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# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Second Appeal No.110 of 2015**

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1. Raghubansh Mani Singh
2. Sri Nand Kishore Singh,
3. Sri Dinanath Singh All Sons of Late Ramchandra Singh,
4. Sumitra Devi, Widow of Late Ramchandra Singh, All residents of village - Barahpur, Police Station -Mokama, District - Patna.
5. Smt. Ragani Kumari @ Pinki Kumari, Daughter of Late Bishwanath Singh and Wife of Sri Shyam Nandan Singh, Resident of Village - Gabee, Police Station and District - Shekhpura.

.... .... Appellant/s

Versus

1. Smt. Asha Devi Wife of Sri Hari Narayan Singh and daughter of Late Ram Nandan Singh, resident of village - Godargawa, P.S. - matihani, District - Begusarai, Post Office, Police Station and District - Begusarai under C/o Hari Narayan Prasad Singh, B.A.O.
2. Sri Awadesh Singh,
3. Sri Praveen Singh, Both Sons of Late Deonandan Singh, Resident of Village - Barahpur, Police Station - Mokama, District - Patna.
4. Most. Saraswati Devi widow of Late Ratan Singh, resident of village - Ranu Bigha, Police Station - Mehus, District - Munger, Now Seikhpura.
5. Droupadi Devi, Wife of Rajendra Prasad Singh, resident of village - Ramdiri, Police Station - Motihari, District - Begusarai.
6. Laxmi Devi, Wife of Mahendra Narayan Singh, resident of village - Dahaur, Police Station - barh, District - Patna.
7. Madhuri Devi, Wife of Mahesh Prasad Singh, Resident of Village and Police Station - Bihat, District - Begusarai.
8. Anuradha Devi, Wife of Sagar Singh, Resident of Village - Cherawan, Police Station - Nawagarh, District - Munger.
9. Shashi Bhushan @ Baudha
10. Purushottam Both Sons of Vishwanath Singh,
11. Rajeev Ranjan,
12. Prabhat Ranjan, Both minor sons of Raghunbash Mani Singh, under the guardianship of their father,
13. Santosh Kumar,
14. Saket Kumar, Both sons of Late Kishore Singh under guardianship of their father,
15. Ashutosh
16. Sati Keshan minor sons of Dinanath Singh,
17. Mukul Kumar, minor son of Shashibhushan Singh, under theguardianship of his father, All residents of village - Barahpur, Police Station - Mokama, District - Patna.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Sanjay Kumar Verma
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

ORAL JUDGMENT

4 22-02-2016 Heard Mr. K.N.Choubey, the learned senior counsel appearing for the appellants. Mr. J.S.Arora, the learned counsel for the respondents is present.

The defendants are the appellants in this appeal against the judgment and decree of affirmance granting the decree for partition as prayed by the plaintiff.

The suit was filed by the plaintiff for partition of the property mentioned in Schedule-I of the plaint. During the pendency of the suit the plaintiff's prayer for amendment in the plaint was allowed and the relief with regard to the deed of gift executed by Toral Singh in favour of Jang Bahadur Singh and deed of gift executed by Jang Bahadur Singh in favour of defendant 1st set and defendant 2nd set as void and not binding upon the plaintiff was incorporated in the plaint.

Both the courts below have recorded the concurrent finding of fact that the Schedule-I property of the plaint was joint family property in which the plaintiff and the defendants have got unity of title and possession. It has been also held that the gift deeds executed by Jang Bahadur Singh in favour of the defendant 1st set and defendant 2nd set are void and not binding upon the plaintiffs.

Mr.Choubey, the learned senior counsel for the appellants has submitted that both the courts below have erred in law in not appreciating the fact that the plaintiff Savitri Devi became widow in the year 1948 and as such she had no right to claim partition of the suit property. It has also been submitted that the appellate court below has erred in law in not considering the oral evidence adduced on behalf of the defendant-appellants and further also not considering that the relief with regard to the deeds of gift in favour of the defendants was definitely barred by limitation as the suit has been filed in the year 1992.

Elaborating the submissions, it has been contended that the original plaintiff Savitri Devi was only a maintenance holder and after her death during the pendency of the suit her daughter who has been substituted in her place cannot claim her own independent right over the suit property as she has not stepped into the shoes of her mother. It has also been argued that both the courts below have erred in coming to the conclusion that the self-acquired property of Jang Bahadur Singh was the joint family property acquisition. No other submission has been made on behalf of the appellants.

After perusal of the judgments of both the courts below and considering the submissions on behalf of the appellants, it is manifest that the pivotal issue between the parties was the nature of the transfer of the property made by Toral Singh in favour of Jang Bahadur Singh in the year 1928 and the blending of the said property by Jang Bahadur Singh with the joint family property which he was holding as karta alongwith his sons. It is not in dispute that the sole plaintiff Savitri Devi (now deceased) was the daughter-in-law of Jang Bahadur Singh being the widow of his son Ramnandan Singh. The contesting defendants including the appellants are the descendants of his two other sons namely Ramchandra Singh and Deonandan Singh. It was the case of the plaintiff that the property acquired by Jang Bahadur Singh from Toral Singh was not by way of gift but by way of family arrangement whereas contesting defendants have claimed the said transfer to be by way of gift conferring exclusive title to Jang Bahadur Singh with further assertion, in sequel, that Jang Bahadur Singh had validly transferred the same to the contesting defendants by executing deeds of gift for the said property in the year 1968.

Though , the trial court has held that the deed of gift (Ext.E/2) executed by Toral Singh in favour of Jang Bahadur Singh was by way of family arrangement, after considering the recitals made therein and taking into notice the subsequent conduct and dealing by Jang Bahadur Singh of the said property but the appellate court below has come to the conclusion that the said deed (Ext.E/2) was a deed of gift executed by Toral Singh in favour of Jang Bahadur Singh out of love and affection. However, there is convergence of conclusion by both the courts below that Jang Bahadur Singh blended the said property subject matter of the gift deed (Ext.2) with the joint family properties and treated the same to be the joint family property which he was holding with his sons. Both the courts below have taken into notice the registered sale deeds (Ext.1/B to Ext.1/G) executed jointly by Jang Bahadur Singh , Ramchandra Singh and Deonandan Singh in 1949 in favour of various persons with regard to the property covered by the gift deed (Ext.E/2); the deed of gift of the year 1958 (Ext.5) executed by Deonandan Singh in favour of his wife regarding the properties contained in the gift deed (Ext.2) and also the Bandobasti (Ext.7) of the year 1963 executed by Deonandan Singh in favour of Ramchandra Singh with regard to the properties covered by deed of gift. It has also been noticed by the courts below that the defendant-appellants have failed to explain the aforesaid transactions evidenced by Ext.1/B to Ext/1/G and also Ext.5 and Ext.7. It further appears that the elaborate scrutiny of the documentary evidence on record has been made by both the courts below before coming to the conclusion that Jang Bahadur Singh never treated the property received by him by gift deed (Ext.2) as his self –acquired property and in fact he blended the same with his joint family properties. This Court has not been persuaded to find that the conclusion by both the courts below in this regard is unreasonable or perverse in any manner. It will be also apposite to mention at this juncture that no part of oral evidence could be pointed out on behalf of the appellants which would have been sufficient to dispel the findings by both the courts below.

Once after holding that the property obtained by gift deed (Ext.2) by Jang Bahadur Singh did not remain his exclusive property and had acquired the nature of joint family property after the blending, the conclusion as reached by both the courts below is inevitable that the gift deed of the said property by Jang Bahadur Singh subsequently in favour of the contesting defendants was void ab initio and not binding upon the plaintiffs. This finding is in consonance with the law laid down by the apex court in the case of ***Thamma Venkata Subbamma Vs. Thamma Rattamma, AIR 1987 SC 1775***. Once the deed of gift is void ab initio, the application of the bar of limitation as envisaged under Article 59 or residuary Article 58 is clearly excluded.

The submission with regard to the right of the sole plaintiff Savitri Devi (now deceased) to claim partition on the ground that she became widow in the year 1948 and thus was only a limited owner is also misconceived in view of Section 14 of the Hindu Succession Act 1956 whereafter her right in the property held as limited owner so far had blossomed into absolute right.

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)**

Nitesh/-

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