

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.211 of 2014

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1. Ram Janam Sao
2. Ram Babu Sao Both sons of Late Jadu Sao
3. Ram Kumari Devi Daughter of Late Jadu Sao All resident of village Musepur,
P.S. + District- Jehanabad
.....Plaintiffs..... Respondents

.... Appellants

Versus

1. Ram Baran Sao @ Tipan Sao
2. Ram Jatan Sao
3. Ram Sevak Sao
4. Ram Ishwar Sao All sons of Late Ram Das Sao All resident of village Musepur,
P.S. + District- Jehanabad
5. Kamla Devi wife of Parmeshwar Sao Resident of Village + P.S.- Bikram,
District Patna
6. Meena Devi Wife of Ramji Sao Resident of Village Patut, P.S. Bikram District-
Patna Both Daughter of Late Ramdeep Sao @ Ramdas Sao
7. Bhuletan Sao son of Late Bindeshwar Sao
8. Paria Devi
9. Shila Devi
10. Rekha Devi
11. Chanda Devi All Daughter of Late Bindeshwar Sao All resident of village
Imamganj, P.S. Paliganj, District Patna
..... Defendants Appellants

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Mishra
For the Respondent/s : Mr. T.N.Maitin, Sr. Advocate
Mr. Ganesh Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 29-11-2016

Heard Mr. Ashok Kumar Mishra, learned Counsel for the appellants. Mr. T.N.Maitin, learned Senior Counsel appearing for the respondents is present.

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

3. The plaintiffs filed the suit for declaration of title and recovery of possession over 5 dec. of land. The facts are not in dispute



that the suit land is part of the land which belonged to Gopi Sao, who died leaving behind widow Mundrika Halwain and three daughters namely Sibiya Devi, Shiv Barti Devi and Vishnubarti Devi. It was the case of the plaintiffs that Mundrika Halwain executed a gift deed on 29.5.2041 in favour of her two daughters namely Sibiya Devi and Vishnubarti Devi giving $17\frac{1}{2}$ dec. of land to Sibiya Devi and $14\frac{1}{2}$ dec. of land to Vishnubarti Devi. It has also come in the pleading and evidence that Vishnubarti Devi subsequently sold 12 dec. of land to Devendra Singh, who in turn sold the said 12 dec. of land back to Sibiya Devi by sale deed dated 1.6.1984. The plaintiffs claimed that Sibiya Devi came to hold total $29\frac{1}{2}$ dec. of land by way of gift and purchase, and total land being 32 dec. only, the defendants who were descendents of Vishnubarti Devi would get only $2\frac{1}{2}$ dec. of land. It would be seemly here to notice the admitted fact that another daughter Shiv Barti Devi did not claim any right in the property left by her parents.

4. The defendants, however, contested the claim of the plaintiffs assailing the legal validity of the gift deed of the year 1941 executed by Mundrika Halwain on the ground that she being the limited owner could not have alienated the property by way of gift. It was the assertion of the defendants, however, that total area of the plot belonging to Gopi Sao was 34 dec. of agricultural land and 4 dec. of homestead land, which was partitioned in the year 1931 by Gopi Sao in his life time in between his two daughters namely Sibiya Devi and Vishnubarti Devi to the extent of half and half and in this manner the defendants asserted that Sibiya Devi got 17 dec. + 2 dec. = 19 dec. in partition and 12 dec. by purchase in the year 1984 and the total land held by her was 31 dec., out



of total 38 dec. The defendants thus denied the claim of title of the plaintiffs over the suit land measuring 5 dec.

5. The trial court returned the findings in favour of the plaintiffs and granted the decree as claimed. The appellate court below, however, on reappraisal of evidence has reversed those findings, allowed the appeal and dismissed the suit by the impugned judgment and decree.

6. Mr. Mishra, learned Counsel for the appellants, has submitted that the appellate court below has not properly considered the material evidence on record and the findings recorded by it are accordingly vitiated. During the course of submission, the learned Counsel, however, has accepted that the findings by the appellate court below that Mundrika Halwain being the limited owner could not have executed the gift deed in favour of her two daughters in the year 1931 is legally un-assailable. No other submission has been made on behalf of the appellants.

7. After considering the submission and perusal of the impugned judgment, the fact is manifest that according to C.S. Khatian the total area of land held by Gopi Sao was 38 dec. i.e. 34 dec. + 4 dec. The title of Sibiya Devi (predecessor of the plaintiffs) over 31 dec. of land is established by pleading and evidence on record. Even otherwise also after the finding that the gift deed of the year 1941 was not legally valid the appellate court below has got no other option but to accept the case of the defendants as pleaded and the finding was inevitable that after the purchase Sibiya Devi would have got total 31 dec. In this manner the defendants being the admitted descendants of Vishnubarti Devi have got 7 dec. of land out of total 38 dec. The findings recorded by the appellate



court below that the plaintiffs have failed to establish their case on cogent evidence could not be shown or established on behalf of the appellants to be perverse or unreasonable in any manner. The findings have been recorded on the basis of scrutiny of evidence which were acceptable and could have been relied upon.

8. This Court, therefore, does not find any substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
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