

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.447 of 1990

- 1.1. Deo Saran Rai Son of Late Garbhu Rai, Village - Lawapur, P.S. Mahnar, Distt. Vaishali.
- 1.2. Smt. Sarswati Devi Wife of Birendra Rai and D/o Late Garbhu Rai, Village - Dindeyalpur, P.S. Deshari, Distt. Vaishali.
- 1.3. Smt. Shail Devi Wife of Bishundeo Rai and D/o Late Garbhu Rai, Resident of Village - Ramnagar, Chakdaut, P.S. Patosi, Distt. Samastipur.
- 2.1. Ram Maya Rai Son of Late Prabhu Rai, Resident of Village Lawapur, P.S. Mahnar, District- Vaishali.
- 2.2. Sumita Devi Wife of Late Akhlesh Rai and D/o Prabhu Rai, Resident of Village - Bidupur, P.S. Bidupur, District- Vaishali.
- 2.3. Baidnath Rai @ Baidnath Das Husband of Late Sudama Devi, Son of late Ram Autar Rai, Resident of Village - Bidupur, P.S. Bidupur, District- Vaishali.
- 2.4. Randheer Kumar Rai @ Randhir Kumar Nirala, Son of Baidnath Rai and Late Sudama Devi, Resident of Village - Bidupur, P.S. Bidupur, District- Vaishali.
- 2.5. Ranjeet Kumar Rai @ Ranjeet Kumar Mustaka, Son of Baidnath Rai and late Sudama Devi, Resident of Village - Bidupur, P.S. Bidupur, District- Vaishali.
- 2.6. Sanjeet Kumar Rai Son of Baidnath Rai and Late Sudama Devi, Resident of Village - Bidupur, P.S. Bidupur, District- Vaishali.
- 3.1. Harish Chandra Rai Son of Late Dhupa Rai and Late Phulmati Devi, Resident of Village - Lawapur P.S. Mahnar, District- Vaishali.
- 3.2. Prem Chand Rai Son of Late Dhupa Rai and late Phulmati Devi, Resident of Village - Lawapur P.S. Mahnar, District- Vaishali.
- 3.3. Shanti Devi Wife of Brahamdeo Rai and D/o Late Dhupa Rai and Late Phulmati Devi, Resident of Kursaha, P.S. Mohadinagar, District- Samastipur.
- 3.4. Ram Dulari Devi Wife of Kapal Rai and D/o late Dhupa Rai and Late Phulmati Devi, Resident of Chak Lal Sahi, P.S. Halai, District- Samastipur.
- 3.5. Mamta Devi Wife of Sakal Pd. Singh and D/o late Dhupa Rai and Late Phulmati Devi, Resident of Mathura, P.S. Bidupur, District- Vaishali.
- 4.1. Amardeep Kumar Son of Late Mishri Lal Rai, Resident of Village Lawapur, P.S. Mahnar, District- Vaishali.
- 4.2. Amarnath Kumar Son of late Mishri lal Rai, Resident of Village Lawapur, P.S. Mahnar, District- Vaishali.
- 4.3. Kaushileya Devi Widow of Late Mishri lal Rai, Resident of Village Lawapur, P.S. Mahnar, District- Vaishali.
5. Upendra Rai Son of Dhupa Rai, Resident of Village Lawapur, P.S. Mahnar, District- Vaishali.
6. Tej Narain Rai Son of Garbhu Rai, Resident of Village Lawapur, P.S. Mahnar, District- Vaishali.



... .. Appellant/s

Versus

- 1.1. Bindeshwar Rai Son of Late Harihar Rai, Resident of Village Lawapur, P.O. Lawapur Mahnar, P.S. Mahnar, District- Vaishali.
- 1.2. Bishundeo Rai Son of late Harihar Rai, Resident of Village Lawapur, P.O. Lawapur Mahnar, P.S. Mahnar, District- Vaishali.
- 1.3. Jagdev Rai S/o late Harihar Rai, Resident of Village Lawapur, P.O. Lawapur Mahnar, P.S. Mahnar, District- Vaishali.
- 1.4. Ram Pravesh Rai, S/o late Harihar Rai, Resident of Village Lawapur, P.O. Lawapur Mahnar, P.S. Mahnar, District- Vaishali.
- 1.5. Shiv Kumar Devi Wife of Fekan Rai and D/o Late Harihar Rai, Resident of Village - Ajaiya, P.S. patori, District - Samastipur.
- 1.6. Dev Kumari Devi Wife of Ram Janam Rai and D/o Late Harihar Rai, Resident of Village - Gochaha, P.S. Mohaddi Nagar, District- Samastipur.
- 1.7. Raj Kumari Devi Wife of Suchindra Rai and D/o late Harihar Rai, Resident of Village - Gochaha, P.S. Mohaddinagar, District- Samastipur.
- 2.1. Shambhu Rai Son of Late Ram Singar Rai, Resident of Village Lawapur, P.O. Lawapur Mahnar, P.S. Mahnar, District- Vaishali.
- 2.2. Subodh Rai S/o late Ram Singar Rai, Resident of Village Lawapur, P.O. Lawapur Mahnar, P.S. Mahnar, District- Vaishali.
- 2.3. Sunita Devi Wife of Amarendra Rai and D/o late Ram Singar Rai, Resident of Village Manipatti, P.S. Jandaha, District- Vaishali.
- 2.4. Uma Devi Wife of Narendra Rai and D/o late Ram Singar Rai, Resident of Village - Dhanmangat, P.S. Dariyapur, District- Chapra (Saran).
- 2.5. Sangita Devi Wife of Tunna Rai and D/o Late Ram Singar Rai, Resident of Village - Dhamon, P.S. Patori, District- Samastipur.
- 2.6. Surajmani Devi W/o Late Ram Singar Rai, Resident of Village Lawapur, P.S. Mahnar, P.O. Lawapur Mahnar District- Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Samr Chandra Kr. Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT

Date : 14-10-2025

Heard learned counsel for the appellants and learned
counsel for the respondents.



2. This appeal has been preferred against the judgment dated 28.08.1990 (hereinafter referred to as the 'Impugned Judgment') and decree dated 11.09.1990 passed by the Sub-ordinate Judge-III, Hajipur at Vaishali (hereinafter referred to as the 'learned trial court') in Title Suit No. 26 of 1985 wherein and whereunder the learned trial court has decreed the suit.

3. The respondents/plaintiffs have filed a suit with a relief to declare void the four sale deeds dated 29.06.1984 executed by Gena Kuer in favour of Mishri Lal Rai, Upendra Rai and Tej Narayan Rai and Smt. Fulmati Devi, Garmu Rai and Paano Devi and for other reliefs.

Prosecution Case

4. The case of the plaintiffs in short is that a genealogy has been given at the foot of the plaint which is part of the plaint and from perusal of the genealogy it will transpire that Nathuni Rai had five sons, namely, Parshuram, Birju, Bhukhan, Thakur Dayal and Bhagwan Rai who died issueless in the state of jointness. Parshuram was having a son, namely, Sheo Deo Rai. Sheo Deo Rai had three sons, namely, Prabhu Rai, Garbhu Rai and Dhupa Rai. Garbhu Rai is the defendant no.1 and Paano Devi is defendant no.2 who is the wife of Prabhu Rai. Fulmati Devi (defendant no.3) is the wife of Dhupa Rai and Mishri Lal Rai



(defendant no.5) is the son of Garbhu Rai. Tej Narayan (defendant no.6) is the son of defendant no.2 and one son of Bhukhan Rai, namely, Baldeo Rai is the plaintiff no.1.

5. It is further submitted that Thakur Dayal was having a son, namely, Chulhai Rai. Chulhai Rai was having no son. Gena Kuer is the widow of Chulhai Rai who has died. It has further been submitted that an area on 01 Bigha 01 Kattha 16 Dhur situated in Lawapur Mahnaar and Lawapur Narayan and Salempur and Jisrajpur P.S. Mahnaar District-Vaishali was the property of Gena Kuer, widow of Chulhai Rai. It has further been submitted that R.S. survey is in the name of said Gena Kuer. Apart from this, 12 dismil of land being the part of 36 dismil, a joint land was in the share of Gena Kuer.

6. Further case of the plaintiff is that Gena Kuer died on 29.09.1984 and at the time of her death, only the plaintiffs and one Prabhu Rai were the heir of Bhukhan Rai. Garbhu Rai and Dhupa Rai were alive and these four persons were the heir of same class of Gena Kuer. As such, the plaintiffs were having one half share and Garbhu Rai and Dhupa Rai were also having one and half share in the property of Gena Kuer. It is further submitted that the possession of the parties is there on the land as per their share and the properties are joint.



7. The respondents/plaintiffs have come to know that appellants/defendants have got executed four sale deeds on 26.09.1984, first in the name of Fulmati Devi (defendant no.3), second in the name of Mishri Lal Rai, Upendra Rai and Tej Narayan Rai, third in the name of Fulmati Devi and fourth in the name of Garbhu Rai and Paano Devi. When the respondents/plaintiffs obtained the certified copy of these deeds, they came to know regarding this act of the appellants/defendants. It has further been submitted that all the sale deeds are without consideration and actually they are not executed by Gena Kuer. It has further been submitted that Gena Kuer was an old lady aged about 80 years. She was very ill before her death, even she was not able to do her daily chores and was very feeble.

8. The witnesses of the sale deed are in collusion with the respondents/defendants, in fact they are not the witnesses of the deeds. The fact is that Gena Kuer has not executed any sale deed. She was having no need to transfer the land. She has not received any consideration and all the documents are sham. It has further been submitted that the said Gena Kuer has never appeared before the Sub-registrar nor she has agreed the execution. It appears that some imposture in place of Gena Kuer



has executed the deed. The deeds were not written on the direction of Gena Kuer as Gena Kuer was very ill and she was even not able to move. She was not able to understand, even she was not having any competence to execute any document. It has also been submitted that the deeds were executed on 26.09.1984 whereas Gena Kuer died on 29.09.1984.

9. Further case of the respondents/plaintiffs is that the reason for executing the deed was pilgrimage as written in the deed but that was not possible for Gena Kuer as she was very feeble and the need to execute the deed which has been shown in the deeds are false and frivolous. She was having no need to execute the sale deed as sufficient crops were being grown in her field and she had never taken loan and from perusal of the alleged sale deeds it also transpires that the four deeds are with respect to entire land of Gena Kuer and it is not possible that one will transfer all the lands and will not keep any land for her maintenance and the execution of four deeds on the same day is beyond imagination.

10. It has also been submitted that the appellants/defendants have got the sale deeds executed in the state of illness of Gena Kuer in collusion with scribe and witnesses and they cannot get any benefit out of the deeds. It is



clear that after the death of Gena Kuer, appellants/defendants would get only half share and half share will be that of respondents/plaintiffs and the appellants/defendants have got the sale deed executed with a view to usurp the right of the respondents/plaintiffs. All the acts of execution of the sale deed is fraudulent. It has also been submitted that appellants/defendants have not taken permission from the Consolidation Officer for the execution of the deeds. It has further been submitted that respondents/plaintiffs are having possession over the half land of Gena Kuer after her death and while execution of these deeds a cloud has been casted on their right. A cause of action arose as the appellants/defendants were not ready to settle the matter. The cause of action arose on the dates when the respondents came to know about the alleged sale deeds. It has also been submitted that consideration amount is very less.

Written Statement

11. Defendant nos. 4 to 6 have contested this suit by filing written statement. It has been submitted that the case of the respondents/plaintiffs is not maintainable and that no cause of action arose to them for filing this case. This case is barred by law of limitation, estoppel and acquiescence. Proper Court fee has not been paid. The appellants/defendants have admitted



paragraphs 1 and 2 of the plaint, regarding paragraph 3 it has been submitted that Gena Kuer was having more than 01 Bigha 01 Kattha 16 Dhur of land in the said village and the same was registered in her name in R.S. survey and that Gena Kuer was also having share of 12 dismil in the joint properties and she was having possession over that land. It has further been submitted that Gena Kuer did not died on 29.09.1984, actually she died on 02.10.1984 and that the respondents/plaintiffs is not having half share in the land of Gena Kuer. It has also been submitted that the statement made in paragraph nos. 5 to 11 are not correct and the sale deed dated 26.09.1984 is not a fraudulent data. It has further been submitted that Gena Kuer has executed all the four sale deeds dated 26.09.1984 after understanding the nature of the deeds. Gena Kuer was not aged about 80 years neither she was very ill before her death and it is also not a fact that she was not able to do her daily pursuits. It has been submitted that the witnesses have witnessed the deed on the request of Gena Kuer. The sale deeds were executed for the needs mentioned in the sale deed and the needs which are described in the sale deeds are correct one. It has further been submitted that Gena Kuer has agreed to the execution of deed before the registrar and neither there was any imposture. All the deeds were read over to Gena



Kuer and after understanding all the deeds she has executed the deeds. She was not very ill and it is false to say that she was not able to understand the nature of the transactions. She did not die after two days of the execution of the deeds and it has also been submitted that no sufficient crops were grown from her field. It has also been submitted that Gena Kuer has not executed the deed of all her land, some lands are left.

12. Appellants/defendants have denied the submissions made in Paragraphs 13 to 17 of the plaint and it has been submitted that it is false to say that the appellants/defendants have got the LTI of Gena Kuer on a plain paper and has got executed the sale deed. It has also been submitted that these sale deeds have not been executed with a view to usurp the share of the respondents/plaintiffs. It has further been submitted that at the time of execution of the deed, there was no need to take permission of Consolidation Officer. No fraudulent act has been committed by the appellants/defendants. It has also been submitted that the consideration amount is sufficient. Regarding paragraph 18 of the plaint. It has been submitted that the respondents/plaintiffs were never having possession over the half land of Gena Kuer and that the appellants/defendants are having possession over the land which has been sold to them by Gena



Kuer and that from the above sale deeds, no loss has been caused to the plaintiffs.

13. Real fact is that these appellants/defendants have purchased 02 Kattha 15 Dhur land for consideration of Rs. 5,000/- and defendant no.4 has purchased 06 Kattha 07 Dhur land for consideration of Rs.8,500/- and after execution of the deeds the defendants are having possession of the sold land. Appellant/defendant no.5 has purchased 06 Kattha 07 Dhur land for consideration of Rs.8,500/- and they are on possession over the land and the consideration was also paid. It has been submitted that suit is not maintainable and is fit to be dismissed.

Submission on behalf of the appellants/defendants

14. Learned counsel for the appellants/defendants has submitted that the judgment and decree passed by the learned trial court is based on conjecture and surmises and the same is against the evidence on record. It has also been submitted that the trial court has erred in deciding all the issues against the appellants/defendants. Learned trial court has not considered the Exhibit-E which was produced by the appellants/defendants. It has also been submitted that the trial court has not considered the evidence of the witnesses brought by the appellants/defendants and has wrongly disbelieved the evidence of the witnesses and



gave wrong finding for describing their evidence. Trial court has wrongly held that the sale deeds which were executed in favour of these appellants/defendants by Gena Kuer were illegal, void and not in accordance with law. Trial court has wrongly held that permission was required for consolidation and execution of sale deeds by these appellants. Trial court has wrongly held that respondents/plaintiffs are coming in peaceful possession of the disputed land. Learned trial court has also not considered the rent receipts filed by the appellants and the finding that no consideration has been passed is not based on evidence. It has also been submitted that the learned trial court has wrongly held that Gena Kuer was ill at the time of execution of the deeds and the trial court has also wrongly held the date of death of Gena Kuer as 29.09.1984. The trial court did not consider the oral and documentary evidence produced by the appellants.

15. Learned counsel for the appellants has relied on certain citations reported in (2011) 6SCC 555, (1995) 2SCC 630, 2012(e) PLJR-PT 1734769, 2023 (e) PLJR-PT 1758293 and 2010 (e) PLJR-PT 1728290.

Submission on behalf of the respondents/plaintiffs

16. As against this, learned counsel for the respondents/plaintiffs has submitted that learned trial court has



rightly decided all the issues and has considered the evidence on record. No mistake has been committed by the learned trial court. It has further been submitted that Gena Kuer was a *pardanasheen* lady and as the appellants has got the sale deed executed from a *pardanasheen* lady, it is the onus upon them to prove that the transaction was fair. It has also been submitted that the reasons disclosed in the sale deed for the execution of the sale deed are not reliable.

17. Learned counsel for the respondents/plaintiffs has relied on certain citations reported in AIR 2003 SC 4351, AIR 1963 SC 1203, AIR 2002 SC 827, AIR 1925 PC 204 and 2012(3) PLJR 36.

Findings of the learned Trial court

18. Learned trial court has held that since the appellants/defendants who were in a dominant position, it is the onus on them to prove that no fraud was there in execution of the said sale deeds. The learned trial court has also held that the consideration amount was not paid as the witnesses who have come to depose regarding payment of the consideration have given different versions which is not in consonance with the sale deeds. Learned trial court has also held that Section 4 of the Benami Transaction Act will hit the above sale deeds. It has also



been held by the learned trial court that the appellants/defendants have not taken permission for sale from the Magistrate and the consolidation proceedings were not de-notified. As such, the sale deeds are also hit from the Provisions of Consolidation Act. As such, the sale deeds executed by Gena Kuer in favour of the appellants/defendants are void.

Issues before the learned Trial court

19. After considering the pleadings of the parties, learned trial court has framed the following issues :

- i) whether the case of the plaintiff is maintainable as framed;
- ii) whether no cause of action arose to the complaint;
- iii) whether the suit of the plaintiff is barred by law of limitation;
- iv) whether this case is barred by Section 34 of the Specific Relief Act;
- v) whether the four sale deeds executed by Gena Kuer on 26.09.1984 are fraudulent, void, inoperative and without consideration and are liable to be held void;
- vi) whether the plaintiff is having title over the lands of above sale deeds;



- vii) whether the plaintiff is in possession of a properties of Gena Kuer;
- viii) whether the plaintiff is entitle to get the relief as sought;
- ix) whether the plaintiff is entitled for any other relief.

20. In this case, respondents/plaintiffs examined altogether 12 witnesses who are given hereunder in tabular for ready reference :-

PW-1	Arun Kumar
PW-2	Ashok Kumar Singh
PW-3	Chandra Prakash Srivastava
PW-4	Bhasishta Kumar Rai
PW-5	Asharfi Rai
PW-6	Naresh Prasad
PW-7	Chandra Shekar Rai
PW-8	Bisheshwar Prasad
PW-9	Ram Singar Rai
PW-10	Rama Shankar Prasad
PW-11	Birendra Prasad
PW-12	Raghubansh Prasad Singh

21. Out of these witnesses, PW-1, PW-2, PW-3, PW-6 PW-8, PW-10, PW-11 and PW-12 are formal witnesses. PW-9 is plaintiff no.2. PW-10 is also a formal witness.



22. Apart from this, the respondents/plaintiffs have also adduced documentary evidences which are given hereunder for ready reference :-

Ext-1	Affidavit dated 06.02.1985 written by Arun Kumar
Ext-2	Chaukidari receipt written by Umesh Prasad Singh
Ext-3	Rent receipt
Ext-3/A	Rent receipt
Ext-3/B	Rent receipt
Ext-4	Endorsement on information petition written by Shri Tarkeshwar Mishra
Ext-5	First page of information petition written by Ashok Kumar Karperdaz and signed by Ram Singar Rai.
Ext-6	Initial of Tulsi Hajra on Ext-5

23. As against this defendants/appellants have examined altogether 16 witnesses which are given hereunder for ready reference :-

DW-1	Rabindra Prasad
DW-2	Braj Kishore Singh
DW-3	Bishwa Nath Prasad
DW-4	Ram Bhawan Rai
DW-5	Raj Niti Rai
DW-6	Ganour Rai
DW-7	Chandeshwar Rai
DW-8	Ram Chandra Prasad
DW-9	Bhushan Prasad
DW-10	Rajgir Rai



DW-11	Krishna Bhagwan Sahai
DW-12	Bishwa Nath Singh
DW-13	Baleshwar Mahto
DW-14	Tej Narain Rai
DW-15	Amar Nath Prasad
DW-16	Naresh Prasad

24. Out of these witnesses, DW-1, DW-2, DW-3, DW-7, DW-9, DW-15 and DW-16 are formal witness. DW-2 is the witness of the sale deed executed by Gena Kuer. DW-3 is also a witness of the deed. DW-11 is the scribe of the deed. DW-12 is also a witness of the deed.

25. Apart from this, the defendants/appellants have also adduced documentary evidence as follows :-

Ext-A-A/2	Rent receipts
Ext-B	Sale deed dated 24.05.1965 executed by Gena Kuer to Ram Darshan Rai.
Ext-B/1	Sale deed dated 26.09.1984 executed by Gena Kuer in favour of Garbhu Rai.
Ext-B/2 to B/4	3 sale deeds dated 26.09.1984 executed by Gena Kuer in favour of the defendants.
Ext-B/5	Sale deed dated 11.03.1980 executed by Gena Kuer in favour of Panma Devi.
Ext-B/6	Sale deed dated 27.04.1961 executed by Gena Kuer.
Ext-C	Bharnai by Gena Kuer for Panwati Devi
Ext-D	Death Certificate of Gena Kuer
Ext-E	Endorsement of Tarkeshwar Mishra on information petition.



Discussions

26. Amongst above issues, issue no. (v) to (viii) are the most important issues for deciding the claim of the appellants/defendants and one more issue which has been raised by the respondents/plaintiffs during course of this appeal is that as Gena Kuer was old, feeble and *pardanasheen* lady, the onus is on the party which is getting the benefit by the said sale deed. Before dealing with the issues involved in this case, I would like to refer Sections 101 and 102 of the Indian Evidence Act.

“Section 101 **Burden of Proof** :- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 102 **On whom burden of proof lies** :- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

27. This is a case in which the respondents/plaintiffs have claimed that the sale deed executed by Gena Kuer in favour of appellants/defendants was forged, fraudulent executed by a imposture and that no consideration was paid. In this suit, if no evidence is adduced, a registered document is there in existence in favour of the defendants, so definitely plaintiff will lose if any



evidence is not adduced. As such, in my view, it is the duty of the plaintiff to prove the facts which he has alleged.

28. At this place, I would like to refer to Section 92 of the Indian Evidence Act.

“When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1). -- Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, ¹[want or failure] of consideration, or mistake in fact or law.

Proviso (2). -- The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). -- The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). -- The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force



for the time being as to the registration of documents.

Proviso (5). Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). -- Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

29. First of all I would like to discuss the issue raised by the respondents/plaintiffs at the stage of hearing of this appeal.

30. Learned counsel for the respondents has relied on a citation reported in **AIR (1925) Privy Council 204** wherein their lordships of privy council have held that :-

“209. The law of India contains well-known principles for the protection of persons, who transfer their property to their own disadvantage when they have not the usual, means of fully understanding the nature and effect of what they are doing In this it has only given the special development, which Indian social usages make necessary, to the general rules of English law, which protect persons, whose disabilities make them dependent upon or subject them to the influence of others, even though nothing in the nature of deception or coercion may have occurred. This is part of the law relating to personal capacity to make binding transfers or settlements of property of any kind. That the instrument here is a wakfnama is a mere accident, and the general and well-settled law of wakf is not in question. The case of an illiterate purdahnashin lady, denuding herself of a large proportion of her property without professional or independent advice is one on which there is much authority. Independent legal advice is not



in itself essential (Kali Buksh Singh's case). After all, advice, if given, might have been bad advice, or the settlor might have insisted on disregarding it. The real point is, that the disposition made must be substantially understood and must really be the mental act, as its execution is the physical act. of the person who makes it [Wajid Khan's case, Sunitabala Debi's case]. The appellant clearly had no such advice, nor is it contended that she had. If, however, the settlor's freedom and comprehension can be otherwise established, or if, as is the respondent's case here, the scheme and substance of the deed were themselves originally and clearly conceived and desired by the settlor, and were then substantially embodied in the deed, there would be nothing further to be gained by independent advice. If the settlor really understands and means to make the transfer, it is not required that someone should have tried to persuade her to the contrary. Again, the question arises how the state of the settlor's mind is to be proved. That the parties to prove it are the parties who set up and rely on the deed is clear. They must satisfy the Court that the deed has been explained to and understood by the party thus under disability, either before execution, or after it under circumstances which establish adoption of it with full knowledge and comprehension [Sudisht Lal's case, Sham Koer's case; Sajjid Hussain's case]. Further, the whole doctrine involves the view that mere execution by such a person, although accompanied by duress, protest or obvious signs of misunderstanding or want of comprehension, is in itself no real proof of a true understanding mind in the executant. Evidence to establish such comprehension is most obviously found in proof that the deed was read over to the settlor and, where necessary, explained. If it is in a language which she does not understand, it must, of course, be translated, and it is to be remembered that the clearness of the meaning of the deed will suffer in the process. The extent and character of the explanation required must



depend on the circumstances. Length, intricacy, the number and complexity of the dispositions. or the unfamiliarity of the subject-matter, are all reasons for requiring an increased amount and efficiency of explanation. Thus a matter not likely to attract the attention of the executant in itself ought not to be relied on as binding, unless her attention has been directly drawn to it [Sham Koer's case].”

31. Learned counsel for the respondents/defendants has also referred to **AIR (2003) Supreme Court 4351** wherein their lordships of Hon'ble Supreme Court have held that burden of proof settlement deed alleged to be executed by old, ageing, illiterate aged 106 years, no witness was examined to prove the execution of the deed or putting of the thumb impression on it. Challenge as to validity by plaintiff onus to prove execution on deed cannot be placed on the plaintiff. Burden of proof in good faith of transaction would be on the defendant dominant party i.e. the party who is in a possession of active competence.

32. Learned counsel has also relied on AIR (1963) SC 1203 wherein judges of the Hon'ble Supreme Court has held that :-

“As regards documents taken from pardahnashin women the court has to ascertain that the party executing them has been a free agent and duly informed of what she was about. The reason for the rule is that the ordinary presumption that a person understands the document to which he has affixed his name does not apply in the case of a pardahnashin woman. The burden of proof shall always rest upon the person who seeks to



sustain a transaction entered into with a pardahnashin lady to establish that the said document was entered into by her after clearly understanding the nature of the transaction. It should be established that it was not her physical act but also her mental act. The burden can be discharged not only by proving that the document was explained to her and that she understood it but also by other evidence, direct and circumstantial.”

33. As against this, learned counsel for the appellants/defendants has submitted that in this case law of *pardanasheen* as discussed by the privy council reported in **AIR (1925) PC 204** is not applicable in this case as in the above case the deed in question was a *wakf* deed which is gratuitous transaction. In this case sale deed is executed for consideration to the executant of the deed, namely, Gena Kuer was not a *pardanasheen* lady as she has executed many sale deeds prior to these deeds as well and these deeds were read over to her and in this case all the witnesses of the deeds have been examined, even the scribe of the deed has also been examined which goes to show that the contentions of the deed were read over to Gena Kuer and she has executed the deed after understanding the nature of the same. So, it cannot be said that while executing the sale deed, Gena Kuer was having no understanding regarding the contentions of the deed. It has also been argued that the law which has been laid by privy council was with respect to “creation of wakf”,



whereas in this case, sale deed has been executed for consideration of the facts of this case are different from the facts of that case.

34. Having heard learned counsels for the parties on this issue it is clear that in this case Gena Kuer has executed four sale deeds in favour of the defendants and from perusal of the evidence of the defence it is clear that the witnesses of the deed and even the scribe of the sale deed has given evidence that the deed was read over to Gena Kuer and she put her LTI before him which was being identified by Chandeshwar Rai. Chandeshwar Rai is also a witness in this case who is DW-7 and from the evidence of DW-7 Chandeshwar Rai it is clear that he has stated that all the contents of the deed was explained to Gena Kuer and after understanding the nature of the deeds she has put her signature on all the four deeds and after that he has identified her LTI on her instance. This goes to show that the contents of the deed were explained to Gena Kuer.

35. DW-11 is the scribe who has stated that on the instance of Gena Kuer, he has written the contents of the deed. So all these witnesses goes to show that the contents of the deed were explained, admittedly Gena Kuer was and old lady, whether she



was old or not, no evidence has been adduced on this point by the plaintiff.

36. It is also noteworthy that the judgment of the privy council (*supra*) which has been referred by the respondents was with regard to “creation of wakf” which is gratuitous transaction and in this case the sale deeds are executed which are for consideration. So, the principle which has been laid down regarding the *pardanasheen* lady in that case is different from the facts and circumstances of this case. It is also a notable fact that said Gena Kuer has earlier also executed two sale deeds, i.e. Ext-B and Ext-B/6. So it cannot be said that Gena Kuer was unaware of the procedures and the transactions which were being executed by her.

37. So in my view, the principle of *pardanasheen* will not come into operation in this case as the executant of the four sale deeds, namely, Gena Kuer has already executed two more deeds before the execution of these deeds and from the evidence of DWs as referred above, it is clear that the contents of the deeds were read over to Gena Kuer.

38. I am of the view that the burden of prove will lie on the plaintiffs in view of Section 102 of the Indian Evidence Act.



As such, this issue which has been raised at the appellate stage is decided against the plaintiffs/respondents.

39. The case of the plaintiff in short is that the four sale deeds which has been executed by Gena Kuer dated 26.09.1984 are fraudulent, illegal, inoperative and no consideration was paid. It is also the case of the plaintiff that the plaintiffs are having joint share on the land of Gena Kuer with the defendants. Further case of the plaintiff is that they have come to know that the defendants have got four sale deeds executed on 26.09.1984 from Gena Kuer. It is further submitted that the said sale deeds are forged and without consideration and the same were not executed by Gena Kuer. It is also the case of the plaintiff/respondents that Gena Kuer was an old lady aged about 80 years and she was very ill and she was not able to do her daily pursuits.

40. It is also the case of the plaintiffs/ respondents that Gena Kuer has never presented her before registrar and has not consented for the execution of the sale deeds before the registrar. It is also stated that the sale deeds were not read over to Gena Kuer and as she was very ill she has lost the ability to understand regarding the nature of the documents. It has also been submitted that in the said sale deeds, the need for the execution of sale deed



was for treatment and for pilgrimage which is baseless as she was very ill. There is no occasion of pilgrimage.

41. As against this, the case of the appellants/defendants is that the sale deed executed by Gena Kuer after receiving the consideration money deed was properly executed, the same was registered before the Registrar and the executant namely, Gena Kuer has agreed before the Registrar the execution of the deeds. It has also been submitted that Gena Kuer was though old but was not ill and also regarding the date of death is concerned, the appellants/plaintiffs have stated that Gena Kuer died on 29.09.1984 whereas the defendants/appellants have submitted that she did not died on 29.09.1984 and she died on 02.10.1984. It is not disputed between the parties that Gena Kuer was having title over the disputed land.

42. The case of the respondents/plaintiffs is that fraud was committed with Gena Kuer while executing the deed and it has also been submitted that some imposture has executed the deed. From the perusal of the plaint it is clear that the plaint does not speak anything regarding kind of fraud. It is well-settled that one who avers that fraud has been committed, it is his duty to also disclose the facts which constitute the fraud. It is also well-settled that in civil cases facts which are not pleaded cannot be proved.



Regarding imposture also it is not clear that who was the imposture to execute the deed. Section 102 of the Indian Evidence Act casts a duty upon the plaintiff to prove the averments which has been made by him. First and foremost is that consideration was not paid in the said sale deeds. Before coming to the oral evidence, I would like to discuss the documentary evidence i.e. the four sale deeds said to be executed by Gena Kuer in favour of the defendants which has been marked as Ext-B/1 to Ext-B/4. Ext-B/1 is the original sale deed executed by Gena Kuer in favour Garbhu Rai. Consideration of this sale deed is Rs.8,500/-. Regarding payment of consideration, it has been endorsed on the first page that the sale deed has been executed for Rs.8,500/- regarding 06 Kattha and 07 Dhur of land and it is endorsed that the entire consideration will be received at the time of Ta Khubzul badlain. Likewise same endorsement is there regarding payment of consideration money in all the sale deeds.

43. In this regard I would like to refer a practice of Ta Khubzul land i.e. exchange of equivalents. The Hon'ble Apex Court has held in the case of **Janak Dulari Devi and Another vs. Kapildeo Rai and Another** reported in (2011) SCC online SC 639 that "per doctrine of ta khubzul badlain, duly executed sale deed does not operate as transfer in prasenti but postpones actual



transfer of tile till the time of exchange of equivalents, that is, exchange of registration receipt and complete sale consideration- Hence, where practice of Ta khubzul badlain is prevalent, until and unless duly executed and registered sale deed comes into possession of purchaser, said deed of sale remains merely an agreement to be performed and will not be a completed sale- However, where such practice is not prevalent, possession of registration receipt by vendor in the absence of clear evidence, does not lead to inference that consideration has not been paid or that title has not passed to purchaser as recited in the deed of conveyance.”

44. This was a case from Bihar and it was held by the Hon’ble Supreme Court that the practice of Ta khubzul badlain is prevalent in Bihar. In this regard, I would like to refer to Paragraphs 15 and 16 of that judgment :-

15. The prevalence of this practice in Bihar is noticed and recognised in several reported decisions-the decision of this Court in Bishundeo Narain Rai and the decisions of the Patna High Court in Sarjug Saran Singh v. Ramcharitar Singh, Shiva Narayan Sah v. Baidya Nath Prasad Tiwary and Baldeo Singh v. Dwarika Singh, which explain the practice of ta khubzul badlain, after relying upon the principles laid down in the earlier decisions of that Court in Mohd. Murtaza Hussain v. Abdul Rahman, Motilal Sahu v. Ugrah Narain Sahu and Panchoo Sahu v. Janki Mandar

16. In Bishundeo Narain Rait this Court held: (SCC p. 505, para 14)



"14. It appears that in the State of Bihar, a practice is prevalent that when the whole or part of a sale consideration is due or any other obligation is undertaken by the vendee, then on execution and registration of the sale deed by the vendor, title to the property, the subject-matter of the sale, does not pass 'ta khubzul badlain', that is, until there is 'exchange of equivalents' and in such a case registration receipt is retained by the vendor, which on payment of consideration due or on fulfilment of the obligation by the vendee is endorsed in his favour or if the sale deed has already been received by the vendor, then the sale deed is delivered to the vendee. Even so, this only shows that such agreements are common in that part of the country but it is essentially a matter of intention of the parties which has to be gathered from the document itself but if the document is ambiguous, then from the attending circumstances, subject to the provisions of Section 92 of the Evidence Act."

45. Learned counsel for the respondents has paid much reliance on the oral evidence of the defendants in which they have not stated actual amounts which they have paid to the vendee. It is also pertinent to mention here that all the original sale deeds are submitted by the appellants which are marked as Ext-B1 to B4 and in the case of **Janak Dulari** (supra), the Hon'ble Supreme Court has held in Paragraph '14' as under :

14. At this stage, we may refer to the practice prevalent in Bihar known as "ta khubzul badlain" (that is, title to the property passing to the purchaser only when there is exchange of equivalents). As per this practice, where a sale deed recites that the entire sale consideration has been paid and possession has been delivered, but



the registration receipt is retained by the vendor and possession of the property is also retained by the vendor, as the agreed consideration (either full or a part) is not received, irrespective of the recitals in the sale deed, the title would not pass to the purchaser, till payment of the entire consideration to the vendor and the registration receipt is obtained by the purchaser in exchange. In such cases, on the sale deed being executed and registered, the registration receipt (which is issued by the Sub-Registrar) authorising the holder thereof to receive the registered sale deed on completion of the registration formalities, is received and retained by the vendor and is not given to the purchaser. The vendor who holds the registration receipt will either receive the registered document and keep the original sale deed in his custody or may keep the registration receipt without exchanging it for the registered document from the Sub-Registrar, till payment of consideration is made. When the purchaser pays the price (that is, the whole price or part that is due) on or before the agreed date, he receives in exchange, the registration receipt from the vendor entitling him to receive the original registered sale deed, as also the possession. If the payment is not made as agreed, the vendor could repudiate the sale and refuse to deliver the registration receipt/registered document, as the case may be, which is in his custody, and proceed to deal with the property as he deems fit, by ignoring the rescinded sale.

46. So as the original sale deed has been submitted by the appellants it is clear that the sale was complete and the consideration money was paid to vendee.

47. During course of argument, learned counsel for the respondents has also submitted that the sale was hit by Section 4 of the Benami Transactions (Prohibition) Act, 1988.



48. In this regard, learned counsel for the appellants has relied on the judgment of Hon'ble Supreme Court reported in **(1995) 2 SCC 630** where in Paragraph 1 of the judgment Hon'ble Apex Court has held that Section 4 of the Benami Transaction Act is retrospective rather it is prospective. In this regard Paragraph 2 of the above cited judgment is quoted hereunder :

“(2) Section 4(2) provides that if a suit is filed by a plaintiff who claims to be the owner of the property under the document in his favour and holds the property in his name, once Section 4(2) applies, no defence will be permitted or allowed in any such suit, claim or action by or on behalf of a person claiming to be the real owner of such property held benami. The disallowing of such a defence which earlier was available, itself suggests that a new liability or restriction is imposed by Section 4(2) on a pre-existing right of the defendant. Such a provision also cannot be said to be retrospective or retroactive by necessary implication. Section 4(2) does not expressly seek to apply retrospectively. So far as such a suit which is covered by the sweep of Section 4(2) is concerned, the prohibition of Section 4(1) cannot apply to it as it is not a claim or action filed by the plaintiff to enforce right in respect of any property held benami. On the contrary, it is a suit, claim or action flowing from the sale deed or title deed in the name of the plaintiff. Even though such a suit might have been filed prior to 19-5-1988, if before the stage of filing of defence by the real owner is reached, Section 4(2) becomes operative from 19-5-1988, then such a defence, as laid down by Section 4(2) will not be allowed to such a defendant. However, that would not mean that Section 4(1) and Section 4(2) only on that score can be treated to be impliedly retrospective so as to cover all the pending litigations in connection with enforcement of such rights of real owners who



are parties to benami transactions entered into prior to the coming into operation of the Act and specially Section 4 thereof. Section 4(2) enjoins that no such defence "shall be allowed" in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. That is to say no such defence shall be allowed for the first time after coming into operation of Section 4(2). If such a defence is already allowed in a pending suit prior to the coming into operation of Section 4(2), enabling an issue to be raised on such a defence, then the Court is bound to decide the issue arising from such an already allowed defence as at the relevant time when such defence was allowed Section 4(2) was out of the picture. It was wrongly assumed by the Division Bench of the Supreme Court in Mithilesh Kumari case that an already allowed defence in a pending suit would also get destroyed after coming into operation of Section 4(2)."

49. The title suit is of the year 1985 whereas the Benami Transaction Act is of the year 1988 and it is for the real owner who can claim the property under the document. No such claim has been made by the real owner in this case.

50. Learned counsel for the respondents have relied on the finding of the learned trial court where learned trial court has held that no permission was taken from the Consolidation Officer for executing the sale deed. In this regard, learned counsel for the appellants has submitted that the consolidation proceedings were complete and there was no notification regarding completion, meanwhile the sale deed was executed.



51. Learned counsel for the appellants has relied on the judgment of this Court reported in **2023 (e) PLJR-PT 1758293** wherein the Hon'ble Division Bench of this Court has held that "Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956- Sections 5 and 32- sale of a property, which was under the consolidation operation- Tribunal found that the sale-deed was executed only after the Chaks were determined and the principles were declared under Section 13- if the Chaks and the principle behind it is declared under Section 13, there shall be no embargo on the alienation of the property, without the permission of the Collector and no bar under Section 5 would get attracted for the Collector of the district to pass any order of nullity under Section 32."

52. While dealing with the issue of permission from Consolidation Officer, learned trial court has referred to Ext-E filed by the appellants and Ext-E is a report from the Consolidation Office which goes to show that the Chaks are confirmed in village Lawapur Mahnar, Lawapur Narayan and Salempur and that possession has also been handed over and has also conceded to the argument that the *chakbandi* was complete and the judgment which has been relied upon by the learned counsel for the appellants of this Hon'ble Court reported in **2023**



(e) **PLJR-PT 1758293**, is only on this point that after the Chaks are determined, there is no any point of taking permission for transfer of the land.

53. Learned trial court has relied much on the oral evidence of the parties, whereas the law laid down under Section 92 of the Evidence Act has not been considered by the trial court. In civil cases, if the case is proved by the documents, there is less need to go into the oral evidences as the oral evidences of the parties are self-serving statements and they are only of need when some admission is made by any party. It means, if any party makes any statement against his interest in his oral evidence, only that part is of importance. In civil cases, the documentary evidence plays a pivotal role. So in view of these discussions, above issues are decided in favour of the appellants.

54. Issue nos. 1 and 2 :- The case of the plaintiffs/respondents is that they are having possession over their share in the land of Gena Kuer and due to execution of the deed in favour of the appellants/defendants, they have brought this suit. Sale Deed was executed by Gena Kuer in favour of the appellants, the plaintiffs are not the party to the contract. There is privity of contract between appellants and Gena Kuer. So appellant has got no cause of action by execution of the deeds by Gena Kuer in



favour of the appellants. As such, this case is also not maintainable. As such, these two issues are also decided in favour of the appellants.

55. From above discussions, it is clear that the sale deeds which were executed by Gena Kuer in favour of the appellants are valid as they were for consideration and the fraud which has been alleged is not properly pleaded nor proved. As such, these sale deeds are valid sale deeds. As such, respondents/plaintiffs is not entitled to get any relief.

56. As far as, issue no.3 and 4 are concerned, they being the natural corollary of issue nos. 1 and 2 are also decided in favour of the appellants.

57. Considering above facts and circumstances of the case, I am of the view that the findings of the learned trial are based only on the oral evidences. Learned trial court has not considered the documents and the averments therein. Learned trial court has failed to consider the practice of Ta khubzul badlain is prevalent in Bihar. The conclusion of the learned trial court are not based on the merits of the case.

58. As such, the judgment and decree passed by the learned trial court is set aside.



59. In result, this appeal is allowed.

60. Office is directed to draw decree accordingly.

61. Let the records of the learned trial court with a copy
of this judgment be sent to the learned trial court.

(Ashok Kumar Pandey, J)

durgesh/-

AFR/NAFR	NAFR
CAV DATE	23.09.2025
Uploading Date	14.10.2025
Transmission Date	NA

