

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.124 of 1981

Against the Judgment and Decree dated 13.02.1981 passed by
Subordinate Judge, Gopalganj in Title Suit No.43 of 1976.

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Ram Janki though Mostt. Salehara Kuer Shebait & Ors

.....Appellants

Versus

Smt. Sonia Devi & Ors

.....Plaintiffs-Respondents

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Appearance :

For the Appellant/s : Mr. Amar Nath Deo, Advocate
Mr. Vinay Kirti Singh, Advocate

For the Respondent/s : Mr. Yogendra Prasad Sinha, Advocate

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Dated : 19th day of May, 2015

P R E S E N T

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV J U D G M E N T

1. The contesting defendants have filed this First Appeal against the Judgment and Decree dated 13 Feb., 1981 passed by the learned Subordinate Judge, Gopalganj in Title Suit No.43 of 1976 whereby the Court below decreed the plaintiff respondent's suit.

2. The plaintiffs respondents filed the aforesaid suit for partition of total 5 biggha 17 katha land on the facts inter alia that 10 biggha 18 katha 8 dhur was recorded in the name of Ramawtar Rai,



Jamuna Rai, Ramsewak Rai and Jangli Rai the four sons of Ram Swarath Rai described in schedule 1 & 2 of the plaint. Plot No.602 729 are recorded in the name of four sons and also one Mohit Rai and another Ramdhari Rai detailed in Schedule 3 of the plaint. The property acquired by Ramsewak Rai is described in Schedule 4 of the plaint. Schedule 5 includes all lands.

3. The further case of the plaintiff is that after revisional survey, one son Yamuna Rai died in jointness without any issue. Ramawtar Rai and Ramsewak Rai died in the year 1934 and 1946 respectively leaving behind Basmato Kuer and Lakho Kuer respective widows. Ramsewak had also two daughters Sonia who is plaintiff No.2 and Kauleshari, defendant No.2. They came in joint possession of the property whereas Mostt. Basmato was only maintenance holder. Subsequently, Lakho Kuer also died on 4.9.1975 leaving behind two daughters. The two daughters were married and plaintiff No.1 is the son-in-law of Lakho Kuer, i.e., husband of plaintiff No.2.

4. The further case is that plaintiff No.1 and plaintiff No.2 were living with Lakho Kuer so, out of her free will, Lakho Kuer gifted the property by executing and registering a gift deed on 08.04.1964 to plaintiff No.1 and put him in possession. The further case is that subsequently, the plaintiff learnt that defendant No.3,



Jangli Rai in collusion with Basmato executed fraudulently a Danpatra deed in the name of Ram Janki, the idol although there is no Mandir in the village and Jangli became Mutwali of Mandir and he wants to grab the property. Partition was demanded and on the refusal, this suit was filed. The plaintiffs claim 3 bigha 3 katha 16 dhur in schedule 1, 2, 3 and 4 on the basis of gift deed in favour of plaintiff No.1 and 3/16th share in Schedule 3 and 4 of the plaint.

5. The defendant No.3 and 4 filed contesting written statement. Besides taking legal and ornamental plea, mainly it is contended that Ramawtar Rai died in the year 1938 and not in the year 1934, therefore, Basmato Kuer became the limited owner according to Hindu Women Right to Property Act, 1937 and she became absolute owner after coming into force of Hindu Succession Act, 1956. Therefore, she was not a maintenance holder. Ramsewak Rai died in the year 1934 issueless leaving behind only widow Lakho Kuer. According to the defendants Sonia and Kauleshari are not the daughters of Ramsewak Rai. In fact they are daughters of Lochan Singh of village Himmatpur. Lakho Kuer was only a maintenance holder. She has not executed any gift deed. Some another lady executed the gift deed as such the gift deed is fraudulent, farzi and void document. By that gift deed, no title passed to the plaintiff No.1. The plaintiffs have no concern with the family of Ramsewak

Rai. After death of Ramsewak, the defendant No.3 and 4 are in possession of the land as such they have perfected their title by adverse possession.

6. The defendant No.5 and 5A have filed supporting written statement supporting the plaintiff. Formal written statement has filed by minor defendants.

7. On the basis of the aforesaid pleadings of the parties, the learned trial Court framed the following issues :-

- (a) Is the suit as maintainable?
- (b) Have the plaintiffs got any cause of action for the suit?
- (c) Whether plaintiff No.2 and defendant No.2 are daughters of Ramsewak Rai?
- (d) When did Lakho Kuwar die?
- (e) Whether alleged deed of gift was executed by an imposter or by Lakho Kuwar?
- (f) Whether plaintiffs have got unity of title and possession along with defendants over the disputed lands and whether they are entitled to a decree for partition it so to what extent of share.
- (g) To what relief, if any, are the plaintiffs entitled?

8. The trial Court on the basis of materials recorded a finding that plaintiff No.2 and defendant No.2 are daughters of Ramsewak Rai. The trial Court also recorded a finding that ext.3 the registered gift deed is executed by Lakho Kuer and decreed the plaintiff's suit.

9. The learned counsel appearing on behalf of the appellant



submitted that the learned trial Court has wrongly held that the plaintiff No.2 and defendant No.2 are daughter of Ramsewak Rai and also wrongly held that gift deed was executed by Lakho Kuer in favour of plaintiff No.1. Jangli and Basmato had executed a gift deed in favour of Ram Janki in the year 1964, therefore, even if they are daughters of Ramsewak, no title could have been conferred by Lakho without getting the gift deed in favour of Ram Janki cancelled or set aside. According to the learned counsel, if in fact plaintiff No.2 is the daughter then naturally she would have inherited the property of her father after death of mother, therefore, there was no question of gifting the property to plaintiff No.1, husband of plaintiff No.2 arises. So the gift deed is doubtful and suspicious document. The learned counsel further submitted that the defendants appellants have adduced sufficient evidences in support of the fact that Ramawtar Rai died in the year 1938 whereas Ramsewak died in the year 1934 but the Court below has not properly appreciated the evidence and decided the issue wrongly in favour of the plaintiff. While deciding this issue, the learned trial Court presumed the facts by observing that elder will die earlier and younger will survive. This observation made by the Court below is erroneous and vitiates the findings. The learned trial Court while appreciating the evidences has wrongly discarded the statements of the witnesses on the ground of

interestedness. According to the learned counsel, on the ground of interestedness, the evidence cannot be discarded in civil cases because in civil cases only the related and interested witnesses will depose,

10. The learned counsel further submitted that the plaintiff shall succeed only on the basis of his own case and not on the basis of weaknesses of the defendant's case. Even if appellants are unable to prove that the two daughters are daughters of Lochan Singh of another village then also the plaintiff has to prove their case pleaded.

11. On these grounds, the learned counsel submitted that the impugned Judgment and Decree are to be set aside and the plaintiff's suit be dismissed with costs.

12. On the other hand, the learned counsel appearing on behalf of the respondents submitted that the Courte below has not discarded the evidence of the witnesses only on the ground of interestedness. The Court below has assigned many other reasons also. It is for the appellants to displace the natural succession of the property by proving the positive case pleaded by them that plaintiff No.2 and defendant No.2 are daughters of Lochan Singh. If they fail to prove this case then naturally the case pleaded by the plaintiff is to be accepted because it is natural succession to the daughters. If the plaintiff No.2 is not the daughter then where is the question of gifting

the property by Lakho to plaintiff No.1 arises. The gift deed itself is sufficient to prove that plaintiff No.2 is daughter of Lakho.

13. The learned counsel next submitted that if the property was inherited by Lakho and it was gifted by her two son-in-law, plaintiff No.1 then the gift deed in favour of Ram Janki will be void ab initio, therefore, plaintiff will not require to challenge the same by filing separate suit. If Jangli and Basmato are not the owner of the property gifted by Lakho to plaintiff No.1 then they cannot transfer better title to Ram Janki. Considering all these matters, the Court below has rightly held that the gift deed has been executed by Lakho in favour of plaintiff No.1. On the basis of the evidences adduced by the parties, the Court below recorded the finding properly therefore, the finding should not be interfered with in this First Appeal. So far the submission of the appellant that the Court below recorded the finding of year of death on presumption, the learned counsel submitted that it is not the fact rather the Court below considered the evidences and then recorded the finding therefore, merely at one place any wrong observation has been made it will not vitiate the finding. On these grounds, the learned counsel submitted that the First Appeal be dismissed with cost.

14. In view of the above submission of the parties, the points arises for consideration in this First Appeal is as follows :-

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- a) Whether the plaintiff No.2 and defendant No.2 are the daughters of Ramsewak Rai and the gift deed executed by Lakho in favour of plaintiff No.1 is valid, genuine as claimed by the plaintiff or fraudulent and void document as claimed by defendant.
 - b) Whether Ramawtar died in the year 1934 or 1938 and Ramsewak died in the year 1934 or 1946 and whether the impugned Judgment and Decree are sustainable in the eye of law.

15. Point No.(a) and (b) :- Both the points are inter-related, therefore, decided together. The power to make gift in favour of son-in-law is dependent on the year of death of her husband, therefore, the points are inter related.

16. According to the plaintiffs, Ramawtar died in the year 1934 leaving behind widow Basmato and Ramsewak died in the year 1946 leaving behind Lakho and two daughters whereas according to the defendants Ramawtar died in 1938 and Ramsewak died in the year 1934 and plaintiff No.2 and defendant No.2 are not the daughter of Lakho Kuer. In support of their respective cases, the parties have examined witnesses. Now, let us consider the witness examined by the parties. P.W.4 has stated that Ramawtar died in the year of earthquake, i.e., in the year 1934 and Ramsewak died in the year 1946. The other witnesses P.W.6, P.W.7, P.W.9, P.W.13 have supported the case of year of death pleaded by the plaintiff. The P.W.10 also supported his case. On the contrary, the defendants



witnesses have also stated and supported the case pleaded by the defendant in the written statement about year of death of Ramavtar and Ramsewak. It can very well be said that these evidences are oath against oath. Therefore, the documentary evidences if available, will play important role in deciding the year of death. The plaintiffs have produced ext. 6 and 6A which are certified copy of death register. Ext. 6 shows that Ramsewak died on 03.10.1946 and ext. 6A shows that Ramawtar died on 10.05.1935. The entries have been made much prior to the dispute between the parties. Birth and death register is public document and, therefore the certified copy is admissible in evidence. There is no reason as to why the entry made in the public document ext. 6 and 6A is to be disbelieved. In view of this undisputed public document, ext.6 and 6A which is in support of the plaintiff's case, it can safely be held that Ramawtar died in the year 1935, i.e., prior to coming into force of Hindu Women Right to Property Act, 1937 whereas Ramsewak Rai died on 03.10.1946. Now, therefore, Basmato Kuer was only a maintenance holder and Lakho Kuer became the limited owner of the property of her husband Ramsewak Rai. The plaintiff has produced ext.'4' series which are the registered sale deeds executed by either Sonia or Kauleshwari or even by Triveni, Plaintiff No.1 wherein the properties were sold by them. If in fact they are not the daughter and the gift deed is not



executed by Lakho in favour of Triveni then the defendant appellant must have challenged those sale deeds on the grounds that the vendors have got no relation with the family of Ram Sewarath and have got no right to sell the property. Ext. '3' is the gift deed executed by Lakho in favour of plaintiff No.1 claiming that he is the son-in-law of Lakho. For the sake of argument if the case of the defendant is believed that Sonia, plaintiff No.2, is not the daughter of Lakho rather she is the daughter of Lachhan Singh then plaintiff No.1 will be the son-in-law of Lachhan Singh of another village. Can it be believed that Lakho Kuer would gift the huge property to son-in-law of another person of another village with whom she has got no relation? In my opinion, it is not the natural human conduct.

17. The plaintiff No.1, Triveni, husband of plaintiff No.2 Sonia has been examined as P.W.10 and Sonia has been examined as P.W.13. They fully supported the case of the plaintiff regarding parentage of plaintiff No.2 and defendant No.2. Likewise the evidence of P.W.4, 6 and 7 shows that both were the daughters of Ramsewak and Lakho. The evidence of P.W.13 and P.W.10 are admissible under Section 50 / 60 of the Evidence Act.

18. On the contrary, according to the defendant witnesses Ramsewak died issueless. D.W.1 D.W.4 are member of committee and D.W.3 is brother-in-law of Ramawtar. It appears that they have



only deposed to the effect that Ramawtar died issueless. From the evidence of D.W.3, it is clear that Lachhan Singh is the brother-in-law of Ramavtar Rai. Except the bald statement of the witnesses D.W.7, 9, 10, 14, 19 nothing has been brought on record on the basis of which it can be said that the plaintiff No.2 and defendant No.2 are the daughters of Lachhan Singh.

19. In view of my above discussion, I find that the plaintiff No.2 and defendant No.2 are the daughters of Ramsewak Rai and Lakho Kuer.

20. So far the genuineness of gift deed, ext. '3', is concerned, it is a registered document, therefore, there is presumption of genuineness. It is for the defendant to show that it is fraudulent and not executed by Lakho. In the present case, except the pleading, there is nothing on record to show that any other person impersonated Lakho Kuer. Lakho Kuer died in the year 1975 which would be evident from the testimony of P.W.7, 10, 13, 17. The defendant pleaded that Lakho Kuer died in the year 1962 but except the pleading, there is no oral evidence in support of it. So far ext. 'F' is concerned, it appears that the entry was made after the year 1963, i.e., after the entry of one Bhagmati who died on 24.01.1963. It further appears that this entry regarding death of Lakho was made by inserting one new page although there were pages in the register.

Considering these aspects of the matter, the Court below has rightly did not rely upon ext. 'F'. I do not find any reason to interfere with the reasoning of the trial Court.

21. Further, the gift deed is of the year 1964 but it was never challenged by the appellant. For the first time, in the defence this plea is taken. There is no evidence to show that any another lady impersonated Lakho Kuer. In such circumstances, I find that ext. '3' is genuine gift deed executed by Lakho Kuer in favour of plaintiff No.1. i.e., her son in law Triveni who is husband of plaintiff No.2 .

22. In view of my above discussion, all the findings of the trial Court are hereby confirmed. Both the points are answered against the defendant-appellant and in favour of plaintiff respondent.

23. In the result, I find no merit in this First Appeal. Accordingly this First Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

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