
(2025) 06 JH CK 0966
In the Jharkhand High Court
Case No : Second Appeal No. 157 Of 2019

Shyamlal Poddar @ Shyam Poddar

APPELLANT

Vs

Sukhdeo Mandal

RESPONDENT

Date of Decision : 23-06-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 11, Order 13 Rule 3
Registration Act, 1908 — Section 17, 49
Code of Criminal Procedure, 1973 — Section 107, 144

Citation : (2025) 06 JH CK 0966

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Amar Kr. Sinha, Ashutosh Pd. Joshi, Kaushik Sarkhel

Final Decision : v Yellapu Uma Maheswari Vs. Buddha Jagadheeswararao"
reported in (2015) 16 SCC 787

Judgement

Anubha Rawat Choudhary, J

1. This appeal has been filed challenging the judgment and decree dated 26.02.2019 (decree signed on 06.03.2019) passed by learned District Judge I, Jamtara dismissing Civil Appeal No.14 of 2017 and confirming the judgement and decree dated 31.03.2017 (decree signed on 11.04.2017) passed by learned Civil Judge (Senior Division) I, Jamtara in Title Suit No.9 of 2009. The appellant was the defendant no.1 in Title Suit No.9 of 2009.

2. This appeal has been admitted for hearing on the following substantial questions of law:

i. Whether exhibit -4 was effecting partition and compulsorily registrable as per section 17 and 49 of the Registration Act or it was just a memorandum of earlier partition?

ii. Whether Oral Family Settlement (Exhibit-4) entered into between the sons with respect to the property acquired by their father during his lifetime without

making daughters as party to the said deed is binding upon the parties and whether the finding of the learned appellate court is perverse and against the mandate of law?

3. Case of the plaintiff

I. The plaintiff Sukhdeo Mandal filed the suit for declaration of right, title and interest over the suit properties in his favour and against the defendant and prayed for delivery of possession over the suit properties in his favour through the process of the court and permanent injunction against the defendants restraining them from disturbing his possession.

II. The land involved in the present case has been described in the schedule to the plaint as under: -

"In the district of Jamtara, Subdivision Jamtara, Police Station Jamtara, Out Post-Karmatarn, Anchal Jamtara, in mouza Karmatarn No. II appertaining to A.K.J. No. 106/4115, plot No. 1206/A area 1/2 decimal and plot No. 1206/2305/A area 1/2 decimal total measuring an area of 1 decimal of land alongwith one pucca constructed house shown in red colour in the annexed trace map."

III. As per the plaint, Narsingh Poddar, Son of Late Raghu Poddar purchased 2 decimals of land from plot No. 1206 and 1206/2305 of mauza Karmatanr from the descendants of Khartar Shaw and Ramdhani Shaw by registered deed of sale; Narsingh Poddar entered into possession of the property in the year 1997 and constructed house over the property having transferrable basauri rights. The genealogy has been given in paragraph 4 of the plaint. Narsingh Poddar had two sons, namely, Moti Poddar and Shyam Poddar. The proforma defendants were the descendants/legal heirs of Moti Poddar.

IV. It is the case of the plaintiff that Narsingh Poddar died in the year 1999 and Moti Poddar died in the year 1987 and thus he left behind only one son, namely, Shyam Poddar. The wife of Moti Poddar is Thakuri Devi who was defendant No. 2. It was the case of the plaintiff that after death of Narsingh Poddar, both the brothers or their legal heirs had succeeded the property purchased by Narsingh Poddar. It was his further case that after death of Moti Poddar, Shyam Poddar had started creating disturbance and ultimately the aforesaid two decimals property was amicably divided half and half; northern one decimal of land was allotted to Shyam Poddar whereas Southern one decimal of land was allotted to the heirs of Moti Poddar. To this, a memorandum of partition was created for future reference on 20.11.2005 only.

V. It is further case of the plaintiff that after death of Moti Poddar, the widow and the children started living at village Posta, P.S. Narayanpur and taking advantage of the death of Moti Poddar, defendant No. 1 Shyam Poddar made up his mind to grab the entire 2 decimals of land. Upon being informed, the legal heirs and successors of Moti Poddar took several preventive measures but they failed. It is alleged in the plaint that the principal defendant Shyam Poddar had anti-dated

several papers to grab the entire 2 decimals of land and ultimately several litigations started between the parties.

VI. The plaintiff's further case is that the proforma defendants i.e. legal heirs and successors of Moti Poddar being in need of money sold their allotted one decimal of land towards the southern side to the plaintiff by a registered deed of sale bearing No. 493 dated 20.10.2008 and consequently, the plaintiff became the rightful owner to the extent of one decimal of land with structure thereon. The principal defendant i.e. Shyam Poddar started creating trouble and on 25.01.2009, the plaintiff along with the legal heirs and successors of Moti Poddar (the proforma defendants) approached the principal defendant Shyam Poddar to give vacant possession of the purchased land as described in the schedule but the principal defendant flatly denied and asked the plaintiff to move the competent court of law. Consequently, the suit was filed on 25.02.2009.

4. Case of the contesting defendant i.e. defendant No.1

The defendant No. 1 Shyam Lal Poddar filed his written statement before the learned trial Court and the case of the defendant no. 1 was as under:

a. There was no cause of action for the suit and the suit was not maintainable. It was the case of the defendant no. 1 that the plaintiff had a jewelry shop at Karmatanr where defendant no. 3 Kashi Poddar (S/o Moti Poddar) worked under him as his employee and he got the illegal sale deed executed by the proforma defendant without any consideration only to commit mischief.

b. The suit was bad for non-joinder of necessary parties as all the heirs of Narsingh Poddar- the original owner of suit land, were not made party. Narsingh Poddar had three daughters namely Amli Devi, Bhumi Devi and Shanti Devi, the first of whom died on 01.10.2008 leaving behind her five sons namely Amardeep, Raju, Tuntun, Ashok and Pappu and a daughter Munni Devi. Bhumi Devi died in or about 2000 leaving six sons namely Tarani, Dhananjay, Nandu, Mahesh, Pancham and Kamlesh and one daughter Beena Devi. It was asserted that Shanti Devi was still alive and the plaintiff deliberately omitted her name and the names of the others and had furnished an incorrect genealogy. The defendant no.1 further averred that the actual owner of the suit land was wife of defendant no.1, which was fully known to the vendors of the plaintiff and also the plaintiff of the suit, but with ulterior motive she was not made party in the suit and the suit was liable to be dismissed for willful non-joinder of necessary parties.

c. It was also case of the defendant no.1 that Narsingh Poddar did not die in 1999 but he died on 26.05.1998 and left behind two sons and three daughters as his next heirs. Before and after the death of Moti Poddar, the proforma defendants always lived at Posta and they had no occasion to live at Karmatanr.

d. It was also pleaded on behalf of defendant Shyam Lal Poddar that the proforma defendants were never the owner of one decimal of land towards southern side and their alleged sale of land to the plaintiff was mala fide. As per

this defendant, the proforma defendants contested several cases under sections 144 and 107 of Code of Criminal Procedure with him for the suit land and got such proceeding drawn up by making false allegations. It was asserted that in all those cases, the defendant no. 1 had clearly asserted in his show-cause that the proforma defendants did not have any right, title, interest in the suit land nor they were in possession of the same. As per the contesting defendant, the fact was that the 2 decimals of land was purchased by Narsingh Poddar who built a tide roof house and was living on the property with his younger daughter-in-law i.e., W/o Shyam Poddar who used to nurse and look after Narsingh Poddar at his old age. Out of special love and affection for her, Narsingh Poddar gifted and transferred the entire two decimals of land along with house in her favour on 07.12.1995 and the defendant no. 1(a) (wife of defendant no.1) accepted the sale gift and entered into possession on 07.12.1995 itself and continued to reside over the property along with her sons on her own right. Narsingh Poddar got himself divested of the said property by such transfer through gift. It was asserted that Narsingh Poddar had also executed a deed of gift in favour of defendant no. 1(a) on 07.12.1995 which was certified by Notary and attested by witnesses and he also sworn an affidavit confirming the contents of the deed. Defendant no. 1(a) had undertaken some construction work over the property soon after the death of Narsingh Poddar but in March 2008, the proforma defendants started filing cases to stop the construction. So, the specific case of the defendant No. 1 was that by virtue of gift defendant no. 1(a) became the absolute owner of the suit land and she is in exclusive owner of the suit property. Alternatively, the defendant No. 1 submitted that defendant no. 1(a) had acquired indefensible perspective title to the entire 2 decimal of land and remained in peaceful possession for more than 12 years beginning from 07.12.1995 adversely to Narsingh Poddar and his heirs.

5. Case of the proforma defendants i.e. defendant Nos. 2 to 5

i. The defendant nos. 2, 3, 4 and 5 appeared and filed their written statement pleading therein that after the sudden demise of Moti Poddar i.e. husband of defendant no.2, these defendants became helpless and as such the defendant no.1 Shyam Lal Poddar decided to grab the entire two decimals of land illegally by practicing fraud and undue influence and as such he prepared ante-dated forged document.

ii. It was the case of these defendants that on 03.07.2004 a panchayati was held at Karmatanr in which the panch after hearing both parties held equal share of both sets of defendants and the original panchnama was given to Shyam Lal Poddar and a photo copy was supplied to the defendant no. 2 Thakri Devi. In the year 2008, once again the defendant Shayam Lal Poddar tried to occupy the suit property and on being informed to the police, a proceeding u/s 144 of Cr. P.C was started between the defendants inter se, registered as CrI. Misc. Case No. 145/2008 in which vide order dated 02.06.2008 the proceeding was dropped with observation that it was a civil dispute and the parties should

knock at the door of civil court for proper relief.

iii. It was also the case of these defendants that again in the month of September, 2008, the defendant no.1 Shayam Lal Poddar started a proceeding u/s 144 of Cr.P.C in which the then SDM Jamtara was pleased to declare and confirm the possession of Shyam Lal Poddar over the suit properties. Being aggrieved and dissatisfied with the aforesaid order, the defendant no.2 Thakuri Devi and her son Kashi Nath Poddar preferred a Criminal Revision before the Learned Sessions Judge, Jamtara bearing Crl. Rev. Case no. 26/2008, in which vide order dated 02.01.2009 the learned revisional court was pleased to allow the revision modifying the order of SDM, Jamtara and the operative portion of order regarding finding of possession given by SDM Jamtara was expunged.

6. Case of defendant No. 1(a)

A. Addition of Leelavati Devi, W/o of Defendant No. 1 as defendant No. 1(a). - The records of the case reveal that upon filing of written statement by defendant No. 1 who asserted that the property belonged to his wife, the plaintiff filed a petition to add her as a party which was allowed vide order dated 10.11.2009 and consequently, wife of defendant no. 1 was made defendant No. 1(a) and thereafter she filed a separate written statement.

B. The defendant no. 1(a) asserted that the suit was bad for non-joinder of necessary parties, since all the heirs of Narsingh Poddar had not been made party in this suit. It was also pleaded that Narsingh Poddar had purchased the suit land in the year 1977 and not in the year 1997 as alleged by the plaintiff, and constructed a tiled roof house on about 1 decimal of land and started living there with the defendant no. 1(a), who used to nurse and look him after in his old age. It was further pleaded that her husband also assisted in managing the household of Narsingh Poddar, but the other son and the son's family as well as the daughters of Narsingh Poddar never cared for welfare and needs. It was also her case that due to her continuous service to her father-in-law, the latter developed special affection for her and on 07.12.1995 he gifted the two decimals of purchased land and the house standing thereon to her, which she accepted and entered into possession on the same day. By such gift, Narsingh Poddar was divested of his right in the land in question and defendant no. 1(a) started possessing the same as of her own right and still she was in possession thereof.

C. It was also case of this defendant that on 07.12.1995 Narsingh Poddar had executed a Written Deed of Gift in her favour, attested by Notary and supported by witnesses and also an affidavit sworn by Narsingh Poddar himself. She further asserted that when she was undertaking some construction work on the suit land, the proforma defendants tried to stop construction of the pucca house and septic latrine being made by her and in that process, they also filed a case u/s 144 of Cr.P.C for stopping construction, but failed to accomplish success. The defendant no. 1(a) further averred that she had acquired a prescriptive title to the entire two decimals of purchased land of Narsingh Poddar and structures

standing thereon by remaining in continuous possession of the same adversely to Narsingh Poddar and subsequently his all the heirs to their knowledge and knowledge of all other persons.

D. It was further pleaded by her that the sale of one decimal of land alongwith pucca constructed house by the proforma defendants in favour of the plaintiff was entirely illegal, void and fraudulent and no title accrued to the plaintiff by virtue of the fake sale deed. It was also case of this defendant that under no circumstances the proforma defendants would sell half of the properties of Narsingh Poddar, who had died leaving behind five branches of sons and daughters and each of them had only 1/5th share therein and as such the proforma defendants who represented only one son of Narsingh Poddar could not have more than 1/5th share and their fake sale of half share of Narsingh Poddar's properties did not confer any title to the extent of half share and plaintiff could not have asked for any decree for half share.

E. The defendant no. 1(a) further averred that the alleged sale deed was replete with false averments. It was pleaded that the plaintiff had brought the sale deed in question in existence with the mala fide object of grabbing the suit land by his muscle power being a dada of the locality, who also gained over the proforma defendants.

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

- (1) Is the suit as framed maintainable?
- (2) Is there any cause of action for the suit?
- (3) Is the suit bad for non-joinder of necessary parties?
- (4) Has the plaintiff right, title and interest over the suit properties?
- (5) Is the deed of gift executed by Narsingh Poddar in favour of the wife of Shyam Poddar is valid and effective?
- (6) Are the plaintiffs entitled to the reliefs claimed?
- (7) Has Lilavati Devi acquired right, title and interest on the basis of adverse possession against Narsingh Poddar and others?

Findings of the trial Court

8. Before the learned trial Court, the plaintiff examined altogether 11 witnesses in support of his case. PW-1 Sukhdev Mandal, PW-2 Shankar Sao, PW-3 Md. Sultan, PW-4 Subeshwar Mandal, PW-5 Ghafoor Mian, PW-6 Pramod Kumar Sah, PW-7 Jai Prakash Ambastha, PW-8 Dhananjay Biswas, PW-9 Mahendra Mandal, PW-10 Sattar Mian @ Ahamad Hussan and PW-11 Pradeep Mandal. The plaintiff also adduced some documents which were marked exhibits as under:

- (i) Deed of Sale dated 20.10.2008 - Ext. -1

- (ii) Original Trace Map dated 20.10.2008 – Ext. -2
- (iii) Signature of Dhananjay Biswas on the Sale Deed - Ext. 3
- (iv) Signature of Mahendra Mandal on the Sale Deed–Ext.3/1
- (v) Signature of Ahamad Hussain on the sale Deed – Ext. 3/2
- (vi) Letter of direction for mutual oral partition of family -Ext- 4
- (vii) Certified Copy of voter list of Shyam Lal Poddar - Ext. -5
- (viii) Certified Copy of Voter List of Lila Devi - Ext. -5/1
- (ix) Certified Copy of order dated 02.01.2009 of CrI. Rev. No 26/2008 - Ext. 6

9. On behalf of the contesting defendant, seven witnesses namely DW-1 Tulsi Das, DW-2 Tarni Poddar, DW-3 Shyam Lal Poddar (defendant no. 1 himself), DW-4 Lilawati Devi, DW-5 Pancham @ Panchanand Poddar, DW-6 Baidyalal Turi and DW-7 Pawan Kumar Poddar were examined. The defendant exhibited following documents:

- (i) Deed of gift dtd. 07.12.1995 – Ext. A
- (ii) Signature of Lila Devi on the deed of gift – Ext. A/1
- (iii) Signature of Narsingh Poddar on the deed of gift –Ext. A/2
- (iv) Affidavit of Narsingh Poddar sworn on 07.12.1995 – Ext. B
- (v) Rent Receipt No. 533010 – Ext. C
- (vi) Rent Receipt No. 1735101 – Ext. C/1
- (vii) Rent Receipt No. 1939210 – Ext. C/2

10. The learned trial Court first considered issue no. (4) i.e. as to whether the plaintiff had right, title and interest over the suit properties. After considering the evidences, in particular deed of sale executed on 20th October 2008 (exhibit- 1), the learned Court found the exhibit-1 to be a valid piece of document showing transfer of the suit land in favour of the plaintiff and thus creating right, title and interest in his favour. The learned trial court recorded that the registered sale deed was not specifically challenged by the contesting defendants nor any counter claim was filed and on the strength of the registered deed which was not challenged, the issue was decided in favour of the plaintiff. The findings are as follows:-

“In the course of trial the deed of sale executed on 20th October 2008 by Thakari Devi, Kashi Poddar and Meena Devi have been proved as Ext.-1 without objection. Although the contesting defendants have challenged the execution of this deed in the course of trial, they have admitted at the time of their cross-examination that they have never challenged the same in any court of law nor prayed for its cancellation. Besides, neither they have alleged that the heirs of

Moti Poddar had got no title to the properties sold by them nor they have filed any counter claim.

In view of the above the sale deed prove vide Ext. 1 is found to be a valid piece of document showing transfer of the suit land in favour of the plaintiff and thus creating right, title and interest in his favour. Thus, this issue is decided in favour of the plaintiff and against the defendants."

11. The issue no. 5 was also decided against the defendant no. 1 and 1(a) as the gift deed was an unregistered document. The findings are as follows:-

"The Deed of Gift has been proved as Ext.A by the defendant no.1. This document is an unregistered instrument. It reflects that stamp for this deed was purchased two months ago prior to its registration in December 1995. DW4 Lilawati Devi has admitted in para 13 of her cross-examination that the deed of gift was prepared in registry office. Further para 23 of her cross- examination shows that her father-in-law died in the year 1998 and in para 24 that prior to that he was bed-ridden for the last 5-6 years and was not in a position to attend nature's call. This piece of evidence creates physical impossibility regarding presence of the executant of the deed proved vide Ext. A, and said to be executed in the year 1995. The trace map annexed thereto further creates suspicion and doubts regarding the genuineness of this document. Needless to say that no immovable property can be transferred through an unregistered instrument.

In view of the above this issue is decided in favour of the plaintiff and against the defendants."

12. Thus, issue no. 5 was decided in favour of the plaintiff and against the contesting defendants.

13. While deciding issue no. 7, the learned trial Court held as under:

"As per para-12 of the written statement of defendant Lilavati Devi she is in peaceful continuous possession of the 2 decimals of land, but as per the plaintiff the death of Narsingh Poddar had occurred in the year 1999, which is slightly contracted by defendant no. 1 of para-9 of W.S. Be that as it may, in both the cases, which refutes the claim of adverse position made by her from the year 1995. She herself has admitted in para-14, 16 and 17 about having no knowledge about the sating aside of the order of 144 of Cr. P.C passed in her favour and also about issuance of rent receipt and mutation of that land. Besides the document proved vide Ext. 5 and Ext. 5/1 clearly establish that her husband and she are the enrolled voters of village Posta, even till the year 2014. In that view of matter the plea of adverse position taken by her is found to be shattered. Needless to say that it is established law that to claim adverse position there must a denial of title of the owner and for a possession to be adverse it has to be actual, open, notorious, exclusive and continuous. In the instant suit the possession of Lilavati is found to be neither against the true owner nor

continuous.

In view of these discussions this issue is decided in favour of the plaintiff and against the defendants."

14. With regard to issue no. 3 i.e., as to whether the suit was bad for non-joinder of necessary parties, the learned trial Court held in paragraph 16 of its judgment as under:

"16. Issue No. (3) i.e. "Is the suit bad for non-joinder of necessary parties?" The contesting defendant Shaymlal Poddar taken the plea that suit is bad for non-joinder of necessary parties as all the heirs of Narsingh Poddar, the original owner of the suit land has not been made party. He has pleaded that Narshinhg Poddar had three daughters, Amli Devi, Bomi Devi and Shanti Devi but the plaintiff had deliberately omitted their names.

The other contesting defendant Lilavati Devi has pleaded similarly in para-4 of her W.S that all the heirs of Narsingh Poddar have not been made in the party in the suit, although the W.S filed by her does not mention the names of the heirs of Narsingh Poddar, in absence of whom, the suit is bad for non-joinder.

On consideration of the pleading of the parties and taking into consideration the facts of this suit, this court finds that Leelavati Devi has already been made a party in this suit vide order dtd 10/11/2009 and the pleading of the defendant regarding the non-joinder of a few others i.e., the three daughters of Narsingh Poddar is not tenable, since they are not necessary parties, this issues has become redundant. Hence, it stands decided in favour of the plaintiff."

15. While deciding issue nos. 1, 2 and 6, the learned trial Court held as under:

"17. Now the issue no. (2) i.e. "Is there any cause of action for the suit?" is taken for discussion.

As per para 21 of the plaint the cause of action for the suit arose on and from 25.01.2009, a Sunday, when the defendant no. 1 refused to give vacant possession of the suit properties to the plaintiff. Vide para-17 of the plaint the plaintiff has alleged that on 25.01.2009 he had approached the principal defendant Shyam Lal Poddar alongwith the proforma defendant to give vacant possession of the suit land and structure as per schedule but he flatly denied and suggested him to move the competent court of law.

The plaintiff examined as PW1 has supported his pleading in regard with this issue in para 13 of his affidavit examination-in-chief which shows that there is cause of action for the suit in his favour. Hence, this issue is decided in favour of the plaintiff and against the defendants.

18. Since the core issues have been decided in favour of the plaintiff and against the defendants the remaining two issues no. (1) and (6), which are related to maintainability of the suit and entitlement of the reliefs claimed by the plaintiff are decided in favour of the plaintiff and against the defendants."

16. After giving the aforesaid findings, the learned trial Court decreed the suit in favour of the plaintiff and against the defendants. The defendants were directed to give delivery of possession to the plaintiff within 30 days failing which he was at liberty for recovery of possession through the process of the court.

Findings of the 1st appellate Court

17. The contesting defendants were appellants before the learned 1st appellate Court. The learned appellate Court framed following points for determination: -

"A. Whether the learned lower court has wrongly decided the issue that plaintiff has got right, title and interest over the suit property without considering the fact of all the legal heirs of Late Narsingh Poddar and the fact of alleged partition between Shyamlal Poddar and the legal heirs of Motilal Poddar?

B. Whether the impugned judgment and decree of the learned Trial Court are justified and it calls for any interference?"

18. The learned 1st appellate Court considered the aforesaid points jointly as both were related to each other. After discussing the arguments of the parties, the learned 1st appellate court recorded its findings at paragraph 12 as under: -

"12. Both points are related with each other, hence, they are taken jointly for discussion. I have perused the pleadings and evidences available on record and considered the submissions of learned counsels for the parties. It is admitted fact that two decimals land from Plot No. 1206 and 1206/2305 of Mouza Karmatanr was purchased by one Narsingh Poddar, S/o Late Raghu Poddar of village Posta. It is also admitted fact that said Narsingh Poddar died in the year 1999 leaving behind the legal heirs of his one son Motilal Poddar, who are Proforma Defendants and another son Shyamlal Poddar, who is Contesting Defendant and Appellant here. It appears that the case of plaintiff is that the Proforma Defendants, who are the legal heirs of said Motilal Poddar were allotted the half share in the said purchased land of Narsingh Poddar and they have sold the one decimal of land to the plaintiff through registered Sale Deed No. 493 dated 20.10.2008. It is further case of plaintiff that after the death of Narsingh Poddar, his son Shyamlal Poddar and the legal heirs of the another son Motilal Poddar succeeded the purchased portion and the said land was amicably divided half and half by them in equal share and 1 decimals of southern side land and structure was allotted to the legal heirs of Moti Poddar and in this respect, Memorandum of Partition was created on 20.11.2005, which has been proved as Ext. 4. Further case of plaintiff is that the legal heirs of Moti Poddar are the Proforma Defendants and they have sold the said 1 decimal land and structure thereon allotted to them in Southern side to the plaintiff through registered Sale Deed and the said Sale Deed has not been challenged till date by the contesting defendants and thus plaintiff has got right and title over the suit land. On the other hand, contesting Defendant Shyamlal Poddar has pleaded that the entire two decimals lands purchased by his father, has been gifted to his wife Lilabati Devi by his father in the year 1995 through a Notary Affidavit and he and his

wife Lilabati Devi are in possession over the suit land and his wife Lilabati Devi has perfected her title over the suit land by way of adverse possession also. He has further pleaded that the plaintiff has suppressed the fact by not impleading the three daughters of the said Narsingh Poddar as the two sons of Narsingh Poddar exclusively never succeeded to the purchased portion of the land and these three daughters were necessary party and these daughters were the legal heirs of Narsingh Poddar but plaintiff has shown that the alleged plot was divided in equal share between the heirs of Motilal Poddar and Shyam Poddar. Contesting defendants have pleaded that the alleged partition document is forged and spurious and proforma defendants have no right to sell 1 decimal land to plaintiff and the alleged Sale Deed does not confer the title to the plaintiff, as the contesting defendants, who are husband and wife and the legal heirs of Narsingh Poddar, are in possession over the same and the said contesting defendant Lilabati Devi has obtained the suit land by way of Gift Deed and also perfected her title by way of adverse possession.

In view of pleadings of both the sides and evidences, it is apparent that plaintiff/respondent has purchased one decimal land of the aforesaid Plot No. 1206 and 1206/2305 of Mouza Karmatanr through registered Sale Deed (Ext. 1) from the legal heirs of Motilal Poddar, the son of Narsingh Poddar. The said legal heirs of Motilal Poddar have been made party as proforma Defendant and they have also filed their written statement, in which they have admitted the execution of Sale Deed (Ext. 1) of the suit property in favour of plaintiff and they have not objected the claim of plaintiff in their written statement. The plaintiff and his witnesses have also proved the execution of Sale Deed of the suit property in favour of plaintiff. The plaintiff has brought a document as "Parvarik Apsi Mokhik Batwara Ka Nideshan Patra" between the legal heirs of Moti Poddar and Shyam Poddar, which have been proved as Ext. 4. Although it does not bear the signature of scribe but P.W. 11 Pradeep Mandal has stated that his father had written the said Batwara Patra and P.W.6 has also proved the creation of the said Batwara Patra and even the Contesting Defendant Shyamlal Poddar, who has examined himself as D.W.3, has also admitted in para 31 that his paternal house is in village Posta and during the lifetime of Narsingh Poddar, he and his brother Motilal got separated and the entire properties were divided by his father in two equal shares. It further appears that contesting Defendant Shyamlal Poddar has not challenged his signature over the alleged Deed of Partition. It further appears that contesting defendants Shyamlal Poddar and his wife have claimed the entire two decimals of lands, purchased by the said Narsingh Poddar, on the basis of a gift deed alleged to be sworn before Notary. These contesting defendant Shyamlal Poddar has admitted in para 5 of his W.S. that the daughters of Narsingh Poddar namely Amli Devi died on 0.10.2008 and Bhumi Devi died on or about 2000, which shows that they were died prior to filing of this suit and these contesting defendants have nowhere stated that these daughters have ever claimed any right in the suit land rather these defendants have claimed the said two decimals of lands including suit land to be their own. The plaintiff has

purchased 1 decimal land and since the contesting defendants had obstructed in taking possession, he has filed the suit against contesting defendants for declaration of his right, title and recovery of possession. Certainly it is a declaratory suit and not a Partition Suit and further it appears that daughters of said Narsingh Poddar or their heirs have never claimed any title and even contesting defendants have examined D.W. 5, who is the son of alleged daughter Bhumi Devi and in spite of having knowledge of the suit,, he has not claimed any right, title over the suit land rather he has stated that his maternal uncle Shyamal Poddar and his wife had obtained the suit land on the basis of gift and by way of adverse possession. It appears that the contesting defendants have claimed the suit land on the basis of unregistered Deed of Gift alleged to be executed by Narsingh Poddar in the year 1995 and the said Lilavati Devi entered into possession and continued to reside there but the said Deed of Gift, which has been marked as Ext. A, is an unregistered instrument and on perusal it appears that stamp for this deed was purchased two months prior to its alleged creation on 07.12.1995. At the same time, it also cannot be denied that the said Narsingh Poddar was bedridden for the last 5-6 years and he was not in position to attend nature's call and he died in the year 1998, hence, his physical presence at the time of executing the said Deed, creates serious doubt about the execution and preparation of Ext. A and moreover this is an unregistered instrument, which cannot create right and title in favour of contesting defendants. Further the alternative plea of adverse possession by contesting defendant Lilavati Devi is also not tenable, as in order to establish the claim of adverse possession, there must be a denial of title of the owner and for a possession to be adverse, it has to be actual, open, notorious, exclusive and continuous but here in this case, it is admitted fact that the Proforma Defendants contested several cases u/s 144 and 107 Cr. P.C. with contesting defendant in the year 2008 for the suit properties, which clearly reveal that Defendant Lilavati Devi had no peaceful continuous possession and it cannot be said in the facts and circumstances of the case that she has perfected her title over the suit land by way of adverse possession. Further it also appears that contesting defendant has pleaded the ownership over suit properties by way of alleged Gift Deed as well as of adverse possession. The plea of ownership and acquisition of rights by adverse possession are mutually destructive and are inconsistent with each other and the Defendants/Appellants have not established their defence of ownership as well as acquisition of right by way of adverse possession with support of cogent and reliable evidences. On the other hand, plaintiff/respondent has proved that he had acquired the suit land by way of registered Deed (Ext.1) executed by the legal heirs of Motilal Poddar and his registered Deed of Sale regarding suit properties is still in existence and thus he holds a better title over the suit land than the contesting defendants and the learned lower court has rightly appreciated all the issues and has rightly decreed the suit of plaintiff directing the contesting defendants to give delivery of possession to the plaintiff and considering entire facts and circumstances of the case, I do not find any illegally and infirmity in the impugned judgment and decree and the same are

liable to be sustained.”

Arguments on behalf of the appellant (defendant no.1)

19. The learned counsel for the appellant has placed Exhibit – 4 and submitted that Exhibit – 4 is the family settlement as claimed by the plaintiff and as per Exhibit – 4 which is dated 20.11.2005, Exhibit-4 is between wife, son and daughter of late Moti Poddar on the one hand and Shyam Poddar on the other. He has submitted that Moti Poddar and Shyam Poddar were the sons of Narsingh Poddar, in whose name the property was standing. He has further submitted that the document dated 20.11.2005 (exhibit-4) reveals that there was a settlement between the legal heirs of Moti Poddar on one hand and Shyam Poddar on the other and the said document reveals that the document by itself is a document of partition and not a memorandum of partition. He has further submitted that the partition deed [the so-called family settlement] was compulsorily registrable and consequently the same could not have been admitted in evidence. He has further submitted that on account of non-registration of the document of family settlement which was essentially a deed of partition between the legal heirs of Moti Poddar and Shyam Poddar, the first substantial question of law is fit to be answered in favour of the appellant and against the respondents.

20. He has further submitted that in the said partition, the daughters of Narsingh Poddar have not been made party, and therefore, on account of non-joinder of the daughters to the deed of partition, the 2nd substantial question of law is also fit to be answered in favour of the appellant. He has further submitted that if these two issues are decided in favour of the appellant, then the natural consequence would be the sale deed executed by the legal heirs of Moti Poddar in favour of the plaintiff in the year 2008 would be null and void and consequently the plaintiff cannot claim any right, title, interest and possession with respect to the property. He has submitted that there is no need to separately challenge the said sale deed and adverse inference has been drawn by the learned courts for not challenging the said sale deed.

21. He further referred to the impugned judgements and submitted that the contesting defendants were claiming the property by referring to a gift deed executed by Narsingh Poddar during his lifetime in favour of wife of Shyam Poddar but the said gift deed has been disbelieved by both the courts and there is no substantial question of law in connection with the gift deed, but irrespective of the gift deed, Shyam Poddar, the defendant no.1, was legal heir and successor of the property belonging to Narsingh Poddar and the daughters having not been made party to the family arrangement or settlement, the case of the plaintiff based on the sale deed executed in 2008 by the legal heirs and successors of Moti Poddar is of no consequence. He has relied upon the judgement passed by Hon'ble Supreme Court reported in (2015) 16 SCC 787 (Yellapu Uma Maheshwari and Anr. Vs. Buddha Jagadheeswararao and Ors.) (paragraph 12.2) and section 49 of the Registration Act, 1908 which deals with the effect of non-registration of documents and also the judgement reported in (2018) 15 SCC 130 (Sita Ram

Bhama Vs. Ramvatar Bhama) (paragraph 14) to submit that the document of partition was inadmissible in evidence and could be looked into for collateral purpose.

Arguments of the Respondents

22. The learned counsel for the respondent - plaintiff has submitted that on the face of Exhibit 4, it is relating to oral partition and the decision arrived thereto and it is a recital of the oral partition which has already taken place, and therefore, it was not compulsorily registrable. He submits that both the courts have rightly referred to Exhibit 4. The learned counsel has further submitted that as per the written statement filed by the defendant, who is the appellant before this Court, his specific case was that the property was belonging to his wife namely, defendant no. 1(a) and he claimed the property in favour of defendant no. 1(a) on the basis of a gift deed which was disbelieved by both the courts and no substantial question of law in that connection has been framed, and therefore, finding in connection with the gift deed has already become final. He has submitted that the plaintiff was claiming the property on the basis of registered sale deed of the year 2008 which was never challenged by defendant no. 1(a) or any of the defendants and the defendants were claiming the property by stating that the property belongs to defendant no. 1(a) by virtue of gift deed. He has also submitted that the case of the defendants as set up in the written statement has been disbelieved.

23. The learned counsel has submitted that the present suit is not the partition suit so as to ensure that all the legal heirs and successors of Narsingh Poddar were required to be made party and the plaintiff had only claimed a declaratory suit on the basis of a registered sale deed which was executed by the legal heirs of Moti Poddar, who claimed to have exclusive possession over the property on the basis of oral partition recorded duly on 20.11.2005 and otherwise also they had the right over the property and therefore it cannot be said that the sale deed was null and void. Had the sale deed been challenged, then under such circumstances, the legality and validity of Exhibit - 4 was required to be examined and under such circumstances, the right of the daughters also could have been adjudicated upon, but in a case where the sale deed has not been challenged, there is no question of adjudication of the right of the daughters and the sale deed by no stretch of imagination can be said to be void ab initio.

24. The learned counsel has relied upon the judgement passed by Hon'ble Supreme Court reported in 1963 SCC Online SC 197 (Tek Bahadur Bhujil Vs. Debt Singh Bhujil and Ors.) (paragraph 13) to submit that family arrangement can be arrived orally and its terms may be put in writing and such a written instrument will not be compulsorily registrable under Section 17 of the Registration Act and therefore it is submitted that reliance on Exhibit 4 was not hit by section 49 of the Registration Act. The learned counsel has also relied upon the judgement passed by the Hon'ble Supreme Court reported in (2020) 9 SCC 706 (Ravinder Kaur Grewal and Ors. Vs. Manjit Kaur and Ors.) (paragraph 17)

and submitted that this judgement stands on similar facts as that of the facts involved in the present case.

Findings of this Court

25. The suit was filed for declaration of right, title and interest with respect to Schedule-A property on the strength of deed of sale dated 20.10.2008 (Exhibit-1) executed by the proforma defendants in favour of the plaintiff. The proforma defendants were representing the legal heirs and successors of the Moti Poddar S/o Late Narsingh Poddar and the principal defendants/contesting defendants were defendant no. 1 and 1(a) i.e., Shyam Poddar, son of Narsingh Poddar and the wife of Shyam Poddar respectively.

26. The specific case of the plaintiff was that Narsingh Poddar had purchased two decimals of land by registered sale deed. He died in the year 1999 leaving behind Shyam Poddar and heirs of late Moti Poddar and after the death of Narsingh Poddar, Shyam Poddar and legal heirs and successors of Moti Poddar remained in possession of the aforesaid property of two decimals but Shyam Poddar started creating some disturbance and the two decimals of property was divided half and half ; one decimal towards the north was allotted to Shyam Poddar and remaining one decimal towards the south was allotted to legal heirs and successors of Moti Poddar and a memorandum of partition to that effect was created for future reference on 20.11.2005 (exhibit-4). Thereafter the legal heirs and successors of Moti Poddar started living in another place and Shyam Poddar tried to grab the entire property and the legal heirs and successors of Moti Poddar were unable to meet the litigation expenses and therefore they sold their 1 decimal share to the plaintiff vide registered deed dated 20.10.2008 (exhibit-1) and consequently the plaintiff became the rightful owner of the suit property comprising of 1 decimal. The cause of action arose on 25.01.2009 when the defendant no. 1 namely, Shyam Poddar (appellant herein) refused to hand over the property to the plaintiff.

27. The defendant no. 1 opposed the prayer and asserted that the owner of the property is his wife as Narsingh Poddar had gifted the property to the wife of defendant no. 1 and was in peaceful possession by constructing a pucca house. It was his further case that Narsingh Poddar did not die in 1999 but he died on 26.05.1998 leaving behind his two sons and three daughters. It was asserted that the sale deed dated 20.10.2008 executed by the proforma defendants in favour of the plaintiff was an illegal document. It was also his case that Narsingh Poddar had three daughters namely Amli Devi, Bhumi Devi and Shanti Devi out of them Amli Devi died on 01.10.2008 leaving behind her five sons whose name was mentioned and Bhumi Devi died sometimes in the year 2000 leaving behind his six sons/daughters whose name was also mentioned and that Shanti Devi was still alive but the plaintiff deliberately omitted to include her name and the name of others and had furnished incorrect genealogy.

28. Consequently, defendant no. 1(a) was added as defendant no.1(a) who

claimed the suit property by virtue of a deed of gift said to have been executed by Narsingh Poddar on 07.12.1995 which was an un-registered document and was certified by the Notary and attested by the witnesses. The principal defendant also claimed that they have acquired indefeasible prescriptive title to the entire two decimal of land by remaining in peaceful possession for more than 12 years beginning from 07.12.1995 adversely to Narsingh Poddar and his heirs.

29. The proforma defendants who are the legal heirs and successors of Moti Poddar and were arrayed as defendant nos. 2,3,4 and 5 asserted in their written statement that on 03.07.2004 a Panchayati was held in which Panch after hearing both the parties held equal share of both sets of defendants and the original punchnama was given to defendant no. 1 and a photocopy was supplied to the defendant no.2 Thakri Devi; in the year 2008 once again the defendant no. 1 tried to occupy the suit property for which a proceeding under Section 144 of Cr.P.C. was also initiated and by order dated 02.06.2008, the proceeding was dropped with an observation that it was a civil dispute. The defendant no. 1 again started a proceeding under Section 144 Cr.P.C. in which the possession of the defendant no. 1 was confirmed against which a Criminal Revision was preferred and by order dated 02.01.2009 the operative portion regarding finding of possession given by SDJM, Jamtara was expunged.

30. The learned Trial Court while deciding issue no. 5 with regard to claim of gift by Narsingh Poddar in favour of defendant no. 1(a) decided the issue in favour of the plaintiff and against the contesting defendants on the ground that gift deed (Ext. A) was an un-registered document and on the basis of materials on record it was held that it was physically impossible for the executant of the gift deed i.e. Narsingh Poddar to execute the same in the year 1995 as he was bed ridden. The gift deed was rejected as suspicious document. It was also observed that no immovable property can be transferred through an un-registered document. The said finding with regard to the gift deed has attained finality.

31. It further transpires that before the learned Trial Court a specific argument on behalf of the contesting defendants was advanced that the genealogy given by the plaintiff was not correct as it showed only two sons but the plaintiff had admitted during his cross examination who was examined as P.W. 1 that Narsingh Poddar had three daughters also. However, the plea of non-joinder of necessary party was rejected by the learned trial court by considering the pleadings and by observing that defendant no. 1(a) was already made party in the proceedings. The learned 1st appellate court also rejected the plea of non-joinder of daughters/their legal heirs as necessary party by observing that two daughters died prior to filing of the suit and the contesting defendants had nowhere stated that those daughters had ever claimed any portion of the suit property. The learned court also observed that the suit was for a declaratory decree and not a partition suit and that one of the defendant witnesses D.W-1 was son of one of the daughters, but he did not claim any right, title or interest over the suit property and had supported the case of the defendant no.1 and

1(a). This Court finds that the plea of non-joinder of daughters/their legal heirs as necessary party was rejected without considering the fact that the entire claim of the plaintiff was rooted in the memorandum of partition (exhibit-4) followed by registered sale deed of the year 2008 (exhibit-1) executed by the proforma defendants in favour of the plaintiff and in the memorandum of partition (exhibit-4) also the daughters/their legal heirs were not parties/signatories.

32. An argument was also advanced by the contesting defendants while assailing the document of partition (Exhibit-4) that it was an illegal and inadmissible document which was not proved by the plaintiff, rather it was filed by Pradeep Mandal P.W. 11. The admissibility of the said document was seriously disputed. It was also asserted that the plaintiff never came in possession of the property as the vendors of the plaintiff (i.e. proforma defendants) did not put the plaintiff in possession of the suit property, rather the suit property was in possession of the contesting defendants on which they have constructed a house. It was also argued that the contesting defendants and also the proforma defendants were the legal heirs of the recorded holder i.e. Narsingh Poddar and therefore in order to claim possession through the process of the court, the plaintiff must prove that they have a better title. It was also asserted that the only issue which was to be decided was whether there was a lawful and valid partition amongst the legal heirs and successors of Narsingh Poddar; whether the proforma defendants i.e. legal heirs and successors of Late Moti Poddar came in possession of the suit premises on the basis of partition and whether execution of sale deed by proforma defendants was lawful.

33. The learned Trial Court while considering the point as to whether the plaintiff had right, title and interest over the suit properties on the strength of Exhibit-1 [i.e. the Sale deed executed by the legal heirs and successors of Moti Poddar in favour of the plaintiff on 20.10.2008] observed that the same was marked as exhibit-1 without objection and the contesting defendants never challenged the execution of this deed nor the deed was challenged in any court of law nor any prayer was made for its cancellation nor they alleged that the legal heirs of Moti Poddar had no title to the properties sold by them nor they had filed any counter claim and consequently, the learned trial court decided the issue by holding that the sale deed [exhibit-1] was a valid document showing transfer of suit land in favour of plaintiff and thus creating right, title and interest in his favour. The learned Trial Court ultimately held that the plaintiff was entitled to get vacant possession of the suit property.

34. The learned Trial Court did not touch upon the core issue as to whether the legal heirs and successors of Moti Poddar acquired any exclusive right, title and interest over the suit property by virtue of partition read with the so called memorandum of partition (exhibit-4) although the entire case of the plaintiff was based on the averment that there was a partition between Shyam Poddar and legal heirs of Moti Poddar and consequently the legal heirs of Moti Poddar acquired title over the suit property which was sold to the plaintiff by registered

deed in the year 2008 (exhibit-1) .

35. So far as the 1st substantial question of law is concerned, upon perusal of Exhibit-4, this court finds that admittedly the same is an un-registered document. The parties whose names have been mentioned in Exhibit-4 dated 20.11.2005 are wife of Moti Poddar, his sons and daughters in first part and Shyam Poddar in the second part. Exhibit-4 refers to some compromise between the parties on 20.11.2005 and the terms of compromise has been mentioned in exhibit-4. As per the terms of compromise, the property belonged to Narsingh Poddar; one of the sons of Narsingh Poddar namely Moti Poddar had suddenly expired; as long as Narsingh Poddar was alive, the legal heirs of Narsingh Poddar were jointly possessing the property but after his death there was dispute in the family and consequently both, Shyam Poddar and legal heirs and successors of Moti Poddar decided to divide the property equally and one decimal towards north was given to the 2nd party and one decimal towards south was given to the 1st party; Wife of Moti Poddar could sell the property allotted to the share of late Moti Poddar.

36. The memorandum of partition does not give any detail of the date of previous partition nor does it refer to any separate possession with respect to the share of each brother. This is over and above the fact that the said document refers to a compromise between the parties which was arrived on 20.11.2005 and the document (exhibit-4) was to give effect to the said compromise. Thus, on perusal of Exhibit-4 dated 20.11.2005, this Court finds that the said document by itself is dividing the share between Shyam Poddar on one hand and legal heirs and successors of Moti Poddar on the other hand through a compromise recorded in the document of partition which was said to be arrived at on 20.11.2005.

37. Considering the nature of Exhibit-4, this court is of the considered view that the same was compulsorily registrable and no reliance can be placed on Exhibit-4 to give exclusive title of the suit property to the legal heirs of Moti Poddar so as to enable them to transfer exclusive title of their share of property to the plaintiff. Admittedly, the vendors of the plaintiff were not in possession of the property and consequently plaintiff was never handed over the possession of the property by his vendors. There is no evidence much less any document showing mutation with respect to the suit property showing the suit property in exclusive possession of legal heirs of Moti Poddar arising out of any partition. The sheet anchor of the claim of the plaintiff was the partition between Shyam Poddar and legal heirs of Moti Poddar. Exhibit-4 being an unregistered document could not have been relied upon.

38. In the judgment passed by the Hon'ble Supreme Court in the case of "Kale Vs. Direction of Consolidation" reported in (1976) 3 SCC 119, the proposition with regard to family settlement through a memorandum and its necessity of registration has been settled and the proposition has been laid down in paragraphs 10 and 11 of the said judgment. In another judgment passed by the

Hon'ble Supreme Court in the case of "Yellapu Uma Maheswari Vs. Buddha Jagadheeswararao" reported in (2015) 16 SCC 787, it was held that the nomenclature given to a document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the document and admissibility of a document is entirely dependent upon the recitals contained in that document, but not on the basis of the pleadings set-up by the party who seeks to introduce the document in question. In the said case, after holding that the document involved in the case was inadmissible for want of registration, the Court proceeded to consider the question as to whether the document could be used for any collateral purpose and the Court accepted the submission of the appellant of that case that the document can be looked into for collateral purpose provided the appellant – defendant paid the stamp duty together with penalty and got the document impounded.

39. Aforesaid two judgments have been followed by the Hon'ble Supreme Court in the judgment reported in (2018) 15 SCC 130 (Sita Ram Bhama Vs. Ramvatar Bhama) wherein the foundational fact was that the plaintiff and the respondent were real brothers and their father decided to divide his self-acquired movable and immovable property between the plaintiff and the defendant. However, the father did not execute any settlement deed. The father died and thereafter the plaintiff and the defendant recorded a memorandum of settlement as decided by their father which was signed by the mother of the parties and also two sisters had signed as witness. However, a suit was filed seeking partition of the property and the defendant filed a petition under Order VII Rule 11 of Code of Civil Procedure taking the plea that during the lifetime of father, the plaintiff and the defendant had partitioned the property and southern portion came in the share of the plaintiff and the northern portion came in the share of the defendant and in confirmation of the earlier partition the family settlement was executed which was signed by the plaintiff and the defendant along with both the sisters and the mother. Thus, it was pleaded that there was no cause of action to file the partition suit. The trial court allowed the said petition filed under Order VII Rule 11 of CPC and dismissed the suit for want of cause of action. Subsequently, another civil suit was filed by the plaintiff claiming that after dismissal of the earlier suit of the plaintiff, the defendant broke open the lock of the house and took possession of the house. The plaintiff prayed for decree of possession against the defendant. In the suit, the plaintiff filed the document evidencing family settlement which was claimed by the plaintiff as a memorandum of settlement. An application was filed by the defendant under Order 13 Rule 3 of CPC and Article 45 and section 35 of the Stamp Act and sections 17 and 49 of the Registration Act, claiming that the memorandum of partition being not a registered document and not being properly stamped, was not admissible in evidence. The trial court allowed the application of the defendant holding that the document of family settlement was not admissible being inadequately stamped and not registered. The judgment of the trial court was upheld by the High Court. The High Court also took the view that so-called family settlement took away the

share of the sisters and the mother, therefore, the same was compulsorily registrable. The plaintiff, being aggrieved by the judgment, was in appeal before the Hon'ble Supreme Court.

40. In paragraph 10 of the judgment, the Hon'ble Supreme Court observed that the only question needed consideration was as to whether the document of family settlement could have been accepted by the trial court in evidence or the trial court had rightly held that the said document was inadmissible. The Hon'ble Supreme Court observed that neither the plaintiff nor the defendant had any share in the property on the date when it was said to have been partitioned by their father who ultimately died and after his death, the plaintiff, the defendant and their mother as well as the sisters became the legal heirs under Hindu Succession Act, 1956 and they inherited the property as Class-I heir. The document divided the entire property between the plaintiff and the defendant which was also claimed to have been signed by their mother as well as sisters. The Hon'ble Supreme Court observed that there was relinquishment of rights of other heirs of the property, hence the learned courts were right in their conclusion that there being relinquishment, the document was compulsorily registrable under section 17 of the Registration Act. In this context, the Hon'ble Supreme Court in paragraph 11 of its judgment has referred to the judgment passed in the case of Kale Vs. Direction of Consolidation (Supra) and has observed as under:

"11. Pertaining to family settlement, a memorandum of family settlement and its necessity of registration, the law has been settled by this Court. It is sufficient to refer to the judgment of this Court in Kale v. Director of Consolidation. The propositions with regard to family settlement, its registration were laid down by this Court in paras 10 and 11:

"10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

- (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
- (3) The family arrangement may be even oral in which case no registration is necessary;
- (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of

the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

11. The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts, which we shall discuss presently.” (emphasis in original)

41. The Hon'ble Supreme Court further went on to examine as to whether the document being unstamped, could be accepted in evidence for collateral purpose. In that context, the Hon'ble apex Court referred to the judgment passed in the case of Yellapu Uma Maheswari (Supra) wherein a reference was made to the Larger Bench judgment of Hon'ble Andhra Pradesh High Court in the case of “Chinnappareddigari Peda Mutyala Reddy Vs. Chinnappareddigari Venkata Reddy” reported in AIR 1969 AP 242 wherein it was held that whole process of partition contemplates 3 phases i.e., severancy of status, division of joint property by metes and bounds and nature of possession of various shares and it was held that in a suit for partition, an unregistered document can be relied upon for collateral purposes i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e., division of joint properties by metes and bounds. As recorded by the Hon'ble Supreme Court, the Hon'ble Andhra Pradesh High Court further held that an unstamped instrument was not admissible in evidence even for collateral purpose, until the same is impounded. Paragraph 14 of the aforesaid judgment in the case of Sita Ram Bhama (Supra) is quoted as under:

“14. After holding the said documents as inadmissible, this Court in Yellapu Uma Maheswari case further proceeded to consider the question as to whether the documents B-21 and B-22 can be used for any collateral purpose. In the above context, the Court accepted the submission of the appellant that the documents can be looked into for collateral purpose provided the appellant-defendant to pay the stamp duty together with penalty and get the document impounded. In paras

16 and 17, the following has been laid down: (SCC p. 794)

"16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant-defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark Exts. B-21 and B-22 for collateral purpose subject to proof and relevance.

17. Accordingly, the civil appeal is partly allowed holding that Exts. B-21 and B-22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy."

42. Having gone through the aforesaid judgment and considering the substantial questions of law involved in this case, this Court has gone through the Exhibit- 4 which has been termed as the memorandum of family settlement. The perusal of exhibit-4 clearly reveals that the same was entered into between the legal heirs and successors of Moti Poddar, son of Late Narsingh Poddar on the one hand and Shyam Poddar, son of Late Narsingh Poddar on the other, being the 2nd party. This Court finds that the daughters of Late Narsingh Poddar and/or their legal heirs have been completely excluded. They have neither signed as witness nor they are party to the memorandum of settlement nor the genealogy of Late Narsingh Poddar has been completely mentioned. The memorandum of partition (exhibit-4) dated 20.11.2005 is based on compromise entered on 20.11.2005 itself and it incorporates the terms and conditions of compromise and the said compromise completely excludes the daughters of the family, although the property was said to have been acquired by Late Narsingh Poddar -the common ancestor. On the date of memorandum of partition, the amendment to Hindu Succession Act had come into force and therefore, the daughters of the family could not have been excluded. The family settlement does not reflect relinquishment of any right by the three daughters/their legal heirs although they were the necessary party. Merely because the daughters of the family have not lodged any claim with respect to the property, that by itself will not validate the memorandum of partition (exhibit-4) dated 20.11.2005. Further, memorandum of partition (exhibit-4) dated 20.11.2005 by itself is recording the terms of compromise dated 20.11.2005 and through this document only, the property is sought to be partitioned between the legal heirs and successors of Moti Poddar on the one hand and Shyam Poddar on the other. Exhibit- 4 is not a

memorandum of earlier partition. Accordingly, this court is of the considered view that exhibit-4 is not admissible in evidence for want of registration.

43. This Court finds that both the learned courts have not at all considered the contents, true impact and import of so-called memorandum of partition (exhibit-4) dated 20.11.2005 and the learned courts have also not considered the consequence of its non-registration and non-inclusion of the daughters of the family in the said memorandum of partition.

44. So far as 2nd substantial question of law is concerned, admittedly none of the daughters/their legal heirs were party to the so-called memorandum of partition (exhibit-4) dated 20.11.2005 which was recording the terms of compromise dated 20.11.2005 entered into between Shyam Poddar and legal heirs and successors of Moti Poddar without including the daughters of Narsingh Poddar – the common ancestor/their legal heirs. Moreover, the compromise as recorded in exhibit-4 is dated 20.11.2005 and by this time the amendment in Hindu Succession Act, dated 09.11.2005 giving coparcenary status to the daughters of the family had come into force and therefore the Exhibit-4/ compromise having not been joined by other daughters of the family cannot be said to be a document of recording partition by metes and bounds nor exhibit-4 can be said to be memorandum of partition amongst the family members of Narsingh Poddar-the common ancestor . The finding of the learned 1st appellate court that the daughters have not made any claim over the property by itself is perverse, inasmuch as, out of the 3 daughters, 2 daughters had expired prior to the so-called memorandum of partition (exhibit-4) and one daughter was still alive but daughters/her legal heirs were neither party to the so-called memorandum of partition (exhibit-4) nor party to the suit. Examination of the son of one of the daughters Bhumi Devi as D.W. 5 who had not claimed any right and title over the suit property, but stated that his maternal uncle Shyam Poddar and his wife had obtained the suit land on the basis of gift and by way of adverse possession is not sufficient to conclude that the daughters/their legal heirs have given up their claim over the suit property. The learned Court recorded that the contesting defendants had nowhere stated that daughters had ever claimed any right in the suit land, rather the defendants claimed that the entire land of 2 decimals which included the suit land of 1 decimal was their property on the basis of gift. Such finding is also perverse, inasmuch as, it were the daughters/their legal heirs who could have come forward, if made party to exhibit-4 or to the suit, to state as to whether they had relinquished their rights over the property and merely because contesting defendants have not made any objection on this point, the same has no bearing in the claim/rights of daughters/their legal heirs.

45. As a consequence of the aforesaid findings, the substantial questions of law are answered as follows: -

A. With respect to the 1st substantial question of law, it is held that exhibit- 4 was effecting partition and was compulsorily registrable as per sections 17 and

49 of the Registration Act and was inadmissible in evidence. Exhibit- 4 dated 20.11.2005 was not a memorandum of partition but it records terms and conditions of compromise dated 20.11.2005 entered into between legal heirs and successors of Moti Poddar in 1st part and Shyam Poddar in 2nd part.

B. So far as 2nd substantial question of law is concerned, the so-called oral family settlement (exhibit-4) entered into between legal heirs and successors of Moti Poddar on the one hand and Shyam Poddar on the other without making daughters as party to the exhibit-4, was not binding on the parties. The finding of the learned 1st appellate court is perverse and is against the mandate of law.

46. Both the substantial questions of law are decided in favour of the appellant (defendant no.1) and against the respondent nos. 1 to 5 (plaintiff and the proforma defendants).

47. This Court also finds that the entire claim of the plaintiff is based on a registered deed of sale dated 20.10.2008 executed by the legal heirs and successors of Moti Poddar although at no point of time, the exclusive possession of legal heirs and successors of Moti Poddar with respect to the suit property has been proved. Admittedly, the plaintiff was never handed over physical possession of the suit property and the property was in possession of the contesting defendants i.e. defendant no. 1 and defendant no. 1(a) and further, the sale deed of the year 2008 (exhibit-1) itself was based on so called amicable partition in two equal shares between legal heirs of Moti Poddar on the one hand and Shyam Poddar on the other. Thus, the entire basis of the title of the vendors of the plaintiff was the amicable partition recorded in the so-called memorandum of partition (exhibit-4) which has been held to be inadmissible in evidence and also held to be not valid in law on account of non-inclusion of the daughters/their legal heirs. Consequently, neither the proforma defendants (legal heirs and successors of Moti Poddar) had the exclusive right, title and possession with respect to the suit property nor the plaintiff acquired exclusive right, title and interest over the suit property by virtue of registered sale deed of the year 2008 (exhibit-1).

48. The law is well-settled that the vendor cannot pass any better title than what he actually possesses. Therefore, the exhibit- 1 which is a registered sale-deed dated 20.10.2008 executed by the legal heirs and successors of Moti Poddar in favour of the plaintiff is in effect sale of undivided portion of joint family property in which vendors of the plaintiff also had share and accordingly, the learned courts were not justified in decreeing the suit and directing the defendant no. 1 and 1(a) to hand over the possession of the suit property to the plaintiff. Accordingly, the impugned judgement passed by learned District Judge- I, Jamtara in Civil Appeal No.14 of 2017 upholding the judgement and decree passed by learned Civil Judge (Senior Division)- I, Jamtara in Title Suit No.9 of 2009 is hereby set-aside and the suit is dismissed.

49. This second appeal is accordingly allowed.

50. Pending I.A., if any, stands closed.

51. Let this judgment be communicated to the learned court concerned through FAX/e-mail.