

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.148 of 2010

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Neelam Devi D/O Late Uma Raman Tiwary @ Nathuni Tiwary & W/O
Karuna Kant Tiwary R/O Vill Amaon, P.S.Chainpur, Distt-
Kaimur(Bhabhua).

.... Appellant/s

Versus

1. Most. Jaldhari Kuer W/O Late Ram Kawal Tiwary R/O Vill Kabar, P.S.
Bhabua, P.O.Kurasan, Distt-Kaimur(Bhabhua).
2. Ganpati Jamuna Tiwary S/O Asharphi Tiwary R/O Vill Upharwaliya ,
P.S.Bhabhua, P.S. Kurasan, Distt-Kaimur(Bhabhua)
3. Most. Nokha Kuer W/O Late Shivjati Singh Vill Datiyaon,
P.S.Bhabhua, Distt-Kaimur(Bhabhua)
4. Asha Devi D/O Uma Raman Tiwary @ Nathuni Tiwary & W/O Kripa
Narayan Tiwari @Munna Tiwary R/O Vill Amaon, P.S.Chainpur, Distt-
Kaimur(Bhabhua).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar
Mr. Md. Waliur Rahman

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

11 20-08-2015 Heard the learned counsel for the appellant.

The defendant in the suit is the appellant in this appeal
against the judgment and decree of reversal decreeing the suit filed
by the plaintiff.

The plaintiff filed the suit for declaring that the gift deed
dated 20.04.1990 was not binding upon the plaintiff and further



prayer was for partition of the suit property to the extent of half share of the plaintiff. There was no dispute in the suit that the plaintiff Most. Jaldhari Kuer was the widow of Ram Kewal Tiwary. The contesting defendants in the suit, however, claimed the suit property on the basis of the gift deed dated 20.04.1990 executed by the said Ram Kewal Tiwary in their favour. The plaintiff's case was that Ram Kewal Tiwary died in state of jointness with his brother Uma Raman Tiwary @ Nathuni Tiwary and gift deed in question had never been executed by him. It was also the case of the plaintiff that the permission to execute the gift deed from the consolidation officer was also obtained by committing forgery and fraud. The defendants, on the other hand, asserted the legality and validity of the gift deed and their title in possession over the gift deed property on the said basis.

The trial court dismissed the suit. In appeal by the plaintiff, however, the appellate court below upon reappraisal of the evidence has overturned the findings of the trial court and decreed the suit.

While criticizing the impugned judgment, the learned counsel for the appellant has submitted that the appellate court below has misconstrued and ignored the material evidence of the defendants and its decision therefore is vulnerable. It has been



submitted that the plaintiff has not made the prayer for setting aside the gift deed rather only the declaration has been prayed and as such so long as the gift deed would stand the suit filed by the plaintiff could not have been decreed. It has been also canvassed that the learned court below has ignored the documentary evidence (Ext. B series) which clearly establish that there had been partition in between Ram Kewal Tiwary with his brother. The learned counsel has further propounded that the suit filed by the plaintiff was barred by limitation as the plaint of earlier T.S. No. 71 of 1991 filed by the plaintiff was returned on 13.12.1995 for presenting the same before the proper court till 13.01.1996 but the present T.S. No. 18 of 1996 has been filed on 18.01.1996. No other submission has been made on behalf of the appellant.

After perusal of the judgments of both the courts below and considering the submissions, it is pellucid that the suit property originally belonged to Ram Kewal Tiwary. The contesting defendants are claiming the suit property on the basis of the gift deed dated 20.04.1990 executed by Ram Kewal Tiwary. The plaintiff, who is admittedly the widow of Ram Kewal Tiwary, has challenged the validity of the said gift deed and has prayed for declaration that the same would not be binding on her. Manifestly, therefore, the plaintiff was not a party to the gift deed and

therefore the relief sought by her for declaration that the said gift deed would not be binding on her appears to be appropriate relief, and the suit filed by her cannot fail for the reason that no relief for setting aside the gift deed has been sought for.

The appellate court below in its judgment has scrutinized the factors reflecting upon the genuineness and validity of the gift deed. On the basis of appreciation of evidence, it has been found that the stamp papers for the gift deed were purchased on 12.04.1990 by the defendant Asha Devi; the gift deed was scribed on 20.04.1990 and left thumb impression of the donor was taken on 21.04.1990 and it has been further found that no person of the village of the donor Ram Kewal Tiwary had appeared as witness on the gift deed, and to the contrary all the witnesses of the gift belonged to another village. During the course of submission, nothing could be pointed out on behalf of the appellants to show or establish that the findings by the appellate court below are perverse or unreasonable in any manner. In fact, the entire submission on behalf of the appellants has centered around re-appreciation which cannot be done at the second appellate stage unless the findings are found to be perverse in any manner. So far the other submission regarding the bar of limitation is concerned, it does not appear from the judgments of both the courts below

that any specific plea in this regard has been raised on behalf of the defendants. It is also apparent that no issue with regard to limitation has been framed. It is well settled that the issue of limitation is a mixed question of law and fact. It is also apt to notice that the plaintiff had approached the court by filing T.S. No. 71 of 1991 well within the period of limitation but the plaint of the same was returned on the ground of want of pecuniary jurisdiction and thereafter the suit was filed before the competent court. In this view of the matter, this Court does not find substance in the submission on behalf of the appellant that the suit was barred by limitation as provided in Article 58 of the Limitation Act. The findings of facts on the issues arising between the parties has been recorded by the appellate court below on the basis of appreciation of evidence and the same is binding on the second appellate court as no perversity could be established in those findings on behalf of the appellant.

Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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