

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 5443 of 2008

1. Bhagirath Kumar son of late Jharkhandi Kumar.
2. Shambhu Kumar.
3. Khedu Kumar.
- Petitioner 2 and 3 are sons of late Solo Kumar.
4. Deban Kumar son of late Hardhar Kumar.
5. Girju alias Birju Kumar.
6. Prakash Kumar.
7. Ranjit Kumar.

Petitioners 4 to 7 are sons of late Builtu Kuwar

Petitioner Nos. 1 to 7 are residents of village -
Kanhaiyapur, P.O. and P.S. Jarmundi, District -Dumka.

..... ... Petitioners
Versus

1. The State of Jharkhand.
2. Commissioner, Santhal Pargana Division, Dumka.
3. Charge Officer, Dumka.
4. Assistant Settlement Officer, Dumka.
5. Shishiya Devi wife of late Puran Kuwar.
6. Ramdayal Kuwar son of late Hetu Kuwar.
7. Sarbo Kuwar son of late Krishna Kuwar.
8. Most. Sitlo Kuwarin wife of latte Krishna Kuwar.
9. Makhbul Kuwar son of late Babne Kuwar.
10. Chaturbhuj Kuwar son of late Babne Kuwar.
11. Dijel Kuwar.
12. Raghunand Kuwar.
13. Barto Kuwar.
14. Raborson Kuwar.
15. Godo Kuwar.

Respondent No. 11 to 15 are sons of Late Sarkal
Kuwar.

16. Bhupati Devi daughter of Late Sarkel Kuwar

Respondent Nos. 5 to 16 are residents of village-
Kanhaiyapur, P.S.+P.O.-Jarmundi Subdivision, District-
Dumka.

17. Barelal Kuwar Son of Late Ashresh Kuwar
 18. Most. Lakhni Kunwarin wife of Late Ashresh
Kuwar
 19. Chhotelal Kunwar Son of Late Ashresh Kunwar
- All of village Kanhaiyapur, P.O.+P.S. Jarmundi Dist.-
Dumka.

..... ... Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Rajeeva Sharma, Sr. Advocate.
: Mr. Om Prakash, Advocate.
: Mr. Ritesh Kumar, Advocate.
For the State : Mr. Vineet Prakash, A.C. to S.C.-IV.
For the Resp. Nos. 5 to 15: Mr. Ajay Kumar Sah, Advocate.
: Mr. Souma Ranjan Mukherjee, Advocate.

14/ 25.08.2026 Heard Mr. Rajeeva Sharma, learned senior counsel appearing for the petitioners, Mr. Vineet Prakash, learned A.C. to S.C.-IV appearing for the State and Mr. Ajay Kumar Sah, learned counsel appearing for the respondent Nos. 5 to 15. Rest of the respondents have chosen not to appear in the matter.

2. This writ petition has been filed under Article 226 of the Constitution of India for quashing the order dated 06.07.2007 passed by the learned Commissioner, Santhal Pargana Division, Dumka in Title Revision No. 24 of 1987, whereby he has been pleased to dismiss the review application dated 15.06.2007 filed by the petitioners for reviewing his order dated 08.01.2007, whereby he has been pleased to confirm the orders dated 22.08.1987 and 28.10.1983 passed by the learned Charge Officer and Assistant Settlement Officer, Dumka in Title Appeal No. 08 of 1983 and Title Partition Suit No. 97 of 1975 respectively, whereby the learned courts have been pleased to dismiss the partition suit, filed by the plaintiffs/petitioners for partition of the suit lands between the parties, who are admittedly, descendants of the common ancestors.

3. Mr. Sharma, learned senior counsel appearing for the petitioners submits that the petitioners/plaintiffs filed a partition suit bearing No. 97 of 1975 before the court of learned Subordinate Judge, Dumka for partition of the lands in question specified in schedule B of the Plaint, namely, JB No. 10/8 of Mouza - Kanhaiyapur No. 33, Sardari Circle Bashkinath, P.S. - Jarmundi, District - Dumka. He next submits that admittedly the parties are the descendants of the common

ancestors. He further submits that the petitioners/plaintiffs had pleaded in the plaint that the lands in question were recorded jointness (*Ismail*) in the *Gantzer Settlement* Purcha in the names of their ancestors namely Chinu Kuwar, Son of Kani Kuwar, Beni Kuwar and Tony Kuwar, both sons of Nagi Kuwar. He then submits that the respondents herein have opposed the prayer of partition and have pleaded that oral partition of the lands in question had already taken place and the parties thereof have been possessing their shares in the lands separately. He also submits that the said partition suit being Partition Suit No. 97 of 1975 in light of Regulation-III of 1872, was transferred to the learned Assistant Settlement Officer, Dumka. He next submits that the learned Assistant Settlement Officer by his impugned order dated 28.10.1983 without discussing / evaluating the oral and documentary evidence has been pleased to hold that partition, which has already been taken place. He further submits that against the said impugned order, the petitioners herein have preferred Title Appeal No. 08 of 1983 before the learned Charge Officer, Dumka, however, the learned Charge officer by his order dated 22.08.1987 has been pleased to dismiss the said appeal by way of confirming the findings of learned Assistant Settlement Officer, Dumka.

4. Learned senior counsel further submits that the said order of learned Charge Officer was further challenged in Title Revision No. 24 of 1987 before the learned Commissioner, Santhal Pargana Division, Dumka, however, the said revision has also been dismissed by the learned Commissioner by the order dated 08.01.2007 upholding the concurrent findings of two of the learned courts. He also submits that thereafter the petitioners have also filed a review petition against the order dated 08.01.2007 of the learned Commissioner in Title Revision No. 24 of 1987, however, the same was also dismissed by the learned Commissioner by his order dated 06.07.2007 observing that his

previous order was logical and correct.

5. Learned senior counsel has relied in the case of ***Ramrudhar Singh Versus Dileshwar Singh & Ors.***, reported in (1964) BLJR 823.

6. On these grounds, Mr. Sharma, learned senior counsel appearing for the petitioners submits that all these learned courts have not appreciated any documentary evidence and only on the basis of oral evidence, have been pleased to hold so, which is not correct and in view of that all these impugned orders may kindly be set aside.

7. On the other hand, Mr. Vineet Prakash, learned counsel appearing for the respondents-State has opposed the prayer and submits that all the learned authorities have appreciated the evidences of the witnesses and found that the partition was already taken place and thereafter passed the orders. He next submits that there are concurrent findings of three of the authorities and there is no illegality in all the impugned orders and in view of that the writ petition may kindly be dismissed.

8. Mr. Ajay Kumar Sah, learned counsel appearing for the respondent Nos. 5 to 15 submits that the Title Partition Suit No. 97 of 1975 was filed on behalf of the petitioners and others against the defendants and others on 12.12.1975, however, in light of the further notification, it has been transferred to the learned Assistant Settlement Officer, Dumka on 17.01.1977. He next submits that it is an admitted position that both the parties are agnates and the learned courts have examined the witnesses and considered their statements and have come to the conclusion that the partition has already been taken place and that was happened prior to Gantzer Settlement i.e. more than 50 years ago. He submits that in view of above, there is no illegality in the impugned order. He further submits that the oral family partition is well maintained and it is well settled and to buttress his argument, he relied in the case of ***Kale & Ors. Versus Deputy Director of Consolidation &***

Ors., reported in **(1976) 3 SCC 119**, wherein the Hon'ble Supreme Court in para-42, has held as follows:-

“42. Finally in a recent decision of this Court in S. Shanmugam Pillai's case (supra) after an exhaustive consideration of the authorities on the subject, it was observed as follows:

"Equitable principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

As observed by this Court in T. V. R. Subbu Chetty's Family Charities' case (supra), that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open."

In these circumstances there can be no doubt that even if the family settlement was not registered it would operate as a complete estoppel against respondents Nos. 4 & 5. Respondent` No. 1 as also the High Court, therefore, committed substantial error of law in not giving effect to the doctrine of estoppel as spelt out by this Court in so many cases. The learned counsel for the respondents placed reliance- upon a number of authorities in Rachbha v. Mt. Mendha; Chief Controlling Revenue Authority v. Smt. Satyawati Sood and some other authorities, which, in our opinion have no bearing on the issues to be decided in this case and it is therefore not necessary for

us to refer to the same.”

9. Relying on the above judgment, Mr. Sah, learned counsel submits that oral partition even not registered, can be valid, arising out of the family partition. He also submits that there are concurrent findings of three courts and further there are disputed questions of facts and the evidences, which cannot be re-appreciated in the writ jurisdiction under Article 226 of the Constitution of India. On these grounds, he submits that the writ petition may kindly be dismissed.

10. In view of the above submissions of learned counsel appearing for the respective parties, the court has gone through the materials available on record including the impugned orders passed by the three of the authorities. The learned Assistant Settlement Officer, Dumka has taken into account the submission and found that it has been stated by the defendants that since the date 10.05.1977 except bandh and kund none of the properties are in joint possession. Since the bandh and kund are necessary for keeping in jointness and they were enjoyed the same jointly and rest of the properties are separated before the *Gantzer Settlement* and before that both the sides have already partitioned their properties and all were enjoying their shares and even doing the agricultural works upon their respective shares.

11. Considering all these facts as family settlement, the learned Assistant Settlement Officer has found that although there is no written partition, however, the witnesses in their evidences have proved that except bandh and kund, rest of the properties have already been partitioned and the plaintiffs have also admitted before the learned Assistant Settlement Officer that all were raiyats and all were enjoying their respective properties separately and that was happening since more than 50 years of passing the said order and that was done by the elders of the petitioners and the defendants, who are petitioners and respondents respectively in the present writ petition. In these

backgrounds, the learned Assistant Settlement Officer by the order dated 28.10.1983 has found that the partition has already been taken place and has been pleased to dismiss the said partition suit, which was challenged by the petitioners before the learned Charge Officer, Dumka.

12. On perusal of the order of the learned Charge Officer, it transpires that the charge officer has further appreciated the evidences of the witnesses and found that the plaintiffs have also admitted that they were residing separately that too before the *Gantzer Survey Settlement* and the other witnesses have said so and thereafter the learned Charge Officer has been pleased to dismiss the appeal by the order dated 22.08.1987, however, the said order was again challenged by the petitioners herein before the learned Commissioner, Dumka, in Title Revision No. 24 of 1987.

13. The learned Commissioner has found that the petitioners herein themselves did not specify possession of any party actually belonged to which defendant party and in absence of such a specification, the entries in the remarks column of the parcha is sufficient proof to show that the parties were in possession of the land accordingly the learned Commissioner has also examined the documents as well as the oral evidence and found that there are concurrent findings of two courts and dismissed the said title revision by the order dated 08.01.2007. Thereafter the petitioners have also filed a review petition against the order dated 08.01.2007 of the learned Commissioner in Title Revision No. 24 of 1987, however, the same was also dismissed by the learned Commissioner by his order dated 06.07.2007 observing that his previous order was logical and correct.

14. In view of the above, it transpires that there are concurrent findings and no perversity has been shown by the learned senior counsel and in this regard, reference may be made to the case of

Chandavarkar Sita Ratna Rao Versus Ashalata S. Guram, reported in (1986) 4 SCC 447, wherein the Hon’ble Supreme Court in para-16 has held as follows:-

“16. ... It is well settled that the High Court can set aside or ignore the findings of fact of an appropriate court if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the courts below have come or in other words a finding which was perverse in law. This principle is well settled. In *D.N. Banerji v. P.R. Mukherjee* [(1952) 2 SCC 619] it was laid down by this court that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities. ...”
(Emphasis Supplied)

15. The said judgment was further considered by the Hon’ble Supreme Court in the case of ***Shamshad Ahmad Versus Tilak Raj Bajaj***, reported in (2008) 9 SCC 1 in para-38 as well as in the case of ***Krishnanand Versus Director of Consolidation***, reported in (2015) 1 SCC 553, where in para-12, the Hon’ble Supreme Court has held as follows:-

“38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is

supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law.”

“12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for reappreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. ...” (Emphasis Supplied)

16. In view of the above judgments and further considering the concurrent findings of the learned three courts, the writ court is not required to reappreciate the evidence and this court further find force in the argument of learned counsel appearing for the respondent Nos. 5 to 15 that oral evidence can be maintained and the same finds supports in light of the judgment of Hon’ble supreme Court in the case of **Kale & ors. (Supra)**.

17. So far as the judgment relied by the learned senior counsel appearing for the petitioners in the case of **Ramrudhar Singh (supra)** is concerned, that was based on the facts and circumstances of that case and the facts of the present case is otherwise, as such, the said order is

not helping the petitioners.

18. Further it is well settled that if the partition is not proved, appropriate order can be passed by the High Court, however, the facts of the present case are otherwise, as the oral partition is proved which has been found support from the concurrent findings of the learned three authorities that too on the admission of the plaintiffs/petitioners.

19. In view of the above facts, reasons and analysis, no case of interference is made out. As such, this petition is hereby, dismissed.

(Sanjay Kumar Dwivedi, J.)

Dated:-25.08.2026

Amitesh/- **[A.F.R.]**