

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.277 of 2013

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1. Ram Shil Jha S/O Late Janardan Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.
 2. Most. Sudama Devi W/O Late Janardan Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.
 3. Anita Devi W/O Ram Shil Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.
 4. Arvind Jha @ Arvind Kumar Jha S/O Ram Shil Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.
 5. Murari Jha @ Murli Jha S/O Ram Shil Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.
 6. Alpa Jha @ Alpana Pathak D/O Ram Shil Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.

.... Appellants.

Versus

1. Sushil Jha S/O Late Janardan Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.
2. Lalan Kumar Jha @ Lalan Kumar Jha S/O Sushil Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.
3. Ganesh Kumar Jha S/O Sushil Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.
4. Indu Kumar Jha S/O Sushil Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.
5. Nirmala Devi W/O Sushil Jha Resident Of Village- Basant, P.O- Basant, P.S- Jalley, District- Darbhanga.

.... Respondents.

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Appearance :

For the Appellant/s : Mr. Suraj Narain Yadav, Adv.
For the Respondent/s : Mr. Manish Kumar No.13, Adv.
Mr.Rohit Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 29-10-2015 Heard Mr.Suraj Narain Yadav, the learned
counsel appearing on behalf of the appellants.

The defendants are the appellants in this appeal
against the judgment and decree of affirmance. The suit has been
filed by the plaintiffs for partition of their share in the suit



property after declaring the gift deed in favour of the defendant Anita Devi which was executed in her favour by her father-in-law Janardan Jha as not binding on the plaintiffs. The necessitous facts for appreciation of the submissions on behalf of the appellants, are that admittedly Markendey Jha was the common ancestor who had two sons Kusheshwar Jha and Janardan Jha. Kusheshwar Jha died leaving behind his wife Gunji Devi and a daughter Mahakali Devi. Janardan Jha died leaving behind his widow and two sons Sushil Jha and Ram Shila Jha. The wife of Ram Shila Jha is Anita Devi. The plaintiff Sushil Jha and his sons have filed the suit for partition of the property allotted to the share of Janardan Jha after partition with his brother Kusheshwar Jha. The contesting defendants, on the other hand, have come out with the case that there had been partition in between Janardan Jha and his two sons in which his two sons Sushil Jha and Ram Shila Jha were given ornaments and jewellery and the immovable property was kept by the father Janardan Jha in his share. It is further case of the defendant that Janardan Jha later on executed a gift in favour of Anita Devi wife of Ram Shila Jha with regard to the entire property which he kept in his share.

Both the courts below after scrutiny of evidence have granted the decree to the plaintiff as prayed for after holding

that the gift deed executed by Janardan Jha in favour of Anita Devi was not legal and valid. It has also been held by the appellate court below that the property obtained by gift by Nirmala Devi wife of Shushil Jha from Gunji Devi and also some property by way of purchase from Gunji Devi were valid transactions and Nirmala Devi acquired valid title over the same on the basis of gift deed and sale deed. The courts below have also overruled the objection regarding non-joinder of parties in the suit. Accordingly the suit was decreed and the appeal thereafter has been dismissed by the impugned judgment and decree.

Mr. Yadav, the learned counsel appearing on behalf of the appellants has raised the substantial questions of law that non-joinder of the four daughters of Janardan Jha in the suit as party defendant has made the suit not maintainable and the decree for partition could not have been granted to the plaintiffs. It has been contended by the learned counsel that the defendants in their written statement have raised this plea of non-joinder of four daughters of Janardan Jha (sisters of the plaintiff Sushil Jha and defendant Ram Shila Jha) as parties but the courts below have wrongly decided this issue. It has also been submitted by Mr. Yadav that the rights of a person bestowed upon him by virtue of a provision of law cannot be defeated by the statement made by

a party in a suit, and therefore, the statement made by Ram Shila Jha as D.W.3 in the suit would not wipe out the interest of the four sisters in the suit property. No other submission has been made on behalf of the appellants.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that Ram Shila Jha has deposed in the suit as D.W.3 and in his deposition he has made the statement that Janardan Jha died leaving behind his widow and two sons. Though in the written statement, the statement was made that there were four daughters also of Janardan Jha but in his deposition which the courts below have pointedly taken into notice, this fact has not been corroborated. Moreover, it is also significant to mention that the defendants in their written statement have come out with the case that there was partition between Janardan Jha and his two sons wherein the two sons got only ornaments and jewellery in their share and the immovable property was kept in his share by the father Janardan Jha. There is no mention by the defendants that in the said partition any share to the sisters was also given. The defendants, thereafter, have come out with the case that Janardan Jha executed a gift deed with regard to the entire property allotted in his share to his daughter-in-law Anita Devi wife of Ram Shila Jha. In this

manner, it is apparent that the defendants themselves have given a go-bye to their case that the four sisters had also got any interest in the property allotted to the share of Janardan Jha. It is also clear that the four sisters had not come out to challenge the gift deed made by Janardan Jha in favour of his daughter-in-law Anita Devi with regard to the entire property claimed to be allotted to his share. In this backdrop, therefore, the submission on behalf of the appellants that the four sisters were necessary parties in the suit does not appear to have substance. From the facts and findings by the courts below, it becomes prominent that this submission has been raised only for the purpose of avoiding the findings recorded by the courts below that the partition as claimed by the defendants between Janardan Jha and his two sons have not been done and the gift deed executed by Janardan Jha in favour of Anita Devi wife of Ram Shila Jha is not legally valid.

For the aforesaid reasons and discussions, this Court does not find substance in the submissions on behalf of the appellants. It is held that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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