IN THE HIGH COURT OF JHARKHAND AT RANCHI

Second Appeal No. 134 of 1998(R)

1(a) Gayatri Devi, wife of Late Prem Chandra Keshri

1(b) Ram Krishna Keshri, son of Late Prem Chandra Keshri

Both resident of 101-B, Pariya Complex, New Delhi, Saket, P.O. and P.S. Saket, New Delhi-110030

2. Sri Madanlal Keshri

3. Sri Vinod Prasad Keshri

Both (2) and (3) are sons of Late Ram Lall Prasad Keshri, residents of Village Garhwa, P.O. and P.S. Garhwa, District Garhwa

.... …. Appellants

Versus

1. Damtanti, widow of Late Jag Narayan Pandey

2. Sunil Kumar Pandey

3. Sajjan Kumar Pandey

Respondent nos.2 and 3 sons of Late Jag Narayan Pandey

4. Sandhya Tiwari, daughter of Late Jag Narayan Pandey

All residents of Village Garhwa, P.O. and P.S. Garhwa, District Garhwa

.... Respondents

With

Civil Revision No. 137 of 2004

1. Damtanti, widow of Late Jag Narayan Pandey

2. Sunil Kumar Pandey

3. Sajjan Kumar Pandey

Opposite Party Nos.2 and 3 are sons of Late Jag Narayan Pandey

4. Sandhya Tiwari, daughter of Late Jag Narayan Pandey

All residents of Village Garhwa, P.O. and P.S. Garhwa, District Garhwa

.... Petitioners

Versus

1. Madan Lal Keshri
2. Binod Prasad Keshri

Both sons of Late Ram Lal Prasad Keshri

Both residents of Garhwa, P.O. and P.S. Garhwa, District Garhwa

.... Opposite Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

[In S.A. No.134 of 1998(R)]

For the Appellants : Mr. Rajeev Kumar, Advocate
Mr. Amit Kumar Verma, Advocate
Ms. Ritul Nanda, Advocate

For the Respondents : Mr. Manjul Prasad, Senior Advocate
Mr. Amit Kumar Tiwari, Advocate
Mr. Akhouri Prakhar Sinha, Advocate

In C.R. No.137 of 2004

For the Petitioner : Mr. Amar Kumar Sinha, Senior Advocate
Mr. Kundan Kumar Ambastha, Advocate

For the Opp. Parties : Mr. Rajeev Kumar, Advocate
Mr. Amit Kumar Verma, Advocate
Ms. Ritul Nanda, Advocate

45/07.10.2026 Heard Mr. Rajeev Kumar, learned counsel appearing for the appellants assisted by Mr. Amit Kumar Verma and Mr. Manjul Prasad, learned senior counsel for the respondents along with Mr. Amit Kumar Tiwari in Second Appeal No.134 of 1998(R).

2. Second Appeal No.134 of 1998(R) and Civil Revision No.137 of 2004 have been tagged together as both are relating to the same property.

Second Appeal No.134 of 1998(R)

3. Second Appeal No.134 of 1998(R) has been preferred being aggrieved with the judgment dated 26.09.1998 and decree signed on 05.11.1998 passed by 6th Additional District and Sessions Judge, Palamau at Dalgonganj in Title Appeal No.33/95 allowing the said appeal and reversing the judgement and decree dated 28.07.1995 passed by learned

Subordinate Judge I, Garhwa in Title Suit No.19/92 dismissing the said suit which was meant for specific performance of an alleged contract dated 27.02.1992. Title Suit No.19/92 was instituted by the plaintiff/appellant/ respondent for Specific Performance of Contract in respect of the suit premises mentioned in the plaint.

4. The case of the plaintiff/respondent is that Plot Nos.480 and 488 appertaining to Khata No.246 of Village- Garhwa situated in Ward No.5 bearing old Holding No.344(1) under the Garhwa Municipality area having 0.8½ acres described by the boundary in the Schedule A of the plaint containing five brick built and Naria tiles rooms, two in the west and three in the south with courtyard to the northern and southern and east and western room with bathroom in the south western corner on it. The Varandah situated in the eastern portion of the north and southern two rooms were owned and possessed by the defendant nos.1 and 2. It is further said that defendant nos.1 and 2 leased out the south three rooms, Varandah attached to them with 1/2 portion of Angan and with Pucca well to the north of them and latrine, bathrooms to the plaintiff on rental of Rs.65/- per month in the month of February, 1986 and he continued as their lessee as such till April, 1988 and when rent of Rs.65/- per month was enhanced to Rs.120/- per month from April, 1988 and the plaintiff continued as lessee till February, 1992. It is further alleged that in the month of January, 1992 in its beginning, Sri Prem Chand Keshri (defendant no.1), expressed his intention to sell the entire Schedule A house for consideration of Rs.60,000/- (Rupees Sixty Thousand) as he was in dire need of money for the marriage of his daughter and the plaintiff expressed his intention to purchase the same on the consideration demanded by him agreeing to pay sum in instalment as he has no ready money. The defendant no.1 agreed to the same and the plaintiff paid Rs.9,000/- in three instalments in the same month and on 26.02.1992 and 27.02.1992 paid Rs.10,000/- and Rs.8,000/-respectively to him towards the above mentioned consideration amount as agreed upon and in token of the same,

the defendant no.1 with consent of his mother- defendant no.2, executed a Sada agreement agreeing there on to execute deed of sale in respect of the Schedule "A" property on receipt of consideration money balanced Rs.33,000/- from the plaintiff at the time of execution and registration before the Sub-Registrar, Garhwa and delivered possession of the same to the plaintiff as landlord of the entire premises fully mentioned in Schedule "A" as part performance of contract in presence of defendant nos.3 and 4 and one Gaj Narain Dubey at his residence and this plaintiff, who had been continuing as tenant and that of his mother defendant no.2 till 27.02.1992 ceased to be their tenant and came in possession of the same as its owner since thereafter and is continuing as such and Suresh Prasad, who had been tenant of defendant nos.1 and 2 for the part of the same as tenant. It is alleged that the plaintiff has always been and always ready and willing to perform part of contract and several times expressed his intention to him (defendant no.1) to perform his part of contract and requested him and his mother to execute the sale deed for Schedule A property in his favour and to receive balance consideration amount of Rs.33,000/- from him as agreed upon before the Sub-Registrar, Garhwa at the time of its registration, but defendant no.1 put off the matter on some plea or other and the plaintiff on 1st July, 1992 learnt that he along with his mother, defendant no.2 has sold the entire Schedule "A" property to defendant nos.3 and 4 by executing two Sale Deeds Nos.2942 and 2943 on 08.05.1992 in favour of the defendant nos.3 and 4. It is said that two sale deeds have not been entered into the book of Registration Office and so the two sale deeds are not binding upon the plaintiff, who is ready and willing to pay balance consideration of Rs.33,000/- to the defendant nos.1 and 2 and if and when he is called upon by the court to do so, it is said that since the defendant nos.3 and 4 have entered into illegal transaction of Schedule "A" with the defendant nos.1 and 2, which are in-effective and void in the eye of law. The cause of action for the suit creates on 27.02.1992 when the defendant nos.1 and 2 by executing Sada agreement finally agreed to sale the

Schedule "A" land on receipt of balance consideration money Rs.33,000/- and on 01.07.1992 when the plaintiff first time learnt for the transfer of the Schedule "A" land, by the defendant nos.1 and 2 to defendant nos.3 and 4 on 08.05.1992, hence this suit.

5. Pursuant to notice in the said suit, the defendants/respondents have appeared and filed the written statement and contested the suit stating that the suit is not maintainable and the cause of action is not genuine and is not valid in the eye of law. It is said that the plaintiff has not paid proper court fee in view of the relief claimed. It is further said that the portion of the suit property was let out to the plaintiff which is continued on rent of Rs.65/- per month which was subsequently enhanced and the rent was raised up to Rs.120/- per month, but he cannot claim exclusive title of the land. It is said that the plaintiff neither had agreed to purchase the property in the suit nor he has ever paid any advance. It is absolutely false that the plaintiff has paid Rs.9000/- in one instalment and in the same month and on 26.02.1992 and 27.02.1992 paid Rs. 10,000/- and Rs.8000/- respectively. Out of the alleged stipulated consideration amount of Rs.60,000/- to the defendant nos.1 and 2 as advance with respect to the suit premises. The defendant nos.1 and 2 have never agreed to transfer the suit premises to the plaintiff nor they have received any advance of consideration. It is further false to alleged by the plaintiff that suit premises was exclusively delivered in the possession of the plaintiff and it is falsely alleged that the defendant nos.1 and 2 have agreed to convey the suit premises to the plaintiff and in pursuance of the part performance, above amount was paid to the defendant nos.1 and 2 and remaining amount was to be paid at the time of execution of the registered sale deed. It is said that the allegation of the plaintiff is that the defendant no.1 executed Sada agreement in writing and in presence of defendant nos.3 and 4 and one Jag Narain Pandey is absolutely false and denied by these defendants. The defendant no.1 has never executed any deed of agreement in favour of the plaintiff nor did he ever agree to execute sale deed in respect of the

plaintiff. The plaintiff is in possession of the suit premises as tenant and he was never in possession of the suit premises in the capacity of the owner of the same. It is said that one Suresh Prasad is tenant in other portion of the suit premises who was tenant of defendant nos.1 and 2 and now he is tenant of defendant nos.3 and 4. Suresh Prasad is neither tenant of the plaintiff nor owner of the suit premises. It is said that it is false and denied by these defendants as there was no question of any contract or agreement in any manner with the alleged view to transfer the suit land to the plaintiff. In fact, this suit has been instituted on the forged documents of agreement and therefore, there has never been any occasion as to express the intention by the plaintiff to ask for conveyance of the suit premises to him. The allegation that it was surprising to the plaintiff to learn on 1st July, 1992 that the defendant nos.1 and 2 have transferred the suit land to the defendant nos.3 and 4 is false. In fact, it was in the notice of the plaintiff since the date of 08.05.1992 that the defendant nos.1 and 2 have transferred the suit land to the defendant no.3 and 4. It is said that the defendant nos. 1 and 2 have executed sale deed in favour of the defendant nos. 3 and 4 with respect to the suit land and they have presented the sale deed, before the Sub-Registrar, Garhwa, who has accepted the deeds for registration and the office of the Registrar, Garhwa had also issued receipt in this matter for taking deed, after the same was registered under the Registration Act. The sale deed executed by the defendant nos.1 and 2 are valid and the same have legal effect in all facts. The alleged sale deed have very legal effect binding upon the plaintiff and every one in respect of the subject matter of the sale deeds. It is said that in fact the defendant nos.3 and 4 have rightly and validly entered into transaction of the suit land and they have acquired valid right, title and possession therein. The plaintiff is tenant of the defendant nos.3 and 4 and when he asked to vacate the suit premises, he has filed this suit to save his neck. It is said that when lease as alleged by the plaintiff it was executed by the defendant no.1 there is absolutely no question for the defendant or anybody else they have any

knowledge about the same. The defendant nos.1 and 2 have transferred the entire suit property through registered Sale Deeds Nos.2942 and 2943 dated 08.05.1992 in favour of the defendant nos.3 and 4, who acquired valid interest therein. The defendant nos.1 after execution of the deed in favour of the defendant nos.3 and 4, had asked the plaintiff and Suresh Prasad to deliver vacant possession of the suit premises to the defendant nos.3 and 4 as the transfer has materialized. The plaintiff and Suresh Prasad had assured them to vacate the suit premises and till 15.06.1992, but they did not vacate the same even within stipulated period so notice by way of letter was issued by the defendant no.1. The plaintiff and Suresh Prasad thereafter these two defendants expressed their intention not to vacate the suit premises, hence Eviction Suit Nos.37/92 and 38/92 are instituted against them much before the institution of the suit. The plaintiff has appeared in the Eviction Suit No.37/92 on 08.07.1992 several dates thereafter applied to contest the suit by filing affidavits as therein provided in the Section 14 of Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 which was allowed on 04.09.1992 to them. Eviction Suit No.37/92 posted for hearing. In the meantime, the plaintiff filed petition showing the existence of the suit therein. Thereafter, in the plaintiff's Eviction Suit No.37/92, the defendants nos.3 and 4 were directed by the court of Munsiff, Garhwa to return plaint to the defendant nos.3 and 4 and against the said order of the Munsiff, Garhwa, the defendant nos.3 and 4 have preferred Appeal No. 12/92 before the learned District Judge, Palamau which is pending for hearing. The plaintiff and Suresh Prasad have brought the suit to create defence in eviction suit so the suit is fit to be dismissed with cost.

6. By order dated 01.10.1999, the present second appeal has been admitted on the following substantial questions of law: -

> *(I) Whether the alleged agreement to sell which is said to have been signed by the defendant no.1 is binding on defendant no.2 who was not a party to it and the defendant no.1 was not having any power of attorney or any other legal authority on her behalf to execute such a*

deed ?
(II) Whether the impugned judgment and decree passed by the lower appellate court can be sustained in view of the fact that the defendant no.2 (Yadu Bansi Devi) has died during the pendency of the appeal and no application for bringing her heirs on record was moved before the lower appellate court even though defendant no.1 was not her only son and representative?

7. Mr. Rajeev Kumar, learned counsel appearing for the appellants while placing Exhibit 1-B, which is agreement, submits that the said agreement is signed by one person. He further draws the attention of the court to Section 16 (c) of the Specific Relief Act, 1963 and submits that willingness to perform essential terms of contract on behalf of plaintiff/respondent was not there.

8. He also submits that Form 47 and 48 of Appendix A in the light of Order VI, Rule 3 of the Code of Civil Procedure clearly stipulates that there must be willingness and the date has not been provided which itself strengthen the case of the appellants. He next submits that after February, 1992, the plaintiff/respondent has not shown anything after that period what the plaintiff has done. He further submits that the appellant herein also filed the Eviction Suit Nos.36 and 37 of 1992 and after filing of the said eviction suit, the present suit relating to specific performance of contract has been instituted by the plaintiff/respondent herein. Mr. Rajeev Kumar further submits that ground 'E' taken in the memorandum of appeal relating to continuous readiness and willingness has not been answered by the learned first appellate court which is apparent error done by the learned first appellate court.

9. To buttress this argument, he relied the case of ***Manjunath Anandappa URF Shivappa Hanasi Vs. Tammansa & Others*** reported in **(2003) 10 SCC 390**, para 15, 16 and 27 of the judgment is quoted herein below:

15. Forms 47 and 48 of Appendix A of the Code of Civil Procedure prescribe the manner in which such averments are required to be made by the plaintiff. Indisputably, the plaintiff has not made any averment to that effect. He, as noticed hereinbefore, merely contended that he called upon Defendant 2 to bring Defendant 1

to execute a registered sale deed. Apart from the fact that the date of the purported demand has not been disclosed, admittedly, no such demand was made upon Defendant 1. We may notice, at this juncture, that the plaintiff in his evidence admitted that Defendant 1 had revoked the power of attorney granted in favour of Defendant 2. In his deposition, he merely stated that such revocation took place after the agreement for sale was executed. If he was aware of the fact that the power of attorney executed in favour of Defendant 2 was revoked, the question of any demand by him upon Defendant 2 to bring Defendant 1 for execution of the agreement for sale would not arise at all. Furthermore, indisputably the said power of attorney was not a registered one. Defendant 2, therefore, could not execute a registered deed of sale in his favour. The demand, if any, for execution of the deed of sale in terms of the agreement of sale could have been, thus, made only upon Defendant 1, the owner of the property. The balance consideration of Rs 10,000 also could have been tendered only to Defendant 1. As indicated hereinbefore, the purported notice was issued only on 8-8-1984, that is, much after the expiry of the period of three years, within which the agreement of sale was required to be acted upon.

16. Even in his deposition, he merely said:

> *"As per the agreement Defendant 2 did not execute the sale deed. I issued a notice calling upon Defendants 1 and 2 to execute the sale deed after receiving the balance consideration. However, they did not come forward to execute the sale deed despite the receipt of the notice. Even today I am ready to pay the balance consideration of Rs 10,000."*

These statements do not satisfy the requirements of Section 16(c) of the Specific Relief Act.

17. The requirement to comply with the mandatory provisions of Section 16(c) of the Specific Relief Act came up for consideration of this Court in Ouseph Varghese v. Joseph Aleys wherein it was held: (SCC p. 543, para 9)

> *"The plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement pleaded in the written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of straitjacket formula. These have to be determined*

> *from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. In our judgment there was nothing to indicate that the appellants at any stage were not ready and willing to perform their part of the contract."*
>
> *27. The decisions of this Court, therefore, leave no manner of doubt that a plaintiff in a suit for specific performance of contract not only must raise a plea that he had all along been and even on the date of filing of suit was ready and willing to perform his part of contract, but also prove the same. Only in certain exceptional situation where although in letter and spirit, the exact words had not been used but readiness and willingness can be culled out from reading all the averments made by the plaintiff as a whole coupled with the materials brought on record at the trial of the suit, to the said effect, the statutory requirement of Section 16(c) of the Specific Relief Act may be held to have been complied with.*

10. Relying on the above judgment, he submits that the procedure prescribed in Form 47 and 48 of Appendix A of the Code of Civil Procedure were not followed which was required to be followed under Order VI Rule 3 of the Code of Civil Procedure.

11. By way of referring Section 28 of the Specific Relief Act, 1963, Mr. Rajeev Kumar further submits that once the decree has been passed and the time limit has been stipulated therein and within the aforesaid time, nothing has been done by the decree holder then further decree holder is restricted to act in terms of the decree as has been held by the Hon'ble Supreme Court in the case of ***Habban Shah Versus Sheruddin*** reported in **2026 INSC 451,** Para 26, 28, 29 and 46 are quoted herein below:-

> *26. Admittedly, in the present case, the plaintiff-respondent had not deposited the balance sale consideration within the period of three months stipulated under the decree. He had not even moved any application within the said time for seeking extension of time, either under Section 148/151 of the CPC or under Section 28 of the Act.*
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> *28. Subsequently, plaintiff-respondent filed second application to deposit balance sale amount on which the court permitted the deposit of balance sale consideration vide order dated 09.10.2015, in pursuance whereof the balance amount was deposited. This was done much after the first appeal itself was dismissed. The question, therefore, is whether such permission to deposit or the deposit itself would ipso facto amount to condoning the delay in making the deposit and resultantly it amounts to deemed*

extension of time. The answer of the above proposition is an absolute 'No'.

*29. In this connection, it would be profitable to refer to a decision of this court in P**.R. Yelumalai v. N.M. Ravi**. In the said case the court was dealing with a similar issue where the decree holder failed to make the deposit within the time stipulated under the decree. The court refused to accept the plea that once the deposit is made and accepted by the court, though beyond the period stipulated under the decree, it would amount to deemed extension of time. It was held that the conditional decree is self-operative, therefore, non-compliance of any condition leads to automatic dismissal of the suit. In a case, the deposit is not made within the time permitted and no application is moved for the extension of time within the said time, it would amount to failure to comply with the condition of the decree which leads to the automatic dismissal of the suit. In other words, it was held that the suit for specific performance of a contract stands automatically dismissed when the conditions under the decree are not complied with by the decree holder and he is not entitled to seek execution of the decree as it ceases to exist in the eyes of law due to deemed dismissal of the suit.*

46. In view of the above legal position when the relief of specific performance is an equitable and a discretionary relief and the same having been granted, the plaintiff-respondent must perform his part of the obligation in time. The condition to deposit the balance sale consideration within three months under the decree partakes the condition under the agreement and makes the aforesaid time as an essence of the agreement. Therefore, the plaintiff-respondent is obliged to establish his readiness and willingness to perform his obligation by depositing the balance sale consideration strictly within the time allowed. It is not at all equitable to condone the delay on his part in depositing the balance sale consideration or extending the time for the same, more particularly when due to non-compliance, the suit itself stands automatically dismissed and the decree vanishes. The conduct of the plaintiff-respondent disentitles him the relief which was earlier granted in view of the long passage of time since 2005 when the agreement was entered into till date as in between land prices might have increased manifold.

12. Relying on the above judgment, Mr. Kumar learned counsel further draws the attention of the court to Section 16 (c) of the Specific Relief Act, 1963 and submits that continuous readiness and willingness on the part of the decree holder, who is the plaintiff/respondent is not there. He submits that if the decree is there and condition therein has not been fulfilled, then even the decree holder is not entitled to the said relief.

13. In the aforesaid background, Mr. Kumar, learned counsel further

draws the attention of the court and submits that other three of the Issues have also been decided along with Issue No.VII by the learned trial court in the said suit appreciating the documentary evidence as well as oral evidences. The learned trial court has a clear cut finding is that the plaintiff has not been able to establish the case of Specific Performance of Contract and in the light of the plaint as well as the evidence of the plaintiff that the defendant no.2 was never entered into the agreement who is also one of the owner of the suit premises and has been pleased to dismiss the suit. He next submits that the learned appellate court in Title Appeal No.33/95 preferred by the plaintiff/respondent has allowed the appeal and has not answered the crux of the matter relating to readiness and willingness to perform the terms and conditions of the contract. In this background, Mr. Kumar, learned counsel further submits that in the light of that the procedure prescribed under Order XLI Rule 3 of the Code of Civil Procedure, has not been followed by the learned first appellate court. He also draws the attention of the court to Section 47 of the Evidence Act. Mr. Kumar further submits that with regard to signature on the agreement, the learned trial court has clearly held that the witness examined on the said point, has got no occasion to see the signature of the defendant no.1. He also submits that the learned first appellate court has also reversed the finding on the point of signature of defendant no.1 on the agreement.

14. By way of referring appellate court's judgment, Mr. Kumar, learned counsel for the appellant submits that the Exhibit C has been considered by the learned first appellate court and has found that the signature marked as Exhibit C/2 is dated 29.02.1992 whether the date has been 27.02.1992. In view of that the learned court has found that the expert has not supported the opinion for signature dated 27.02.1992 as mentioned in Exhibit 1 and on the basis of opinion of the expert, signature dated 27.02.1992 of Prem Chandra Keshri cannot be said to be forged one. By way of referring the said finding of the learned first appellate court, Mr. Kumar, learned counsel submits that it was the duty of the plaintiff to prove

the said signature as the plaintiff was claiming the said agreement and the learned appellate court has wrongly fastened the liability upon the appellant/defendant. He submits that however, the learned trial court's clear cut finding is there that the plaintiff has not prayed for appointing any expert opinion to prove the signature and was also not willing to do so. In this background, he submits that onus was upon the plaintiff and the plaintiff has failed to do so. On the aforesaid background, he further advanced the argument by way of placing the judgment of ***Thiruvengadam Pillai Vs. Navaneethammal & Another*** reported in **(2008) 4 SCC 530**, para 19 of the judgment is quoted herein below:-

> *19. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses. But the various circumstances enumerated by the trial court and the High Court referred to earlier, when taken together, rightly create a doubt about the genuineness of the agreement and dislodge the effect of the evidence of PWs 1 to 3. We are therefore of the view that the decision of the High Court, reversing the decision of the first appellate court, does not call for interference.*

15. Relying on the above judgment, he submits that the learned first appellate court has lost sight of the fact and the parties who has relied on the said document, was required to prove the same wherein the plaintiff/respondent has failed to do so.

16. By way of referring Section 47 of the Evidence Act Mr. Kumar, learned counsel further submits that the learned court can make an opinion on the handwriting if a person is acquainted with that handwriting. He also submits that in the light of Section 67 of the Evidence Act has to be proved by that person whose signature is there. In the aforesaid background, Mr. Kumar, learned counsel appearing for the appellants submits that the learned first appellate court has erred in reversing the judgment of the learned trial court and has not discussed the materials on record as well as the witnesses in its right perspective.

17. Mr. Kumar, learned counsel appearing for the appellants also submits that the agreement was not properly stamped and by way of referring para 35 of the Stamp Act, he submits that if any document is unstamped, the court is not required to look into that document. To buttress his argument, he refers to the judgment in the case of ***G.M. Shahul Hameed v. Jayanthi R. Hegde*** passed in Civil Appeal No.1188 of 2015 reported in **(2024) 7 S.C.R. 316**, para 15, 16 and 17 of the judgment is quoted herein below: -

> *15. Profitable reference may be made to the decision of this Court in **Javer Chand and others v. Pukhraj Surana**. There, provisions of section 36 of the 1899 Act, which is pari materia section 35 of the 1957 Act, came up for consideration. A Bench of four Hon'ble Judges of this Court held that when a document's admissibility is questioned due to Improper stamping, it must be decided immediately when presented as evidence. The relevant paragraph is extracted hereunder:*
>
> > *"4. *** Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the court. The court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit*

in the case. The record in this case discloses the fact that the hundis were marked as Exts. P-1 and P-2 and bore the endorsement 'admitted in evidence' under the signature of the court. It is not, therefore, one of those cases where a document has been inadvertently admitted, without the court applying its mind to the question of its admissibility. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction."

(emphasis ours)

16. Once again, addressing a matter concerning section 36 of the 1899 Act, a Bench of three Hon'ble Judges of this Court in ***Ram Rattan v. Bajrang Lal held as follows:***

"6. When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objects in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however would not mean that the objection as to admissibility on the ground that the instrument is not duly stamped is judicially decided; it is merely postponed. In such a situation at a later stage before the suit is finally disposed of it would none-the-less be obligatory upon the court to decide the objection. If after applying mind to the rival contentions the trial court admits a document in evidence, Section 36 of the Stamp Act would come into play and such admission cannot be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. The court, and of necessity it would be trial court before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case and where a document has been inadvertently admitted without the court applying its mind as to the question of admissibility, the instrument could not be said to have been admitted in evidence with a view to

attracting Section 36 (see Javer Chand v. Pukhraj Surana) [AIR 1961 SC 1655]. The endorsement made by the learned trial Judge that 'Objected, allowed subject to objection', clearly indicates that when the objection was raised it was not judicially determined and the document was merely tentatively marked and in such a situation Section 36 would not be attracted."

(emphasis ours)

17. The pivotal aspect emerging for consideration on the terms of sections 33 and 34 of the 1957 Act, with which we are concerned, is that whether the Trial Court did judicially determine the question of admissibility. It is here that we need to ascertain the rationale behind the Trial Court's approach to go behind admission of the GPA in evidence and marking thereof as an exhibit, leading to the order under challenge before the High Court. Relevant portions of the order of the Trial Court read thus:

*"2. ***There are two suits before this court, one is the present suit and another suit is OS No. 301/03. In the present suit, the GPA holder of plaintiff filed an affidavit by way of chief examination in the morning session and the documents were marked. While marking the documents he was held up in the court of Civil Judge (Jr. Dn.), Mangalore and hence no objection regarding the deficiency of stamp duty on GPA could be raised before this court. Accordingly the matter has been adjourned for cross examination of PW1. The alleged GPA is in favour of third party with power to sell the property and hence article 41 of the Karnataka Stamp Act 1957 is applicable and stamp duty on the market value has to be paid on the same. The GPA is executed on a stamp paper of value of Rs.100/- only. As per Section 33 of the Karnataka Stamp Act, 1957, the court shall impound the said GPA even without the objections by the advocate for 1st defendant. His absence at the time of chief examination of PW1 is not intentional but as he was held up in another court.*

3. The 1st defendant has also filed IA No. IX under Sec. 114, R/w. Sec. 151 of CPC to review the order of marking Ex.P2 which is insufficiently stamped and to hear the objections regarding inadequacy of stamp duty on the similar grounds.

7. The points that arise for consideration are:-

1. Whether Ex. P2 GPA is insufficiently stamped and plaintiff is liable to pay deficit duty and penalty?

2. Whether the order permitting the plaintiff to mark the document requires to be reviewed?

8. The points are answered in affirmative for the following:

*9.*** The clauses are very specific that the power of attorney has been given powers to sell the properties and the power of attorney has acted upon the GPA and has execute the sale deed in favour of the plaintiff as per*

> *Ex.P3. Under Article 41(e), when the power of attorney is given for consideration and authorizing the attorney to sell the immovable property, the duty payable is same duty as a conveyance for a market value equal to the amount of the consideration. As stated above, no consideration has been mentioned in the GPA., but the GPA has been given authorizing to sell the immovable property. The GPA has been issued to a third party.... article 41(ab) is applicable. The learned counsel for plaintiff objected for considering these applications on the ground that document is already marked with out any objections and hence the question of reviewing the order considering the question of stamp duty at this stage does not arise. As seen from the order sheet, the plaintiff was examined on 6.6.2010 and document was marked on same day. Immediately on the next date of hearing the counsel has filed IA No. IX and X to consider the aspect of payment of stamp duty and penalty i.e., on the day on which the matter was posted for cross examination of PW1. It is certain that the senior counsel appearing for the plaintiff was not present at the time of examination of PW1 in chief as the court remembers that the junior counsel was present and probably being unaware of the question of stamp duty has not raised any objections. The court has marked the document as an exhibit and has put the seal for having marked the document as to who has produced the document and admitted through which witness and marked for plaintiff. No doubt, there is mention that the document is admitted through PW1 and Ex.P2, but the court has not applied its mind while marking the document as to whether document is sufficiently stamped or insufficiently stamped.*
>
> *10. ***The circumstances under which the application is being filed and circumstances under which the document came to be marked, clearly show that the document was marked without application of the mind of the court and without objection of the other side and this court is of the view that the admissibility of the document could be considered at this stage.*

18. Relying on the above judgment, Mr. Kumar, learned counsel submits that the learned court is not required to consider those documents which was not properly stamped.

19. Mr. Kumar, learned counsel submits that Section 53A of the Transfer of the Property Act is also not attracted in the case of plaintiff/respondent in view of the fact that the plaintiff/respondent is the tenant and mere execution of the agreement of sale between the landlord and the tenant does not mere execution of an agreement to sale between a

landlord and tenant does not ipso facto bring about a determination of the subsisting tenancy. To buttress this argument, he refers to the judgment in the case of ***Nazim Shaikh Hasan Vs. Nasir Mushtaa Shaikh & Others*** reported in **2026 INSC 853**, para 18, 19 and 20 of the judgment is quoted herein below: -

> *18. This Court in Vayyaeti Srinivasarao (supra) further considered the interplay between Section 53A of the TP Act and the continuance of tenancy subsequent to the agreement to sell. It was observed that Section 53A operates as a shield for a transferee who has taken possession pursuant to a contract of transfer, or who continues in possession in part performance thereof and has done some act in furtherance of the contract, thereby debarring the transferor from enforcing any right in respect of such property. Significantly, this Court categorically held that the continuous possession of a tenant in the suit property even after entering into an agreement to sell would not by itself amount to part performance so as to put the tenant in possession pursuant to the agreement to sell. It is only where the tenant is inducted into possession for the first time subsequent to the contract that it would constitute strong evidence of possession changing hands pursuant to the contract.*
>
> *19. It is also trite law that an agreement to sell, by itself, does not confer any title or interest in the property in favour of the purchaser, and a beneficial reference in this regard may be made to the judgment of this Court in* ***Suraj Lamp and Industries Private Limited (2) Through Director v. State of Haryana and Another*** *wherein this Court held as follows:*
>
> > *"16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam (1977) 3 SCC 247] observed: (SCC pp. 254-55, paras 32-33 & 37)*
> >
> > > *"32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See Ram Baran Prasad v. Ram Mohit Hazra [AIR 1967 SC 744: (1967) 1 SCR 293]) The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or casement therein.*
> > >
> > > *33. In India, the word transfer' is defined with reference to the word 'convey'.... The word 'conveys'*

in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

37. … that only on execution of conveyance, ownership passes from one party to another....

17. In Rambhau Namdeo Gajre v. Narayan Варил Dhotra (2004) 8 SCC 614] this Court held: (SCC p. 619, para 10)

10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter."

(emphasis supplied)

20. The ratio flowing from the aforesaid pronouncements, read conjointly, can be distilled to the following propositions:

(i) the mere execution of an agreement to sell between a landlord and tenant does not ipso facto bring about a determination of the subsisting tenancy;

(ii) it is only when the terms of the agreement or the unequivocal conduct of the parties, inconsistent with the continuance of the existing tenancy, disclose either an express or implied surrender within the meaning of Section 111(e) or (f) of the TP Act, that the lease can be said to have been determined;

(iii) the continuous possession of a tenant even after the execution of an agreement to sell does not amount to part performance under Section 53A of the TP Act unless such possession is shown to be directly relatable to and flowing from the agreement to sell; and

(iv) any agreement to sell, not being a registered deed of

> *conveyance, does not by itself confer any title or interest in the property.*

20. Mr. Kumar, learned counsel further submits that in the light of Section 44 of the Transfer of Property Act, if the property is of joint possession of two or three persons and that too a particular dwelling house, the said property cannot be transferred to the person outside of the family. He relied in the case of ***Dorab Cawasji Warden Vs. Coomi Sorab Warden & Others*** reported in **(1990) 2 SCC 117**, para 25 and 26 of the judgment is quoted herein below: -

> *25. We had also noticed earlier that Cawasji, the father of the appellant transferred his undivided half share in the suit property in favour of his son Sohrab under a deed dated April 16, 1952. Two questions may arise for consideration whether this transaction is covered by Section 44 of the Act and whether after the transfer, the appellant's brother and the appellant can be said to be holding the property as undivided family. The transfer by the father in favour of Sohrab was a transfer in favour of a member of a family as Sohrab was living with them. Sohrab attained the age of 18 only on December 25, 1951 and as seen from the other documents he was living with his father and brother till 1968 when he got married. It is only after he was married the appellant and Sohrab were occupying different portions of the suit property and having different mess. In the absence of a document evidencing partition of the suit house by metes and bounds and on the documentary evidence showing that the property is held by the appellant and his brother in equal undivided shares, we are of the view that the plaintiff-appellant has shown a prima facie case that the dwelling house belonged to an undivided family consisting of himself and his brother.*
>
> *26. The two brothers, therefore, shall be deemed to be holding the property as members of an undivided family and in the absence of the partition by metes and bounds qua this property they shall be deemed to have been holding the dwelling house as an undivided family. Prima facie, therefore, the transfer by defendants 1 to 3 would come within the mischief of second paragraph of Section 44 of the Act.*

21. Relying on the above judgment, he submits that in the absence of partition by meets and bounds, the property cannot be sale by one person. He submits that it is further fortified in the light of the statement made by the plaintiff itself that the said dwelling house is owned and possessed by defendant nos.1 and 2, who are the mother and son

respectively. In the aforesaid background, he submits that the law point no.1 may kindly be answered in favour of the appellants herein. He next submits that the defendant no.2 died during pendency of the first appeal and no substitution petition was filed and even substitution was not made in spite of the judgment passed by the learned first appellate court against the dead person. He submits that it is well settled that the judgment and decree passed against a dead person, that is nullity and further a direction has been issued to the defendant no.2 to execute the deed in favour of the plaintiff/respondent. On these grounds, he submits that the law point no.2 further may kindly be answered in favour of the appellant/defendant.

22. On the other hand, Mr. Manjul Prasad, learned senior counsel appearing for the plaintiff/respondent submits that the learned first appellate court has rightly answered the points. Mr. Prasad, learned senior counsel draws the attention of the court to para 1 of the plaint and submits that the plot number has been clearly described in the said para and the plaintiff/appellant was tenant in the said premise on the monthly rent of Rs.65/- per month w.e.f. February, 1986. By way of referring para 6 of the written statement of the appellant/defendant, Mr. Manjul Prasad, learned senior counsel submits that the tenancy has been accepted in the said para. He next submits that on 10.03.1992, marriage of the defendant's daughter was fixed and was solemnized and for that purpose prior to that, advance was paid by the plaintiff for property involved in the suit. He submits in view of that on 08.05.1992, the defendant nos.1 and 2 executed the sale deed in favour of the defendant nos.3 and 4. He submits that the defendant nos.3 and 4 instituted two eviction suits being Eviction Suit Nos.37/92 and 38/92 respectively before the Munsiff, Garhwa which was returned to file afresh. Thereafter, Title Suit No.19/92 was instituted on 19.08.1992 that is prior of return order of the eviction suit. He submits that Prem Chandra Keshri (defendant no.1) died during the pendency of the second appeal and he has been substituted in the second appeal by the legal heirs and successors. He refers to para 4 of the plaint and submits

that the statement is there to do the part of the contract and the contract is Exhibit 1/B. He also refers to para 7, 8 and 9 of the evidences of D.W. 1-Prem Chandra Keshri and submits that he has supported the agreement. Mr. Prasad, learned senior counsel further submits that what has been argued by the learned counsel appearing for the appellant that was not argued before the learned two courts and to buttress his argument he refers to the case of ***Mst. Sugani Vs. Rameshwar Das & Another*** reported in **AIR 2006 SC 2172**, para 27 of the judgment is quoted herein below:-

> *26. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact. It is true that the lower appellate court should not ordinarily reject witness accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal, when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible. One drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.27. If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure-requiring interference in second appeal. This Court in Reserve Bank of India v. Ramkrishna Govind Morey (1976 (1) SCC*

> *803) held that whether the trial court should not have exercised its jurisdiction differently is not a question of law justifying interference.*

23. Mr. Prasad, learned senior counsel further submits that Exhibit 1 and 1/A are the letters of defendant no.1 to plaintiff for eviction. He also refers to Exhibit 4 which is the marriage card of daughter of Prem Chandra Keshri (defendant no.1). He next refers to Exhibit 7 that is the order of Munsiff of Eviction Suit No.7/92. He submits that the amount regarding the agreement was received by the defendant no.1 and he also accepted the same on behalf of mother, who happened to be defendant no.2.

24. Mr. Manjul Prasad, learned senior counsel admits that the defendant no.2 died during the first appeal and further submits that the substitution was not made. He also submits that the plaintiff was put in possession after signing of the agreement. Accordingly, Mr. Prasad, learned senior counsel submits that if possession was provided, the question of readiness and willingness fails and to buttress this argument he relied on the judgment in the case of ***Krishan Gopal Vs. Gurmeet Kaur (Dead) through LRs. & Others*** reported in **2025 Supreme (SC) 1068**, para 12, 13, 17 and 18 of the judgment are quoted herein below: -

> *12. This being the factual backdrop, we may note certain crucial aspects. The Agreement to Sell was 'admittedly executed on 08.10.2001 and the sale deed pursuant thereto was to be executed by 31.01.2002. The plaintiffs asserted that they were ready and willing to pay the balance consideration on that day and get the sale deed executed and registered but the defendant failed to turn up at the office of the Sub-Registrar, Hoshiarpur. The inconsistent stands of Krishan Gopal as to whether or not he attended the Sub-Registrar's office on that day must weigh against him. The financial position of the plaintiffs, having been found to be sound by the Trial Court as well as the First Appellate Court on the strength of their property holdings and the balances in their bank accounts, that issue is no longer open to question before us.*
>
> *13. Well settled is the legal proposition that, to prove his readiness and willingness, a purchaser need not necessarily produce the money or carry it with him or vouch a concluded scheme of finance. [See Nathulal vs. Phoolchand, (1969) 3 SCC 120 and Sukhbir Singh and Others vs. Brij Pal Singh and Others, (1997) 2 SCC 200]. It is equally well settled that readiness and willingness is to be inferred from the conduct of the parties. [See His Holiness*

Acharya Swami Ganesh Dassji vs. Sita Ram Thapar, (1996) 4 SCC 526 and Bibi Jaibunisha vs. Jagdish Pandit and Others (1997) 4 SCC 4811.

17. Section 22 of the Specific Relief Act, 1963, deals with the Court's power to grant the reliefs of possession, partition, refund of earnest money, etc. while dealing with specific performance of contracts. Section 22(1)(a) states that a person suing for specific performance of a contract for transfer of immovable property may ask for possession also in addition to such performance. In this regard, we may refer to Babu Lal vs. Hazari Lal Kishori Lal and Others, (1982) 1 SCC 525. It was held therein that, in appropriate cases of specific performance of contracts of sale of immovable property, the Court can order delivery of possession of the property even if it has not been specifically asked for. It was observed that an order for delivery of possession without a corresponding amendment in the plaint would only be a mere omission which would not be fatal to the relief of possession under Section 22 of the Specific Relief Act, 1963 and more so, when the order is being made in furtherance of the cause of justice. Therefore, the failure on the part of the plaintiffs to amend their suit prayer, so as to seek the relief of delivery of possession, cannot be held against them. At best, it was an omission on their part which was not fatal.

18. It appears that the balance sale consideration of Rs. 9,00,000/- was deposited before the Executing Court by the plaintiffs in February, 2012. However, we are informed that there has been an astronomical rise in the prices of lands in the vicinity of the suit land. Even if that be so, mere escalation of land prices would not be a reason, by itself, to deny the equitable relief of specific performance once sufficient grounds are made out for granting such relief [See Kanshi Ram vs. Om Prakash Jawal and Others, (1996) 4 SCC 593 and Gobind Ram vs. Gian Chand, (2000) 7 SCC 5481.

25. Mr. Prasad, learned senior counsel further submits that unstamped document marked as exhibit in the suit and use by parties that is admitted and to buttress this argument he refers to the case of ***Javer Chand & Others Vs. Pukhraj Surana*** reported in **1961 Supreme (SC) 211**. Relying on the above judgment, Mr. Prasad submits that is the ratio and in view of that argument of learned counsel appearing for the appellant may kindly be negated with regard to unstamped document. He also submits that law is well settled that if the agreement of sale of property signed by the vendor alone and delivered to and accepted by the purchaser though not signed by him is a valid agreement and that is enforceable and to buttress this argument he refers to ***Aloka Bose Vs. Parmatma Devi &***

Others reported in **2008 Supreme (SC) 1883**, para 7 of the judgment is quoted herein below: -

> *7. We find that neither of the two decisions have addressed the real issue and cannot be said to be laying down the correct law. The observation in Md. Mohar Ali (supra) stating that an agreement of sale is an unilateral contract is not correct. An unilateral contract refers to a gratuitous promise where only party makes a promise without a return promise. Unilateral contract is explained thus by John D. Calamari & Joseph M. Perillo in The Law of Contracts (4th Edition Para 2-10(a) at pages 64-65):*
>
> *"If A says to B, 'If you walk across the Brooklyn Bridge I will pay you $ 100. A has made a promise but has not asked B for a return promise. A has asked B to perform, not a commitment to perform. A has thus made an offer looking to a unilateral contract. B cannot accept this offer by promising to walk the bridge. B must accept, if at all, by performing the act. Because no return promise is requested, at no point is B bound to perform. If B does perform, a contract involving two parties is created, but the contract is classified as unilateral because only one party is ever under an obligation."*
>
> *All agreements of sale are bilateral contracts as promises are made by both - the vendor agreeing to sell and the purchaser agreeing to purchase. On the other hand, the observation in S.M. Gopal Chetty (supra) that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. Section 10 of the Act provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. The proviso to section 10 of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. In any agreement of sale, the terms are always*

> *negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognized communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale.*

26. On the point of Section 28 of the Specific Relief Act, 1963, Mr. Manjul Prasad, learned senior counsel relied in the case of ***Ishwar (since deceased) through LRs & Others Vs. Bhim Singh & Another*** reported in **[2024] 9 S.C.R. 1** as well as in the case of ***Ramankutty Guptan Vs. Avara*** reported in **1964 Supreme (SC) 161**. Relying on the aforesaid two judgments, Mr. Manjul Prasad, learned senior counsel submits that if the second appeal is still pending then that is not condition precedent that within stipulated time in the decree it requires to be complied. On the same issue he also relied in the case of ***Anand Narayan Shukla Vs. Jagat Dhari*** reported in **[2026] 5 S.C.R. 453** and he refers to para 22, 23, 35 and 40 which are quoted herein below: -

> *22. Section 2 (2) of the Code of Civil Procedure, 1908, which defines a decree, specifically excludes an order of dismissal in default from the ambit of a decree. As a sequitur, for there to be a merger of the trial court decree in the appellate court decree, there must be an adjudication on merits, though it is immaterial whether the decree or order under appeal is set aside or modified or simply confirmed.-In our view, dismissal of the appeal for non-prosecution would not merge the trial court decree in the order of the appellate court. In the present case, there is no dispute that the appeal of judgment-debtor was dismissed for non-prosecution; therefore, in our view, there would be no merger of the trial court decree in the appellate court order. Issue (A) is answered accordingly.*
>
> ***Issue (B)***
>
> *23. The next argument on behalf of the appellant is that once the Execution Court permitted the appellant to deposit the balance consideration even after expiry of the period fixed by the trial court decree, it would be deemed that the Court had extended the time to deposit. Therefore, the application to rescind the contract for non-deposit was not maintainable and ought to have been dismissed. On this aspect, we notice that the order of the Execution Court, dated 26.11.2020, permitting deposit did not determine the rights of the parties qua rescission of the contract.*

> *Rather, the deposit was permitted just to test the bona fides of the decree holder in pursuing the execution. Though such deposit becomes a relevant factor for determining whether the decree holder had been throughout ready and willing to perform his obligation under the contract/ decree, it would not extinguish the right of the judgment-debtor to seek rescission of the contract. We, therefore, hold that by permitting the decree holder to make deposit to show his bona fides, the Court did not foreclose the right of the judgment debtor to seek rescission of the contract under Section 28 of the 1963 Act. Issue (B) is decided accordingly.*
> *35. The decree of specific performance passed in favour of the appellant dated 03.03.2017 directed that the plaintiff shall pay to the defendant no.1 entire consideration amount @ Rs.16,00,000 per acre for the land bearing Khasra No. 1463/12 dh/2, area 3.75 acres, situated at Mauza Rampur Chaurasi, Circle Raigon, Tehsil Raghuraj Nagar, District Satna within one month or deposit the same in the Court. It was provided that upon payment by the plaintiff of the said amount to defendant No.1 or depositing it in the Court, defendant No.1 shall register the sale of the said land in favor of the plaintiff within two months, and if defendant No.1 does not do so, then after fulfilling all the legal formalities for registration of the disputed land by the plaintiff and paying the stamp duty as per rules, the contract of sale shall be executed by the Court on behalf of defendant No.1 in favor of the plaintiff.*
>
> *40. Neither the Execution Court nor the High Court took into consideration that though the decree fixed a time frame for deposit of the balance consideration, it did not provide for the consequences of failing to adhere to the time schedule. In such circumstances, in our view, there could be no automatic rescission of the decree for specific performance. Thus, the Court while exercising its power under Section 28 of the 1963 Act was required to consider whether the decree was liable to be rescinded or the decree holder was entitled to get extension of time up to the date of deposit in Court. Though, while granting the relief of extension, it was open for the Court to balance the equities by putting the decree holder to such terms as may adequately compensate the judgment debtor for the delay.*

27. Relying on the said judgment, he submits that in this judgment it has also been held that if the appeal is pending and within the stipulated time, direction of the decree is not complied that will not harm the plaintiff since stay was granted by this court in the second appeal while admitting the same. In the aforesaid background and submission, Mr. Manjul Prasad, learned senior counsel appearing on behalf of respondent/plaintiff submits that the law points may kindly be answered in favour of the respondent/plaintiff. He next submits that the first appellate court has

rightly considered the law and reversed the finding of the learned trial court relating to point no.2.

28. In reply, Mr. Rajeev Kumar, learned counsel appearing for the appellant submits that the agreement was not stamped which is not admissible and to buttress this argument he refers to ***G.M. Shahul Hameed v. Jayanthi R. Hegde*** (supra). He again repeated his argument with regard to Section 44 of Transfer of Property Act and also refers to ***Habban Shah Versus Sheruddin*** (supra).

29. In view of the above submission of learned counsel appearing for the parties, the court has gone through the materials on record including the judgments and the trial court's record. Learned Subordinate Judge- I while deciding Title Suit No.19/92, framed eight Issues to decide the said suit. The Issue Nos.IV, V, VI and VII were interlinked and in view of that the learned court has taken those Issues simultaneously. Issue No.IV was with regard to the agreement between the plaintiff and defendant nos.1 and 2 to purchase the suit house on consideration of Rs.60,000/- and defendant nos.1 and 2 received Rs.27,000/- from the plaintiff out of the said consideration amount by way of part performance of contract. Issue No.V was relating to agree to transfer by defendant nos.1 and 2 and Issue No. IV was related to two sale deeds dated 08.05.1992. Learned trial court has considered the witnesses examined on behalf of the plaintiff as well as the defendants. P.W. 1 is Rameshwar Prasad, who is an Advocate Clerk and he was formal and he has proved the letter written by Prem Chand Keshri which was marked as Exhibit 1 and another letter was marked as Exhibit 1/a and one Sada agreement which was marked as Exhibit 1/b. Learned court has found that the witnesses were not present at the time of writing and he has simply proved the signature of Prem Chand Keshri and that witness has also admitted that he was not acquainted with contents of the letter. P.W.2 Jag Narayan Pandey, who was the plaintiff himself, has stated that he has taken a portion of the suit premises from defendant no.1 on monthly rental of Rs.65/- in the year 1986 and rent was further enhanced

upto Rs.120/- per month and he paid rent till February, 1992. He has also stated that house was in the name of Prem Chand Keshri and his mother, who is the defendant no.2. He has stated that in the month of January, 1992, the defendant no.1 has desired to sale the suit premises and it was settled that the suit premises will be sold at the cost of Rs.60,000/-. He has also stated about the part payment and subsequently, the plaintiff came to know that the suit premises was sold by defendant nos.1 and 2 to defendant nos.3 and 4. He has proved the paper marked as Exhibit 3. He has also proved marriage invitation card of daughter of Prem Chand Keshri which was marked as Exhibit 4 and the letter as Exhibit 5. He has also proved Exhibit 6, which is the notice. In his cross-examination, he has stated that no Kirayanama (rent agreement) was written in the year 1985. He has also stated that one Suresh Prasad was also tenant, but as owner has not realized any rent from Suresh Prasad nor he has given any notice for rent or for eviction. He has also stated that the agreement was written by defendant no.1 and it was not signed by his mother, who is defendant no.2. Learned court has held that since the property was in the name of two persons, negotiations should be there by both the persons, however, talk was made only by defendant no.1. Learned court has also found that consent of defendant no.2 was not obtained. He has only stated that part consideration money was paid to the defendant no.1 and defendant no.2 was also present. Learned court has found that there were no witness on the point of part consideration money paid by the plaintiff and it was not disclosed defendant nos.1 and 2 willing to execute the sale deed on taking part consideration money. There were no witness in whose presence the plaintiff has expressed his desire to defendant nos.1 and 2 for taking the remaining amount and execution of the sale deed. Learned court has also took into consideration that defendant no.1 has challenged the signature and he has clearly said that this forged signature had been inserted in the letter and contents were written by the plaintiff himself and the plaintiff was not ready to compare the signature of the defendant no.1 by

handwriting expert. Learned court has also found that in the light of statement of P.W. 2, defendant filed eviction suit in the civil court's jurisdiction and had admitted that he has not filed the petition mentioning that the defendant executed agreement of sale to the plaintiff in eviction suit and in view of that the learned court has found contradiction in his statement. P.W. 3 was a formal witness and he was cross-examined and he was very close to the plaintiff being the Teacher. He has admitted that on agreement he did not signed.

30. Learned counsel for the defendant has challenged the signature and contents written by that witness. Learned court has found that the said witness as interested witness. Learned trial court has further appreciated eleven witnesses examined on behalf of the defendants. D.W. 3- Girijesh Kumar is a formal witness has proved two sale deeds which were marked as Exhibit A and A/1. He has stated in his cross-examination that the deed was not written in his presence. The said witness was found to be formal in nature by the learned trial court. D.W. 4- Prabhu Narayan Tiwary is an Advocate's Clerk, who has proved the sale deed which is Exhibit A/2 and he has stated that the sale deed was executed in his presence and written by Awadhesh Prasad. D.W. 7- Ram Lakhan Prasad is an Advocate's Clerk and has proved the report of Handwriting Expert- Ashok Kashchhap marked as Exhibit C. He was found to be a formal witness. D.W. 8- Jamil Ahmad is a Typist and he proved the report of Md. Quasim Khan, Advocate which is marked as Exhibit D and this witness has only typed the report of the Advocate. D.W. 9 is Jalaluddin Khan is an Advocate's Clerk and he has proved the sale deed which is Exhibit A/3. D.W. 11- Hari Narayan Dubey is a Typist and he proved the letter which is marked as Exhibit D.

31. D.W. 1 is Prem Chand Keshri, defendant no.1 and he has stated that he sold the suit premises to defendant nos.3 and 4 by executing two separate sale deeds on taking consideration amount. He has stated that he and his mother- defendant no.2 executed sale deed in favour of defendant nos.3 and 4. He has also stated that after execution of the sale deed, he

handed over the receipt for taking sale deeds from the Registration Officer to defendant nos.3 and 4. He has further stated that before sale, plaintiff and one Suresh Prasad were tenants and further he gave the suit premises to Jag Narain Pandey in the year 1986 on the monthly rental of Rs.65/- from May, 1988 and later he enhanced the rent up to Rs.120/- per month. He has also stated that he directed the tenant to vacate the premises as he has sold the suit premise to defendant nos.3 and 4. He also denied that any agreement has taken place. He did challenge the signature on the agreement. He has also stated that he has not demanded any money from the plaintiff for the purpose of his daughter's marriage rather marriage was performed at Allahabad and not at Garhwa. He also served the notice to the plaintiff for eviction of the suit premises and never talked to the plaintiff regarding sale of the suit premises. In the cross-examination, no material contradiction was found by the learned trial court. He has stated that the sale deed was executed in favour of defendant nos.3 and 4 on 08.05.1992 and taking consideration money and he has given the name of the witness who were present at the time of the execution of the sale deed. Payment of consideration amount was paid by defendant nos. 3 and 4, was also admitted by him in presence of Dwarika Babu and that person is said to be well reputed man of the locality. He has also given the description of the suit premises in cross-examination and the plaintiff was the tenant and defendant no.1 admitted that eviction suit was filed by the defendant against the plaintiff of this case in the court of Munsiff, Garhwa and the learned court has found that there is clear evidence on the point that he never expressed desire for sale of the suit premises.

32. D.W. 2- Brij Nandan Vishwakarma has stated that he has a shop near the suit premises and owner of the suit premises was Prem Chand Keshri. He has also stated about the sale of suit premises and talk in this regard in the month of April, 1992 at the shop of Dwarika Babu with defendant nos.3 and 4 and consideration amount of Rs.60,000/- was settled as consideration money of the suit premises and defendant nos.3

and 4 were ready to purchase the suit premises. In view of that the learned trial court has found that, that person was present at the time of discussion of sale of the suit premises. In his cross-examination, no contradiction has been found by the learned court.

33. D.W. 6- Madan Lal Keshri is one of the defendant who has purchased the suit premises from defendant nos.1 and 2 and he has given details of the suit premises in his deposition. He has stated how the amount has been paid and deed was executed on 08.05.1992 and the talk of sale was held on 15.04.1992 which was held in presence of Dwarika Babu and the learned court has further dealt with the exhibits and has found that the case of specific performance of contract not made out and from the plaint as well as evidence of plaintiff, defendant no.2 was never entered into agreement who is one of the owner of the suit premises and in view of that the said Issues have been decided against the plaintiff and further Issues have been decided. Issue No.III was not pressed in course of the argument and while deciding aforesaid Issue Nos.I and II, the learned court has found no valid cause of action for the suit and thereafter has been pleased to dismiss the Title Suit No.19/92 by the judgment dated 28.07.1995.

34. The aforesaid judgment was challenged in Title Appeal No.33/95 which was decided by 6th Additional District and Sessions Judge, Palamau at Dalgonganj by the judgment dated 26.09.1998. The learned appellate court has found that only point for consideration in the appeal was whether there was any agreement between the plaintiff and defendant nos.1 and 2 to purchase the suit house for a consideration amount of Rs.60,000/- and whether the defendant nos.1 and 2 received Rs.27,000/- in advance out of the consideration amount of Rs.60,000/- and whether the defendant nos.1 and 2 agreed to transfer the suit premises on receiving the balance consideration amount. Learned appellate court has discussed the case of both the sides and has considered Exhibit 5 and found that contention of the plaintiff was that there was oral agreement between him and defendant nos.1 and 2 to sale the suit premises to the plaintiff/appellant.

35. The appellate court has also referred to Exhibit 4 which is the marriage card of the daughter of Prem Chand Keshri. Exhibit C has been found by the learned appellate court that signature marked C-2 is dated 29.02.1992 rather the actual the date was 27.02.1992 and it has been held by the learned appellate court that expert has not given his opinion for signature dated 27.02.1992 as mentioned on Exhibit 1 and on the basis of opinion of expert, signature dated 27.02.1992 of Prem Chand Keshri, learned appellate court has held that it cannot be said to be forged one and D.W. 10 has stated in para 7 of his deposition that there was no admitted signature of Prem Chand Keshri dated 27.02.1992. For comparison in the present suit, he got the photocopy of questioned signature dated 29.02.1992 along with negative in para 8. The document- Exhibit 1 shown to come for comparison with the specimen signature dated 23.02.1994 and has stated that not possible on the basis of office examination to give satisfactory opinion at that moment which shall require more time for detail examination and he has stated that he cannot give a positive opinion regarding this because it was not present for his examination and it has been argued that Exhibit 1 and the signature dated 27.02.1992 have not been sent to expert and he has not opined in respect of above mentioned signature which fully support the case of the plaintiff and has hold that signature dated 27.02.1992 and Exhibit 1 is genuine one.

36. Learned first appellate court has found that in the deposition of D.W. 10 particularly in para 7, 8 and 9, he has not given a concrete opinion about the signature on the deposition dated 01.02.1994 and he has not compared the signature of the present and nor even on the date he has seen Prem Chand Keshri and in view of that he has found that deposition of D.W. 10 that expert is not confirmed about the signature of the witness and he has asked to give his opinion there and in view of that the appellate court has found merit in the submission of the learned counsel appearing for the respondent/plaintiff and hold that the disputed document along with the admitted documents and as such no reliance can be made on that

report which has been wrongly accepted by the learned trial court who has failed to appreciate the document Exhibit 2- passbook and the money was withdrawn by the plaintiff/appellant with the purpose of meeting requirement of the agreement and has also found the marriage card helping the plaintiff/appellant. Learned appellate court has accepted the contention of the plaintiff that he was acting on behalf of his mother also. According to the learned first appellate court, the agreement of sale was also on behalf of the mother and has been pleased to reject the contention of genuineness of the signature on the said agreement and has held that the defendant nos.1 and 2 have received part consideration money and they are duty bound to execute the sale deed and in view of that he has been pleased to reverse the finding of the learned trial court and allowed the appeal by the judgment dated 26.09.1998 and directed the appellant/defendant nos.1 and 2 to receive the balance consideration money of Rs.33,000/- and execute the sale deed in favour of plaintiff/respondent in respect of Schedule "A" land of this plaint and respondent nos.3 and 4 were also directed to join with them as executors there within a period of two months from the date of the said judgment, failing which the same shall be done through the process of the court at the cost of defendants/respondents.

37. On perusal of the trial court's record, it transpires that Exhibit 1-B is alleged agreement which is not on any stamp paper and has been alleged to be signed only by Prem Chand Keshri on 29.02.1992 whereas the property in question is also in the name of the mother of Prem Chand Keshri, who is defendant no.2.

38. The witnesses examined in the suit have stated so and it transpires from perusal of the deposition of the witnesses from the trial court record to that effect as discussed by the learned trial court as noted (supra) wherein the learned appellate court on the point of signature of fraud and denial, has reversed the finding of the learned trial court on the ground that handwriting expert had not said so, however, the finding of the

learned trial court is based on the fact that D.W. 1 has challenged the signature.

39. Further in the trial court record and after perusing the evidences, it has come out that defendant no.1 has challenged the signature and he has clearly said that his forged signature was inserted in the letter and the contents were written by the plaintiff and the plaintiff has not said that he is ready to compare the signature of the defendant no.1 by Handwriting Expert.

40. D.W. 10- Ashok Kachhap, who is Handwriting Expert and he has compared the disputed signature of defendant no.1 and he has proved the report- Exhibit E and he has been cross-examined by the plaintiff and in his cross-examination, he has said clearly that the disputed signature which was referred for compare is forged and it is not genuine. Exhibit 4 series are the sale deeds which has been executed and Chutka was given by defendant no.1 to the purchaser for obtaining sale deed. When plea was taken by the plaintiff of the said agreement, onus lies upon the plaintiff to prove the signature that has not been done and in view of that this court finds force in the argument of learned counsel for the appellant relying on the judgment in the case of ***Thiruvengadam Pillai Vs. Navaneethammal & Another*** (supra). Further case has been tried to be improved by the plaintiff on the basis of oral agreement as discussed by the learned trial court. For such type of cases, continuous willingness is another aspect and for that in a case of specific performance of contract, Form 47 and 48 of Appendix A in the light of Order VI, Rule 3 of the Code of Civil Procedure is made and in view of that averments are required to be made by the plaintiff and in view of that also the case of ***Manjunath Anandappa URF Shivappa Hanasi Vs. Tammansa & Others*** (supra) relied by the appellant is helping the appellant. It is not clear after passing decree what step has been taken by the plaintiff/respondent and in view of that the case of ***Habban Shah Versus Sheruddin*** (supra), relied by the learned counsel for the appellant further fortified the claim of the appellant.

Admittedly, on perusal of the agreement Exhibit 1-B that is not on any stamp paper which is further against the principle as laid down by the Hon'ble Supreme Court in the case of ***G.M. Shahul Hameed v. Jayanthi R. Hegde*** (supra), relied by the learned counsel for the appellant. A contract of sale does not create itself any interest in or charge on the property that is expressly declared in Section 54 of the Transfer of Property Act and on that Issue, the case of ***Nazim Shaikh Hasan Vs. Nasir Mushtaa Shaikh & Others*** (supra) is very clear on which reliance has been placed by the learned counsel appearing for the appellant. On the jointness of property, judgement relied by the learned counsel appearing for the appellant in the case of ***Dorab Cawasji Warden Vs. Coomi Sorab Warden & Others*** (supra) also fortified the claim of the appellant. It was the duty cast upon the plaintiff to prove that he will perform his part of the contract and that has not been by the plaintiff/respondent.

41. Judgment relied by Mr. Manjul Prasad, learned senior counsel for the appellant in the case of ***Mst. Sugani Vs. Rameshwar Das & Another*** (supra) it has been held that where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure-requiring interference in second appeal, however, in the case in hand, the substantial question of law as noted (supra), has already been framed and in view of the said judgment, is not helping the respondent/plaintiff. On the point of substitution not made before the first appellate court of the legal heirs of defendant no.2, Mr. Manjul Prasad, learned senior counsel relied the case ***Krishan Gopal Vs. Gurmeet Kaur (Dead) through LRs. & Others*** (supra) is on the different point and in that case amendment was not made and in that background the said judgment has been passed wherein in the present case, substitution was not made of defendant no.2 and as such that judgment is not helping the respondent/plaintiff. It is well settled that the judgment passed against a dead person is nullity. A reference may be made to the case of ***Kishun (Dead) Through LRS. Vs. Behari (Dead)***

***By LRS.*, reported in (2005) 6 SCC 300**, para-6 of which reads as under:-

> *"6. As rightly pointed out by learned counsel for the appellants and fairly agreed to by learned Senior Counsel for the respondent, the decree passed by the High Court in favour of a party who was dead and against a party who was dead, is obviously a nullity. It is conceded that the legal representatives of neither of the parties were brought on record in the second appeal and the second appeal stood abated. On this short ground this appeal is liable to be allowed and the decision of the High Court.*

Relying on the said judgment, he submits that the said order itself is nullity.

42. On the point of un-stamped document marked exhibited in the suit and the judgment relied by Mr. Manjul Prasad, learned senior counsel for the respondent/plaintiff in the case of ***Javer Chand & Others Vs. Pukhraj Surana*** (supra) is on the different facts and circumstances of the case. The said agreement is only alleged to be signed by defendant no.1 and that signature has also been denied and that is also un-stamped. In view of that even if argument of learned counsel appearing for the respondent/plaintiff is accepted on the un-stamped document, still that document is in dispute. If the agreement to sale is valid even the oral agreement can be considered as has been held by the Hon'ble Supreme Court in the case of ***Aloka Bose Vs. Parmatma Devi & Others*** (supra) relied by the learned counsel appearing for the appellant, however, in the present case, agreement itself is in cloud and in view of that the said judgment is also not helping the appellant. Even if the argument of learned senior counsel for the respondent/plaintiff with regard to Section 28 relying in the case of ***Ishwar (since deceased) through LRs & Others Vs. Bhim Singh & Another*** , ***Anand Narayan Shukla Vs. Jagat Dhari*** and ***Ramankutty Guptan Vs. Avara*** (supra) are accepted and further considering that stay was granted by this court while admitting the second appeal, however, still the agreement is under cloud and the witnesses have supported so and signature has not been sought to be proved by the

plaintiff, however, the duty was cast upon the plaintiff and as such the said judgments are further not helping the respondents.

43. In view of the above discussion, it is crystal clear that agreement to sale was alleged to be signed by defendant no.1 and signature has not been proved and defendant no.2 was not a party to that and further defendant no.1 was not having any power of attorney, it cannot be said that all these acts have been contained legally and as such the law point no.1 is decided in favour of the appellant herein.

44. So far law point no.2 with regard to not substituting the legal heirs and successors in the appeal, is also decided in favour of the appellant as it is well settled that judgment and decree against a dead person is nullity and as such both the law points are decided in favour of the appellant.

45. The Second Appeal is allowed, consequently, judgment dated 26.09.1998 and decree signed on 05.11.1998 passed by 6th Additional District and Sessions Judge, Palamau at Dalgonganj in Title Appeal No.33/95, is hereby set aside. The judgement and decree dated 28.07.1995 passed by learned Subordinate Judge I, Garhwa in Title Suit No.19/92 is restored.

Civil Revision No.137 of 2004

46. Heard Mr. Amar Kumar Sinha, learned senior counsel for the petitioners along with Mr. Kundan Kumar Ambastha and Mr. Rajeev Kumar, learned counsel for the opposite parties in Civil Revision No.137 of 2004.

47. This civil revision has been preferred against the judgment and decree dated 10.08.2004/23.08.2004 passed by learned Munsiff, Garhwa in Eviction Suit No.37 of 1992 decreeing the suit on contest with cost against the petitioner and directing the petitioner to hand over the vacant possession of the suit premises to the opposite parties within three months, failing which the opposite parties shall have the right to get the vacant possession through the process of the court.

48. The plaintiff/opposite party filed Eviction Suit No. 37 of 1992 for ejectment of the defendant/petitioner from the suit premises on the ground of personal necessity under the provision contained in Section 11 (1) (c) of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982.

49. The case of the plaintiff as set out in the plaint is that the building standing over the lands of Plot Nos. 480 and 488 with adjoining open land of the said Plots appertaining to Khata No.246 measuring eight and half decimals of Garhwa Town originally belonged to Prem Chand Keshri and his mother Most. Jadubanshi Devi and they had let out a portion of the said building to the defendant for residential purpose on a monthly rent of Rs.120/- per month and subsequently the plaintiffs purchased the aforementioned property by virtue of two Registered Deeds of Sale dated 08.05.1992 from Prem Chand Keshri and Most. Jadubanshi Devi and thereafter the plaintiffs informed the Defendant requesting him to vacate the suit premises and to pay the arrears of rent.

50. The defendant contested the suit by filing written statement mainly on the ground that there is no relationship of landlord and tenant between the plaintiffs and the defendant in view of the fact that the defendant has already paid a sum of Rs.27,000/- to Prem Chand Keshri in three instalments and in Token thereof Prem Chand Keshri executed a Deed of Agreement on 27.02.1992 whereby he agreed to execute Sale Deed with respect to the entire lands including the suit property in favour of the defendant on receipt of the balance consideration amount of Rs.33,000/- from the defendant at the time of Registration of Sale Deed and the defendant was put in possession over the suit premises in part performance of the said contract on the same day in presence of the plaintiffs and as such the Defendant remained tenant of Prem Chand Keshri only till 27.02.1992 and since thereafter the Defendant is continuing in possession of the entire premises as its landlord.

51. Further case of the defendant/petitioner is that the defendant came to know only on 01.07.1992 that Prem Chand Keshri has sold the

entire premises to the plaintiffs who had full knowledge of the contract dated 27.02.1992 and as such the defendant filed Title Suit No.19 of 1992 in the court of learned Sub-Judge, Garhwa against Prem Chand Keshri and his mother Most. Jadubanshi Devi claiming specific performance of agreement with respect to the aforementioned property after declaring the Sale Deeds dated 08.05.1992 as void, illegal and inoperative.

52. The defendant produced the agreement dated 27.02.1992 (Exhibit-E) in order to prove that Prem Chand Keshri received a sum of Rs.27,000/- in three instalments from the defendant towards part payment of the entire consideration amount for sale of the aforementioned property and Prem Chand Keshri delivered the possession of the entire premises to the defendant on the same day in part performance of the said agreement.

53. The defendant also produced Notice dated 29.06.1992 (Exhibit-C) in order to prove that in the said Notice, Prem Chand Keshri admitted the agreement dated 27.02.1992. The defendant had also produced the certified copy of judgment and decree dated 26.07.1998 passed in Title Appeal No.33 of 1995 (Exhibit-G) in order to prove that by the said judgment and decree in Title Suit No.19 of 1992 filed by the defendant herein has been decreed directing Prem Chand Keshri and Most. Jadubanshi to execute Sale Deed in favour of the Defendants with respect to Schedule-A land which includes the suit premises.

54. Mr. Amar Kumar Sinha, learned senior counsel submits that so far the oral evidence adduced by the plaintiff in the suit is concerned, P.W. 8 namely Prem Chand Keshri has stated in para 5 of his cross-examination that after partition between the brothers, the said property has come in the share of Prem Chand Keshri and his mother. He next submits that in para 7 of the cross-examination he has stated that after the partition, the said property was in possession of Prem Chand Keshri and his mother and the said property is not belonging to other brothers as well as sisters. He submits that Prem Chand Keshri has also stated in para 8 of his cross-examination that rent relating to the said property was being received by

him, as an owner of the said property. He also submits that P.W. 9- Madan Lal Keshri has stated in his cross-examination in para 55 that the said house has come into the share of Prem Chand Keshri and his brothers, sisters and mother have got no share of the said property. He submits the learned trial court has framed eight Issues and the main Issues are as to whether the plaintiffs are the landlord of the suit premises and is there any relationship of landlord and tenant between the plaintiffs and the defendant and whether the plaintiffs acquired the suit premises for their bona fide use and occupation. He submits that the learned trial court has failed to take into consideration Exhibit E and G. He submits that Exhibit E is the agreement dated 27.02.1992 and Exhibit G is the certified copy of Title Appeal No.33 of 1995. He submits that in view of these two documents, it is well established that there is no relationship of landlord and tenant between the parties. He submits that in the light of Exhibit E, C, H, H/1 and G, it is clear that since after 27.02.1992, the defendant is continuing in possession of the suit premises as transferee in part performance of contract and not as a tenant and his aforesaid right is well protected under Section 53(A) of the Transfer of Property Act. He next submits that the learned court has not taken into consideration that there was no judgment and decree passed in Title Appeal No.33 of 1995 on the date of judgment in eviction suit.

55. Mr. Amar Kumar Sinha, learned senior counsel further submits that agreement was executed by Prem Chand Keshri and his mother Jadubanshi Devi in favour of defendant no.4- Jag Narayan Pandey and that was entered on 27.02.1992 as shown in Exhibit E. While placing Exhibit E, he further submits that Prem Chand Keshri has received the amount of Rs.27,000/- in three installment by way of agreement, possession was already given to the petitioner and in view of that Section 53-A of the Transfer of Property Act is attracted. According to him, valuable right was created in favour of the petitioner in the light of the judgment passed in Title Appeal No.33 of 1995 and in spite of that judgment of eviction has

been passed. On these grounds, he submits that the prayer made in the civil revision petition may kindly be allowed and the judgment and decree may kindly be set aside.

56. On the other hand, Mr. Rajeev Kumar, learned counsel for the opposite parties submits that regarding the argument advanced by Mr. Amar Kumar Sinha, learned senior counsel that Section 53-A of the Transfer of Property Act attracted as the plaintiff has put into possession pursuant to the part performance of the contract and therefore, his possession cannot be disturbed either by transferee or his heirs, the eviction suit is not maintainable in view of agreement dated 27.02.1992 which has been accepted by the learned first appellate court. He submits that this proposition of law was tested by the Hon'ble Apex Court wherein it has been categorically held that the possession of tenant who subsequently entered into an agreement for sale with landlord still remains as tenant and tenancy and tenant and tenancy has not come to an end and as such possession of tenant does not get any metamorphous change merely because he had entered into an agreement with landlord and his possession cannot be treated as part performance of contract under Section 53-A of the Transfer of Property Act and to buttress his argument, he relied in the case of ***G.M. Shahul Hameed v. Jayanthi R. Hegde*** (supra) noted in the argument of second appeal. He also submits that the revision petition has been argued as objection and admissibility has not been taken and therefore, it cannot be subsequently taken to it and was marked as an exhibit and this question has been considered by the Hon'ble Apex Court from time to time and a decision was cited by the respondent ***Javer Chand and others v. Pukhraj Surana*** (supra) in which document was marked as exhibit after realizing penalty and therefore, Section 36 of the Indian Stamp Act comes into play and the Hon'ble Supreme Court in the aforesaid two cases where document get admitted inadvertently and where the objection was rightly or wrongly decided in that case. Section 36 of the Indian Stamp Act is applicable as held in ***G.M. Shahul Hameed v.***

Jayanthi R. Hegde (supra) noted in the argument in the second appeal.

57. So far Civil Revision No.137 of 2004 is concerned. P.W. 8- Prem Chand Keshri has stated in para 5 of his cross-examination that after partition between the brothers, the said property has come in the share of Prem Chand Keshri and his mother. P.W. 9 has also stated in his cross-examination at para 55 that the said house came in the share of Prem Chand Keshri and his mother.

58. Suit No.37 of 1992 was instituted by the plaintiff seeking the eviction of the defendant from the suit premises on the ground of the plaintiff's personal necessity. It was prayed that in the event the defendant fails to handover vacant possession of the suit land, the plaintiffs be granted vacant possession of the suit premises through the intervention of the court, along with the costs of the suit and any other reliefs. It has been stated in the plaint that the portion of the building suit premises is situated over Plot Nos. 480 and 488 so situated as form one block of land under Khata No.246 of Garhwa Town, P.O. and P.S. Garhwa, District Garhwa, prescribed in Schedule 'A' appended at the foot of the plaint forming a part thereof. It has been stated in the plaint that entire building with adjoining open land of Plot Nos.480 and 488 with an area of 8½ decimals belonged to Prem Chand Keshari and his mother, Yaduvanshi Devi and the management thereof was in the hand of Sri Prem Chand Keshri. The said suit premise as described in Schedule 'A' was let out on rent to the defendant for his residential purpose in the year 1992 and even from some time before the monthly rent for the premises was fixed for Rs.120/- and the same rent was continued. The payment of the electricity charges was the liability of the defendant. In course of time, the members of their family increased and in view of that the necessity for purchasing some suitable premises for accommodating the increased family members has arose. For the reasons aforesaid, the plaintiffs approached Sri Prem Chand Keshri for the sale of the entire premises for them. When they heard that he and his mother wanted to sell the same, the plaintiffs told Sri Prem Chand Keshri

that they intended to make the purchase for the residence of a part of their family and thereafter, the transaction of sale came to be completed on 08.05.1992 through registered deeds of sale came to be executed by Sri Prem Chand Keshri and his mother, for their entire holding and open space measuring 8½ decimals, each of the two sale deeds contained half area which has been executed and registered in favour of the plaintiffs since there has not taken place partition of the said entire area of 8½ decimals and each plaintiffs having one-half share and both the purchasers therefore have joined as plaintiffs in the suit. After the transaction mentioned above, Sri Prem Chand Keshri along with the plaintiffs went to the defendant and informed him that the plaintiffs have made the purchase of the entire building with open space in his possession as well as in possession of Suresh Prasad, son of Late Pachu Sahu. The plaintiffs have made the purchase because they are in need of keeping a part of their family in the purchased premises and, therefore, the defendants were prayed to vacate the same and on request, the defendant also promised to vacate the suit premises in their occupation by the 15th of June, 1992. When the defendant did not vacate the premise as promised by him by the 15th of June, 1992, Sri Prem Chand Keshri reminded the defendant of his premise sent a notice to him to vacate the premises and to pay the rent which become due by the time and the suit premise is to be vacated to the plaintiffs as purchasers. Because the purchase of the suit land, they were entitled to receive the rent. The notice of Sri Prem Chand Keshri was dated 29.06.1992. The defendants replied to the said notice with a copy to the plaintiffs & making an absolutely false statement therein that Sri Prem Chand Keshri had promised to sale the premises in his occupation to him when he wanted to sale it and had for that reason had realized from him, a sum of Rs.27,000/- in different instalments. The said contention was alleged to be baseless. In this background, it was necessitated to file the suit for eviction. The cause of action for the suit arose on 15.06.1992 when in spite of the promise to vacate, the suit premises were not vacated and

finally cause of action arose on 02.07.1992.

59. Pursuant to the notice, the defendants appeared in the said suit and alleged that the said title suit was in garb of eviction suit and unless and until the plaintiff valued the suit property properly and pay the ad-valorem court fee thereon and seek clarification of the title and the suit is not maintainable under the Court Fee Act and under the Specific Relief Act. Averment made in the plaint has been denied.

60. The case of the defendant in brief is that this suit of the plaintiff is not maintainable as per law. The plaintiff has no cause of action to bring the suit and the suit is barred by the principles of waiver, acquiescence, estoppel, and res judicata. The suit has been presented by the plaintiff in a deceptive manner instead of a regular eviction suit, for which the plaintiff should properly value the suit and pay the appropriate court fee. It is true that the suit property belongs to Prem Chand Keshri and his mother, and the defendant has been a tenant there since the year 1986, whose rent was ₹65 per month, which became ₹120 per month in the year 1992. Prem Chand Keshri, along with the land and house premises, agreed to sale the entire suit property to the defendant for ₹60,000. Prem Chand Keshri needed money for his son's marriage, which is why he took money from the defendant in installments from time to time, including ₹9,000 on 26.02.1992, ₹10,000, and ₹8,000 on 27.02.1992. In this manner, Prem Chand Keshri has taken a total of ₹27,000 as advance consideration from the defendant. It was agreed that the remaining ₹33,000 would be paid at the time of registration before the Registrar and the possession of the entire suit property was handed over to the defendant as an owner. The defendant was always ready to pay the remaining ₹33,000 for the purchase of the said land, but he was surprised to learn that Prem Chand Keshri had sold the entire suit property to the plaintiff, whereas he had no right to sale the said suit property. Consequently, the defendant filed a suit in the court of Sub-Judge for the specific performance of the contract under the Specific Relief Act against Prem Chand Keshri and his mother, in which a claim has

also been made to declare the said sale deed, through which the plaintiff purchased the suit property, null and void. The plaintiff did not acquire any kind of right, title, or interest over the suit land through the said sale deed.

61. The learned trial court by its judgment dated 10.08.2004 passed in Suit No.37/92 was pleased to decree the suit with cost and the defendants were ordered to hand over the vacant possession of the suit premises to the plaintiffs within three months, otherwise the plaintiffs shall have the right to obtain vacant possession of the suit premises through the court. The said judgment is challenged in this civil revision.

62. The learned trial court has framed eight Issues to decide the said suit. Issue No.III was related to whether plaintiff are the owners of the suit premises and whether the landlord-tenant relationship was established between the parties. Issue No.IV was related to defendant a tenant of the suit premises and is the plaintiff its owner/landlord after purchasing the suit premises and Issue No.V was does the plaintiff have the right to evict the defendants from the suit premises on the ground of the genuine and personal necessity of himself and his family were taken-up together by the learned court and the learned court has found that it is an admitted fact that the suit premises, admeasuring 8½ acres, were jointly owned by Prem Chand Keshri and his mother, in which the defendant resided as a tenant. There was a landlord-tenant relationship between Prem Chand Keshri and the defendant. Prem Chand Keshri sold the said suit premises, along with 8½ decimals of land to the plaintiff through a registered sale deed wherein the defendant claimed that he had entered into an agreement with Prem Chand Keshri to sale the suit premises had paid a consideration amount of Rs.27,000/- in various installments and had agreed to pay the remaining Rs.33,000/- at the time of registration. The defendant was always ready to pay this, however, Prem Chand Keshri sold the said premises to the plaintiff. The defendant claimed this sale is not legally binding upon them. Registered Sale Deed No. 2952, dated 08.05.1992 was marked as Exhibit 2 and Sale Deed No. 2942, dated 08.05.1992 was marked as Exhibit 2/1 and

map plan was marked as Exhibit 3 and sold to buyer Vinod Prasad, land located in Garhwa Town, Khata No.246, Plot No.480, area 2½ acres and Plot No.488, area 2 ½ acres. Exhibit 5 was the statement given by the defendant's witness no.4- Suresh Prasad in Title Suit No.19/92 and Exhibit 7 was certified copy of the judgment passed learned court of Munsiff, Garhwa in Eviction Suit No.38/1992 which was instituted by Madan Lal Keshri for eviction of Suresh Prasad in which Suresh Prasad claimed that an agreement for the entire suit premises was executed in his favor by Prem Chand Keshri, but by that judgment, the plaintiff's suit was decreed for the premises that were given on rent.

63. After appreciating the exhibits as well as the evidences of the plaintiff and defendant, the learned court has found that the defendant had taken disputed premises on rent from Prem Chand Keshri and Prem Chand Keshri subsequently sold the said disputed premises to the plaintiff through a registered sale deed and thereafter, the status of the plaintiffs has now become that of the landlord and the learned court has found that the plaintiffs have succeeded in proving that they are the owners of the suit premises after purchasing it and that a landlord-tenant relationship is established between them and the defendant. In view of that Issue Nos.III and IV were decided in favour of the plaintiff by the learned court. The learned court has also considered the submission regarding Title Suit No.19/92 as well as Title Appeal No.33/95 and has come to the conclusion that the pendency of title appeal is not bar to decide the suit as well as pendency of the present Second Appeal No.134 of 1998(R) are also been considered by the learned court. Learned court has further discussed that the question of title cannot be determined by the court in an eviction suit and eviction suit can be disposed of strictly in accordance with the provisions prescribed under Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 and the question of title between the plaintiff and the defendant is also under consideration before the High Court and therefore, the learned court has held that the judgment passed by the first appellate court in the

in title suit cannot be deemed final and in view of that it transpires that that has been rightly answered as argued by the learned counsel appearing for the petitioner regarding Title Appeal No.33/95.

64. In view of the above and further in the second appeal, the judgment of the first appellate court in Title Appeal No.33/95 has further been set aside by this court as discussed hereinabove and the judgment of the trial court in Title Suit No.19/92 has been upheld. In the aforesaid premises, the learned court has dealt with the matter elaborately and has found the necessity and directed to evict the petitioners. It is also not in dispute that plaintiffs were tenant in the suit premise which has been subsequently sold by the Prem Chand Keshri to the plaintiff by the sale deeds and the manner of agreement and about the signature elaborate discussion has been made while deciding the Second Appeal No.134 of 1998(R) as in the first part of the judgment.

65. Admittedly, Ekrarnama (Exhibit E), is not on any stamp paper. There is no doubt that by virtue of agreement of sale, no title is created, declared, assigned, limited or extinguished either in the present or in future. An agreement of sale generally contains a recital as to a preexistent title and also a promise to execute sale deeds in future so as to confer title by such sale deeds which are yet to be executed and further consequence of agreement of sale has to be ascertained from the terms and conditions of the agreement and can certainly be taken into consideration for collateral purposes to determine the change in the nature of relationship between the parties.

66. The agreement for sale as such is not compulsorily registrable as the same neither creates nor extinguishes any right or title over the property, but is required to be registered in order to claim benefit of part performance of contract under Section 53A of the Transfer of Property Act, however, that can be looked into for the purpose of finding out as to whether the relationship between the parties changed from ***land lord and tenant*** to ***seller and buyer*** so as to exclude the very applicability of the

Jharkhand Buildings (Lease, Rent & Eviction) Control Act seeking remedy of eviction on account of default in payment of rent and bonafide personal necessity of the plaintiff. However, agreement alleged is prior of amendment of Section 53A of the Transfer of Property Act i.e. 24.09.2001. As discussed in the second appeal, agreement itself is doubtful and even the signature has not been proved and challenge to that has been made by Prem Chand Keshri. The learned trial court considering all the aspects has been pleased to decreed the Eviction Suit No.37/1992 and the another tenant's Eviction Suit No.38/1992 was also decreed by another court.

67. There is no perversity in the judgment of the learned trial court and as such, this revision petition is hereby, dismissed. Interim order passed by this court is hereby, vacated.

68. Let the trial court record be sent back to the learned court forthwith of Eviction Suit No.37/1992 as well as of Title Suit No.19/92. In the aforesaid way second appeal is allowed and the civil revision petition is dismissed.

(Sanjay Kumar Dwivedi, J.)

Dated 07.10.2026
Anit

A.F.R.

Uploaded
11.10.2026