

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.460 of 2012

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1. Umesh Kumar Singh @ Pintu Singh S/O Prithvi Nath Singh Resident Of Village Chheri, P.S. Rewati, District Ballia (U.P.).
 2. Sasa Devi @ Sosa Devi @ Sushila Devi D/O Prithvi Nath Singh And W/O Vinod Singh Resident Of Village, P.O. And P.S. Chilkahar, District Ballia (U.P.).
 3. Mana Devi D/O Prithvi Nath Singh And W/O Harendra Singh Resident Of Village And P.O. Kureji, P.S. Garwar, District Ballia (U.P.).
 4. Maya Devi D/O Prithvi Nath Singh And W/O Sri Prakash Singh Resident Of Village & P.O. Hariya Kala, P.S. Rewati, District Ballia (U.P.).
- Plaintiffs Appellants

.... Appellants

Versus

Rajendra Kuer S/O Jagdish Kumar Resident Of Village Sadhpur, P.S. Munshi, District Saran.

..... Defendant Respondent

.... Respondent

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Appearance :

For the Appellant/s : Mr. Nagendra Rai, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 07-12-2016

Heard Mr. Nagendra Rai, learned Counsel appearing for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance dismissing the suit.

3. There is no dispute with regard to the fact that the property originally belonged to Ram Ekbal Kuer. According to the genealogy as set up by the plaintiff Ram Ekbal Kuer, Pyaro Kuer was the daughter-in-law of Ram Ekbal Kuer being the widow of his predeceased son. The suit was filed by Ram Ekbal Kuer and Pyaro Kuer for declaration that the deed of gift dated 18.10.1982 executed by the plaintiff in favour of the defendant was illegal. The suit was filed in the year 1983. There was no



prayer for setting aside the gift deed. It was the case of the plaintiffs that the plaintiff No. 1 suffered paralytic attack and the defendant took him to Chapra for treatment accompanied by plaintiff No. 2 and he fraudulently got executed registered deed dated 18.10.1982. The defendant however denied the assertion made by the plaintiffs and contested the suit.

4. Both the courts below have come to the concurrent finding of fact that the plaintiffs have failed to establish the case of fraud as pleaded by them alleged to have been committed by the defendant in obtaining the gift deed in his favour. The suit was dismissed and thereafter the appeal has also been dismissed by the impugned judgment and decree.

5. Mr. Nagendra Rai, learned Counsel for the appellants, has pointed out that after the death of both the plaintiffs i.e. Ram Ekbal Kuer and Pyaro Kuer, the only daughter of Ram Ekbal Kuer, namely Mato Devi was substituted as plaintiff and after her death her heirs have been substituted as plaintiffs. It has been contended by learned Counsel that both the courts below have failed to consider the very material fact touching upon the legality and propriety of the gift deed in question that there was no reason for the plaintiffs namely Ram Ekbal Kuer and Pyaro Kuer for executing the gift deed in favour of the defendant in presence of the only daughter Mato Devi. It has been submitted that this reason if considered along with other evidence would have been sufficient for the courts below to come to the conclusion that the gift deed in question was not a legally and validly executed document. It has been further submitted that the plaintiff No. 2 Pyaro Kuer was an illiterate lady and therefore burden of proof was definitely upon the defendants to establish



the legality and validity of the gift deed. Reliance in this regard has been placed upon the decisions reported in the case of ***Bibi Jaibunnisa vs. Abdul Ghaffoor 1984 BBCJ 605*** and in the case of ***Miti Dewa vs. Daitari Nayak AIR 1982 Orissa 174***. The next submission on behalf of the appellants is that the appellate court below has not analysed the oral evidence before concurring with the conclusions of the trial court and as such the judgment passed by the appellate court below stands vitiated. It has also been vehemently canvassed that both the courts below have not properly considered the material evidence on behalf of the parties and also the well settled legal principles.

6. After considering the submissions and perusal of the judgments of both the courts below it is manifest that the gift deed dated 18.10.1982 is a registered document and as such there is legal presumption of its due execution. The original two plaintiffs who were the donors in the gift deed in question though remained alive for three – seven years after the filing of the suit but no step was taken by them for their examination or at least the examination of plaintiff No. 1 Ram Ekbal Kuer who according to his case itself was 95 years old and suffering from paralytic attack as special witnesses. There is no explanation on behalf of the plaintiffs for non examination of the two plaintiffs as special witness though they were the victims of the alleged fraud said to have been committed upon them. The courts below have rightly taken into notice this fact while considering the pleading and evidence on behalf of the plaintiffs. Further, there is no medical document to support the case of the plaintiffs that plaintiff No. 1 was suffering from paralytic attack and his mental condition had deteriorated. There is also no material evidence to



substantiate the case that plaintiff No. 2 Pyaro Kuer was suffering from mental disbalance since after the death of her husband. The learned Counsel on behalf of the appellants however has been emphatic in his submission that the oral evidence has been led on behalf of the plaintiffs to establish the aforesaid facts. It transpires from perusal of the judgments of both the courts below that the oral evidence adduced on behalf of both parties have been scrutinized before arriving at the conclusion that the plaintiffs have failed to establish by cogent evidence that the plaintiffs were disabled to the extent that they were not in a position to exercise reasonable discretion and freewill in entering into transactions. The further finding of fact has also been recorded by the courts below on the basis of evidence that the plaintiff No. 2 Pyaro Kuer though illiterate had been managing all the affairs of the family which was contrary to the plea of the plaintiffs regarding her abnormal mental condition.

7. This Court has also not been persuaded to align with the submission on behalf of the appellants that the findings of the appellate court below are vulnerable as it has failed to undertake the thread bear analysis of the oral evidence on record, for the reason that the judgment of the appellate court below is a judgment of affirmance and it is demonstrably clear from the appellate court judgment that it was alive to the issues arising in the suit and the evidence on record in that regard. As ruled by the Apex Court in ***Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179***, in a case of affirmance by the appellate court a general agreement with the findings of the trial court would suffice. Moreover the findings by both the courts below have been recorded on



the basis of consideration of the facts and circumstances and the evidence in totality and in consonance with the doctrine of preponderance of probabilities. During the course of submission also it could not be shown or established on behalf of the appellant that the findings of facts as recorded by both the courts below are perverse or unreasonable in any manner.

8. After perusal of the impugned judgments this Court finds that the conclusion by both the courts below on the material issues have been recorded on the basis of evidence which were acceptable and could have been relied upon. The principles as laid down in the case of **Bibi Jaibunnisa** (supra) and in the case **Miti Dewa** (supra) have been rendered in different setting of facts and is distinguishable in view of the findings recorded by both the courts below that plaintiff No. 2 Pyaro Kuer was managing all her affairs and there was no cogent evidence to establish her abnormal mental condition as asserted.

9. 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.)

Snkumar/-

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