

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.154 of 2014**

=====

1. Manna Thakur S/O Late Sonal Thakur Village - Basauli, Tola - Sugauna,  
Pargana - Jarail, P.S. - Rahika, District - Madhubani.

....Plaintiff/Respondent 1st party/Appellant

Versus

1. Smt. Savitri Devi wife of Ram Autar Yadav resident of village - Basauli, Tola -  
Sugauna, Pargana - Jarail, P.S. - Rahika, District - Madhubani.

2(a) Most. Jagtarin Devi wife of deceased resident of village - Basauli, Tola -  
Sugauna, P.S. - Rahika, District - Madhubani.

.....Defendants/Appellant 2nd Party/Respondent 2nd Set

3. Purni Devi wife of Bathu Thakur and daughter of Raghunandan Thakur resident  
of village - Akashpura, P.S. - Rahika, District - Madhubani.

4. Ramvati Devi wife of Tuntun Thakur and daughter of Raghunandan Thakur  
resident of village - Dumri, P.S. & District - Madhubani.

5. Binod Thakur S/O Musai Thakur and Maternal grandson of Raghunandan  
Thakur.

6. Ram Kumari Devi wife of Barjan Thakur and maternal-grand-daughter of  
Raghunandan Thakur Both residents of village - Aror, Pargana - Jarail, P.S. - Aror,  
District - Madhubani. Presently residing at village - Basauli, Tola - Sugauna, P.S. -  
Rahika, District - Madhubani.

7. Shrabhan Thakur S/O Mangal Thakur resident of village - Basauli, Tola -  
Sugauna, P.S. - Rahika.

.....Defendants/Respondent 2nd Party/Respondent 3rd Set

=====

**Appearance :**

For the Appellant/s : Mr. Binod Kumar Singh, Adv  
For the Respondent/s : Mr.

=====



**CORAM: HONOURABLE MR. JUSTICE V. NATH**  
**ORAL JUDGMENT**  
**Date: 16-11-2016**

Heard learned counsel for the appellant.

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

The plaintiff filed the suit for declaration of title and confirmation of possession over the land described in Schedule-1 of the plaint and for recovery of possession over the land described in Schedule-2 as also for recovery of possession over the land described in Schedule-1, if found dispossessed. The further relief was prayed for declaration that the ex parte decree passed in T.S. No. 154 of 1957 was null and void and the sale deed dated 10.07.1958 in pursuance to the said decree was also null and void and not binding upon the plaintiff.

The facts are not in dispute that T.S. No. 154 of 1957 was filed by Defendant No. 1 Raghunandan Thakur for specific performance of contract on the basis of Mahadnama dated 02.09.1957. The said suit was decreed ex parte and the sale deed was executed by the court on 10.07.1958 in favour of defendant no. 1 Raghunandan Thakur. The plaintiff however has claimed title over the suit land on the basis of the gift deed dated 20.02.1960 executed by Most. Manti Devi in his favour. The trial court returned the findings on the issues in favour of the plaintiff and granted the



decree, as prayed. The appellate court below has reversed the findings of the trial court and set aside the judgment and decree.

Learned counsel for the appellant has submitted that the appellate court below has failed to consider the material evidence on record and therefore, the findings are vitiated. It has been contended that the learned court below has also erred in law in holding the suit filed by the plaintiff to be barred by limitation by committing error in holding that the notices have been validly served upon Most. Manti Devi in T.S. No. 154 of 1957. It has also been canvassed that the appellate court below has ignored the material evidence on behalf of the plaintiff supporting his physical possession over the suit land which leads to the inference that the ex parte decree in question was not acted upon. The learned counsel for the appellant has also submitted that the appellate court below has failed to take into notice that the appeal has abated with regard to some of the respondents for want of substitution.

After considering the submissions and perusal of the judgment of both the courts below, it is pellucid that the material note of discord between the parties is the legal validity of ex parte decree passed in T.S. No. 154 of 1957 in favour of defendant no. 1 Raghunandan Thakur and against Mostt. Manti Devi through whom the plaintiff has claimed the suit land on the basis of the gift deed in his favour on 20.02.1960. The appellate court below on scrutiny of



evidence including judgment passed on 03.06.1981 in Criminal Appeal No. 402/1978 / 03/81 has come to the conclusion that the plaintiff and his father had got knowledge of the ex parte decree passed in T.S. No. 154 of 1957 and the sale deed dated 05.07.1958, executed in pursuance thereof in the year 1973 itself. The appellate court below thereafter has come to the conclusion that the suit filed after lapse of more than 3 years against the ex parte decree and the sale deed is barred by limitation. It has further also come to the conclusion that the trial court has wrongly applied the provision of Section 14 of Limitation Act on the basis of the pendency of mutation proceedings and thereby has wrongly come to the conclusion that the suit was not barred by limitation.

During the course of submission, this Court has not been persuaded to hold that the finding on the issue of limitation by the appellate court below is perverse or *de hors* established principles of law. Further the appellate court below has also come to the conclusion on the basis of Exhibit-7 and the deposition of the plaintiff examined as PW-11 that the father of the plaintiff in whose favour the gift deed dated 20.02.1960 was executed did not come in possession over the gifted land after the execution of the gift deed and even had accepted the said gift only after 10 years of the execution of the gift deed. The appellate court has also analyzed further evidence and thereafter has come to the conclusion that the



decree passed in T.S. No. 154 of 1957 was a valid decree and the finding by the trial court in this regard was not sustainable. During the course of submission, it could not be shown or established on behalf of the appellant that the material findings of fact as recorded by the appellate court below are perverse or unreasonable in any manner. So far as the submission with regard to the abatement of appeal after the death of some of the respondents no material fact in this regard has been disclosed in the memo of appeal and only a vague statement has been made in para nos. 2 and 3 in this regard, which in the opinion of this Court is not sufficient to sustain the contention on behalf of the appellant that the appeal in the court below stood abated due to non-substitution of the heirs and legal representatives of some of the respondents.

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)

Ranjan/-

|                   |          |
|-------------------|----------|
| AFR/NAFR          | NAFR     |
| CAV DATE          | N.A.     |
| Uploading Date    | 06.01.17 |
| Transmission Date | N.A.     |

