

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.335 of 2012

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1. Most. Ashturna Kuer W/O Late Brij Nandan Singh R/O Vill-Bhakura, P.S.-Arrah
Muffassil, Distt-Bhojpur(Bihar)

.... Appellant/s

Versus

1. Khardushan Singh S/O Hajuri Singh R/O Vill-Bhakura, P.S.-Arrah Muffassil,
Distt-Bhojpur(Bihar)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. ASHOK KUMAR

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-06-2015

Heard Mr. Ashok Kumar, learned Counsel appearing for the
appellant.

2. The defendant is the appellant in this appeal against the
judgment and decree of affirmance granting the decree to the plaintiff, as
prayed.

3. The plaintiff filed a suit assailing the gift deed said to have
been executed by him in favour of the defendant – appellant and praying
for the relief of setting aside/cancelling it.

4. The plaintiff's case, as made out in the plaint, was that a gift
deed has been obtained in favour of the defendant – appellant by playing
fraud on him when he was seriously ill and had lost sense of
comprehension. It was also the case of the plaintiff that he was joint with
his brother with whom he was residing but when his brother and his
family were out for some time, he fell ill and during illness he was taken
for treatment by one Karuna Singh who obtained the gift deed during that

period in favour of the defendant Most. Ashturna Kuer.

5. The defendant appeared and contested the claim of the plaintiff, asserting the legality and validity of the gift deed in question.

6. The trial court after scrutiny of the pleadings and evidence of the parties returned the finding that the fraud was perpetrated upon the plaintiff in obtaining the gift deed and further the plaintiff was joint with his brother and the gift deed executed in state of jointness was not legal and valid.

7. In appeal, the appellate court, on reappraisal of the evidence, has concurred with the findings of the trial court on the material issues and dismissed the appeal.

8. Mr. Ashok Kumar, learned Counsel appearing for the appellant, has emphatically submitted that the finding by both the courts below are vitiated as both the courts below have approached the issues in perverted manner inasmuch as the issue of jointness of the plaintiff with his brother was first taken up and decided and thereafter the issue of perpetration of fraud upon the plaintiff has been decided. It has been canvassed by the learned Counsel that this wrong approach has made the finding of fraud against the defendant vulnerable. No other submission has been made on behalf of the appellant.

9. After considering the submissions and perusal of the judgments of both the courts below it is pellucid that the validity of the gift deed in question has been assailed firstly on the ground that the joint family property could not have been alienated by way of gift and secondly on the allegation of fraud said to have been played upon the plaintiff for obtaining the gift deed in question in favour of the defendant. It is,

however, manifest from reading the judgments of both the courts below that entire oral and documentary evidence have been scrutinized before reaching to the finding on the aforesaid issues. It is evident from the discussions made in the judgments that the defendant and her witnesses in their deposition have not been able to substantiate the case of partition and the valid execution of the gift deed in question by the plaintiff out of his free will and consent. There is also absence of explanation for presentation of the gift deed for registration on commission if the plaintiff was physically and mentally fit to go to the Registration Office.

10. Civil litigations are decided on the basis of preponderance of probability and this Court has not been persuaded to hold that the findings by both the courts below are perverse or unreasonable in any manner.

11. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal. This appeal is accordingly dismissed.

(V. Nath, J.)

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