

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.218 of 1983

(Against part of the judgment and decree dated 29.01.1983 passed by 2nd Additional Subordinate Judge, Chapra in Partition Suit No.84 of 1976/95 of 1981).

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Satrughan Pandey & Ors.

.... Defendants-Appellants

Versus

Awadhesh Pandey & Ors

.... Plaintiffs-Respondents

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Appearance :

For the Appellant/s : Mr. Satyendra Narayan Singh, Advocate

For the Respondent/s : Mr. Nand Kishore Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 18-10-2016

1. The defendant No.1(since deceased and substituted) had filed this First Appeal against the part of the judgment and decree dated 29.01.1983 passed by the learned 2nd Additional Subordinate Judge, Chapra in Partition Suit No.84 of 1976/95 of 1981 whereby the learned Court below decided issue no.9 in favour of the plaintiffs-respondents.

2. The plaintiff-respondents had filed the aforesaid Partition Suit No.84 of 1976 claiming 13/32 share in the suit lands described in various schedules of the plaint. The plaintiff further prayed for declaration that the deed of gift dated 23.05.1962 and 28.05.1962 executed by Laxmina Kuer and Mathura Pandey in favour of defendant No.1 as fraudulent, illegal and void.

3. For deciding this First Appeal, the great details of the pleadings of the parties are not required to be stated herein. Therefore, only relevant portion is being stated for better understanding the case of the parties.

4. According to the plaintiff, Mahadeo Pandey, the common ancestor died leaving behind four sons namely Tulsi Pandey, Puja Pandey, Ratan Pandey and Debi Pandey. Branch of Puja Pandey extinct. Ratan Pandey died leaving a son, Ram Prasad Pandey who also died leaving behind widow, Reshma Kuer, four sons and two daughters. Debi Pandey had two sons namely Chatrapat Pandey and Thakur Pandey. Chatrapat Pandey died 52 years before the institution of the suit without any heir. Thakur Pandey died leaving behind Sheopujan Pandey. His son died leaving behind three sons and widow, Ruksano Kuer. Tulsi Pandey, the first son of Mahadeo Pandey died leaving behind two sons namely Rajaram Pandey and Baburam Pandey. Rajaram Pandey died 46 years prior to filing the suit. Baburam Pandey died leaving behind three sons namely Mathura Pandey, who died in 1966, Rajendra Pandey whose widow, Laxmina Kuer is defendant No.4 and Panchanand Pandey whose widow, Lagna Kuer is defendant No.3. The defendant Nos.1 to 3 are the heirs of Panchanand Pandey. Defendant No.1 is the first son of Panchanand Pandey. The second son, Awadhesh Pandey is the plaintiff and

defendant No.2 is the daughter of Panchanand Pandey. After the death of Rajendra Pandey in the year 1920, only his widow, Laxima Kuer, defendant No.4 was there. She died during the pendency of the suit and her name has been expunged. Mathura Pandey died issueless in the year 1966.

5. The further case is that immediately after survey, Chatrapat Pandey and Rajendra Pandey died in jointness with other heirs of Debi Pandey and Tulsi Pandey. After 34 years of survey, Mathura Pandey and Sheopujan Pandey, sons of Thakur Pandey separated taking half share each and there was complete partition between two branches. Mathura Pandey and Panchanand Pandey remained joint and Laxmina Kuer, defendant No.4 was getting maintenance. The plaintiffs were also remained joint. Mathura Pandey and Panchanand Pandey acquired some properties out of the nucleus of the joint family properties in the name of defendant No.1, Chandra Shekhar Pandey. All these properties are the joint family properties. There are other great detail pleadings but those are not required to be stated herein.

6. So far gift deed is concerned, it is the case of the plaintiff that after 1953, defendant No.1 became the karta and as karta, he executed many deeds. The plaintiff was married in the year 1975. The defendant No.1 told that he has got a deed of gift executed by



Mathura Pandey and Laxmina Kuer in his favour, therefore, the plaintiff has got no share in the properties. The plaintiff was not aware about the gift deed. When he came to know about the gift deed, he obtained copy thereof and found that it was never executed by Mathura Pandey and Laxmina Pandey validly. The gift deeds are fraudulent and fabricated documents and are nullity. Laxmina Kuer had no right to execute any deed of gift on 23.05.1962. There had been no partition, therefore, Mathura Pandey had also no right to execute any gift with respect to undivided coparcener share.

7. The defendants-respondents filed contesting written statement. Their main case is that there was separation between Tulsi Pandey and Debi Pandey before survey. Both the branches had half and half share which were divided half and half. There had already been partition between Mathura Pandey, Panchanand Pandey and Rajendra Pandey but properties were not divided by metes and bounds. After the death of Rajendra Pandey, his properties were inherited by Most. Laxmina Kuer who remained in possession till 1956 and, therefore, she acquired valid title under the Hindu Succession Act, 1956. Thereafter, she gifted the property to defendant No.1 in 1962. Mathura Pandey was also separate and he had got 1/3rd share in it, so, he executed a gift deed on 28.05.1962 in favour of defendant No.1.

8. The further case of the defendant is that the parties were separate and whatever properties were acquired by Mathura Pandey were his self-acquired properties. The others have got no share. Here also, it will not be out of place to mention here that the other part of the statements made in the written statement are not required to be gone into.

9. The trial court framed the following issues:

- I. Is the suit as framed maintainable?
- II. Has the plaintiff got valid cause of action for the suit?
- III. Is the suit barred by ouster, limitation and adverse possession?
- IV. Whether Mathura Pandey, Rajendra Pandey, Panchanand Pandey and Rajaram Pandey were separate?
- V. Whether Lachmina Kuer widow of Rajendra Pandey was maintenance holder as alleged by the plaintiff or she was owner as alleged by the defendants?
- VI. Whether schedule 2 lands are self-acquisition of defendant No.1?
- VII. Whether schedule 4 is self acquisition of Draupati Devi, defendant No.5?
- VIII. Whether schedule 3 lands are ancestral properties of the parties and the alleged deed of gift in favour of Bhagmani Devi, wife of plaintiff is illegal and not operative?
- IX. Whether the deeds of gift executed by Mathura Pandey and Lachmina Kuer are legal, valid, genuine and operative?
- X. Whether Mathura Pandey, Rajendra Pandey and Panchanand Pandey were members of joint family and whether

defendant no.1 was karta of the joint family?

- XI. Whether defendant No.1 is the step son of defendant No.3 or son of Lagna Kuer?
- XII. Whether there is unity of title and possession between the parties in respect of the disputed land?
- XIII. Is the plaintiff entitled to a decree of partition, if so, what would be his share and in which of the properties of the plaintiff?
- XIV. To what reliefs or relief, if any, is the plaintiff entitled?

10. After hearing the parties, the learned Court below on the basis of the materials available on record came to the conclusion that defendant No.1 was not the karta and that there was separation between the parties prior to 1975 vide paragraph 21 and 26. The Court below also recorded finding that the Schedule IV properties are self-acquired properties of defendant No.5 and Schedule II properties are also self-acquired properties of defendant No.1.

11. The Court below also while dealing with issue no.8 held that Schedule III properties are the ancestral land, as such, the gift deed did not confer title in favour of Bhagmani Devi. The Court below while dealing with issue no.5 at paragraph 38 held that Laxmina Kuer had no title nor she acquired any property, therefore, the issue was decided in favour of the plaintiff and while dealing with issue No.9, the gift deed in favour of defendant No.1, the Court below held that the gift deeds will not take away the right of the other

coparceners and that Laxmina had no right, title to execute valid gift, as such, the gift deeds are void.

12. At the time of hearing of this First Appeal, the learned counsel for the appellants specifically raised the points covered under issue no.9 i.e. with regard to the gift deeds executed by Mathura Pandey and Laxmina Kuer. The learned counsel for the appellants submitted that he is not pressing the other points in this First Appeal as most of the issues have been decided in favour of the defendant No.1-appellant. The properties which are self-acquired properties of defendant No.1 and his wife have been held to be the self-acquired property of the appellant. So far the ancestral properties are concerned, the appellants have got no objection for partition but the gift deeds executed by Mathura Pandey and Laxmina Kuer in favour of defendant No.1-appellant are wrongly held as void document. The learned counsel submitted that Rajendra Pandey died in the year 1920 and on his death, his share devolved on Laxmina Kuer. She was entitled for maintenance out of the share of her husband, Rajendra Pandey. After coming into force of Hindu Succession Act, Laxmina Kuer became the absolute owner of the share of Rajendra Pandey. Thereafter, she has executed the Will in favour of defendant No.1 but the Court below did not consider this legal aspect of the matter that the gift deed has been executed after she

became the absolute owner thereof in view of Section 14 of the Hindu Succession Act, 1956. Even if the defendant-appellant failed to prove that she had purchased any property then also she had the right, title, interest and possession of the share of her husband and rightly executed the gift deed in favour of defendant No.1.

13. So far gift deed executed by Mathura Pandey is concerned, the learned counsel submitted that the learned Court below wrongly held that the gift deed was not a valid gift deed and doubted the same on the ground that Mathura Pandey was aged about 88 years at the time of execution of the gift deed. The learned counsel further submitted that Mathura Pandey had the right to execute gift with respect to his undivided share and he had gifted the share to the defendant No.1-appellant.

14. In view of these submissions made by the learned counsel for the appellants, I have not stated the other facts pleaded by the parties. These two points have been raised only and for deciding these two points, the other portion of the pleading regarding joint fund, nucleus or self-acquisition and which properties have been acquired in the name of lady or by whom it was acquired are not relevant as those issues have been decided in favour of the appellants and that part of the judgment and decree has not been challenged by the plaintiff-respondents by filing cross-objection.



15. The learned counsel for the respondents submitted that since Laxmina Kuer admittedly died in the year 1920, she will not become the owner of the share of the deceased husband nor after Hindu Succession Act, she will become the absolute owner thereof. She was only a maintenance holder, as such, she had no authority or right, title to execute the gift deeds in favor of defendant No.1-appellant. So far gift deed executed by Mathura Pandey is concerned, the learned counsel submitted that it is also the case of the defendant. The parties were joint and there had been no partition. The plaintiff also pleaded that there had been no partition and the parties are joint. The finding has been recorded by the Court below that separation between the parties was in the year 1975 only and the suit has been filed for partition in the year 1976. Therefore, on the date of execution of the gift deed, Mathura Pandey was not in possession of any specific land and has no specific share in the joint family coparcenary property, therefore, he could not have executed the gift deed.

16. In view of the above rival contentions of the parties, the only point arises for consideration in this First Appeal is as to “whether both the gift deeds executed by Mathura Pandey and Laxmina Kuer are valid and confer title and possession in favour of defendant No.1 or not?”

17. According to the plaintiffs, there was no partition

between the parties. Mathura Pandey and Panchanand Pandey were joint. On the contrary, according to the defendant No.1-appellant, Mathura Pandey, Panchanand Pandey and Rajendra Pandey were separate prior to survey but there was no partition between them. The Court below held that the parties are joint and that prior to 1975, there was no separation between the parties. In other words, the coparcenary status of the family was in existence upto 1975. The gift deed has been executed by Mathura Pandey in the year 1962.

18. The Hon'ble Supreme Court in the case of **Thamma Venkata Subbamma (dead) by L.R. v. Thamma Rattamma and others, AIR 1987 Supreme Court 1775** has held that "the essence of a coparcenary under the Mitakshara School of Hindu Law is community of interest and unity of possession. A member of joint Hindu family has no definite share in the coparcenary property, but he has an undivided interest in the property which is liable to be enlarged by deaths and diminished by births in the family." In this decision, the Hon'ble Supreme Court also held that "a gift by a coparcener of his undivided interest in the coparcenary property is void. The reason as to why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift is that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his



undivided interest in the coparcenary property, a coparcenary cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift is to maintain the jointness of ownership and possession of the coparcenary property. It is true that there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joint Hindu family from being disintegrated. The rigour of this rule against alienation by gift has been to some extent relaxed by the Hindu Succession Act, 1956. Section 30 of the Act permits the disposition by way of will of a male Hindu in a Mitakshara coparcenary property.”

19. Here, as has been pleaded by the parties and found by the trial court admittedly there is unity of title and community of possession with regard to the joint family property. The court below, therefore, granted decree for partition of the ancestral property. This part of the decree is not under challenge as the defendant-appellant himself admitted that there had been no partition, therefore, the unity of title and community of possession is admitted. In such circumstances, the gift deed executed by Mathura Pandey will be a void gift deed as has been held by the Supreme Court in the aforesaid decision.

20. So far the gift made by Laxmina Kuer is



concerned, it may be mentioned here that husband of Laxmina Kuer namely Rajendra Pandey admittedly died in the year 1920. Therefore, the question is whether on death of Rajendra Pandey in the year 1920, the share of Rajendra Pandey will devolve on his widow or not. So far position of law is concerned, in the year 1920, widow was not entitled to inherit the share of husband in the coparcenary property. She was entitled to maintenance only.

21. Prior to 1937, the only *sapindas*, who were succeeding the interest were son, grand son and great grand son. After 14th April, 1937, the widow, pre-deceased sons and pre deceased son's widow were recognized to inherit the share. After 14th April, 1937, a widow takes the same share as that of sons. It may be mentioned here that till then also the daughters were not recognized as an heir. In the year 1937, the Hindu Women's Rights to Property Act (XXIII) of 1937, which was amended by Act No. XI of 1938, introduced important change in the law of succession. In this Act, the widow was given right to inherit the share of husband in coparcenary property as a son. Reference may be made to Section 3 of the Hindu Women's Right to Property Act.

22. Prior to this Act of 1937, no right was conferred to the widow. Section 4 of the 1937 Act provides that nothing in this Act shall apply to the property of any Hindu dying intestate before the

commencement of this Act.

23. In view of this provision, the widow, Most. Laxmina Kuer will not get any benefit because of the Hindu Women's Right to Property Act, 1937 as her husband, Rajendra Pandey had died in the year 1920. Therefore, Most. Laxmina Kuer was entitled to maintenance only and did not even take limited interest in the property what is commonly known as widow's estate. The Hindu Succession Act was enacted in the year 1956. Section 14 of the Hindu Succession Act, 1956 provides that any property possessed by a female Hindu whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. In the present case, although, it was pleaded that some properties were acquired by Laxmina Kuer but except this pleading, nothing has been brought on record.

24. The Hon'ble Supreme Court in the case of *Kalawatibai vs Soiryabai And Others* reported in *AIR 1991 SC 1581* held that a female Hindu possessed of the property on the date of the act i.e. Hindu Succession Act came into force can become absolute owner only if she was a limited owner. In view of this settled principle of law, she could not be the absolute owner of the share of her husband because no benefit is available to her under the Act of 1937. In other words, she was not a limited owner. When she was not

the limited owner and the act of the year 1937 is not applicable in the case, there is no question of become absolute owner under Section 14 of the Hindu Succession Act arises.

25. In view of the above facts and settled law, on the death of Rajendra Pandey in the year 1920, the property will devolve on the brothers of Rajendra Pandey according to the rule of survivorship. In other words, as soon as Rajendra Pandey died in the year 1920, the title vested on the coparceners and the widow got the right of maintenance only. This vesting of property on the coparceners will not be divested because of subsequent enactment of either Hindu Women's Right to Property Act or under Hindu Succession Act. In such circumstances, when she was not a title holder nor even a limited owner, she could not have gifted by gift in favour of defendant No.1.

26. In view of my above discussion, I find that the gift deed executed by Laxmina Kuer is a void document as she had no right, title or interest or possession so as to confer same title, interest and possession on defendant No.1. Because of Hindu Women's Right to Property Act, 1937 or Hindu Succession Act, 1956, her right of maintenance will not confer title on her. She had no right to execute the gift deed. Therefore, the gift deed is not binding on the reversioners or the plaintiff. Accordingly, I find that the Court below has rightly held that the gift deeds did not confer title on defendant

No.1. Thus, the finding of the learned Court below on this point is, therefore, hereby confirmed.

27. In the result, this First Appeal is dismissed with cost of Rs.10,000/- to be paid by the appellants to plaintiff-respondents within two months failing which the plaintiff-respondents shall be at liberty to realize the same through the process of the Court.

(Mungeshwar Sahoo, J)

Saurabh/-

AFR/NAFR	AFR
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