

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

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**Second Appeal No.136 of 2026**

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**1.**Ram Kishun Mahto, aged about 66 years, son of late Nanku Mahto

**2.**Panchmi devi @ Panchm Devi aged about 71 years, wife of Ram Kishun Mahto, Both are residents of Village Datma, PO Sandi, PS Sikidiri, District Ranchi, Jharkhand

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

**-- Versus --**

**1.**Md. Salim Khan, son of late Jamaluddin Khan, resident of Village Datma, PO Sandi, Ps Sikidiri, District Ranchi, Jharkhand

*.... Plaintiff /Respondent/ Respondent*

**2.**the Deputy Commissioner, Ranchi, Collectorate Building, Near Deputy Para, PO GPO, PS Kotwali, District Ranchi, Jharkhand

**3.**The Chief Secretary, State of Jharkhand, Project Building, Dhurwa, PO and PS Dhurwa, District Ranchi

*.... Respondents/respondents*

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Appellants(s) :- Mr. Ayush Aditya, Advocate

For the State :- Mr. O.P. Tiwari, G.P.II

Mr. Mukul Kr. Singh, AC to GP-II

For the Respondent :- Mr. Avishek Prasad, Advocate

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**4/11.06.2026** Heard Mr. Ayush Aditya, the learned counsel appearing on behalf of the appellants and Mr. Avishek Prasad, the learned counsel appearing on behalf of the respondent.

**2.** This Second Appeal has been filed against the judgment dated 23.03.2026 (decree signed on 04.04.2026) passed by learned Additional Judicial commissioner-XVII, Ranchi in Civil Appeal No.70 of 2024, whereby the appeal has been dismissed and the impugned judgment dated 24.07.2023 and the decree signed on 04.08.2023

passed in Original Suit No.576 of 2023 passed by learned Civil Judge (Senior Division)-XIV, Ranchi has been affirmed.

**3.** Mr. Ayush Aditya, the learned counsel appearing on behalf of the appellants submits that Original Suit No.576 of 2023 has been instituted by Md. Salim Khan for declaring the sale deed no.5607 dated 14.11.1945 in favour of the plaintiff, and if not in possession, to put in possession. The said suit was decided by the learned court by the judgment dated 24.7.2023 and it was decreed in favour of the plaintiff, *ex-parte*. He next submits that, aggrieved with the said judgment dated 24.7.2023, the appellants-herein preferred Civil Appeal No.70 of 2024 which has been further dismissed by the learned appellate court by the judgment dated 23.03.2026 affirming the judgment of the learned trial court. He next submits that, aggrieved with the said judgment of the learned first appellate court, the appellants-herein have preferred the present Second Appeal.

**4.** Mr. Ayush Aditya, the learned counsel appearing on behalf of the appellants further submits that the learned trial court has proceeded *ex-parte* against the appellants-herein which has been affirmed by the learned appellate court and that is not in accordance with law, which is one of the law point to admit the present Second Appeal. He next submits that the next law point is there with regard to 10 decimals of land under Plot No.64, Khata No.56 and this

dispute has been wrongly decided by both the learned courts, which is required to be answered by way of framing the substantial law point(s) by this Court and on these grounds, he submits that the instant Second Appeal may kindly be admitted.

**5.** It transpires from the judgment of the learned courts that, the case of the plaintiffs/respondents/ respondents was that Sheikh Ramjan, the grand-father of the plaintiff along with Sheikh Panchu, Sheikh Lacchu, Sheikh Argali and Md. Ali purchased and acquired 15.60 acres of land Vide Deed No-5607 dated 14.11.1945 from the Khatiyani Raiyat, Bahoran Mahto under Khata No-56 located at Mauza-Datma, Thana-Ormanjhi, Present Thana-Sikidari, District-Ranchi. After family partition, Sheikh Ramjan, the grand-father of the plaintiff, acquired 5.20 acres out of the above land as his share. The same has been mentioned in Schedule-A to the Plaint. During his life time Sheikh Ramjan remained in total possession of his share of land and after his death, his son Sheikh Jamaludin, the father of the plaintiff, also remained in possession of the same. Upon the death of Sheikh Jamaludin his three sons, Sheikh Salim (Plaintiff), Sheikh Suleman and Sheikh Hussain also remained in possession of the same.

The instant suit, however, was brought by the plaintiff regarding the 10 decimal of land located at Plot No-64, Khata No-56, Mauza-Datma, Thana-Ormanjhi, Present Thana-Sikidari, District-

Ranchi which was a part of the total land purchased and acquired by the grand-father of the plaintiff Sheikh Ramjan along with others Vide Sale Deed No-5607 dated 14.11.1945 and which was also a part of the 5.20 acres of land that fell in the share of the grand-father of the plaintiff in the family partition and which later came in possession of the plaintiff and his family. The same has been mentioned in Schedule-B to the Plaint. It was the case of the plaintiff that the defendants tried to dispossess the plaintiff over the suit land listed in Schedule-B to the Plaint on the ground that the same has been allotted to them by the Government under the Pradhan Mantri Aawas Yojana. It was also contended that the defendants had constructed two to three rooms over the suit land by force and with the aid of anti-social elements. The plaintiff filed a petition u/s 144 of the Cr.P.C before the Court of Ld. S.D.M, Sadar, Ranchi but the proceedings of the same were, however, dropped. The plaintiff also pleaded that the suit land was ancestral property of the plaintiff and no promulgation regarding the acquisition of the same was ever made by the Government which could have enabled the plaintiff to file any objection. No Istehar was circulated in the locality as regards the acquisition of the suit land. The rent had been regularly paid by the family of the plaintiff while the Government had also recognized Sheikh Lachhu and others as settled-raiyats of the village. The claim of the defendants does not

have any locus, it was pleaded. The plaintiff tried to settle the dispute but the defendants did not pay any heed to it. The cause of action for the suit arose in June, 2017 when the defendants started construction over the suit land and then on 15.02.2018 when the Ld. S.D.M, Sadar, Ranchi dropped the proceedings u/s 144 of the Cr.P.C. Hence, for redressal of his grievance, the plaintiff instituted the present suit before the Competent Court. The Suit value of the property was at Rs. 1500/- and the plaintiff made payment of ad-volerum court fee. Lastly, the plaintiff pleaded for the following reliefs:

- I. A decree may be passed in favour of the plaintiff after declaring the sale deed dated 14.11.1945 Vide Deed No-5607, Volume-1, Page No-77 as genuine, perfect and legal.
- II. Declare the Claims of the defendants as fictitious and not genuine.
- III. The possession of the plaintiff may be confirmed and if found dispossessed he may be delivered the possession of the suit land through the process of the Court.
- IV. Cost of the suit.
- V. Other relief or reliefs as may be awarded which the court deems fit and proper.

**6.** In the trial court, the appellants/defendants have not appeared and in view of that the suit has proceeded ex-parte against the appellants/ defendants which has been decreed in favour of the plaintiffs/ respondents. Aggrieved with that, the appellants/defendants have preferred the Appeal being Civil appeal No.70 of 2024 and it has been contended that the learned trial court

judgment is erroneous, unjust and not in accordance with the facts of the case and it was also agitated that the judgment was pronounced and the suit was decreed and disposed of without proper service of notice to the appellants/defendants. The appellants have remained oblivious regarding institution of the Original suit and it is only when they received the notice in Execution Case No.115 of 2003 related to the suit, they came to know regarding the disposal of the same in their absence. It was also contended that the appellants/ respondents have been deprived of their rights and the opportunity to appear in the suit and defend their case before the learned trial court and in view of that, it was submitted before the learned first appellate court that the ex-parte disposal of the suit in absence of the appellants/ defendants was unfair. It was further contended that the under Khata No-56, Plot No-64 along with other plots measuring an area of 15 acre 60 decimal situated at Mauza-Datma, P.S-Sikidari, District-Ranchi was recorded in Original Khatian in the name of of Balram Mahto and subsequently, Balram Mahto sold the entire land by virtue of a Sale Deed dated 14.11.1945 in favour of Sheikh Ramzan, Sheikh Pachu, Sheikh Lachu, Sheikh Ardali and Md. Ali. The appellant/ respondents have further stated that out of the above purchasers, Sheikh Ardali and Md. Ali sold their share of land in favour of Nanku Mahto (father of the appellant, Ram Kishun Mahto) Vide Registered Sale Deed No-

13416, Dated 16.12.1971 in presence of witness, namely, Md. Jamaludin who was, in fact, the father of the Respondent/Plaintiff, Salim Khan. It was also contended that the name of Nanku Mahto was mutated before the C.O, Ormanjhi and rent of the said land has been regularly paid in the name of Nanku Mahto. It has also been contended that later in the year 2017 the B.D.O, Ormanjhi had allotted the land along with the house built upon it under the Pradhan Mantri Aawash Yojana to the appellant, Panchmi Devi Vide Letter No-1508 (II) dated 14.11.2017. The appellants in the light of the aforementioned allotment constructed Indira Aawash over the suit land after demolishing the old house and have been living there while in possession of the same. The appellants had also taken the electricity connection in the house and have been paying electricity bill. It was also contended before the learned appellate court that the proceeding under section 144 Cr.P.C instituted by the Respondent /Plaintiff, Md. Salim Khan, before the Court of Ld. S.D.O, Sadar, Ranchi was dropped later on. It was also contended that before the learned trial court all these facts were suppressed and in view of that the same was required to be set aside. In the aforesaid background, it was contended by the appellants/defendants that the ex-parte proceeding was unjust and the impugned judgment decreed was not in accordance with the facts of the case and the mandatory provisions of law have not been

complied with and the decree passed against the appellants / defendants was obtained by the plaintiff /respondents by concealing the material facts and the learned trial court has failed to properly verify regarding service of notice. It was agitated before the learned appellate court by the appellants herein that they were in possession of the suit land as their father was the bonafide purchaser in the year 1971 and the appellants have not been able to place their case as the case was proceeded ex-parte. It was also contended that without taking the material facts into consideration due to suppression of the same by the plaintiff/ respondents, the decree was obtained and on these grounds, it was contended that the judgment of the learned trial court dates 24.7.2023 and decree signed on 4.8.2023 suffers from inherent defects and errors and in view of that, the Original Suit No.576 may kindly be remanded back to the learned trial court for fresh adjudication. The learned court had heard both the sides and had proceeded to decide the said appeal in the aforesaid background.

**7.** The learned trial court while deciding the Original Suit has noted in paragraph no.4 of the judgment that the notice upon the appellants/ defendants have already been issued and it was served upon the appellants/ defendants, however, the appellants have chosen not to appear and the learned trial court in view of that, by the order dated 05.01.2019 the said suit was fixed for ex-parte

hearing. The learned trial court after appreciating the documentary as well as the oral evidences led by the plaintiffs/ respondents, decreed the suit in favour of the plaintiffs by the judgment dated 24.7.2023.

**8.** The learned first appellate court has framed three points to decide the appeal in paragraph nos.9 and 11 of the judgment and the point no.9.1 has been answered in paragraph no.10 whereas point no.9.2 and 9.3 have been answered in paragraph no.11 of the said judgment. Point no.9.1 was with regard as to whether the service of notice upon the appellants/ defendants to the satisfaction of the learned trial court was there or not? While deciding the said point, the learned appellate court has found that the Original Suit No.576 of 2023 was originally registered as Original Suit (T.S) No-42 of 2018 on 27.02.2018 and the same was admitted on 04.04.2018 and the Notices were issued to the defendants which included both the appellants on 09.04.2018 and the service report was attached with the record on 03.05.2018. The learned appellate court has found from the order sheet dated 14.5.2018 that service of notice against the appellant/ defendant no.1 namely Ram Kishun Mahto and Deputy Commissioner, Ranchi were found to be proper. Vide order dated 5.1.2019 it was held that the contents of notice were read over to the Appellant / Defendant No-2, Panchmi Devi, who was the wife of the Appellant / Defendant No-1, Ram Kishun Mahto

and resided in the same house with him and after understanding the same, she caused the notice to be received by her husband, Ram Kishun Mahto. The Appellant / Defendant No-1, Ram Kishun Mahto had already personally received the Summons on 18.04.2018. thus, the learned first appellate court has found that notice upon the appellant/ defendants was already effected. The learned first appellate court has also found that the appellant/ Ram Kishun Mahto has personally received the summons while the Appellant / Defendant No-2, Panchmi Devi, who is his wife was also fully conversant regarding the institution of the Suit since the contents of the notice informing her regarding the institution of the Suit and calling for her appearance were read over to her. The learned first appellate court has also found that Appellants / Defendants failed to appear and contest the Suit and defend the same and inspite of the knowledge of the Suit, the Appellants/Defendant No-1 and 2 did not take any steps and failed to appear. In this background, the appellate court has held that the contention of the appellant/defendants that they were not served with the notice, was found not to be true and it has been correctly said by the learned first appellate court that no suit can indefinitely remain pending for the appearance of the defendants when they have been served with proper notice or has been made conversant regarding institution of the suit and consequently, issue no.9.1 with regard to the service of

notice has been answered against the appellant /defendants by the learned appellate court.

**9.** In view of above, there is no doubt that ex-parte decree against the defendant has to be set aside if the parties satisfy the court that summons was not duly served or has prevented by sufficient cause from appearing when the suit was called for hearing, however, it is equally well settled that the court shall not set aside the said decree on mere irregularity in the service of summons or in a case where the defendant had notice of the date and sufficient time to appear in the court. The legislature in its wisdom, made the second proviso mandatory in nature. Thus, it is not permissible for the court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso herein. Order IX rule 13 CPC, "sufficient cause" is an expression which has been used in a large number of statutes and "sufficient cause" has been considered by the Hon'ble Supreme Court in the case of ***Parimal v. Veena Alias Bharti*** reported in ***(2011) 3 SCC 545***, wherein at paragraph no.13 it has been held as under:

*"13. "Sufficient cause" is an expression which has been used in a large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and*

*circumstances existing in a case and duly examined g from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court h concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously."*

**10.** Under Order IX Rule 13 CPC, the test has to be applied as to whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so and further sufficient cause is a question of fact and the court has to exercise its discretion in variant and special circumstances there cannot be a straight jacket formula of universal application.

**11.** What has been discussed hereinabove, which has been found by the learned appellate court, the appellants herein was knowing about the suit and inspite of proper notice, have not appeared to contest the suit for one reason or other. In view of the clear cut finding on the issue in question, the Court finds that there is no perversity on the ex-parte hearing of the suit by the learned first appellate court and as such, the contention of Mr. Ayush Aditya, the learned counsel appearing on behalf of the appellants with regard to the said issue is not accepted by the court.

**12.** With regard to the second law point framed by Mr. Ayush

Aditya, the learned counsel for the appellants with regard to the disputed plot number, the learned first appellate court has determined the same in paragraph no.11 of the judgment.

**13.** In light of the pleadings before the learned first appellate court, the learned first appellate court has found that there is no dispute among the party that a total of 15.60 acres of land at Mouza Datma, P.S. Ormanjhi, present P.S. Sikidiri, District Ranchi was purchased by Sheikh Ramjan along with Sheikh Panchu, Sheik Lachhu, Sheikh Ardali and Md. Ali Vide Sale Deed No-5067 dated 14.11.1945 from Khatiyani-Raiyat Bahuran Mahto. It was also found to be admitted by the learned first appellate court that neither of the parties dispute the fact that the purchasers came in possession of the above land after acquiring the same by way of sale deed. The subsequent family partition has also not been disputed wherein it is stated that Sheikh Ramjan received 5.20 acres out of the above land as his share. The Plaintiff / Respondents have contended that after the death of Sheikh Ramjan his only son Sheikh Jamaludin came in possession of the above land and later on his death his three sons including the plaintiff acquired and came in khas possession of the same which included the suit land of 10 decimal under Khata No-56, Plot No-64, at Mauza-Datma and rent-receipts were issued in their favour. The learned court has further examined the plaintiff witnesses i.e. PW 1 to PW 5 and all the witnesses have supported the case of the plaintiff and the plot number has also described by them as plot

no.64. The dispute was raised by the appellants/ defendants over the suit land measuring 10 decimals in Khata No.56 Plot no.64 and the contention was made that 20 decimal of land under Khewat No-5, Khata No-56, Plot No-94 was sold by way of Registered Sale Deed No-13416 dated 16.12.1971 by Sheikh Ardali and Md. Ali out of their share of land purchased in 1945 in favour of Nanku Mahto, the father of the Appellant / Defendant No-1. It was also contended that the appellants came in peaceful possession over the same after death of Nanku Mahto. It was also contended that in 2017 the B.D.O. Ormanjhi has allotted the above land / all house under Pradhan Mantri Aawash Yojana Vide Letter No-1508(II) dated 14.11.2017 in favour of the Appellant / Panchmi Devi and they have constructed a house therein. The finding of the learned trial court has been considered by the learned appellate court in paragraph no.14 of the judgment. The learned court examining the exhibits has found that 10 decimal of land under Khata No-56, Plot No-64 which is the suit land is mentioned both in the Khatiyani as also in the Sale Deed Dated 14.11.1945 and that was in favour of Sheikh Ramjan, the grand-father of the plaintiff and others, who were all the ancestors of the plaintiff and the learned appellate court has further found that the suit land is mentioned in both the Survey Khatiyani and also in the Sale Deed executed in favour of the ancestors of the plaintiff. The copy of description of Khatiyani filed by the appellants also found 10 decimal of land in respect of Plot No-64. The learned courts have found that the suit and decree are concerning to 10

decimals of land under plot no.64 Khata no.56 for the claim and the case of the appellants was related to 20 decimals of land of plot no.94 under Khata no.56 and in view of that, the learned appellate court has found that the measurement of both the lands are different. The learned appellate court has also found that even the copy of the sale deed filed by the appellant/ defendants bears the mention of land located under plot no.94 and not plot no.64. In view of that, it was found that the appeal was with respect to the separate plots. On query made by the learned first appellate court, the counsel for the appellant/ defendants has not been able to answer as to why no steps have been taken to correct the plot number in the sale deed of 1971. The learned first appellate court has also found that no additional evidence was made by the appellants/ defendants herein to establish their case and exhibit the documents upon which they propose to rely.

**14.** It is well settled that the appeal is a continuance of the trial and the provisions are there that on the bona-fide, if the evidence is not led, that can be led before the learned first appellate court, however, no steps have been taken by the appellant/ defendants to prove on the documents which have been relied by them. In this background, the learned appellate court has been pleased to dismiss the contention of Mr. Ayush Aditya, the learned counsel appearing on behalf of the appellants with regard to disputed plot which has been tried to be made the law points in the present Second Appeal, which

clearly suggest that the first appellate court has given a judicious thinking over the issue in question and has passed the judgment. In view of that, this Court finds that there is no illegality and that is a mixed question of facts and law.

**15.** In view of above facts, reasons and analysis, the Court finds that all the issues which have been raised by Mr. Ayush Aditya, the learned counsel appearing on behalf of the appellants for admitting the instant Second Appeal have been rightly appreciated and answered by the learned first appellate court.

**16.** The Second Appeal can be admitted only on substantial question of law. In course of argument, no perversity has been shown by the learned counsel appearing for the appellants to admit the instant Second Appeal. It is well settled that the High Court is not required sitting under Section 100 of the Civil Procedure Code (CPC) to re-appreciate the evidences and there are concurrent findings of the learned two fact finding courts and there is no illegality in the impugned judgment, and as such, the present Second Appeal being Second Appeal No.136 of 2026 is, hereby, dismissed, and consequently, pending petition, if any, also stand disposed of.

**( Sanjay Kumar Dwivedi, J.)**

SI/ **A.F.R**

Dated : 11.06.2026,