

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.160 of 2014

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1. Smt. Minta Devi, wife of Gopal Sharma (D/o Late Kameshwar Thakur) resident of Village Wazania, P.O. & P.S. Nasariganj, District Koderma, at present residing at Village Chiraiyan, P.O. + P.S. Nardiganj, District Nawada
 2. Smt. Sona Devi, wife of Mishri Sharma, resident of Village Rukhi, P.O. Koshi, P.S.Roh, District Nawada
 3. Smt. Sushila Devi, wife of Chandramauli Sharma, resident of Village Maulanagar, P.O. Manjhway, P.S. Hasua, District Nawada
 4. Smt. Kunti Devi, wife of Vijoy Sharma, resident of Village Rukhi, P.O. Koshi, P.S. Roh, District Nawada
 5. Smt. Kalo Devi, wife of Balak Singh, resident of Village Kena, P.O. Orhanpur, P.S. Nawada (Muffasil), District Nawada, All (2 to 5) daughters of Late Kameshwar Thakur (Original plaintiff)

..... Plaintiffs Appellants

.... Appellants

Versus

1. Smt. Meena Devi, wife of Brij Nandan Sharma
2. Brij Nandan Sharma, son of Chandrika Sharma, both resident of Village Mahuli, P.O. Sisma, P.S. Nawada (Muffasil), District Nawada

..... Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Dronacharya

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-09-2016

Heard Mr. Dronacharya, 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. The suit has been filed by the plaintiff Kameshwar Thakur (since deceased through the L.R.) for declaration that the gift deed dated 15.9.1998 with regard to the suit property was illegal, invalid and posed as inoperative. There is no dispute that the original plaintiff Kameshwar Thakur and defendant No. 1, in whose favour the said gift deed was



executed, were father and daughter. It is also pertinent to take notice that Kameshwar Thakur had six daughters and defendant No. 1 Meena Devi was one of the daughters in whose favour the gift deed in question was executed. The defendant No. 1 appeared and contested the suit asserting the legality and validity of the gift deed.

4. Both the courts below have come to the concurrent finding of fact that the gift deed in question is legal and valid. The appellate court below has further also come to the conclusion that the suit filed by the plaintiff in the year 2006 seeking relief against the gift deed dated 15.9.1998 was barred by limitation.

5. The solitary submission made by Mr. Dronacharya, learned Counsel for the appellants, is that the gift deed could not have been a valid transaction as it was executed with regard to a joint family property. During the course of submission, however, it has been accepted that no specific pleading in this regard has been made in the plaint by the plaintiff.

6. After considering the submission and perusal of the judgments of both the courts below, it is manifest from the findings by the appellate court below on the issue of limitation that knowledge of the gift deed of the plaintiff Kameshwar Thakur within one year of its execution has been accepted by PW 1 as well as PW 2, who are also daughters of the original plaintiff Kameshwar Thakur and have been substituted as plaintiffs in the suit after his death. In this view of the matter, the appellate court below has rightly come to the conclusion that the suit was barred by limitation. Further, in absence of any averment by Kameshwar Thakur that he was possessing the property, subject matter of the gift



deed, in jointness, the submission that the gift deed in question was void cannot be legally sustained. This plea also does not appear to have been raised in the court below.

7. The findings on the issues have been recorded by both the courts below on the basis of evidence, which were acceptable and could have been relied upon. This Court does not find any perversity or unreasonableness in those findings.

8. 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/-

AFR/NAFR	
CAV DATE	N/A
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