# IN THE HIGH COURT OF JUDICATURE AT PATNA
**FIRST APPEAL No.48 of 2006**

**CNR No. BRHC010359652006**

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1. Arjun Prasad, Son of late Guru Sharan Ram, Resident of Silaw, P.S. Silao, District-Nalanda.
2. Bikrant Kumar, Son of Arjun Prasad, Resident of Silaw, P.S. Silao, District-Nalanda at Biharsharif.
3. Vivek Kumar, Son of Arjun Prasad, Resident of Silaw, P.S. Silao, District-Nalanda at Bihar Sharif.

... ... Appellant/s

Versus

2. Arvind Kumar, Son of Sri Saryu Prasad, Resident of Silaw, P.S. Silao, District-Nalanda at Biharsharif.
3. Anil Kumar, Son of Sri Saryu Prasad, Resident of Silaw, P.S. Silao, District-Nalanda at Biharsharif.
4. Sunil Kumar, Son of Sri Saryu Prasad, Resident of Silaw, P.S. Silao, District-Nalanda at Biharsharif.

... ... Respondent/s

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**Appearance :**
For the Appellant/s : Mr. Ramesh Kumar Chaudhary, Advocate
For the Respondent/s : Mr. Sanjay Prasad, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA**

**CAV JUDGMENT**

**Date : 30.10.2026**

Heard learned counsel for the appellants as well as learned counsel for the respondents.

**2.** The present first appeal has been preferred under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) against the judgment dated 28.01.2006 and decree dated 16.02.2006 passed by the Court of learned Subordinate Judge-VII, Biharsharif at Nalanda (hereinafter referred to as ‘Trial Court’) in Title Suit No.102 of 1997,

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wherein the learned Trial Court dismissed the claim of the plaintiffs (appellants herein) with cost.

**3.** For the sake of convenience, the parties shall be referred to in terms of their status before the learned Trial Court.

**4.** The facts of the case, as set out in the plaint, are that the appellants-plaintiffs instituted Title Suit No. 102 of 1997 seeking a decree for partition of their 66 paise share in the movable and immovable properties described in Schedules II and III of the plaint, claiming the same to be joint family properties in joint possession of the parties. The case of the plaintiffs is that Govind Ram of village Chainpura, P.S. Atri, District Gaya, had two sons, namely, Kanhai Ram and Gurusharan Ram, and the latter was adopted by Kashiram of village Silao, District Nalanda, who was married to the sister of Govind Ram and had no issue of his own. According to the plaintiffs, Gurusharan Ram thereafter, started residing with Kashiram as his adopted son, and upon the death of Kashiram and his wife Devaki Devi, succeeded to their properties. It is further pleaded that Gurusharan Ram died leaving behind his wife, plaintiff no. 4 Binda Devi *alias* Meghni Devi, and two sons, namely, plaintiff no. 1 Arjun Prasad and defendant no. 1

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Saryug Prasad, who inherited and continued in joint possession of the family properties. Since plaintiff no. 1 was a minor at the time of his father's death, defendant no. 1, being the elder brother, allegedly managed the family affairs and properties as the *Karta* of the joint family. The plaintiffs further asserted that the family possessed movable and immovable properties, including business assets, over which the parties had unity of title and possession, but subsequent disputes and differences necessitated the institution of the suit for partition.

**5.** The defendants-respondents appeared and filed their written statement, denying the relationship of brotherhood between plaintiff no. 1 Arjun Prasad and defendant no. 1 Saryug Prasad and disputing the genealogy set out in the plaint. Their specific case was that they belonged to a different family originating from Budhan Ram of village Karah Haiderganj, P.S. Silao, District Nalanda, who had two sons, Kashiram and Bihari Ram. It is stated that Kashiram’s natural son was Gurusharan Ram, whose only son was defendant no. 1 Saryug Prasad, whereas the plaintiffs belonged to the family of Govind Ram of village Chainpura, District Gaya, whose son Gurusharan Ram was a different person altogether. The defendants denied that Kashiram had adopted the plaintiffs’ alleged father or that

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plaintiff no. 4 was the mother of defendant no. 1. It was further asserted that defendant no. 1 had inherited the properties of Kashiram and Bihari Ram and was in exclusive possession thereof, while the plaintiffs had no right, title or interest in the same. It was also pleaded that plaintiff no. 1 was a tenant in the house of defendant no. 1, that the parties had no unity of title or possession, and that the plaintiffs had suppressed the existence of Geeta Prasad, the alleged elder brother of plaintiff no. 1. On these grounds, the defendants challenged the maintainability of the suit and prayed for its dismissal.

**6.** On the basis of the pleadings of the parties, the learned Trial Court framed eleven issues for determination, as herein under:

> "*(i) Is the suit as framed maintainable?*
>
> *(ii) Have the plaintiffs got cause of action for the suit?*
>
> *(iii) Is the suit barred by sec, 34 of the Specific Relief Act?*
>
> *(iv) whether the court fee paid sufficient?*
>
> *(v) Is the suit barred by law of limitation?*
>
> *(vi) Whether Kashi Ram of village Silao Haidarganj Karah was married with the sister of Govind Ram of Village-Chainpura, P.S. Atri, District-Gaya?*
>
> *(vii) Whether there were two Gurusharan Ram, one son of Kashi Ram of Village-*

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*Silao Haidarganj, P.S. Atri?*

*(viii) Whether plaintiff Arjun Prasad and defendant no. 1 Saryug Prasad are sons of one and the same Gurusharan Ram from mother late Most. Binda Devi @ Meghni Devi?*

*(ix) Is there any unity of title and possession in between the plaintiffs and the defendants?*

*(x) Are the plaintiffs entitled to a decree for partition of the suit property?*

*(xi) To what reliefs other for which the plaintiffs are entitled too?"*

**7.** In support of their respective cases, both parties adduced oral as well as documentary evidence. The plaintiffs examined thirteen witnesses and exhibited documentary evidence, which are as under in tabular form for ready reference:

**List of Plaintiff-Witnesses**

| **PWs** | **Description** |
|---|---|
| PW-1 | Binda Devi @ Meghni Devi (wife of Gurusharan Ram/mother of plaintiff no.1 and defendant no.1/plaintiff no.4) |
| PW-2 | Chandradeo Ram (maternal uncle of plaintiff no.1 and defendant no.1 and brother of PW-1) |
| PW-3 | Vijay Kumar (purchaser of land from Kanhai Ram) |
| PW-4 | Rajendra Prasad (Friend of Kashi Ram from a neighbour village) |

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|---|---|
| PW-5 | Dr. Indradeo Prasad Gupta (known to the parties) |
| PW-6 | Barho Devi (elder daughter of Govind Ram) |
| PW-7 | Wasi Ahmed (known to the parties) |
| PW-8 | Arjun Prasad (plaintiff no.1) |
| PW-9 | Diksha Narayan Singh (formal witness) |
| PW-10 | Chandra Choudhary (close door neighbour of the plaintiffs and defendants) |
| PW-11 | Bihari Prasad (relative of the plaintiffs and defendants) |
| PW-12 | Jagat Prasad Singh (headmaster of Middle School, Silao who brought the admission register of 1965-1966) |
| PW-13 | Sitaram Pandit (chaukidari sarpanch/formal witness) |

**List of Exhibits**

| **Exts.** | **Description** |
|---|---|
| Ext.-1 | Original sale deed dated 28.09.1972 |
| Ext.-2 to 2C | Chaukidari receipts |
| Ext.-3 | School Admission Register of Middle School, Silao |
| Ext.-4 | Revenue Rent Receipt |
| Ext.-5 | Order of Mutation of Anchal Adhikari dated 30.10.1997 |
| Ext.-6 | Mutation Paper |
| Ext.-7 | C.C. of the Voter List of year 1980 of Rajgir constituency, Village-Silao |
| Ext.-8 | Gram Panchayat Parikarik Register of year 1958 |
| Ext.-9 | Mutation Suddhi Patra |

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|---|---|
| Ext.-10 | Residential Certificate |
| Ext.-11 | Original certificate in the name of Arjun Prasad issued by Bihar Vidyalaya Pariksha Samiti |
| Ext.-12 | Deposition of Saryu Prasad in T.S. No.139 of 1996 |

**8.** The defendants, on the other hand, examined ten witnesses and produced documentary evidence to support their plea of separate genealogies, exclusive possession and the alleged independent identity of the two persons named Gurusharan Ram. The evidence, oral as well as documentary, produced by the defendants are as herein under in tabular form for ready reference:

**List of Defendant Witnesses**

| **DWs** | **Description** |
|---|---|
| DW-1 | Sheo Nandan Prasad (known to the parties) |
| DW-2 | Saryug Prasad (defendant no.2) |
| DW-3 | Mahendra Singh (known to the parties) |
| DW-4 | Brij Nandan Prasad (co-villager) |
| DW-5 | Miskri Singh (known to the parties) |
| DW-6 | Uma Charan Ram (relative) |
| DW-7 | Shyam Kishore Prasad (formal witness) |
| DW-8 | Hari Mahto (known to the parties) |
| DW-9 | Bishnu Dayal Prasad (formal witness) |
| DW-10 | Ram Bilash Yadav (formal witness) |

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**List of Exhibits**

| Exts. | Description |
|---|---|
| Ext.-A | Deed of Mortgage dated 07.03.1960 executed by Saryug Ram in favour of Dwarka Ram |
| Ext.-B to B17 | Chaukidari Receipts |
| Ext.-C to C9 | Challan showing payment of land revenue in the name of Bihari Ram |
| Ext.-D | License in the name of Arvind Kumar |
| Ext.-E | Order-sheet dated 11.04.1957 |
| Ext.-F | Survey Khatian |
| Ext.-G | Notice |
| Ext.-H | Fine charge dated 28.07.1975 |
| Ext.-I | Tax token of B.R.Q.-4588 |
| Ext.-J | Road permit of Taxi No. B.R.Q.-4588 in the name of Gita Prasad |
| Ext.-J1 | Notice in the name of Gita Prasad |
| Ext.-K | Notice fine in the name of Gita Prasad |
| Ext.-K1 | Road permit in the name of Gita Prasad |

**9.** Upon consideration of the oral and documentary evidence, the learned Trial Court, by the impugned judgment and decree dated 28.01.2006, dismissed the suit with costs. The learned Trial Court held that the plaintiffs had failed to establish the alleged adoption of Gurusharan Ram by Kashiram and had not satisfactorily proved that plaintiff no. 1 Arjun Prasad and defendant No. 1 Saryug Prasad were sons of the same person. Learned Trial Court further doubted the genuineness and

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evidentiary value of Ext.-1, questioned the reliability of certain documents produced by the plaintiffs, and considered Exts.-7 and 8 doubtful on account of discrepancies concerning the villages to which they related and the circumstances surrounding their issuance. The learned Trial Court further relied upon the documentary evidence produced by the defendants to hold that the plaintiffs belonged to a different lineage and observed that the alleged suppression of Gita Prasad, stated to be the brother of plaintiff no. 1, adversely affected the plaintiffs' case and rendered the suit defective for non-joinder of a necessary party. Consequently, it held that the plaintiffs had failed to establish the joint family relationship, unity of title and joint possession necessary to sustain their claim for partition and were not entitled to any share in the suit properties.

**10.** Aggrieved by the aforesaid judgment and decree, the plaintiffs have preferred the present first appeal.

**11.** Learned counsel appearing on behalf of the appellants submitted that the impugned judgment and decree passed by the learned Trial Court suffer from material errors in the appreciation of oral and documentary evidence, resulting in the erroneous dismissal of the suit for partition. It is submitted

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that the principal controversy in the suit concerns the identity of the common ancestor and the relationship between the parties. The appellants have consistently asserted that plaintiff no.1 Arjun Prasad and defendant no.1 Saryug Prasad are the sons of the same Gurusharan Ram, and the later was taken in adoption by Kashiram, who was married to the sister of Govind Ram of village Chainpura, District Gaya. Learned counsel further submitted that the oral testimony of the witnesses acquainted with the family history, read in conjunction with the documentary evidence, sufficiently establishes the pleaded genealogy and the entitlement of appellants to a share in the suit properties.

**11.i.** Learned counsel for the appellants further submitted that the learned Trial Court failed to attach due evidentiary value to Ext.-1, the registered sale deed dated 28.09.1972, in which defendant no. 1 is described as acting on his own behalf and as guardian of his minor brother, Arjun Prasad. Learned counsel submitted that the said document constitutes a significant piece of evidence supporting the relationship between the parties, particularly when the execution of the document was supported by the testimony of PW-3, the purchaser’s son, who claimed to have witnessed the

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transaction and identified both parties. Learned counsel also drew attention to Ext.-3, the school admission register recording Gurusharan Ram as the father of Arjun Prasad and Saryug Prasad as his guardian, as well as Exts.-7 and 8, the voter list and Gram Panchayat family register, respectively. It is submitted that these documents, considered cumulatively, lend substantial support to the appellants' case and could not have been discarded merely on the basis of conjectures or isolated discrepancies.

**11.ii.** Learned counsel next submitted that the learned Trial Court erred in rejecting the oral evidence adduced by the appellants without properly appreciating the testimony of the witnesses who were acquainted with the family and its affairs. It is pointed out that the evidence of PWs- 2, 4, 5, 6, 7, 10 and 11 were relied upon to establish the relationship between the parties and their joint possession of the suit properties. Particular emphasis has been placed on the testimony of DW-3, Mahendra Singh, which, according to the appellants, supported their case concerning the identity of the father of the parties and their residence in the ancestral house. It is submitted that the defence evidence was not subjected to an equally careful scrutiny and that the documentary materials relied upon by the

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respondents concerning revenue payments, business transactions and vehicles did not, by themselves, disprove the relationship pleaded by the appellants.

**11.iii.** Lastly, learned counsel for the appellants submitted that the learned Trial Court was not justified in drawing an adverse inference against the appellants on account of the alleged suppression of Geeta Prasad, particularly when the appellants disputed the respondents' version regarding his relationship with plaintiff no.1. It is further submitted that the application seeking comparison of the thumb impression of defendant no.1 appearing on Ext.-1 was kept in abeyance by order dated 27.08.2001, and the absence of such comparison deprived the appellants of an opportunity to obtain expert evidence on a material issue. According to the appellants, the cumulative effect of the oral and documentary evidence establishes the relationship between the parties, the unity of title and possession, and their entitlement to the claimed 66 paise share. Accordingly, it is prayed that the impugned judgment and decree be set aside and the suit be decreed.

**12.** *Per contra*, learned counsel appearing on behalf of the respondents supported the impugned judgment and decree and submitted that the appellants have failed to establish

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the foundational fact necessary for maintaining a suit for partition, namely, their relationship with the respondents and their entitlement to a share in the suit properties. It is submitted that the defence has consistently maintained that the parties belong to two distinct families and that the similarity in the name of their respective ancestors, both named Gurusharan Ram, cannot establish a common lineage. Learned counsel submitted that Gurusharan Ram who was the father of defendant no.1 was the natural son of Kashiram of Karah Haiderganj, District Nalanda, whereas the father of plaintiff no. 1 belonged to the family of Govind Ram of Chainpura, District Gaya. Learned counsel submitted that the alleged adoption, which forms an essential link in the appellants' genealogy, has not been established by reliable evidence. He further submitted that Malti Devi was the wife of Gurusharan Ram and not Binda Devi. Gurusharan Ram and Malti Devi were killed in the 1946-47 riots. Bihari Ram died issueless on 18.02.1957, and Kashiram died in 1984. He also stated that Govind Ram of Chainpura had no sister married to Kashiram. His sister, Rama Devi, was married to Ramlal of Gauriasarai (Khodaganj). The plaintiffs' Gurusharan Ram is an altogether different person who lived at Chainpura (Gaya).

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**12.i.** He further submitted that plaintiff No. 1 is the grandson of Govind Ram and has an elder brother, Geeta Prasad, who was not impleaded. Plaintiff No. 1 has lived in Silao since 1964 and worked as a taxi driver and lives as a tenant in a house of Defendant No. 1. He further submitted that the suit was allegedly instigated by Om Prakash, a cousin of Arjun who was dismissed from a shop of defendant no. 1's son. The defendants has exclusive possession, right, title and interest over the disputed property. He further submitted that the defendants proved through documentary evidence, Exts. G, G/1, G/2, H, I, J and K (sales-tax notices, fine receipts, tax token and road permits), that Plaintiff No. 1 Arjun Prasad has a real brother, Geeta Prasad, and that both are taxi drivers. The plaintiffs did not plead the existence of Geeta Prasad. On the plaintiffs' own case, that Plaintiff No. 1 is the son of Gurusharan Ram and is entitled to a share in the property of the Karah family, Geeta Prasad, as a full brother of Plaintiff No. 1, would be equally a co-sharer. His deliberate omission has two consequences; (i) the suit is bad for non-joinder of a necessary party, since no effective partition decree can be passed in the absence of a person whose share would be affected (Issue No. 4); and (ii) the plaintiffs did not come to court with clean hands.

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A party who conceals a material fact such as the existence of his own brother, to support a claim of descent from a different family, is disentitled to equitable relief.

**12.ii.** Learned counsel for the respondents further submitted that Ext.-1 (sale deed dated 28.09.1972) does not conclusively establish the alleged brotherhood between plaintiff no.1 and defendant no.1. He submitted that the respondents disputed the execution and genuineness of the document by defendant no.1 and point out that the signature attributed to him on the sale deed is in *Devanagari* script, whereas his signatures on other documents, including Ext.-A, the registered mortgage deed, are in *Kaithi* script. It is submitted that the mere description of Arjun Prasad as a minor brother in the sale deed cannot dispense with the requirement of proving the execution of the document and authenticity when the same has specifically been disputed. Further, the land situated at Chainpura, which is the plaintiffs village and not defendant. Defendant No. 1 had no occasion to deal with land there as a guardian of anyone. Execution of a document does not by itself prove the relationship pleaded. Learned counsel further submitted that Ext.-3, the school admission register, and the other documents relied upon by the appellants are insufficient to

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establish the disputed genealogy, particularly in the absence of reliable corroboration concerning their preparation, authenticity and evidentiary significance. Exts. 3, 10 and 11 (school records) show only that the father's name of Plaintiff No. 1 is recorded as Gurusharan Ram. The defendants do not dispute that Plaintiff No. 1's father was named Gurusharan Ram. The dispute is whether he is the same Gurusharan Ram as the father of Defendant No. 1. The records say nothing about the village, the lineage, or adoption by Kashiram. They therefore prove nothing on the decisive question.

**12.iii.** Learned counsel for the respondents also submitted that the oral evidence adduced by the appellants suffered from material inconsistencies concerning the alleged adoption, the identity of the family members and the relationship between the parties. It is submitted that the testimony of the witnesses must be assessed in its entirety and that the statements of interested or related witnesses cannot be accepted without careful scrutiny, particularly where the central issue is the identity of the common ancestor. Learned counsel further relies upon the documentary evidence produced on their behalf, including the *chaukidari* receipts, revenue records, survey documents and other materials, to submit that the

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properties were held and dealt with independently by the respondents' family. It is submitted that the appellants have failed to establish that the suit properties formed part of a joint family estate in which they possessed any subsisting share.

**12.iv.** He further submitted that only a coparcener of a joint Hindu family can seek partition of coparcenary property, and every coparcener must trace descent from a common ancestor. The plaintiffs, having failed to prove a common ancestor, have no right to seek partition. The appellant's case depends wholly on proof of adoption and descent from a common ancestor. The plaintiff's own witnesses admit that Kashiram had a natural son named Gurusharan Ram, which negates the fact of adoption. On possession, the evidence shows that Plaintiff No. 1 is a resident of Gaya district who came to Silao for business in or about 1964 and resides there as a tenant in one of house of Defendant No. 1. The defendants proved their possession and occupation through both oral and documentary evidences. The learned Trial Court correctly concluded that the disputed property is not in joint possession and occupancy of both parties.

**12.v.** Learned counsel for the respondents lastly submitted that the appellants cannot succeed merely by pointing

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out alleged deficiencies in the evidence adduced by the respondents, as the burden of establishing their own title and entitlement to partition rests upon them. It is submitted that the appellants have failed to prove either the alleged adoption or the unity of title and possession, while the claim concerning the existence and role of Geeta Prasad further raises questions regarding the completeness of the parties impleaded in the suit. It is therefore submitted that the learned Trial Court, having considered the rival pleadings and the evidence on record, rightly dismissed the suit, and that no sufficient ground has been made out for interference by this Court in the present first appeal. Accordingly, the respondents prayed that the appeal be dismissed and the impugned judgment and decree be affirmed.

**13.** Having considered the rival submissions advanced on behalf of the parties and upon perusal of the pleadings and the materials available on record, the point which arises for determination in the present appeal is*: "whether the appellants have been able to establish that plaintiff no.1, Arjun Prasad, and defendant no.1, Saryug Prasad, are the sons of one and the same Gurusharan Ram and, consequently, whether the appellants are entitled to claim a 66 paise share in the suit properties?"*

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**14.** At the outset, it would be apposite to bear in mind that the jurisdiction of this Court in a first appeal under Section 96 of the CPC is both extensive and plenary. The first appellate Court is the final Court of fact and law and is under an obligation to independently reappraise and reassess the entire oral and documentary evidence available on record, keeping in view the pleadings of the parties, the issues framed, and the findings recorded by the learned Trial Court. While due consideration must be given to the reasoning adopted by the learned Trial Court, the appellate Court is not precluded from drawing its own conclusions on the evidence and determining whether the findings under challenge are sustainable in law and on facts. In the present appeal, therefore, this Court shall examine the material evidence on record, particularly the depositions of the witnesses and the documentary evidence adduced by the parties, to determine whether the findings recorded by the learned Trial Court with regard to the relationship between the parties, the alleged adoption, the genealogy, and the claim of unity of title and possession warrant interference in the exercise of its first appellate jurisdiction.

**15.** This Court has perused the materials available on

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record and at this stage it shall be appropriate to re-appreciate the testimonies of the witnesses on behalf of the appellants/plaintiffs.

**16.** PW-1, Binda Devi @ Meghni Devi, is the plaintiff no. 4 herself, since she is an interested witness in the case, her evidence has been scrutinized with utmost care and caution. It is found that in her examination-in-chief as well as in cross-examination, she has, in one way or the other, supported the plaintiffs' case. However, in paragraph no. 30 of her cross-examination, this witness has categorically stated that Kashiram had one son namely Gurusharan Ram.

**17.** PW-2, Chandra Deo Ram, brother of plaintiff no. 4, Binda Devi, deposed in his examination-in-chief that plaintiff no.1, Arjun Prasad, and defendant no.1, Saryug Prasad, were his nephews and that their grandfather, Govind Ram, belonged to village Chainpura, District Gaya. He stated that Govind Ram had a sister who was married to Kashiram of Karah, that Kashiram had no children and had brought Gurusharan Ram, son of Govind Ram, to his house and treated him as his son. According to the witness, Kashiram possessed land at Karah and Silao and also had a grocery business, and after his death, his properties devolved upon Gurusharan Ram, who

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subsequently died leaving behind his wife and two sons, Arjun Prasad and Saryug Prasad. He further stated that the parties belonged to the same family and that Saryug Prasad was managing the family affairs.

**17.i.** In his cross-examination, however, the witness admitted that he had no documentary proof of the marriage or the alleged relationship, had not seen the family registers of either Chainpura or Karah Haiderganj, and could not produce documentary evidence establishing that the two persons named Gurusharan Ram were one and the same. He also acknowledged that Chainpura and Karah Haiderganj were separate revenue villages and that he had no personal business connection with the family at Chainpura.

**18.** PW-3, Vijay Kumar, deposed in his examination-in-chief that he knew Govind Ram of village Chainpura, who had two sons, namely, Kanhai Ram and Gurusharan Ram, both of whom had died. He stated that Gurusharan Ram had two sons, Saryug Prasad and Arjun Prasad. He further testified regarding the sale of a four-decimal plot of land, together with a dilapidated tiled house situated thereon, by Kanhai Ram and Saryug Prasad in favour of Chandravati Devi for a consideration of Rs. 1,500/-, stating that, at the time of the

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transaction, Om Prakash, son of Kanhai Ram, and Arjun Prasad, brother of Saryug Prasad, were minors and that the transaction had taken place in his presence.

**18.i.** In his cross-examination, the witness stated that Govind Sao had died around 1971 and he had no documentary evidence concerning the genealogy of the family or the alleged relationship between Kashiram and Govind Sao. He admitted that he had never seen Kashiram or Gurusharan Ram of Karah Haiderganj, although he had heard from Govind Sao that Kashiram was his brother-in-law. He further admitted that he had not seen the family register of Gurusharan Ram and was unaware of several particulars concerning the genealogy and the alleged death of Gurusharan Ram during the communal riots of 1946.

**19.** PW-4, Rajendra Prasad Singh, deposed in his examination-in-chief that he knew Kashiram of Karah, who had no children and had brought up Gurusharan Ram as his son. He stated that Kashiram's matrimonial home was at village Chainpura, where Govind Ram resided, and, after Kashiram's death, his properties devolved upon Gurusharan Ram, whose sons were Saryug Prasad and Arjun Prasad. He further stated that Kashiram had a grocery shop and other properties at Karah.

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**19.i.** In his cross-examination, he admitted that Karah and his own village were separate revenue villages and he had visited Chainpura only a few times, without having any substantial acquaintance with its inhabitants. He admitted that he had never seen Govind Ram and his knowledge of the latter's family genealogy was derived from what Kashiram had told him. Further, he admitted that he had not witnessed the alleged adoption of Gurusharan Ram and had learnt about it from Kashiram and Bihari Ram. He was also unable to state whether any document evidencing the adoption existed and conceded that Gurusharan Ram's name had not been recorded in any of Kashiram's properties.

**20.** PW-5, Dr. Indradeo Prasad Gupta, deposed in his examination-in-chief that he knew Gurusharan Ram and his two sons, Saryug Prasad and Arjun Prasad, who, according to him, resided jointly in the same household and with whom he had social and familial relations. He further stated that Gurusharan Ram's ancestral house was at village Chainpura and Kashiram of Haiderganj Karah was Gurusharan Ram's maternal uncle by marriage.

**20.i.** In his cross-examination, he admitted that he had never visited Chainpura, had no acquaintance with its

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inhabitants, and had seen Gurusharan Ram only once during his childhood, without having any conversation with him. He further admitted that his knowledge regarding the relationship between Kashiram and Gurusharan Ram was derived from information supplied by his father and that he had neither seen any genealogical document nor possessed personal knowledge of Kashiram's family.

**21.** PW-6, Barho Devi, deposed in her examination-in-chief that Govind Ram of village Chandpura was her father and that he had two sons, namely, Kanhai Ram and Gurusharan Ram, and two daughters, namely, herself and Madho Devi. She stated that Devaki Devi, the sister of Govind Ram, was married to Kashiram of Karah, who had no issue and had taken Gurusharan Ram into his household, treating him as his son. According to her, Gurusharan Ram had two sons, Saryug Prasad and Arjun Prasad, and, after Kashiram's death, his properties devolved upon Gurusharan Ram and, subsequently, upon Saryug Prasad and Arjun Prasad, who continued to live jointly without partition. She further stated that she knew Kashiram personally, used to visit his house, and Gurusharan Ram had died leaving behind his wife, Binda Devi, and two sons.

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**21.i**. In her cross-examination, however, she admitted that she had no documentary evidence to establish the alleged relationship between Saryug Prasad and herself or to substantiate the genealogy pleaded by the appellants. She also stated that she had not attended Gurusharan Ram's *shradh* ceremony and could not specify how long before her subsequent visit to her parental village he had died.

**22.** PW-7, Wasi Ahmed, deposed in his examination-in-chief that he knew Saryug Prasad and Arjun Prasad and both had properties at Karah and Silao. He stated that Kashiram and his brother Bihari Ram had no children and Kashiram had taken Gurusharan Ram, the son of his wife's brother, into his household as a foster son. He further stated that Gurusharan Ram had two sons, Saryug Prasad and Arjun Prasad, and the properties of Kashiram devolved upon Gurusharan Ram and, after the latter's death, upon his two sons. He further stated that Saryug Prasad began looking after the properties after Kashiram's death, when Arjun Prasad was still young.

**22.i.** In his cross-examination, however, the witness admitted that he had no personal knowledge of Gurusharan Ram's parentage, had never visited Kashiram's matrimonial home, and had neither witnessed the alleged adoption nor knew

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whether any document had been executed in that regard. He was also unable to state whether, or in whose name, the properties of Kashiram were recorded in the relevant revenue or other official records. He admitted that he had come to depose at the instance of Arjun Prasad.

**23.** PW-8, Arjun Prasad, plaintiff no. 1, deposed in his examination-in-chief that he and defendant no. 1, Saryug Prasad, were full brothers, being the sons of Gurusharan Ram and Binda Devi, and they had a common interest in the properties situated at Karah and Silao. He stated that Gurusharan Ram, son of Govind Ram of Chandpura, had been taken into the household of Kashiram of Karah as a foster son, as Kashiram and his brother Bihari Ram had no children. He further stated that the properties of Kashiram devolved upon Gurusharan Ram and, after the latter's death, upon Saryug Prasad and himself, who continued to hold them jointly without partition. He further deposed that Saryug Prasad was managing the affairs of the family and the present suit had been instituted because of disputes arising within the family.

**23.i.** In his cross-examination, however, the witness admitted that he had not witnessed the alleged adoption, could not state its date or the age of Gurusharan Ram at the relevant

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time, and had neither seen any document evidencing the adoption nor produced any independent witness from Chandpura to establish it. He further admitted that he had no documentary evidence regarding the alleged relationship between Govind Ram and Kashiram, the absence of children of Kashiram, or the devolution of Kashiram's properties upon Gurusharan Ram. He was also unable to state whether Gurusharan Ram's name had been recorded in the relevant revenue records after Kashiram's death and admitted that he had no documentary evidence to establish the joint acquisition of the properties claimed by him.

**24.** PW-10, Chander Choudhary, deposed in his examination-in-chief that he knew both parties and resided in their neighbourhood. He stated that Saryug Prasad and Arjun Prasad were full brothers, being the sons of the same Gurusharan Ram, and he had also seen their mother. He further stated that Kashiram, who had no children, had taken Gurusharan Ram, the son of his wife's brother, into his household as a foster son, and the properties of Kashiram devolved upon Gurusharan Ram and, thereafter, upon Saryug Prasad and Arjun Prasad, who possessed the properties jointly.

**24.i.** In his cross-examination, he admitted that he had

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never visited Chandpura and had not seen the genealogical records of either the family of Govind Ram or Kashiram. Although he claimed to know that Gurusharan Ram of Chandpura had come to Silao with his wife about 50–60 years earlier, he was unable to state the age of Gurusharan Ram at that time or provide specific particulars concerning his family. He further admitted that he had no documentary evidence establishing the relationship between Saryug Prasad and Arjun Prasad or the alleged adoption of Gurusharan Ram by Kashiram.

**25.** PW-11, Bihari Prasad, deposed in his examination-in-chief that he knew both parties and had social relations with them, including customary visits and participation in meals and family occasions. He stated that Saryug Prasad and Arjun Prasad were full brothers, being the sons of Gurusharan Ram, and the properties situated at Silao and Karah had originally belonged to Gurusharan Ram and subsequently came into the joint possession of both brothers, with Saryug Prasad managing the affairs of the family. He further denied that Arjun Prasad had a brother named Geeta Prasad and maintained that the Gurusharan Ram of Silao and the Gurusharan Ram of Karah were one and the same person.

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**25.i.** In his cross-examination, he admitted that he had not personally seen Gurusharan Ram about whom he deposed and his knowledge of him was derived from information supplied by his deceased father approximately 20–25 years earlier. He further admitted that he had neither seen any genealogical record nor any document relating to the properties allegedly held by Gurusharan Ram, and he had no documentary evidence to establish the relationship between the parties or their joint ownership of the suit properties. He also admitted that he had come to depose at the instance of Arjun Prasad.

**26.** PWs-9, 12 and 13 are formal witnesses.

**27.** Now, it is pertinent to re-appreciate the evidence adduced by the respondents/defendants.

**28.** DW-1, Sheo Nandan Prasad, deposed in his examination-in-chief that he knew both parties and stated that Arjun Prasad of Chandpura and defendant no. 1, Saryug Prasad, belonged to different families. He further stated that Kashiram of Haiderganj Karah had a son, whose name he could not recall, and three grandsons, of whom Saryug Prasad was one. He also stated that Kashiram and his brother Bihari Ram had properties and houses at Karah, as well as properties at Silao.

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**28.i.** In his cross-examination, he clarified that the eldest grandson of Kashiram was Arvind, while he could not recall the names of the other two. He further stated that Kashiram was married into the family of Arjun Prasad and Arjun and Saryug resided in the same house, Arjun having come there at the age of approximately 10–12 years and thereafter residing with Saryug. He also stated that both parties had their maternal homes at Nardiganj.

**29.** DW-2, Saryug Prasad, defendant no.2, deposed in his examination-in-chief that the genealogy furnished by the plaintiffs was incorrect and, according to his own genealogy, Budhan Ram was his great-grandfather, whose two sons were Kashiram and Bihari Ram. He stated that Kashiram had a son named Gurusharan Ram, who was his father, and his mother was Malti Devi. He denied that plaintiff no.1, Arjun Prasad, was his brother or Binda Devi (PW-1) was his mother, stating that Arjun Prasad belonged to a different family of village Chandpura, District Gaya. He further denied that Kashiram had adopted Gurusharan Ram of Chandpura or that the latter had any connection with the family or properties of Kashiram. He further stated that Kashiram died in 1945, his parents died during the communal riots of 1946, and Bihari Ram, who had

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no children, died on 18.02.1957. He claimed that, following the death of Bihari Ram, he became the sole surviving heir and obtained mutation of the properties in his name, with rent receipts thereafter being issued in his favour. He also disputed the plaintiffs' claim to the properties situated at Karah and Silao, stating that certain properties were ancestral, some had been acquired by him independently, and others belonged to his wife or sons. He further deposed that Arjun Prasad and his alleged brother Geeta Prasad had come to Silao for employment, that Arjun Prasad had worked as his taxi driver and occupied a room in his house as a tenant, and the present suit had been instituted after disputes arose over payment of rent.

**29.i.** In his cross-examination, he reiterated that Arjun Prasad and Geeta Prasad belonged to the family of the Gurusharan Ram of Chandpura, whereas his own father was a different person bearing the same name. He stated that his parents had died during the communal riots of 1946-47. He also stated that he had not maintained written accounts of his business transactions and could not furnish specific particulars of several properties, including their individual areas and boundaries. He further admitted that the documentary material

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relating to certain properties was not available with him and that he had not examined all the documents inherited from Bihari Ram. He stated that he had visited Chandpura only after institution of the suit to ascertain Arjun Prasad's family background and the information he obtained was based on inquiries made from a local person.

**30.** DW-3, Mahendra Singh, deposed in his examination-in-chief that he knew both parties and had seen the suit properties, over which he had observed Saryug Prasad exercising possession, whereas he had never seen Arjun Prasad in possession thereof. He stated that Saryug Prasad was the only son of Gurusharan Ram and that Arjun Prasad belonged to the family of village Chandpura, having no relationship with Saryug Prasad's family. In his cross-examination, he admitted that he had no personal relationship with Saryug Prasad's family and that his knowledge of Arjun Prasad's status as a tenant was derived from what Saryug Prasad had told him; he had never witnessed Arjun Prasad paying rent.

**31.** DW-4, Brij Nandan Prasad, deposed in his examination-in-chief that he knew Saryug Prasad, whose father, according to him, was Gurusharan Ram and whose grandfather was Kashiram. He stated that Saryug Prasad was the only son of

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Gurusharan Ram. He further stated that a school, namely, K.B. Public School (Kashi Bihari Public School), was being run in the ancestral house of Saryug Prasad at Karah and that he himself was managing the school. He further stated that Saryug Prasad had permitted him to run the school free of charge to perpetuate the memory of his ancestors, with the responsibility for maintenance resting upon the school management.

**31.i.** In his cross-examination, he admitted that he had never seen either Kashiram or Gurusharan Ram and that his knowledge concerning them was based on information received from others. He stated that he had heard from his grandfather approximately 15–20 years earlier that Saryug Prasad was the only son of Gurusharan Ram, but acknowledged that he had no close relationship with Saryug Prasad and had met him only occasionally.

**32.** DW-5, Miskri Singh, deposed in his examination-in-chief that he knew both parties and had known Darshan Ram of his village, whose grandson, according to him, was Arjun Prasad. He stated that Darshan Ram had one son and five daughters, including Binda Devi, and Arjun Prasad had a brother whose name he could not recall. He further stated that he knew Saryug Prasad because both of them had earlier

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operated vehicles for hire and stated that Saryug Prasad had no relationship with Darshan Ram.

**32.i.** In his cross-examination, he admitted that he had no close connection with Darshan Ram's family and was unable to provide particulars regarding the names of all his daughters, their marital relationships, or their descendants. He further stated that he did not know the family relationships and genealogies of several families residing there. He stated that he had never resided at Silao and that his acquaintance with Saryug Prasad arose from their respective activities in vehicle operators' unions approximately 35 years earlier. Significantly, he admitted that he had never visited Saryug Prasad's alleged maternal home at Akbarpur or met the members of that family, and his knowledge regarding the same had been derived from Saryug Prasad himself.

**33.** DW-6, Uma Charan Ram, in his examination-in-chief, deposed that he knew Ram Lal of Bauri Sarai, whose daughter Rama Devi was his maternal grandmother and whose brother was Govind Ram of Chainpura. He stated that Rama Devi was the only sister of Govind Ram, though he was unaware whether Govind Ram had another sister named Devaki Devi. According to him, Ram Lal had two daughters and no

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son, and his properties devolved upon his two daughters, one of whom was his mother.

**33.i.** In his cross-examination, he admitted that he had visited Chainpura only once during his childhood, when his maternal grandmother was ill, and had seen Govind Ram on that occasion, but could not recall the house he had visited or provide further particulars of the family. He further stated that he had known Saryug Prasad for approximately two or three years and was not acquainted with the members of his family.

**34.** DW-7, Shyam Kishore Prasad, in his examination-in-chief, deposed that two mortgage deeds dated 07.03.1960, executed in the matter of Saryu Ram and Dwarika Prasad, were written in his presence by the scribe, Bodh Narayan Prasad. He identified the handwriting and signatures of the scribe on the documents and stated that the deeds had been prepared at the instance of Saryu Ram. He also identified the witnesses to the first mortgage deed as Naurangi Ram and Harvansh Singh, son of Naurangi Ram, and the document was marked as Ext.-A (torn). The second mortgage deed was incomplete and torn, with portions of two pages and an intervening date missing, and was marked as Mark-X for translation.

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**34.i.** In his cross-examination, he admitted that he could neither read nor write *Kaithi* Hindi, the script in which both mortgage deeds were written, and that the writing was difficult to decipher. He further stated that he could not read the name of the executant or identify the person who had executed the documents. With regard to the torn document marked as Mark-X, he admitted that the endorsement and signatures appearing in the margin were illegible and appeared to have faded completely.

**35.** DW-8, Hari Mahto, in his examination-in-chief, deposed that Silao and *Mauza* Karah are adjacent villages and he knew Kashiram and Bihari Ram, residents of Karah. He stated that Kashiram had one son, Gurusharan Ram, who in turn had one son, Saryu Ram. He further stated that Saryu Ram was the sole male heir in his generation and had been in possession of the ancestral properties as the exclusive owner, continuing in such possession till the date of his deposition.

**35.i.** In his cross-examination, the witness stated that he had known Kashiram and Bihari Ram since before 1946, as they were engaged in the grain trade. However, he admitted that he had no house or land in *Mauza* Karah and had no personal relationship or regular social interaction with its inhabitants. He

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further admitted that, despite being acquainted with people belonging to his own caste as well as the Bhumihar community in Silao, he could not fully explain their genealogies or identify their ancestors.

**36.** DW-9, Bishnu Dayal Prasad, in his examination-in-chief, deposed that his father, Sukan Mahto, who had served as a Chowkidari Sarpanch for Mauza Karah and Mauza Seema, had died approximately forty years earlier. He identified ten chowkidari receipts issued in the names of Kashiram and Bihari Ram, marked as Exts.-B to B/9, as bearing his father's handwriting and signatures. He also identified seven receipts issued in the name of Bihari Ram, marked as Exts.-B/10 to B/16, as bearing the handwriting and signatures of his father.

**36.i.** In his cross-examination, he admitted that his son was a tenant in Saryug Ram's house and that he himself had previously resided there as a tenant.

**37.** DW-10 is a formal witness.

**38.** In the present case, the principal controversy concerns the identity and parentage of Gurusharan Ram, the alleged adoption of Gurusharan Ram by Kashiram of Karah, and the consequent claim of the appellants to a share in the suit

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properties. The findings of the learned Trial Court must, therefore, be tested against the evidence as a whole to determine whether the appellants have established their entitlement to the relief claimed.

**39.** The case of the appellants is that Govind Ram of Chainpura had two sons, Kanhai Ram and Gurusharan Ram, and that Gurusharan Ram was taken in adoption by Kashiram of Karah, who allegedly had no children. According to the appellants, the properties of Kashiram devolved upon Gurusharan Ram and, thereafter, upon his sons, Arjun Prasad (plaintiff no.1) and Saryug Prasad (defendant no.1), who allegedly continued to hold the properties jointly. The defendants dispute this genealogy and submitted that Gurusharan Ram associated with Kashiram was his natural son and that Arjun Prasad belongs to a separate family. Thus, the appellants were required to establish not merely the existence of persons bearing the name Gurusharan Ram, but also that the persons referred to in the rival genealogies were one and the same individual and that the appellants derived their claimed interest in the suit properties through him. Similarity of names or a general assertion of relationship cannot, by itself, establish identity of parentage, adoption or succession to immovable

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property.

**40.** In ***Madhusudan Das v. Narayani Bai and Ors.***, reported in ***(1983) 1 SCC 35***, the Hon'ble Supreme Court reiterated that the person asserting adoption bears the burden of proving the *factum* and validity of the adoption by reliable evidence. The Hon'ble Apex Court observed as herein under:

> "***19.*** *It is well settled that a person who seeks to displace the natural succession to property by alleging an adoption must discharge the burden that lies upon him by proof of the factum of adoption and its validity (see A. Raghavamma v.A. Chenchamma [AIR 1964 SC 136 : (1964) 2 SCR 933] ). It is also true that the evidence in proof of the adoption should be free from all suspicion of fraud and so consistent and probable as to give no occasion for doubting its truth (see Kishori Lal v. Chaltibai [AIR 1959 SC 504 : 1959 Supp 1 SCR 698 : 1959 SCJ 560] ). Nonetheless the fact of adoption must be proved in the same way as any other fact."*

**41.** Since the alleged adoption is stated to have taken place before the death of Kashiram in or about 1945, its validity must be examined under the Hindu law applicable at the relevant time, subject to proof of the parties' governing personal law. The provisions of the Hindu Adoptions and Maintenance Act, 1956, cannot be mechanically applied to an adoption alleged to have been completed before the Act came into force.

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In ***Lakshman Singh Kothari v. Smt. Rup Kanwar @ Rup Kanwar Bai***, reported in ***AIR 1961 SC 1378***, the Hon'ble Supreme Court explained that the act of giving and taking is an essential element of a valid adoption, although no particular form of ceremony is prescribed. It observed in para 10 as herein under:

> "***10.*** *The law may be briefly stated thus: Under the Hindu law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may*

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*be, to a third party."*

**42.** At the same time, in ***L. Debi Prasad v. Tribeni Devi and Ors.***, reported in ***(1970) 1 SCC 677***, the Hon'ble Supreme Court recognised that, in the case of an ancient adoption, direct evidence of the ceremony may be unavailable and that long-standing recognition, family conduct and surrounding circumstances may assume considerable significance. Accordingly, the appellants' claim cannot be rejected merely because no witness witnessed the adoption; the question is whether the evidence, considered cumulatively, establishes the alleged adoption and the consequent chain of succession.

**43.** Upon examination of the oral evidence adduced on behalf of the appellants, it appears that PW-1, Binda Devi @ Meghni Devi is the plaintiff no. 4 herself, since she is an interested witness in the case, her evidence has been scrutinized with utmost care and caution. It is found that in paragraph no. 30 of her cross-examination, this witness has categorically stated that Kashiram had one son namely Gurusharan Ram. This statement clearly establishes that when Kashiram already had a biological son, the question of adopting another son does not arise. This statement further proves that there were two

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persons bearing the same name Gurusharan Ram, one was a resident of Gaya district and the other was a resident of Nalanda district. PW-2, Chandra Deo Ram in his cross-examination failed to substantiate the plaintiff case and in paragraph no. 16 of his cross-examination he has clearly stated that Binda Devi is not called or known as Meghni Devi. This clearly create doubt with respect to the identity of Plaintiff No. 4 who was herself deposed as Meghni Devi. PW-4, Rajendra Prasad Singh render the fact doubtful that Kashiram has adopted Gursharan Ram because this witness has started in his deposition that Kashiram had kept Gursharanram with him in the manner of a son. PW-6, Barho Devi, in paragraph no. 9 of her cross-examination deposed that Gurusharan ram died at Chainpura in the district of Gaya and his *Shraddha* ceremony was also performed there itself which render doubt that whether Kashiram had actually adopted Gurusharan Ram. Also, PW-8 in paragraph no. 21 of her cross-examination has admitted that no document of adoption was executed. PW-10 in paragraph no. 9 of his cross-examination started that Gurusharan Ram was the son of Kashiram and created the impression that Gurusharan Ram was not the adopted son of Kashiram. The analysis of oral evidences adduced by the plaintiff clearly demonstrate several

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inconsistencies which distinctly negates the fact of adoption and establish that the plaintiffs have no relationship with the defendants, no common ancestor, no coparcenary and no right to partition. On the other hand all the defendant witnesses had fully supported and substantiated the defendant case both in examination-in-chief and cross-examination. The testimony demonstrates that the asserted relationships between Plaintiff No. 1 and Defendant No.1 require reliable corroboration. Moreover, the defendants' evidence is not conclusive merely because it challenges the appellants' version; nevertheless, any deficiencies in that evidence do not relieve the appellants of the burden of proving the foundational facts of their claim.

**44.** The principle governing ancient adoption, as explained in ***Devi Prasad (supra)***, assumes particular importance in the present case. Long and consistent recognition of an alleged adoptee as a son, treatment by the alleged adoptive father as his own child, and contemporary family or property transactions may provide relevant evidence when direct proof of the adoption ceremony is no longer available. The appellants rely upon the assertions that Kashiram had no children, that Gurusharan Ram was accepted as his son, and that the properties subsequently devolved upon Gurusharan Ram

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and his sons. However, the evidence must establish a sufficiently consistent course of recognition rather than merely repeat the same assertion. In the present case, there are several inconsistencies appear in the deposition of the plaintiff witnesses which shows failure on the part of plaintiff to substantiate his case. The evidence, as presented, does not sufficiently establish through independently corroborated circumstances the identity of the Gurusharan Ram alleged to have been adopted by Kashiram and the subsequent devolution of the suit properties. This conclusion does not rest upon the absence of a registered adoption deed alone; it follows from the cumulative deficiencies in the evidence of adoption, identity and succession.

**45.** Ext.-1, the registered sale deed dated 28.09.1972, is a material document and must be given due consideration. According to the evidence of PW-3, the transaction concerned four decimals of land and a dilapidated tiled house sold to Chandravati Devi for Rs. 1,500, with Saryug acting on his own behalf and as guardian of his minor brother Arjun. The description of Arjun and Saryug as brothers is relevant evidence in support of the appellants' assertion concerning their relationship. However, the evidentiary effect of the deed must

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be confined to the facts it actually records. The recital may support the relationship described in that transaction, but it does not, by itself, conclusively establish the identity and parentage of Gurusharan Ram, his alleged adoption by Kashiram, or the devolution of all the properties included in the present partition suit. The deed must be read alongside the other evidence concerning the source of title and the competing genealogies. Proof of a sibling relationship between Arjun and Saryug does not automatically establish that the suit properties belonged to Kashiram or that the appellants acquired the claimed 66-paise share through the alleged adoption. Moreover, Ext. 1, the 1972 sale deed, does not help the plaintiffs. It concerns land at Chainpura, the plaintiffs' village, not the defendant. Its signature is in Devanagari, whereas Defendant No. 1 knew only Kaithi, as shown by Ext. A (the 1960 rehan-nama) and his signatures on the written statement and vakalatnama.

**46.** Ext.-3, the school admission register which show only that the father's name was Gurusharan Ram and do not demonstrate which Gurusharan., and Exts.-7 and 8, the voter list and Gram Panchayat family register, must likewise be evaluated according to their actual contents, the source of the information recorded and the purpose for which the records

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were maintained. Entries in official or institutional records may be relevant to the facts recorded therein, but they do not automatically establish every disputed relationship or confer title to immovable property. Their evidentiary value depends upon whether they reliably connect the relevant individuals and corroborate the specific genealogy pleaded by the appellants. Exts. 7 and 8 (voter list and family register) relate to different villages and contradict each other, and the Block Development Officer reported that no family register exists for Karah Haidarganj. D.W.-9, Bishnu Dayal Prasad, identified the handwriting and signatures on the *chowkidari* receipts marked Exts. B to B/16. These documents must be assessed according to what their contents actually establish and cannot be treated as conclusive proof of genealogy, succession or title merely because certain names or signatures appear on them. The documentary evidence, therefore, has to be considered cumulatively with the oral evidence rather than in isolation.

**47.** The burden of proving the relationship, the adoption and the jointness lay squarely on the plaintiffs under Sections 101 and 102 of the Indian Evidence Act, 1872. The plaint gives no date, year or circumstances of the alleged adoption of Gurusharan Ram by Kashi Ram. The burden of

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proving the asserted title and share remains upon the appellants, and the deficiencies in the defence evidence cannot substitute for proof of their own case. Further, only a coparcener can seek partition, and that needs a common ancestor, which the plaintiffs failed to establish. Plaintiff No. 1 came to Silao for business around 1964 and lives as a tenant in Defendant No. 1's house, while the defendants proved their own possession. The Trial Court examined each witness and exhibit, applied the burden of proof correctly, and found on the evidence that the plaintiffs failed to prove their case. On re-appreciation of the evidence, no interference is warranted. A plaintiff in a suit for partition must prove his own title and cannot take advantage of weaknesses in the defence. The learned Trial Court rightly applied this principle that the plaintiffs must prove their case on their own strength. A plea of adoption, which displaces the natural line of succession, must be proved strictly, by clear, cogent and consistent evidence of the giving and taking and of the capacity of the adopter. The learned Trial Court rightly held that the very factum of adoption is doubtful. The suit rested on the coincidence of names. The adoption was not proved. Even the plaintiffs' own witnesses were interested or contradicted themselves and (PW 1, 4, 10) stated that Kashiram had a son,

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and there was no godnama (deed of adoption), date or year of adoption. The plaintiffs suppressed the existence of their real brother Geeta Prasad Exts. G to K, the sales-tax notices, fine receipts, tax token and road permits, prove that Arjun Prasad and Geeta Prasad are brothers and so did not come with clean hands. He was also a necessary party who was not joined. Joint possession was not proved, as Exts. 7 and 8 relate to different villages and are doubtful.

**48.** A decree for partition necessarily presupposes proof of the claimant's proprietary interest in the properties sought to be partitioned, the source from which that interest is derived and the share to which the claimant is entitled. In the present case, the appellants have asserted that the suit properties belonged to Kashiram and devolved upon Gurusharan Ram and, thereafter, upon his sons. However, the evidence does not satisfactorily establish the complete chain connecting Kashiram, the alleged adopted Gurusharan Ram and the appellants' claimed interest in the suit properties. Ext.-1 provides evidence of the relationship described in a particular transaction, but does not independently prove the entire genealogy or title to all the properties. The remaining documentary evidence, as described, does not sufficiently

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bridge the gap between the rival genealogies, while the oral evidence concerning the adoption and devolution of the properties suffers from material limitations in the witnesses' knowledge and corroboration. The objection concerning non-joinder of Geeta Prasad must be considered separately in light of the pleadings and whether he is shown to have an interest that would be directly affected by the decree. However, the failure to establish the foundational genealogy and consequential proprietary interest is sufficient to defeat the appellants' claim, without treating non-joinder as the sole ground for dismissal.

**49.** In ***Santosh Hazari v. Purushottam Tiwari***, reported in ***(2001) 3 SCC 179***, the Hon'ble Supreme Court emphasised that a first appellate Court must independently assess the evidence, address the material issues and record reasons for its conclusions. Having undertaken that exercise, and keeping in view the principles governing proof of adoption laid down in ***Lakshman Singh Kothari (supra)***, ***Madhusudan Das (supra)*** and ***Devi Prasad (supra)***, this Court finds that the appellants have failed to establish by sufficiently reliable and corroborated evidence the identity of the Gurusharan Ram through whom they claim, the alleged adoption by Kashiram

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and the consequential devolution of the suit properties. The conclusion is not based merely upon the absence of direct evidence of the adoption ceremony or a registered adoption deed, but upon the cumulative assessment of the oral and documentary evidence and the failure to establish the complete chain of succession necessary for the claimed share.

**50.** After considering all the oral and documentary evidences available on record it clearly lean towards the fact that the factum of adoption has not been established. The plaintiff fails to prove its own case on their own strengths. From the evidence produced in the case, it is also clearly established that the father of Defendant No. 1 was also named Gurusharan Ram, but he was a resident of village Karah Haiderganj, Police station Silao, District Nalanda. The only basis of the suit is the similarity and coincidence of the fathers' names. Taking fraudulent advantage of this mere similarity of name, the plaintiffs have filed the present suit, although they otherwise had no legal cause of action to institute the same.

**51.** Consequently, the appellants have failed to demonstrate any material error in the judgment and decree passed by the learned Trial Court warranting interference in this appeal. The judgment and decree dated 28.01.2006 passed by

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the learned Subordinate Judge-VII, Biharsharif, Nalanda, in Title Suit No. 102 of 1997 are affirmed.

**52.** The present First Appeal is, accordingly, dismissed.

**53.** The interlocutory application(s), if any stands disposed of, if any interim order or injunction order passed regarding disputed land deemed to be set aside in the light of above findings.

**54.** Let the trial court records be transmitted forthwith along with a copy of this judgement to the concerned court for the needful.

**55.** There shall be no order as to costs.

**(Ramesh Chand Malviya, J)**

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