

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Second Appeal No. 5 of 2023

1. Rubi Devi, aged about 45 years, Wife of Late Suraj Kumar Gupta,
 2. Shalini Kumari, aged about 25 years, Daughter of Late Suraj Kumar Gupta
 3. Mini Kumari, aged about 20 years, Daughter of Late Suraj Kumar Gupta
 4. Sunny Kumar Gupta, aged about 19 years, Son of Late Suraj Kumar Gupta,
 5. Saroj Devi, aged about 68 years, Wife of Late Madan Prasad Gupta,
 6. Jyoti Jamuar, aged about 53 years, Daughter of Madan Prasad Gupta
- All residents of Makatpur Chowk, Giridih, P.O. & P.S. – Giridih (T),
District – Giridih (Jharkhand)

... ... **Defendants/Respondents/ Appellants**

-Versus-

1. Ritesh Kumar Gupta, Son of Rabindra Prasad Gupta, Resident of Makatpur within P.S. – Giridih (T), P.O. and District – Giridih

... ... **Plaintiff/Appellant/Respondent**

2. Shivani Devi, Wife of Late Kishore Prasad Gupta,
3. Sheetal Adhikari, Daughter of Late Kishore Prasad Gupta,
4. Pooja Singh, Daughter of Late Kishore Prasad Gupta
5. Priti Singh, Daughter of Late Kishore Prasad Gupta
No.2 to 5 Residents of 43/11 Ground Floor, C.N. Roy Road, Picnic Garden, P.O. & P.S. – Kolkata, District – Kolkata – 700039
6. Amit Gupta @ Rinku Gupta, Son of Late Madan Prasad Gupta, Resident of Makatpur Chowk, Giridih, within P.S. – Giridih (T), P.O. and District – Giridih
7. Sandeep Kumar Gupta, son of Late Kishore Prasad Gupta, Resident of Ground Floor, 43/11, C.N. Roy Road, P.O. & P.S. – Kolkata, District – Kolkata – 700039

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

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants	: Mr. Sudarshan Shrivastava, Advocate
	: Mr. Amit Kr. Verma, Advocate
For the Respondent No. 1	: Mr. Himanshu Kumar Mehta, Advocate
	: Mrs. Manjusri Patra, Advocate
	: Mr. Rishav Raj, Advocate
For Respondent Nos. 2 to 7	: none

Lastly heard on 20.01.2025

07/06th March 2025

1. This second appeal has been filed challenging the Judgment and Decree dated 11.11.2022 and 24.11.2022 respectively passed in Civil Appeal No. 08 of 2020 by the learned Principal District Judge, Giridih reversing the Judgment and Decree dated 21.01.2014 and 03.02.2014 respectively passed in Title Suit No. 36 of 2006 by the learned Civil Judge (Sr. Division) III, Giridih.
2. The case arises out of suit seeking specific performance of contract of sale of immovable property.
3. The appellants and Proforma Respondent No. 6 are representing the Defendant Nos. 2 to 4 of the suit. The Respondent Nos. 2 to 5 and 7 are representing the original Defendant No.1 and Respondent No.1 is the plaintiff of the suit.
4. The suit was filed by Ritesh Kumar Gupta (plaintiff) seeking a decree against the original Defendant No.1 for specific performance of registered agreement of sale dated 06.09.2005 (exhibit-1) for sale of suit property. The suit was dismissed and the judgment and decree of the trial Court has been set-aside by the learned Appellate Court and the appellate court directed the legal heirs and successors of Kishore Prasad Gupta [original Defendant No.1] to execute the registered sale-deed with respect to the suit property in favour of the plaintiff. The legal heirs and successors of Kishore Prasad Gupta [original Defendant No.1] have not filed any appeal. The appeal has been filed by the defendant no.2 (purchaser of the suit property and wife of defendant no.3) and other legal heirs of defendant no.3 and also by the legal heirs of defendant no.4. The defendant no.2 has purchased the suit property vide registered sale-deed dated 29.05.2006 (exhibit-C) executed by Kishore Prasad Gupta [original Defendant No.1] pursuant to purported unregistered agreement of sale dated 06.05.2005 (exhibit-B) between Kishore Prasad Gupta [original Defendant No.1] and defendant no.4. The registered sale-deed dated

29.05.2006 (exhibit-C) has been executed by Kishore Prasad Gupta (original defendant no.1) through the power of attorney holder, original defendant no.3. The suit was filed for specific performance of contract being registered agreement dated 06.09.2005 (exhibit-1) between the plaintiff and the original defendant no.1.

5. The suit was dismissed primarily on the ground that the suit property was a joint property of defendant nos.1 to 4 and therefore the registered agreement of sale dated 06.09.2005 (exhibit-1) was not a valid document and was void. While dismissing the suit the learned trial Court also held that the defendant no.1 was not entitled to make any agreement of sale and the joint share cannot be alienated without the consent of other coparceners. The learned first appellate Court reversed the judgement and decree holding that there was a valid family partition and the suit property was the exclusive property of the defendant no.1 which could be alienated by him and consequently the registered agreement of sale dated 06.09.2005 (exhibit-1) was valid. The learned appellate Court held the readiness and willingness to perform the part of the contract in favour of the plaintiff. The learned first appellate Court also held that the unregistered agreement of sale dated 06.05.2005 (exhibit-B) was an afterthought to by-pass the binding effect of registered agreement of sale dated 06.09.2005 (exhibit-1).

6. This second appeal was admitted on 02.08.2023 on the following substantial questions of law: -

1. Whether the appellate court committed perversity by decreeing the suit of the plaintiff even though as the plaintiff knowing pretty well that the defendant no. 1 has sold the suit property to the defendant no. 2 vide registered sale deed dated 29.05.2006 marked as Exhibit 'C' yet did not pray for cancellation of the aforesaid sale deed, marked as Ext. 'C'.

2. Whether the suit property being a joint family property of the defendants on 06.09.2005, learned First Appellate court committed a perversity by ignoring the fact that the defendant no. 1 alone, was not competent to enter into an agreement for

*sale, with the plaintiff vide Ext. 1 on 06.09.2005, in view para 14 and 15 of the judgment of the co-ordinate Bench of this court, in the case of the **Bharat Singh vs. Aklu Hazam** reported in 2002 1 JLJR 565.*

Argument of the Appellants

7. While giving the foundational background, the learned counsel for the appellants submitted that on 06.05.2005, there was an agreement of sale between the defendant no. 1 [Kishore Prasad Gupta] and defendant no. 4 [Madan Prasad Gupta] and with respect to the same property, there was another agreement of sale dated 06.09.2005 between the plaintiff and defendant no. 1. He submits that on 29.05.2006, the defendant no.1 executed the sale deed in favour of the defendant no. 2 [Rubi Devi] through the power of attorney holder i.e. original defendant no.3 pursuant to the earlier agreement of sale dated 06.05.2005 and thereafter, the suit for specific performance of contract was filed on 07.06.2006, but no prayer was made to set-aside the sale-deed dated 29.05.2006. He has also submitted that the sale-deed dated 29.05.2006 was exhibited as exhibit-C before the learned Court but the plaintiff did not take any step to challenge the sale-deed. The learned counsel submits that once the sale-deed was already executed in favour of the defendant no. 2 [Rubi Devi] there was no question of grant of specific performance of contract and to direct the defendant no.1 to execute sale-deed in favour of the plaintiff.

8. The learned counsel further submitted that the learned trial Court has given a finding that there was no partition but the learned Appellate Court has reversed the said finding by holding that there was partition. He submits that in the suit for specific performance of contract, there was no occasion to enter into such a dispute as to whether there was any partition or not. The learned counsel has also submitted that the onus was upon the plaintiff to prove that there was a partition and that the suit property fell in exclusive possession of the defendant no. 1 by virtue of such a partition and the property could be subject matter of agreement dated 06.09.2005

executed by the defendant no.1 and to get the same implemented through suit for specific performance of contract against defendant no.1.

9. The learned counsel for the appellants has submitted that initially the suit was filed only against one defendant seeking specific performance of contract and subsequently, the purchaser, the executor of registered sale deed dated 29.05.2006 and also the party to the earlier agreement of sale dated 06.05.2005 were added as defendant no.2, 3 and 4 respectively. The learned counsel has submitted that though the sale deed dated 29.05.2006 was not challenged in as much as no prayer was made to set aside the same, but even the relief portion of the plaint was not amended adequately so as to direct the purchaser to join in the execution of sale deed if the suit was allowed. He has submitted that the learned first appellate court while setting aside the trial court's decree has directed only the respondent nos. 1A to 1D and 7 to execute the sale deed. The learned counsel has submitted that since the plaint was not amended, the learned appellate Court passed the decree directing the legal heirs and successors of the defendant no.1 (Kishore Prasad Gupta) to execute the sale deed in favour of the plaintiff (Ritesh Kumar Gupta), although the sale deed in connection with the same property was already executed in favour of the defendant no.2 by the defendant no.1 vide sale deed dated 29.05.2006. He submits that considering the nature of relief prayed for in the original suit, it was for the plaintiff to amend the plaint so as to get appropriate relief against the purchaser of sale deed dated 29.05.2006, namely, Rubi Devi, but no such steps were taken.

Argument of the Respondent No.1 (Plaintiff)

10. Learned counsel appearing on behalf of the Respondent No.1, on the other hand, has opposed the prayer and has submitted that there was no need to challenge the sale-deed dated 29.05.2006 as the plaintiff was seeking to enforce the agreement dated 06.09.2005 by filing suit on 07.06.2006. He has also submitted that the plaintiff had no knowledge

about the sale-deed executed on 29.05.2006 and therefore, there was no occasion to challenge the same in the suit.

11. The learned counsel for the respondent no.1 (plaintiff) has referred to the judgments passed by Hon'ble Supreme Court reported in *(1953) 2 SCC 509 (Lala Durga Prasad and Ors. Vs. Lala Deep Chand and Ors.) paragraph 40, 41 and 42; (2022) 7 SCC 384 (P. Ramasubamma Vs. V. Vijayalakshmi and Ors.) paragraph 5.3 and 16, and (2024) 8 SCC 83 [Maharaj Singh and Ors. VS. Karan Singh (dead) through legal representatives and Ors.] paragraph 20, 22 and 24* to submit that there was no need to challenge the sale deed, and therefore, the sale deed was not challenged. He submits that the 1st substantial question of law is fit to be answered in favour of the respondent no.1(plaintiff). He has submitted that merely because there was no further amendment in the prayer portion of the plaint, the same is not fatal to the relief granted to the plaintiff and in view of the aforesaid three judgments, the point of law is fit to be answered in favour of the respondent no.1(plaintiff).

12. So far as substantial question of law no.2 is concerned, the learned counsel has submitted that there is no perversity in connection with the finding of the learned first appellate Court. The learned appellate Court has held that there was previous partition amongst the family members.

Case of the Plaintiff

13. The case of the Plaintiff as per the Plaint is as under:

A. The defendant no.1 had land house building situated within municipal area of Giridih which was acquired by his father in the name of his mother by virtue of registered sale deed dated 07.09.1960. The parents died leaving behind their sons namely, Ratan Prasad Gupta, Madan Prasad Gupta, Umesh Prasad Gupta, Prakash Prasad Gupta, Suresh Prasad Gupta, Sunil Prasad Gupta and Kishore Prasad Gupta (defendant no.1).

B. After the death of parents, the defendant no. 1 and his brothers amicably partitioned the suit property along with other properties

at Dhariyadih and as such, had exclusive respective shares and Takhta. As per the amicable family partition, 5 brothers namely Umesh, Kishore, Suresh, Sunil and Prakash got share in the suit building whereas brothers were allotted their share in the land and house at Dhariyadih.

C. It was further case of the plaintiff that all the brothers, after amicable partition, got their names mutated and began paying rent and tax thereon and accordingly, defendant no. 1 got his name mutated as such paid rent and taxes regularly and exercised all acts of ownership and possession in the suit property and separate holding no. 539(H) was opened. The defendant no. 1 was the absolute owner of the suit property and had the right to sell and transfer the property.

D. The father of the plaintiff namely Rabindra Prasad Gupta was running a shop in the portion of the suit premises along with that of the portion belonging to Umesh Prasad Gupta. The father of the plaintiff had taken the property on rent and paid rent to the father of the defendant no.1 and thereafter, to the defendant no.1 and as such, the plaintiff became fully assured about the right, title and possession of the defendant no.1.

E. In the month of September, 2005, the defendant no.1 was in need of money and he decided to sell and transfer the suit premises and approached the plaintiff to sell the suit premises to the plaintiff for a consideration amount of Rs. 14,11,000/-. The plaintiff accepted the offer and plaintiff and the defendant no. 1 mutually agreed and they arrived at an agreement of sale and purchase of the land house and premises involved in the suit within the stipulated period of 9 months. The plaintiff paid an amount of Rs. 2 lakhs by way of advance and the balance consideration of Rs. 12,11,000/- was to be paid. As per the agreement, the plaintiff was to pay Rs. 6 lakhs upto 15th October 2005 and remaining Rs. 6,11,000/- was to

be paid at the time of execution of the registered deed in favour of the plaintiff within a period of 9 months. In pursuance of the agreement, the deal was executed by the plaintiff and the defendant no.1 and it was presented for registration and the same was registered and thus, both the parties entered into a registered concluded contract for sale of the suit premises on 06.09.2005 to be performed within a period of 8 months i.e. upto 05.05.2006.

F. The plaintiff altogether paid Rs. 8 lakhs to the defendant no.1 towards the consideration and the remaining Rs. 6,11,000/- was due to be paid at the time of execution of the registered deed of sale, but as per undertaking dated 18.10.2005 the defendant no. 1 did not deliver the Khas vacant possession of the remaining portion of the suit premises on the pretext that the same was not being vacated by another tenant and allowed the plaintiff to continue in occupation of the part of the premises in his tenancy as absolute owner from November, 2005. The plaintiff was not required to pay rent and the security amount of Rs. 45,000/- lying with the defendant no.1 was to be adjusted towards consideration amount of the suit premises.

G. The plaintiff, after coming into occupation and possession of the suit premises as absolute owner, was delivered the possession of the entire roof of the suit premises and the plaintiff got it encircled with wall and thereafter, had been exercising all acts of possession and ownership over the said part of the suit premises except the part of the premises which was under the tenancy of a 3rd person. Ultimately, the 3rd person also vacated the suit premises and delivered the Khas possession to the defendant no.1.

H. In the meantime, the brother of the defendant no. 1, namely, Sunil Prasad Gupta served a notice dated 10.01.2006 threatening the plaintiff not to purchase the suit premises and another notice was sent to revoke the contract and take back the amount.

Thereafter, the plaintiff got a notice published in newspaper dated 02.03.2006 circulating in the locality informing the persons in the locality and defendants in particular that the defendant no.1 has entered into an agreement with the plaintiff to sell the property. The plaintiff repeatedly approached the defendant no.1 for execution of registered sale-deed but he refused to execute the sale-deed on 31.05.2006 and then the suit was filed. Ultimately, a complaint case was also instituted by the plaintiff alleging fraud and cheating.

Case of Defendant No.1

14. The case of defendant no.1 as per Written Statement is as under:

- I.** The defendant no.1 contested the suit by stating that the suit was not maintainable; there was no cause of action; it was barred by the provisions of Specific Relief Act and barred by limitation. It was also asserted that there were other co-sharers of the property under the family arrangement dated 17.02.1995 and 13.04.1995 and that the defendant no.1 was never entitled to execute any agreement for sale or execute any sale-deed in favour of a stranger as the co-sharers would have preferential right and that the suit was bad for non-joinder of necessary parties.
- II.** It was further asserted by the defendant no. 1 that Madan Prasad Gupta and Rubi Devi were necessary parties to the suit because the defendant no.1 executed earlier an agreement of sale in favour of his brother Madan Prasad Gupta on 06.05.2005 in presence of witnesses and received Rs. 2 lakhs earnest money and subsequently, on the strength of power of attorney dated 24.05.2006 the authorized attorney holder executed a registered sale-deed dated 29.05.2006 in favour of Rubi Devi. The suit property was said to be ancestral property and the son of defendant no. 1 namely Sandeep Kumar Gupta

had a share in the property and he was also said to be a necessary party. The defendant no. 1 denied partition amongst 7 brothers and asserted that the 7 brothers were using the entire holding as per their convenience. He also asserted that demand in the municipality was running jointly in the name of all 7 brothers who were paying rent at the Anchal and rent receipt was jointly issued. It was also stated by the defendant no.1 that the plaintiff was still a tenant in the portion of the suit property and his status was only and only as that of a tenant under Rubi Devi who purchased 2.30 decimals of land and house standing thereon from the defendant no. 1 through registered sale-deed dated 29.05.2006 and the plaintiff was bound to pay rent to Rubi Devi.

- III.** It was denied by the defendant no.1 that he was in urgent need of money and he offered the plaintiff to sell the suit property, rather it was asserted that an agreement of sale was entered into with his brother Madan Prasad Gupta on 06.05.2005 after taking 2 lakhs as earnest money out of total consideration money of Rs. 9 lakhs and an agreement for sale was executed on 06.05.2005. It was asserted that the plaintiff had been offering higher amount and had been forcing the defendant no. 1 to revoke the earlier agreement dated 06.05.2005 and defendant no.1 mistakenly entered into registered agreement of sale dated 06.09.2005 without intimating Madan Prasad Gupta and without revoking the agreement of sale dated 06.05.2005 and in such circumstances, the brother of the defendant no.1 sent a legal notice dated 10.01.2006 asking the defendant no.1 not to sell the property. The defendant no. 1 informed the plaintiff and intimated him for revocation of agreement of sale dated 06.09.2005 and offered and requested the plaintiff to refund the earnest money and the defendant no. 1 ultimately

registered a power of attorney dated 24.05.2006 and appointed Suraj Kumar Gupta to sell and transfer the property to Rubi Devi. It was asserted that at the time of execution of power of attorney, the son of defendant no.1, namely, Sandeep Kumar Gupta who also had share with the defendant no. 1 in the suit property, started quarrelling and the matter was finalized by intervention of well-wishers and it was agreed that Sandeep Kumar Gupta will receive an amount of Rs. 5 lakhs as per consideration amount of his share of property. Ultimately, Sandeep Kumar Gupta received Rs. 5 lakhs from Rubi Devi and Madan Prasad Gupta on account of his share and he executed, signed and acknowledged the receipt and waived his right, title and interest in favour of the purchaser. It was asserted that the agreement of sale dated 06.09.2005 was illegal, bad and never enforceable and also under the Specific Relief Act and the defendant no. 1 was only liable to refund the earnest money to the plaintiff.

Impleadment of Defendant Nos. 2 to 5 in the suit

15. On petition dated 11.04.2007 filed by the plaintiff under Order 1 Rule 10(2) of Code of Civil Procedure and the other side showing no objection to the proposed amendment, Defendant Nos. 2 to 5 were added in the suit vide order dated 08.05.2007 passed by the learned trial Court. Defendant no.5 was the son of the defendant no.1 and claimed that the suit property was the joint family property.

Case of defendant nos. 2 to 5

16. The defendant nos. 2 to 5 appeared and contested the suit by filing their written statement on the ground that the cause of action referred in para 27 of the plaint are false and imaginary. It was alleged that the suit was barred under the provision of Specific Relief Act, barred by limitation and the suit property was part and parcel of jointly possessed property owned by all the co-sharers who were residing as per their convenience

and consequently, the defendant no. 1 was never entitled to execute any agreement for sale or to execute any sale deed in favour of any stranger without the consent of the other co-sharers. It was their further case that other co-sharers have their preferential right, title and interest to purchase the share of the other co-sharer in a dwelling house. It was asserted that the alleged agreement for sale of the plaintiff was not enforceable and was a void contract. It was asserted that the plaintiff was not entitled to get any equitable relief. All the allegations have also been denied by the defendant no. 2 to 5 as were denied by the defendant no.1 in his written statement. It was asserted that the agreement for sale between the plaintiff and the original defendant no.1 was void ab initio and inoperative.

17. On the basis of the pleadings of the parties, following issues were framed by the learned trial court: -

- I. Whether the suit is maintainable in its present form?*
- II. Whether the plaintiff has got cause of action for the instant suit?*
- III. Whether the plaintiff suit is barred by law of limitation?*
- IV. Whether plaintiff is entitled for decree for Specific Performance of Contract regarding suit land as mentioned in the plaint?*
- V. Whether instant suit is barred under the provision of Partition Act?*
- VI. Whether the agreement for sale dt. 06.09.2005 executed by the defendant in favour of the plaintiff is valid and genuine?*
- VII. Whether plaintiff is entitled for any other relief or reliefs?*
- VIII. Was/is the plaintiff ready and willing to perform its part of contract?"*

18. Findings of the learned trial Court are as under:

"5. ISSUE NO. VI- Whether the agreement for sale dt. 06.09.2005 executed by the defendant in favour of the plaintiff is valid and genuine?

For the sake of convenience this issue is taken first for determination. On perusal of the plaint, it transpires that

land and house standing over holding no. 539 ward no. 1 (old) 2 (new) plot no. 48 area measuring 7 katta (11½ Decimal) by the father of defendant no. 1 and in the name of mother of defendant no. 1 Smt. Bhibha Devi who died leaving behind 7 sons namely Ratan Pd. Gupta, Madan Pd. Gupta, Umesh Pd. Gupta, Prakash Pd. Gupta, Suresh Pd. Gupta, Sunil Pd. Gupta and Kishor Pd. Gupta (defendant). The plaintiff further stated that the aforesaid 7 brothers amicably partitioned the aforesaid land and building along with land house and properties particularly at Mohalla at Dhariyadih and said partitioned got reduced into writing by virtue of a deed for family arrangement partitioned dt. 17.02.1995 duly signed by all the brother and the suit property failed into exclusive share takhta of Kishor Pd. Gupta whose name was duly mutated in Giridih municipality and defendant no. 1 Kishor Pd. Gupta is the absolute owner of the suit property having right title and interest to sale or transfer the same. He through his father Rabindra Pd. Gupta is running of glossary shop in a portion of suit premises measuring 4'x 23' along with that of the portion of the belonging to the Umesh pd. Gupta measuring 8'x 23' since 1982 was a tenant under the father of defendant no.1 and thereafter under the defendants and rents were being paid to them. In September 2005 the defendant was a need of heavy amount for the purpose of his business and he approach and offer the plaintiff to sale the suit premises in consideration of Rs. 14 lac 11 thousand and accordingly, entered into registered agreement dt. 06.09.2005 and plaintiff paid Rs. 2 lac to the defendant no. 1 Kishor Pd. Gupta as earnest money on the same date of Rs. 6 lac on 17.10.2005 and on 18.10.05 and it was agreed that the plaintiff will get the sale deed registered within 8 months from 06.09.2005 after payment of balance of Rs. 6 lac 11 thousand. The plaintiff through his father Rabindra Pd. Gupta who is tenant in suit premises since long under the defendant no.1 and one of the co-sharer Umesh pd. Gupta. The suit property in terms of partitioned dt. 17.02.1995 got allotted to the defendant no. 1 and plaintiff entered into said concluded contract dt. 06.09.2005 (Ext 1) and paid Rs. 2 lac to vendor (Defendant no. 1). Again, plaintiff paid Rs. 6 lac by way of cash and bank draft on

17.10.2005 and 18.10.05 duly accepted by the defendant no. 1 (ext. 2), vendor and duly signed by executed receipt by defendant no. 1 Kishor Pd. Gupta his wife Sibani Devi and son of defendant no. 1 Sandeep Kr. Gupta and defendant no. 5 in present suit coupled with the full brother of the defendant no. 1 namely Umesh Pd. Gupta has also endorsed on the back of the aforesaid receipt that such payment has been made by the plaintiff to defendant no. 1. This amount paid to the plaintiff towards performance of own part on contract all alone plaintiff performed its part of contract but defendant did not deliver remaining portion of ground floor vacated by the another tenant Vijay Persuramka. Earlier he had given possession of first floor which got brought within brick built wall at the roof by the plaintiff and plaintiff all along performed its part of contract. But on going through the Ext-1, I find that it has not been signed by the all defendant. PW I Rabindra Pd Gupta have stated in para 16 of his cross examination that the suit property is a part of brick built house and that was of Bibha Devi. She died leaving behind her 7 sons and one daughter. Four brother of her family are living in the same house and in para 17 he has stated that he had seen the paper of partition but the partitioned has not been proved by the plaintiff. PW3 Ritesh Kr. Gupta who is the plaintiff of this case he stated in para 33 of his cross examination that the suit property is the property of Bibha Devi and after her death herself came in possession over the suit property. From the statement of this witness, it is clear that the suit property is a joint property of defendants. From the oral evidence and the exhibits produced by the defendant it is clear that Kishor Pd. Gupta earlier executed an agreement for sale in favour of the brother Madan Pd. Gupta and received Rs. 2 lac and subsequently on strength of power of attorney dt. 24.05.2006 the attorney holder executed a registered sale deed dt. 29.05.2006 in favour of Rubi Devi defendant no. 2. The defendant no. 1 Kishor Pd. Gupta mistakenly entered into registered agreement for sale deed dt. 06.09.05 without intimating Madan pd. Gupta and without revoking/canceling the agreement for sale dt. 06.05.05, the brother of defendant no. 1 send a lawyer notice dt. 10.01.2006 (Ext 1) to defendant no. 1 and plaintiff

advised not to sale the share of the defendant to any stranger. Defendant no. 1 informed the plaintiff by letter dt. 22.02.06 (Ext 1/1) and intimating him for the revocation of agreement for sale deed dt. 06.09.2005 and offer and requested plaintiff to refund back earnest money paid by him. Considering the oral statement and the documentary evidence of the plaintiff I find that the suit property is a joint property of defendants no. 1 to 4. So, the agreement for sale dt. 05.09.2005(Ext 1) is not valid and void and he (Defendant no. 1) was not entitled to make any agreement for sale. The learned counsel for the defendant has referred the rulings 2002(1) JLIR page 565, 2009(4) JLJR Sc 201, 2004(3) JLJR 205 and 2009(1) JLLJR 302, it has been held by the Hon'ble Court that joint share cannot be alienated without the consent of other coparcener. Accordingly, this issue is decided against the plaintiff.”

ISSUE No. I, II, III, IV and VIII were decided against the plaintiff on the ground that the agreement for sale dated 06.09.2005 (Exhibit 1) was not valid as the suit property is a coparcenary property. It was held that the plaintiff had no cause of action and was not entitled for a decree for specific performance of contract of sale against the defendant no.1.

ISSUE NO. V was also decided against the plaintiff by observing that from the evidence of PW 1 and 3 the court found that the suit property was a joint property and partition was not proved by the plaintiff nor any registered paper of partition was produced by the plaintiff and from the oral evidence of the defendants and the documents produced by them, it was clear that the suit property was a coparcenary property and hence the instant suit was barred under the provisions of the Partition Act. **ISSUE NO. VII** was not pressed by the plaintiff. The suit was held to be not maintainable in the present form and was dismissed.

19. The learned first appellate Court considered the issue nos. 4, 5 and 6 which were framed by the trial court and decided them together.

20. The learned first appellate Court considered the materials on record, both oral and documentary, and held that there was a family partition by metes and bounds and the family partition document dated 17.02.1995 was duly signed by all the 7 brothers and each co-sharer assumed their own part and have been paying rent for their respective shares ; the suit property was the exclusive property of the defendant no.1; the registered agreement dated 06.09.2005 (Exhibit-1) between the plaintiff and the defendant no.1 was binding ; Exhibit B dated 06.05.2005 (the agreement of sale relied upon by the defendants) and the Exhibit C dated 29.05.2006 (registered sale deed executed in favour of the defendant no.2 by the defendant no.1) were contradictory and inconsistent and Exhibit B was inadmissible in evidence and exhibit-B was an afterthought to by-pass the binding registered agreement dated 06.09.2005 (exhibit-1) ; the suit was not barred by limitation and there was readiness and willingness on the part of the plaintiff to perform his part of the contract. After recording the aforesaid findings, the learned first appellate Court allowed the appeal and decreed the suit by directing the legal heirs of defendant no.1 to execute the sale deed in favour of the plaintiff. The findings of the learned first appellate Court relevant for the purposes of this case considering the substantial questions of law are as under:-

“16. As such, from perusal of the evidence i.e. oral as well as documentary evidence, it transpires that in fact, the suit property had been partitioned by the co-sharers by an amicable family settlement between the coparceners of the family on 17/02/1995 duly signed by all the coparceners. Further each co-sharer has assumed its own part and have been paying rent on their respective shares and partition stands admitted. There was no such understanding between the co-sharers of the suit property that they shall have right of preemption if any one of them ever decides to sell his part of property. Further a valid agreement for sale has been entered into between the appellant/plaintiff and respondent/ defendant no. 1 Kishore

Prasad Gupta by which the respondent/defendant no.1 was under obligation to transfer its share in the property to the appellant/plaintiff in which he was running the Grocery Shop along with his father. Although the said property was an ancestral property of the respondents/defendants, but the same appears to be duly partitioned before the agreement for sale was entered between the appellant and defendant no.1 Kishore Prasad Gupta. Hence, the provisions of part of act would apply in the instant case as admittedly the suit property was not wholly a dwelling house, but also a commercial property. It is contended that the learned court below has erroneously decided the issue No.6 and held that the agreement for sale dated 06/09/2005 entered in between the plaintiff/appellant and defendant no. 1/respondent, was not valid and the joint-share in a property cannot be alienated and is without the consent of other co-parceners in spite of the fact that the said property is no more a joint-property and has been partitioned by way of an amicable family settlement by metes and bounds. Further a co-sharer is entitled to sell and transfer the property to the extent of his share even in absence of partition. It is required to be examined the genuineness of the agreement for sale entered between Kishore Prasad Gupta and his brother Madan Prasad Gupta purportedly before the said Agreement.

So far the partition and exclusive possession are concerned, which admitted vide Ext-X & Ext-X/1, Ext-B, Ext-C & Ext-H. Hence, the partition dated 17/02/1995 is binding and the law is very specific that any Batwara or arrangement in the family, is proof of partition and any transaction based on such partition, is proof of partition by metes and bounds and nobody can challenge the same since it is barred by principles of estoppel and acquiescence.

Amendment of Section 6 of Hindu Succession Act, 1956, is not applicable since

So far the registered deed of Agreement dated 06/09/2005 is concerned, that is binding upon any unregistered paper or persons. Ext-1 shows the consideration amount of Rs.14,11,000/- out of which Rs.2,00,000/- have been paid and on 17/10/2005 another Rs.6,00,000/- have been paid through two Bank Drafts in compliance of the agreement and only 6,11,000/- remained due. Ext-2 contains signature of Kishore Prasad Gupta, his wife Shivani Devi and son Sandeep Prasad Gupta. So, the entire family of Kishore Prasad Gupta accepted the terms and conditions of the agreement and abide themselves from the binding effect of the agreement, even the other brother Umesh Prasad Gupta, was the witness in the said Ext-2 and put his signature, i.e. Ext-3/c."

"18. On the basis of the evidence i.e. oral as well as documentary evidence as discussed above, it is apparently clear that the alleged Agreement for Sale dated 06/09/2005 (Ext-1) executed by the defendant Kishore Prasad Gupta in favour of plaintiff/appellant Ritesh Kumar Gupta in respect of the suit property as mentioned in the Schedule of the plaint, is valid and genuine document. But the learned court below did not consider the aforesaid fact, and recorded the findings against the materials as available on the record. The plaintiff/appellant has succeeded in proving his case on the basis of evidence and documents as available on the record. As such, the learned court below has erroneously decided the main issue i.e. issue no.6 as well as Issue Nos. 4 & 5 against the appellant/plaintiff.

19. So far question of the limitation

20. Further, so far the question of Readiness and Willingness, are concerned,

21. In the aforesaid facts and circumstances, since the main Issue i. e. Issue No.6 as well as Issue Nos.4 & 5, which have erroneously been decided against the appellant/plaintiff

without considering the documents and other materials available on the record, hence, the instant suit filed on behalf of the appellant/plaintiff is also maintainable in its present form and plaintiff has valid cause of action for the suit. Accordingly, the impugned judgment dated 21/01/2014 and its decree signed on 03/02/2014 by the court of the Civil Judge (Senior Division)-III, Giridih in Title Suit No. 36 of 2006, is hereby set aside and this appeal is allowed. Respondents no. 1A to 1D are directed to execute the registered deed of sale with respect to the suit property in favour of the appellant/plaintiff on payment of balance consideration amount within a period of two months from the date of judgement. In case of failure of the respondents to execute the required registered deed of sale the plaintiff/appellant is at liberty to get the execution of required registered deed of sale of the suit property against respondent nos. 1A to 1D through the process of law. Both parties shall bear their own cost.”

21. The material list of dates and the sequence of events are as follows:-

Admitted fact.	The suit property was recorded in the name of mother of the defendant no.1 who died leaving behind 7 sons including defendant nos.1 and 4
17.02.1995 <i>As per the plaintiff and disputed by the defendants.</i>	There was a family partition which was reduced into writing and duly signed by all the seven brothers followed by separate possession and the suit property fell into the share of the defendant no.1
06.05.2005 Exhibit- B <i>As per the defendants and Disputed by the plaintiff</i>	Unregistered Agreement for Sale Executed between Defendant No. 1 (Kishore Prasad Gupta) & Defendant No. 4 (Madan Prasad Gupta) for Rs. 9,00,000/-. (Exhibit - B)
06.09.2005 Exhibit-1	Another Registered Agreement for Sale executed by Defendant no. 1 (Kishore

	Prasad Gupta) in favour of Plaintiff for Rs. 14,11,000/- and payment of Rs. 2,00,000/- received as advance.
02.03.2006 Exhibit-4	Paper publication by Plaintiff.
29.05.2006 Exhibit- C	Defendant no. 1 (Kishore Prasad Gupta) executed the Sale Deed in favour of Defendant No. 2 (Rubi Devi) for Rs. 4,00,000/- through Power of Attorney holder Defendant No. 3. (Exhibit - C)
07.06.2006 (Suit Filed)	Plaintiff Ritesh Kumar Gupta filed a suit for Specific Performance of Contract against Defendant no. 1 (Kishore Prasad Gupta) wherein no prayer was made to cancel the sale-deed dated 29.05.2006. (Exhibit - C)

22. Admittedly, neither there was any prayer in the plaint for cancellation of sale deed dated 29.05.2006 executed by Kishore Prasad Gupta [original Defendant No.1] in favour of Rubi Devi [Defendant No. 2] nor there was any prayer to direct the defendant no.2 to join in the execution of sale deed in favour of the plaintiff nor any such direction was issued by the learned first appellate Court. This Court finds that it was never the case of the defendant no.2 that she had purchased the property without notice of the registered agreement of sale entered into between the plaintiff and the defendant no.1. The only case of the defendant no.2 was that the suit property was the joint family property and defendant no.1 could not have executed the agreement of sale in favour of the plaintiff and the defendant no.4 being the co-sharer had the preferential right to purchase the property who purchased the property in the name of the defendant no.2 by registered sale deed dated 29.05.2006 (exhibit-C) prior to filing of the suit.

Findings on 2nd substantial question of law

23. The learned trial Court held that the property was a joint property of defendant nos. 1 to 4 and consequently, held that the agreement of sale

dated 06.09.2005 (Exhibit-1) executed by defendant no. 1 in favour of the plaintiff was not valid and was void as the defendant no. 1 was not entitled to make any agreement of sale. The learned trial Court, *inter alia*, relied upon the judgment passed by this Court in the case of **“Bharat Singh Vs. Aklu Hazam” reported in 2002 (1) JLJR 565** which has been specifically referred to in the 2nd substantial question of law.

24. The learned first appellate Court has recorded a finding in paragraph 5 of its judgment that the suit property was purchased by the father of the defendant no. 1 in the name of the mother of defendant no.1 who died leaving behind 7 sons and it was the case of the plaintiff that the 7 brothers amicably partitioned the suit property and also other land, house and properties which got reduced into writing by virtue of a deed of family arrangement dated 17.02.1995 duly signed by all the brothers and the suit property fell in exclusive share of defendant no. 1 Kishore Prasad Gupta who got his name mutated in the municipality and had been the absolute owner of the suit property having right, title and interest to sell or transfer the same.

25. The second substantial question of law has been framed by observing that the suit property was a joint family property of the defendants on the date of agreement, that is, 06.09.2005 although there is specific finding recorded by the learned first appellate court after scrutinizing the materials on record that there has been family partition amongst the seven brothers of the defendant no.1 prior to registered agreement of sale dated 06.09.2005 (exhibit-1) and that the co-sharers were separated and that the suit property was the exclusive property of the defendant no.1. It is important to note that the defendant no. 5 (respondent no.7), who is the son of original defendant no.1 and had also claimed that the suit property was joint family property and claimed to have a share in the property with his father, is not the appellant before this court and is accordingly not aggrieved by the appellant court’s judgement and decree.

Further, the respondent nos. 2 to 7 have chosen not to appear before this court.

26. The substantial question of law as framed does not challenge the aforesaid findings of the learned first appellate Court and no other substantial question of law has been framed challenging the said findings. Otherwise also, the aforesaid findings of the learned first appellate Court are based on due scrutiny of materials on record and the perusal of the discussions reveals that the previous family partition stood almost admitted even by the witnesses produced by the defendants.

27. In view of the findings recorded by the learned first appellate Court that there was previous partition amongst the 7 brothers of the defendant no.1 by metes and bounds on 17.02.1995, there is no doubt that the suit property was not a joint family property on 06.09.2005. This Court is of the view that the learned first appellate Court having recorded a finding that there was previous family partition has committed no perversity and the learned appellate Court has rightly held that the agreement of sale dated 06.09.2005 [Exhibit-1] which was entered into by defendant no. 1 with the plaintiff is a valid document. The ratio of the judgment passed by this Court in the case of *“Bharat Singh Vs. Aklu Hazam” (Supra)* does not help the appellants in any manner. In the said judgement it has been held that once it is established that a property is a joint family property then one of coparceners alone has no right to execute the agreement of sale for such property but in the present case there is a finding of previous partition and also a finding that the suit property was the exclusive property of the original defendant no.1. As a result of the aforesaid findings, the 2nd substantial question of law is answered in favour of the plaintiff and against the defendants. It is held that the suit property being exclusive property of the original defendant no.1 as held and recorded by the learned first appellate court, the first appellate Court did not commit any perversity while holding that the defendant no. 1 alone was competent to enter into an agreement for sale with the plaintiff

vide Exhibit 1 on 06.09.2005 and the ratio of the judgment of the coordinate Bench of this court in the case of ***“Bharat Singh Vs. Aklu Hazam”*** reported in ***2002 1 JLJR 565*** does not apply to the facts of this case.

Findings on 1st substantial question of law

28. After considering the provisions of Specific Relief Act, 1877, Transfer Of Property Act, 1882 and the Indian Trusts Act, 1882, the Hon’ble Supreme Court in the judgment reported in ***(1953) 2 SCC 509 (Lala Durga Prasad & Others vs. Lala Deep Chand & Others)*** has laid down the law as to how a decree of specific performance of contract has to be prepared in case of transfer which is subsequent to the agreement which is sought to be enforced through specific performance of contract and when such subsequent transferee has no notice about the earlier agreement of sale. It has been held by the Hon’ble Supreme Court that in aforesaid cases there is no need to challenge the subsequent sale-deed and the court can direct such subsequent purchaser to join in with the transferor for the execution of sale-deed in favour of the plaintiff in order to enforce the specific performance of contract. Paragraph 37 to 42 of the aforesaid judgement is quoted as under: -

“37. The practice of the courts in India has not been uniform and three distinct lines of thought emerge. (We are of course confining our attention to a purchaser’s suit for specific performance.) According to one point of view, the proper form of decree is to declare the subsequent purchase void as against the plaintiff and direct conveyance by the vendor alone. A second considers that both vendor and vendee should join, while a third would limit execution of the conveyance to the subsequent purchaser alone.

38. The only statutory provisions which bear on this point are Section 91 of the Trusts Act, 1882, Section 3 of the Specific Relief Act, 1877 Illustration (g), and Section 27 of that Act, and Section 40 of the Transfer of Property Act.

39. Section 91 of the Trusts Act does not make the subsequent purchaser with notice a trustee properly so-called but saddles him with an obligation in the nature of a trust (because of Section 80) and

directs that he must hold the property for the benefit of the prior “contractor”, if we may so describe the plaintiff,

“to the extent necessary to give effect to the contract”.

Section 3 Illustration (g) of the Specific Relief Act makes him a trustee for the plaintiff but only for the purposes of that Act. Section 40 of the Transfer of Property Act enacts that this obligation can be enforced against a subsequent transferee with notice but not against one who holds for consideration and without notice. Section 27 of the Specific Relief Act does not carry the matter any further. All it says is that specific performance may be enforced against:

“27. (a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;”

None of this helps because none of these provisions directly relate to the form of the decree. It will therefore be necessary to analyse each form in the light of other provisions of law.

40. *First, we reach the position that the title to the property has validly passed from the vendor and resides in the subsequent transferee. The sale to him is not void but only voidable at the option of the earlier “contractor”. As the title no longer rests in the vendor it would be illogical from a conveyancing point of view to compel him to convey to the plaintiff unless steps are taken to revest the title in him either by cancellation of the subsequent sale or by reconveyance from the subsequent purchaser to him. We do not know of any case in which a reconveyance to the vendor was ordered but Sulaiman, C.J. adopted the other course in *Kali Charan Singh v. Janak Deo Singh*. He directed cancellation of the subsequent sale and conveyance to the plaintiff by the vendor in accordance with the contract of sale of which the plaintiff sought specific performance. But though this sounds logical the objection to it is that it might bring in its train complications between the vendor and the subsequent purchaser. There may be covenants in the deed between them which it would be inequitable to disturb by cancellation of their deed. Accordingly, we do not think that is a desirable solution.*

41. *We are not enamoured of the next alternative either, namely, conveyance by the subsequent purchaser alone to the plaintiff. It is true that would have the effect of vesting the title to the property in the plaintiff but it might be inequitable to compel the subsequent transferee to enter into terms and covenants in the vendor’s*

agreement with the plaintiff to which he would never have agreed had he been a free agent; and if the original contract is varied by altering or omitting such terms the court will be remaking the contract, a thing it has no power to do; and in any case it will no longer be specifically enforcing the original contract but another and different one.

42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in Kafiladdin v. Samiraddin and appears to be the English practice. See Fry on Specific Performance, 6th Edn., p. 90, Para 207; also Potter v. Sanders. We direct accordingly.”

29. In the judgment passed by the Hon’ble Supreme Court reported in **(2018) 11 SCC 761 (B. Vijaya Bharathi vs. P. Savitri & Ors.)**, the Hon’ble Supreme Court considered Section 16(c) and 19(b) of the Specific Relief Act, 1963 and held in paragraph 17 that when there is already a conveyance of property, the same would stand in the way of a decree of specific performance of contract unless the conveyance is set-aside and therefore unless the conveyance is set-aside, no decree for specific performance could possibly follow. The aforesaid judgment reported in **(2018) 11 SCC 761 (supra)** was subject matter of consideration in the recent judgment of the Hon’ble Supreme Court reported in **(2024) 8 SCC 83 [Maharaj Singh & Others vs. Karan Singh (dead) through legal representatives & Others]** wherein the aforesaid view taken by the Hon’ble Supreme Court in **(2018) 11 SCC 761 (supra)** has been held to be not a binding precedent by observing that the decision of Larger Bench of the Hon’ble Supreme court reported in **(1953) 2 SCC 509 (Supra)** was not placed while deciding the judgment reported in **(2018) 11 SCC 761 (supra)**. It has been held in the judgment reported in **(2024) 8 SCC 83 (supra)** that there was no requirement to make a prayer in the plaint for cancellation or setting aside the subsequent sale deed to enforce specific performance of contract. The Hon’ble Supreme Court

referred to Section 19 clause (a) to (c) of the Specific Relief Act, 1963 and held that the defendants who are claiming under the sale-deeds executed after execution of the suit agreement can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are bonafide purchasers without the notice of the original contract. It has also been held that when, in a given case, the defendants, who are subsequent purchasers failed to prove that they entered into the sale-deed in good faith and without notice of the suit agreement, in view of Section 19(b) of the Specific Relief Act, 1963, a decree for specific performance can be passed against such defendants and the subsequent purchasers can be directed to execute the sale-deed along with the original vendor and there is no necessity to pray for cancellation of the subsequent sale deed.

30. Thus, the law has now been settled that in a suit for specific performance of contract when there is a sale of the property after the suit agreement and such purchaser has bought the property bonafidely in good faith and without notice of the suit agreement, there is no need to challenge the sale-deed and the court can direct the subsequent purchaser to join in for the execution of sale-deed in favour of the plaintiff.

31. The case of the defendants was that the sale-deed dated 29.05.2006 (exhibit-C) was executed as a result of the agreement of sale dated 06.05.2005 (exhibit-B) and therefore the sale-deed was relatable to earlier agreement of sale dated 06.05.2005 (exhibit-B) and the suit agreement dated 06.09.2005 (exhibit-1) was subsequent to their agreement. In the context of the earlier agreement dated 06.05.2005 (exhibit-B) relied upon by the defendants, the learned first appellate Court has recorded a clear finding that the agreement dated 06.05.2005 (exhibit-B) was an afterthought to bypass the shackles of binding effect of the registered agreement of sale dated 06.09.2005 (exhibit-1). Further finding was also recorded that there was inconsistency and contradiction between the earlier agreement of sale dated 06.05.2005 (exhibit-B) and the sale-deed

dated 29.05.2006 (exhibit-C), interalia, with respect to the payment of consideration amount. On the face of the aforesaid findings recorded by the learned first appellate Court, it cannot be said that the sale-deed dated 29.05.2006 (exhibit-C) was pursuant to the earlier agreement of sale dated 06.05.2005 (exhibit-B) and no reliance can be placed by the defendants on the earlier agreement of sale dated 06.05.2005 (exhibit-B).

32. Consequently, it has to be examined as to whether the sale-deed dated 29.05.2006 (exhibit-C) executed by the defendant no.1 in favour of the defendant no.2 was bonafide, in good faith and without notice to the suit agreement dated 06.09.2005 (exhibit-1). This court finds that it was never the case of the defendant Nos. 2 to 5 that they had no knowledge or notice about the registered agreement of sale dated 06.09.2005 (exhibit-1) which is the suit agreement. The fact also remains that much prior to execution of sale dated 29.05.2006 (exhibit- C) there was a paper publication dated 02.03.2006 (exhibit-4) at the instance of the plaintiff informing the public at large that the defendant no.1 has entered into a registered agreement of sale dated 06.09.2005 (exhibit-1) with the plaintiff with respect to the suit property. Thus, the defendant no.2 to 5 cannot be said to be bonafide purchaser, in good faith and without notice to the suit agreement dated 06.09.2005 (exhibit-1).

33. In view of the aforesaid findings of the learned first appellate Court, the defendants cannot take shelter of the agreement of sale dated 06.09.2005 (exhibit-B) to justify execution of the sale-deed dated 29.05.2006 by the defendant No. 1 in favour of defendant No. 2. It has neither been pleaded nor proved by the defendant nos.2 to 5 that the sale-deed dated 29.05.2006 (exhibit-C) was executed without notice with respect to the registered agreement of sale dated 06.09.2005 (exhibit-1). This court is of the considered view that there was no need for the plaintiff to seek cancellation of sale-deed dated 29.05.2006 (exhibit-C) when seen in the light of the aforesaid judgements passed by the Hon'ble Supreme

Court reported in *(2024) 8 SCC 83 (Maharaj Singh & Others vs. Karan Singh (dead) through legal representatives & Others)*.

34. Accordingly, the 1st substantial question of law is hereby answered against the appellants and in favour of the respondent no.1 (plaintiff) and it is held that the learned first appellate Court committed no perversity while decreeing the suit of the plaintiff even though the plaintiff did not pray for cancellation of the aforesaid sale-deed dated 29.05.2006 (exhibit-C).

35. It is important to place on record that the execution case arising out of the appellate court judgement and decree being Execution Case No. 26/2023 has been closed vide order dated 29.11.2024. Apparently, the sale deed has already been executed in favour of the plaintiff through the process of court and the sale deed No. 2024/GIR/4851/BKI/4518 dated 29.11.2024 running in 22 pages was placed before the executing court from the registry office and the execution proceeding has been closed after full satisfaction of the decree. The petition seeking stay of execution proceedings was filed before this court vide affidavit dated 16.12.2024 being I.A. No. 13681 of 2024 and by this time the execution proceedings was already closed.

36. Both the substantial questions of law having been answered against the appellants and in favour of the respondent no.1 - plaintiff, this second appeal is dismissed.

37. Pending interlocutory application, if any, is closed.

38. Let the records received from the learned Court be sent back to the learned Court concerned forthwith.

(Anubha Rawat Choudhary, J.)