

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.301 of 2013

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Zareena Khatoon @ Margo daughter of late Janab Md. Omer and wife of
Md. Jalaluddin Khan Resident of Mohalla- Chamra Godam Kanhauli, P.S.
Kotwali Town, P.O. & District- Muzaffarpur

.... Appellant/s

Versus

1. Sahbojuddin @ Lovely son of late Md. Jalaluddin
2. Shabana Khatoon @ Daizy
3. Baby Benazir
4. Nadra Khatoon @ Disuza All Daughters of late Md. Jalaluddin resident
of Mohalla- Chamra Godam Kanhauli, P.S. Kotwali Town, P.O. &
District- Muzaffarpur
5. Pawan Kumar Chaudhary
6. Durgesh Kumar Chaudhary Both sons of Sri Ram Chandra Chaudhary
Both residents of mohalla - Kanhauli Bishandatta, B.M.P. 6, P.S.
Mithanpura, P.O. Ramma Town, District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Naresh Chandra Verma
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

7 22-12-2015 Heard Mr. Naresh Chandra Verma, the learned
counsel appearing on behalf of the appellant.

The plaintiff is the appellant in this appeal against the
judgment and decree of affirmance dismissing the suit.

The plaintiff filed the suit for declaration of her title
and possession over the suit property on the basis of oral gift in
her favour by the defendant no. 1 and further for declaration that
the two sale deeds dated 18.05.1995 executed by the defendant no.

1 in favour of the defendant 2nd set for the suit property are forged, fabricated and without consideration and did not confer any title to the defendant 2nd set.

The factual expose' are that the plaintiff and the defendant no. 1 (now deceased) were husband and wife. The suit property admittedly belonged to the defendant no. 1. The plaintiff has claimed that in the month of March 1991, the defendant no. 1 made oral gift of the suit land in her favour in presence of witnesses and the plaintiff accepted the said gift and came in exclusive possession over the gifted property. The plaintiff has also come out with the case that the defendant no. 1 later on also sworn non-affidavit in support of the said oral gift. The relationship between the plaintiff and the defendant no. 1 later on deteriorated leading to the filing of the criminal case by the plaintiff against her husband (defendant no. 1). The plaintiff has alleged that the defendant no. 1 in retaliation executed the two sale deeds with regard to the suit property in favour of the defendant 2nd set. The plaintiff has also averred that the defendant 2nd set by taking benefit of the difference between the plaintiff and the defendant no. 1 and also by intoxicating the defendant no. 1 has got executed the two sale deeds in her favour.

The defendant no. 1 appeared in the suit and filed his



written statement denying the oral gift to have been made by him in favour of the plaintiff with regard to the suit property and further also denying to have sworn any affidavit in support of the said oral gift. The defendant 2nd set in their written statement have claimed to have purchased the said property by two sale deeds executed in their favour by the defendant no. 1 after receiving the adequate consideration money.

The trial court, after scrutiny of the pleadings and evidence of the parties, returned the findings against the plaintiff and dismissed the suit. In appeal, the appellate court below, on reappraisal of evidence, has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

Mr. Verma, the learned counsel for the appellant has submitted that both the courts below have erred in law in recording the findings against the plaintiff which are vitiated for misappreciation and non-appreciation of the evidence. It has been canvassed that the evidence relating to mutation proceeding in favour of the plaintiff and the local inquiry by the magistrate supported the possession of the plaintiff over the suit house but the courts below have ignored the same. The learned counsel for the appellant, however, has accepted that even after the denial of the



oral gift and affidavit in support of the same by the defendant no. 1 no step has been taken by the plaintiff for examination of the signature over the affidavit by handwriting expert. It has, however, been submitted that the learned trial court has wrongly assumed the rule of expert in examining the signature of the defendant no. 1 over the affidavit and the finding in that regard has been wrongly recorded. It has also been argued that the possession of the plaintiff over the suit land which has been corroborated by the evidence on recording including the mutation in her name are sufficient pointer to the fact of oral gift in her favour but the courts below have wrongly ignored the said aspect. The reliance has been placed upon the decision in the case of **Bibi Maniran Vs. Mohammad Ishaque, A.I.R. 1963 Pat. 229.**

After perusal of the judgments of courts below and considering the submissions, it is manifest that admittedly the suit property belonged to the defendant no. 1 who was husband of the plaintiff. The defendant no. 1 has transferred the suit property in favour of the defendant 2nd set by two sale deeds. The plaintiff has filed the suit seeking relief against the said two sale deeds but in order to succeed, the plaintiff was required to establish the transfer of title over the suit property in her favour by the defendant no. 1 through oral gift. It was the case of the plaintiff that her husband



(defendant no. 1) after making the oral gift in her favour had also sworn an affidavit (Ext. 3) in support of the said oral gift. However, the husband of the plaintiff (defendant no. 1) in her written statement and deposition denied to have made oral gift as alleged in favour of the plaintiff and also denied to have sworn affidavit (Ext. 3) in support of the said oral gift. The courts below have found that no step was taken by the plaintiff for examination of the signature of the defendant no. 1 over the affidavit (Ext. 3) by handwriting expert in case of the definite denial by the defendant no. 1. It is transparent that the affidavit (Ext. 6) said to have been sworn by the defendant no. 1 was the most import and direct evidence in support of the oral gift as claimed by the plaintiff. There is no explanation on behalf of the plaintiff-appellant regarding the inaction on the point of the plaintiff to establish the genuineness of the signature of the defendant no. 1 on the affidavit (Ext. 3). This was a strong circumstance which has been relied upon by both the courts below in disbelieving the case of the oral gift as propounded by the plaintiff.

It also appears from the judgment of the appellate court below that a detailed scrutiny of the material evidence of the parties has been made before reaching to the conclusions against the plaintiff on the issues. The appellate court below has also



taken into notice the deposition of the witnesses said to have been present at the time of making of the oral gift and has refused to rely upon the same. This Court has not been persuaded to hold that the findings recorded by the courts below are unreasonable or perverse and not based on consideration of material evidence of the parties. Much stress has been led by the learned counsel for the appellant on the order of mutation in favour of the plaintiff or the inquiry report to show that the possession of the suit land was with the plaintiff and this fact has corroborated making of the oral gift in favour of the plaintiff. This Court is not impressed with this submission for the simple reason that the issues arising in the suit are to be decided on the basis of the totality of evidence and not only upon stray evidence here and there. The mutation which has admittedly been initiated by the plaintiff just before filing of the suit cannot by itself be the settler of the issue of acquisition of title by the plaintiff on the basis of oral gift. The reliance upon the decision of this Court in the case of **Bibi Maniran** (supra) is also misconceived because in the said case the husband who made the oral gift in favour of his wife on the one hand and the wife on the other filed separate mutation petitions after the oral gift. In fact the entire submission on behalf of the appellant centers around reappreciation of evidence in order to interdict the concurrent

findings of fact which are based upon appreciation of evidence by the courts below.

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

(V. Nath, J)

Devendra/-

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