

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.119 of 1993

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Against the judgment and preliminary decree dated 30.01.1993 passed by Shri Akhileshwar Prasad, Sub-Judge-Ist, Begusarai in Title Suit No. 96 of 1985

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1. Most. Sumitra Devi W/o Late Kari Singh
2. Rabindra Kumar Singh son of Late Kari Singh
Both resident of village- Ratanpur, Ward No. 9, within Municipal Area- Begusarai,
District- Begusarai..... Appellants

Versus

1. Most. Numu Devi wife of Late Ramtanuk Singh R/o village- Ratanpur
Municipal Area, P.S. & District- Begusarai

2. Arvind Singh
3. Kumar Madhwan
4. Shambhu Singh
5. Jhingur Singh
6. Ranjeet Singh

2 to 6 sons of Ramtanuk Singh, R/o village- Ratanpur Municipal Area, P.S. &
District- Begusarai

.... Respondents

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Sinha
Mr. Arvind Kumar Sharma
Mr. Chetan Kumar
Mr. Shiv Shankar Kumar

For the Respondent/s : Mr. RAM PRIYA SHARAN SINGH

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
C.A.V. JUDGMENT

Date: 24-06-2015

The instant appeal has been preferred against the judgment and preliminary decree, dated 30.01.1993, passed by the learned Sub-Judge-Ist, Begusarai in Title Suit No. 96 of 1985 whereby and whereunder the suit filed by the plaintiffs was partly decreed declaring 1/3rd share of the plaintiffs described in Schedule I of the plaint. The plaintiffs are the appellants whereas the defendants are the respondents.

2. The plaintiffs Kari Singh and Rabindra Singh, the son of Kari Singh, have filed Title Suit No. 16 of 1985 to pass a preliminary decree for partition with respect to their half share in Schedule I and separate Takhta may be



carved out and DP over the same may be effected through the process of the Court as well as to declare the alleged deed of gift dated 08.11.1984 purported to have been executed by Ramsagar Singh as null and void which confer no title and possession upon the alleged donee. Further relief is for a decree for accounting the income of joint family property directing the defendant no. 1 to furnish accounts as well as the cost of the suit.

3. The case of the plaintiffs in short is that there was Natho Singh who has got four sons, namely, Ramsagar Singh, Ramtanuk Singh defendant no. 1, Kari Singh plaintiff no. 1 and late Sukho Singh. Natho Singh was the Karta of the joint family. Jointly, family possessed ancestral landed property and some lands were acquired by late Natho Singh as Karta and Manager of joint family. Natho Singh died in the year 1955 in state of jointness with his four sons and one widow defendant no. 7. After the death of Natho Singh, Ramsagar Singh being eldest and wise became Karta and manager. Fourth son Sukho Singh died issueless in the state of jointness. Ramsagar Singh also died issueless on 14.12.1984 in the state of jointness with the plaintiffs and defendants. Ramsagar Singh had weak physic and was a permanent patient of several decease and for the last six months before death he totally became invalid due to acute asmatic attack. He lost his mental discretion as well and he was under the treatment of Dr. Satyadeo Singh but at last he was admitted in the private clinic of Dr. S. K. Lal, Begusarai till his death. The plaintiff no. 1 was looking after the agricultural operations and was also looking after the animals. The joint family was running a business of sale of rickshaw and its repairing and this business was managed and looked after by the defendant no. 1 and Sukho Singh till his death. The defendant no. 1 was also assisting Ramsagar Singh in the management of joint family property and he was acting as defacto Karta and Manager for the last three years, as Ramsagar Singh became physically



disabled. The joint family acquired some landed property from the income of joint family and income of joint family was kept deposit in bank account operated by the defendant no. 1. All the title deeds were in possession of Ramsagar Singh and defendant no. 1. After the death of Ramsagar Singh, the defendant no. 1 began to claim some of the joint family property as his own without partition, resulting, the plaintiffs demanded partition amicably but the defendant no. 1 refused to partition the same and claimed some property gifted by late Ramsagar Singh. The plaintiffs after due inquiry obtained a copy of deed of gift which was executed in favour of all the sons of defendant no. 1. The deed of gift dated 08.11.1984 is a fraudulent and illegal document and the same was not executed by Ramsagar Singh voluntarily and it has been brought into existence by playing fraud and coercion. The document is alleged to be executed on 08.11.1984 at Begusarai on the stamp purchased at Begusarai on 06.11.1984 and scribed by a deed writer of Begusarai but was presented at Teghara Sub-Registry Office where Ramsagar Singh was taken in the name of treatment at Mokama Hospital. Except Chandra Singh who is in consult and in collusion with defendant no. 1 no other villager has been called either to be attesting or identifying witness. Other attesting witness Bipin Bihari Singh of village Maheshwara was unknown to Ramsagar Singh. The recitals in the deed are false and fictitious. The allegation of partition of joint family property and separation of Ramsagar Singh from others and his separate possession over the lands is maliciously false and fraudulently fabricated. It is also false that Ramsagar Singh was looked after by the defendant no. 1 to 6 rather he was looked after by all the family members. Contents of the deed were not scribed at the instruction of Ramsagar Singh and it was the act of defendant no. 1. Ramsagar Singh did not acknowledge the execution and defendant no. 1 by impersonification created the deed of gift in collusion with the staffs of Registry Office as the entire property is



still joint and, as such, the deed of gift is illegal and void and not enforceable. The property given in the gift was never exclusive property of the share of Ramsagar Singh and the description of property are also wrong and incorrect. The gift has neither been accepted nor acted upon nor the gifted property came in possession of the defendant no. 2 to 6 as donee rather the same is in joint possession and under cultivation of plaintiff no. 1. The joint family property was never partitioned and the lands described in the deed are fictitious, imaginary and not in existence. All the joint family property are fully described in Schedule I whereas the lands detailed in the deed of gift is fully described in Schedule II.

4. Defendant No. 1, 2 and 7 have filed separate written statement and they have opposed the contentions of the plaintiffs. According to the defendants, the suit of the plaintiffs is not maintainable, there is no cause of action for bringing the suit. It is an admitted fact that Natho Singh was the Karta of his family and there were four sons and some properties were acquired also. Natho Singh died in the year 1955. It is also an admitted fact that Sukho Singh died issueless leaving behind him his three brothers and mother. Ramsagar Singh was never ill seriously and he has not lost his mental condition rather he remained healthy both physically and mentally till his death. After the death of Sukho Singh, in the year 1975, partition took place between plaintiff no. 1, defendant no. 1 and Ramsagar Singh by metes and bounds and accordingly, the parties came in possession over the $\frac{1}{3}^{\text{rd}}$ share each. The mother, defendant no. 7, does not take any share. Ramsagar Singh purchased land of Khata No. 80, Plot No. 142 of village Makhdumpur area 17Kattha after the partition and it was his self acquired property. It is false to state that the plaintiff no. 1 was cultivating the lands of joint family property rather all the three brothers were cultivating their lands separately. The defendant no. 1, out of his own income, started business of purchasing



rickshaw and selling and repairing and further purchased Car and Jeep to which the plaintiffs and Ramsagar Singh have got no concern. All the parties have opened their own accounts in Bank having no concern with each other. After partition, in the year 1975, Ramsagar Singh and defendant no. 1 purchased some lands to which the plaintiffs have got no concern. The plaintiffs are not entitled for 1/3rd share. Ramsagar Singh, as was issueless, was keeping the sons of defendant no. 1 as his own sons and he was being looked after by them and being pleased with the services, Ramsagar Singh executed gift deed in favour of defendant no. 2 to 6 who were joint with defendant no. 1 and the defendant no. 1 started cultivating the same. On the spot the plots have been divided as per partition. The plaintiffs have got full knowledge about the gift deed and Ramsagar Singh has executed the same out of his own free will and being physically and mentally both sound and no fraud was committed, as some of the lands were situated at Barauni and as such it was presented for registration at Sub-Registry Office, Teghara. It is wrong to say that his LTI and signature was brought under influence or pressure. As a matter of fact, Ramsagar Singh executed the deed of gift with full knowledge of recitals and he had admitted the execution before the Registrar and as there is no joint family property and, as such, the suit is fit to be dismissed.

5. Learned court below, on the basis of pleadings of the parties, framed the following issues :-

- (1) Is the suit framed maintainable ?
- (2) Is the plaintiffs got any cause of action for bringing the suit ?
- (3) Whether the suit is barred by law of limitation, estoppel,, waiver and acquiescence ?
- (4) Whether the suit is bad due to non-joinder of necessary parties and misjoinder of parties ?

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- (5) Whether the disputed properties are the joint family properties and the defendant no. 1 is the Karta and Manager.
- (6) Whether the properties in suit have been acquired after the death of father out of joint family fund in the name of different members ?
- (7) Whether the partition has taken place and all the parties are in separate possession ?
- (8) Whether the defendant no. 1 and Ramsagar Singh have got sufficient income to acquire properties after the partition ?
- (9) Whether the suit has been under valued and whether the court fee paid is sufficient ?
- (10) Whether the deed of gift executed by Ramsagar Singh is legal and binding and whether it has been created by fraud ?
- (11) Whether the plaintiffs are entitled for any relief ?

6. Learned court below took issue no. v, vi and vii together and after considering the pleadings and evidences available on the record came to a finding that there was no partition between the parties and the properties described in Schedule I in item no. 1 are the joint family properties but in item no. 2 where description of movable properties is given, the plaintiffs have not succeeded in proving the same as joint family properties and accordingly, declared that movable properties are not liable for partition. Thereafter, issue no. 8 was taken for consideration and the same was decided against the plaintiffs. Issue No. 10 has also been decided against the plaintiffs and it has been held that the deed of gift executed by Ramsagar Singh, in favour of defendant no. 2 to 6 is valid and binding upon the plaintiffs. Issues no. 3, 4 and 9 were not pressed and accordingly, the suit was partly decreed.



7. Learned counsel for the appellants arguing in this appeal has submitted that the learned court below has given finding that there was no partition by metes and bounds between the parties and the immovable properties described in schedule 1 item no. 1 are the joint family properties but in spite of that finding held the deed of gift executed by Ramsagar Singh as valid which is against the law. According to the learned counsel, against the finding of the learned court below the respondents have not filed any cross-appeal and, as such, that finding has become final and, as such, the deed of gift by a coparcener in a joint Hindu family of his undivided share is void on the ground that coparcener has no power to gift his undivided share. The learned court below has come to a wrong conclusion that deed of gift is valid as like the sale deed.

8. Learned counsel for the appellants has placed reliance upon a decision reported in (1987) 3 SCC page 294 in the case of **Thamma Venkata Subbamma (dead) by L.R. vs. Thamma Rattamma and Ors.** wherein the Hon'ble Apex Court has held that gift by a coparcener of his undivided coparcenary interest to another coparceners is void. Further reliance has been placed upon a decision reported in 2011 (1) PLJR page 603 in the case of **Sukhdeo Mahton vs. Ram Lakhan Mahto & Ors.** It is submitted that deed of gift does not partake of character of testamentary succession. The Karta and Manager of joint Hindu Family has a right to alienate undivided interest in the joint family property for valid consideration for family necessity and the purchasers acquire only the equitable right to an allotment of his predecessors share by partition. The purchaser is entitled to the allotment of the specific property sold and to be put in possession as far as possible subject to equity but a coparcener has got no right to execute deed of gift of his undivided share since the gift being for no consideration is void in toto and operates *eo instanti* during the

life time of donor. Gift is not a testamentary succession under Section 30 of the Hindu Succession Act. Learned counsel for the appellants has placed reliance upon a decision reported in (1993) 4 Supreme Court Cases page 392 in the case of **Pavitri Devi and another vs. Darbari Singh and others.**

9. On the other hand learned counsel for the respondents has submitted that the deed of gift has rightly been held valid and operative. Services rendered by defendant no. 2 to 6 to Ramsagar Singh was as alike his sons and then Ramsagar Singh being pleased with his services has executed the deed of gift. Learned counsel for the respondent has conceded that it is true that against the finding of jointness no cross-appeal has been filed. According to him, the deed of gift is valid, legal and binding upon the plaintiffs as it was executed within their knowledge. Further it has been argued that the defendant no. 1 has got his own business and movable properties and it has rightly been held that the same are and not liable for partition. Learned counsel for the respondents submits that one coparcener can gift his share to other coparcener.

10. Now, it is for consideration as to whether the deed of gift executed by Ramsagar Singh in favour of defendant no. 2 to 6, the sons of defendant no. 1, is valid, legal and binding upon the plaintiffs, in spite of finding of fact by the learned court below that there was no partition in the joint family properties.

11. Against the finding of the learned court below that there was no partition by metes and bounds between the parties for immovable properties, described in schedule I of the plaint, the respondents have not filed any cross-appeal and, as such, the same finding of fact has attained finality and now it is for consideration as to whether Ramsagar Singh was entitled to execute the deed of gift of his undivided share to defendants no. 2 to 6 without the consent of



plaintiffs as there had been no partition between the parties and the family is joint, as such, the parties are coparcener. Under such circumstances, the parties had common interest and unity of possession in the coparcenary property. None of them had definite share in it. Therefore, Ramsagar Singh had undivided interest in the property but after making recital that there was partition and the properties gifted are exclusive properties falls flat on the ground. The argument of the learned counsel for the respondents that a coparcener can make a gift of his undivided interest to other coparcener has got no leg to stand.

12. In the case of **Thamma Venkata Subbamma** (Supra) the Hon'ble Apex Court at paragraphs 13, 14 and 15 has held as follows:

“13. We may also refer to a passage from Mulla's Hindu Law, Fifteenth Edition, Art. 258, which is as follows :- *“Gift of undivided interest.-* (1) According to the Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such transaction being void altogether there is no estoppel or other kind of personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparceners.”

14. It is submitted by Mr. P. P. Rao, learned Counsel appearing on behalf of the respondents, that no reason has been given in any of the above decisions why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift. The reason is, however, obvious. It has been already stated that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his undivided interest in the coparcenary property, a coparcener cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift

is to maintain the jointness of ownership and possession of the coparcenary property. It is true that there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joint Hindu family from being disintegrated.

15. The rigor of this rule against alienation by gift has been to some extent relaxed by the Hindu Succession Act, 1956. Section 30 of the Act permits the disposition by way of will of a male Hindu in a Mitakshara coparcenary property. The most significant fact which may be noticed in this connection is that while the Legislature was aware of the strict rule against alienation by way of gift, it only relaxed the rule in favour of disposition by a will the interest of a male Hindu in a Mitakshara coparcenary property. The Legislature did not, therefore, deliberately provide for any gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to another coparcener. Therefore, the personal law of the Hindus, governed by Mitakshara School of Hindu Law, is that a coparcener can dispose of his undivided interest in the coparcenary property by a will, but he cannot make a gift of such interest.”

13. In the case of **Sukhdeo Mahton** (Supra), this Court relying on the aforesaid decision has also held that in a joint Hindu family a coparcener cannot gift his undivided share and the learned court below has compared the deed of gift as like sale deed and has come to conclusion that a coparcener can alienate his undivided share to anyone is wrong in view of settled principle of law. In the case of **Pavitri Devi and another** (Supra), the Hon’ble Apex Court in paragraph 12 has been pleased to hold that gift of coparcener’s property by a member is void. In other words it is settled principle of law that a dispossession

intra vivos by gift of coparcenary property except either with the consent of other coparceners or between the coparceners or in exceptional circumstances is void. Since the gift being not for consideration is void in toto, and it is not a testamentary succession Under Section 30 of the Hindu Succession Act.

14. In view of the settled principle of law, I find that the deed of gift, Ext. A, is a void document executed by a coparcener Ramsagar Singh in favour of defendant no. 2 to 6, the sons of defendant no. 1, as Ramsagar Singh has no authority to transfer by gift his undivided share in the coparcenary property. Accordingly, the findings of the learned court below on this point is hereby set aside. The plaintiffs are entitled to ½ share in schedule I properties.

15. So far movable properties are concerned, the plaintiffs have not succeeded in proving the same as a joint family properties and the finding of the learned court below in this regard is hereby confirmed and it does not require any interference by this Court.

16. In view of the above discussions, this first appeal is partly allowed. The judgment and decree of the learned court below to the extent indicated above is hereby set aside but in the facts and circumstances of the case there shall be no order as to cost.

(Jitendra Mohan Sharma, J)

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