

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**S.A. No.7 of 2019**

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Jagat Narayan Sahu, aged about 45 years, son of Dewan Sahu, resident of village -Kobang, P.O. -Pakar Tanr, P.S. -Pakar Tanr, District -Simdega

....      ....      ....      **Defendant No.2/Appellant/Appellant**  
***Versus***

1. Lebdu Turi
2. Aghnu Turi, both sons of Late Jhaman Turi, resident of village -Pakar Tanr, P.O. and P.S. -Pakar Tanr, District -Simdega.
3. Katail Devi, wife of Late Etwa Turi
4. Reena Kumari
5. Lalita Kumari
6. Sarita Kumari, nos. 4 to 6 are daughters of Late Etwa Turi
7. Meena Devi, wife of Shakespere Tirkey and daughter of Late Etwa Turi, all residents of Village -Aruna, Tailor Medical at Pahar Nope Town, P.O. & P.S. -Pahar Nopetown, Bampooflat, District -South Andman (Andman and Nikobare), Pin-744207
8. Prabha Devi, wife of Karumanidhi Ranga Swami, daughter of Late Etwa Turi, resident at Pohargam, P.O. & P.S. -Pohargram, District -South Andaman (Andman and Nikobare), PIN -744105
9. Mahesh Turi, son of Late Sukru Turi, resident of village -Pakar Tanr, P.O. and P.S. -Pakar Tanr, District -Simdega

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10. Firni Devi, wife of Bajru Manjhi, resident of village -Dukhu Toli, P.S. -Pilkhi, District -Jaspur (Chhatisgarh)
11. Bhirni Devi, wife of Habil Manjhi, resident of village Tapu Basti, P.O. & P.S. -Tapu Basti, P.P. Bampilat,, Andaman, District -South Andman
12. Gangi Devi, wife of Bhauwa Manjhi, resident of village -Tamra, Khumbhartoli, P.O., P.S. and District -Simdega.
13. Jitni Devi, wife of Bhaghi Manjhi, resident of village -Rokedega, P.O. & P.S. -Palkot, District -Gumla
14. Heena Devi, wife of Sukru Turi, resident of village -Pakar Tanr, P.O. & P.S. -Simdega, District -Simdega.
15. Bindeshwar Manjhi, son of Pifak Manjhi, resident of village -Pakar Tanr, Chamru Toli, P.O. & P.S. -Pakar Tanr, District -Simdega.
16. Bijay Manjhi
17. Larango Manjhi, both sons of Tunu Manjhi, resident of village -Sikaria Tanr, P.O. & P.S. and District -Simdega.
18. Porhi Devi, wife of not known, resident of village and P.O. -Charaitanr, P.S. -Duldula, District -Jaspur (Chhatisgarh)
19. Deputy Commissioner, Simdega, P.O., P.S. and District -Simdega

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**Proforma Defendants/ Proforma Respondents/Proforma Respondents**

20. Most Mangi Devi, wife of Late Sukru Turi, resident of village -  
Tamra, Kumhartoli, P.O., P.S. & District -Simdega.

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**Defendant no.1/Appellant/Proforma Respondent**

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For the Appellants : Mr. Amar Kr. Sinha, Advocate  
: Mr. Kundan Kr. Ambastha, Advocate

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**PRESENT**

**HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY**

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*By the Court:-*

1. Heard the learned counsel for the appellant.
2. This second appeal under Section 100 of Code of Civil Procedure has been preferred against the judgment and decree of affirmance dated 06.10.2018 passed by the learned District Judge-I, Simdega in Civil Appeal No.4 of 2016 whereby and where under the learned first appellate court has dismissed the appeal on contest after holding that there is no illegality in the Judgment and decree passed by the learned Civil Judge (Sr. Division) -I, Simdega in Original Suit No. 2 of 2012 dated 28.01.2016.
3. The brief facts of the case is that the plaintiffs filed the suit No. 2 of 2012 in the Court of Civil Judge (Senior Division)-I, Simdega with a prayer for adjudication of right, title and interest on the basis of R.S. Khatiyani that:- (i) they are the heirs and successors of Kandru Turi and Khala Turi; (ii) that the sale deed of the suit land dated 26.11.2011 bearing no. 1189 of 2011 is null and void and inoperative and other consequential reliefs.

4. The case of the plaintiffs in brief is that the parties except the defendant no.2 -Jagat Narayan Sahu belongs to Turi Caste, a Scheduled Caste in the State of Jharkhand. They are guided by Hindu Law in the matter of inheritance and succession. The plaintiffs are the descendants of recorded tenants Khala Turi. After the death of their ancestors, the plaintiffs applied for succession mutation vide Mutation Case No. 67 of 2011-12 and got the land recorded in their names and started paying revenue to the Government. The defendant no.2 claimed ownership over the suit property on the ground that he has purchased the same from Mosomat Mangni Devi by registered sale deed no. 1189 of 2011. The plaintiffs obtained the certified copy and found that the defendant no.1 -Most. Mangni Devi had no right to transfer the land sold by her to the defendant no.2; by the said sale deed. Hence, the plaintiffs filed the suit with the prayer that sale deed no. 1189/2011 is null and void.

5. In her written statement, the defendant no.1 challenged the maintainability of the suit on various technical grounds. She denied that the ancestral property of Khata No. 41 & 42 situated at Pakartanr was joint rather there was a mutual partition amongst the heirs and successors of recorded tenants and she pleaded that sale of land by her to the defendant no.2 -Jagat Narayan Sahu was legal and valid. The defendant no.2 filed a separate written statement and he also challenged the maintainability of the suit on

various technical grounds. He admitted the genealogical table and that the defendant no.1 belongs to Turi, a Scheduled Caste community but he claimed that defendant no.1 has valid right, title and interest over the suit property which she has transferred to the defendant no.2. The defendant nos. 4 to 12 did not file any written statement.

6. On the basis of the rival pleadings of the parties, the following issues were settled by the learned trial court:-

- “(I) Whether the suit is maintainable in the present form?*
- (II) Whether the plaintiff has got valid cause of action?*
- (III) Whether the plaintiffs have got valid right, title, interest over the suit property?*
- (IV) Whether the sale deed No. 1189/2011 dated 26.11.2011 is Null and Void?*
- (V) Whether the plaintiffs are entitled to any relief claimed?”*

7. In support of their case, the plaintiffs’ altogether examined four witnesses and proved the documents which have been marked Ext. 1 to 4 whereas from the side of the defendants, altogether five witnesses were examined and the defendants proved the document which has been marked Ext. A.

8. The learned trial court first took up issue nos. III and IV together and after considering the evidence in the record considered that though it has not been specifically pleaded but it is a question of law that the sale deed concerned executed by the defendant no.1 in favour of the defendant no.2 is barred by Proviso (b) of Section 46(1) of the Chota Nagpur Tenancy Act, 1908, hence such sale deed is illegal and void which cannot confer

any right, title and interest in respect of the suit land upon the defendant no.2. Hence, the possession of the defendant no.2 upon the land of the plaintiffs and the defendant no.1 is illegal and decided the issue nos. III & IV in favour of the plaintiffs and against the defendants. The learned trial court next took up issue no.2 and after considering the materials in the record came to the conclusion that the plaintiffs have cause of action for filing the suit. In respect of issue no.I next taken up by the learned trial court, the learned trial court concluded that the suit is maintainable. Lastly, the learned trial court took up issue no.5 and held that the plaintiffs are entitled to the relief and decreed the suit.

9. Being aggrieved by the Judgment and Decree passed by the learned trial court, the defendants preferred Civil Appeal No. 4 of 2016 in the Court of District Judge-I, Simdega. The learned first appellate court formulated the following three points for determination:-

*“(1) Whether suit property is joint and plaintiffs have got valid right, title, interest over the suit property and whether plaintiffs are in possession of suit property?*

*(2) Whether defendant no.1 Most. Mangi Devi has got any exclusive share which she sold to the Defendant No.2 Jagat Narayan Sahu and whether the Sale Deed No. 1189 dated 26.11.2011 was valid?*

*(3) Whether judgment or decree passed by the learned Lower Court require any interference?”*

10. The learned first appellate court first took up the point for

determination no.1 and after making independent appreciation of the evidence in the record came to the conclusion that the suit property is joint property of the plaintiffs and the defendant no.1 but after purchase of the suit property by the defendant no.2, the defendant no.2 is possessing the same. Hence, the defendant no.1 had no right, title and interest over the suit property and decided the point for determination no.1 in favour of the plaintiffs and confirmed the finding of the learned trial court in respect of issue nos. II, III & IV. The learned first appellate court next took up point for determination no.2 and considered the admitted case of the parties that the plaintiffs and defendant no.1 -Most. Mangi Devi belongs to Turi Caste which is a Scheduled Caste and in view of Proviso (b) of Section 46(1) of the Chota Nagpur Tenancy Act, 1908, the transfer by a member of Scheduled Caste to a person who does not belongs to Scheduled Caste is not recognized as valid, hence held that the Sale Deed No. 1189/2011 dated 26.11.2011 is void ab initio and relying upon the Judgment of this Court in the case of **Sitlal Baitha and Others Vs. Rudi Chamar and Others**, reported in (2003) 4 JLJR 286 wherein it was held that a sale deed executed in violation of Section 46 of the Chota Nagpur Tenancy Act is *void ab initio* and relying upon the Judgment of Hon'ble Supreme Court of India in the case of **Kameswaramma Vs. Subba Rao**, reported in AIR 1963 SC 884, observed that though there is no specific issue framed since there are materials to show that the

parties knew exactly what point they have to meet and they went to trial with knowledge relating to the particular issue, hence the decree is not entitled to be reversed unless the parties shows that they were materially prejudiced and decided the point for determination no.2 against the defendant nos. 1 & 2. The learned first appellate court next took up issue no.3 and held that there is no illegality in the judgment and decree passed by the trial court and dismissed the appeal.

11. It is submitted by the learned counsel for the appellant that the judgment and decree passed by the courts below is vitiated due to misconstruing the provisions contained in Section 46 of the Chota Nagpur Tenancy Act, 1908. It is then submitted that when there was no pleading contending that the sale deed in question is bad for violation of Section 46 of the Chota Nagpur Tenancy Act; the courts below ought not have held that the sale deed in question is bad for violation of Section 46 of the Chota Nagpur Tenancy Act. Hence, it is submitted that the judgment passed by both the courts below be set aside after formulating appropriate substantial question of law and suit of the plaintiffs be dismissed.

12. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that it is a settled principle of law that in view of Section 46 of the Chota Nagpur Tenancy Act, an occupancy raiyat who is a member of Scheduled Caste, if transfers his or her right

without the previous sanction of the Deputy Commissioner; by sale, exchange, gift, will or lease to another person, the same will be void ab initio and Section 46(3) of the Chota Nagpur Tenancy Act, 1908 mandates that such transfer shall not be recognized as valid by any court, whatever in exercise of civil, criminal or revenue jurisdiction.

13. Undisputedly, the defendant no.1 is a member of Scheduled Caste being of Turi Caste and the sale deed in question bearing no. 1189/2011 dated 26.11.2011 was made without the previous sanction of the Deputy Commissioner. Under such circumstances, this Court do not find any illegality in both the courts below holding that the Sale Deed No. 1189/2011 dated 26.11.2011 is void ab initio; irrespective of the fact, as to whether there was specific pleading to this effect or not. Hence, in the considered opinion of this Court, no substantial question of law is involved in this appeal.

14. Accordingly, this appeal being without any merit is dismissed.

**(Anil Kumar Choudhary, J.)**

High Court of Jharkhand, Ranchi  
Dated the 30<sup>th</sup> July, 2024  
AFR/ Sonu-Gunjan/-