

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 124 of 2023

1. Satyanand Mohan Raju, aged about 81 years, (*died and substituted v.o.d. 17.11.2025*)
1(a) Kamala Raju, aged about 77 years, w/o Late Satyanand Mohan Raju, resident of 2D, 3rd Floor, GNS Tower, Near Brijdham Ramdad Bhatta, VTC, Sakchi, P.O. and P.S. Bistupur, Town Jamshedpur, District East Singhbhum
2. Shiva Ram Mohan Raju, aged about 74 years, Son of Late D. Satyanarayan Mohan Raju, resident of Sundernagar Mill area by the side of perfect electricals, P.O. and P.S. Sundernagar, Town, Jamshedpur, District East Singhbhum

... .. **Plaintiffs/Appellants**

-Versus-

Shivjee Sharma, son of Late Jagannath Sharma, resident of Muiguttu, Masjid Road, Kitadih, P.O. Tatanagar, P.S. Parsudih, Town Jamshedpur, District East Singhbhum

... .. **Defendant/Respondent**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants	: Mr. Rahul Kr. Gupta, Advocate : Mr. Vipul Poddar, Advocate M/s Sugandha Jaiswal Poddar, Advocate
For the Respondent	: Mr. Pandey Neeraj Rai, Advocate Mr. Rohit Ranjan Sinha, Advocate Mr. Navneet Sahay, Advocate Mr. Rishav Raj, Advocate

Reserved on 15.12.2025

Pronounced On 16.03.2026

This first appeal has been filed against the judgment dated 31.05.2023 (decree signed on 09.06.2023) passed by the learned Civil Judge (Sr. Division) III, Jamshedpur in Original Suit No. 212 of 2016, whereby the learned court has dismissed the suit filed by the plaintiffs.

2. The suit was filed for the following reliefs: -

(a) For passing appropriate order directing the defendant to return original copy of registered Sale deeds as mentioned above to the Plaintiff as because the aforementioned two sale deeds no. 705/508 dated 07.02.2014 and no. 2736/2125 dated 17.05.2014 are itself null and void.

(b) For cost.

(c) Your any other relief or reliefs to which the plaintiffs are found entitled thereto according to law and equity.

3. The details of the properties have been mentioned in four schedules and the disputed property is relatable to Schedule-II and III of the plaint and both are admittedly part of Schedule-I property. Schedule II relates to sale deed no. 705/508 dated 07.02.2014 and Schedule III relates to sale deed no. 2736/2125 dated 17.05.2014. Schedule IV is part of schedule II and III.

4. It is not in dispute that the plaintiffs were the owner of Schedule I property and it is also not in dispute that aforesaid sale deeds dated 07.02.2014 and 17.05.2014 were executed by the plaintiffs in favour of the sole defendant.

5. *The case of the plaintiffs* was that no consideration had passed pursuant to the two sale deeds as the cheques mentioned therein were returned to the defendant at the insistence of the defendant and hence the sale deeds were null and void and the plaintiffs were entitled to return of the registered sale deeds, which were collected by the defendant from the registry office on the basis of registration slips, which were handed over by the plaintiffs to the defendant in good faith upon registration of the sale deeds but the cheques were returned by the plaintiffs to the defendant at the insistence of the defendant subsequent to the registration of the sale deeds. *On the other hand*, the case of the defendant is that it was agreed that the plaintiffs would encash the cheques mentioned in the sale deeds only after the property is mutated in the name of the defendant but mutation was refused by the concerned authority on the ground that the property belongs to the State of Jharkhand and hence the cheques were returned by the plaintiffs, but the entire consideration amount was paid by the defendant to the plaintiffs or their relatives upon instructions of the plaintiffs, partly through cash and partly through bank transactions.

6. The following issues were framed by the learned Trial Court: -

- i. Whether the suit is maintainable in its present form?*
- ii. Whether the plaintiff has any valid cause of action for the suit?*
- iii. Whether suit is barred by principle of waiver, estoppel an acquiescence?*
- iv. Whether suit is barred under the provisions of T.P. Act and Specific Relief Act?*

- v. *Whether the suit is undervalued or properly valued?*
- vi. *Whether the present suit is bad in law owing to withdrawal of Title Suit No. 74 of 2015 allegedly filed earlier by the plaintiff?*
- vii. *Whether plaintiffs were entitled to sell the property in question?*
- viii. *Whether two sale deeds bearing no. 705/508 dt.7.2.2014 and 2736 /2125 dt. 17.5.2014 executed by the plaintiff were with proper consideration payment resulting into transfer of valid title in favour of defendant?*
- ix. *Whether plaintiffs are entitled for decree of declaration prayed without claiming possession or who is in actual physical possession?*
- x. *Whether the plaintiff is entitled to any other relief or reliefs?*

The suit was ultimately dismissed.

Findings of the learned court

7. **Issue No. I,** Whether the suit is maintainable in its present form, was decided against the plaintiffs by citing the following reasons: -

- a) By referring to the judgment of the Hon'ble Supreme Court in the case of *Janak Dulari Devi versus Kapildeo Rai*, the learned trial court observed that the Supreme Court specifically referred to the prevalent practise in Bihar known as "*ta khubzul badlain*", the practise of the title passing only when there is exchange of equivalent and observed that it was held that this practice specifically proved that a duly executed sale deed will not operate as transfer in *preasanti* but postpones actual transfer of title from the time of execution and registration of deed, to the time of exchange of equivalent, that is registration receipt and the sale consideration.

The trial court observed that the practice is prevalent only in Bihar that until and unless the duly executed and registered sale deed comes to the possession of the purchaser, or until the right to receive the original sale deed is secured by the purchaser by obtaining the registration receipt, the deed of sale merely remains an agreement to be performed and will not be a completed sale and the same practice was recognised by the Hon'ble High Court of Patna.

The learned trial court further observed that the facts of the present case are different. The learned court observed that in the present case, it is admitted that the defendant has the possession of the sale deeds as well as the registration slips and further it is not the case of the plaintiffs that the practice of '*ta khubzul badlain*' was recognised in Jharkhand.

Moreover, the learned trial court recorded that to prove that the registration of sale deeds (*Exhibit 1 and 1/1*) had not passed the title even though the recitals in the sale deeds mentioned the transfer of possession and payment of consideration amount, the practice of "*ta khubzul badlain*" required retention of at least the registration slips (*chirkut*) and sale deeds with the seller. The learned trial court recorded that in the present case, admittedly both the sale deeds and their registration slips were with the defendant and held that hence the aforesaid case laws do not help the case of the plaintiffs. The court held that the facts of the present case clearly provide the possession of the sale deeds and the registration slips with the defendant.

- b) Further, it is a settled principle of law that courts are generally restricted to interpreting the contract within the four corners of the written document and referred to section 92 of the Evidence Act and observed that both sale deeds, Exhibit 1 and 1/1, provide that the possession of the lands described in the Schedule of the sale deeds [Schedule II and III of the plaint] had been transferred to the defendant.

The learned trial court then referred to Section 55(3) of the Transfer to Property which provides that where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power. The court held that the sale deeds were given to the buyer only on payment of full consideration amount.

The court further observed that even though the mode of payment of the sale consideration has been admitted to have been by way

of payment to the creditors of the plaintiffs and their relatives by the defendant, the fact remains that any oral evidence contrary to the sale deeds (Exhibit 1 and 1/1) documenting the payment of sale consideration is excluded by the documentary evidence.

- c) Further the plaintiffs have brought on record Exhibit 3 and 4 to show that the possession of the lands in the Schedule of the plaint had been transferred in favour of one Arun Kumar Thakur by way of Agreement for Sale dated 12.08.2016 and the registered general power of attorney dated 05.04.2017.

The plaintiffs cited judgement reported in *2018 (3) CCC 272 (SC)* wherein the Hon'ble Supreme Court held that an unregistered agreement for sale can be admitted as evidence of contract in a suit for specific performance as well as on the decision of the Supreme Court in its decision reported in *2004(4) JLJR (SC) 215*.

The learned trial court held that in the present case, as was evident from the date of the agreement for sale itself that the sale agreement was entered into after the sale deeds and by referring to Section 48 of the Transfer of Property Act, held that any right of subsequent transferee shall be subject to the right of earlier transferees.

The court also observed by referring to the agreement of sale that it showed that sale deed was to be registered within one month but no registered deed pursuant to the agreement of sale with third party was brought on record and rejected the contention of the plaintiffs that possession of the suit land had been transferred into the possession of Arun Kumar Thakur, the second party of agreement for sale marked as Exhibit 3 and that in pursuance of the agreement of sale he was carrying on construction.

- d) The court also observed that no instrument of cancellation of sale deeds (exhibit- 1 and 1/ 1) has been brought on record by the plaintiffs.

The Exhibit D and E show that a title suit for cancelation of the two sale deeds (Exhibit 1 and 1/1) was filed but the same was withdrawn with permission to file a fresh suit. However, no decree

or cancellation deeds cancelling the two sale deeds has been brought on record.

- e) It is a settled proposition of law that a transfer of immovable property of a value of Rs.100 or upwards is to be made by way of a registered instrument and such sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In the present case the Exhibit 1 and 1/1 itself provide that payment of consideration was made and same was acknowledged and the plaintiffs' right, title, interest vested with the defendant on the date of the execution of the sale deed.
- f) A reference was made to section 8 of the Specific Relief Act and the learned trial court was of the view that it cannot be held that the plaintiffs were entitled to the lawful possession of the sale deeds since the plaintiffs have not been able to establish the same had been wrongfully transferred from them to the defendant and hence no relief of return of sale deeds can be granted to the plaintiffs.

8. ISSUE NO. II Whether the plaintiff has any valid cause of action for the present suit?

It has been pleaded that the cause of action of the present suit arose when the defendant denied to return the sale deeds marked as Exhibits 1 and 1/1 through their reply dated 09.09.2016. The purported reply marked as X/1 for identification has not been proved by the plaintiffs by way of primary evidence. Moreover, in light of the fact that the suit itself for the relief claimed is not maintainable and the cause of action remaining unproved, it cannot be held that the plaintiffs had any cause of action for the present suit, since there is nothing on record to show that the sale deeds sought to be recovered from the defendant had been cancelled or had been wrongfully taken from the possession of the plaintiffs and that they were entitled to it. Since the suit was held to be not maintainable, the issue no. (ii) was also decided accordingly.

9. ISSUE NO. III: Whether the suit is barred by principle of waiver, estoppel and acquiescence?

ISSUE NO. IV: Whether the suit is barred under the provisions of Transfer of Property Act and Specific Relief Act?

ISSUE NO. IX: Whether plaintiffs are entitled for decree of declaration prayed without claiming or who is in actual physical possession?

The suit was held to be barred by principle of waiver, estoppel and acquiescence by holding that it was not open to the plaintiffs to deny the recitals of the sale deeds which were executed by them. The plea that the suit was barred by Section 34 of the Specific Relief Act was declined since in the present case the plaintiffs have not sought a declaration but has only sought a relief of return of the two sale deeds. In absence of the declaration to the effect that the sale deeds were invalid being sought, the prayer that the sale deeds ought to be returned to the plaintiffs was not maintainable. An unregistered agreement to sale (exhibit-3) can only be given as evidence to enforce specific performance of a contract whereas a general power of attorney (exhibit-4) in favour of any person only creates a right of agency and does not create any right and interest over the immovable properties.

10. Issue nos. III, IV and IX were taken together by the learned trial court and were decided the same in the following manner: -

A. In the present case, the plaintiffs have submitted that since the sale deeds Exhibit 1 and 1/1 are void documents, the same should be returned to the plaintiffs. It is pertinent to mention that the plaintiffs have not sought the declaration that the sale deeds were void and not binding on them or have claimed the relief for their cancellation.

The plaintiffs have submitted that in light of the fact that no consideration was paid, the entire sale deed was a sham transaction. Hence the plaintiffs being the executant of the sale deeds was denying the fact of it being so executed as was recited in the sale deeds which provided that the sale consideration had been paid and possession had been delivered to the defendant consequent thereto.

Hence, the fact that the sale deeds existing in favour of the defendant showed that the right, title and interest in property had been transferred in favour of the defendant, the plaintiffs being executants of the same cannot deny the recital of the same since the principle of estoppel is based on the principle of equity i.e. when one person has included the other person by his act, omission or declaration to believe something and the other person had taken some steps on believing that statement, it would be unjust and inequitable to allow the former to deny from his former statement.

Therefore, where two parties enter into an agreement by way of a deed as to certain facts, this implies that neither he nor his representatives or any person claiming under him can deny the facts mentioned and agreed in the deed. Hence, the plaintiffs as executants of the sale deeds cannot claim the same to be null and void.

- B.** Further the defendant has submitted that in absence of prayer for recovery of possession, no suit for return of the sale deeds will be maintainable since it is barred under Section 34 of the Specific Relief Act. In the present suit, the plaintiffs being the executants of the sale deeds have prayed that the same be returned since they are null and void. However, they have submitted that the possession of the lands described in the sale deeds was with them and they had transferred the possession of those lands for development in favour of one Arun Kumar Thakur from 12.08.2016. However, the present pleading is in contradiction to that as is recited in the sale deeds marked as Exhibit 1 and 1/1. Further the defendant submitted that he was in possession of the lands described in the Schedule of the sale deeds. It was submitted on behalf of the defendant that without seeking the relief for recovery of possession, relief for declaration would not be maintainable. The case laws cited by the defendant were held not helpful to the defendant since in the present case the plaintiffs have not sought a declaration but has only sought a relief of return of the two sale deeds.

C. Further the fact that any transfer of immovable property can only be made by way of registered deed as well as the fact that the stipulation of a registered deed of sale being executed by the plaintiffs had been made within one month of the execution of the agreement of sale dated 12.08.2016 and the fact of the plaintiffs not bringing on record the same i.e. the registered sale deed in favour of Arun Kumar Thakur shows that the agreement for sale had not been complied with by the plaintiffs themselves. The plaintiffs claimed that the possession is with Arun Kumar Thakur who has been put in possession of the schedule lands in pursuance of the agreement to sale dated 12.8.2016. However, the defendant has averred in his written statement that the possession of the land described in schedule II and III are in possession of the defendant.

Both plaintiffs and defendant by way of oral evidence have submitted that they are in possession of the lands described in the schedule of the plaint. Hence, documentary evidence adduced on behalf of both sides have to be looked into since it is a settled proposition of law that documentary, evidence excludes oral evidence.

The two sale deeds marked as Ext. 1 and 1/1 which are registered show that the possession of schedule II and III lands were with the defendant whereas the agreement to sale marked as exhibit 3 which have not been registered shows delivery of the property to Arun Kumar Thakur who was adduced as P.W. 2 in pursuance of which a general power of attorney dt. 5.4.2017 marked as Ext. 4. Further Section 54 of Transfer of Property Act which defines sale provides that an immovable property of the Value of Rs. 100/- and upwards can only be transferred by way of a registered /instrument of sale. An unregistered agreement to sale can only be given as evidence to enforce specific performance of a contract whereas a general power of attorney in favour of any person only creates a right of agency and does not create any right and interest over the immovable properties.

D. It is the case of the plaintiffs that since the deeds were without consideration the same ought to be returned to them as it was submitted that the defendant was in wrongful possession of the sale deeds. Hence in absence of the declaration to the effect that the same were invalid being sought, the prayer that they ought to be returned is not maintainable in light of the reasons as already discussed under ISSUE NO. I.

11. ISSUE NO. VI: Whether the present suit is bad in law owing to withdrawal of Title Suit No. 74 of 2015 allegedly filed earlier by the plaintiff was decided in favour of the plaintiffs.

ISSUE NO. VII: Whether plaintiffs were entitled to sell the property in question was decided by observing that even the defendant has not denied the capacity of the plaintiffs to make a valid transfer of the lands described in Schedules of the plaint.

12. ISSUE No. VIII: Whether two sale deeds bearing no. 705/508 dt.7.2.2014 and 2736 /2125 dt. 17.5.2014 executed by the plaintiffs were with proper consideration payment resulting into transfer of valid title in favour of defendant? was decided by observing that the defendant have pleaded that the plaintiffs, to save themselves from paying income tax, had instead of being paid by cheque, preferred to take payment by way of payment to their creditors, their relatives and security personnel as sale consideration. It has been held that even though the defendant has admitted that the payment of consideration was made by way of other modes than specified in the sale deed marked as Ext. 1 and 1/1 in light of the discussion as made under issue no. I, the sale deeds could not be held to be void on the ground that no sale consideration had passed to the plaintiffs. The trial court observed that it is a settled principle of law that a registered instrument of transfer providing for sale of immovable property shall be held to be a valid transfer on sale and consideration amount may be part paid or completely paid or even may be promised to pay and accordingly, the issue was decided against the plaintiffs.

13. ISSUE NO. V: Whether the suit is undervalued or properly valued? was decided by observing that in the present suit, the plaintiffs

had valued the suit to be Rs. 36 Lakh. Further the sale deed marked as Ext. 1 and 1/1 were executed for a total consideration amount of Rs. 1,02,30,000/- as is provided in the sale deeds. Hence the suit does not appear to have been undervalued. The trial court observed that since only return of aforesaid sale deeds was sought and no recovery of possession was sought, a total of only Rs. 250/- as court fees has been paid. The learned trial court also observed that the defendant has brought no evidence on record to show that the suit as valued was undervalued but have submitted that since the plaintiff was an executant of the sale deeds *ad-volrem* Court fees should have been paid. The court further observed that the suit has been held to be not maintainable in light of decision on ISSUE No. I and decided issue no. V accordingly.

14. ISSUE No. X: Whether the plaintiff is entitled to any other relief or reliefs? was decided by observing that the suit has been held to be not maintainable and the plaintiffs are not entitled to any other relief.

15. Arguments of the appellants.

- I. It has been argued by the learned counsel for the appellants that the learned Trial Court has travelled beyond the pleadings while deciding the suit which is not permissible under law.
- II. He submits that the learned Trial Court has failed to consider that when sale consideration amount has not passed, then there is no requirement of seeking cancellation of the sale deed as such sale deed is already null and void. This aspect has been dealt by the Hon'ble Supreme Court in the case of *Kewal Krishan v Rajesh Kumar & Ors.* reported in *2021 SCC Online SC 1097*. The learned trial court has also failed to consider that the sale consideration through cheques mentioned in the sale deeds were not encashed and were returned to the defendant.
- III. The learned Trial Court has wrongly construed the fact that as one of the firms, namely, Shree Balajee Heritage, in which the son of the defendant is the Director, has transferred certain amount to the plaintiffs and his family members could be said to be a part of the sale consideration.

- IV. The learned trial court has also failed to consider that title does not pass on mere registration of the sale deed, rather the title passes only after exchange of registration receipt and the sale consideration and has referred to the judgment passed by the Hon'ble Supreme Court in the case of *Janak Dulari Devi & Anr. v. Kapildeo Rai & Anr.* reported in (2011) 6 SCC 555.
- V. The learned counsel has also submitted that the learned Trial Court has failed to consider that in Jharkhand the practice of registration receipt is prevalent and the laws of Bihar have been adopted in terms with the Bihar Reorganization Act, 2000 and therefore, the practice in Bihar known as “*ta khubzul badlain*”, is also prevalent in the State of Jharkhand.
- VI. The learned counsel has also submitted that the learned trial court has failed to consider that an unregistered agreement for sale can be admitted as evidence of contract in a suit for specific performance as per the provision of Section 49 of the Registration Act and has referred to the judgement passed by the Hon'ble Supreme court in the case of *R. Hemalatha v. Kashthuri* reported in 2023 SCC Online SC 381 and submits that the learned Trial Court has failed to consider the unregistered agreement for sale dated 12.08.2016 (Exhibit-3) from where it is evident that the land in question is in possession of one Arun Kumar Thakur. The learned counsel submits that a valid transfer of title is complete only when entire sale consideration is paid and if sale consideration is not paid, then even if in the recital of the sale deed it is mentioned about possession, the possession will be deemed to be in favour of the plaintiffs.
- VII. The learned Trial Court has failed to properly appreciate Section 54 of the Transfer of Property Act and that it is settled principle of law that if sale deed is executed without consideration, then such sale is not at all valid in the eyes of law and the same is null and void. The learned Trial Court has failed to appreciate that documents marked as Exhibit-A and B were not brought on record

by the defendant by way of pleadings and could not be relied upon.

16. The learned counsel for the appellants has also relied upon the following judgments: -

(i) *1951 SCC 1189 (Kedar Lal Seal & Anr. Vs. Har Lal Seal) para 39 and 40*

(ii) *(2022) 18 SCC 489 (Kewal Krishan vs. Rajesh Kumar and Others) para 18-21;*

(iii) *2025 SCC Online SC 1961 para 29,34,35,36,37,38 [Shanti Devi (since deceased) through Lrs. Goran versus Jagan Devi and Others]*

17. Arguments of the respondent.

- a) Without admitting that the consideration with respect to the two-sale deeds (exhibit-1 and 1/1) were not paid, the sale deeds showed passing of possession to the defendant, therefore the suit was barred by Section 34 of the Specific Relief Act.
- b) Learned counsel for the respondent has submitted that his arguments would be touching upon the factual aspects and also legal aspect with respect to Section 54 of the Transfer of Property Act read with Sections 6, 30, 31 and 64 of the Negotiable Instruments Act and Section 34 of the Specific Relief Act.
- c) With respects to the facts, the learned counsel for the respondent has submitted that as per the case of the plaintiffs, first sale deed was executed on 07.02.2014 and the second one was executed on 17.05.2014, if the turn of events as narrated in the plaint and the natural course of conduct are taken is taken into consideration, then there was no occasion to execute the second sale deed dated 17.05.2014.
- d) He submits that on 07.02.2014, the sale deed was executed upon issuance of four cheques which was followed by three letters dated 22.02.2014, 28.03.2014 and 08.04.2014 in connection with first sale deed. The learned counsel submits that in the letter dated 22.02.2014, a letter was said to be served upon the plaintiffs that when the defendant went for mutation, he came to know that the

property cannot be mutated as the property is a government land and the defendant requested the plaintiffs to return the cheque and initiate the process of cancellation. The letter dated 28.03.2014 is a reminder to that effect and the letter dated 08.04.2014 is the letter said to have been issued by the plaintiffs by which the plaintiffs claimed that all the cheques were returned. The sale deed dated 07.02.2014 was marked exhibit-1 and letters dated 22.02.2014, 28.03.2014 and 08.04.2014 were marked Exhibit-2, 2/1 and 2/2 respectively.

- e) The learned counsel submits that since the defendant was conscious of the fact that the sale deed was to be cancelled and the cheques were to be returned with respect to the first sale deed, there was no occasion for the defendant to enter into second sale deed on 17.05.2014. The learned counsel submits that the description of the property in schedule-II and Schedule-III is identical except with respect to the area. He submits that the property in Schedule-II and Schedule-III appears to be adjoining to each other. The learned counsel then submits that this itself indicate that exhibit-2, 2/1 and 2/2 were forged and fabricated documents.
- f) The learned counsel then referred to the ***second sale deed dated 17.05.2014*** and submits that identical letters with respect to second sale deed have also been said to have been issued i.e. dated 01.06.2014, 15.06.2014 and 01.07.2014 which have been marked exhibit-2/3, 2/4 and 2/5 respectively. Both the set of letters with respect to the 1st sale deed and the 2nd sale deed have the same tenure and it appears that they all have been prepared at one point of time.
- g) The learned counsel has submitted that the aforesaid conduct is absolutely unnatural and therefore this aspect of the matter is to be kept in mind while considering the genuineness of Exhibit-2 to 2/5. He submits that the factual case which has been set up by the plaintiffs does not appear to be genuine and probable.

- h) The learned counsel then referred to the plaint filed in the previous suit which was marked exhibit-E and has highlighted the difference between paragraph 9 and 10 of the present plaint and corresponding paragraph 9 and 10 of the previous plaint and has submitted that in the present suit, much improvement has been made and there is a difference in the case of the plaintiffs.
- i) The learned counsel has then referred to Exhibit-3 which is said to be an agreement of sale to 3rd party which is dated 12.08.2016 and has submitted that this has to be seen with reference to paragraph 18, 19 and 22 of the plaint. He submits that the legal notice was issued by the plaintiffs on 23.08.2016 which was subsequent to exhibit-3 and its reply was given on 09.09.2016, but in paragraph 22 the term '*thereafter*' has been mentioned.
- j) The learned counsel has submitted that the plaintiffs has made out a case that the agreement of sale with 3rd party was made after the issuance of legal notice. He submits that the plaint reveals that after the notices the property was delivered to 3rd party right on the date of execution of agreement with 3rd party.
- k) The learned counsel then referred to Order VIII Rule 5 of CPC and has submitted that merely because the six letters in exhibit-2 series have not been specifically denied in the written statement, but still the court considering the aforesaid circumstances would certainly see as to whether the plaintiffs have duly proved the aforesaid exhibits in the light of the flow of events and the circumstances and as to whether the plaintiffs have been able to prove the facts as narrated in the plaint.
- l) The learned counsel then referred to ***Section 54 of the Transfer of Property Act*** and has submitted that it is to be seen as to whether passing of money was intended to be a condition precedent in the present case. He submits that for that purpose, the recital of the sale deed is relevant and the fact that the cheques were issued itself reveals that the money would come to the seller only upon presentation of cheque and apparently the execution of registered sale deed coupled with payment through cheque would fall under

promise to pay at a future date and cannot be termed as payment on the date of execution of the sale deed. The learned counsel submits that under such circumstances if the payment is not made by encashment of cheque for any reason whatsoever the seller has a remedy to sue for the consideration amount but the fact that the sale deed was registered and the title had passed on the date of registration cannot be disputed. The learned counsel has also submitted that the registered deed itself uses the word that the title and possession passed on the date of registration and therefore non-encashment of cheques at a later point of time will not make the sale deed null and void for want of consideration on the date of registration of the sale deed. The learned counsel has in particular referred to paragraph 3 of the sale deed. He submits that the execution and registration was intended to be on the same day and the title passed on the same day, the payments stood deferred as the cheques were to be encashed. The learned counsel then referred to Sections 6, 30, 31 and 64 of the Negotiable Instruments Act and has submitted that the recovery through cheque is either through presentation and in case the cheque is bounced through the legal process of proceeding under Section 138 of the Negotiable Instruments Act and in case the cheque is not presented or not honoured for any reason and recourse of Section 138 is not taken, then the party has a legal remedy of filing a suit for recovery of money. The learned counsel submits that therefore an objection has been taken in the written statement that instead of filing of money suit the plaintiff has chosen to file a suit for declaration of the sale deed null and void.

- m) The learned counsel has referred to the judgment passed by the Hon'ble Supreme Court reported in *(2009) 4 SCC 193 (Kaliaperumal vs. Rajagopal & Anr.)* and has placed the entire facts of the said case and has submitted that in the said case, the party intended to pass the entire consideration amount on the date of registration, but only part payment was made and therefore the Hon'ble Supreme Court was of the view that the registration of the

sale deed did not pass the title of the property. The learned counsel has submitted that the principle of law involved in connection with passing of title of the property has to be based on the facts and circumstances of each case and the intention of the party on the date of registration as to whether the parties intended to transfer the property only after receipt of the entire consideration by the vendor as a condition precedent is required to be examined. He has referred to paragraph 15 to 21 and also paragraph 22 of the aforesaid judgment.

- n) The learned counsel submits that the judgment which has been relied upon by the appellants reported in *(2022) 18 SCC 489 (Kewal Krishan vs. Rajesh Kumar & Others)* does not help the appellants in any manner, inasmuch as, in the present case, it is not a case that the sale deed was without payment of price or it did not provide for payment of price at a future date rather the sale deed was coupled with issuance of cheques which were to be encashed at later point of time.
- o) The learned counsel has submitted that the intention of the party would also reflect from the recital of the sale deeds and if the recitals are not clear then the conduct of the parties is required to be seen.
- p) The learned counsel also submits that the payment of consideration has been made through alternative mode to the plaintiffs or his nominees which is much more than the amount involved in the cheques involved in this case.
- q) The learned counsel has referred to Section 34 of the Specific Relief Act and has submitted that the suit was barred by the said Section. He submits that the corresponding section under the Specific Relief Act, 1877 was Section 42. He has referred to the judgement passed by Hon'ble Supreme Court reported in *(1973) 2 SCC 60 (Ram Saran and Another Vs. Smt. Ganga Devi)* and has referred to the facts of the said case, wherein the plaintiffs had brought a suit with respect to property which was partly in possession of the plaintiffs and partly in possession of the

defendants, but did not seek any claim for recovery of possession, and consequently, the Hon'ble Supreme Court held that the suit was barred by Section 42 of the Specific Relief Act of 1877.

- r) The learned counsel submits that in the present case, the learned trial court has recorded a finding that the defendant was in possession of the property. He submits that the plaintiffs have not sought any relief for recovery of possession, and therefore, suit was barred under Section 34 of the Specific Relief Act.
- s) The learned counsel has then referred to the judgement passed by Hon'ble Supreme Court reported in *(2014) 14 SCC 502 (Venkataraja and Ors. Vs. Vidyane Doureradjaperumal)* and referred to paragraphs 23 and 24 and submitted that once the written statement was filed stating that the defendant was in possession of the suit property, the plaintiffs ought to have amended the plaint seeking recovery of possession, but no such steps were taken by the plaintiffs and ultimately, the possession having been found in favour of the defendant, the suit was hit by Section 34 of the Specific Relief Act.
- t) The learned counsel for the respondent has referred to the point of possession. He submits that both the parties have led oral evidence on the point of possession, which are contrary to each other and in the pleadings also, they have claimed possession. He has submitted that the sale deed itself reveals that the possession of the suit property was given on the date of execution of the sale deed, and therefore, in the matter of conflicting oral evidence, the document which is a registered sale deed is required to be seen and the learned counsel then refers to Sections 91 and 92 of the Indian Evidence Act.
- u) The learned counsel submits that the oral evidence is excluded on the face of the documentary evidence i.e. registered sale deed which itself reveals that the possession was given on the date of registration. He has then submitted that the plaintiffs claimed to be in possession of the property and in order to come out of the rigors of Section 34 of Specific Relief Act, it was for the plaintiffs to

prove that the plaintiffs were in possession of the property. He submits that the burden of proof was on the plaintiffs to prove that they were in possession of the property, which the plaintiffs miserably failed to prove.

- v) The learned counsel has referred to Sections 101 to 104 of Evidence Act and submits that the plaintiffs having failed to discharge their burden with regards to claim of possession and on the basis of the registered sale deed the defendant has successfully demonstrated that the possession was delivered to the defendant on the date of registration, therefore, the suit was rightly held to be barred by Section 34 of the Specific Relief Act.
- w) The learned counsel for the respondent has also submitted that the applicability of Section 54 of the Transfer of Property Act is to be seen from another angle. He submits that in the judgements which has been referred to by him, it reveals that the factum of giving possession by itself is an important aspect to determine as to what the parties intended at the time of registration of the sale deed.
- x) The learned counsel submits that the fact that the possession was handed over to the defendant at the time of execution of the sale deeds itself speaks volumes that the parties intended that the property should pass on to the defendant on the date of execution of the sale deeds and the payment of consideration was at a future date upon collection of the amount covered by the cheques which were the mode of payment of consideration and therefore, the burden of proof was upon the plaintiffs by virtue of Section 103 of the Indian Evidence Act to prove that the possession was with the plaintiffs and not with the defendant.
- y) The learned counsel has also submitted that the plaintiffs has alleged that the defendant has acted in a clandestine and fraud manner, but there are no particulars of such clandestine manner in the plaint. For this, he has referred to the judgement passed by the Hon'ble Supreme Court reported in *(2010) 5 SCC 104 (Shanti Budhiya Vesta Patel and Ors. Vs. Nirmala Jayprakash Tiwari and Ors.)* paragraphs 22, 32, 33.

18. Rejoinder arguments of the appellants (plaintiffs)

- (i) The learned counsel for the plaintiffs, in rejoinder, has submitted that the suit property being a vacant land, the point of possession/dispossession has to be seen from a different angle. He has submitted that he shall cite a judgement to demonstrate that when the suit property is a vacant land what has to be seen is who has the right to possess the same. The learned counsel thereafter submits that the question of title being passed on the date of registration of the sale deed, does not arise in view of the specific stand taken by the defendant in paragraph 10 of the written statement that the cheque was to be encashed only after mutation. He submits that this itself reveals that the intention of the party was that the title would pass after mutation, and consequently, after payment of consideration and it is an admitted fact on record in paragraph 23 of cross-examination of D.W. 1 that the mutation has not been done in favour of the defendant.
- (ii) The learned counsel for the appellants has referred to Section 34 of the Specific Relief Act and has submitted that admittedly no prayer for recovery of possession has been made in the plaint as the plaintiffs remained in possession of the property. Since, the plaintiffs were in possession, the proviso to Section 34 is not attracted and therefore, the suit was not hit by Section 34 of the Specific Relief Act. He also submits that the fact that the plaintiffs were in possession was not in dispute as the plaintiffs were the owner of the suit property which was vacant land. Further, it was for the defendant to plead and prove the exact date of possession which is totally absent in this case and they are trying to coverup by referring to the sale deeds which is also not in accordance with law.
- (iii) The learned counsel for the appellants has further submitted that the only material evidence, which has been brought on record with regard to possession of the defendant, are the sale deeds themselves. He has submitted that admittedly the consideration

amount as mentioned in the sale deeds was not paid and therefore, the defendant is not permitted to rely on the sale deeds itself to claim that he was in possession of the property as the sale deeds are void. He has referred to paragraph 1 of the sale deed to submit that the entire consideration amount was stated to have been paid and the seller was said to have delivered possession of the suit property and since the consideration itself was not paid, the defendant cannot claim possession. The learned counsel has referred to Exhibit-2, 2/1 and 2/2 and submitted that even as per these exhibits the defendant has indicated that the property was not capable of being mutated in his name as the property was declared to be a government land and the vacant land was of no use of the defendant. In such circumstances, the defendant cannot claim possession.

- (iv) Learned counsel submits that the payment for consideration was the most important part of the transaction and only upon payment the right would accrue under the deeds. Since, there was no payment, therefore, the sale deeds were *void ab-initio*.
- (v) He has reiterated the judgment which is cited by him reported in *(2025) SCC OnLine SC 1961 [Shanti Devi (Since Deceased) through Lrs. Goran vs. Jagan Devi and Others]* and has submitted that the earlier judgment passed in the case of *Kewal Krishnan v. Rajesh Kumar* reported in *(2022) 18 SCC 489* was duly considered in paragraph 34 of the judgment and has submitted that it has been held that if a sale deed in respect of immovable property is executed without payment of price, it is not a sale at all in the eyes of law, specifically under Section 54 of the Transfer of Property Act, 1882 and such a sale without consideration would be void and would not affect the transfer of the immovable property. He submits that as per sale deed, the price was to be paid through cheques and in fact the consideration amount was not paid in the manner stated in the sale deeds themselves.

- (vi) The learned counsel for the appellants has also relied upon the judgment passed by the Hon'ble Supreme Court reported in **(2003) 12 SCC 219 (Ashan Devi & Anr. vs. Phulwasi Devi & Others)**. He has referred to paragraph 23 and 24 of the aforesaid judgment to submit that the possession in connection with the vacant land is to be seen in the light of the said judgement when admittedly, the present property is vacant land.
- (vii) The learned counsel has then tried to distinguished the judgment relied upon by the learned counsel for the respondent which is reported in **(2009) 4 SCC 193 (Kaliaperumal vs. Rajagopal & Anr.)** and has in particular referred to paragraph 18 onwards to submit that in a case where the sale deed itself reveals that the consideration amount is paid and if it is found that the consideration amount was not paid, then the sale is void. He has submitted that the intention of the parties is required to be gathered from the facts and circumstances and particular the recital of the sale deed itself. In the present case, the parties intended to transfer the property upon payment of consideration amount through cheques and merely because it was mentioned in the sale deeds that the possession was being delivered, the same is not conclusive. The possession was to be delivered coupled with payment of the consideration amount which was never paid and consequently the sale deeds were required to be declared *void-ab-initio*.
- (viii) The learned counsel has then referred to Section 54 of the Transfer of Property Act and has submitted that since the sale deed itself revealed that the consideration was paid and it was nobody's case that the consideration will be paid in future or it was partly paid or partly to be paid in future, therefore, none of the three categories regarding payment of consideration under Section 54 of the Transfer of Property Act is satisfied in the present case and the consideration having not been paid in terms of the sale deeds itself, the sale deeds were void.

19. Further arguments of the respondent.

- a) The learned counsel for the respondent in furtherance to and in response to the submissions made in rejoinder by the learned counsel for the plaintiffs (appellants) has referred to the evidence of the sole defendant and has submitted that in paragraph 6, he has made a statement that he was in possession of the property, but during cross-examination, numerous suggestions have been given, but there is no such suggestion on the point of possession. However, this Court finds that even in his evidence-in-chief, there is no mention that he was given possession on the date of execution of the sale deed, though in paragraph 6 he has made a reference that he was in possession of the property.
- b) On the date with respect to the date of possession, the learned counsel for the respondent has only relied upon the registered sale deeds which itself reveal that on the date of registration the possession was handed over to the defendant.
- c) The learned counsel has further submitted that the plaintiffs never asked for any local inspection of the property rather none of the parties asked for local inspection to find out the actual possession, but it was for the plaintiffs to take steps for local inspection, but no steps having been taken as the burden of proof was upon the plaintiffs that they were in possession of the property and therefore the plaintiffs have failed to establish their case.
- d) The learned counsel has also submitted that as per the sale deeds, two aspects are very clear; one is passing of cheques and the other is passing of possession. He submits that these two aspects were enough to hold that the sale deeds were duly executed upon payment of consideration and the possession also passed simultaneously.
- e) The learned counsel has then referred to Section 114 of the Indian Evidence Act to submit that the very fact that the defendant applied for mutation itself reveals that he after having taken possession went to the authority for mutation and then

came to know that the property cannot be mutated in his name as the property was a government land and this aspect is apparent from the letters exhibited by the plaintiffs themselves to demonstrate that the defendant had gone to the Circle Office for the purposes of mutation. The learned counsel has also submitted that the fact that the registration slips were given to the defendant also reveals that the possession also must have been given to the defendant.

- f) So far as the judgment passed in the case of *Shanti Devi (Supra)* is concerned, the learned counsel for the respondent submits that in the said case, there was also a prayer for recovery of possession.
- g) With respect to the judgment passed in the case of *Ashan Devi (Supra)*, the learned counsel submits that the present case also relates to the question as to who was in possession of the property and in the said judgment, the Hon'ble Supreme Court has observed that in case of property being vacant, the possession has to be seen from a different angle, but once the parties are in dispute on the point of possession, the evidence has to be seen as to who was in possession of the property. The sale deeds themselves were enough evidence that the possession was handed over to the defendant on the date of execution of the sale deeds. He submits that it was not even the case of the plaintiffs that the possession is to be derived on the basis of title and nobody was in actual physical possession of the property.
- h) The learned counsel has also relied upon the judgment passed by the Hon'ble Supreme Court reported in *(2011) 6 SCC 508 (Noida Entrepreneurs Association vs. Noida & Others)* and has referred to paragraph 25 to submit that although there was no plea seeking declaration of title, but still the proviso to Section 34 will come into play as once the sale deeds are declared void, the title would naturally go back to the plaintiffs. He submits that the plea of declaration of the sale deeds are void amounts to

seeking a declaration of title and therefore proviso to Section 34 is very much attracted in the present case.

20. The case of the plaintiffs in short is as under: -

- a. It was the case of the plaintiffs that schedule-I property was recorded in last survey settlement in record of rights in the name of State of Bihar and was shown in possession of the State. Consequently, a Title Suit No.-18/2003 of 1973 was filed by the father of the plaintiffs against the State of Bihar, which was decreed in their favour in the year 1976 and the property was also mutated in their name. The plaintiffs executed two registered sale deeds vide Registered Sale Deeds dated 07.02.2014 and 17.05.2014 which is the subject matter of dispute in the present case as contained in Schedule II and III of the plaint which are part of Schedule I property.
- b. The specific case of the plaintiffs is that at the time of execution of *registered Sale Deed dated 07.02.2014*, total consideration amount of Rs 62,70,000/- was paid through four cheques all dated 07.02.2014 which were in the custody of the plaintiffs.
- c. It was their further case that on 22.02.2014, defendant gave a letter to the plaintiffs stating that the property registered in favor of defendant for total consideration amount as mentioned above shall be paid to plaintiffs by defendant only after mutation is done in his favour. The defendant also mentioned that he was informed that the mutation of the land cannot be done as the land is recorded in the name of State of Jharkhand although the lands were subject matter of decree in Title Suit filed by the plaintiffs against the State of Bihar/Jharkhand.
- d. Thereafter, the defendant directed the plaintiffs to return all the cheques mentioned in the sale deed dated 07.02.2014 and also asked the plaintiffs to take step for the cancelation of Sale deed. It was also stated that mutation was not the pre-condition for execution of registration and payment of sale consideration by the defendant. However, the defendant again issued a letter dated 28.03.2014 by referring to his earlier letter dated 22.02.2014

asking the plaintiffs to arrange return of all the cheques issued in favor of the plaintiffs immediately, otherwise the defendant shall take necessary legal action against the plaintiffs. Consequently, the plaintiffs returned all the cheques to the defendant vide letter dated 08.04.2014 on which the defendant had put his signature in token of proof of the receipt of all the four cheques.

- e. It is further case of the plaintiffs that similarly, so far as *other registered sale deed dated 17.05.2014* is concerned, total consideration amount of Rs. 39,60,000/- was also paid through four cheques all dated 17.05.2014 as mentioned in the sale deed itself. As happened with respect to the aforesaid sale deed dated 07.02.2014, the plaintiffs, at the insistence of the defendant, returned all the four cheques on 01.07.2014, which the defendant had given to plaintiffs on the day of executing the sale deed dated 17.05.2014. The defendant had put his signature in token of proof of the receipt of four numbers of cheques, mentioned above.
- f. Further case of the plaintiffs was that the defendant after receipt of his cheques from plaintiffs, which were not encashed, managed to obtain the sale deeds from the office of the Registrar at Jamshedpur in clandestine manner without giving information to the plaintiffs on the basis of registration slips, which were handed over to the defendant in good faith by the plaintiffs.
- g. It was also stated that the possession of the property in schedule II & III was not delivered to the defendant by the plaintiffs, although the registration slips were handed over on the basis of the earlier cheques received by the plaintiffs.
- h. The plaintiffs thereafter issued a legal notice dated 23.08.2016 asking the defendant to return both the registered sale deeds. The defendant responded the legal notice vide reply dated- 09.09.2016, whereby the defendant claimed to be the owner of two registered sale deeds. It was the case of the plaintiffs that the defendant had intentionally and deliberately cheated the plaintiffs by taking back all his eight cheques and after getting the Sale Deed registered in his favor.

- i. The case of the plaintiffs was that the two registered sale deeds did not convey any title to the defendant and it was repudiated by the plaintiffs vide notice dated 23.08.2016 and therefore the defendant was not entitled to claim any right, title or interest or possession with respect to schedule II & III land.
- j. It was further case of the plaintiffs that they have entered into an agreement in favor of another person for transfer of lands mentioned in Schedule IV, the possession of the same was also delivered to said person for construction of building.
- k. The case of the plaintiffs was that the two registered sale deeds dated 07.02.2014 and dated 17.05.2014, executed in favor of defendant, has no legal value in the eyes of law, because sale consideration was not paid to the plaintiffs and delivery of possession were also not given to defendant even after registration and execution of registered sale deeds. Consequently, the case of the plaintiffs was that the two registered sale deeds have no value in the eyes of the Law, being without consideration and both the sale deeds were required to be declared null and void on this count.
- l. It was asserted that only fixed court fee of Rs. 250/- was payable as the suit was of declaratory nature.

21. The case of the defendant in short is as under: -

- i. It was asserted that the suit was not maintainable in the present form; there was no valid cause of action; it was barred under the provisions of Transfer of Property Act; suit was barred by the principles of estoppels, waiver and acquiescence; the suit was bad for mis-joinder and non-joinder of necessary parties and causes of action for the suit and the suit was barred under the provisions of Specific Relief Act and the suit was grossly under-valued.
- ii. It was asserted that the plaintiffs have prayed for return of two sale deeds whose value was Rs. 62.70 lacs and 39.60 lacs respectively total being Rs. 1,02,30,000/- but the suit was valued for Rs. 36 lakhs only. It was also asserted that the plaintiffs assume that the Sale deeds were null and void and avoided to

make a prayer of cancellation of Sale deeds and this was done evidently to evade payment of full ad-valorem Court fee.

- iii. Another objection was taken by stating that the plaintiffs had filed one Title Suit No. 74/2015 against the defendant seeking cancellation for aforesaid two Sale deeds by paying ad-valorem court fee of Rs.50,000/-. Later on, the plaintiffs withdrew the said Title suit unconditionally but this vital fact was suppressed by the plaintiffs before the court. It was asserted that the plaintiffs are estopped from assuming and alleging that the said two sale deeds were null and void and the same were not acted upon.
- iv. It was agreed between the parties that the cheques issued by the defendant and mentioned in sale deeds dated 07.02.14 and 17.05.14 will be encashed by the plaintiffs only after mutation in respect of the lands mentioned in the said two deeds and in pursuance of the same, the plaintiffs retained those cheques with them; still the defendant paid the entire consideration money of Rs. 1,02,30,000/- to the plaintiffs and/or their relatives as per their requirement and direction, partly by cash and partly by bank transaction, on receipt of the aforesaid cheques mentioned in the two sale deeds. Therefore, the entire consideration money was paid. This is why the plaintiff neither filed Money Suit claiming the consideration money mentioned in the said Sale deeds nor proceeded with earlier Title Suit No. 74/2015 as mentioned above for cancellation of those deeds.
- v. It was further case of the defendant that the plaintiffs voluntarily gave the registration slips in respect of the two sale deeds and also delivered physical possession of the lands mentioned in the schedules (Schedule-II and III).
- vi. The defendant admitted to have collected original sale deeds from the registration office on completion of registration of the same and they even applied for mutation of the land.
- vii. It was asserted that having received the full consideration amount with respect to the two sale deeds, the plaintiffs were estopped from challenging the validity of the same.

- viii. The defendant having paid the full consideration money as per direction of the plaintiffs and also taken physical possession of the suit (purchased) lands, there is no question of cheating in any way. As a matter of fact, after taking possession of the lands purchased by him through two sale deeds, the defendant commenced construction of several residential premises thereon after levelling the same by expending huge amount money. Out of greed to grab those premises or alternatively to extort money illegally, the present suit has been filed by the plaintiffs at the instigation of some mischief mongers.
- ix. With respect to the transaction with another person, it was asserted that upon careful perusal of Schedule I and IV of the plaint, it would be evident that land mentioned in schedule IV was never in possession of the plaintiffs. The major part of Schedule IV is in possession of the defendant since the date of execution and registration of the two sale deeds in question and that the defendant was raising construction of the buildings in Schedule II & III lands which he had purchased by the two sale deeds. It was also asserted that admittedly Schedule IV includes major Schedule II & III purchased by the defendant and asserted that except the defendant, no other person is making any construction on any part of Schedule I land.
- x. It was asserted that the plaintiffs had no cause of action and was not entitled to any relief. However, along with the written statement, no document as such was annexed.

22. Points for determination

- i. Whether the suit is maintainable in its present form?*
- ii. Whether the plaintiffs have any valid cause of action for the suit?*
- iii. Whether suit is barred under the provisions of section 34 of the Specific Relief Act?*
- iv. Whether the suit is undervalued or properly valued?*
- v. Whether the present suit is bad in law owing to withdrawal of the Title Suit No. 74 of 2015 filed earlier by the plaintiffs?*
- vi. Whether two sale deeds bearing no. 705/508 dt.7.2.2014 and 2736 /2125 dt. 17.5.2014 executed by the plaintiffs*

were with payment of consideration resulting into transfer of valid title and possession in favour of defendant?

Findings of this Court.

23. On behalf of the plaintiffs, altogether three witnesses were examined including the plaintiff no.1. Plaintiff no. 1 was examined as P.W. 1; son of plaintiff no. 2 was examined as P.W. 3 and claims to be aware of all the transactions. P.W. 2. is Arun Kumar Thakur who is said to be the general power of attorney holder with whom the plaintiffs have entered into an agreement of sale dated 12.08.2016 with respect to Schedule-IV property. Plaintiffs exhibited the following documents: -

X	Photo copy of notice dt. 23.8.2016 marked for identification
X/1	Photo copy reply to notice dated 9.9.2016 marked for identification
Ext. 1	Certified copy of sale deed no. 705/508 dated 7.2.2014
Ext.1/1	Certified copy of sale deed no. 2736/2125 dated 17.5.2014
Ext.2	Letter dt. 22.2.2014
Ext.2/1	Letter dt. 28.3.2014
Ext.2/2	Letter dt. 8.4.2014
Ext.2/3	Letter dt. 1.6.2014
Ext.2/4	Letter dated 15.06.2014
Ext.2/5	Letter dated 01.07.2014
Ext. 3	Agreement for sale dated 12.08.2016
Ext.4	General power of attorney dated 05.04.2017
Ext.5	Notice under Section 142(1) of Income Tax Act, 1961
Ext.6	Certified copy of order passed in ABA No. 103 of 2019

24. On behalf of the defendant, altogether two witnesses were examined. The sole defendant was examined as D.W. 1 and D.W. 2 is the son of the sole defendant. Following documents were exhibited on behalf of the defendant: -

Ext. A	Letter dated 16.02.2015
Ext. B	Letter dated 30.08.2018
Ext. C	Bank statement from 23.01.2014 to 23.01.2015
Ext. D	Certified copy of order passed by Civil Judge, Senior Division I dated 20.08.2016 in T.S. No. 74 of 2018
Ext. E	Certified copy of Complaint of T.S. No. 74 of 2016
Ext. F	Certified copy of order passed by the Hon'ble High Court in A.B.P. No. 4166 of 2016
Ext. G	Receipt of Kalyani Dey issued on behalf of Shree Balaji

	Heritage
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25. PW-1 (Satyanand Mohan Raju), the plaintiff no.1, filed his examination-in-chief on affidavit and supported his case with respect to right, title, interest and possession with him and his brothers in connection with Schedule I property stating that his father purchased the Schedule I property. He also stated that in last survey settlement, the lands were recorded in the name of State of Bihar, now Jharkhand, showing his father in possession in the records of right. Accordingly, his father filed Title Suit No.18/2003 of 1973 against State of Bihar, which was decreed by the court of learned Additional Sub-judge at Jamshedpur in the year 1976, in favour of his father and the decree was confirmed in appeal by the High Court and his father was declared as the owner of the property and thereafter, rent was fixed by the competent authority.

He stated that the plaintiffs transferred the Schedule- II & III Lands in favour of the defendant vide registered Sale Deed dated 07.02.2014 for the sale of 206 decimals of land and registered Sale Deed dated 17.05.2014 for the sale of 132 decimals of land.

The registered Sale Deed dated 07.02.2014 was in favour of the defendant for a total consideration amount of Rs. 62,70,000/- vide four cheques totaling to Rs.62,70,000/- issued to the plaintiffs which were mentioned in Sale Deed dated 07.02.2014. However, the plaintiffs did not present and did not encash the cheques in the bank, as the defendant had told them that the defendant would intimate when fund will be available in his account and the cheques remained in the custody of the plaintiffs. On 22.02.2014, the defendant gave a letter to him informing that he will pay the total consideration amount only after mutation of the land is done in his favour as the defendant was informed that the land cannot be mutated since the land is recorded in the name of State of Jharkhand and the defendant directed the plaintiffs to return all the cheques and asked the plaintiffs to take step for cancelation of Sale Deed as per law. On 28.03.2014, the defendant again gave a letter to him for returning all the cheques and accordingly, the plaintiffs returned all the cheques to the defendant and got a receipt dated 08.04.2014 from the defendant. Similarly, on 01.07.2014, the plaintiffs also returned four

Cheques to the defendant amounting to Rs.9,90,000/- each to the defendant, which the defendant had given to the plaintiffs on the day of executing the other sale deed dated 17.05.2014 and got a receipt dated 01.07.2014 from the defendant.

After receipt of the unencashed cheques, the defendant managed to obtain the original Sale Deed dated 07.02.2014 and original Sale Deed dated 17.05.2014 from the office of the Registrar at Jamshedpur in clandestine manner without giving information to the plaintiffs on the basis of registration slips, which were handed over to the defendant in good faith by the plaintiffs. He further stated that the plaintiffs had not delivered the possession of the lands mentioned in Schedule-II & III to the defendant, although he had handed over the registration slips to the defendant earlier on the basis of the cheques received by the plaintiffs.

P.W-1 claimed that Sale Deed dated 07.02.2014 and Sale Deed dated 17.05.2014 have no legal value in the eyes of law, as the consideration was not paid to the plaintiffs and the delivery of possession was not given to the defendant and therefore, both sale deeds are null & void.

P.W-1 further stated that he sent a legal notice 23.08.2016 to the defendant asking him to return both original sale deeds and the defendant replied vide reply dated 09.09.2016 claiming himself to be the owner of the lands and refusing to return the original sale deeds. P.W-1 further claimed that the defendant is not entitled to any right, title or interest or possession of Schedule- II & III lands.

P.W-1 further stated that they have executed another agreement in favour of another person for transfer of the lands mentioned in Schedule-IV and they have delivered possession of Schedule-IV lands to him, who is raising construction of building.

P.W-1 stated that the cause of action for the suit arose on and from 09.09.2016 within the jurisdiction of the learned trial court, when the defendant refused to return the original sale deeds to them vide his reply dated 09.09.2016 and claimed himself to be the owner of the Schedule-II & III lands by virtue of null & void registered sale deeds.

On fresh oath, P.W-1 identified xerox copy of legal notice dated 23.08.2016 as Mark-X and xerox copy of reply dated 09.09.2016 as

Mark-X/1 and he exhibited C.C. of Sale Deed No.705/508 dated 07.02.2014 as Exhibit-1, C.C. of Sale Deed No.2736/2125 dated 17.05.2014 as Exhibit-1/1 and letters dated 22.02.2014, 28.03.2014, 08.04.2014, 01.06.2014, 15.06.2014 and 01.07.2014 as Exhibits-2, 2/1, 2/2, 2/3, 2/4, 2/5 (with objection) respectively.

During cross-examination, P.W-1 admitted that both the original sales deeds are in the possession of the defendant and the plaintiffs have not filed any suit for cancellation of the sale deeds. He admitted at Para-33 that the disputed land and other lands which were decreed in favour of his father were examined at the time of assessment of rent. He admitted at Para-34 that after death of his father, their names were entered into Register-II in the Circle Office, but he cannot say as to whether he has filed the mutation documents in court or not. He further admitted at Para-35 that the land-in-question was currently registered in the Khata of the Government and therefore, his father had filed a title suit claiming that the land belonged to him and had obtained a decree and thereafter, the Government had preferred appeal before the Hon'ble High Court. The appeal has been dismissed confirming the decree granted to his father.

He also admitted at Para-36 that he has entered into agreements and sale deeds with four different persons for developing the land and the developer is developing the land. At Para-37, he denied the suggestion that the defendant is carrying out the development. At Para-41, he denied the suggestion that the cheques mentioned in both sale deeds were returned because the amount of the cheques were paid to him and the family members of his brothers. At Para-42, he denied the suggestion that letter and receipt given by the defendant, which are Exhibits- 2/3 to 2/5, are fake and the same have been made by him. He admitted at Para-43 & 44 that the defendant had asked them to cancel the sale deeds, but they have not gone to the registration office for cancellation of the sale deeds. He further admitted at Para-47 & 48 that a Title Suit No.74/2016 was filed before the learned Civil Judge (Senior Division)-I against the defendant for cancellation of the two sale deeds, but he has withdrawn the suit vide order dated 20.08.2016. He also admitted at Para-49 that he

does not know as to whether he had taken any permission before withdrawal of the suit for filing another suit. At Para-50, he denied the suggestion that the possession has been given to the defendant and the plaintiffs have got the money. At Para-55, he denied the suggestion that the sale deeds executed in favour of the defendant is valid.

26. PW-2 (Arun Kumar Thakur) filed his examination-in-chief on affidavit stating that the plaintiffs have executed (a) Sale Agreement dated 12.08.2016 in which plaintiffs are the first party and M/s. Tridev Corporation represented by its partners are second party and the possession 10 bighas (3 Acres 34 Decimals) of land was delivered to M/s. Tridev Corporation for raising superstructure and multistoried building and (b) A General Power of Attorney dated 05.04.2017 was executed by the plaintiffs in favour of Mr. Arun Kumar Thakur. He further stated that Sale Agreement dated 12.08.2016 was executed between the plaintiffs and Tridev Corporation for raising superstructure of multistoried building, after the defendant had taken back his all eight cheques given to plaintiffs towards sale consideration and had suggested the plaintiffs to get the sale deeds cancelled. He further stated that prior to execution of Sale Agreement and General Power of Attorney, the plaintiffs and their co-sharers were in possession with their full right, title and interest without any interference from any corner and from the date of Sale Agreement dated 12.08.2016, he is in possession with full right, title and interest without any interference from any corner. He stated that the claim of plaintiffs is genuine and bonafide.

During cross-examination, he exhibited Sale Agreement dated 12.08.2016 as Exhibit-3 (with objection that witness is only competent to testify with respect to his signature appearing on the document). He exhibited the General Power of Attorney dated 05.04.2017 as Exhibit-4 (with objection that witness is only competent to testify with respect to his signature appearing on the document). He admitted at Para-12 that both the documents have not been registered.

During **cross-examination** on behalf of the defendant, he denied the suggestion at Para-13 that at the time of execution of the agreement between the plaintiffs and him, Title Suit No.74/2016 was pending in the

court. He also admitted at Para-17 & 19 that he has filed criminal case against two Raju brothers, Shivjee Sharma and S. Karthikeya who is son of Shivjee Sharma and the case is presently pending. He further admitted at Para-20 that he does not have any report from any government office regarding his possession over the land for which the Agreement of Sale was made between him and the plaintiffs. He further admitted at Para-21 that a major portion of the land mentioned in the Agreement of Sale executed by him matches with the lands mentioned in Sale Deed dated 07.02.2014 and Sale Deed dated 17.05.2014. He further admitted at Para-24 that the plaintiffs and the defendants have not obtained any cancellation deed from the Registrar office. At Para-27, he denied the suggestion that Shivjee Sharma has paid the agreed sale consideration of the lands mentioned in the sale deeds to the plaintiffs and their relatives and further replied that not a single rupee has been paid.

27. PW-3 (Dandupole Tarkesh Raju) filed his examination-in-chief on affidavit stating that he is *the son of Plaintiff No.2*. He deposed on the same lines as P.W-1 and also referred to the documents already exhibited by the P.W-1. **P.W-3** further stated that the plaintiffs executed Sale Agreement in favour of M/s. Tridev Corporation for transfer of 3.33 acres of lands mentioned in Schedule-II and delivered possession of the Schedule-II lands to him and the plaintiffs received Rs.40,00,000/- towards part of the sale consideration of the Schedule-II land. A General Power of Attorney was also given to Mr. Arun Kuar Thakur, a Managing Partner of M/s. Tridev INC for the Schedule-II land, who is in possession of the total land and is raising construction of the building therein.

During cross-examination, he admitted that Shivram Mohan Raju has brought up him and he is not his own father, but considers him as his father. He admitted that his name is not mentioned in Sale Deeds dated 07.02.2014 and 17.05.2014, but he has seen the sale deeds and admitted that his sign is also not present in the Development agreement and the Power of Attorney.

28. The Defendants examined 02 witnesses, namely, Shivjee Sharma (DW-1) and son of the defendant, S. Kartikeya (DW-2), in support of their case.

29. DW-1 (Shivjee Sharma) is the sole defendant and he filed his examination-in-chief on affidavit. He stated that he has purchased land measuring total area of 3.38 Acres from the plaintiffs by two registered sale deeds dated 07.02.2014 and 17.05.2014 area 2.06 Acres for Rs.62,70,000/- and area 1.32 acres for Rs.39,60,000/- respectively, total being Rs.1,02,30,000/-. He further stated that the details of the cheques issued by him to the plaintiffs towards price of the land have been mentioned in the sale deeds, but the plaintiffs, in order to save themselves from income tax and also to clear their dues payable to their creditors, got payments made by him or his son namely, S. Kartikeya to the plaintiffs and their relatives and creditors. Apart from this, to save their lives from creditors and their musclemen, the plaintiffs took security service and asked the defendant to pay security expenses also. He stated that as per the instructions from plaintiffs, he and his son have paid about Rs.1,47,62,700/- on following heads in lieu of cheques mentioned in the two sale deeds and therefore, the plaintiffs returned all those cheques to him.

(a)	Paid to plaintiffs and their family members plus T.D.S.	Rs.3,20,000/- Rs.62,700/-
(b)	Creditors of plaintiffs	Rs.44,00,000/-
(c)	Security charges	Rs.74,80,000/-
(d)	Plaintiff's court expenses in the case lodged by A.K. Thakur	Rs.5,00,000/-
(e)	Payment to A.K. Thakur as per order of Hon'ble High court	Rs.20,00,000/-
	Total	Rs.1,47,62,700/-

He further stated that the plaintiffs have filed the suit for return of the original sale deeds alleging that price of the land was not paid by him and hence, the sale deeds are null and void and they are entitled to get back the original sale deeds from him. He claimed that the case of the plaintiffs is totally false. He further stated that no court has declared the sale deeds as void and in fact, he has paid an excess amount of about

Rs.45,32,700/ to the plaintiffs. He claimed that both the sale deeds are legal, valid and acted upon and he is in possession of the purchased lands.

During cross-examination, he admitted at Para-9, 10 & 11 that after getting the cheques return from the plaintiffs, the entire records of making payments of money including bank statements and documents are available with his son and he does not remember the dates. He further admitted at Para-13 that A.K. Thakur had lodged a case under Section 420 against him and his son and also against Satyanand Mohan Raju and Shivram Mohan Raju. He further admitted at Para-16 that Satyanand Mohan Raju has also filed a criminal case under Sections 420 and 406 against them, which is pending and he is on bail. He further admitted at Para-18 that after the sale deeds, he had given cheques to plaintiff no.1. He states at Para-22 & 23 that he is claiming his ownership and title over the schedule property on the basis of Sale Deed dated 07.02.2014 and Sale Deed dated 17.05.2014, but the mutation could not be done in his name and he has not served any notice to the plaintiffs in this regard. He claimed at Para-24 that all the letters have been prepared by plaintiff no.1 but he admitted at Para-25 that he has not filed any case in this regard.

30. DW-2 (S. Kartikeya) is the son of the defendant who filed his examination-in-chief on affidavit. His father purchased land measuring 3.38 Acres from the plaintiffs by two registered sale deeds in the year 2014 for a total price of Rs.1,02,30,000/- and his father tendered the sale price of said land by cheques mentioned in the Sale Deeds, but the sellers/plaintiffs preferred to receive the amount not by realization of cheques through bank, but by direct cash payment to their creditors and security reasons; and by part payment to them, their relatives etc. through cheque and cash. He stated that as against total price of Rs.1,02,3000/- for 3.38 Acre of land purchased by his father from plaintiffs, a total sum of Rs.1,47,62,700/- has been paid to the plaintiffs and/or their nominated person from time to time as instructed and requested by the plaintiffs. He also stated that by letter dated 16.02.2015, the plaintiffs requested his father and him to pay upto Rs.19,25,000/- to their eleven creditors named

in that letter. By another letter dated 30.08.2018, the plaintiffs acknowledged receipt of Rs.44,00,000/- for their creditors, Rs.74,80,000/- for their security personnel and Rs.5,00,000/- for court expenses for him and his father against the price of the land sold by his father. He stated that the bank statement of himself and his father filed in this case are public documents and the Bank statement of his father shows payments of Rs.3,20,000/- to the plaintiffs and their relatives namely, Satyanand Mohan Raju, Kamala Raju and D.T. Raju during January, 2014 and February, 2014. He also stated that certified copy of order dated 20.08.2016 passed by Civil Judge (Sr. Div.)-I, Jamshedpur in Title Suit No.74/2016 and certified copy of plaint of the same suit are public documents. He also stated that the certified copy of the common order dated 28.08.2017 passed by the Hon'ble High Court of Jharkhand, Ranchi in A.B.A. No.4166/2016 is a public document and in compliance of said order of the Hon'ble High Court, they (he and his father) deposited Rs.20,00,000/- (Twenty Lakhs Only) in Court. He exhibited letter dated 16.02.2015 bearing signature of plaintiff as Exhibit-A (with objection that the signature is forged and not original). He exhibited letter dated 30.08.2018 bearing signature of the plaintiff as Exhibit-B (with objection that the signature is forged and not original). He further exhibited the computer-generated bank statements from 23.01.2014 to 23.01.2015 of Shree Balajee Heritage, which is his Proprietorship Firm, as Exhibit-C (with objection that the money has been credited for different reasons). He exhibited the certified copy of order dated 20.08.2016 passed by Civil Judge (Sr. Div.)-I, Jamshedpur in Title Suit No.74/2016 as Exhibit-D. He exhibited the certified copy of plaint of Title Suit No.74/2016 as Exhibit-E. He exhibited the certified copy of the order dated 28.08.2017 passed by the Hon'ble High Court of Jharkhand, Ranchi in A.B.A. No.4166/2016 as Exhibit-F.

During cross-examination on behalf of the plaintiffs, he admitted that he and his father were present at the time of registration of the sale deeds and his father had given 08 cheques totaling Rs.1,00,30,000/- to the plaintiffs and the sale deeds were executed between his father and the plaintiffs. He had prepared Development Agreement with Anand Home

Makers whose partners were *Arun Kumar Thakur (P.W-2)* and U.P. Baranwal. At Para-21, he said that he does not remember as to when the Development Agreement was prepared, whether it was prepared earlier or after both the sale deeds. He admitted at para-23 that Arun Kumar Thakur had filed the criminal case under Section 420 of IPC against the plaintiffs and himself and his father. He stated at Para-24 that he considers the amount of Rs.20,00,000/- given to Arun Kumar Thakur as per the order of the Hon'ble High Court as part of the consideration amount against the sale deeds. He further admitted at Para-26 & 27 that he had executed agreement in favour of other for the plots mentioned in the sale deeds and he had taken money against sale of the lands and had handed over the money to the plaintiffs. On showing the receipt of Balajee Heritage issued from his office, DW-2 exhibited the receipt as Exhibit-G, but he said that he had returned the said amount. He further admitted at Para-32 that the plaintiffs are the debtors of the persons to whom they had told to sell the plots through agreement. He also admitted at Para-33 that the agreement of selling the plots was between the plaintiffs and him and the agreement was executed at the instance of Satyanand Mohan Raju. He further admitted at Para-34 that he has not filed the document of written permission of Satyanand Mohan Raju for selling the plots. He stated at Para-36 & 37 that he had given the amount of Rs.74,80,000/- of Satyanand Mohan Raju as security and he has the receipt issued by the security persons, but he does not know as to whether he has filed the receipt or not. He further said at Para-38 that he had borne the expenses of Rs.5,00,000/- of the case lodged by Arun Kumar Thakur and he considers the said expenses as part of the consideration amount. He further admitted at Para-42 that he is working on the post of Superintendent in Railway and he cannot do any business during the period of his service.

31. Admittedly, the suit was filed seeking a direction upon the defendant to return the original copy of the registered sale-deeds dated 07.02.2014 and 17.05.2014 alleging that the deeds are itself null and void on account of non-payment of consideration amount.

32. So far as the consideration amount with regard to sale deed dated 07.02.2014 is concerned, it was relating to the vacant land in schedule II of the plaint and altogether four cheques all dated 07.02.2014 drawn on SBI, Jugsalai totalling Rs. 62,70,000/- were mentioned in the deed itself and it was also mentioned therein that the consideration amount was paid through the aforesaid cheques and the plaintiffs delivered the title and possession to the defendant from the date of the execution of the deed upon receipt of the consideration amount. It is not in dispute that the cheques were handed over to the plaintiffs in the date of execution of the sale deed.

33. So far as other sale deed dated 17.05.2014 is concerned, the same was also in relation to the vacant land in Schedule-III of the plaint. In the sale deed dated 17.05.2014, similar averments were made as that of sale deed dated 07.02.2014 and the consideration amount as stated to have been paid was mentioned in the sale deed and it was through four cheques all dated 17.05.2014 totalling Rs. 39,60,000/- and the plaintiffs delivered the title and possession to the defendant from the date of the execution of the deed upon receipt of the consideration amount. It is not in dispute that the cheques were handed over to the plaintiffs in the date of execution of the sale deed.

34. It is the case of the plaintiffs that the cheques in relation to both the sale deed dated 07.02.2014 and 17.05.2014 remained in their custody and the defendant issued letter dated 22.02.2014 with respect to the sale deed dated 07.02.2014 stating that the consideration amount would be paid to the plaintiffs only after mutation is done and the defendant was informed by the authorities that the mutation of the land cannot be done as the land is recorded in the name of State of Jharkhand. It is further case of the plaintiffs that the defendant on 28.03.2014 asked the plaintiffs to return the cheques immediately otherwise legal action will be taken and consequently the plaintiffs returned all the cheques to the defendant vide letter dated 08.04.2014 and the defendant had put his signature in the letter dated 08.04.2014 as a token of receipt of the cheques.

35. The specific case of the plaintiffs is that the mutation was never a pre-condition for execution and registration and payment of sale

consideration in connection with the sale deed dated 07.02.2014 and the plaintiffs did not receive the consideration with respect to the sale deed dated 07.02.2014.

36. Similar was the situation in connection with other sale deed dated 17.05.2014 and similar letters were exchanged in connection with the sale deed dated 17.05.2014 and the plaintiffs had returned all the cheques mentioned in sale deed dated 17.05.2014 vide letter dated 01.07.2014 and the defendant had put his signature as a token of proof of receipt of cheques in connection with sale deed 17.05.2014.

37. It was also the case of the plaintiffs that the defendant managed to obtain the original sale deeds from the Registrar at Jamshedpur in a clandestine manner on the basis of registration slips which were handed over to the defendant in good faith by the plaintiffs. It was further grievance of the plaintiffs that the possession of the scheduled land in Schedule-II and Schedule-III was not delivered to the defendant although the plaintiffs had handed over the registration slips to the defendant on the basis of receipt of the cheques by the plaintiffs as mentioned in the sale deeds. It was asserted that the aforesaid two sale deeds were null and void for want of consideration and the possession was also not delivered to the defendant.

38. The cause of action arose when the defendant refused to return the original sale deeds to the plaintiffs and claimed to be the owner of the property. The plaintiffs demanded the sale deeds vide legal notice dated 23.08.2016 and the defendant refused to return the sale deeds vide letter dated 09.09.2016.

39. *On the other hand*, the specific case of the defendant was that the suit is barred under the provision of Specific Relief Act and the suit was under-valued at Rs. 36,00,000/- although the total amount of money involved in the two sale deeds was Rs. 1,02,30,000/- (Rs. 62,70,000/- + Rs. 39,60,000/-) and it was asserted that the plaintiffs assumed that the sale deeds are null and void primarily to evade payment of full *ad-valorem* court fees.

40. It was also asserted that the plaintiffs had filed a Title Suit No. 74/2015 seeking cancellation of the two sale deeds and paid *ad-valorem*

court fees, but withdrew the Title Suit unconditionally and this fact was suppressed by the plaintiffs.

41. It was the case of the defendant that it was agreed between the parties that the cheques issued by the defendant mentioned in the sale deeds dated 07.02.2014 and 17.05.2014 will be encashed by the plaintiffs only after mutation in respect of the lands mentioned in the two sale deeds is done and in pursuance of the same, the plaintiffs retained the cheques with them. However, the defendant contended that the entire consideration amount of Rs. 1,02,30,000/- has been paid to the plaintiffs and/or their relatives as per their requirements and directions partly by cash and partly by bank transactions on receipt of the aforesaid cheques mentioned in the two sale deeds and that is why the plaintiffs had neither filed any money suit claiming the consideration mentioned in the sale deeds nor proceeded with Title Suit No. 74/2015.

42. It has been further asserted that the plaintiffs had voluntarily given the registration slip with respect to the two sale deeds and also delivered the physical possession of the land so the defendant collected the original sale deeds from the registration office on completion of registration and further applied for mutation of the land and the plaintiffs having receiving the entire consideration amount, though not through the cheques mentioned in the sale deed, but in the manner indicated above, they are estopped from challenging the validity of the sale deeds. It was asserted that the defendant had commenced construction of several residential premises over the property.

43. It has also been asserted that the title to the land pass with the execution and registration of the sale deeds and the vendor cannot retain any right over the land which is already transferred by registered sale deeds. It has also been asserted that the sale of immovable property is complete even on promise to pay price of the land and that the defendant had already paid the full sale price of the land. It has also been asserted that the plaintiffs out of their own wish did not produce the cheques mentioned in the two sale deeds to the bank for realization of payment of the amount mentioned therein. However, the defendant being a bonafide purchaser paid the entire value of the land as per the request and

requirement of the plaintiffs in cash and bank transaction on receiving back the cheques in question.

44. It has also been asserted that the land in Schedule-IV was never in possession of the plaintiffs and its major portion is in possession of the defendant since the date of execution and registration of the two sale deeds and the defendant is raising construction of building in Schedule-II and Schedule-III land and admittedly Schedule-IV includes major portion of Schedule-II and Schedule-III land. It has also been asserted that except the defendant, no other person is making any construction on any part of Schedule-I land.

45. With respect to the cause of action, the defendant stated in para 13 that the title to the land passes with the execution and registration of the sale deeds. Thereafter, the transferor cannot retain any right over the land already transferred by registered sale deeds. The sale of immovable property is complete even on promise to pay the price of the land. The defendant has already paid the full sale price of the lands purchased by him. So, the notice dated 23.08.2016 from or on behalf of the plaintiffs is totally absurd and illegal. However, the defendant did not deny the receipt of notice from the plaintiffs dated 23.08.2016.

46. From perusal of the plaint and written statement and also the aforesaid two sale deeds dated 07.02.2014 (Exhibit-1) and 17.05.2014 (Exhibit-1/1), it is not in dispute that the sale consideration was specifically mentioned in the sale deeds which were through number of cheques all containing the dates on which the sale deeds were executed. Admittedly, nothing has been mentioned in the sale deeds that the cheques would be encashed only after mutation is done with respect to the vended properties. However, it is the case of the plaintiffs that when mutation could not be done, the defendants asked for return of the cheques which were duly returned to the defendant and it is the case of the defendant that it was agreed between the parties that the cheques would be encashed only after mutation is done.

47. It was the case of the defendant that the cheques would be encashed by the plaintiffs only after mutation is done and pursuant thereto, the plaintiffs retained the cheques and in spite of that, the

defendant paid the entire consideration money of Rs. 1,02,30,000/- to the plaintiffs and/or their relatives as per the requirement and direction of the plaintiffs partly by cash and partly by bank transactions on receipt of the aforesaid cheques mentioned in the two sale deeds. This specific statement has been made in paragraph 10 of the written statement, which is quoted as under: -

“10. That with regard to the statements made in para .: 8 to 13 of the plaint it is submitted that although it was agreed between the parties that the cheques issued by defendant and mentioned in sale deeds dated 07.02.14 and 17.05.14 will be en-cashed by the plaintiff only after mutation in respect of the lands mentioned in the said two deeds and in pursuance of the same the plaintiffs retained the those cheques with them; still the defendant paid the entire consideration money of Rs. 1,02,30,000/- to the plaintiffs and/or their relatives as per their requirement and direction partly by cash and partly by bank transaction on receipt of the aforesaid cheques mentioned in the two sale deeds. Therefore, none of the sale deeds is hollow but entire consideration money for those two deeds was paid in toto.

This is why the plaintiff neither filed Money Suit claiming the consideration money mentioned in the said Sale deeds nor proceeded with earlier Title suit no.: 74/2015 as mentioned above for cancellation of those deeds.”

(emphasis supplied)

48. In view of the aforesaid specific stand raised by the defendant in the written statement, it is clear that though the consideration amount as mentioned in the sale deeds referred to different cheques and all cheques were of the date of the execution of the sale deeds, but the plaintiffs had returned all the cheques to the defendant as it allegedly agreed by the plaintiffs that the cheques would be encashed only after mutation.

49. It is further case of the defendant that the plaintiffs voluntarily gave the registration slips with respect to the two sale deeds and also physical possession of the land at the time of execution of the sale deeds and admittedly the defendant, as per the written statement, collected the original sale deeds from the registry office. The defendant claimed that they applied for mutation which was refused by the concerned authority by stating that the land belongs to the state of Jharkhand.

Point of determination nos. (i) and (ii)

i. Whether the suit is maintainable in its present form?

ii. ***Whether the plaintiffs have any valid cause of action for the suit?***

50. This Court finds that the specific case of the plaintiffs was that no consideration had passed pursuant to the two sale deeds as the cheques mentioned therein were returned to the defendant at the insistence of the defendant and hence the sale deeds were null and void and the plaintiffs were entitled to return of the registered sale deeds which were collected by the defendant from the registry office on the basis of registration slips which were handed over by the plaintiffs to the defendant in good faith upon registration of the sale deeds but the cheques were returned by the plaintiffs to the defendant at the insistence of the defendant subsequent to the registration of the sale deed. ***On the other hand,*** the case of the defendant was that it was agreed that the plaintiffs would encash the cheques only after the property is mutated in the name of the defendant but mutation was refused by the concerned authority on the ground that the property belongs to the State of Jharkhand and hence the cheques were returned by the plaintiffs but the entire consideration amount was subsequently paid by the defendant to the plaintiffs or their creditors or relatives upon instructions of the plaintiffs, partly through cash and partly through bank transactions.

51. The learned trial court while deciding issue no. (i) held that the suit was not maintainable by observing that the practice of "*Ta Khubzul Badlain*" (the title passes only when there is exchange of equivalents) is applicable in the State of Bihar and has refused to apply the same to the State of Jharkhand. The learned trial court while making such observation has failed to consider that such practice being recognized by different judicial pronouncements in the undivided State of Bihar and cannot cease to exist when it comes to the State of Jharkhand which has been created from the then State of Bihar in the year 2000. Such finding and observation of the learned trial court cannot be sustained in the eyes of law.

52. However, the learned trial court also observed that the practice of "*Ta Khubzul Badlain*" is not applicable in the present case as the defendant was admittedly in possession of the sale deeds which he received upon presentation of the registration slips in the registry office

and the aforesaid practice of “*Ta Khubzul Badlain*” required retention of at least registration slips / sale deeds with the seller. The learned court held that the aforesaid judgment does not help the plaintiffs.

53. This Court is of the considered view that merely because the registration slips were with the defendant and the defendant had procured the original sale deeds from the Registry Office, the same does not satisfy the requirement of “*Ta Khubzul Badlain*” as the said principle primarily means that the title passes only when there is ‘exchange of equivalents’. The learned trial court has failed to consider that as per the admitted case of the parties, the consideration as mentioned in the sale deeds, which were said to have been paid through cheques, were never paid through the cheques mentioned in the sale deeds. Rather, the cheques were returned to the defendant at their insistence and the registration slips were said to have been handed over to the defendant earlier immediately upon registration and receipt of the cheques mentioned in the sale deeds. It is not the case of the defendant that the registration slips were retained by the plaintiffs and upon payment of equivalent through other mode the registration slips were handed over to the defendant and then the defendant obtained the original deeds from the registry office.

54. Exhibit-1 and 1/1 are the registered sale deeds, wherein the details of consideration amount has been mentioned to have been paid by cheques. The plaintiffs had returned 8 cheques mentioned in Exhibit-1 and 1/1 in the light of the letters dated 22.02.2014 (Exhibit-2), 28.03.2014 (Exhibit-2/1), 01.06.2014 (Exhibit-2/3) and 15.06.2014 (Exhibit-2/4). Further, the return was also acknowledged by the defendant which is also evident from the acknowledgement in the letter dated 08.04.2014 (Exhibit-2/2) and 01.07.2014 (Exhibit-2/5). It is apparent from the written statement in paragraph 10 that the cheques were admittedly returned to the defendant and it was the specific case of the defendant that in spite of return of cheques to the defendant, the entire consideration amount was subsequently paid by the defendant to the plaintiffs/their relatives or creditor in cash/bank transactions. It stands admitted by the defendant in the written statement that the

consideration amount, which is said to have been paid and mentioned in the registered sale deed through cheques, was never paid to the plaintiffs through those cheques as mentioned in the sale deeds and the same were never encashed by the plaintiffs and were returned to the defendant.

55. It is important to note that the learned trial court also observed that though the mode of payment of sale consideration was admitted to have been paid by way of payment to the creditors and their relatives by the defendant, but this plea of the defendant was rejected on the ground that any oral evidence contrary to the sale deeds (Exhibit-1 and 1/1) documenting the payment of sale consideration is excluded by the documentary evidence. Thus, the learned trial court has considered the sale deeds as sacrosanct by referring to Section 92 of the Evidence Act and observed that both title and possession was transferred to the defendant and has thereby failed to consider that even as per the admitted case of the defendant, the sale consideration through cheques as mentioned in the sale deeds, being the mode and manner of payment of consideration, was not paid by the defendant and the defendant claimed that they had paid the consideration amount subsequently to the creditors of the plaintiffs and their relatives through cash/bank transactions. The learned trial court failed to consider that admittedly the sale consideration through cheques as mentioned in the sale deeds did not pass to the plaintiffs. The learned trial court also observed that no instrument of cancellation of the sale deeds was brought on record by the plaintiffs and has thereby failed to consider that the sale deeds were void for want of consideration and in view of the judgment passed by the Hon'ble Supreme court in the case of *Prem Singh versus Birbal reported in (2006) 5 SCC 353*, if a sale deed is void, no relief to set it aside is required. The judgment passed in the case of *Prem Singh (supra)* has also been referred to in the recent judgment of Hon'ble Supreme Court reported in *2025 SCC OnLine SC 1961 (supra)*.

56. The learned trial court has wrongly held that there was nothing to show that the deeds were wrongfully taken by the defendant.

57. In the aforesaid circumstances, this Court is of the considered view that the suit as framed seeking return of the original sale deeds was maintainable.

58. Further, the plaintiffs had issued legal notice prior to filing of the suit demanding the return of the registered sale deeds and the receipt of the registered notice seeking return of the deeds is not in dispute in the written statement. It was for the defendant to prove that the consideration was paid in connection with the sale deeds as it was admitted case of the parties that the consideration was not paid through the cheques mentioned in the sale deeds although in the sale deeds it was mentioned that the consideration amount was paid through the cheques mentioned therein. It is important to note that the consideration was neither said to have been partly paid nor the payment was deferred and there was no stipulation in the deeds that the cheques would be encashed only after mutation is done.

59. This court is of the considered view that the learned trial court erred in holding that the suit was not maintainable and there was no cause of action and failed to consider that it was admitted case of the defendant that the consideration was not paid through cheques as mentioned in the sale deeds and the cheques were returned to the defendant. It was for the defendant to prove that how and when the consideration was paid and whether the registration slips were handed over to the defendant in exchange of the equivalent. This aspect of the matter has been further discussed in details while deciding the point of determination no. (vi) regarding the sale deeds involved in this case. It is also important to note that the title of the plaintiffs and execution of registered deeds in favour of the defendant is not in dispute. The plaintiffs claimed that the deeds were void for want of consideration.

60. In view of the aforesaid facts, this Court is of the considered view that the suit was maintainable in the present form and the plaintiffs had a valid cause of action.

61. *Accordingly, the point for determination nos. (i) and (ii) is decided in favour of the appellants-plaintiffs and against the respondent-defendant.*

Point of determination no. iv-***Whether the suit was undervalued or properly valued and whether the required court fees was paid?***

62. This court finds that the suit was valued at 32 Lakh but court fees of Rs.250/- was paid by the plaintiffs. Upon perusal of the relief prayed for, the plaintiffs had only prayed for the return of the two original sale deeds involved in the present case. The learned trial court held that the suit was valued at Rs. 36 Lakh and that the two sale deeds marked as Ext. 1 and 1/1 were executed for a total consideration amount of Rs. 1,02,30,000/- as mentioned in the sale deeds and hence the suit was not undervalued.

63. So far as payment of court fees is concerned, the learned trial court held that since only return of aforesaid sale deeds were sought and no recovery of possession was sought, a total of only Rs. 250/- as court fees has been paid. However, the learned trial court held that since the suit was not maintainable the issue was decided accordingly.

This Court has held while deciding point of determination no. (i) and (ii) that the suit was maintainable and the plaintiffs had a valid cause of action. This Court is of the considered view that the learned trial court has rightly held that the suit was not under-valued and since only return of aforesaid sale deeds were sought and no recovery of possession was sought, a total of only Rs. 250/- as court fees has been paid. This Court is of the considered view that since only return of aforesaid sale deeds was prayed in the plaint and neither recovery of possession nor a declaration that the sale deeds were void was sought, the ad-valorem court fees was not payable and a total of only Rs. 250/- paid as court fees was sufficient. The case of the plaintiffs was that since the consideration was not paid in terms of the sale deeds, the sale deeds were void but no declaration was sought to declare the sale deeds as void and primarily the prayer was to return the sale deeds by submitting that the sale deeds were void. This Court is of the considered view that the suit was properly valued and the court fees was also properly paid as neither a relief was prayed seeking a declaration that the sale deeds were void nor any relief seeking recovery of possession was prayed for in the plaint and the

prayer was to return the original sale deeds. *The point of determination no. (iv) is accordingly decided in favour of the plaintiffs- appellants and against the defendant-respondent.*

Point of determination no. (iii)

Whether the suit is barred under section 34 of the Specific relief Act, 1963?

The learned trial court has held that the suit was not barred under Section 34 of the Specific relief Act since in the present case the plaintiffs has not sought a declaration but has only sought a relief of return of the two sale deeds since it was not open to the plaintiffs to deny the recitals of the sale deeds which mentioned that title and possession passed to the defendant upon execution of sale deed and upon payment of consideration through cheques.

In the judgement reported in *(1973) 2 SCC 60 (supra)* relied upon by the defendant, the plaintiffs sought a declaration that they are the sole owners of the suit property but did not claim recovery of possession, the suit was held to be barred under section 42 of the Specific Relief Act, 1877 (corresponding to section 34 of the Specific Relief Act, 1963). In view of the relief prayed for in this case seeking return of the two original sale deeds by asserting that the deeds were void, the said judgement does not apply. If the deeds are void, the recitals of the deeds are of no consequence.

In the judgement passed by the Hon'ble Supreme Court reported in *(2014) 14 SCC 502 (supra)*, it has been held that a mere declaratory relief without consequential relief was barred under section 34 of the Specific Relief Act, 1963 and in the said case admittedly the defendant was in possession of the suit premises. In the present case, the plaintiff is not seeking any declaratory relief but is only seeking return of the original sale deeds, hence, the suit was not barred under section 34 of the Specific Relief Act, 1963.

64. By referring to the judgement passed by the Hon'ble Supreme Court reported in *(2011) 6 SCC 508 (Noida Entrepreneurs Association vs. Noida & Others)* paragraph 25, it has been submitted by the learned counsel of the defendant that it has been held by the Hon'ble Supreme

Court that whenever *a thing is prohibited, it is prohibited, whether done directly or indirectly* and it has been submitted by the learned counsel for the respondent that although there was no plea seeking declaration of title, still the proviso to Section 34 will come into play as once the sale deeds are declared void, the title would naturally go back to the plaintiffs and that the plea of declaration of the sale deeds are void amounts to seeking a declaration of title and therefore proviso to Section 34 is very much attracted in the present case. *This court is of the view that the aforesaid argument is misplaced.* It has been held in the judgement passed in the case of *Prem Singh versus Birbal* reported in (2006) 5 SCC 353 and followed in *Shanti Devi versus Jagan Devi*, reported in 2025 SCC Online SC 1961 that when the document in question is void ab initio/or void, a decree for setting aside the same would not be necessary since such a transaction would be *non-est* in the eyes of law, owing to it being a nullity.

65. In the present case, a prayer was made seeking return of the sale deeds and a plea was raised that the sale deeds were *void-ab-initio* for want of consideration as the cheques mentioned in the sale deed were returned to the defendant at the instance of the defendant and the defendant in the written statement, paragraph 10, admitted the fact of return of cheques and raised a plea that the consideration was subsequently paid to the plaintiffs/their relatives through cash/banking transaction and thus admitted that the consideration as per the sale deeds through cheques, mentioned in the sale deeds, were not paid. In such circumstances, there was no need for the plaintiffs to seek a declaration that the sale deeds were void as apparently, they were nullity in the eyes of law as consideration did not pass as per the terms of the sale deeds having recitals that the consideration was paid through the cheques. The aforesaid aspect of the matter has not been properly considered by the learned trial court. This Court is of the considered view that the relief prayed in the present suit did not amount to seeking declaration of title by the plaintiffs as the plaintiffs simply prayed for return of the void sale deeds and accordingly the suit was not barred by Section 34 of the Specific Relief Act, 1963 on account of the fact that the plaintiffs did not

seek recovery of possession. The point of determination no. (iii) is accordingly decided in favour of the plaintiffs (appellants) and against the defendant (respondent).

Point of determination no. v.

Whether the present title suit is bad owing to withdrawal of the title suit no. 74 of 2015 filed earlier by the plaintiffs?

66. This Court finds that the earlier suit was filed seeking cancellation of the sale deeds and the plaint has been marked as *exhibit-E* and in the said title suit also the plaintiffs had taken a specific plea in paragraph 13 that the plaintiffs did not receive the consideration money by cheques as mentioned in the sale deeds and the sale deeds were null and void and also asserted in paragraph 14 that the plaintiffs were in possession of the property and the sale deeds were not acted upon. The said suit was withdrawn vide order dated 20.08.2016 (*exhibit- D*) at the very initial stage with a liberty to file a fresh one in respect to the same cause of action and consequently, the present suit was filed. However, in this suit no relief was prayed to declare the sale deeds null and void and it was pleaded that the sale deeds were without consideration and hence they were null and void. This Court finds that the present suit was not bad owing to withdrawal of the Title Suit No. 74 of 2015 filed earlier by the plaintiffs once the liberty was given to the plaintiffs to file a fresh suit arising from the same cause of action. The law is well settled that if the deed is void-ab-initio or is void, the same need not be set-aside as it would be a nullity in the eyes of law [*reference Prem Singh versus Birbal reported in (2006) 5 SCC 353*]. The learned trial court held that the earlier plaint, Exhibit E showed that the same was filed for cancellation of the very sale deeds that was sought to be returned by way of the present suit and held that since the present suit has been held to be not maintainable while deciding issue no.(i) hence this issue was decided accordingly. This court has already held as above while considering point of determination no. (i) and (ii) that the present suit is maintainable and there was a valid cause of action to file the present suit. In view of the order seeking withdrawal of the earlier suit giving liberty to the plaintiffs to file a fresh suit on the very same cause of action, this Court

holds that the present suit is not bad owing to withdrawal of the title suit no. 74 of 2015 filed earlier by the plaintiffs. *The point of determination no. (v) is accordingly decided in favour of the appellants (plaintiffs) and against the respondent (defendant).*

Point of determination no. (vi)

Whether the two sale deeds bearing no. 705/508 dated 07.02.2014 and 2736/2125 dated 17.05.2014 executed by the plaintiffs were with payment of consideration resulting into transfer of valid title and possession in favour of the defendant?

67. This Court finds that the *P.W-1* has fully supported his case and stood the test of cross examination. The execution of the two sale deeds are not in dispute and it is also not in dispute that the sale deeds mentioned the payment of consideration through 4 cheques each and upon registration and receipt of the cheques, the registration slips were handed over to the defendant, but the cheques were not presented for encashment at the insistence of the defendant and the defendant asked the plaintiffs to return the cheques on the ground that the mutation was denied and the cheques were duly returned to the defendant. It has been asserted that the original sale deeds were taken by the defendant on the basis of registration slips without informing the plaintiffs. It is not in dispute that the cheques mentioned in the sale deeds were returned and the *P.W-1* denied receipt of the consideration amount in connection with the sale deeds and asserted that the sale deeds were null and void. He admitted that Title Suit No.74/2016 was filed against the defendant for cancellation of the two sale deeds, but the suit was withdrawn vide order dated 20.08.2016 and he did not know as to whether he had taken any permission before withdrawal of the suit for filing another suit. However, the order of withdrawal of the previous suit and also the plaint of the previous suit has been exhibited by the defendant. The *P.W-2* has supported the case of the plaintiffs and claimed that the plaintiffs have executed (a) Sale Agreement dated 12.08.2016 with M/s. Tridev Corporation represented by its partners and the possession of 10 bighas (3 Acres 34 Decimals) of land was delivered to M/s. Tridev Corporation for raising superstructure and multistoried building and (b) A General

Power of Attorney dated 05.04.2017 was executed by the plaintiffs in favour of Mr. Arun Kumar Thakur. He stated that Sale Agreement dated 12.08.2016 was executed after the defendant had taken back his all eight cheques given to the plaintiffs towards sale consideration and had suggested the plaintiffs to get the sale deeds cancelled. He exhibited the sale agreement dated 12.08.2016 as exhibit-3 (with objection that witness is only competent to testify with respect to his signature appearing on the document) and also exhibited the General Power of Attorney dated 05.04.2017 as Exhibit-4 (with objection that witness is only competent to testify with respect to his signature appearing on the document) and thus both the documents contained the signature of this witness. He admitted that a major portion of the land mentioned in the Agreement of Sale executed by him matches with the lands mentioned in Sale Deed dated 07.02.2014 and denied the suggestion that the defendant has paid the agreed sale consideration of the lands mentioned in the sale deeds to the plaintiffs and their relatives and asserted that not a single rupee has been paid by the defendant. *P.W-3* has also fully supported the case of the plaintiffs as that of *P.W-1* and he is neither the signatory of the agreement of sale with M/s. Tridev in which *P.W-2* is the managing partner and asserted that M/s. Tridev INC was in possession of Schedule-II land.

68. *On the other hand, this court finds that the D.W-1 and 2* have admitted that the two sale deeds were executed for consideration amount totaling Rs.1,00,30,000/- and the consideration consisted of total of 8 cheques but the cheques were returned and the consideration was not paid through the cheques. They stated that as per the instructions from plaintiffs, they have paid about Rs.1,47,62,700/- on different heads, that is, paid to plaintiffs and their family members plus T.D.S, Creditors of plaintiffs, Security charges, Plaintiff's court expenses in the case lodged by A.K. Thakur and Payment to A.K. Thakur as per order of Hon'ble High Court in lieu of cheques mentioned in the two sale deeds and therefore, the plaintiffs returned all those cheques to *D.W-1*. The defendant exhibited letter dated 16.02.2015 bearing signature of plaintiff as Exhibit-A (with objection that the signature is forged and not original)

and also letter dated 30.08.2018 bearing signature of the plaintiff as Exhibit-B (with objection that the signature is forged and not original) and these documents did not have any foundational pleadings in the written statement and no steps were taken by the defendant to get the signature of the plaintiff on exhibit A and B examined through an expert and thus exhibit A and B were not proved. Moreover, the list of persons mentioned in the letter dated 16.02.2015, total 11 in number, were not produced as witnesses and no such details were averred in the written statement also. There was no foundational pleading with respect to the computer-generated bank statements from 23.01.2014 to 23.01.2015 of Shree Balajee Heritage as Exhibit-C and the same was marked with objection that the money has been credited for different reasons. The certified copy of the order dated 28.08.2017 passed by the Hon'ble High Court of Jharkhand, Ranchi in A.B.A. No.4166/2016 (filed by the plaintiffs) and A.B.A. No. 3245 of 2016 (filed by the defendant and his son) disposed of by common order by the High Court has been marked as Exhibit-F by which an amount of Rs. 20,00,000/- was directed to be paid to Arun Kumar Thakur (P.W-2), one of the partners of M/s Anand Home Makers which was just a condition of grant of Anticipatory Bail. D.W.-2, the son of the defendant has stated during his cross examination that he had prepared Development Agreement with Anand Home Makers whose partners were Arun Kumar Thakur (P.W-2) and U.P. Baranwal and he did not remember as to when the Development Agreement was prepared, whether it was prepared earlier or after both the sale deeds and he also admitted that Arun Kumar Thakur had filed a criminal against the plaintiffs and himself and his father and he considers the amount of Rs.20,00,000/- given to Arun Kumar Thakur as per the order of the Hon'ble High Court in the aforesaid A.B.As as part of the consideration amount against the sale deeds although the development agreement as claimed by the D.W-2 was entered between D.W-2 and Arun Kumar Thakur (P.W-2) and U.P. Baranwal. The development agreement has not been exhibited by the defendant *even those persons who are said to have received the payments have not deposited before the court and the same has not been substantiated through cogent evidence by the defendant. In*

view of the aforesaid discussions, this Court is of the considered view that the defendant has not proved that the consideration amount with respect to the two sale deeds were subsequently paid to the plaintiffs through different creditors and relatives.

69. This Court finds that as per the sale deeds, there was no condition that the cheques would be encashed only after the mutation is done, but it appears from the aforesaid materials that after execution of the sale deeds and upon receipt of the cheques, the plaintiffs gave the registration slips to the defendant who collected the original sale deeds from the registration office and then applied for mutation. However, when the authority refused mutation by alleging that the property stands in the name of Government of Jharkhand, the plaintiffs returned all the cheques to the defendant at the insistence of the defendant. It is not in dispute from the side of the defendant that the cheques were duly returned by the plaintiffs. The sale deeds neither refer to deferred payment of consideration amount nor any such condition was put in the sale deeds that the cheques will be encashed only after the mutation is done. The sale deeds were clear that the consideration stood *paid* through the cheques mentioned in the sale deeds and admittedly the cheques were handed over to the plaintiffs on the date of execution of the sale deeds. However, on account of the aforesaid reasons, the cheques were returned to the defendant at the insistence of the defendant and therefore the consideration which was mentioned in the sale deeds and the manner in which the consideration was to be paid as mentioned in the sale deeds never materialized. *Consequently, the consideration said to have been paid as mentioned in the sale deeds did not pass to the plaintiffs.* In absence of consideration having been passed in terms of the sale deeds, the sale deeds itself are null and void. Since the sale deed did not refer to any future payment of consideration, the case of the defendant that they paid the entire consideration amount subsequently amounting to Rs. 1,02,30,000/- to the plaintiffs and/or their relatives as per their requirement and direction partly by cash and partly by bank transactions on receipt of the cheques mentioned in the two sale deeds is of no consequence and this is over and above the fact that payment of

consideration in the aforesaid manner was not proved by the defendant and even the learned trial court did not rely upon the claim of the defendant that the consideration was paid in the aforesaid manner. Rather the learned trial court was of the view that the consideration was paid in terms of the sale deed itself and the title and possession passed upon execution of the sale deeds as mentioned in the sale deeds and the defendant had also received the original sale deeds from the registration office and held that the sale was complete upon registration of the sale deeds. While holding as aforesaid, the learned trial court failed to take into consideration that it stood admitted that the consideration was not paid through the cheques mentioned in the registered sale deeds and thus the consideration did not pass as contemplated in the sale deeds and it was not the case of the defendant that upon payment of the consideration later on the registration slips were handed over to him and then he took the originals from the registration office.

70. On account of the admitted fact that the consideration in terms of the sale deeds did not pass, there cannot be any doubt that the sale deeds were null and void as the sale deeds stipulated that the consideration was paid through the cheques mentioned therein and any other mode of payment of consideration was not contemplated in the sale deeds nor the payment of consideration was deferred in the sale deeds nor subsequent payment of consideration as claimed by the defendant has been proved by the defendant.

71. Heavy reliance has been placed by the learned counsel for the defendant on the judgement passed in the case reported in *(2011) 6 SCC 555 (supra)* and it has been asserted that upon receipt of the registration slips, the sale was complete and admittedly the defendant obtained the original registered deeds from the registry office on the strength of the registration slips. On the other hand, the plaintiffs have tried to interpret the aforesaid judgment in their own favour and have submitted that receipt of registration slips and obtaining the original sale deeds are not conclusive and is of no consequence when the consideration did not pass in terms of the sale deeds as mentioned to have been paid in the sale deeds.

72. In the judgment passed by the Hon'ble Supreme Court reported in *(2011) 6 SCC 555 (supra)*, the case was arising out of a title suit decided prior to creation of State of Jharkhand and was arising from the then State of Bihar.

The Hon'ble Supreme Court referred to the earlier judgments reported in *(1998) 7 SCC 498* and *(2009) 4 SCC 193* and held in paragraph 13 that where the sale deed recites that on receipt of total consideration by the vendor, the property was conveyed and possession was delivered, the clear intention is that title would pass and possession would be delivered only on payment of the entire sale consideration. It has also been held that therefore, where the sale deed recited that on receipt of entire consideration, the vendor was conveying the property, but the purchaser admits that he has not paid the entire consideration (or if the vendor proves that the entire sale consideration was not paid to him) title in the property would not pass to the purchaser.

However, the Hon'ble Supreme Court considered the prevalent practice in Bihar known as "*Ta Khubzul Badlain*" [that is, title to the property passing to the purchaser only when there is "exchange of equivalents"]. The Hon'ble Supreme Court explained the practice by observing that as per this practice, where a sale deed recites that entire sale consideration has been paid and possession has been delivered, but the Registration Receipt is retained by the vendor and possession of the property is also retained by the vendor, as the agreed consideration (either full or a part) is not received, irrespective of the recitals in the sale deed, the title would not pass to the purchaser, till payment of the entire consideration to the vendor and the Registration Receipt is obtained by the purchaser in exchange. In such cases, the registration receipt is retained by the vendor and is not given to the purchaser and the vendor may retain the registration receipt till the payment of consideration is made and when the purchaser pays the price (that is the whole price or part that is due) on or before the agreed date, he receives in exchange, the registration receipt from the vendor entitling him to receive the original registered sale deed, as also the possession and if payment is not made as agreed, the vendor could repudiate the sale and refuse to deliver the registration

receipt/registered document, as the case may be, which is in his custody, and proceed to deal with the property as he deems fit, by ignoring the rescinded sale.

The Hon’ble Supreme Court held that the effect of such transactions in Bihar is that even though the duly executed and registered sale deed may recite that the sale consideration has been paid, title has been transferred and possession has been delivered to the purchaser, the actual transfer of title and delivery of possession is postponed from the time of execution of the sale deed to the time of exchange of the registration receipt for the consideration, that is “ta khubzul badlain”. Paragraph 20 of the report is quoted as under: -

“20. We have referred to several decisions of the Patna High Court in detail to demonstrate the existence of the established practice of exchanging equivalents (ta khubzul badlain). The effect of such transactions in Bihar is that even though the duly executed and registered sale deed may recite that the sale consideration has been paid, title has been transferred and possession has been delivered to the purchaser, the actual transfer of title and delivery of possession is postponed from the time of execution of the sale deed to the time of exchange of the registration receipt for the consideration, that is, ta khubzul badlain.”

The Hon’ble Supreme Court in the facts of the case held that the only possible inference was that the intention of the parties was that title would not pass till the consideration was not paid; and as the consideration was not paid, the sale in favour of the appellants did not come into effect and the title remained with the vendor and the sale deed dated 22.2.1988 was a dead letter and consequently the subsequent sale in favour of the concerned respondent was valid.

The Hon’ble Supreme Court has further has observed that the aforesaid practice of “*Ta Khubzul Badlain*” (of title passing on exchange of equivalent) is prevalent only in Bihar and has also observed that normally the recitals in a sale deed about transfer of title, receipt of consideration and delivery of possession will be evidence of such acts and events and on the execution and registration of the sale deed, the sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally and the exception to this rule is stated in the judgment reported in (2009) 4 SCC 193. The relevant

paragraphs of the aforesaid judgment reported in (2009) 4 SCC 193 have been quoted in the judgment itself in paragraph 12 of the report and the relevant extract of the judgment is quoted in the aforesaid judgment in paragraph 12 which is quoted as under: -

“12. In **Kaliaperumal v. Rajagopal** this Court again considered the issue and held:

"17. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of the Transfer of Property Act, 1882 ('the Act', for short) defines 'sale' as 'a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised'. If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act.

18. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.

19. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and-determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of the Evidence Act.

22. There is yet another circumstance to show that title was intended to pass only after payment of full price. Though the sale deed recites that the purchaser is entitled to hold, possess and enjoy the scheduled properties from the date of sale, neither the possession of the properties nor the title deeds were delivered to the purchaser either on the date of sale or thereafter. It is admitted that possession of the suit properties purported to have been sold under the sale deed was never delivered to the appellant and continued to be with

the respondents. In fact, the appellant, therefore, sought a decree for possession of the suit properties from the respondents with mesne profits. If really the intention of the parties was that the title to the properties should pass to the appellant on execution of the deed and its registration, the possession of the suit properties would have been delivered to the appellant."

73. The Hon'ble Supreme Court in the judgment reported in **(2009) 4 SCC 193** (*supra*) has clearly held that normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration is a condition precedent for passing of the property. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties and such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of Evidence Act.

74. In the present case, the consideration amount in both the sale deeds as recited in the sale deeds was paid through the cheques all containing the date on which the respective sale deed was executed and it has been recorded in the sale deed that the consideration has been paid. Meaning thereby, the parties intended that the sale would take its effect upon receipt of consideration through cheques. Admittedly, the cheques were returned to the defendant at the insistence of the defendant. There was no stipulation in the sale deeds that the cheques would be encashed for receipt of consideration only after mutation is done in favour of the defendant. The defendant stated that the consideration was to be paid upon mutation and admittedly mutation was never done in favour of the defendant, still the defendant claimed that consideration was paid later to

the plaintiffs/their creditors/family members which they have failed to prove. Thus, no consideration passed to the defendant although it was recorded in the sale deed that the consideration amount was paid through cheques. In such circumstances, the title and possession did not pass and recital of the sale deed, that the title passed and possession was delivered, is of no consequences.

75. This Court is of the considered view that the sale deed recited that the entire sale consideration has been paid and the possession has been delivered, but no consideration was paid in terms of the sale deed itself. Consequently, there can be no doubt that the parties intended that there would be transfer of title and possession upon receipt of the sale consideration which is said to have been paid in the registered sale deeds through cheques. The sale deeds did not refer to any deferred payment/part payment of the consideration amount and there was no recital in the sale deed that the cheques would be encashed only when the mutation is done. Rather, the sale deed revealed that the entire sale consideration has been paid through the cheques but the cheques were returned to the defendant and at the same time the defendant received the original deeds from the registry office on the strength of the registration receipts which were handed over to the defendant by the plaintiffs upon registration of the sale deeds as the deed itself revealed that the consideration amount was paid through the cheques. It is not the case of the defendant that the consideration amount was paid through the cheques nor it is the case of the defendant that the registration receipt was received by the defendant from the plaintiffs after payment of consideration through other mode of payment to the plaintiffs/their relatives, partly through cash and partly through banking transactions. The defendant has neither produced the original sale deeds as obtained from the registry office nor had given the date on which the defendant had received the original sale deeds from the registry office. Further, as held above, the defendant has failed to prove that the consideration amount was paid to the plaintiffs through other mode of payment to the plaintiffs/their relatives, partly through cash and partly through banking transactions as claimed by the defendant in the written statement.

76. In view of the aforesaid facts and circumstances, this court is of the considered view that the defendant failed to prove that the defendant had obtained the registration slips from the plaintiffs upon payment of consideration amount in the manner as claimed by the defendant in the written statement to the plaintiffs/their relatives, partly through cash and partly through banking transactions as admittedly the consideration as contemplated in the sale deeds through the cheques did not pass to the plaintiffs. Thus, the defendant has failed to prove that the registration slips were handed over to the defendant upon exchange of equivalent and the practice prevalent in the undivided State of Bihar (now Jharkhand in this case) of “*Ta Khubzul Badlain*” (of title passing on exchange of equivalent) has been followed in this case.

77. This Court is of the considered view that merely because the defendant was in possession of the registration slips, the same does not raise a presumption that the registration slips were handed over to the defendant on exchange of equivalent particularly when admittedly the consideration did not pass through cheques as mentioned in the sale deeds. It was for the defendant to prove that the consideration was paid later on in terms as pleaded in the written statement and there can be no doubt that the title and possession cannot be said to have been passed to the defendant upon execution and registration of the sale deeds as admittedly the consideration, though stated to have been paid through cheques mentioned in the sale deeds, were never paid through the cheques mentioned in the sale deeds.

78. Both the parties claimed to be in possession of the suit property and the only material pointed out by the learned counsel for the defendant with regards to the possession is the recital in the sale deeds which stated that the title and possession is handed over to the defendant from the date of execution of the sale deeds. The plaintiffs claimed that the sale deeds being void as the consideration through cheques did not pass to the plaintiffs, the recitals of the sale deeds are of no consequences as the sale deeds are nullity in the eyes of law and it was an admitted fact that the cheques were never encashed by the plaintiffs and were returned to the defendant.

79. This Court finds that except the recital in the sale deeds that the possession was delivered to the defendant, there is no other evidence from the side of the defendant that they were in possession of the suit property and admittedly even the mutation was not done in their favour. Admittedly, the land was vacant land as per the sale deeds. Since, the recitals of the sale deed reveals that the title and possession passed to the defendant as the consideration amount was said to have been paid vide cheques all issued on the date of sale deeds and admittedly, the cheques were returned to the defendant at the instance of the defendant and the consideration did not pass in the manner stated in the sale deed through cheques and even the payment of consideration later on could not be proved by the defendant, in such circumstances, the sale deeds were void and hence nullity in the eyes of law and the sale deeds were as dead letters and consequently it was open to the plaintiffs to deal with their property with third party and the plaintiffs have entered into agreement with third party. Since the agreement of sale does not pass any right and title it is not required registration and the present case is not a case where the plaintiffs are seeking protection under section 53 A of the Transfer of Property Act.

80. The sale deeds were void on account of the admitted fact that the consideration did not pass to the plaintiffs through cheques mentioned in the sale deeds and in terms of the sale deeds. It is important to note that even as per the case of the defendant the cheques were returned and they claimed that the consideration was subsequently paid to the plaintiffs/their relatives as per the instructions of the plaintiffs, which the defendant failed to prove.

81. *The case can also be seen from the angle of the case of the defendant as per the written statement.* It was the specific case of the defendant that it was the intention of both the parties that cheques issued by the defendant as mentioned in both the sale deeds will only be encashed by the plaintiffs after mutation of the land in question will be done in the name of the defendant. But since the land in question was not mutated in the name of the defendant by the concerned authority the defendant demanded his cheques back from the plaintiffs which the

plaintiffs did. It was stated by the defendant that they have paid the consideration amount in full by way of cash and bank transactions.

This Court finds that the defendant has not been able to show any document which can prove that the entire sale consideration amount was paid to the plaintiffs. Ext. A & B as submitted by the defendant shows that it is a letter dated 16.02.2015 and 30.08.2018 allegedly written by plaintiffs to the defendant which defendant is showing that payment has been made as per request by the plaintiffs. The plaintiffs denied his signature on both these letters and the same remained unproved by the defendant. Moreover, the persons and amounts as mentioned in these letters are those persons who have entered into agreement with the defendant before the sale of the present land in question and the defendant has returned those persons the advance which defendant has taken. The defendant has not produced any witness and documentary evidence to that effect which can prove that on the request of plaintiffs the amount was handed over to them.

D.W-1 in Para 4 has mentioned about the details of the payment allegedly given to the plaintiff, but the defendant witness is unable to prove the same by any oral or documentary evidence. From the same it is evident that defendant has alleged that they have paid an amount of Rs.1,47,62,700/- which includes payment to one Arun Kumar Thakur as per order of Hon'ble High Court, payment of Rs.5,00,000/- for court cases expenses by plaintiff, payment of Rs.74,80,000/- as security charges, Rs.44,00,000/- to creditors of plaintiff. All these details of payment are without any proof. In cross examination, D.W. 1 has stated that his son has the details of the amount which was paid on account of sale consideration and also accepts that mutation is not done in his name.

D.W-2 in his chief has stated that they have paid an amount of Rs.1,47,62,700/- to the plaintiffs but the sale consideration amount was only Rs.1,02,30,000/- and they have paid excess. He has given the modes of payment but the same was neither supported by any documentary proof nor by any oral evidence of those persons whom they are saying payment has been transferred. In cross examination D.W. 2- has stated about his proprietorship firm, namely, Shree Balaji Heritage and its Bank

Statement which is marked as Ext. C & G. These document shows that defendant's son has taken consideration amount from various persons for allotment of land and afterwards he has returned those persons the money back and at present without giving any oral or documentary proof this defendant's son is stating that on account of sale consideration the same was paid.

Hon'ble Supreme Court of India in the case of *Shanti Devi (since deceased) though Lrs. Goran v Jagan Devi & Ors. reported in 2025 SCC Online SC 1961 at para 34-38* relying on its earlier judgment of *Kewal Krishnan v Rajesh Kumar reported in (2022) 18 SCC 489 at para 18-21* held that “a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not affect the transfer of the immovable property”.

In the instant case, the defendant has not been able to prove the fact that sale consideration amount was paid after they have received back the cheques as mentioned in both the sale deed. Therefore, when no consideration has been flown such sale will have no legal effect and the same will be null and void. Moreover, the learned Court below has failed to give any specific finding with regard to the fact that when defendant has not been able to prove how the consideration amount was paid after receiving all the cheques then whether such sale will be valid or not. Further, it is also well-settled principle of law that title of property passes to the purchaser only when there is exchange of equivalent. Irrespective of the recitals as mentioned in the sale deed if entire consideration amount has not been paid and registration receipts are not obtained in exchange the title does not pass. This principle is known as 'ta khuzul badlain' as recognized by the Hon'ble Supreme Court of India in the case of *Janak Dulari Devi v Kapildeo Rai reported in (2011) 6 SCC 555*

[refer para 11-20 & 24] wherein the Hon'ble Supreme Court held that 'Intention of the parties has to be seen from the facts'. In the present case as per the defendant the intention of the parties was that cheques will be presented only after mutation of the land in question therefore the cheques were demanded back and plaintiffs handed over the cheques. Therefore, no consideration was flown thus, when no consideration has been flown such sale will have no legal effect and the same will be null and void and dead letters. ***Thus, even if the case is seen in the light of the written statement of the defendant, there can be no doubt that the sale deeds are null and void and dead letters.***

82. So far as the claim for possession is concerned, the only evidence, which has been relied upon by the defendant to claim that they were put in possession of the land covered by the two sale deeds, is that it has been mentioned in the sale deeds itself that the possession of the property was handed over.

83. This Court is of the considered view that once the sale deeds are null and void, any recital in the sale deed relating to possession of vacant land is of no consequence. This Court is of the considered view that neither title nor possession passed upon execution and registration of the sale deeds as claimed by the defendant as the consideration did not pass in terms of the sale deeds and the defendant has also failed to prove that the consideration was subsequently paid to the plaintiffs through their creditors and relatives, partly through cash and partly through bank transactions. The argument of the defendant that, the plaintiffs ought to have filed money suit for recovery of the consideration amount, is devoid of any merit as the sale deeds were void, nullity and dead letters and the defendant has no right to retain the original sale deeds collected from the registry office.

84. The learned trial court inspite of recording that the defendant has admitted that the payment of consideration was made by way of other modes than specified in the sale deeds marked as Ext. 1 and 1/1 and in the light of the discussions made while deciding the point of maintainability of the suit as issue no (i) where reliance has been placed upon the fact that the defendant was handed over the registration slips in

connection with the sale deeds held that the sale deeds cannot be held to be void on the ground that no sale consideration had passed to the plaintiffs. The court observed the settled principle of law that a registered instrument of transfer providing for sale of immovable property shall be held to be a valid transfer on sale and consideration amount may be part paid or completely paid or may even may be promised to pay. However, the learned court failed to consider that in the present case, the sale consideration was said to have been paid through cheques at the time of execution of the sale deeds which was admittedly returned to the defendant and the defendant failed to prove that sale consideration was subsequently paid and in exchange of equivalent the registration slips were handed over to the plaintiffs and that the records reveal that the registration slips were handed over at the time of registration of the deeds in view of the fact that as per the deeds the consideration was paid through cheques. The learned trial court has failed to properly apply the principle of law as laid down by the Hon'ble Supreme Court in the case reported in *(2011) 6 SCC 555 (supra)* applicable to the State of Bihar (now Jharkhand) as fully discussed above.

85. The entire approach of the learned trial court in relying upon the fact that the defendant had obtained the original sale deeds from the registry office upon presentation of registration slips and holding that the two sale deeds were valid, is erroneous in law. The learned trial court has failed to consider that admittedly, the cheques mentioned in the sale deeds were not encashed and were returned to the defendant at the insistence of the defendant and there was no evidence to show that registration slips were handed over to the defendant upon receipt of the equivalent. In fact, the registration slips were handed over upon registration of the sale deeds which mentioned that the consideration was paid through cheques mentioned in the sale deeds and the defendant neither paid the consideration through the cheques mentioned in the sale deeds nor proved that the consideration amount was paid subsequently through creditors and relatives of the plaintiffs as claimed in the written statement. It is important to note that even the learned trial court has not relied upon the story of subsequent payment of consideration as claimed

by the defendant in the written statement. The learned trial court failed to consider that merely because the registration slips were handed over to the defendant, it cannot be presumed that the consideration amount was paid, when admittedly the consideration was not paid in terms of the sale deeds. It was never the case of the defendant that the registration slips were handed over to the defendant after the consideration amount was paid subsequently through creditors and relatives of the plaintiffs as claimed in the written statement so as to say that the registration slips were handed over upon exchange of the equivalent. The learned trial court failed to consider that in the facts of the present case the handing over of the registration slips were not upon payment of equivalent and the parties had also intended the consideration to pass in terms of the sale deeds through cheques mentioned therein which admittedly never passed in terms of the sale deeds and the defendant further failed to prove that the consideration passed later on as claimed in the written statement.

86. *In view of the aforesaid findings, it is held that the two sale deeds bearing no. 705/508 dated 07.02.2014 and 2736/2125 dated 17.05.2014 executed by the plaintiffs were without payment of consideration and hence void, nullity and dead letters in the eyes of law and consequently the sale deeds did not result into transfer of title and/or possession in favour of the defendant though it was mentioned in the recitals of the sale deeds that the title and the possession was handed over to the defendant upon payment of consideration amount through cheques .*

87. In view of the aforesaid findings, this Court is of the considered view that the learned trial court erred in holding that Exhibit-1 and 1/1 were valid and also holding that consideration amount mentioned in the sale deeds had passed and has wrongly dismissed the suit.

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

89. The sale deeds being void for want of consideration are nullity and dead letters in the eyes of law and hence the plaintiffs are entitled to get back the original sale deeds from the defendant.

90. The defendant is directed to hand over the original sale deeds *bearing no. 705/508 dated 07.02.2014 and 2736/2125 dated 17.05.2014 executed by the plaintiffs* within a period of three months from today, failing which it will be open to the plaintiffs to get the same through the process of court.

91. Office to prepare decree.

92. Let a copy of this order be communicated to the court concerned through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Dated: 16.03.2026

Uploaded on: 17.03.2026

Mukul/-