar Upadhyay and from Ext-P.W.-2, has also in his deposition fully supported the case of plaintiff and the testimony of it remained intact in cross examination and nothing has come out to demolish his statement made in examination in chief in the affidavit filed by him.

Ld. Counsel on behalf of the defendant has submitted that the defendant no.1 has already been stated in his examination-in chief that he was deceived and taken to the Registrar Office and there he got to know that the registry was in connection with his plot and hence, he has taken all the paper.

EXT-Z/3 – From documents marked for identification as Z/3, Z/4 and Z/5 support the case of plaintiff that both the parties had agreed to get the Electric connection of the house transferred in the name of Biramdeo Roy Choudhary (Plaintiff), in view of mutual transfer of the house to him.

Before coming to the conclusion on Issue No. 7, 8 and 9 it is important to be re-produced section 91 and 92 of Indian Evidence Act and the finding of Apex Court on maxim nonest-factum for ready reference.

Section 91- Evidence of terms of contracts, grants and other dispositions of property reduced to form of document - ……

Section-92. Exclusion of evidence of oral agreement – *……..*

Here in this case, it has been admitted that Biramdeo Roy Choudhary (Plaintiff) and Anil Kumar Upadhyay (Defendant No.1) were doing business in the names of two firms namely, M/s. Anil Udyog and M/s. Choudhary Engineering Syndicate at Bokaro Industrial Area. Being Industrialists, both were entitled to get plot in Udaymi Awasia Sahkari Lohanchal Complex Samity Limited (to be called hereafter in short as Co-operative Society) and accordingly they were allotted Housing plots. One Co-operative Plot No. 83 was allotted to Anil Kumar Upadhyay and one Co-operative Plot no. 186 was allotted to Biramdeo Roy Choudhary. It was agreed between the two business partners that they should exchange the plots by mutual agreement and accordingly a memorandum of agreement was made and executed by both of them on 19.03.1997 and as per agreement they exchanged their plots and then as per the terms of agreement they submitted a joint application to the Lohanchal Co-operative society on 20.03.1997 enclosing therewith a copy of agreement requesting therein to allow them to mutually exchange their plots. Then being asked by the Secretary of the said Co-operative society they also submitted affidavits which were sworn by them on 02.06.2003. In the said affidavit they admitted that as agreed under agreement dated 19.03.1997 Sri Biramdeo Roy Choudhary had started construction on plot no. 83 meeting entire expenses incurred therein. Both the affidavits along with another joint application dated 10.06.2003 requesting for mutual change of plots submitted to the Secretary Co-operative society. Subsequently also another request letter was submitted to the secretary on 25.07. 2014. Thus, as per direction they also paid transfer fee of Rs.11000/-(Rupees Eleven thousand) each by two separate Banker's cheque with letter dated 28.05.2015. The co- operative society approving the mutual transfer of plots issued letter of permission for mutual transfer of plot no. 186 to 83 and 83 to 186.The society also issued a letter to the District Sub-Registrar requesting him to transfer sub-lease no.3569 of plot no. 83 in favour of Biramdeo Roy Choudhary. There after a deed of transfer of lease hold interest of plot no. 83 was prepared in favour of plaintiff by defendant no. 1 and after signing and getting it countersigned by the Secretary of Co-operative society parties presented the same for registration in the office of the District Sub-

Registrar, Bokaro at Chas on 03.08.2015 and thereafter all other formalities including photography, finger print, scanning etc were completed. The defendant disclosed that he had taken back the transfer deed from the office of District Sub-Registrar, Bokaro at Chas, this was confirmed by the District Sub-Registrar by his letter dated 17.10.2016 sent in reply to the application for information under the provisions of RTI Act,2005 to the plaintiff. It was also disclosed to plaintiff that Anil Kumar Upadhyay- (the defendant no.1) had submitted the application for withdrawal of the transfer deed on 31.10.2015 to the Sub-Registrar, Bokaro at Chas.

The case of defendant no.1 is in denial to the case of plaintiff, According to him it is not correct that he was not financially sound to start construction of building, he never agreed to exchange his plot no. 83 with plot no. 186 of plaintiff, no memorandum of agreement to that effect was made on 19/3/1997, he denies the statement made in para 8 of the plaint that according to terms of agreement a joint application for allowing them to exchange plots was submitted to the co-operative society. He denies the meeting with the secretary, execution of the affidavit by him and all other statements in para 8 to 15 of the plaint but he does not deny them specifically. There is an evasive and general denial that statements made in those paras are incorrect, baseless and imaginary.

In para 21 of W.S. defendant no.1 admits that he withdrew the documents from Sub-Registrar, Bokaro, Chas, meaning thereby that he the knowledge that he had presented the documents for registration. He has made a general allegation that plaintiff on several papers has taken his signature, so he admits his signature on all those papers. He admits that the police has locked the house over plot no. 83. He does not deny that plaintiff applied to SDM, Chas for direction to the police to remove the lock. He does not assert that he opposed the locking of House by the police, he does not also claim that he applied to SDM, Chas for removal of lock by police and handing over possession of the house to him. He on the other hands states that learned SDM, Chas validly passed the order. The defendant no. 2 to 4 have been impleaded as parties in this suit by order dated 12.02.2019. These defendant no.2 & 3 appeared in the suit, but did not file any written statement. The proceeding against defendant no.4 went Ex party as it not appeared in the suit. These defendants did not adduce in any oral or documentary evidences in the

suit. This court further finds those issues related to agreement for mutual transfer of plots between the parties thereby constituting a contract and the performance of the said contract. ***While discussing the pleading and evidences as above this court finds that plaintiff and defendant no.1 in performing their part of contract did many acts and deeds, as required to be done under the said contract. They executed the deed of Memo of Agreement on 19.03.1997 and as final act they executed a Deed of Transfer of Sub- lease hold interest which was signed by defendant no.1 as Transferor & by plaintiff as Transferee and approving it, signed by the secretary of the co-operative on 03.08.2015 & then said deed of transfer of sub-lease was taken back unilaterally by the Defendant no.1 on 31.08.2015 (vide Ext-12 and 12/1) Defendant no.1 has fled the said deed in the court on 28.02.2023 which is present on record of the suit. Now under the above back drops when this court examines the evidences brought on record by defendant then it is found that they do not throw any light on those issues. They do not disprove the contract and do not present anything to show that plaintiff is not ready to perform his part of contract. So, this court concludes that plaintiff and defendant no.1 had Mutually entered into an agreement on 19.03.1997 to exchange their plots. The said agreement was made by the free consent of both the parties, who as per section 14 of the contract Act 1872 were competent to contract, the said agreement is for exchange of their plots allotted to them by the society, with permission of the said society and so it was for a lawful consideration and with a lawful object and there is nothing to suggest that the said agreement is void and so it is a valid contract.***

Here it is worth quoting the finding of Hon'ble Apex Court in doctrine non-est-factum.

Hon'ble Apex Court in the case of ***Madhvakrishnan V. Sami****, a reference has been made to the doctrine of non-est-factum also. But this has been explained after a statement of the general rule of law that a party of full age and understanding is normally bound by his signature to a document whether he reads it or understand it or not. Because equity does not save people from consequences of their own folly but will save them from being victimized by other people. The learned Judge who has delivered the judgement in the court has stated.*

Therefore, keeping in mind, the provision as laid down u/s 91 and 92 of Evidence Act it is crystal clear that when the terms of the contract have been reduced to form a document. No evidence shall be given in proof of the terms of such contract except the document itself and no oral evidence for contradicting the written agreement shall be admitted in evidence. Here in this case, it is evident that the defendant no.1 has admitted his signature on memorandum of agreement dated 19.03.97 but during his testimony he has stated that the signature was opened on blank paper.

Further the defendant no.1 has evasively denied the submission on joint application for permission to transfer exchange the suit property. Further from the submission of plaintiff it is clear that the plaintiff has been performing his part of contract.

Further it is also clear that the defendant has also performed part of his contract by submitting letter before President of Co-operative Society by submitting letter for permission for mutual exchange of plot before President of Co-operative Society (Ext.8). Further after getting permission from the society transfer fees has also been paid (Ext Y, Y/1, Z and Z/1).

The defendant raised only defence that he was deceived while signing memorandum of agreement (Ext.4) but simply denied his signature on joint application dated 20.03.1997 (addressed to Secretary Co-operative Society) for allowing mutual exchange of plot (Ext.5). Defendant no.1 has also denied content of affidavit by both the parties which has been marked as Ext.6 and 6/1.

So far as evidence adduced on behalf of the defendant no.1 is concerned it has already been admitted by both the parties that a proceeding u/s 144 was initiated and subsequently the court of SDO has directed both the parties to approach the court and in the meantime the possession of the building was handed over to the defendant no.1 but it has also been admitted that previously the building was in possession of plaintiff and the connection of the electricity have been taken with the consent of the defendant no.1(Ext.-Z/3).

Therefore, the averment in the plaint and the evidence clearly indicate readiness and willingness of the plaintiff to fulfil his part of contract. Here in this case readiness and willingness of both the parties cannot be established by applying any straight jacket formula rather it has to be determined from the entirety of facts and circumstances

relevant to the intention and conduct of the party concern. Here in this case, it cannot be said that the plaintiff at any stage was not ready and willing to perform his part of contract. Rather the conduct of defendant also established this fact that till the time the defendant withdrew his paper from the Registry Office, Chas, the defendant no.1 was not only willing rather he has also performed his part of contract. Therefore, merely the defence of non-est-factum cannot save the defendant from his legal liability. In the facts and circumstances mentioned above plaintiff has successfully proved that

- The plaintiff and the defendant had mutually entered into an agreement on 19.03.1997 to exchange their plots.

- There exists valid contract between the parties.

- The plaintiff had performed his part of the contract and willing to perform the remaining part.

Under the above facts and law, plaintiff is entitled to get the relief of possession over plot no.83 described on schedule of the plaint. Thus, it may be concluded that in view of finding of the court that may be made on issue no. 7,8 and 9 in his favour, the plaintiff is entitled to get all the reliefs claimed in the present suit. And, accordingly these issues are decided in favour of the plaintiff."

Issue no. 10: *Whether the plaintiff is entitled for the reliefs?*

In the light of finding on core issue i.e. issue no. 07, 08 & 09, this court comes to the conclusion that plaintiff is entitled for relief."

13. Accordingly, the learned trial court decided all the issues in favour of the plaintiff and decreed the suit on contest without cost and issued directions to the Defendant No.1 observing as under:

*"**Relief:***

Plaintiff successfully proved its case. Since contract was valid & evasive denial by defendant successfully proved.

Defendant no.1 is hereby given 3 months to perform his part of contract and get the deed of transfer of sub-lease hold interest executed and register in favour of plaintiff in respect of plot no.83 of co-operative society & in case of failure plaintiff will be at liberty to get the register deed executed through agency of court as per law.

This court further observes that – The contract was mutual and hence plaintiff should get the plot no. 186 of co-operative society register in the name of defendant no. 01

within reasonable time or else it will lead to miscarriage of justice."

14. <u>Arguments of the appellant-defendant no. 1</u>

A. The learned counsel for the appellant has submitted that the Deputy Commissioner, Bokaro and Sub-Divisional Officer, Chas, Bokaro had not contested the suit and so far as Officer-in-charge, Sector-XII P.S., Bokaro is concerned, the proceeding was *ex-parte* against him vide order dated 04.03.2022.

B. The learned counsel submits that as per the case of the plaintiff, an agreement was entered into between the plaintiff and the defendant no. 1 with respect to exchange of plots as both of them were allocated plot in the Co-operative Society, namely, Udaymi Awasiya Sahakari Lohanchal Complex Samittee Limited. The plaintiff was allotted plot no. 186 and the defendant no. 1 was allotted plot no. 83. He further submits that the land was lease hold property given to Udaymi Awasiya Sahakari Lohanchal Complex Samittee Limited and the property allotted was to be transferred to the concerned person by way of sub-lease.

C. The learned counsel has submitted that the Co-operative Society was not a party to the proceeding.

D. The learned counsel submits that pursuant to the allotment of the plot to the defendant no. 1, which is plot no. 83, a registered deed was duly executed by the Co-operative Society, but so far as the allotment of plot no. 186 to the plaintiff is concerned, no such registered deed was executed and therefore the plaintiff did not acquire any title as per law. He submits that the sub-lease was required to be compulsorily registered in favor of the plaintiff.

E. The learned counsel submits that the specific case of the plaintiff was that the plaintiff was to get the property of the defendant no. 1 i.e. plot no. 83 and he was to give his plot no. 186 to the defendant no. 1 and for that purpose, an exchange

deed of agreement was duly executed. The learned counsel submits that the deed could not be registered as the defendant no. 1 ultimately did not participate in the registration of the deed and took back the deed from the registry office which gave rise to the cause of action for the plaintiff to file the suit seeking specific performance of contract. The learned counsel has further submitted that the suit property was only in relation to plot no. 83 as per the schedule to the plaint.

F. The learned counsel submits that the learned court decreed the suit by directing the defendant no. 1 to execute the deed in favor of the plaintiff and also directed the plaintiff to execute the deed in favor of the defendant no. 1 with respect to plot no. 186. However, the learned court erred in doing so, inasmuch as, the learned court did not examine as to whether the plaintiff has any valid title with respect to the plot no. 186 which could be transferred in favor of defendant no. 1. The learned counsel submits that in absence of registration of deed with respect to plot no. 186 in favor of the plaintiff, the plaintiff had no title to transfer in favor of defendant no. 1 and consequently, the decree with respect to direction issued to the plaintiff to transfer the plot no. 186 to the defendant no. 1 is of no consequence. He submits that the other part of the decree directing the defendant no. 1 to transfer the property in favor of the plaintiff with respect to plot no. 83 is only half portion of the decree and since the plots cannot be exchanged, therefore, the impugned judgment cannot be sustained in the eyes of law.

G. The learned counsel has referred to his written submissions filed before this Court, wherein it has been stated that the allotment made in favor of the plaintiff was cancelled with respect to plot no. 186 on 18.12.2024 and it has been allotted to another person through registered lease deed. However, it is not in dispute that this fact has not been brought on record in the First Appeal by way of any additional evidence.

H. It is evident from the evidence that co-operative plot no. 186 was allotted to the plaintiff/respondent but it was not duly registered through registered lease deed in favour of the plaintiff/respondent and therefore plaintiff/respondent cannot be said to be the owner of the property and therefore a person having no title cannot transfer his immoveable property to another person and therefore the agreement dated 19.03.1997 (exhibit- 4) is illegal and unlawful and void in the eyes of law.

I. The trial court failed to discuss about the registration of plot no. 186 in favour of the plaintiff/respondent and without deciding about the entitlement of respondent over plot no.186 decreed the suit for mutual transfer of the property between the parties.

J. As per the plaintiff, plot no. 186 was allotted to him by the co-operative society, but admittedly the same was not registered by the cooperative society in favour of the plaintiff. It was the case of the plaintiff that there was an agreement of exchange between plaintiff and the contesting defendant with respect to plot no. 186 of the plaintiff and plot no. 83 of the contesting defendant. The plot no. 83 was duly registered in the name of the contesting defendant, but there was no registry with respect to plot no. 186 in the name of the plaintiff and therefore, there cannot be any exchange between two immovable properties – one registered in favour of the contesting defendant and other not registered in favour of the plaintiff. Even the possession with respect to plot no. 186 was never handed over by the cooperative society to the plaintiff.

K. The learned counsel for the appellant has submitted that altogether 10 issues were framed by the learned court and out of them, issue nos. 7, 8 and 9 are the core issues which will also form the point for determination in the present case.

15. <u>Arguments of the Respondent No. 1-plaintiff</u>

I. Learned counsel for the plaintiff has submitted that both the plaintiff and the defendant no. 1 had approached the Co-operative Society for the purpose of mutual transfer and the transfer fee was also submitted which was to the extent of Rs. 11,000/- by both the parties with respect to their respective plots and both of them had applied for permission for mutual transfer which was granted by the Co-operative Society, which is apparent from the letter dated 10.06.2015 (***Exhibit-9 -marked with objection)*** and addressed to the plaintiff which indicates that the permission for mutual transfer was granted with respect to both the plots. He submits that since the permission for transfer was granted with respect to both the plots, the parties entered into deed for mutual transfer, presented it before the Sub-Registrar for registry, necessary formalities were also done, but on account of technical fault, the registration could not be completed. The specific case of the plaintiff was that the parties were required to come on another date, but defendant no. 1 did not come and ultimately, the defendant no.1 took away the deed presented before the Sub-Registrar without finalization of the registry and therefore the suit for specific performance of contract was filed.

II. During the course of arguments, a letter dated 11.06.2015 ***marked as Exhibit-Z/2*** was placed which is a letter issued to the Registrar, Chas, Bokaro by the Co-operative Society, wherein the Registrar, Chas, Bokaro was informed that a request was made to transfer of plot no. 83 to the plaintiff, namely, Biramdeo Roy Choudhary and all dues of the society was received and a request was made to transfer the sub-lease in favor of Sri Biramdeo Roy Choudhary.

III. However, during the course of arguments, the learned counsel for the plaintiff could not point out any such letter issued by the Co-operative Society to the Registrar, Chas, Bokaro with respect to plot no. 186.

During the course of arguments, it is not in dispute that the sub-lease in favor of the plaintiff with respect to plot no. 186 was never registered. The plaintiff only had a letter of allotment, with respect to plot no. 186.

IV. To this, the learned counsel for the respondent-plaintiff has referred to the judgment passed by the Hon'ble Supreme Court reported in ***(2010) 5 SCC 401 (S. Kaladevi vs. V.r. Somasundaram & others)*** paragraph 11 and 12 to submit that the law has been laid down by the Hon'ble Supreme Court that there is no need to get agreement of sale registered with respect to specific performance of contract. He submits that in such circumstances, merely because sub-lease was not registered in favor of the plaintiff with respect to plot no. 186, the same has no consequence in this case and the judgment passed by the learned court asking the parties to execute their respective deeds in favor of each other with respect to their respective plots is in terms of the agreement and therefore the same does not call for any interference.

16. <u>Rejoinder argument of the appellant-defendant no. 1</u>

Learned counsel for the appellant, in response, has submitted that the agreement of transfer need not be registered, but a person cannot be directed to pass title which he does not possess. He submits that the plaintiff never had any title with respect to plot no. 186 as the lease deed was never executed by the Co-operative Society in favor of the plaintiff. Therefore, the plaintiff had no title to transfer the property to the defendant no. 1 with respect to plot no. 186. In such circumstances, the direction upon the defendant no. 1 to transfer his property i.e. plot no. 83 to the plaintiff cannot be sustained in the eyes of law as there can be no possible exchange between the plaintiff and the defendant no. 1 with respect to their respective plots, the plaintiff having no title with respect to plot no. 186.

17. <u>Points for determination.</u>

Considering the disputes involved in the case, following **points of determination** arise in the present first appeal:

(i) Whether the plaintiff and the defendant no. 1 had mutually entered into an agreement on 19.03.1997 to exchange their plots?

(ii) Whether there exists any valid contract between the parties?

(iii) Whether the plaintiff had performed/ready to perform his part of the contract?

(iv) Whether, in the event of allowing the present first appeal, the Respondent No.1 (Plaintiff) is entitled for any relief against the appellant (Defendant No.1) in terms of Relief No. (iii) and (iv) as prayed for in the plaint?

Findings of this Court

In course of trial, ***the plaintiff examined 03 witnesses as oral evidence*** in support of his case, who are as under: -

PW-1	Arun Kumar Srivastava
PW-2	Anup Kumar Srivastava
PW-3	Pradeep Kumar Singh

The plaintiff exhibited the following documents as documentary evidences: -

Exhibit-1	Authorisation letter dated 04.01.2000	With Objection
Exhibit- 1/1	General Power of attorney dated 05.12.2016	With Objection
Exhibit-2	Allotment letter dated 25.06.93 of Plot No.186	Without Objection
Exhibit-2/1	Map of Plot No.186	Without Objection
Exhibit-3	Agreement of Sub-lease dated 04.08.1995 of Plot No.83	Without Objection
Exhibit-4	Memorandum of agreement dated 19.03.1997	With Objection
Exhibit-5	Joint Application dated 20.03.1997	With Objection
Exhibit-6	Affidavit of plaintiff dated	With Objection

	02.06.2003	
Exhibit-6/1	Affidavit of Defendant No.1 dated 02.06.2003	With Objection
Exhibit-7	Application for mutual change of plots dated 10.06.2003	With Objection
Exhibit-8	Joint request application dated 25.07.2014 submitted for mutual change of plots	With Objection
Exhibit-9	Permission letter dated 10.06.2015	With Objection
Exhibit-10	C.C. of notice issued in M.P. Case No.430/2016	Without Objection
Exhibit-10/1	C.C. of police report in M.P. Case No.430/2016	Without Objection
Exhibit-11	Application dated 27.09.2016 filed under R.T.I. Act	Without Objection
Exhibit-11/1	Counterfoil of Postal Order	Without Objection
Exhibit-12	Information vide Letter No.1117 dated 17.10.2016	Without Objection
Exhibit-12/1	Photocopy of application dated 31.08.2015	Without Objection
Exhibit-12/2	Photocopy of Letter vide Registration No. UASLCSL/ 2014-15/14	Without Objection
Exhibit-13	C.C. of order dated 06.10.2016 passed in M.P. Case No.430/2016	Without Objection
Exhibit-14 to 14/2	Three (03) postal receipts	Without Objection
Exhibit-Z	Xerox copy of application dated 28.05.2015	With Objection
Exhibit-Z/1	Xerox copy of Cheque dated 27.05.2015	With Objection
Exhibit-Z/2	Xerox copy of application dated 11.06.2015	Without Objection
Exhibit-Z/3	Xerox copy of application to Jharkhand State Electricity Board	With Objection
Exhibit-Z/4	Xerox copy of affidavit dated 11.08.2015 of plaintiff	With Objection
Exhibit-Z/5	Xerox copy of affidavit dated 11.08.2015 of Defendant No.1	With Objection
Exhibit-Z/6	Xerox copy of application	Without

	submitted to O/c Sector-12 PS	Objection
Mark-X for identification	Xerox copy of allotment letter dated 04.10.1992	Without Objection
Mark-Y for identification	Xerox copy of application dated 28.05.2015	With Objection
Mark-Y/1 for identification	Xerox copy of cheque dated 27.05.2015	With Objection
Mark-Y/2 for identification	Notice under Section 80 of CPC	Without Objection

The Defendant No.1 examined 03 witnesses, who are as under:

DW-1	Shailendra Kumar Roy
DW-2	Sanjay Roy
DW-3	Anil Kumar Upadhyay

The Defendant No.1 exhibited the following documents in support of his case: -

Exhibit- A	Original Receipt No.1835 dated 02.09.2022	Without Objection
Exhibit-A/1	Original Receipt No.362 dated 02.09.2022	Without Objection
Exhibit-B	Original Electricity Bill No.147893 dated 22.06.2016	Without Objection
Exhibit-B/1	Original Receipt No. NS 28/14251 dated 14.09.2016 of Electricity Department	Without Objection
Exhibit- C	Original Receipt No.1091 dated 22.06.2016 in the name of Defendant No.1 related to change of name	Without Objection
Exhibit- D	Original Letter No. UASLCSLtd/17-18/58 dated 08.11.2017 issued by Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited	Without Objection
Exhibit-E	Original reply letter dated 13.08.2016 issued by Secretary	Without Objection
Exhibit-F	Original Receipt No.556 dated 08.08.15 issued by	Without Objection

	Jharkhand Police	
Mark-X for identification	Computer generated Bill dated 30.09.2022	Without Objection
Mark-X/1 for identification	Letter dated 15.01.2017 of Defendant No.1 demanding key of the house	Without Objection

18. ***PW-1 (Arun Kumar Srivastava),*** an ***agent and authorized representative of Biramdeo Roy Choudhary*** filed his examination-in-chief on affidavit and supported his case as pleaded in the plaint. He specifically stated that-

a. The Co-operative Society had allotted Plot No.186 to the plaintiff vide Allotment letter dated 25.08.1993 and Plot No.83 to the Defendant No.1 vide Allotment Letter dated 04.10.1992.

b. The Co-operative Society registered the allotted Plot No.83 in the name of the Defendant No.1 on 04.08.1995, but the plot allotted to the plaintiff could not be registered and had remained under process.

c. It was agreed between the plaintiff and the defendant no.1 that both would mutually exchange their allotted plots. Accordingly, the plaintiff will give his allotted Plot No.186 to the Defendant No.1 and the Plot No.83 allotted to the Defendant No.1 will be given to the plaintiff and both parties will get the exchanged plots transferred in their respective names. In this regard, a Memorandum of Agreement was executed between both the parties on 19.03.1997 and as per the terms of the agreement, both parties exchanged their allotted plots and took possession of the exchanged plots.

d. Thereafter, both parties submitted a joint application dated 20.03.1997 alongwith a copy of the Memorandum of Agreement in the office of the Co-operative Society for obtaining permission to exchange their plots and as per the direction of the Secretary of the Co-operative Society, both submitted their affidavits dated 02.06.2003 in the office of the

Society alongwith a joint application dated 10.06.2003 requesting him to allow the mutual exchange of their plots. The Defendant No.1 in his affidavit had clearly stated that as per the agreement dated 19.03.1997, the plaintiff had commenced construction of the house on Plot No.83 at his own expenses and the Defendant No.1 had not invested a single penny in the construction of the house on Plot No.83.

e. Both parties also submitted a joint request application dated 25.07.2014 to the Secretary of the Society, on which both parties were directed to deposit the transfer fee of Rs.11,000/- for mutual exchange of their plots. Accordingly, both parties deposited their respective transfer fee of Rs.11,000/- on 29.05.2015 through separate cheques.

f. Thereafter, the Co-operative Society issued Letter No. dated 10.06.2015 regarding mutual exchange of plots and allotting Plot No.83 to the plaintiff and allotting Plot No.186 to Defendant No.1.

g. Thereafter, the Co-operative Society vide Letter dated 11.06.2015 requested the District Sub-Registrar, Chas to transfer Sub-Lease No.3569 related to Plot No.83 in the name of the plaintiff.

h. After grant of permission, both parties prepared a deed of transfer of lease duly signed by both the parties and countersigned by the Secretary of the Co-operative Society and presented the same before the District Sub-Registrar, Chas on 03.08.2015 for registration and both parties also presented themselves physically in the office of the District Sub-Registrar, Chas, where procedures of taking of photographs, fingerprints, scanning, etc. of both parties were completed.

i. On 04.08.2015, the Registry Office informed the plaintiff that due to a technical problem in the departmental server, the registration process could not be completed and directed both parties to come on any other date.

j. He further stated that during pendency of the registration process, both parties decided that the electricity connection standing in the name of the Defendant No.1 for Plot No.83 would be transferred in the name of the plaintiff. Thereafter, the plaintiff submitted an application dated 11.08.2015 alongwith two affidavits dated 11.08.2015 of both parties to the Assistant Electrical Engineer, Electric Supply Sub-Division, Chas. The Defendant No.1 clearly stated in his affidavit that he has mutually exchanged his Plot No.83 with Plot No.186 of the plaintiff and the Co-operative Society has transferred the ownership of Plot No.83 to the plaintiff and he has also given physical possession of Plot No.83 to the plaintiff. On the basis of the aforesaid application, Jharkhand State Electricity Board transferred the electricity connection of Plot No.83 from the Defendant No.1 to the plaintiff.

k. In the meantime, the Defendant No.1 changed his mind and started evading to go to the office of the District Sub Registrar, Chas for execution of the Deed of Transfer. On 09.08.2016, the Defendant No.1 alongwith some anti-social elements broke the lock of the plaintiff at Plot No.83 and forcibly tried to take possession of the house. On reporting the matter to the police, the police locked the entrance door of the house and kept the key with its possession and on the report sent by the police, the learned S.D.M., Chas initiated Misc. Case No.430/2016 under Section 144 of Cr.P.C.

l. In course of verification by the police, it transpired that the Defendant No.1 has withdrawn the Deed of Transfer from the office of the District Sub-Registrar, Chas. The plaintiff sought information under the Right to Information Act in this regard from the District Sub-Registrar, Chas-cum-Public Information Officer, Chas, Bokaro, who vide Letter No.1117 dated 17.10.2016 provided information to the plaintiff that the Defendant No.1 has withdrawn the Deed of Transfer presented

by both the parties for registration. The Sub-Registrar also provided a copy of the application dated 31.08.2015 to the plaintiff in which the Defendant No.1 had stated that now he does not want to register the Deed of Transfer of Sub-Lease Hold Interest related to Plot No.83 and the same be returned to him.

m. Thereafter, the S.D.M., Chas, vide order dated 06.10.2016, dropped the proceeding under Section 144 of Cr. P.C. with the observation that the parties should approach the competent court for specific relief, as the subject matter of the case is related to right and title of the parties, which is beyond the jurisdiction of the court.

n. He further stated that during pendency of the suit, the Deputy Commissioner, Bokaro (Defendant No.2), the Sub-Divisional Officer, Chas (Defendant No.3) and Sector-12 P.S. (Defendant No.4) illegally handed over the key and possession of the house at Plot No.83 to the Defendant No.1.

o. He further stated that as per the terms and conditions of Memorandum of Agreement dated 19.03.1997 executed between both the parties, the plaintiff had given possession of his Plot No.186 to the Defendant No.1 and the plaintiff is ready to appear in the office of the District Sub-Registrar, Chas for execution of the deed of transfer and he has already purchased the stamp duty of Rs.11,000/- approximately alongwith the stamp papers in the name of the Defendant No.1 and he is also ready to bear the other expenses.

p. He further stated that the Defendant No.1 had voluntarily agreed to transfer Plot No.83 to the plaintiff and after willingness of both parties, the plaintiff has invested Rs.35,00,000/- towards the construction of the house. Therefore, now the Defendant No.1 has no basis to resile from the terms and conditions of the Memorandum of Agreement and he is bound to execute the Deed of Transfer of Plot No.83,

which he had unilaterally withdrawn from the office of the District Sub-Registrar, Chas, Bokaro. He exhibited the aforesaid documents mentioned above as exhibit 1 to 13.

During cross-examination on behalf of the Defendant No.1, he admitted at Para-81 that Exhibit-3 (Agreement of Sub-Lease) is registered in the name of the Defendant No.1 and the Defendant No.1 has given the original Agreement of Lease to the plaintiff, which is in the name of Defendant No.1. He has not filed the document of Plot No.186 related to the plaintiff, as the said document has not been registered till date. He also admitted at Para-95 that Sub-Lease of Plot No.186 has not been registered by the Registrar till date. He stated at Para-99 that after execution of agreement-cum-lease dated 04.08.1995 of plot no. 83 (Exhibit-3), the Defendant No.1 has given the Exhibit-3 to the plaintiff in the year 1997. Exhibit-4 does not bear the date with the signature of the witnesses and Exhibit-4 has not been verified by any attesting authority or Registrar / Registration Officer. He stated that Exhibit-4, which is a memorandum of agreement, was prepared on 19.03.1997. He also admitted at Para-165 to 167 that the Society had sub-leased Plot No.83 in the year 1997, but the sub-lease of Plot No.186 has not been registered till date and Plot No.186 is in possession of the Society till date. He also admitted at Para-168 & 169 that house is lying constructed over Plot No.83 which was constructed about 10-12 years ago and the electricity connection is in the name of the Defendant No.1 at present. He further admitted at Para-171 and 172 that Biramdeo Roy Choudhary has submitted application against the Defendant No.1 for vacating Plot No.83 before the Hon'ble High Court of Jharkhand at Ranchi, Deputy Commissioner, Bokaro and others. The plaintiff has filed Writ Petition No.6636/2017 before the Hon'ble High Court, Ranchi. He admitted at Para-173 to 175 that he had submitted an application on 09.08.2016 to the Officer-in-charge, Sector-12 P.S. against the Defendant No.1 and on the basis of the said application, the proceeding under Section 144 of CrPC was initiated by the Sub-Divisional Officer, Chas. On the order of the Sub-

Divisional Officer, the police officer had inspected and locked the house, but both the parties were directed to approach the Civil Court for specific relief.

19. ***PW-2 (Anup Kumar Srivastava)*** filed his examination-in-chief on affidavit stating that he knows both parties of the suit and the facts related to the suit. He has also stated that the Cooperative society, namely, Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited had allotted Plot No.186 to the plaintiff and Plot No.83 to the Defendant No.1; the Co-operative Society registered the allotted Plot No.83 in the name of the Defendant No.1, but the plot allotted to the plaintiff could not be registered and had remained under process. A Memorandum of Agreement was executed between them and subsequently, both exchanged their allotted plots and took possession of the exchanged plots. Both the parties submitted a joint application in the office of the Society and paid the transfer fee for permission to exchange their respective plots and thereafter, the Co-operative Society issued an order regarding the exchange. Thereafter, The Co-operative Society requested the District Sub-Registrar, Chas to transfer the Sub-Lease related to Plot No.83 in the name of the plaintiff. After getting permission from the Society, both parties prepared a Deed of Transfer for the transfer of Plot No. 83 in the name of the plaintiff, which was signed by both the parties and countersigned by the Secretary of the Co-operative Society, and presented the same before the District Sub-Registrar, Chas for registration. However, due to technical problem with the departmental server, the registration process of transfer of sub-lease deed could not completed and they were asked to come again. He further stated that after mutual consent, the electricity connection taken in Plot No.83 in the name of the Defendant No.1 was transferred in the name of the plaintiff. Thereafter, the Defendant No.1 started evading to go to the office of the District Sub Registrar, Chas for execution of the Deed of Transfer. On 09.08.2016, the Defendant No.1 alongwith some anti-social elements broke open the lock of the plaintiff over Plot No.83

and tried to take possession of the house. When the matter was reported at the police station, the police locked the entrance door of Plot No.83 and kept the key in its possession and submitted a report to the court of the learned Sub-Divisional Magistrate, Chas. On the report sent by the police, the learned court initiated Misc. Case No.430/2016 under Section 144 of Cr.P.C. in which he is also a party. The plaintiff had filed an application in the court of the learned Sub-Divisional Magistrate, Chas, requesting to direct the local police to open the lock and to give possession of Plot No.83 to the plaintiff because the plaintiff had constructed a house on Plot No.83 at his own expense and it was in his possession. The learned court passed an order that the parties should approach the competent court for specific relief, as the subject matter of the suit is related to the right and title of the parties, which is outside the jurisdiction of the court. He further stated that during pendency of the suit, the Defendant No.2 (Deputy Commissioner, Bokaro), Defendant No.3 (Sub-Divisional Magistrate, Chas) and Defendant No.4 (Sector-12 Police Station) illegally handed over the key and possession of the house at Plot No.83 to the Defendant No.1. The Defendant No.1 had voluntarily agreed to transfer his Plot No.83 to the plaintiff and with the consent and wish of both parties, the plaintiff had made the investment for construction of the house. He stated that the claim of the plaintiff is correct.

During cross-examination on behalf of the Defendant No.1, P.W-2 admitted that Plot No.186 was allotted to the plaintiff and Plot No.83 was allotted to the Defendant No.1. He admitted that Plot No.83 has been registered by the Society, whereas Plot No.186 has not been registered by the Society and that he had no knowledge as to who has rights over Plot No.186. ***During cross-examination on behalf of the Defendant Nos.2 and 3***, he admitted at Para-70 and 71 that he has no knowledge as to on whose application and order, the police had locked Plot No.83 and had opened the lock. He also admitted at Para-72 that on the application of the plaintiff, Defendant Nos.2 and 3 were implead parties in the suit.

20. ***PW-3 (Pradeep Kumar Singh)*** was the Secretary of Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited during the relevant period of the case. He filed his examination-in-chief on affidavit stating that he came to know about the suit from the records available in the office of the Society. He further stated that Plot No.186 was allotted to the plaintiff and Plot No.83 was allotted to the Defendant No.1 by Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited. Plot No.83 allotted to Defendant No.1 was registered in his name by the Co-operative Society, but the plot allotted to the plaintiff could not be registered and was pending in the process. Both parties had submitted a joint application dated 20.03.1997 alongwith a photocopy of the Memorandum of Agreement dated 19.03.1997 in the office of the Society for permission to exchange their respective plots. The joint application dated 20.03.1997 has already been exhibited as Exhibit-5. Both the parties had also submitted joint applications dated 10.06.2003 and 25.07.2014 to the Society for transfer of the plots alongwith application dated 20.03.1997, Memorandum of Agreement dated 19.03.1997 and Affidavit dated 02.06.2003. The joint application dated 10.06.2003 has already been exhibited as Exhibit-7 and the joint application dated 25.07.2014 has already been exhibited as Exhibit-8. On 28.05.2015, both parties had submitted separate applications alongwith banker's cheques of Rs.11,000 each against transfer fees. Both the applications and the banker's cheques have already been exhibited as Exhibits- Y, Y/1 Z and Z/1. Thereafter, on 10.06.2015, the Cooperative Society had issued an order related to the exchange, which bears his signature as Secretary of the Society. The permission letter dated 10.06.2015 has already been exhibited as Exhibit-9. Thereafter, the Co-operative Society vide Letter dated 11.06.2015 had requested the District Sub-Registrar, Chas to transfer Sub-Lease No.3569 related to Plot No.83 in the name of the plaintiff, which bears his signature. Letter dated 11.06.2015 has already been exhibited as Exhibit-Z/2. After getting permission from the society, both parties prepared a Deed of Transfer for transfer of Plot No.83 in

the name of the plaintiff and both parties signed and got countersigned by the Secretary of the Society and presented it in the office of the District Sub Registrar, Chas for its registration. He stated that the Defendant No.1 had voluntarily agreed to transfer his Plot No.83 to the plaintiff and the plaintiff made investment for construction of the house with consent of both parties. The claim of the plaintiff is correct.

During cross-examination on behalf of the Defendant No.1, he admitted at Para-17 that he had worked on the post of Secretary from 2014 to 2019. He also admitted at Para-24 & 26 that Plot No.186 has not been registered by the Society, whereas Plot No.83 has been registered by the Society in the name of the Defendant No.1. He also stated at Para-29 that an unregistered plot can be exchanged with consent of both parties. He further admitted at Para-30 that he had given information to the Sub-Registrar, Chas in the year 2015. He had received letter in the name of Secretary in the year 2015. He admitted at Para-31 that the receiving on the Letter dated 20.03.1997 is not his signature and he cannot say as to whose signature is it. He further admitted at Para-37 that Plot No.83 is allotted in the name of the Defendant No.1 and he is residing there and the society fee is being deposited in his name. He also admitted at Para-39 that he had not gone to the office of the Sub-Registrar. He further admitted at Para-43 that all the plots in Lohanchal Society are in the names of plot holders. He denied the suggestion at Para-44 that Plot No.186 is not registered in the name of any person and Plot No.83 is registered in the name of the Defendant No.1 and therefore, Plot No.186 and Plot No.83 cannot be exchanged. ***During cross-examination on behalf of the Defendant Nos.2 and 3***, he admitted at Para-48 that he does not have knowledge as to in which clause of the Bye-laws of the Society, it is mentioned that unregistered plots can be exchanged between two persons.

21. ***DW-1*** (Shailendra Kumar Roy) filed his examination-in-chief on affidavit stating that he knows and identifies both parties of the suit. He further stated that Arun Kumar Srivastava and his two

brothers have house adjacent to the house of the Defendant No.1 at Plot No.83, Lohanchal Awasiya Colony, BIADA. About 23 years ago, he had seen the Defendant No.1 constructing house on the land over Plot No.83, Lohanchal Colony, BIADA allotted to him as an industrialist of BIADA Industrial Area, Balidih, Bokaro. The Defendant No.1 has right and possession over Plot No. 83, Lohanchal Awasiya Colony and he complies with the rules and conditions of the Society in letter and spirit and he has not exchanged his plot with any person. Arun Kumar Srivastava and his family members are harassing the Defendant No.1 for past few years. Arun Kumar Srivastava and Defendant No.1 had good relationship between them from the time of allotment of the plot till the construction of the house and due to the cordial relationship between them, the house was constructed on the same plan and structure. The Defendant No.1 always used to live with the father of Arun Kumar Srivastava and he used to support him fully in the works and he used to take meal, interact and conduct business with him day and night. After death of Harishchandra Lal Srivastava, the father of Arun Kumar Srivastava, Arun Kumar Srivastava started harassing the Defendant No.1 by making various fake documents and in connivance with the Secretary, BIADA Housing Colony and police of Sector-12 P.S. and without any order of Senior Officer threw all the articles from the house of Plot No.83 and locked and sealed the gate and gave the key of the gate to the Secretary and submitted an application to the Sub-Divisional Officer, Chas. When the Defendant No.1 reported the incident to the Senior Officer, after hearing both the parties, an order was passed and the key was handed over to the Defendant No.1. He further stated that the Defendant No.1 has not exchanged or transferred his plot with any person and since the time of allotment of the plot, the Defendant No.1 has been living peacefully by constructing a house. The suit is baseless and false. The plaintiff has prepared all the documents by deceiving the Defendant No.1 and as soon as the Defendant No.1 came to know the truth, he made complaint before the Senior Police Officer. The claim of

ownership of the plaintiff over the aforesaid plot is completely false and baseless and his claim is erroneous and unjust.

During cross-examination, he admitted at Para-15 that he knows the Defendant No.1 for the last 25 years. He further admitted at Para-23 that he cannot say as to which forged documents were prepared. ***During cross-examination on behalf of the Defendant Nos.2 and 3***, he admitted at Para-31 that on the order of the Senior Police Officer, the lock of the gate of Plot No.83, Lohanchal Awasiya Colony was opened and its key was handed over to the Defendant No.1. He said that the claim of the plaintiff over the land and house over Plot No.83, Lohanchal Awasiya Colony, BIADA is false.

22. ***DW-2*** (Sanjay Roy) filed his examination-in-chief on affidavit stating that Plot No.83, Lohanchal Awasiya Colony, BIADA is allotted land of the Defendant No.1. The house of plaintiff and his brothers is situated at Plot No.82, 81 and 80 adjacent to the house of the Defendant No.1. He further stated that the suit is legally not maintainable and is baseless and false. He has not seen Biramdeo Roy Choduhary and Arun Kumar Srivastava while constructing house over the allotted Plot No.83, nor they have right and possession over the same. He had seen the Defendant No.1 constructing house over plot No.83 and he had seen the Defendant No.1 while construction of the house over Plot No.82, 81 and 80 and completion of the work. Defendant No.1 looked after all the works of the house of the father of the plaintiff related to Lohanchal Awasiya Colony, BIADA till his lifetime and continued to do his work as an assistant. He further stated that the Defendant No.1 has not executed any agreement of transfer of his plot with Biramdeo Roy Choudhary, the plaintiff. It is true that Biramdeo Roy Choudhary and Defendant No.1 had a partnership in industry in the BIADA Industrial Area, which the plaintiff has also presented in court in his evidence. The house constructed over Plot No.83 is in title and possession of the Defendant No.1 and is also recorded in the society register and Plot No.83 is registered in the name of Defendant No.1. The suit filed by the plaintiff is baseless,

false and unjustified. All the documents produced by the plaintiff in court to grab the house of Defendant No.1 constructed over plot No.83 are forged.

During cross-examination on behalf of the plaintiff, he admitted at Para-16 that the Defendant No.1 has one more industry in partnership named Choudhary Syndicate. He further admitted at Para-19 that Plot No.83, Lohanchal Colony was allotted to the Defendant No.1 in the year 1988 and construction works in it started in the year 2000. ***During cross-examination on behalf of the Defendant Nos.2 and 3,*** he admitted at Para-31 that Plot No.83, Lohanchal Colony was locked on the application of Arun Kumar Srivastava.

23. ***DW-3 (Anil Kumar Upadhyay)*** filed his examination-in-chief on affidavit stating that he is the Defendant No.1 in the suit. The suit is baseless, false and unjustified. The rights and duties of the plaintiff mentioned in the plaint are completely false and shows conspiracy. The statement of the plaintiff that document for exchange of plots between Biramdeo Roy Choudhary and him was prepared is completely false, rather he and Biramdeo Roy Choudhary had good relationship with the father of the plaintiff and he had obtained his signature on blank paper for his personal work and the same was illegally used by the plaintiff. He further stated that Biramdeo Roy Choudhary has not given him anything in writing or information that he has given the right and responsibility to Arun Kumar Srivastava to look after and manage his property and to look after and run the factory in partnership. Plot No.83 situated in Lohanchal Awasiya Colony has been allotted in his name by BIADA, which is registered in his name and is in his right and possession. He has constructed the house over Plot No.83 situated in Lohanchal Awasiya Colony and he is residing in the house and complying with all society rules and conditions. He is paying the electricity bill and society maintenance fees. The plaintiff has stated in the plaint and his evidence that BIADA has allotted Plot No.186, Lohanchal Awasiya Colony in the name of Biramdeo Roy Choudhary, whereas the Plot No.186 is not

registered in the name of Lohanchal Housing Society. Therefore, there is no basis for exchange or transfer and he has not carried out any transfer. No plot has been registered in the name of Biramdeo Roy Choudhary, nor it would be registered in future, since Plot No.186 is a tribal land inhabited by tribal persons and it is in their rights and possession. It has only been marked on a map and it has not been registered in the name of the Lohanchal Colony Society. The plaintiff has stated that an industry is established in partnership in his name and Biramdeo Choudhary in Bokaro Industrial Area, BIADA. It is true that on the basis of the industry, plot has been allotted in Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited and the Secretary, Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited, B.S. City has issued a certificate. 10 decimals land has been allotted to him, but it is not mentioned as to how much land has been allotted to Biramdeo Roy Choudhary. A separate factory, Anil Udyog, is allotted in his name in which Biramdeo Roy Chodudhary has no share, rather he has 49% share in Choudhary Engineering Syndicate. He further stated that the father of the plaintiff deceived him and took him as a witness to the registration office in Chas, Bokaro, where he came to know about all the facts related to the plot and thereafter, he returned home with all the documents. The plaintiff, in connivance with Officer-in-charge, Sector-12 P.S., evicted him from his house at Plot No.83, locked the gate and initiated a proceeding under Section 144 of CrPC in the court of the learned Sub-Divisional Magistrate, Chas, but after perusal of the documents and hearing both the parties, the Sub-Divisional Magistrate, Chas, Bokaro passed an order in his favour. Thereafter, pursuant to the order of the Sub-Divisional Magistrate, Chas Bokaro, he submitted a complaint before the senior police officer against the illegal act of the Officer-in-charge, Sector-12, B.S. City P.S. and the senior police officer verified at his level and unlocked the sealed gate and allowed him to enter into the house and he is residing in the allotted house. He further stated that the suit filed by the plaintiff is totally baseless and is liable to be dismissed. He also

stated that on 08.08.2015, he has informed B.S. City P.S., Bokaro regarding missing of the original allotment document of Plot No.83, Lohanchal Awasiya Colony allotted in his name and Receipt No.556 is the receipt for the information. The plaintiff has filed the original allotment document of his Plot No.83, Lohanchal Awasiya Colony in court and has exhibited as Exhibit-3. On 08.11.2017, on the order of the Deputy Commissioner Bokaro, Pradeep Kumar Singh, the Secretary handed over the key of the lock of the main gate of his Plot No.83, Lohanchal Awasiya Colony to him and its receiving is U.A.S.L.C.S.Ltd./17-18/58.

During cross-examination on behalf of the plaintiff, he admitted at Para-32 that he had business relationship with Biramdeo Roy Choudhary. He further admitted at Para-37 that he cannot say as to whether the statements stated in Para-5, 9, 10, 13, 14, 15, 16,18,19, 21 and 23 was stated in the written statement or not. He also admitted at Para-38 & 40 that he cannot say as to on which date and month his signatures were taken on blank papers. He further admitted at Para-39 that he has never filed any complaint before the police or administration with regard to misusing his signatures made on blank papers by the plaintiff, as he came to know about the same after filing the suit, but he has also not filed any case even after coming to know about the same. He further admitted at Para-42 that he has not filed any document which suggests that Plot No.186 is not registered with Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited and he has said the same on the basis of the documents produced by the plaintiff. He further admitted at Para-43 that he has not filed any document to establish that Plot No.186 is a tribal land, but he came to know from the Society that the same is a tribal land and the land has not been registered till date and BIADA has cancelled the same. He admitted at Para-44 that he does not know as to whether Plot No.186 is registered or not. He admitted at Para-48 that he has returned the industry to BIADA and he is the owner of Choudhary Engineering Associate and Biramdeo Roy Choudhary is also a partner. He also

admitted at Para-59 that he had not filed any complaint to SDO, Chas, DIG with regard to the forgery committed with him and he has not filed any document related to the complaint. He admitted at Para-66 that he had withdrawn the original deed from the Registrar Office. He denied the suggestion at Para-68 that the plaintiff has made all the expenses of construction over Plot No.83 and he has not made any investment. He also denied the suggestion at Para-69 that before handing over Plot No.83 to him by the administration, the plaintiff had possession over the plot and the construction works. He denied the suggestion that he has not claimed over Plot No.83. He was not cross-examined on behalf of the Defendant Nos.02 and 03.

Point of determination no. 1 and 2

Whether the plaintiff and the defendant had mutually entered into an agreement on 19.03.1997 to exchange their plots?
AND
Whether there exists any valid contract between the parties?

24. It was the specific case of the plaintiff that vide exhibit-4, the plaintiff (plot no. 186) and the defendant no.1(plot no. 83) entered into memorandum of agreement dated 19.03.1997 for mutual transfer of plots. Both parties signed on each page of it. Both of them accordingly decided to request the society to exchange their plots for which they applied jointly an application mentioning that as per the agreement they have exchanged own plots and have taken possession accordingly from each other. It was the case of the plaintiff that pursuant to the agreement, the plaintiff had handed over the possession of plot no. 186 to the defendant no.1 and was ready to transfer the same to the defendant no.1 for which he had purchased some stamp paper in the name of defendant no.1. It was further case of the plaintiff that pursuant to the permission granted by the co-operative society, the defendant no.1 also acted and ultimately deed of transfer was prepared and presented for registry but later on the defendant no.1 unilaterally took back the document from the registry

and refused to register the deed of transfer of plot no. 83 to the plaintiff and hence the suit was filed for specific performance by the defendant no.1. ***On the other hand,*** the defendant no.1 asserted that the agreement- Ext.4 is forged and it has been prepared under complete deception. It was also asserted that the sign of the defendant no.1 has been obtained on blank page and subsequently it was typed, which has been misused and under such circumstances, the defendant no.1 had taken back the document presented for registration from the registry office.

25. While assailing the impugned judgement decreeing the suit directing the defendant no.1 to transfer the plot no. 83 in favour of the plaintiff and also directing the plaintiff to get the deed in connection with plot no. 186 transferred in favour of the defendant no.1, it is the specific case of the defendant no.1 that since the plot no. 186 was never registered in favour of the plaintiff, the plaintiff was not capable to transfer the same in favour of the defendant no.1 and was not ready and willing to perform his part of the agreement of the year 1997 and therefore no decree could have been passed upon the defendant no.1 to transfer the plot no. 83 in favour of the plaintiff pursuant to the so called agreement of the year 1997 for mutual transfer of plots. ***On the other hand,*** the plaintiff-respondent no.1 has argued that the impugned judgement and decree do not call for any interference. The arguments advanced by the parties have already been recorded above.

26. The evidence of P.W.-1, Arun Kumar Srivastava, who claims to be the agent and authorized representative of Biramdeo Roy Choudhary, reveals that it is not in dispute that the Co-operative Society had allotted plot no. 186 to the plaintiff vide allotment letter dated 25.08.1993 and plot no. 83 to the defendant no. 1 vide allotment letter dated 04.10.1992 and further the Co-operative Society registered the sub-lease relating to allotted plot no. 83 in the name of defendant no. 1 on 04.08.1995, but the plot allotted to the plaintiff, that is, plot no. 186, was not registered in the name of the plaintiff , which according to P.W.-1 remained under process. The plaintiff and the

defendant no. 1 entered into an agreement to exchange their respective plots and the memorandum of agreement executed between both the parties is dated 19.03.1997. The required affidavit regarding exchange of plot was also submitted before the Secretary, Cooperative Society in the month of June 2003.

It was the deposition of P.W.1 that as per the agreement dated 19.03.1997, the plaintiff had commenced construction of the house over plot no. 83 at his own expenses and subsequently on 25.07.2014, a joint request application was made to the Secretary of the Society and the parties deposited transfer fee of Rs. 11,000/- on 28.05.2015 through separate cheques. This was followed by the letter dated 10.06.2015 issued by the Cooperative Society regarding mutual exchange of plot allotting plot no. 83 to the plaintiff and allotting plot no. 186 to the defendant no. 1. Further, the Cooperative Society vide letter dated 11.06.2015 requested the District Sub-Registrar, Chas to transfer sub-lease relating to plot no. 83 in the name of the plaintiff. However, pursuant to the letter dated 11.06.2016 issued by the Co-operative Society to the District Sub-Registrar, Chas in relating to plot no. 83 permitting its transfer in the name of the plaintiff, a deed was prepared for such transfer in connection with plot no. 83, but it did not materialize and ultimately, it was the defendant no. 1 who had taken away the deed so presented for registration from the office of District Sub-Registrar, Chas.

P.W.-1 during his cross-examination has stated that he has not filed any document in connection with plot no. 186 relating to the plaintiff as the said document has not been registered till date. He also admitted that plot no. 186 was in possession of the Society till date. He further admitted that the house is lying constructed over plot no. 83 which was constructed about 10 to 12 years ago and the electricity connection was continuing in the name of defendant no. 1. He stated that on the basis of his application, the proceeding under Section 144 of Cr. P.C. was initiated by the Sub-Divisional Officer, Chas and on the order of the Sub-Divisional Officer, the Police Officer had

inspected and locked the house and both the parties were directed to approach the civil court for specific relief.

It is the admitted position that though sub-lease in connection with plot no. 186 was allotted in the name of the plaintiff, but the same was not registered in favour of the plaintiff. Further P.W.-1 during his cross-examination has stated that plot no. 186 was still in possession of the Co-operative society.

It stands admitted from the evidence of the P.W-1 that neither the sub-lease in connection with plot no. 186 was registered nor any such letter was issued by the Cooperative Society so as to request the District Sub-Registrar, Chas to transfer the plot no. 186 in favour of defendant no. 1. P.W.-1 during his cross-examination has clearly admitted that no document was filed in connection with plot no. 186 which was allotted to the plaintiff as the registration was not done and also stated that so far as the house constructed over plot no. 83 is concerned, it was constructed about 10 to 12 years ago and the electricity connection was continuing in the name of defendant no. 1.

PW-2 (Anup Kumar Srivastava) also supported the case of the plaintiff and has deposed on similar lines as that of P.W-1, the plaintiff.

PW-3 (Pradeep Kumar Singh) was the Secretary of Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited during the relevant period of the case. He stated that Plot No.186 was allotted to the plaintiff and Plot No.83 was allotted to the Defendant No.1 by Udaymi Awasiya Sahkari Lohanchal Complex Samity Limited. Plot No.83 allotted to Defendant No.1 was registered in his name by the Co-operative Society, but the plot allotted to the plaintiff could not be registered and was pending in the process. Both parties had submitted a joint application dated 20.03.1997 alongwith a photocopy of the Memorandum of Agreement dated 19.03.1997 in the office of the Society for permission to exchange their respective plots. The joint application dated 20.03.1997 has already been exhibited as Exhibit-5. Both the parties had also submitted joint applications dated

10.06.2003 and 25.07.2014 to the Society for transfer of the plots alongwith application dated 20.03.1997, Memorandum of Agreement dated 19.03.1997 and Affidavit dated 02.03.2006. The joint application dated 10.06.2003 has already been exhibited as Exhibit-7 and the joint application dated 25.07.2014 has already been exhibited as Exhibit-8. On 28.05.2015, both parties had submitted separate applications alongwith banker's cheques of Rs.11,000 each against transfer fees. Both the applications and the banker's cheques have already been exhibited as Exhibits- Y, Y/1 Z and Z/1. Thereafter, on 10.06.2015, the Cooperative Society had issued an order related to the exchange, which bears his signature as Secretary of the Society. The permission letter dated 10.06.2015 has already been exhibited as Exhibit-9. Thereafter, the Co-operative Society vide Letter dated 11.06.2015 had requested the District Sub-Registrar, Chas to transfer Sub-Lease No.3569 related to Plot No.83 in the name of the plaintiff, which bears his signature. Letter dated 11.06.2015 has already been exhibited as Exhibit-Z/2. After getting permission from the society, both parties prepared a Deed of Transfer for transfer of Plot No.83 in the name of the plaintiff and both parties signed and got countersigned by the Secretary of the Society and presented it in the office of the District Sub Registrar, Chas for its registration. He stated that the Defendant No.1 had voluntarily agreed to transfer his Plot No.83 to the plaintiff and the plaintiff made investment for construction of the house with consent of both parties. The claim of the plaintiff is correct. ***During cross-examination on behalf of the Defendant No.1***, he admitted that Plot No.186 has not been registered by the Society, whereas Plot No.83 has been registered by the Society in the name of the Defendant No.1. He also stated that an unregistered plot can be exchanged with consent of both parties. He further admitted that Plot No.83 is allotted in the name of the Defendant No.1 and he is residing there and the society fee is being deposited in his name. He admitted that all the plots in Lohanchal Society are in the names of plot holders. He denied the suggestion that Plot No.186 is not registered in the

name of any person and Plot No.83 is registered in the name of the Defendant No.1 and therefore, Plot No.186 and Plot No.83 cannot be exchanged. ***During cross-examination on behalf of the Defendant Nos.2 and 3***, he admitted that he does not have knowledge as to in which clause of the Bye-laws of the Society, it is mentioned that unregistered plots can be exchanged between two persons.

27. Thus, there is consistent evidence on record that registered sub-lease of plot no. 83 was duly executed by the cooperative society in favour of the defendant no.1 and the registry of sub-lease of plot no. 186 by the co-operative society in favour of the plaintiff was still under process. As per the agreement of exchange of plot dated 19.03.1997 also, the registry of sub-lease of plot no. 186 by the co-operative society in favour of the plaintiff was under process.

28. The plaintiff has placed on record enough materials to demonstrate that the agreement dated 19.03.1997 (Exhibit-4) was entered into between the parties and was also acted upon by way of various documents and also money deposited before the co-operative society for exchange of plot and even the plaintiff and the defendant no.1 executed a deed for registration of transfer of plot no. 83 to the plaintiff which was not registered as the same was taken back by the defendant no.1 from the registry office. On the other hand, the defendant no.1 has failed to prove his case that the documents including the agreement dated 19.03.1997 (Exhibit-4) and other documents have been prepared by the plaintiff by taking signatures on blank pages. ***The defendant no. 1 has been examined before the learned court at D.W-3. During cross-examination on behalf of the plaintiff***, he stated that he cannot say as to on which date and month his signatures were taken on blank papers and that he has never filed any complaint before the police or administration with regard to misusing his signatures made on blank papers by the plaintiff and stated that he came to know about the same after filing the suit, but he has also not filed any case even after coming to know about the same. He admitted that he had withdrawn the original deed from the

Registrar office. He denied the suggestion at Para-68 that the plaintiff has made all the expenses of construction over Plot No.83 and he has not made any investment. He also denied the suggestion at Para-69 that before handing over Plot No.83 to him by the administration, the plaintiff had possession over the plot and the construction works. He denied the suggestion that he has no claim over Plot No.83.

29. In view of the aforesaid discussions of the materials on record, this court is of the considered view that the plaintiff has proved that agreement dated 19.03.1997 (Exhibit-4) was duly entered into between the plaintiff and the defendant no.1 and both the parties have acted upon pursuant thereto to a great extent and even the co-operative society had issued specific letter to the registrar to register the plot no. 83 in favour of the plaintiff by the defendant no.1 and deed was also prepared for registry and presented for registry but the same was not registered and the defendant no.1 took the deed back from the registry office.

30. Even the learned trial court has considered the evidence thread bare to come to findings in favour of the plaintiff while holding that the plaintiff and the defendant had mutually entered into an agreement on 19.03.1997 to exchange their plots and that there exists a valid contract between the parties. There is no reason to differ with the aforesaid findings of the learned trial court with respect to issue no. 7 and 8 *[corresponding to point of determination no. 1 and 2 respectively]*. ***Accordingly, the point of determination no. 1 and 2 is decided in favour of the plaintiff-respondent no.1 and against the appellant-defendant no.1.***

Point of determination no.3

Whether the plaintiff had performed/ready to perform his part of the contract?

31. As per the agreement dated 19.03.1997 (Exhibit-4), M/s Bokaro Industrial Area Development Authority had allotted land to the aforesaid Co-operative Society and the aforesaid Co-operative society had in turn allotted plot bearing No. 83 measuring 0.10 acres to the

defendant no. 1 vide allotment letter dated 04.10.1992 and plot No. 186 measuring 0.10 acres in the name of the plaintiff vide allotment letter dated 25.06.1993. It has also been clearly mentioned in the agreement that the said Co-operative society had already registered the plot no. 83 in favor of defendant no. 1 on 04.08.1995 and the registration process of plot no. 186 in the name of the plaintiff was under process. It was specifically stipulated in the agreement that for the mutual convenience of the plaintiff and the defendant no. 1, they decided/agreed to exchange their plots. Both the parties decided to request the said Co-operative society to exchange their plots.

32. The records further reveal that joint applications were made by both the parties to the said Co-operative society for mutual exchange of plot which resulted in issuance of letter dated 10.06.2015 (Exhibit-9) marked with objection whereby the Society granted permission for mutual transfer of plots as requested. The said letter dated 10.06.2015 (Exhibit-9) is addressed to the plaintiff whereby the plaintiff was also directed to take necessary steps to do the sub-lease of the plots. The sub-lease of plot no. 186 continued to be under process and had not materialized in favor of the plaintiff so as to enable the plaintiff to transfer the same in favor of defendant no. 1. Thus, therefore there was no readiness on the part of the plaintiff to perform his part of the contract of transferring plot no. 186 in favor of defendant no. 1.

33. This is coupled with the fact that the plaintiff asserted in his plaint that he had already performed his part of the agreement as the plot no. 186 was already handed over to the defendant no.1 though admittedly, the plot no. 186 was not registered in favour of the plaintiff by the co-operative society.

34. It further transpires from the record that the Co-operative Society issued a letter to the Registrar (Exhibit-Z/2) dated 11.06.2015 stating that plot no. 83 was of the defendant no. 1 and he had requested to transfer the same to the plaintiff and all the dues of the society was already paid and the request was made to the Registrar, Chas, to transfer the sub-lease with respect to plot no. 83 in favor of

the plaintiff. Admittedly, no such corresponding letter has been referred to by the plaintiff with respect to plot no. 186 requesting the Registrar, Chas, Bokaro to transfer the plot no. 186 in favor of defendant no. 1 and apparently this is due to the reason that the sub-lease was never registered by the Co-operative Society in favor of the plaintiff with respect to plot no. 186 and therefore there was complete absence of readiness on the part of the plaintiff to perform his part of the contract of mutual transfer of plot in connection, as admittedly, the sub-lease with respect to plot no. 186 was never registered/executed by the said Co-operative society in favour of the plaintiff. The plaintiff made a statement in paragraph 21 of the plaint that the plaintiff had already performed his part of the contract by handing over possession of co-operative plot no. 186 to the defendant and is ready to attend the office of District Sub-Registrar at Chas to execute the deed of transfer and that he has already paid the stamp duty around Rs. 11,010/- (Rupees Eleven Thousand ten only) required for the purpose along with the stamp papers purchased in the name of defendant and he is ready to bear any ancillary cost which the defendant is well aware. However, in the absence of registry of sub-lease with respect to plot no. 186 by the cooperative society in favour of the plaintiff, there was no scope of the plaintiff to be able to transfer the plot no. 186 to the defendant no.1.

35. On the face of aforesaid aspect of the matter, there can be no doubt that there was no readiness on the part of the plaintiff to perform his part of the agreement of the year 1997 (exhibit-4) so as to enable him to transfer the sub-lease in favour of the defendant no.1 and certainly it cannot be said that the plaintiff had performed his part of the contract of the year 1997 by stating that he had handed over the plot no. 186 to the defendant no.1 and his statement that he was ready to go to registry office to execute the deed of transfer of plot no. 186 in favour of the defendant no. 1 is of no consequences as the plaintiff did not acquire title over plot no. 186 in absence of registry in his name.

36. Considering the fact that the agreement is of the year 1997 and also the fact that the agreement is not a transfer of title and in view of the judgements placed by the learned counsel for the respondent – plaintiff, there is no doubt that the agreement of exchange of plots was not compulsorily registrable. However, at the same time, in order to enable the plaintiff to transfer the plot no. 186 to the defendant no. 1 in exchange of plot no. 83, which was to be transferred by the defendant no. 1 in favour of the plaintiff, it was compulsory for the plaintiff to acquire title with respect to plot no. 186 and for that purpose the sub-lease with respect to plot no. 186 was required to be registered in favour of the plaintiff by the Co-operative society which was admittedly never done and was still under process since prior to 1997. In the absence of such registry with respect to plot no. 186 in favour of the plaintiff, the plaintiff was not capable of performing his part of obligation with respect to the contract of the year 1997 regarding mutual exchange of plot. Therefore, there can be no doubt that there was no readiness on the part of the plaintiff to perform his part of the contract of the year 1997 so as to be entitled to a decree seeking performance of the corresponding obligation of the defendant no.1.

37. In view of the admitted position that plot no. 186 was not registered in the name of the plaintiff, though it was allotted way back in the year 1995, it cannot be said that the plaintiff was ready to perform his part of the contract/agreement of the year 1997. This is in view of the fact that even as per the contract/agreement of the year 1997 the process of registry in favour of the plaintiff with respect to plot no. 186 was under process and the registry with respect of plot no. 83 in favour of the defendant no. 1 was done. Unless the sub-lease in connection with plot no. 186 was registered in the name of the plaintiff, the same was not capable of being transferred by the plaintiff to the defendant no. 1 in spite of the agreement of exchange of plots executed way back in the year 1997.

38. In view of the aforesaid circumstances, the plaintiff was incapable of performing his part of the contract of transfer of sub-lease in connection with plot no. 186 in favour of the defendant no. 1 in terms of the agreement of the year 1997 (exhibit-4) so as to seek relief of corresponding obligation upon the defendant no. 1 to transfer the sub-lease in connection with plot no. 83 in favour of the plaintiff.

39. The plaintiff has miserably failed to demonstrate his readiness to perform his part of the contract, that is, transfer of sub-lease in connection with plot no. 186 to the defendant no. 1 and under such circumstances, there was no scope for the learned court to decree the suit and directing the defendant no. 1 to transfer the sub-lease in connection with plot no. 83 in favour of the plaintiff.

40. This court finds that the learned trial court has completely failed to consider that the agreement of mutual transfer of plot between the plaintiff and the defendant no.1 was not capable of giving effect to, as the co-operative society had not transferred the plot no. 186 to the plaintiff by way of a registered deed although the plot no. 83 was transferred to the defendant no.1 by registered sub-lease. Even if the plaintiff was willing to perform his part of contract but was not ready/ capable to transfer the plot no. 186 to the defendant no.1 in absence of registration of sub-lease in his favour. ***The findings of the learned trial court in favour of the plaintiff with respect to issue no. 9 is set-aside.***

41. ***In view of the aforesaid discussions, the plaintiff had neither performed nor was in a state of readiness to perform his part of the contract of transfer of plot no. 186 to the defendant no.1 as the property was not yet transferred in favour of the plaintiff by the aforesaid cooperative society through a registered sub-lease. The point of determination no.3 is accordingly answered in favour of the appellant-defendant no.1 and against the plaintiff-respondent no.1.***

42. ***As a cumulative effect of the aforesaid findings with respect to point of determination no. 3, the learned trial court was not justified in directing the defendant no.1 to execute deed of transfer of sub-***

lease in favour of plaintiff when the plaintiff had neither performed nor was in a state of readiness to perform his part of the contract of transfer of plot no. 186 to the defendant no.1. Further, the learned court also erred in directing the plaintiff to get the plot no. 186 of co-operative society register in the name of defendant no. 01 within reasonable time when admittedly the plaintiff had no title with respect to plot no. 186 as the sub-lease in connection with plot no. 186 was not registered in the name of the plaintiff by the aforesaid co-operative society. It is also important to note that the aforesaid co-operative society is not even a party to the suit.

Point of determination no.4

Whether, in the event of allowing the present first appeal, the Respondent No.1 (Plaintiff) is entitled for any relief against the appellant (Defendant No.1) in terms of Relief No. (iii) and (iv) as prayed for in the plaint?

The relief no. (iii) and (iv) as prayed in the suit were –

> *In alternatively of the relief (i) & (ii), a direction may kindly be issued to the defendant to pay the current market value of the concerned building prevailing at the time of passing the decree on assessment of the same made by the property valuer appointed by the court.*
> *And*
> *For interest on the said amount from the date of decree till payment.*

43. Admittedly, the plaintiff-respondent no.1 has not filed any cross objection/cross appeal in connection with the alternative relief prayed for by the plaintiff in the suit. The learned trial court had also not framed any issue on the alternative relief as prayed for by the plaintiff.

44. ***So far as the point of determination no. 4*** is concerned, which is by way of alternative relief as prayed for by the plaintiff, this Court finds that though the plaintiff has stated that it was the plaintiff who had constructed the building over plot no. 83 and spent Rs. 35,00,000/- on the building, but the plaintiff miserably failed to prove this fact, inasmuch as, no documentary evidence in connection with spending of money with respect to construction of building over plot

no. 83 has been produced by the plaintiff; there is no evidence or details as to when the amount was spent for construction of the house. Further, even as per the documents produced by the plaintiff, at the time of payment of transfer fee of Rs. 11,000/- to the Co-operative Society on 28.05.2015, the lease rent with respect to the property belonging to the plaintiff was paid by the plaintiff and the lease rent with respect to the property belonging to the defendant no. 1 was paid by the defendant no. 1 [exhibit-Y, Y/1, Z, Z/1]. The agreement for exchange of plot is of the year 1997 [exhibit-4]. P.W-3, the secretary of the cooperative society has admitted that Plot No.83 is allotted in the name of the Defendant No.1 and he is residing there and the society fee is being deposited in his name. Further, P.W.-1 during his cross-examination has clearly stated that the electricity connection was still standing in the name of defendant no. 1.

45. In the aforesaid circumstances, the plaintiff having failed to make out a case for any relief as prayed for in relief nos. (iii) and (iv) in the plaint, no relief can be granted to the plaintiff in this regard. ***Accordingly, point of determination no. 4 is decided in favor of the appellant (defendant no. 1) and against the respondent no. 1 (plaintiff)***.

46. **<u>Summary: -</u>**

a. ***There is no reason to differ with the findings of the learned trial court with respect to issue no. 7 and 8 [corresponding to point of determination no. 1 and 2 respectively]. Accordingly, the point of determination no. 1 and 2 is decided in favour of the plaintiff-respondent no.1 and against the appellant-defendant no.1.***

b. ***The findings of the learned trial court in favour of the plaintiff with respect to issue no. 9 is set-aside and point of determination no.3 is accordingly answered in favour of the appellant-defendant no.1 and against the plaintiff-respondent no.1.***

c. ***Point of determination no. 4 is decided in favor of the appellant (defendant no. 1) and against the respondent no. 1 (plaintiff)***.

47. As a cumulative effect of the aforesaid findings, this appeal is hereby ***allowed.*** Consequently, the impugned judgment and decree is set-aside.

48. Pending interlocutory application, if any, is dismissed as not pressed.

(Anubha Rawat Choudhary, J.)

Date of Order:26.10.2026
Mukul/-
Date of Uploading:29.10.2026