

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.60 of 1975

Against the judgment and decree dated 23.12.1974 passed by learned 1st Additional Subordinate Judge, Patna in Title Suit No.61 of 1968/06 of 1973.

Smt. Sita Sundar Devi

.... Plaintiff-Appellant

Versus

Savitri Devi & Ors.

.... defendants-Respondents

Appearance :

For the Appellant : Mr. Ganpati Trivedi, Sr. Advocate.

Mr. R.K. Sinha No.2, Advocate.

Mr. Chakravarti Singh, Advocate.

For the Respondents : Mr. Naresh Kumar Sinha, Advocate.

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 11-08-2015

The original plaintiff, Devas Rai had filed the aforesaid suit for declaration that the gift deed dated 09.05.1967 said to have been executed by him in favour of defendant nos.2 to 4 is fraudulent, illegal and void. Further prayer was that the agreement alleged to have been executed on the same date in favour of Kameshwar Singh be also declared as fraudulent and that the plaintiff is not bound by the same. The plaintiff also prayed for cancellation of the gift deed.

2. The plaintiff prayed the aforesaid relief alleging that he is the owner of suit property. He has wife and a daughter named Sita Sundari Devi, who is married with Gyanendra Prasad Sinha. According to the plaintiff, he got Gyanendra Prasad Sinha educated

and after completion he joined government service but at the instance of the plaintiff and his wife, Gyanendra Pd. Sinha left the service in 1964 and started residing with the plaintiff along with Sita Sundari Devi and their two daughters, Meera Kumari and Bharti Kumari. Gyanendra Prasad Sinha was looking after and managing the affairs of the plaintiff.

3. The further case is that on 20.4.1967 the original defendant no.1, Ishwari Prasad Singh and Ram Kishun Rai came to plaintiff and requested him to sell plot no.189 measuring 0.03 acre and plot no.761 measuring 0.02 acre to defendant no.5, Ram Kishun Rai because the plaintiff had no other lands near the above two plots, therefore, he was facing difficulty whereas defendant no.5 had his lands near the above two plots. The plaintiff agreed and the consideration amount was fixed at Rs.250/-. During the said negotiation the plaintiff and defendant no.1 agreed that a pakka nala be constructed for irrigation purpose to irrigate the plaintiff's land comprised within plot no.1064 and 1067. In fact the defendant no.1, Ishwari Prasad Singh told that unless pakka nala is constructed it will be inconvenient to the plaintiff and defendant no.1 to irrigate their lands and, therefore, they agreed that a pakka nala shall be constructed by them jointly by their joint expenses and that nala will in between plot no.1064 and 1067 belonging to the plaintiff and right will be



given to the defendant no1. to carry water through the land of the plaintiff. On 08.05.1967 defendant nos.1 and 5 came to the plaintiff and told him that the agreement and the sale deed shall be executed and registered on 09.05.1967. The defendants will go to the Registry Office at Dinapur on 08.05.1967 and shall get the documents prepared as there was morning office during that period. On 09.05.1967 plaintiff went to Registry Office and found defendant nos.1 and 5 with one Devanand Rai. They told that the sale deed and the agreement i.e. *Ekrarnama* has already been finalized and asked the plaintiff to put L.T.I. on the aforesaid documents. According to the plaintiff, the contents of the documents were not read over and explained to him. The scribe came to him and told that the people are objecting the entry of the plaintiff to the Registry Office as he is a leper and he remained standing outside the office. After some time they came out with a staff and again took his L.T.I. on several papers. The defendant nos.1 and 5 then took his L.T.I. on two chirkuts and paid him Rs.250/-.

4. The total area of the land of the plaintiff in Khata Nos.9 and 46 measures 11.75 acres. On 18.03.1968 the plaintiff went to pay the rent and then he learnt that defendant no.1 had already paid the rent on the ground that the lands have been gifted by the plaintiff to him. Thereafter he sent his son-in-law, who on enquiry found that fraudulent gift deed was created. Certified copy was obtained and then



the plaintiff came to know about the fraudulent act of the defendant no.1. The defendant nos.2 to 4 in whose names the gift deed is written are sons of defendant no.1 and they are not related in any way with the plaintiff. The plaintiff has his wife, daughter, son-in-law and grand children and has love and affection for them who are residing with him. The son-in-law has a very little land in his native village but it was falsely recited in the deed that defendant nos.2 to 4 are grand sons of plaintiff and Sita Sundari Devi is residing in his sasural where she has got huge property. The agreement, which was to be executed between the plaintiff and defendant no.1, has falsely been executed between the plaintiff and one Kameshwar Singh who is a fictitious person. The plaintiff was to execute only two documents and, therefore, he put L.T.I. on two chirkuts only. He never told any scribe to scribe the gift deed nor the contents thereof were read over and explained to the plaintiff and he never entered into agreement with Kameshwar Singh.

5. Defendant no.1 fraudulently got the gift deed created when there was no question of gifting the huge property to defendant no.1 or his sons, as they are not at all related with the plaintiff.

6. Defendant nos.1 to 4 filed contesting written statement. Their case, in short, is that the plaintiff had developed a serious type of leprosy so his wife, son-in-law, daughter and grand-daughters



completely deserted and neglected him. Sita Sundari Devi was married in a well-to-do family and she always lived in her sasural with her daughters. Since the plaintiff was helpless and in a pitiable condition and there was none to look after him, he approached the defendant nos.1 to 4 to look after and get him treated. He promised to give a portion of property to defendant nos.1 to 4. Accordingly, they got him treated by specialized Dr. Swami Charan and the defendants spent time and money for the plaintiff's treatment and because of their devotion and service the plaintiff was pleased and he out of his own freewill gifted the property to defendant nos.2 to 4 and registered it on 09.05.1967. At his instance the gift deed was scribed and it was read over and explained to the plaintiff and then after understanding the contents he put his L.T.I. on it.

7. The further case is that Kameshwar Singh is not a fictitious person rather he is the son of Hazari Singh, who is in inimical term with the defendants. All other allegations were denied.

8. The defendant nos.6 and 7 filed separate written statement. According to them, they have got a son named "Munshi" and not "Kameshwar Singh". Even the alias name of Munshi is not Kameshwar Singh. Accordingly, they supported the plaintiff's case.

9. On the basis of the aforesaid pleadings the learned court below framed the following issues:-

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- (i) Is the suit framed maintainable?
 - (ii) Has the plaintiff got any cause of action for the suit?
 - (iii) Is the suit bad for mis-joinder of parties?
 - (iv) Is the suit barred under section 34 of the Specific Relief Act?
 - (v) Is the suit barred by principles of waiver, acquiescence and estoppel?
 - (vi) Is the genealogical on given in the written statement correct?
 - (vii) Is the deed of gift dated 09.05.1967 in favour of defendants nos.2 to 4 fraudulent, fabricated, illegal and not binding upon the plaintiffs?
 - (viii) To what relief or reliefs, if any, is the plaintiff entitled?

10. After trial the learned court below recorded the finding that the plaintiff has no cause of action and, therefore, is not entitled to any relief. The trial court also recorded the finding that the defendants failed to prove affirmatively that they were gotia of plaintiff, Devas Rai. The court below also found that the plaintiff failed to prove that the gift deed was obtained from him by fraud as such the gift deed is not a fraudulent, fabricated and illegal document. Accordingly, the plaintiff's suit was dismissed.

11. The learned Senior Counsel Mr.Ganpati Trivedi for the appellant submitted that the court below has clearly recorded the finding that defendant nos.1 to 4 are not related with the original plaintiff. The plaintiff has got his wife, daughter, son-in-law and two grand-daughters, therefore, in such circumstances it is not believable that he would have gifted his entire property to the persons, who are



not related with the plaintiff, particularly when the plaintiff himself was in need of money for treatment. The plaintiff has produced overwhelming evidence in support of the fact that his daughters, son-in-law and grand-daughters were residing with him. Moreover, the plaintiff himself lived along with his wife then also without making any provision for himself and his wife it cannot be believed that all the properties could have been gifted by him, particularly when he was in need of money. The court below has not properly appreciated the evidences produced by the plaintiff. The court below has wrongly drawn adverse inference against the plaintiff. The defendants have produced medical prescriptions 12 in numbers ranging from the year 1956 to 1964 and from these medical prescriptions it is not apparent as to what expenses the defendants incurred. During this period the defendant nos.2 to 4 were in fact students and, therefore, there is no question of providing any service to the plaintiff by them arises. Further to serve the plaintiff and to look after the plaintiff's property the son-in-law of the plaintiff resigned from the service in the year 1964 and he started residing with the plaintiff along with his wife and children. Now, therefore, on this ground also when the son-in-law was looking after the plaintiff and his property, the plaintiff could not have gifted the property to the defendants only because they had advanced some assistance to him. According to the learned counsel, the



approach of the court below is wrong. The plaintiff clearly stated that he agreed to sell the property to defendant no.5 and sale deed was executed on 09.05.1967. On the same date the plaintiff was to execute an agreement with the defendant no.1. The defendant no.1 fraudulently created a document of gift by obtaining signatures on some papers the contents whereof were never read over and explained to the plaintiff. The plaintiff had agreed to execute and register two deeds i.e. sale deed and agreement and, therefore, he signed only on two chirkuts.

12. The learned counsel further submitted that the defendants neither examined the scribe nor the attesting witness of the gift deed and moreover the original gift deed was not produced by the defendants. The defendant no.5 in whose favour the sale deed has been executed has not contested the suit. Moreover, the plaintiff is not praying for any relief with regard to the sale deed executed by him in favour of defendant no.5. It is the defendant no.1, who played main role and in place of agreement he got a gift deed executed and a fake agreement was also created. The learned court below wrongly dismissed the plaintiff's suit without considering the circumstances which are strong enough to disbelieve the story of defendants. According to the learned counsel, not a small area of land has been gifted but here about all the properties measuring 11 acre has been



gifted to defendant nos.2 to 4. The learned counsel further submitted that the plaintiff examined expert, P.W.23, who compared L.T.I. of Devas Rai appearing on chirkuts of alleged agreement with his admitted L.T.I. and gave report to the effect that it does not tally but the court below discarded his opinion and found that the L.T.I. is of plaintiff. According to the learned counsel, there is no pleading of the defendants to that effect nor any objection to the report of the expert was filed by the defendants nor any contrary evidence was adduced by the defendants nor any cross-examination was made to P.W.23, therefore, the court below has wrongly discarded the evidence of P.W.23, the expert. On this ground the learned counsel submitted that the appeal be allowed after setting aside the judgment and decree of the court below and the plaintiff's suit be decreed declaring the gift deed and agreement as fraudulent, illegal and void document not executed by plaintiff and are not binding on plaintiff.

13. On the other hand, learned counsel Mr. Naresh Kumar Sinha for the respondents submitted that it is not necessary that gift is made only to relative. The son-in-law, daughter and wife all of them deserted the plaintiff and no one was there to look after the plaintiff, therefore, the plaintiff requested the defendants to get him treated. The defendants got him treated and spent much time and money, therefore, the plaintiff gifted the property being pleased with their service.

Subsequently when the son-in-law and daughter knew about the act of the plaintiff, they instigated the plaintiff to get the gift deed set aside. According to the learned counsel, the daughter and son-in-law never served the plaintiff when he was in need of service and money. In fact the defendants provided him money and looked after him. In support of their case, the defendants have produced medical prescriptions right from the year 1956 to 1964. If in fact the wife and son-in-law and daughter were residing with plaintiff and were looking after him, they should have produced the medical prescription to show that they were getting him treated but nothing has been produced by them which clearly indicates that they had left him. The plaintiff is not denying his signature on the gift deed. His contention is only that he was not knowing the contents of the gift deed but this allegation of the plaintiff cannot be accepted because he was a person who was knowing all the affairs from before and it is not accepted from him that without knowing the contents he would have signed the deeds. All allegations made by the plaintiff are for the purpose of the suit and in fact it was willfully executed and registered by the plaintiff himself, therefore, the gift deed cannot be said to be a fraudulent deed not binding on plaintiff. The learned counsel further submitted that the defendants have examined witnesses in support of the fact that the defendants got the plaintiff treated by the expert doctor. The villagers



have also supported. The documents were registered documents, therefore, the case of the plaintiff that he came to know after one year cannot be relied upon. Considering all these aspects of the matter and the evidences produced by the parties the learned court below has rightly recorded the finding that the gift deed is neither fraudulent nor illegal and in fact it was executed by the plaintiff in favour of the defendants. In such circumstances the appellant's appeal be dismissed with cost.

14. It may be mentioned here that during the pendency of the appeal the original plaintiff has died and his daughter has been substituted. Likewise the defendant no.1 and some other defendants have also died and they have been substituted.

15. In view of the above rival contentions of the parties the point arises for consideration in this appeal is as to whether the plaintiff is entitled to the relief claimed by him in relation to the gift deed alleged to have been executed by him in favour of defendant nos.2 to 4 and the agreement in favour of Kameshwar Singh and whether the impugned judgment and decree are sustainable in the eye of law or not?

16. The plaintiff has prayed for setting aside the gift deed and the deed of agreement and has denied to have purchased the stamp for the gift deed. The plaintiff also denied the fact to have got



the deed of gift scribed by any person and even by Ram Babu Singh. Admittedly, the scribe has not been examined. The plaintiff's case is also that the contents of the gift deed were never read over and explained to him. His specific case is that in course of getting the two documents executed, the L.T.I. of the plaintiff was also obtained on the gift deed by defendant no.1 in collusion with defendant no.5. Admittedly the defendant no.5 neither appeared nor filed written statement but he has been examined as witness in this case. After denying these facts the plaintiff's specific case is that he has his wife, son-in-law, daughter and two grand-daughters residing with him. In 1964 the son-in-law resigned from his service and came to live with him for looking after the plaintiff's affairs. Further the defendant nos.1 to 4 are not related with the plaintiff. In view of this pleading now the case of the plaintiff is that there was no question of gifting the property to the defendants particularly when the plaintiff has his kith and keen to whom he loves very much, who were taking care of him.

17. It is settled principles of law that a registered document is presumed to be genuine unless the contrary is proved. However, this presumption is rebutable. Once the plaintiff denied its execution with his knowledge and alleged fraud describing how the fraud was played on him, it was for the defendant to have explained

the facts, which have been denied by the plaintiff.

18. The plaintiff has examined P.Ws.14, 15, 22, 24 and 27 in support of his case that the defendant nos.1 to 4 are not related with the plaintiff. The plaintiff has also proved certified copy of the plaint of Title Suit No.10 of 1931, which has been marked as Ext.32. In paragraph 19 of the evidence defendant no.1, who has been examined as D.W.22, has admitted that he does not know Udit Rai. From perusal of Ext.32, it appears that Udit Rai and Jian Rai, who were father and uncle of Devas Rai, had been shown as sons of Sheo Tahal Rai. Udit Rai and his son Matru Rai were the plaintiffs whereas Mostt. Anandi Kuer was the defendant. The defendant no.1 in his evidence has said that he does not know any of them. From perusal of the impugned judgment, I find that considering all these evidences and materials the learned court below recorded clear finding that the defendants failed to prove affirmatively that they are *gotia* of Devas Rai. I do not find any reason to interfere with this finding.

19. The plaintiff has shown the circumstances as discussed above and the reason as to why he would have gifted his entire property to defendants, who are not close relatives without making any provision either for himself or for his wife and the daughter, grand-daughters etc. When these facts were brought on record it was for the defendants to have satisfactorily explained the matter. Now

let's consider what are the evidences produced by the defendants.

20. D.W.16 has been examined on behalf of the defendant to prove that in fact for execution of gift deed stamp of Rs.312/- was purchased by plaintiff and this witness helped the plaintiff in purchasing the stamp of Rs.312/-. So far this evidence is concerned, admittedly he was a student of B.S. College, Danapur at that time. There is no reason as to why the plaintiff will take help from a student particularly when it is the case of the defendants that they were looking after the plaintiff. Further in his evidence he has stated that after obtaining the stamp from Stamp Daroga, he handed over to the plaintiff. From perusal of the impugned judgment, it appears that the court below has meticulously considered his evidence and then held that all these facts show carelessness on the part of this witness in observing things but at the same time the court below relied upon his testimony observing that all these will not show that he had not gone with Devas Rai. In my opinion the approach of the court below is wrong. It is general practice in the society that a purchaser or a donee always do all the formalities may it be in the name of the vendor or the donor but here the defendants came with a case that the plaintiff was in love and affection with the defendants so much so that he himself was taking keen interest for executing the gift deed. There is no reason as to why he did not take help from his son-in-law or the



defendants for purchasing the stamp rather he took the help from student. At the end of paragraph 20 the court below considering the evidence of D.W.16 has held that D.W.16 may not be wholly truthful but drew adverse inference on the ground that the plaintiff has not produced the *challan* to prove that he has not deposited the amount for purchasing the stamp from treasury nor has produced the register. So far this reasoning of the trial court is concerned, as stated above it can be said that the court below has approached the case in wrong angle. It is the case of the defendants that plaintiff has purchased the stamp, therefore, it was for the defendants to prove this fact because the plaintiff has denied in so many words and it is settled principles of law that negative cannot be proved. Once the plaintiff denied the facts, the presumption of genuineness of the gift deed stands rebutted and the onus shifted on the defendants to prove positively the fact asserted by the defendants.

21. D.W.17 is the father of D.W.16, who has been examined to prove the execution of the gift deed by Devas Rai, who is one of the witnesses in the gift deed. In paragraph 5 this witness has clearly stated that he and his son reside together and on the date of registration of gift deed i.e. on 09.05.1967 his son, D.W.16 had not gone to the Registration Office with him. Further D.W.17 has clearly stated that in the *challan* the plaintiff had not signed or put his L.T.I.

Now, therefore, even if *challan* could have been produced then also it could have not been proved that Devas Rai has purchased his stamp. In such circumstances the court below has wrongly drew adverse inference against the plaintiff.

22. So far the other witnesses are concerned, D.W. 20 is defendant no.4 and D.W.22 is defendant no.1. Defendant no.5 has been examined as D.W.12. This D.W.12 has stated that he does not know whether Devas Rai had executed the gift deed and Ekrarnama on that date. It may be mentioned here that Devas Rai had executed a registered sale deed in favour of defendant no.5 i.e. D.W.12. Admitted fact is that all the three documents were registered on the same date. D.Ws.1, 2, 4 and 5 and D.W.7 have all stated that Devas Rai had told them that out of his own freewill he had gifted the property to the defendants. The defendants have produced these witnesses in support of the case of valid and genuine gift deed.

23. It is admitted fact that D.Ws.16 and 17 both are well known to Ishwari Prasad Singh, defendant no.1. This D.W.17 is the witness in the gift deed and Ishwari Prasad Singh, defendant no.1 (D.W.22) is the witness in agreement, Ext.14 and also in the sale deed executed by plaintiff in favour of defendant no.5. D.W.22 in his evidence clearly stated that he learnt from Biswanath Rai (D.W.16) for the first time on 09.05.1967 in the Registration Office that stamp

has been purchased on 09.05.1967.

24. The scribe of the gift deed has not been examined. From the above evidences of D.Ws.16 and 17 read with D.W.22 it appears that there are much contradictions in their evidences.

25. It is admitted fact that the plaintiff put his L.T.I. only on two chirkuts. It is admitted fact that three documents were registered. There is no reason as to why the plaintiff was asked to put his L.T.I, only on two chirkuts. The thumb impression on third chirkut, Ext.26 has been found to be not thumb impression of plaintiff. The expert has been examined as P.W.23, who has proved his report Ext.22. From perusal of the impugned judgment, it appears that the court below differing with the report of the expert and held that it is the L.T.I. of Devas Rai. Now, therefore, from the facts stated above it appears that the plaintiff was knowing that he had to execute two documents, therefore, he put L.T.I. on two chirkuts but the defendants produced third chirkut purported to have been impressed by Devas Rai, which has been found to be a forged L.T.I. The reason for discarding the evidence of the expert and the report assigned by the court below is not acceptable.

26. In this case the original gift deed has not been produced by the defendants. The certified copy produced by the plaintiff has been marked as Ext.3, whereas the certified copy



produced by the defendants is marked Ext.D. In the gift deed the reason for gifting the property has been recited to the effect that the defendants are agnate of the plaintiff and the daughter of the plaintiff deserted him during his ailment and was not residing with him and the defendants served the plaintiff and got him treated. So far the first recital regarding agnatic relation is concerned, I have already discussed above and found that the defendants failed to prove that they are agnates of the plaintiff. So far the desertion by daughter is concerned, the plaintiff has produced Ext.1 series, which are the voter list from perusal of which it becomes clear that Sita Sundari Devi was living with her daughters with her father. Ext.2 series are admission registers of the schools, which show that Meena Kumari, the grand-daughter of plaintiff, was reading in the school at Gopalpur since 1960 onwards. Ext.3 series are the certificates of the school from 06.01.1960 to 31.10.1964 and Ext.12 series are the tuition fees, which clearly prove that the daughter of the plaintiff was residing with her father along with her two grand-daughters. It is admitted fact that the son-in-law also resigned from service in the year 1964 and started residing with the plaintiff and his family.

27. It is settled principles of law that for proving fraud the circumstance is to be shown satisfactorily to the conscience of the Court because no direct evidence will be found. Here, the plaintiff has



proved the fact that he has his wife, daughter, grand-daughters and son-in-law to whom he loves much. Now the question is, can it be believed that one person will gift all the properties to some persons, who are either not related or distantly related without making provision even for himself and his wife? In my opinion, this cannot be the natural conduct of a person. This is one of the strong circumstances which raises strong suspicion about the genuineness of the gift deed as there is no explanation at all. Can it be believed that the plaintiff's love and affection towards his wife, daughter, grand-daughters and son-in-law and even towards himself was lesser than the love and affection towards the defendants? Again, the answer will be same.

28. The plaintiff has proved that he had agreed to sell some part of the property in favour of defendant no.5 and had agreed to enter into an agreement with defendant no.1 for construction of pakka nala. He put his L.T.I. on two chirkuts. The question is wherefrom third chirkut came? The expert has found the L.T.I. to be forged. There is no explanation at all.

29. The plaintiff has proved that the son-in-law resigned in the year 1964 (this fact is not denied by the defendants). The question is if son-in-law was there for looking after the property and the plaintiff why the plaintiff did not take assistance from him rather

he took assistance from the persons, who are well known to the defendants?

30. The defendants have produced at the time of trial only some medical prescriptions, which have been marked as Exts.A to A/12 and has examined Dr. Swami Charan. According to the defendants, the plaintiff was being treated by this doctor. These medical prescriptions starts from 1956 to 1964. The question is if plaintiff was the patient and he was being treated by the doctor, therefore, it was expected that the prescriptions should have been in possession of the plaintiff. There is no explanation as to how the defendants were in possession of the same. There is no pleading at all by the defendants to show any amount was spent by them and what was the amount which they spent which pleased the plaintiff so much so that he gifted everything as if he renounced the world. Merely because the defendants have produced medical prescriptions, no categorical finding can be recorded that in fact the defendants were serving the plaintiff and the family members, stated above, of the plaintiff deserted and/or were not residing with the plaintiff.

31. The other aspect is that if in fact the plaintiff was in need of money when he was ailing and was being treated then in such circumstances he could have sold the property for arranging money but he did not sell rather he obtained assistance from the defendants

and then gifted everything, which again creates a strong doubt.

32. All these are the circumstances, which have been proved by the plaintiff, which clearly indicate that in fact the defendants played a fraud on the plaintiff and got the gift deed executed by him, i.e. fraudulently they obtained L.T.I. and the gift deed. The court below has not considered all these aspects of the matter and wrongly drew adverse inference against the plaintiff. The Court has also not considered the natural conduct and the circumstances in the present case.

33. In view of my above discussion I, therefore, find that the plaintiff has been able to prove that the defendants fraudulently got the gift deed executed by obtaining his L.T.I. on it as such the gift deed is not genuine document and no title passed on the defendants on the basis of this gift deed. The finding of the court below, therefore, is hereby reversed.

34. So far the deed of agreement is concerned, nobody is praying for enforcement of the said agreement. Nobody has also proved its valid execution and, therefore, it is futile to examine this matter.

35. In the result, this first appeal is allowed. The impugned judgment and decree are set aside and the plaintiff's suit is decreed with cost of Rs.10,000/- to be paid by the contesting

defendants to the plaintiff-appellant within two months failing which the appellant shall be at liberty to realise the same through the process of the Court.

Harish/

(Mungeshwar Sahoo, J)

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