

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.430 of 1977

Against the Judgment and Decree dated 17th February, 1977 passed by Ist Addl. Subordinate Judge, Hajipur in Title Suit No.37 of 1974 / 24 of 1976.

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Ram Binay Singh & Ors

.....Defendants-Appellant/s

Versus

Madan Mohan Singh & Ors

.....Plaintiffs-Respondent/s

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Appearance :

For the Appellant/s : Mr. S. S. Dwivedi, Sr. Advocate
Mr. Ranjan Kumar Dubey, Advocate
Mr. Partha Garauv, Advocate with him.

For the Respondent/s : None.

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Dated : 15th day of March, 2017

P R E S E N T

CORAM : HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL J U D G M E N T

1. The original defendant No.1 (since died and substituted by legal representatives) had filed this First Appeal against the Judgment and Decree dated 17th February, 1977 passed by learned Ist Addl. Subordinate Judge Hajipur in Title Suit No.37 of 1974 / 24 of 1976



whereby the learned Court below decreed the plaintiff respondent's suit for partition.

2. It appears that the original plaintiff, Mostt. Phul Kumari Kuer filed aforesaid suit claiming for partition of her 1/3rd share in the suit property. The plaintiff claimed 1/3rd share alleging that there had been partition between two branches, i.e., branch of Durga Singh and Jamuna Singh, both brothers being sons of Rampal Singh. After partition, Jamuna Singh came in possession of half property. Jamuna Singh had 3 sons, namely, Sheo Sharan Singh, Baidehi Saran Singh and Gauri Saran Singh. Sheo Saran Singh died in 1945 leaving behind his widow Phul Kumari Kuer, the original plaintiff of the partition suit. The two other sons of Jamuna Singh are defendant No.1 and 2 respectively. The plaintiff claimed 1/3rd share alleging that after going into force of the Hindu Succession Act, 1956, she became the absolute owner because of Section 14 of the Hindu Succession Act, 1956.

3. The defendants filed contesting written statement alleging that Sheo Saran Singh died in 1935 and not in the year 1945, therefore, Phul Kumari Kuer had only right to maintenance and she did not become the absolute owner of the share of her husband because of Section 14 of the Hindu Succession Act.

4. It may be mentioned here that during the pendency of the suit Phul Kumari Kuer executed registered gift deeds dated 19.01.1976 in the



name of the two sons of defendant No.2, Gauri Saran Singh. On the basis of this registered gift deed, both sons of Gauri Saran Singh, namely, Madan Mohan Singh and Brij Mohan Singh filed an application before the trial Court for being added as co-plaintiff in the Court below. They claimed that Mostt. Phul Kumari Kuer had gifted some property to them and they are the owner thereof. By order dated 28.01.1973, the trial Court allowed the intervention application and added them as co-plaintiff in the Court.

5. After trial, the trial Court on the basis of evidences recorded finding that in fact Sheo Saran died in 1945 and then decreed the plaintiff's suit for partition to the extent of $1/3^{\text{rd}}$ share.

6. The learned senior counsel, Mr. S. S. Dwivedi, appearing on behalf of the appellant submitted that because of subsequent development, the question as to whether Sheo Saran Singh died in the year 1945 or in the year 1936 becomes irrelevant. The learned senior counsel submitted that during the pendency of the suit itself, consolidation proceeding was going on but the defence could not be taken by the defendants and, therefore, the suit continued and ultimately it was decreed. However, the consolidation authorities by order dated 5.12.1986 in Consolidation Case No.548 of 1986 has declared the gift deed executed by original plaintiff, Phul Kumari Kuer dated 19.01.1976 in favour of the two sons of Gauri Saran Singh as void because of the



fact that it was executed without permission of the consolidation authority. The donee filed appeal which was also dismissed by order dated 27.03.1987 passed by Deputy Director (Consolidation) Vaishali in Appeal No.531 of 1987 and the revision filed by the donee being Revision No.1474 of 1987 has also been dismissed by Joint Director (Consolidation) Patna by order dated 30.10.1987 / 12.11.1987 and, therefore, now the property has to be divided among the heir of Jamuna in equal share. The learned senior counsel further submitted that the original plaintiff Phul Kumari Kuer also died. During the pendency of this First Appeal, her name has been deleted as she died leaving behind no heir. The learned senior counsel further submitted that the appellants have filed application under Order 41 Rule 27 CPC being I.A. No.1655 of 2017 annexing the copies of the order passed by the consolidation authority and the appellate authority and revisional authority.

7. As stated above, no body appeared on behalf of the respondent.

8. In view of the above factual position, it is not necessary to decide the question regarding the year of death of Sheo Saran Singh. Admittedly, the original plaintiff Phul Kumari Kuer died during the pendency of this Appeal. It may be mentioned here the two co plaintiff, i.e, two sons of Gauri Saran Singh were added as plaintiff as they were claiming right, title and interest and possession on the basis of the



registered gift deed said to have been executed by Phul Kumari Kuer in their favour on 19.01.1976 and now the said gift deed has been also held to be void gift deed.

9. The Hon'ble Supreme Court in the case of *Union of India Vs. Ibrahimuddin 2013 (1) PLJR 48 SC = (2012)8SCC 148* has held that 'the proper stage to here the application under Order 41 Rule 27 CPC is the stage of hearing of the First Appeal.' This interlocutory application being I.A. No.1655 of 2017 has been filed by the appellants for permission to adduce additional evidence regarding the findings of the consolidation authorities. At the time of hearing of the First Appeal and this interlocutory application, the learned counsels for the appellant produced the original certified copies of the three annexures of interlocutory application. After perusal of certified copies, the same are being returned to the appellant.

10. It is admitted fact that during the pendency of the suit, these orders passed by the consolidation authority, appellate authority under the Consolidation Act and the revisional authority were not available. The orders have been passed during the pendency of this First Appeal. Therefore, these facts being the subsequent facts and the documents existed during the pendency of this Appeal, the same are required to be considered for passing a satisfactory judgment. The other fact is that now the dispute between the parties regarding year of death of Sheo



Saran Singh has become meaningless because of the fact that original plaintiff Phul Kumari Kuer, widow of Sheo Saran Singh had also died leaving behind no issue. Therefore, her property will devolve on the two other branches of sons of Jamuna, namely, defendant No.1, Baidehi branch and defendant No.2, Gauri Sankar Singh's branch. Now, therefore, the question will be whether defendant No.1 and defendant No.2 are entitled for half and half share in the property or the gifted property will go to the sons of Gauri Saran Singh who are respondent Nos.2 and 3 in this First Appeal who were the co-plaintiff in the Court below.

11. Since I have already held that the documents which are being produced by the appellant by filing interlocutory application under Order 41 Rule 27 CPC are necessary for deciding the controversies between the parties once for all, I hereby allowed the interlocutory application filed by the appellant and marked the original certified copies of three order-sheets as exhibit J, J-1 and J-2, the original are returned. The originals are being substituted by the photocopies which are Annexure 1, 2 and 3.

12. From perusal of these exhibits J, J1 and J2, it becomes clear that the gift deed executed by Phul Kumari Kuer, wife of deceased Sheo Saran Singh in favour of respondent No.2 and 3 has already been declared as void document. Accordingly, when the gift deeds have been



declared as void documents, it will be deemed that Phul Kumari Kuer died without executing any document, and therefore, her right, title and interest in the suit property will devolve equally on defendant No.1 and defendant No.2. In other words, the respondent No.2 and 3 have got no right, title and interest on the basis of the void gift deed.

13. In view of my above finding, the First Appeal is allowed and the impugned Judgment and Decree is modified to the extent that the plaintiff's share will devolve equally on defendant No.1 and 2 only. So, the plaintiff respondents are entitled to half share in the suit land, accordingly, their partition suit is decreed to that extent. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J.)

Sanjeev

