

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.244 of 2014

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1. Indramani Devi Wife of Late Chandeshwar Prasad Singh
 2. Prabhat Kumar Son of Late Uday Narayan Sharma Both are Resident of Pathraul, P.O.-Jaitpur, P.S.- Hasanpura, District Aurangabad.

.... Appellant/s

Versus

1. Amrendra Kumar Son of Harinadan Singh
2. Ram Shaneshi Sharma Son of Late Shyam Nandan Sharma Both Resident of Village - Mehendiya, P.S.- Mehendiya the then District - Jehanabad present District - Arwal
3. Mamta Kumari Daughter of Late Uday Narayan Sharma
4. Tripti Singh Wife of Satendra Kumar Singh and Daughter of Late Chandeshwar Prasad Singh Resident of Village – Nath Kharsa, P.S.- Mehandia, P.O. Niranjan Pur, District- Arwal
5. Reshmi Devi Wife of Sudhir Kumar and daughter of Late Chandeshwar Prasad Singh Resident of Village - Motha, P.S.- Goh, District – Aurangabad.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. J.S. Arora, Sr. Adv.
Mr. Manoj Kumar, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-07-2017

Heard Mr. J.S. Arora, learned senior counsel appearing
on behalf of the appellants.

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

The admitted facts are that Ram Keshwar Singh was the



original owner of the property and had one son Paras Nath Singh and a daughter Ram Sawari Devi. Paras Nath Singh died leaving behind two widows namely Sona Mukhi Devi and Raj Rani Kunwar. Raj Rani Kunwar executed a deed of gift on 19.10.1985 in favour of the defendant nos. 1 and 2. The two sons of Raj Rani Kunwar filed the suit praying for declaration that the said gift deed dated 19.10.1985 was sham, illegal, fraudulent, voidable, ineffective and not binding upon the plaintiffs with prayer for cancelling the same. The defendants filed the written statement contesting the assertions of the plaintiffs and resisting the grant of decree, as prayed.

It is also admitted fact between the parties that both widows namely Sona Mukhi Devi and Raj Rani Kunwar died after the commencement of the Hindu Succession Act, 1956. However, the crucial note of discord between the parties was the year of death of Ram Keshwar Singh who, according to the plaintiffs, died in the year 1957 but the defendants claimed that he died in the year 1945. The trial court returned the finding that Ram Keshwar Singh died in the year 1945 leaving his son Paras Nath Singh and the daughter Ram Sawari Devi. The trial court, however, granted the part decree to the plaintiffs holding that the gift deed executed by Raj Rani Kunwar was valid to the extent of her share in the property after taking notice of the fact that another widow who died in the year 1977 had executed a



will (Ext. 4) in favour of the father of the defendant no. 1.

The defendants filed appeal against the part decree of the suit. The plaintiffs, however, did not file any cross objection or appeal against the findings pertaining to the year of death of Ram Keshwar Singh in the year 1945. The said issued therefore, has attained finality between the parties. The appellate court has allowed the appeal and dismissed the suit by the impugned judgment and decree modifying the judgment and decree of the trail court.

Mr. Arora, learned senior counsel appearing on behalf of the appellants has submitted that the order of the consolidation officer dated 29.12.1983 (Ext. 6A) allotting 1/4th share to the plaintiffs and remaining 3/4th share to Raj Rani Kunwar has not been considered by the appellate court below and the judgment, therefore, is vulnerable. Elaborating the submissions, it has been contended that under Section 15 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 the certificate granted by the consolidation authorities is conclusive proof of title and therefore the appellate court below has committed error of jurisdiction in not taking into notice the said document of title in favour of the plaintiffs. It has also been submitted that the deed of gift under challenge was without permission as required under the provisions of the said Act and therefore, also the said gift deed was void. During the course of



submission, it has, however, been accepted in view of the finding that Ram Keshwar Singh died in the year 1945 remaining un-challenge, the mother of the plaintiff could not have inherited the estate left behind by Ram Keshwar Singh along with his brother Paras Nath Singh.

After considering the submissions and perusal of the judgments of both the courts below, it is manifest that the entire claim of the plaintiffs in the suit was based upon the fact that their mother Ram Sawari Devi inherited properties left behind by Ram Keshwar Singh as his heir along with her brother Paras Nath Singh. However, after the finding that the death of Ram Keshwar Singh occurred in 1945 his daughter Ram Sawari Devi definitely could not have inherited his properties as his legal heirs and the same was inherited by his only son Paras Nath Singh exclusively. There is no dispute that Paras Nath Singh died in the year 1958 left behind his two widows namely Sona Mukhi Kunwar and Raj Rani Kunwar who succeeded to their husband estate as joint tenants. After the death of one widow namely Sona Mukhi Kunwar in the year 1977, another widow Raj Rani Kunwar having survived her became the absolute owner of the property. The deed of gift dated 19.10.1985 was executed by Raj Rani Kunwar for her entire property in favour of the defendants. The conclusion, therefore, is inevitable that for assailing the legal validity



of the said gift deed the plaintiffs were required first to establish their right, title and interest in the property subject matter of the said gift deed. In view of the findings of fact on the major issues against the plaintiffs by both the courts below, this Court does not find that the plaintiffs are entitled to question the legal validity of the said gift deed.

The reliance placed upon the orders of the consolidation officer for recording 1/4th share in the suit land in favour of the plaintiffs as basis of their title is also misconceived. As it is well settled that the entry in the survey khatian cannot create or extinguish title of a person in the land. Even otherwise also, the Apex Court in the case of **Achyutanand Choudhary Vs. Luxman Mahto, 2012 (2) SCC 76** has laid down that Section 15 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 only embodies a rule of evidence and does not create any bar on the jurisdiction of the civil court. This Court has not been persuaded to hold that the plaintiffs' claim of title over the suit land or its part can be based upon only the consolidation records when the findings of fact by the civil court are otherwise. Though, it appears from the judgment of the trial court that there was no issue with regard to requirement of permission under the provisions of the said Act before execution of the gift deed in question but nonetheless the appellate



court has taken into notice the said issue and has found that there is no evidence on behalf of the plaintiffs establishing the requirement of permission on the date when the said gift deed has been executed.

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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