

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.395 of 2008

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1. Most. Shila Devi, wife of Late Ram Nagina Singh alias Lal Babu Singh
 2. Deepak Kumar Singh @ Nageshwar Singh @ Deepak Kumar
 3. Chandan Kumar Singh @ Chandan Singh, both sons of Late Ram Nagina Singh @ Lal Babu Singh, all residents of Village Kharsan, P.S. Riga, District Sitamarhi
 4. Pushpa Devi @ Pusha Devi, daughter of Late Ram Nagina Singh @ Lal Babu Singh, wife of Shailendra Singh, resident of Village Ashopur, P.S. Purnahiya, District Sheohar
 5. Meena Devi, daughter of Late Ram Nagina Singh @ Lal Babu Singh, wifer of Dilip Singh, resident of Village Suppi, PS Majorganj, District Sitamarhi
 6. Rubi Devi, daughter of Late Ram Nagina Singh @ Lal Babu Singh, wife of Govindra Singh, resident of Village Murha, P.S. Kanhauli, District Sitamarhi (Defendants... Respondents in the court below)

.... Appellants

Versus

Smt. Janki Devi, wife of Ram Narain Kuer, resident of Village Kharsan, P.S. Riga, District Sitamarhi (Plaintiff ... Appellant in the court below)

.... Respondent

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Appearance :

For the Appellant/s : Mr. Dronacharya
Mr. Ripu Daman Singh,
Mr. Vinay Kumar Mishra
Mr. Arun Kumar Mishra
Mr. Dharmendra Jha
Mr. Sanjay Kumar Pandey
Mr. Sunil Kumar

For the Respondent/s : Mr. Bimal Kumar
Mr. Birendra Kumar

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 04-11-2015 Heard Mr. Dronacharya, learned Counsel appearing for the appellants.

2. The defendants are the appellants in this appeal against the judgment and decree of reversal granting the decree to the plaintiff.

3. The plaintiff filed the suit for declaration of title and confirmation of possession, or in the alternative, for recovery of



possession over the suit land. Admittedly the suit property belonged to defendant No. 2 Radha Kuer. The plaintiff claimed her title and possession over the suit property on the basis of registered gift deed dated 28.4.1977 executed by defendant No. 2 in her favour. The defendant No. 2, however, executed a deed of cancellation on 28.4.1989, whereby she cancelled the gift deed in favour of the plaintiff. The defendant no. 2 thereafter executed three sale deeds for the suit property in favour of the defendant No. 1 transferring the suit property in dispute.

4. The case of defendant Nos. 1 and 2 in the suit was that the gift deed dated 28.4.1977 was obtained by the plaintiff by misrepresenting the facts and in fact the defendant No. 2 intended to execute a deed of will, but by fraudulent presentation the plaintiff has obtained the gift deed in her favour. On the basis of these facts the defendants have contested the prayer of the plaintiff regarding acquisition of valid title on the basis of gift deed in question.

5. The trial court returned the finding against the plaintiff and dismissed the suit. In appeal by the plaintiff, the appellate court below on reappraisal of evidence has overturned the findings of the trial court and granted relief in favour of the plaintiff.

6. Mr. Dronacharya, learned Counsel appearing for the appellants, has, while assailing the findings of the appellate court below, submitted that the appellate court below has wrongly placed the onus upon the defendants to prove that the permission before the execution of the gift deed was not obtained. It has been canvassed that in the gift deed the fact regarding obtaining permission along with



the case number instituted before the consolidation authority for the said purpose had been mentioned but the plaintiff did not adduce evidence in support of the said fact. In that view of the matter, it has been highlighted that the gift without the requisite permission could not have been sustained and the appellate court below has wrongly placed reliance on the case of the plaintiff. It has been further submitted by the learned Counsel that that the appellate court has wrongly held on the basis of cancellation deed (Ext. H) that the defendant No. 2 had accepted to have executed the gift. It has been submitted that there is no such averment in the cancellation deed executed by defendant No. 2. On these premises, it has been submitted by the learned Counsel that substantial questions of law are arising for consideration in this appeal.

7. From perusal of the judgments of the courts below and after consideration of the submissions, the fact stands admitted that the suit property originally belonged to defendant No. 2 Radha Kuer. The plaintiff has claimed her title over the suit land on the basis of gift deed dated 28.4.1977, executed by defendant No. 2 Radha Kuer, who was her '**Mausi**'. The defendant No. 2 as well as defendant No. 1 in their written statement have questioned the validity of the said gift deed on the ground that it was obtained by means of fraudulent representation when the defendant No. 2 Radha Kuer was made to understand that she was actually executing a deed of will, as intended by her. The fact of execution of the cancellation deed 12 years after the execution of the gift deed by defendant No. 2 Radha Kuer on 28.4.1989 is also accepted and thereafter the execution of



the three sale deeds in favour of the defendant-appellants by defendant No. 2 Radha Kuer on 6.2.1993 is also accepted. However, the plaintiff has assailed the acquisition of right, title and interest over the suit land on the basis of three sale deeds executed by the defendant No. 2 on the ground that by execution of the cancellation deed (Ext. H) the legal effect of the duly executed and registered gift deed cannot be taken away. From the deposition of the defendant-appellants which has been taken into notice in para 40 of the trial court judgment, it becomes apparent that Radha Kuer had got the knowledge of the fraudulent misrepresentation with regard to the gift deed in the year 1989 or just after four-five years of the execution of the gift deed. It has been accepted position that the defendant No. 2 Radha Kuer did not file any suit for cancellation of the gift deed within the period of limitation as required under Article 59 of the Limitation Act or even under the residuary Articles 58 or 113 of the Limitation Act. The law is well settled that by deed of cancellation the legal effect of a duly executed and registered document cannot be taken away. The appellate court below has recorded the findings of fact on reappraisal of evidence on record and this Court has not been persuaded to find unreasonableness or perversity in the same in any manner.

8. Learned Counsel for the appellants has accepted that except the averments that no permission was obtained as required under Section 5 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, there was no further fact pleaded on behalf of the contesting defendants that such permission was in

fact required at the time when the gift deed was executed. It has also been accepted that there is no material to establish the said fact of requirement of obtaining permission at the relevant time.

9. The issues arising between the parties now stand concluded by the findings of fact as recorded by the appellate court below. This Court, therefore, does not find any substantial question of law arising in this appeal for consideration, which is, accordingly, dismissed.

(V. Nath, J.)

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