

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.239 of 2014

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1. Sabiban wife of Late Dildar Miyan
 2. Md. Hussain
 3. Anwar Hussain
 4. Sahabuddin Ansari All sons of Late Dildar Miyan
 5. Usman Mian son of Late Sukhal Miyan
 6. Most. Nasiban wife of Late Sukhal Miyan
 7. Bibi Khatoon wife of Late Subhan Miyan
 8. Nuraisha Khatoon
 9. Sobaratan Khatoon
 10. Zohara Khan all daughter of Late Subhan Miyan
 11. Mukhtar Ansari son of Late Hanif Miyan
 12. Fatma Khatoon daughter of Late Hanif Miyan
 13. Unadan Wife of Late Jalil Ahmad
 14. Mehadi Hussain
 15. Aslam Ansari
 16. Wajid Ali
 17. Nawajid Ali All sons of Late Jalil Miyan
 18. Qurban Ahmad
 19. Ibrahim Mian
 20. Noor Alam
 21. Fateh Hussain All sons of Late Sahebjan Miyan
 22. Hasibani
 23. Qayada Both daughter of Late Sahebjan Miyan
 24. Rahmatullah Miyan
 25. Najibullah Miyan
 26. Mainuddin Ansari
 27. Mubarak Miyan All sons of Mirjan Miyan
 28. Tetara Khatoon
 29. Jaitunisha
 30. Musliman Khatoon All daughter of Mirjan Miyan All resident of village -
Deoria, P.S. Maharajganj, District - Siwan

.... Appellant/s



Versus

1. Jaharuddin son of Late Ekbal Miyan
2. Mansoor Miyan son of Late Ekbal Miyan
3. Maula Miyan son of Late Ekbal Miyan
4. Tasiran d/o late Ekbal Miyan
5. Mahboob Miyan
6. Gafoor Miyan.
7. Tatari
8. Halmani
9. Nimajani All sons and daughter of Late Rasool Miyan
10. Most. Raisa Khatoon wife of Late Rasool Miyan
11. Samsul Miyan
12. Dara Miyan Both son of Late Nahijan
13. Bibi Fatma
14. Bibi Maidi Both daughter of Late Nabijan
15. Most. Jainab @ Janabia wife of Late Nabijan
16. Nasima Khatoon wife of Late Imamuddin Miyan @ Jamunia
17. Abdus Salam
18. Kalamuddin Ansari Both son of Late Imamuddin Miyan
19. Noor Tara Khatoon
20. Chand Tara Khatoon Both D/o Late Imamuddin Miyan
21. Moiazama Khatoon wife of Late Id Mohammad
22. Naim Ansari
23. Qayeem Ansari Both sons of Late Id Mohammad
24. Hasina Khatoon
25. Aisa Khatoon daughter of Late I Mohammad
26. Chand Bali Miyan son of not Known
27. Mustakim Miyan son of not Known
28. Murtuja Miyan son of not Known
29. Mustafa Miyan son of not Known
30. Taslim Miyan son of not Known
31. Naseem Miyan All resident of village - Deoria, Police Station - Maharajganj,
District - Siwan

.... Respondent/s

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Appearance :



For the Appellant/s : Mr. Raghieb Ahsan, Sr. Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 02-12-2016

Heard Mr. Raghieb Ahsan, learned senior counsel for appellants.

The plaintiffs are the appellants in this appeal against the judgment and decree of affirmance dismissing the suit for partition.

The parties to the suit belong to a family governed by Mahomedan Law. The genealogy has been given in the judgment of the appellate court below which has not been disputed by the appellants, and from which it appears that admittedly the parties to the suit are descendants of Bhinik Miyan who died leaving behind four sons namely Asa Miyan, Dasa Miyan, Gudar Miyan and Fatingan Miyan. The plaintiff 1st set are the descendants of Fatingan Miyan and have claimed half share in the suit property. The plaintiff 2nd set are the descendants of Gudar Miyan and have claimed 1/4th share in the suit property. It is the case of the plaintiffs that Asa Miyan made oral gift of his share in favour of Fatingan Miyan as Asa Miyan was issueless and similarly the son of Dasa Miyan namely Hukum Miyan orally gifted his share in favour of son-in-law Rajbali Miyan. The shares in the property by the two sets of the plaintiffs have accordingly been claimed on the basis of the aforesaid main averment.



The defendants contested the claim of the plaintiffs inter alia on the specific ground that there had been partition by metes and bounds between the descendants of Bhinik Miyan with regard to the entire property much before survey operation and the parties came in possession of their respective allotted shares. It was also the case of the defendants that Jhagaru Miyan son of Asa Miyan orally gifted his share in favour of Hukum Miyan and the case of oral gift by Asa Miyan as pleaded by the plaintiffs was denied.

Both the courts below have returned the findings on the issues against the plaintiffs holding that the plaintiffs have failed to establish their case of oral gift by Asa Miyan in favour of Fatingan Miyan and further the jointness of possession between the parties with regard to the suit property. The suit was dismissed and the appeal thereafter has also been dismissed by the impugned judgment and decree.

Mr. Raghiv Ahsan, learned senior counsel for the appellants, at the outset, has submitted that the finding by the courts below that Asa Miyan has not made oral gift in favour of Fatingan Miyan, as recorded against the case of the plaintiff-appellants, is not being assailed in this appeal. On behalf of the appellants, it has, however, been propounded that both the courts below have failed to consider that there is concept of unity of title and jointness of



possession between the parties even though they are governed by Mahomedan Law. In order to bolster his submissions, learned senior counsel has placed reliance upon the decisions in the case of **Sk. Md. Zafir Vs. Sk. Amiruddin A.I.R. 1963 Pat. 108, Rukaiya Begum Vs. Fazalur Rahman, A.I.R. 1998 Pat. 1, Sabura Ammal Vs. Ali Mohamed Nachiar, A.I.R. 1970 Mad. 411 and Mt. Fardosjahan Begum Vs. Kazi Shafiuddin, A.I.R. 1942 Nagpur 75**. It has been further submitted that the principles of adverse possession and ouster could not be applicable in the facts and circumstances of the case where the parties belonged to a joint family. It has also been submitted that the gift deed dated 06.12.2016 executed by Hukum Miyan in favour of his son-in-law Rajbali Miyan was definitely in excess of his share and the same would therefore not bind the interest of the plaintiffs. It has been finally contended that both the courts below thus have ignored the settled principles of law and material evidence on record and the impugned judgments are therefore vulnerable. No other submission has been made on behalf of the appellants.

After considering the submissions and perusal of the impugned judgments of both the courts below, it is pellucid that the plaintiffs have based their claim firstly on the basis of oral gift by Asa Miyan in favour of Fatingan Miyan asserting that Asa Miyan was



issueless. The finding has been recorded by the appellate court below on the basis of evidence that Asa Miyan did not die issueless rather he had a son Jhagaru Miyan. The court below have further held that the plaintiffs have failed to substantiate by cogent evidence that their case of oral gift by Asa Miyan in favour of Fatingan Miyan. In this appeal this finding has not been questioned on behalf of the plaintiff-appellants. It is, thus, apparent that the major claim of the plaintiff 1st set to have 3/4th share in the suit property has remained unfortified. The submission that even in a family governed by Mahomedan Law there is unity of title and jointness of possession does not find support from any of the decisions relied upon on behalf of the appellants. On principle as well as precedent, the concept is well settled that there is no joint tenancy in Mahomedan Law and the estate of a deceased Mahomedan vests in each heir in proportion to the share according to Mahomedan Law and those heirs come to possess the property as tenants-in-common. It is, therefore, demonstrably clear that there is only the concept of joint possession in Mahomedan Law and the appellate court below has rightly noticed the said position in law. The appellate court below, however, has taken into notice the documentary evidence as well as the statement made in deposition by plaintiff no. 1 (examined as P.W.5) as well as the statement by other witnesses of the plaintiffs regarding separate possession and transactions by sale



and mortgage of the properties in their possession. It has also been found by the appellate court below that the legal validity of the registered gift deed (Ext. C) dated 06.12.2016 in favour of Rajbali Miyan, an stranger to the family, has not been challenged by the plaintiffs or their predecessor and no relief in that regard has been claimed. During the course of submissions on behalf of the appellants, it could not be shown or established that the findings of fact as recorded by the courts below on the basis of appraisal of evidence are unreasonable or perverse in any manner. Even otherwise also, this Court finds that the conclusions by the courts below are based upon evidence which were acceptable and could have been relied upon. The material issues arising between the parties in the suit are now concluded by concurrent findings of fact.

For the aforesaid reasons and discussions, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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