

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.262 of 2013

-
1. Annapurna Devi, widow of Late Rajendra Prasad Sharma
 2. Pankaj Kumar Sharma Son of Late Rajendra Prasad Sharma
 3. Amit Kumar Son of Late Rajendra Prasad Sharma
 4. Anjula daughter of late Rajendra Prasad Sharma
 5. Nisha Sharma daughter of Late Rajendra Prasad Sharma
Residents of Mohalla - Bakerganj, Police Station - Pirbahore,
District and town Patna

... .. Appellant/s

Versus

Ratan Lall son of Late Hira Lall Resident of Mohalla - Bakerganj,
Police Station - Pirbahore, District and town Patna

... .. Respondent/s

with

SECOND APPEAL No. 261 of 2013

- 1.1 Babita Devi, Widow of Late Krishna Mohan Prasad, Resident of
Mohalla- Bakerganj, Police Station- Pirbahore, District and
Town- Patna. At present residing at Uttari Patel Nagar, Gokul
Path, Phulwari, District and City- Patna.
- 1.2 Akash Lall, Son of Late Krishna Mohan Prasad, Resident of
Mohalla- Bakerganj, Police Station- Pirbahore, District and
Town- Patna. At present residing at Uttari Patel Nagar, Gokul
Path, Phulwari, District and City- Patna.
- 1.3 Priya, D/o Late Krishna Mohan Prasad, Wife of Niraj Kumar
Prakash, Resident of Village and P.S.- Khagaul, District- Patna.
- 1.4 Manisha, D/o Late Krishna Mohan Prasad, Wife of Shashi
Kumar, Resident of Mohalla- Raja Bazar, P.S. Shastri Nagar,
District- Patna.
2. Pradeep Kumar Lall Both sons of Late R.P. Lall Residents of
Mohalla - Bakerganj, Police Station - Pirbahore, District and
town Patna

... .. Appellant/s

Versus



Ratan Lall Son of Late Hira Lall Resident of Mohalla - Bakerganj,
Police Station - Pirbahore, District and town Patna

... .. Respondent/s

Appearance :

(In SECOND APPEAL No. 262 of 2013)

For the Appellant/s : Mr. Kim Choubey, Sr. Advocate
Mr. Ashok Kumar Garg, Advocate
Mr. Dineshwar Pandey, Advocate
For the Respondent/s : Mr. J.S. Arora, Sr. Advocate
Mr. Ravi Bhatia, Advocate
Mr. Rakesh Kumar, Advocate
Ms. Prakriti Prakash, Advocate
Ms. Supriya Kumari, Advocate

(In SECOND APPEAL No. 261 of 2013)

For the Appellant/s : Mr. Kim Choubey, Sr. Advocate
Mr. Ashok Kumar Garg, Advocate
Mr. Dineshwar Pandey, Advocate
For the Respondent/s : Mr. J.S. Arora, Sr. Advocate
Mr. Ravi Bhatia, Advocate
Mr. Rakesh Kumar, Advocate
Ms. Prakriti Prakash, Advocate
Ms. Supriya Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 23-09-2026

Both the appeals arise between the same parties, litigating under the same title. Since the subject matter of the suits and the appeals being the same, they have been heard analogously and this Court propose to disposed of these appeals by this common judgment.

2. Before narrating the grounds of substantial questions of law involved in these appeals, I deem it necessary to state the following facts. One Ratan Lall, since deceased, instituted



Eviction Suit No. 2 of 1991 which was subsequently re-numbered as Title Suit No. 36 of 1995, seeking eviction against the defendants. It has been pleaded by the original plaintiff that his father, late Hira Lall, during his lifetime, had acquired a number of properties at Patna and other places, comprising houses and agricultural lands. The said properties were the self-acquired properties of the father of the original plaintiff. The said Hira Lall had contracted two marriages. From his first wife, he had two sons. After the death of his first wife, Hira Lall married Smt. Janak Dulari Devi, the mother of the plaintiff. From the wedlock between Hira Lall and Janak Dulari Devi, two sons and one daughter were born. The first wife of Hira Lall had given birth to two sons, namely, Ram Chandra Lall and Ram Prasad Lall, and five daughters. The youngest son of Hira Lall from his second wife was the plaintiff in Title Suit No. 35 of 1995.

3. In the year 1948, Hira Lall divided all his immovable properties amongst his family members by executing registered deeds of gift. It is not necessary to state the details of the properties transferred by Hira Lall in favour of his sons, the widows of his predeceased son, etc. However, it is necessary to record that the said Hira Lall wanted to transfer some property to his second wife and his youngest daughter. At that point of time,



the plaintiff was not born. Therefore, he executed a deed of family arrangement and partitioned his property in favour of his legal heirs by executing a deed of family arrangement. He also retained the suit property, being a residential house at Patna. Even after such family arrangement, he executed different deeds to transfer the properties to his legal heirs.

4. The plaintiff was born in the year 1954 and, when he was about two years old, his father executed a registered deed of gift in the year 1958, transferring the suit property, being a residential house at Patna, in favour of the plaintiff. The said deed of gift was duly accepted, and the name of the plaintiff, as a minor, was recorded in the records of rights.

5. After transfer of the shares to his legal heirs, the said legal heirs started living separately. Hira Lall constituted a separate joint family with the plaintiff. In this state of affairs, Hira Lall died in a state of jointness with the plaintiff, and upon his death, the entire estate of Hira Lall devolved upon the plaintiff.

6. It is claimed that the plaintiff inherited the entire estate of Hira Lall and came into possession of the said property and, alternatively, acquired title by adverse possession. It was further the case of the plaintiff that his father transferred the suit property by executing a deed of gift on 11th December, 1956. The



said deed was presented for registration on 13th March, 1957, and was admitted on the same date. However, the deed was impounded for want of the requisite deficit stamp duty. Subsequently, the deficit stamp duty was paid in the year 1980. However, due to the oversight and mistake, the deed was not entered into the volume maintained in the registration office, as required under Sections 60 and 61 of the Indian Registration Act.

7. Failure to record the deed in the volume in terms of the aforesaid provisions of the Indian Registration Act is an administrative omission, and the said defect is curable under Section 87 of the said Act. However, the gift was duly accepted by the plaintiff during his minority. The deed was accepted by the donor himself on behalf of the donee. Upon attaining majority, the said property devolved upon the plaintiff, and he became the absolute owner of the suit property.

8. It is further contended by the plaintiff that one R.C. Lall, stepbrother of the plaintiff, died in the year 1945, leaving behind his widow, who used to reside in the suit property. However, she left the house in the year 1958. Another stepbrother, namely, R.P. Lall, was delivered six houses by his father, who also left the house of the plaintiff in the year 1958. The sister of the



plaintiff, namely, Smt. S. Devi, was also given a house property by way of gift.

9. The father of the plaintiff died in the year 1960, leaving behind his second wife and the plaintiff, as well as his stepsons and daughters, as his legal heirs and representatives. After the death of Hira Lall, the plaintiff and his mother suffered financial setbacks, and the mother of the plaintiff inducted Rajendra Prasad Sharma, third son of late R.P. Lall, as a tenant in the ground floor of his residential house on a monthly rent of Rs. 75/- per month in the year 1966, payable according to the English calendar month. The other two sons from the first wife of late R.P. Lall, namely, Krishna Mohan Prasad and Pradeep Kumar, were also inducted jointly as tenants on a monthly rent of Rs. 65/- per month according to the English calendar month in one portion of the first floor of the house in the month of April, 1966,

10. Under the aforesaid background, it is the case of the plaintiff that, on the date of filing of the suit, he was dependent upon the financial help rendered to him by his elder brother from the income of the grocery shop. However, with such meager income, it was not possible for him to maintain his family. He wanted to start his own business of manufacturing hosiery goods. Therefore, on the ground of *bona fide* requirement, he requested



the defendants to quickly vacate and deliver peaceful possession of the tenanted portion in his favour, however, they refused to vacate the suit premises. They also defaulted in payment of money/rent.

11. Subsequently, the plaintiff determined the tenancy orally with effect from 15th November, 1990, and asked the defendants to vacate the premises by 31st December 1990 and also to pay the arrears of rent but they failed and neglected to do so. Therefore, the original plaintiff filed the suit for eviction of all the defendants/tenants, and alternatively for a declaration that there was a complete partition between Hira Lall and his other heirs in the year 1948 and the Suit Holding No. 12, was retained by Hira Lall which was subsequently gifted to the plaintiff by executing a registered deed of gift in the year 1956. By virtue of the said gift deed, the plaintiff becomes the absolute owner of the suit property or in the alternative as a result of his long, continuous and uninterrupted possession of the suit property for more than twelve years, the plaintiff had acquired adverse possession over the said suit property and his title if found defective has been perfected by adverse possession.

12. The defendants contested the suit by filing a written statement, wherein they denied all the material allegations made out by the plaintiff against them. It is the specific case of the



defendants that the plaintiff could not be granted any decree for eviction in the absence of any of the grounds under Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. It is further contended by the defendants that, under the garb of an eviction suit, the plaintiff plaintiff title over the suit property and, therefore, the suit is not maintainable.

13. The defendants further contended that the suit premises had been acquired as joint family property and that the same was not the self-acquired property of their predecessor, in interest late Hira Lall, since deceased. Since the property was joint family property, the defendants have right title and interest over the suit property. The defendants also denied the execution of the deed of gift allegedly by Hira Lall in the year 1956-57 and contended that, by virtue of the said deed of gift, the property had been wrongly recorded in the name of the plaintiff alone.

14. The defendants further denied the plaint case/story that the widow of R.C. Lall had delivered peaceful possession of a portion of the suit property in favour of the plaintiff. It is contended that the truth is that the widow of late R.C. Lall is still in possession of a portion of the suit premises. In short, the defendants claimed possession over the suit property as the legal heirs of Hira Lall, and the nature of the property is joint family



property and that they were co-arceners therein. Therefore, the defendants contended that the plaintiff was not entitled to any decree.

15. Subsequent to the amendment of the plaint, the defendants filed an additional written statement, stating, *inter alia*, that the suit property, being the ancestral property of the plaintiff and the defendants, was originally acquired by late Sushant Thakur and, after his death, the same was mutated in the name of his son, late Hira Lall, who started living in the suit house.

16. It was further contended that Hira Lall, from his first wife, Bastao Devi, had two sons, namely, Ram Chandra Lall and Ram Prasad Lall. Ram Prasad Lall was the father of the defendants. With the help, cooperation and financial assistance of Ram Chandra Lall and Ram Prasad Lall, Hira Lall purchased 52 Kari of land adjacent to the suit house, which has now been amalgamated with the suit house and the entire suit house along with the said land is the joint family property of the legal heirs of Hira Lall. It is further contended that the said property was not purchased from the exclusive possession of Hira Lall.

17. It is further contended that, from the wedlock between Hira Lall and his second wife, namely, Janak Dulari Devi, two sons, namely, Bachchan Lall @ Shiv Ganga Prasad and Ratan



Lall, and a daughter, namely, Shanti Devi, were born. After the birth of Shanti Devi and Bachchan Lall, the second wife of Hira Lall, namely, Janak Dulari Devi, started creating trouble in the family with the sole motive to get the joint family land and the house get transferred in her and her children's name which was resisted by Hira Lall and his son Ram Chandra Lall.

18. It is claimed that, due to such family dispute, the eldest son of Hira Lall, namely, Ram Chandra Lall, committed suicide. It was further claimed by the defendants that the alleged deed of gift was not executed by Hira Lall of his own free will and that it was the outcome of undue influence and pressure. Therefore, according to the defendants, the alleged deed of gift in favour of the plaintiff was illegal, inoperative and invalid and was never acted upon.

19. The further case of the defendants is that the electricity connection of the suit house stands in their names. They were paying the municipal taxes and electricity charges, whereas the plaintiff had never asserted his right over the suit property as a Donee. Thus, the defendants claimed that the plaintiff cannot not claim ownership over the suit property either by virtue of the deed of gift or by adverse possession.



20. On a thorough search of the LCR, this Court finds that the record of Eviction Suit No. 2 of 1991, renumbered as Title Suit No. 36 of 1995, was not at all received by this Court. The department did not examine the record of the trial court at the time of receiving the same. It is a voluminous blunder committed by the concerned department. However, this Court is proceeding with the delivery of judgment because both the parties have submitted the amalgamated complaints of Title Suit No. 35 of 1995 and Title Suit No. 36 of 1995.

21. However, the learned Registrar General is specifically directed to fix responsibility upon the concerned officer and staff of the Second Appeal Section for the aforesaid lapse. Upon fixing liability upon the concerned officer and staff, he shall propose initiation of departmental action, subject to the final decision of the Hon'ble the Chief Justice. An extract copy of this order be sent to the learned Registrar General, Patna High Court.

22. Prior to filing of Title Suit No. 35 of 1991, the plaintiff had filed Title Suit No. 2 of 1991 against the defendants on the same facts and circumstances. The prayer portion of the said suit was as follows:-



“(a) That a decree for eviction be passed in favour of the plaintiff as against the defendant and the defendant be directed to vacate the premises within a reasonable period to be fixed by the Court, failing which possession be delivered through the process of the Court, and the cost incurred therein be ordered to be realized from the defendant.

(a)(i) Alternatively, it may be declared that there was complete partition among Hira Lall and his other heirs in 1948 and suit holding No. 12 was retained by Hira Lall in his share which he gifted to the plaintiff by gift dated 11-12-56 and plaintiff came in possession and assuming the deed was not completed the plaintiff acquired title by adverse possession. Alternatively, it may be held that in 1948 there was severance and partition and Hira Lall was allotted suit holding on his death the plaintiff inherited his estate being after-born son joint with him. As such, the plaintiff has title and the defendants' possession is permissive as such a decree of eviction be passed against defendant.



(b) That mesne profits from the date of suit till the date of possession be awarded to the plaintiff at the rate of Rs. 4/- per day or at such rate as the court deems fit and proper.

(c) That the cost of the suit with interest pondentilite and future be awarded to the plaintiff.

(d) That any other relief or reliefs which the Court deem fit and proper be awarded to the plaintiff.”

23. The defendants have also contradicted the case of the plaintiff on the same defense, therefore, we do not think it necessary to record the same facts revealed in the plaint and written statement of the parties in Eviction Suit No. 2 of 1991 re-numbered as T.S. No. 36 of 1995 for the sake of unnecessary repetition and brevity.

24. The trial court decreed the suit in favour of the plaintiff and against the defendants by its judgment dated 21st June 2005. Against the said judgment and decree, the defendants preferred two appeals, being T.A. No. 47 of 2005 arising out of Title Suit No. 35 of 1995 and T.A. No. 48 of 2005 arising out of Title Suit No. 36 of 1995. Both the appeals were heard analogously and were dismissed on contest.



25. Against the concurrent findings of fact recorded by both the courts below, the instant appeal was preferred and admitted by this Court for hearing under Order XLI Rule 11 of the CPC on the following substantial question of law, vide order dated 16th September 2015:-

“(i) Whether the deed of gift dated 11.12.1956 (Ext. 4), which is the basis of the title of the plaintiff over the suit property, could have been admitted in evidence even when the said document was not registered in accordance with Sections 60 and 61 of the Registration Act and whether, on the basis of the said document, the title could pass to the plaintiff on the basis that all the formalities required for registration on the part of the donor was complete and the remaining action required to be done was by the registering authority?”

26. The learned counsel for the appellant submits that the Court is required to frame an additional substantial question of law on the issue as to whether a deed of gift in favour of a minor donee is valid when the donor himself accepts the gift on behalf of the donee. Therefore, the following additional substantial question of law is framed as Question No. 2:



“2. Whether a deed of gift executed by the donor in favour of a minor is valid when, by virtue of the deed of gift, the donor himself accepts the gift on behalf of a minor donee?”

27. The learned Advocate on behalf of the appellants submits that it is not disputed that one Hira Lall was the original owner of the suit property during his lifetime. Hira Lall married twice before the Hindu Marriage Act came into operation. From the wedlock between Hira Lall and his first wife, admittedly, two sons and five daughters were born. The second wife of Hira Lall gave birth to two sons and one daughter. The youngest son of Hira Lall from the second wife was the original plaintiff, and the original defendants were the step-brothers of the plaintiff. It is also not disputed that during the pendency of the suit, on the death of the plaintiff and some of the defendants, their legal heirs and representatives were substituted. They are now contesting the instant appeal.

28. It is submitted by the learned advocate on behalf of the appellants that the property acquired by Hira Lall, the predecessor-in-interest of the parties, was self-acquired property. Sometime in 1948, he delivered a major portion of his property by executing various deeds of gift in favour of the defendants. The



said Hira Lall had a house in Patna, and the said house was not transferred to anybody. In 1954, the plaintiff was born. According to the plaintiff, Hira Lall executed a deed of gift in favour of the plaintiff when he was about two years old, on 11th December 1956. The deed was impounded and forwarded to the Collector, Patna, under Section 38(2) of the Indian Stamp Act for non-payment of deficit stamp duty.

29. It is submitted by the learned Advocate on behalf of the appellants that the said deed was not registered for non-payment of requisite stamp duty, and the document was impounded under Sections 60 and 61 of the Indian Registration Act.

30. The learned Advocate on behalf of the appellants submits in this regard that under the provisions of Section 58(1) (c), it is the duty of the registering officer to verify on every document admitted to registration, amongst other particulars, any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document and any receipt of consideration in whole or in part made in his presence in reference to such execution.

31. Section 59 of the Indian Registration Act states that the registering officer shall affix the date and his signature on all



endorsements made under Sections 52 and 58 relating to the same document and made in his presence on the same date.

32. Section 60 speaks about the duty of the registering officer to endorse on the deed a certificate containing the word "registered", together with the number and page of the book in which the document was copied. Sub-section (2) of Section 60 requires the registering officer to sign, seal and put the date below such certificate, and only then is the registration deemed to be complete.

33. Section 61 states that the registration of a document shall be deemed complete when the endorsements and certificate referred to and mentioned in Sections 59 and 60 are copied into the margin of the register book, and the copy of the map or plan, if any, mentioned in Section 21, shall be filed in Book No. 1. Thereafter, the document shall be returned to the person who presented the same for registration.

34. It is contended on behalf of the defendant that the donor in his lifetime did not comply with the provisions of Sections 60 and 61 of the Indian Registration Act, and, therefore, the deed in question was not registered.

35. I have examined the deed marked as Exhibit 4 in the trial court. It is found from the deed of gift that it was executed on



11th December 1956, and deficit stamp duty of Rs. 27.50 and Rs. 5 as penalty was paid on 26th February 1958 during the lifetime of Hira Lall. Thereafter, the said deed was registered. Both the courts below rightly held that the provision of the Registration Act was duly complied with and the deed of gift was found to be registered. The said deed was acted upon by the father of the plaintiff during his minority. And after he became major, on acceptance of the deed of gift, he became the owner of the suit property. Therefore, I do not find any illegality in the judgment passed by the trial court and the judgment of affirmation and decree passed by the first appellate court.

36. Learned Advocate on behalf of the appellants, in support of his argument, refers to a decision passed by the Hon'ble Supreme Court in ***Civil Appeal No. 9951 of 2017, U. Manjunath Rao versus U. Chandrashekhar and another***, reported in ***2017 (3) PLJR (SC) 441***. Paragraph 12 of the aforesaid judgment deals with the scope of Order XLI Rule 31 of the Code of Civil Procedure. Paragraph 12 of the aforesaid judgment runs thus:-

“On a perusal of the said Rule, it is quite clear that the judgment of the appellate court has to state the reasons for the decision. It is necessary to make it clear that the approach of



*the first appellate court while affirming the judgment of the trial Court and reversing the same is founded on different parameters as per the judgments of this Court. In **Girijanandini Devi** (supra), the Court ruled that while agreeing with the view of the trial court on the evidence, it is not necessary to restate the effect of the evidence or reiterate the reasons given by the trial court. Expression of general agreement with reasons given in the trial court judgment which is under appeal should ordinarily suffice. The same has been accepted by another three-Judge Bench in **Santosh Hazari** (supra). However, while stating the law, the Court has opined that expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage to be adopted by the appellate court for shirking the duty cast on it. We are disposed to think, the expression of the said opinion has to be understood in proper perspective. By no stretch of imagination it can*



*be stated that the first appellate court can quote passages from the trial court judgment and thereafter pen few lines and express the view that there is no reason to differ with the trial Court judgment. That is not the statement of law expressed by the Court. The statement of law made in **Santosh Hazari** (supra) has to be borne in mind.”*

37. In reply thereto, the learned Advocate for the plaintiff refers to **Union of India and another versus Ranchhod and others**, reported in **(2007) 14 SCC 326 :: AIR 2008 Supreme Court 938**. In the aforesaid decision, the Hon'ble Supreme Court had dealt with the scope of Order XLI Rule 31 of the CPC and observed as follows:

*“In **Girja Nandini Devi versus Bijendra Narayan Choudhary**, AIR 1967 SC 1124, an observation was made that it is not the duty of the appellate court, when it agrees with the view of the trial court on the evidence, either to restate the effect of the evidence or to reiterate the reasons given by the trial court. Expression of general agreement with the reasons given by the court, the decision of which is under appeal, would ordinarily suffice.*



7. The aforesaid observation in Girja Nandini Devi (supra) is often misunderstood and sometimes the Courts while delivering a judgment of affirmance have adopted a shortcut method of not considering the evidence but merely expressing a general agreement with the reasons given by the trial Court. This case was considered in Santosh Hazari v. Purushottam Tiwari (2001) 3 SCC 179, wherein it was observed as below:-

"The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general



agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (See Girja Nandini Devi v. Bijendra Narain Choudhury). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is



entitled to interfere with the finding of fact."

8. In the case in hand the High Court has not referred to even an iota of evidence which was adduced by the parties. There were large number of landholders whose land was acquired and they had filed separate objections under Section 9 of the Act and had separately sought references under Section 18 of the Act. They had separately lead evidence in support of their cases before the reference Court. It is not a case where a single case may have large number of parties and the evidence adduced is common for all of them. In the matter of determination of compensation large number of factors have to be seen, namely, nature and quality of land, whether irrigated or unirrigated, facilities for irrigation like existence of well etc., presence of fruit bearing trees, the location of the land, closeness to any road or highway, the evenness of the land, namely, whether its level is even or there are pits etc., its position in rainy season, namely, whether water gets accumulated in rains, existence of any building or structure and a host of factors having bearing on valuation of the land."

38. Learned Advocate on behalf of the respondent, on the other hand, submits, referring to a decision in ***AIR 1952 Patna***



265, Hirendra Narayan Singh versus Jung Bahadur Singh and others, on the question as to whether the payment of landlord's fee is a condition precedent to the registration of the Kebala and since it has been found in fact that the landlord's fee has been paid, it ought to be held that the plaintiff acquired no title upon registration of the Kebala. The Division Bench of this Court held as follows:

“In my opinion this argument is untenable and cannot succeed. For it is an established rule that if a statute imposes a public duty and requires that it should be performed in a certain manner or within certain time or on certain conditions such cases will be regarded as intended to be directory otherwise injustice or inconvenience will result to persons who have no control over those exercising their duty without promoting the essential aim of the legislature. It has been held, for instance, when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that the Act was directory only and might be



complied with after the prescribed time 'SMITH v. JONES', (1830) 1 B & Ad 328 at p. 334. In another case 'BELLAMY v. SAULL', (1863) 32 L J Q B 366, the Queen's Bench had to construe Section 34 of the Revenue Act, 1861, which enacted that no copy of a bill of sale should be filed in any Court unless the original was produced to the officer duly stamped and it was held that the section did not invalidate the registration if the bill was not duly stamped when so produced since the object of the enactment was to protect the revenue, and this was thought sufficiently attained if the deed was afterwards duly stamped, without going to the extreme of holding the registration void.

6. In the present case I think that the condition as regards payment of the landlord's fee enacted in Section 12 (2) of the Bihar Tenancy Act is merely directory and not absolute and in consequence the failure to deposit landlord's fee at the time of registration of the kebala, did



not affect the title of the plaintiff. It follows that the plain-tiff obtained valid title to the land as soon registration was effected irrespective of the question whether the landlord's fee was paid or not.

7. This opinion is supported by 'RANI PRABHABATI v. LallJI MAHTO', 23 Pat 356, in Which a Division Bench of this Court held that under Section 13, Bihar Tenancy Act, when a permanent tenure was sold in execution of a mortgage-decree, the title of the auction-purchaser became complete on the sale being confirmed, even though the landlord's fee may not have been deposited and that the landlord, therefore, could not proceed to sell the tenure in execution of a decree for rent obtained by him against the original tenure-holder in a suit instituted after the confirmation of the sale. The same principle was enunciated in 'CHANDRASEKHAR v. JAGARNATH', 24 Pat 148, in which a transferee of a portion of a



permanent tenure was not impleaded in the rent suit subsequently brought by the landlord and it was held that the decree for rent obtained by the landlord against the recorded tenant will not affect the transferee and the plea that the landlord had no notice of the transfer was of no avail. Mr. J. M. Ghosh who appeared for the respondents pointed out that this case ought to be distinguished on the ground that under Section 1 of the Bengal Act I of 1903 no transfer of a tenure made under Section 12 or Section 13 "shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by the said Sections 12 and 13 has not been paid." But it is important to notice that the transferee had not paid the fee for service of notice on the landlord and on this point Fazl Ali, C. J., states at page 151 of the report:

"It is true that these cases were cases relating to Section 12 of the Bengal Tenancy Act, but it seems to me that on principle no distinction



can be drawn between cases which come under Section 13. Section 11 of the Bihar Tenancy Act, which has already been quoted, provides that a permanent tenure is capable of being transferred in the same manner as other immovable property. There is nothing in the Act to suggest that the title of the transferee is not complete until the landlord receives notice of the transfer. It is true that provisions are made for the payment of the landlord's registration fee and also for the service of notice upon the landlord, but it is nowhere suggested that non-compliance with the provisions will affect the title of the transferee. Where the sale takes place under Section 12, notice is to be issued by the officer who registers the instrument of transfer, and where the sale takes place under Section 13, the notice is to be issued by the Court confirming the sale. The mere fact that the Registrar or the Court does not carry out the directions contained in Sections 12 and 13 cannot affect



the title of the transferee, and if the failure of the payment of the landlord's fee by the transferee cannot affect his title as provided by Section 1 of Act I of the Bengal Act (No. I of 1903), I do not see why his failure to deposit the fee for serving notice on the landlord should have any other effect."

It is of importance to observe that in '24 Pat 148', the plaintiff had failed to pay not merely the landlord's fee but also the fee prescribed for the service of notice and it was held by the Bench that neither failure to deposit the landlord's fee nor failure to deposit the fee to serve notice can affect the title of the transferee. In other words the decision was that the provision as regards payment of process-fee and costs of transmission was merely directory and not imperative and cannot affect the title of the vendee under the registered kebala. I see no reason in principle why the provision with respect to the payment of the landlord's fee in Section 12 (2) should



be construed in a different manner even assuming that Section 1 of the Bengal Act I of 1903 is non-existent.

8. Upon these grounds, I would set aside the decree of the lower appellate Court and order that the plaintiff should be granted a decree for declaration of title and recovery of possession of the land in dispute. There will be no decree as regards mesne profits in the circumstances proved in the case. The appeal is accordingly allowed with costs throughout.”

39. On the question as to whether the donor can, in respect of a deed of gift executed in favour of a minor donee, accept the gift on behalf of the minor donee, the learned Advocate appearing on behalf of the respondent has referred to paragraph 10 of the judgment in ***Ponnuchami Servai versus Bala Subramaniam and others***, reported in ***AIR 1982 Madras 281***. Paragraph 10 of the said judgment is relevant to the issue and is quoted hereinbelow:

“10. Even assuming that I could go into the question of acceptance, I see no reason to differ from the conclusion of the court below.



The non-acceptance would strike at the root of the validity of the deed. If there was no acceptance, there was no need for the first defendant to execute a deed of revocation on 7-5-1974. Further, the circumstances in which the first defendant was placed go to show that the whole idea was to see that the properties were saved for the family. Such a purpose cannot be effectuated by execution of a sham or nominal document. The plaintiff was a minor and the acceptance of the settlement can only be by his guardian. After the Hindu Minority and Guardianship Act, 1956, there can be no doubt that the father alone could be the guardian of the person as well as the property of a minor. It is only after him that the mother can be the guardian. Unfortunately, there is a general notion that in a document executed by the father in favour of a minor issue, somebody else has to be appointed as a guardian and the mother is referred to as the guardian in such cases. But this is a lay and



erroneous notion. The acceptance, on the facts here, can only be by the father as the guardian of the minor and when he himself executed a document, the acceptance can be presumed.”

40. The same principle is laid down in ***K. Balakrishnan V. K. Kamalam and Others*** reported in ***2004 (1) SCC 581***. Paragraph 25 and 26 are relevant for our purpose and are reproduced below:-

“25. Where a gift is made in favour of a child of the donor, who is the guardian of the child, the acceptance of gift can be presumed to have been made by him or on his behalf without any overt act signifying acceptance by the minor. In the instant case, the mother who is the natural guardian gifted the property to her minor son in the year 1945. The donee was an educated lad of 16 years of age, capable of understanding and living jointly with the donor. Knowledge of the execution of the gift would have been derived in normal circumstances, by the minor, being beneficiary, sooner or later after its execution. Knowledge



of gift deed to both the parents as natural guardians and the donee is sufficient to indicate acceptance of gift by the minor himself or on his behalf by the parents. The gift deed was revoked by the mother much after its execution as late as in the year 1970. By that time, the donee had become a major and he never repudiated the gift. We have examined the terms of the gift deed. Non-delivery of possession of the gifted property, non-exercise of any rights of ownership over it, and failure by the donee, on attaining majority, in getting his name mutated in official records are not circumstances negating the presumption of acceptance by the minor during his minority or on his attaining majority. The donor had reserved to herself, under the terms of the gift deed, the right to manage, possess and enjoy the property during her lifetime. Since the possession and enjoyment of the property including management of the school were



retained by the donor during her lifetime, the acceptance of the ownership of the property gifted could be by silent acceptance. Such acceptance is confirmed by its non-repudiation by his parents and by him on attaining majority. As is the evidence on record, the mother, the donor, was herself the natural guardian of the minor donee. The father was also a guardian and had knowledge of the gift. He also did not repudiate the gift on behalf of the donee. The donee himself was 16 years of age and could understand the nature of the beneficial interest conferred on him. He also had knowledge of the gift deed and on attaining majority did not repudiate it. These are all circumstances which reasonably give rise to an inference, if not of express but implied acceptance of the gift. Where a gift is made by the parent to a child, there is a presumption of acceptance of the gift by the donee. This presumption of acceptance is founded on human nature. "A man may be



fairly presumed to assent to that to which he in all probability would assent if the opportunity of doing so were given to him.” (See Halsbury’s Laws of England, 4th Edn., Vol. 20, para 48.)

26. In the case of Sunder Bai v. Anandi Lall the donee was a child and in the care of the donor himself. The High Court held that in such circumstance, express acceptance could not be insisted upon. In the case of Ponnuchami Servai v. Balasubramaniam the father himself was the donor and executed a gift deed in favour of his minor son. The parties continued to stay together in the said property even after the gift. In these circumstances it was held that the gift in favour of the minor would be deemed to have been accepted as the father himself was the guardian and had himself executed the gift deed.”

41. In view of the decisions passed by the Hon’ble Supreme Court, as well as the Madras High Court and the Patna High Court, this Court finds no merit in the instant appeals. Both



the substantial questions of law are accordingly decided against the appellants.

42. The appeals are accordingly dismissed on contest. There shall, however, be no order as to costs.

43. Further, the trial court record be returned to the court below forthwith.

(Bibek Chaudhuri, J)

Suraj/-

AFR/NAFR	NAFR
CAV DATE	15.09.2026
Uploading Date	23.09.2026
Transmission Date	23.09.2026

