

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11263 of 2014

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Smt. Savitri Devi @ Soni Devi W/o Rajeev Kumar Rao Vill. - Laukariya, P.S.
Bariaya, Distt. - West Champaran.

.... Petitioner/s

Versus

Ashok Kuwar s/o Babunand Kuwar r/o vill. - Ratnamala, Tola Patbandhi, P.S.
Majuwalia, Distt. - W. Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhannjay Kumar No 2, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-07-2016

Heard learned counsel for the petitioner.

The legal sustainability of the impugned order by the learned court below refusing the prayer of the plaintiff-petitioner to alienate a portion of the suit property has been questioned in this petition under Article 227 of the Constitution of India.

The fact is admitted that a title suit has been filed by the present petitioner along with her mother Most. Chanchali Kuer praying for setting aside the gift deed said to have been executed in favour of the defendant-respondent with regard to the entire property including the share of the present plaintiff-petitioner. During the pendency of the suit, the petition was filed by the plaintiff-petitioner for alienating the part of the suit property in order to meet personal

financial requirements. The learned court below has turned down the said prayer by the impugned order.

Learned counsel for the petitioner has submitted that the gift deed included the share of the present-petitioner also and therefore the learned court below should have allowed the prayer of the petitioner for alienation to the extent of her share. It has been submitted that after the death of the plaintiff no. 1 Most. Chanchala Kuer during the pendency of the suit, the present petitioner has become the sole owner of the entire property.

After considering the submissions and perusal of the impugned order, it is manifest that the property of the petitioner is also the subject matter of the gift deed in favour of the respondent and the said gift deed has been challenged on ground of fraud etc. It is, therefore, obvious that till the said gift deed is set aside by granting the relief as prayed by the plaintiff-petitioner, the title over the property subject matter of the gift deed will not revert back to the petitioner. In this eventuality, the petitioner at present having no title over the property subject matter of the suit, could not have been allowed to alienate the said property. The learned court below has committed no error or material irregularity declining the prayer made on behalf of the petitioner.

The present application is, accordingly, dismissed. The

learned court below is directed to expedite the hearing of the suit as the same has been pending since 2008.

(V. Nath, J)

Devendra/-

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