

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.164 of 2014

1.Sri Pawan Kumar Jha son of Late Kamal Jha.

2.Sri Sharvan Kumar Jha son of Late Kamal Jha.

Both residents of village Madhepur, P.S. Madhepur, District Madhubani.

....(Defendants) (Appellants) Appellant/s

Versus

1.Pramod Jha son of Late Bikal Jha.

1(a). Mosmat Devkala Devi wife of Late Bikal Jha, residents of village Madhepur, P.S. madhepur, District Madhubani.

1(b) Punita Devi wife of Balram Mishra, resident of village Madanpur, P.O. Rataul, P.S. Madhepur, District Madhubani.

1(c) Nunu @ Noonu Devi wife of Sanjay Jha, village Mahinathpur, P.O. Mehath, P.S. Bhairab Asthan, District Madhubani.

1(d) Babita Devi wife of Mihir Jha@ Pinku Jha, village Bhawanipur, P.S. Pandaul, District Madhubani.

2. Sri Narayan Jha son of Late Rambharosh Jha.

3.Sri Prabodh Jha son of Late Rambharosh Jha.

4.Smt. Urmila Devi wife of Indrakant Jha. Residents of village Pachahi, P.S. Madhepur, District Madhubani.

5. Smt. Tribeni Devi wife of Binod Mishra, resident of village Manmohan, P.S. Madhepur, district madhubani.

6.Smt. Archana Jha wife of Sri vinod Kumar Jha of village Balauncha, P.S. Lakhnaur, District Madhubani.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Jha, Sr. Adv

For the Respondent/s : Mr. Suraj Narain Yadav Yadav, Adv, Mr. Arvind Kumar, Adv and Ms. Annushree, Adv

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-10-2016



Heard Mr. Anil Kumar Jha, learned senior counsel appearing on behalf of the appellants and Mr. Suraj Narain Yadav, learned counsel for the respondents.

The defendants are the appellants in this appeal against the judgment and decree of affirmance granting the decree of partition to the plaintiffs.

The factual exposes' are that admittedly the common ancestors of the parties namely Munna Jha had three sons Harbansh Jha, Satyadeo Jha and Jaidev Jha. The descendant of Jaidev Jha were the plaintiffs in the suit and the descendants of Harbansh Jha were the defendants in the suit. Satyadeo Jha died unmarried and issueless. In the suit for partition filed by the plaintiffs claiming 1/2 share in the family property on the basis that the share of Satyadeo Jha devolved upon the surviving two brothers, the defendants came out with a case that Satyadeo Jha had executed a deed of gift on 21.11.1944 in favour of their predecessor Budhu Jha. The defendants, therefore, asserted the share of the plaintiffs in the suit property only to the extent of 1/3rd share and claimed the remaining 2/3rd share in the said property.

In view of the rival cases of the parties, it is evident that the disharmony in their claim rested on the legality and validity of the gift deed dated 21.11.1944 said to have been executed by



Satyadeo Jha in favour of Budhu Jha who was predecessor of the defendants. As legal corollary, the issue of partition between the three sons of Munna Jha and allotment of the property in the exclusive share to Satyadeo Jha which he transferred by gift deed in favour of the defendants was also directly in issue. Both the courts below have concurrently found that there had been no partition by metes and bounds between the three sons of the common ancestors of Munna Jha and therefore, the gift of his share by one son Satyadeo Jha in favour of the defendants in the state of jointness was a void transaction and could not be the basis of the claim over his share by the defendants.

Mr. Jha, learned senior counsel appearing for the defendant-appellants criticizing the impugned judgments has submitted that both the courts below have failed to take into consideration that the suit was barred by limitation as the gift deed of the year 1944 was challenged in the suit filed in the year 1973. It has been contended that the gift deed in question (Exhibit-D) being a registered document carried with it the presumption of genuineness as laid down by the Apex Court in the case of ***Jagdish Prasad Shivhare vs. Municipal Corporation, Gwalior and others*** (2000) 8 SCC 191 and as such the relief which has been claimed by the plaintiff could not have been granted because it necessarily



involved setting aside of the said gift deed. It has been submitted that the gift deed executed by Satyadeo Jha with regard to his share in favour of the defendants has been brushed aside by both the courts below on surmises and conjectures. It has also been canvassed that both the courts below did not frame specific issue with regard to the gift deed and there was also no prayer in the plaint for setting aside the gift deed but both the courts below have wrongly proceeded to determine the validity of the gift deed for the purpose of granting the relief to the plaintiffs. It has also been argued that Exhibit-E which was the sale deed executed by Budhu Jha (predecessor of the defendant) on 14.05.1946 has also not been considered by the courts below and therefore, the impugned judgment suffers from non consideration of material evidence as well. It has also been submitted that in view of the provisions of the Registration Act the donee is fully entitled to present a gift deed for registration after the death of donor. Reliance in this regard has been placed on a bench decision of this Court in the case of *Ramjanam Dubey & Ors vs Ramjag Dubey & Ors, 1992(2) PLJR 1*. The learned senior counsel has further relied upon a decision of the Apex Court in the case of *Marabasappa v. Ningappa,, (2011) 9 SCC 451* and the decision in the case of *Narendra Kante vs Anuradha Kante & Ors, 2010(1) PLJR SC 174* in support of his submissions. No

other submission has been made on behalf of the appellants.

After considering the submissions and the perusal of the judgments of both the courts below it is pellucid that the plaintiffs in the suit for partition claimed their 1/2 share in the suit properties whereas the defendants while admitting 1/3rd share of the plaintiffs, claimed 2/3rd share in the property on the ground that they have got 1/3rd share of the third brother Satyadeo Jha through gift deed dated 21.11.1944. The defendants raised specific plea that there had been separation followed by partition in between the three branches represented by Budhu Jha (predecessor of the defendants), Ram Bharosh Jha (predecessor of the plaintiff) and Satyadeo Jha (unmarried and issueless). However, both the courts below on the basis of scrutiny of evidence have concurrently found that the defendants have failed to establish the partition between the three branches by cogent evidence in that regard. It is transparent from the evidence of the defendants as noticed by the courts below that almost all the witnesses of the defendants including the defendants in their depositions have asserted that the instrument of partition between the parties was prepared in presence of the Panches. But both the courts below have further found that no such document relating to partition has been produced in evidence on behalf of the defendants. The other documentary evidence produced by the

defendants in support of the partition have also been analyzed by the courts below before coming to the conclusion that those documentary evidence do not corroborate the case of partition as pleaded by the defendants.

Much emphasis has been laid on behalf of the appellants with regard to non consideration of the sale deed executed by their predecessor Budhu Jha on 14.05.1946 (Exhibit-E) but it transpires from the perusal of the judgment of the trial court that the said document has been elaborately considered and found to be not supporting the case of partition as pleaded. Further there is no explanation furnished with regard to non production of the deed of instrument of partition before the court in face of the acceptance by the defendants and their witnesses that such deed was prepared. The documentary evidence Exhibit-C and Exhibit-E adduced on behalf of the defendants are in fact only the evidence of the transactions of the part of the suit property by their predecessor who according to the plaintiffs was also the karta of the joint family. This Court has not been persuaded to discard the findings by both the courts below on the issue of partition only on the basis that Exhibit-E has not been considered by the appellate court below. In civil litigation, the guiding factor for determination of issues is preponderance of probabilities. Non consideration of one piece of evidence or stray



evidence cannot have overreaching effect unless it can be shown or established that the consideration of the same would have turned the table in favour of the appellants. After careful consideration and perusal of the findings by both the courts below on the issue of partition, this Court comes to the conclusion that the finding has been recorded on the basis of evidence which are acceptable and could have been relied.

Considering the contention vehemently raised on behalf of the appellants relating to the suit barred by limitation, it is evident that there is no pleading or evidence on behalf of the defendants that the gift deed in question was ever given effect to and acted upon. It has not been the case of the defendants that they have got their names entered in the revenue records or other relevant records with regard to the property subject matter of the gift. Further both the courts below after perusal of the gift deed in question have also found that no specific plot with definite area has been mentioned in the gift deed (Exhibit-D) and only the 1/3rd share on all the plots has been mentioned to have been gifted. Both the courts below have come to the conclusion that the gift has been made with regard to the share of the donor and is not with regard to any specific property/area allotted to the donor on partition. During the course of submission before the court this finding of fact also could not be



shown to be incorrect. The conclusion therefore is inevitable that the gift deed has been executed by a coparcener with regard to the joint family property during the status of jointness without the consent of other coparceners. In the case of *Thamma Venkata Subbamma vs Thamma Rattamma, (1987) 3 S.C.C 294*, the Apex Court has ruled that such a gift with regard to the joint family property in the state of jointness would be void altogether. Both the courts below have, therefore, also rightly held that the gift deed as propounded by the defendants was void. As the plaintiff has filed the suit for partition of his share, such suit could not have been held to be barred by limitation on the ground that the defendants have asserted their rights on the basis of a gift with regard to the suit property which was void altogether. On behalf of the appellants, it could not also be shown or established from the pleadings or evidence aliunde that the plaintiffs had the knowledge of the gift deed from before. In any view of the matter, as the gift deed in question has rightly been found to be a void document, this Court finds that the submission on behalf of the appellants that the suit for partition was barred by limitation cannot be legally sustained. The decisions relied upon on behalf of the appellants do not appear to alter the above conclusions.

The issue between the parties, moreover, have been concluded by concurrent findings of facts on the basis of the

evidence and no perversity or unreasonableness in the same could be shown or established on behalf of the appellants during the course of submission.

For the aforesaid reasons and discussions, this Court finds that no substantial question of law is arising for consideration in this appeal, which is accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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