

THE HIGH COURT OF JHARKHAND AT RANCHI
Second Appeal No.231 of 2016

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1. Prabhash Kumar Shah, S/o Late Radhe Shyam Shah,
 2. Smt. Radha Devi, w/o Prabhash Kumar Shah
- Both by faith Hindu Resident of Gaddi Mohalla, Panchgarhi,
Bazar,P.O.-Katrasgarh,P.S.-Katras,District Dhanbad(Jharkhand)

.... Appellants/Defendants
Versus

1. (a) Anupama Jaiswal, w/o Late Ganga Pd. Bhagat
(b) Smt. Mithu Jaiswal, D/o Late Ganga Pd. Bhagat, w/o
Janardan Bhagat
2. Ajay Kumar Jaiswal S/o Late Ganga Prasad Bhagat
3. Samir Kumar Jaiswal, s/o Late Ganga Prasad Bhagat
4. Abhishek Jaiswal s/o Late Ganga Prasad Bhagat
All by faith Hindu, resident of Gandhi Chowk, Rajbari road,
P.O.-Katras Bazar, P.S. Katras, Dist. Dhanbad

....Plaintiffs/Respondents

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mr. Kundan Kumar Ambastha, Adv.
For the Respondents : Mr. A.K. Sahani, Adv.
Mr. Vikesh Kumar, Adv.
Mr. Ajit Kumar, Adv.

JUDGMENT

C.A.V On 13/09/2023

Pronounce on 06 /12/2023

Heard learned counsel for both the parties.

2. The Original Title Suit No.157 of 1996 was instituted by one Ganga Prasad Bhagat @ Jaiswal(since deceased) along with his three sons namely Ajay Kumar Jaiswal, Sameer Kumar Jaiswal and Abhishek Jaiswal seeking following reliefs:-

- (a) For a decree that the two sale deeds dated 16.09.1996 (registered on 17/09/96 at the office of Registrar of Assurance of Kolkata) executed by plaintiff no.1 in favour of defendant nos.1 & 2 are adjudged to be void and for an order for the same to be delivered up and cancelled, and for sending a copy of the decree to the Registrar of Assurance, Kolkata.

- (b) For a decree for confirmation of possession of the plaintiff and proforma defendants or recovery of possession if necessary.
- (c) For a decree for permanent injunction restraining the defendant nos.1 & 2 including their men, agents, servants etc. from entering into the lands in suit from raising any construction or further construction in or over the suit lands.

3. Brief facts of the case of the plaintiffs as pleaded in the plaint is that one Jageshwar Bhagat of Katras owned and possessed some agricultural land at Mouza Katras including plot Nos.328, 329, 340 and 341, while in peaceful possession thereof the said Jageshwar Bhagat gifted some of the land in the name of Tulsi Bhagat, Ram Lakhan Bhagat, Ram Chandra Prasad Bhagat and Ganga Prasad Bhagat vide registered Deed of gift No.8164 dated 16.07.1943 and put them in possession thereof. Tulsi Bhagat was only daughter and legal heir of Jageshwar Bhagat and another donee are the sons of Tulsi Bhagat. Tulsi Bhagat died 10 years ago leaving three sons namely Ramlagan Bhagat, Ramchandra Bhagat and Ganga Prasad Bhagat who inherited the property left by their mother. Tulsi Bhagat while in peaceful possession of the aforesaid land divided the same and the land which was described in scheduled of the plaint fell into the exclusive share of Ganga Prasad Bhagat and his family, who came in possession thereof. Two sons of Ganga Prasad Bhagat namely Ajay Kumar Jaiswal and Samir Kumar Jaiswal have been carrying their business and other son Abhishek Kumar Jaiswal has been studying in Odisha. All the lands and business belong to the family of Ganga Prasad Bhagat which have been blended in joint family property and are being held and possessed by the plaintiffs. Ganga Prasad Bhagat father of Ajay Kumar Jaiswal, Samir Kumar Jaiswal and Abhishek Jaiswal did not have any knowledge of English or Bengali and he can write in Hindi only. He is the man of weak intellect and the entire joint family property is managed by Ajay Kumar Jaiswal and Samir Kumar

Jaiswal. Defendant No.1 is a rich and influential businessman of Katras, who took Ganga Prasad Bhagat to Kolkata for his treatment and got two sale deeds executed there on payment of consideration amount of Rs.13,20,000/- (Rs. Thirteen Lakhs and twenty thousands) but at the time of execution of alleged deeds, Ganga Prasad Bhagat was not in sound health position and at the same time there was serious family dispute and disturbance in the family. It is alleged that the defendants/appellants taking advantage of vulnerable condition of Ganga Prasad Bhagat and pretending his treatment at Kolkata got executed two sale deeds Nos.6333 and 6334 dated 16.09.1996 registered on 17.09.1996 by Registrar Assurance, Kolkata. The alleged two above sale deeds were not executed voluntarily by Ganga Prasad Bhagat and no consideration amount was ever paid to him. The contents of the sale deeds were also not read over and explained to the vendor in Hindi. The plaintiffs also came to know after obtaining certified copies of two sale deeds that total consideration amount was entered only Rs.1,98,000/- (Rs. One lakh ninety eight thousand). One sale deed was executed in favour of defendant No.1 Prabhash Kumar Saha and another in favour of his wife namely Radha Devi who are appellant Nos.1 and 2 respectively. Both the aforesaid sale deeds are totally void under the law as per provision of section 30 (2) of the Indian Registration Act which has been deleted by the Bihar Amendment Act, 1991 and Section 28 of Registration Act has also been replaced.

4. The defendants/appellants' case is that the land of plot No.328 of Mauza Katras was not the subject matter of deed of gift dated 16.07.1945 but Tulsi Bhagatain being the only legal heir of her father inherited the said plot after death of Jageshwar Bhagat. During the lifetime of Tulsi Bhagatain her three sons namely Ganga Prasad Bhagat, Ramchandra Bhagat and Ramlakan Bhagat, partition all these lands along with other lands including plot No.328 and Ganga Prasad Bhagat was exclusively allotted Plot Nos.327, 328, 329, 340 and 341 total area 3 acres and 14 decimals. Thus by virtue of the said partition Ganga Prasad Bhagat became

the absolute and exclusive owner of these lands from the date of said partition and hence it is false to say by the plaintiffs that he and his brother inherited the interest in the gifted property of plot No.328 after death of his father. Rather as per partition among brothers of Ganga Prasad Bhagat dated 14.06.1974 the said property came under exclusive possession of Ganga Prasad Bhagat, the land and business of their sons never blended into joint family property. The defendants purchased the suit land by virtue of two registered sale deeds dated 17.09.1996 from Ganga Prasad Bhagat on payment of full consideration amount and acquired perfect right title and possession over the land in question and it is false to say that Ganga Prasad Bhagat was a man of weak intellect and was not of sound health at the time of execution of sale deed, rather true facts is that said Ganga Prasad Bhagat himself made proposal to sale the suit land in month of September, 1996 @ Rs. 3,000/- per decimal. The defendants agreed to purchase the same and advance money of Rs.11,000/- each for two sale deeds was paid to Ganga Prasad Bhagat then he executed the agreement for sale on 14.09.1996 and thereafter these two sale deeds dated 16.09.1996 were executed and registered on 17.09.1996 and consideration amount was paid through cheque bearing cheque No.SB/AP-290609 dated 17.09.1996 and SB/AP-290591 dated 17.09.1996 of State Bank of Bikaner and Jaipur at Katrasgarh Branch and said cheques were en-cashed by Ganga Prasad Bhagat on 20.09.1996 and out of the amount, four fixed deposit @ Rs.50,000/- each were made by him and his three sons and his wife were made nominees in fixed deposit. It is further alleged that after registration of two sale deeds, the said Ganga Prasad Bhagat delivered the possessions of land in question to the defendants in presence of other plaintiffs and the defendants have constructed the boundary wall, room and fixed gate over the said land as such defendants have got valid right, title, ownership and possession over the suit land by virtue of sale deeds and have been coming into peaceful possession within the knowledge of plaintiffs. Hence the suit of plaintiffs is liable to be dismissed.

5. On the basis of pleadings of the parties, the learned trial court has settled following issues for adjudication:-

- (i) *Is the suit maintainable in its present form?*
- (ii) *Is there any cause of action arose for the present suit?*
- (iii) *Is the suit barred by law of limitation?*
- (iv) *Is the suit barred by the principles of estoppel, waiver and acquiescence?*
- (v) *Whether the suit land property was the joint family property of Ganga Prasad Bhagat and his three sons?*
- (vi) *Whether the two suit sale deeds Nos.6333 and 6334 executed on 16.09.1996 and registered on 17.09.1996 at the office of registrar of assurance Kolkata are void and for want of jurisdiction under Indian Registration Act?*
- (vii) *Whether the aforesaid two sale deeds are void having been taken by Ganga Prasad Bhagat by means of fraud, manipulation and without payment of consideration money fraudulently?*
- (viii) *To what relieved or relieves, the plaintiffs are found entitled to?*

6. The learned trial court has taken issue Nos.5, 6 and 7 as primary issues and interconnected with each other for adjudication simultaneously and after considering oral as well as documentary evidence adduced by the parties has decided issue Nos.5 and 6 in favour of plaintiffs and issue No.7 against the plaintiffs and in favour of the defendants. Accordingly, it was held that the suit scheduled property belong to Ganga Prasad Bhagat and his sons which were sold by two sale-deeds in question by Ganga Prasad Bhagat executed on 16.09.1996 and registered on 17.09.1996 at Registrar Assurance, Kolkata in contravention of Sections 28 and 30 the Registration Act, 1908- (Bihar Amendment) Act, 1991 are void but the aforesaid sale deeds were found not to be affected by fraud or misrepresentation

and without consideration. Hence the suit was decreed in favour of the plaintiffs and against the defendants.

7. Being aggrieved and dissatisfied against the judgment and decree of learned trial court, Title Appeal No.84 of 2012 was preferred by the appellants/plaintiffs. The learned appellate court observed that the registration (Bihar Amendment) Act which is applicable in the state of Bihar, it oust the jurisdiction of alleged two Sale Deed Nos.3666 and 3664 to be presented for registration before Registrar Assurance, Kolkata. The learned Appellate Court relying upon the decision of Hon'ble Calcutta High Court in the case of *Rumi Sein and Ors. Vs. Sanjay Sureka & Ors. reported in (2011) 0 Supreme (Cul) 853*, wherein it was held that "the omission of Section 30(2) of the Indian Registration Act, 1908 as applicable to the State of Bihar would only effect the authority of that state" therefore, the registration of these two sale deed Nos.6333 and 6334 dated 17.09.1996 when there is office of Sub-Registrar, Dhanbad, the registration of sale deeds cannot be held to be valid and genuine after passing of Registration (Bihar Amendment) Act, 1991. There was no cogent explanation on the part of the learned counsel of the defendants/appellants as to why sale deeds were executed and registered at Kolkata when there was an office of Sub-Registrar in Dhanbad.

8. The learned appellate court below also took into notice that both the registered sale deed Nos.6333 and 6334 were later on presented before Sub-Registrar, Dhanbad deficit and required stamp duty as per the rule and norms of the State was also deposited. The appellate court has recorded specific findings that both the registered sale deeds registered on 17.09.19696 at the office Registrar Assurance, Kolkata were *void ab initio* and in-operative in view of passing Registration (Bihar Amendment) Act, 1991, hence, confer no right title interest and possession over the suit land to the defendants/appellants. The learned appellate court also observed that the execution of both sale deeds have not been challenged by the plaintiffs/respondents rather execution was admitted but the way in which execution and registration of

these two documents are done, it was against the principle of law and does affect the legal rights of plaintiffs/respondents and also invalid in view of provision under section 54 of Transfer of Property Act. Accordingly, the appeal filed by the appellants was dismissed on contest and impugned judgment and decree was upheld and confirmed.

9. Being aggrieved and dissatisfied with the appellate judgment and decree, present second appeal has been preferred by appellants wherein the substantial question of law to be decided in this appeal has been formulated as under:-

Whether the courts below were right in decreeing plaintiff's suit considering the fact that Registration (Bihar Amendment) Act, 1991 will prevail over the Indian Registration Act or not?

Whether the judgment of the appellate court below is perverse and is in teeth of violation of well settled principles which is again discussed by the Hon'ble Supreme Court in the case of the State of Rajasthan and Ors. Vs. Shiv Dayal and Anr. reported in (2019) 8 SCC 637?

10. Learned counsel for the appellants assailing concurrent findings of learned trial court and learned First Appellate Court has extraneously argued that both the courts below have misinterpreted the provision of Article 254 of Constitution of India in perspective of provisions of Indian Registration Act, 1908. On the date of presentation of sale deed before Registrar Assurance, Kolkata for registration he was guided by provision of Indian Registration Act, 1908 not by the Amendment of State Legislature. It is settled principle of law that any amendment made by State Legislature in respect of subject matter falling in concurrent list of Constitution of India cannot bound the provisions of Central Act. It is further submitted that learned court below has recorded specific findings that sale deeds were not vitiated due to fraud, under influence, misrepresentation or any other grounds which makes the transaction void or voidable. Simply because sale deeds were executed in proper manner by

receiving valuable consideration money and also presented before Sub-Registrar, Dhanbad and required stamp duty as per norms of State Government, Bihar, the sale deeds cannot be treated as *void-ab-initio* or liable to be cancelled.

Learned counsel for the appellants has placed reliance upon the following reported judgments:-

(i) *State of Rajasthan and Ors. Vs. Shiv Dayal and Anr.* reported in (2019) 8 SCC 637

(ii) *Gati Cargo Management Service vs. SBL Industries Ltd.* reported in (2014) 0 Supreme (Del) 1519,

(iii) *Ashok Kumar Vs. State of Bihar and Anr.* reported in (2022) 6 BLJ 1

11. Per-Contra, Mr. A.K. Sahani, Learned senior counsel for the respondents has refuted the aforesaid contentions raised on behalf of the appellants and submitted that there are concurrent finding of facts and laws of the courts below which could not be interfered lightly. It is further submitted that both sale deeds Nos.6333 and 6334 executed by the original plaintiff have been declared void and were cancelled and possession of the plaintiffs/respondents have been confirmed as well as permanent injunction has also been granted through the decree of both the courts below. It is further submitted that the registration of sale deeds at Registrar Assurance, Kolkata in respect of property situated in Ranchi/Bihar, after amendment in the Indian Registration Act by Bihar (Amendment Act), 1991 is void in terms of section 28 and 30 of the Registration Act. Elaborating his argument, learned counsel has further submitted that section 28 of Indian Registration Act, 1908 says that every document mentioned in Section 17 sub section (1)(a)(b)(c)(d) and (e), sub-section 2 of section 17, in so far as such documents effects immovable property, and section 18 clause (a),(b),(c) and (cc) shall be presented for registration in the office of sub registrar within whose sub district, the whole or some portion of the property to which such documents relates is situate. Similarly, section 30 of the Indian Registration Act, 1908 provides that any registrar may in his indiscretion receive and register any document which might by registered by any Sub

Registrar subordinate to him. Sub clause (2) of section 30 of the Indian Registration, Act says that Registrar of a district in which a presidency town is included and the Registrar of Delhi district may receive and register any document referred to in section 28 of Indian Registration Act without regard to the situation of any part of India of the property to which the document relates. It is further argued that as per Bihar(Amendment) Act, 1991, the provision of section 30(2) in the Parent Central Act has been deleted after receiving assent from President of India. Therefore, in respect of property situated in State of Bihar after amendment, no sale deed can be executed in any presidency town or in Delhi. Both learned courts below have recorded concurrent findings in this regard. It is also contended that merely by depositing the stamp duty required in the State of Bihar by the appellants before Registrar Office, Dhanbad is not sufficient to validate the transaction of sale. Therefore, there is no illegality or infirmity in the judgment and decree passed by both courts below and this appeal has no merits, which is liable to be dismissed with cost.

12. In view of the above arguments and substantial questions of law involved in this appeal, I deem it appropriate to discuss the relevant provisions of the Indian Registration Act and the Bihar (Amendment Act), 1991 at the relevant time of execution of sale deed dated 16.09.1996 and their registration on 17.09.1996 at the office of Registrar Assurance, Kolkata.

At the relevant time, sections 28 and 30 of Indian Registration Act, 1908 as applicable to the State of Bihar read as under:

“Section-28. Place for registering documents relating to land. Save as in this Part otherwise provided every document mentioned in clauses (a), (b), (c), (d) and (e) of sub-section 1 and sub-section (2) of section 17 insofar as such documents affect immovable property and in clauses (a), (b), (c) and (cc) of section 18 shall be presented for registration in the office of the Sub-Registrar within whose sub-district or district

the whole of the property to which such document relates is situated in the State of Bihar.
“Section-30.Registration by Registrars in certain cases. -(1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

(2)The registrar of a district in which a presidency town is included and the registrar of the Delhi district may receive and registrar any documents referred to in section 28 without regard to the situation in any part of India of the property to which the document relates”

By virtue of the Registration (Bihar Amendment) Act, 1991 enacted by the legislature of the State of Bihar, the Act as applicable to the State of Bihar was amended and provision of sub-section 2 of section 30 of the Act was omitted w.e.f., 08.08.1991.

13. Other provisions applicable in this case are Sections 66 and 67 of Indian Registration Act, 1908 which are produced bellows:-

“Section 66. Procedure after registration of documents relating to land - (1) On registering any non-testamentary document relating to immovable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

(2) The Registrar shall also forward a copy of each document, together with a copy of the map or plan (if any) mentioned in Section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub

Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

Section 67. Procedure after registration under Section 30, subsection (2).-

On any document being registered under section 30, sub -section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in Section 66, sub-section (1)."

14. In the given situation of this case, the question arises as to whether the existing law-Registration Act, 1908 would prevail despite the enactment of the Registration (Bihar Amendment) Act, 1991 can only be resolved with reference to Article 254 of Constitution of India. The Registration Act, 1908 occupies the filed following under Entry 6 of the concurrent list, thus, by virtue of article 246(2) of the Constitution of India, the parliament as well as the State legislature would have the power to legislate in respect of the subject matter. Article 254 of Constitution of India is reproduced below.

" Article 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States:-

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before

or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

15. Now, It would be appropriate to discuss leading judgments of some High Courts and Hon'ble Supreme Court relevant to the questions involved in this case:-

16. In the case of *Gati Cargo Management Service vs. SBL Industries Ltd.(supra)*, wherein principal question involved was as whether the registration of sale deed relating to a property situated in Bihar, with the office of Sub Registrar, Mumbai would be valid?

After apprising the relevant provisions of Indian Registration Act, Registration (Amendment Act), 1991 and article 254 of Constitution of India, the High Court of Delhi held as under:-

"24. By virtue of Article 254(1) of the Constitution, in the event of any conflict of laws enacted by a State Legislature and by the Parliament in respect of matters listed in the concurrent list, the

legislation as enacted by the Parliament would prevail. In a situation, where a State Legislation has obtained the President's assent, the same would prevail in that State. Although, in the present case, there are no two different enactments, however, the principles that are enunciated in Article 254 of the Constitution of India would be applicable. Thus, in my view, the Registration Act, 1908 as amended by the Registration (Bihar Amendment) Act, 1991, would prevail over the existing law (i.e pre-constitutional legislation) as applicable to the State of Bihar. However, it is relevant to note that the same does not imply that the law as amended by the Bihar Legislature would have extraterritorial application. The last four words of Article 254(2) of the Constitution of India - "prevail in that State" clearly restrict the applicability of the amendment to the state of Bihar. That being so, the Registration of the sale deeds in question by the registering authorities in Mumbai by virtue of Section 30(2) of the Act are not flawed.

25. It is apparent from the above that the registration authorities in the State of Maharashtra were duly empowered to register the documents in accordance with the Central Legislation-the Act. There is no dispute that Section 30 of the Act as applicable to the State of Maharashtra included Sub-section (2). Accordingly, the act of the registering authorities in Mumbai, in registering a document pertaining to the subject property situated at Ranchi cannot be faulted. The limited question that needs to be addressed is whether the deletion of Section 30(2) of the Act as applicable to Bihar by the Bihar Legislature would have the effect of voiding the

registration effected by the registering authorities at Mumbai.

26. The learned counsel for the applicants had drawn my attention to the amendments to Section 28 of the Act as applicable to the territory of Pondicherry, which were carried out by virtue of the Pondicherry Act 5 of 1999 w.e.f. 04.05.1999. Section 28 as amended by the Pondicherry Act 5 of 1999 reads as under : - "28. Place for registering documents relating to land.- Save as in this Part otherwise provided,- (a) every document mentioned in clauses (a), (b), (c), (d) and (e) of sub-section (1) and sub-section (2) of section 17, in so far as such document affects immovable property and in clauses (a), (b), (c) and (cc) of section 18 shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the Union Territory of Pondicherry; and any document registered outside the Union Territory of Pondicherry in contravention of the provisions of clause (a) shall be deemed to be null and void.

"27. It was pointed out that the amendment to Section 28 brought about by the Bihar Legislature did not include a clause similar to clause (b) of Section 28 of the Act as introduced by Pondicherry Act 5 of 1999. According to the applicants this indicated that it was not the intention of the Bihar Legislature to void any registrations in respect to property situated at Bihar, which were effected by the authorities in the erstwhile presidency towns and Delhi. It is settled law that the legislature expresses its intent through the language of the statute and accordingly, the language of a statute must be interpreted to discover the intention of the Legislature. In the present circumstances, one is

hard pressed to find any other intention of the Bihar Legislature in deleting Section 30(2) of the Act, except to provide that registering documents other than in a manner as expressed by Section 28 of the Act was not available. However, that in my view would not be the same as expressing a legislative intent to void registrations of all documents that are effected, by virtue of section 30(2) of the Act, by Registrars of the districts in which the erstwhile Presidency-towns are located or by the Registrar of Delhi.

28. *It is relevant to note that although, the Registration (Bihar Amendment) Act, 1991 omitted Sub-section 2 of Section 30 from the Act. No attendant change was brought in Section 66 and 67 of the said Act which read as under : - "66. Procedure after registration of documents relating to land - (1) On registering any non-testamentary document relating to immovable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate. (2) The Registrar shall also forward a copy of each document, together with a copy of the map or plan (if any) mentioned in Section 21, to every other Registrar in whose district any part of such property is situate. (3) Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy of the Sub Registrars subordinate to him within whose sub-district any part of the property is situate. (4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1. Section 67. Procedure after registration under Section 30, subsection (2).- On any document being registered under section 30, sub -section (2), a copy of such*

document and of the endorsements and certificate thereon shall be forwarded to every Registrar within district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in Section 66, sub-section (1)."

29. *A plain reading of the aforesaid provisions clearly indicate that in the event a document was registered under Section 30(2) of the Act by a Registrar, a copy of same would be required to be forwarded to the Registrar in whose district the immovable property is situated. Section 66(1) of the Act mandates the Registrar to forward the memorandum of the document received by him to each Sub-Registrar subordinate to him in whose sub-district any part of the property is situated. In the event the legislative intent was to disregard any document that was registered by a Registrar of the district in which the erstwhile Presidency towns are located or by the Registrar of Delhi then the provisions of Section 67 of the Act would also have been omitted. In this regard it is relevant to note that the 'The Registration and Other Related Laws (Amendment) Act, 2001 enacted by the Parliament, which finally omitted section 30(2) of the Registration Act, 1908 also deleted section 67 of the said Act. Accordingly, in my view, the Registration effected by the registering authority at Mumbai cannot be cancelled on account of the amendment brought about by the Registration (Bihar Amendment) Act, 1991.*

30. *The Calcutta High Court in the case of Rumi Sein (supra) has also upheld the registrations effected outside the State of West Bengal even though Section 30(2) of the Act had been deleted by the West Bengal Legislature. The West Bengal Legislature had enacted the West Bengal Act 17 of*

1996. By virtue of Section 3 of the said Act, Subsection (2) of Section 30 of the Act was omitted from the Act as applicable to the State of West Bengal. In the case of Rumi Sein (*supra*), a controversy arose with reference to two deeds of conveyance relating to the property situated in West Bengal which were registered in June 1999, at Mumbai. The Calcutta High Court considered the controversy in the following manner : - "There is a further technical objection to the power of attorney taken by the plaintiffs. They say that Section 28 of the Registration Act, as is relevant in the context, provides that a document affecting immovable property shall be presented for registration in the office of a sub registrar within whose sub-district the whole or some portion of the property to which such document relates is situate. The plaintiffs refer to Section 30 of the Act and the effect of such provision following its amendment. Prior to the relevant amendment of Section 30 of the Act, sub-section (2) thereof permitted, *inter alia*, the registrar of a district in which a presidency town was included to receive and register any document referred to in Section 28 without regard to the situation in any part of India of the property to which the document related. Sub-section (2) was omitted from Section 30 of the Act by a West Bengal amendment that came into effect in 1997. Subsequently, there was a Central amendment that altogether removed Section 30(2) from the statute. The plaintiffs suggest that upon the West Bengal amendment coming into effect in 1997, no document affecting any immovable property in West Bengal could have been received or registered by any registrar in Mumbai. *Prima facie*, such argument is not acceptable. Upon the West Bengal amendment

coming onto effect, no registrar of a district in West Bengal in which a presidency town was included could have received or registered a document affecting any immovable property irrespective of where the property was situate. But the registrar in Mumbai was not subject to this amendment and, notwithstanding the West Bengal amendment, the registrar in Mumbai continued to be governed by Section 30(2) of the Registration Act till it was obliterated in 2001. Since the two Mumbai documents were executed in 1999, notwithstanding the West Bengal amendment, there does not appear to have been any infirmity in the Mumbai registrar receiving and registering the same."

17. Recently in the case of *Ashok Kumar Vs. State of Bihar and Anr.* reported in (2022) 6 BLJ 1 Hon'ble Patna High Court reiterating the principle of law in *Gati Cargo Management Services (supra)* has held as under:-

"14. In the aforesaid context, this Court deems it fit and proper to refer to the Government of Bihar notifications dated 18.07.2002 and 22.08.2002, whereby and whereunder provision has been made for deposit of differential amount of stamp duty with regard to those lands which have been registered outside the State of Bihar. The petitioner has brought on record proof of deposit of the differential amount of a sum of Rs. 1,82,500/-, which has also been duly accepted and to the said effect certificate has been issued by the District Sub-Registrar, Patna vide certificate dated 29.10.2017.

15. With regard to the third ground, on which the petitioner has been non-suited vide the impugned order dated 28.02.2004, this Court finds that though on the date of registration of the sale deed

in favour of the petitioner i.e. on 27.12.2001, Section 30(2) of the Indian Registration Act had been omitted by the Central Amendment Act, published in the gazette on 24.09.2001, however, the office of the Inspector General of Registration and Controller of Stamps, Maharashtra State, Pune vide letter dated 04.04.2002, in reference to the validity of sale deed in question, executed on 27.12.2001 at Mumbai, has clarified that it has issued an Order, whereby the Government of Maharashtra has given effect to "The registration and other related laws (Amendment) Act, 2001", published by the Central Government vide Bill No. 48/2001 dated 24.9.2001, with effect from 01.01.2002, hence Section 30(2) of the Indian Registration Act was valid till 31.12.2001 in the presidency town of Mumbai. In such view of the matter, this Court finds that the registration of the sale deed in question at Bombay on 27.12.2001 i.e. prior to 01.01.2002, which is the cut off date, is legal and valid. As far as amendment of Section 28 of the Indian Registration Act by the Bihar Act 6 of 1991, with effect from 08.08.1991, is concerned, the same provides for registration of documents relating to immovable property by presentation of the same for registration in the office of the Sub-Registrar within whose subdistrict or district, the whole of the property is situated to which such documents relates as far as the State of Bihar is concerned, nonetheless, this Court finds that the same is contrary to the original Section 28 of the Indian Registration Act, 1908, which starts with a non -obstante clause i.e. "save as in this part otherwise provided", meaning thereby that the same is subject to the provisions contained in Section 30(1) of the Indian Registration Act which provides that- "Any Registrar may in his

discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him”, thus the expression “Any Registrar” would mean all the Registrars and, moreover, at that point of time i.e. on 27.12.2001, on which date the sale deed was registered, as mentioned herein above, Section 30(2) was also in force, which empowers any Registrar of a district including a presidency town to receive and register any document referred in Section 28 without regard to the situation in any part of India of the property to which the document relates. The aforesaid amendment in Section 28 of the Indian Registration Act by the Bihar Act 6 of 1991, to the extent is inconsistent with the law made by the Parliament, is repugnant, in terms of Article 254 of the Constitution of India, thus this Court finds that there is no infirmity as far as execution of the sale deed dated 27.12.2001 is concerned, hence the same is held to be legal and valid. Consequently, the grounds taken by the learned Collector, Patna in the impugned order dated 28.02.2004, to non-suit the petitioner is held to be unfounded and illegal.”

18. In the case of State of Rajasthan & Ors. Vs Shiv Dayal & Anr. (supra) Hon'ble Apex Court has held as under:-

“Though the concurrent finding of fact is usually binding on high court while hearing second appeal, this rule of law is subject to certain exception. Where concurrent finding of fact is recorded de-horse the pleading, or is based on no evidence or misreading the material documentary evidence, or is recorded against any provision of law, or the decisions is one which no judge acting judicially could reasonably have reached, such grounds will constitute substantial question of law within the meaning of section 100 CPC.”

19. In view of aforesaid discussion of relevant laws involved in this case as well as guidelines of judicial pronouncements, I arrive at definite conclusion that in the instant case both court below have committed serious error of law while interpreting the provisions of Indian Registration Act, 1908 in the light of Registration (Bihar Amendment) Act, 1991 as per provision of Article 254 of Constitution of India and declared the subject sale deeds as *void ab initio*. The findings recorded by both the courts below clearly suggests that the execution of sale deeds were not vitiated by any fraud, misrepresentation, undue influence, coercion or any other reason making the transactions void or voidable under law. The declaration of sale deeds to be void merely on the ground that the same were registered by the office of the Registrar Assurance at Kolkata is not warranted under law. Therefore, the very vital approach of the courts below regarding the above main issue does not satisfy the constitutional mandate and suffers from perversity.

20. In view of the above discussion and reasons, the concurrent findings and judgments and decree of both the courts below is hereby set aside and the suit of the plaintiff /respondent is dismissed.

21. In the circumstances, both parties shall bear their own costs.

22. Accordingly, pending I.A. No. 6508 of 2020, I.A. No.1454 of 2021 and I.A. No.5786 of 2023 are disposed off.

(Pradeep Kumar Srivastava, J.)