

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.333 of 2017

-
-
1. Sonamati Devi, w/o Late Jadu Nandan Mistri
 2. Smt. Bhagiya Devi, wife of Mewa Yadav
 3. Smt. Kauleshwari Devi, wife of Sri Basudeo Yadav
 4. Basudeo Yadav, son of Late Dasan Yadav
 5. Smt. Manorama Devi, w/o Late Balram Mistri
- All are resident of Village- Kanhaul, P.S.- Bodh Gaya, District- Gaya.

... .. Appellants

Versus

1. Mahendra Vishwakarma, son of Late Harihar Vishwakarma
 2. Smt. Sangeeta Devi, wife of Sri Mahendra Vishwakarma
- Both are resident of village Kunhaul, P.s. Bodh Gaya, District Gaya, at present residing at village Dhanama, P.s. Barachatti, District Gaya
3. Jagdeo Yadav, son of Bhola Yadav
 4. Suresh Yadav, son of Bishundhari Yadav
 5. Umesh Yadav, son of Bishundhari Yadav
 6. Binod Yadav, son of Bishundhari Yadav
 7. Dara Yadav, son of Karu Yadav
 8. Rupa Yadav, son of Karu Yadav
 9. Arvind Yadav, son of Karu Yadav
 10. Vijay Yadav, son of Ram Bilash Yadav
 11. Anil Yadav, son of Ram Bilash Yadav
 12. Pappu Yadav, S/o Ram Bilash Yadav
- All are resident of Village- Kanhaul, P.S.- Bodh Gaya, District- Gaya.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Shashi Shekhar Dwivedi, Sr. Adv.
Mr. Arun Kumar Sinha

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 03-11-2017

The appellants have put to challenge the judgment and decree, dated 19.04.2017/26.04.2017, passed by learned VIth Additional District Judge, Gaya, in Title Appeal No.



09/2016/2006 (D.J.), whereby and whereunder the learned lower appellate court has set aside the judgment and decree dated 04.11.2006/15.11.2006 passed by learned Sub-Judge-II, Gaya, in Title Suit No. 41/2001/148/2001 and has thus allowed the appeal on contest.

2. I have heard Mr. Shashi Shekhar Dwivedi, learned Senior Counsel for the appellants, at length.

3. The appellant No. 1 is the widow and the only legal heir and successor of the sole plaintiff, Jadu Nandan Mistry, who died on 28.11.2012 during the pendency of the appeal before the lower appellate court. She was impleaded as defendant no. 13 in the suit. For the benefit of convenience, the parties have generally been described in the present judgment and order according to their position in the title suit.

4. Briefly narrated, the case of the plaintiff as per the plaint was that he owned and possessed the lands in village-Kanhaul, P.S.- Bodh Gaya, District -Gaya. He was issueless and therefore depended upon the defendant No. 1 (Respondent No.1 herein), his sister's son for looking after the plaintiff and his wife (defendant no. 13 and appellant no. 1 herein) and also the lands held by him. Respondent No.2 herein, who is the wife of the defendant No. 1, was impleaded



as defendants No. 2. Defendant nos. 1 and 2 looked after the plaintiff and his wife well and also took care of the lands held by the plaintiff. The defendant No. 1 and defendant No. 2, in course of time started living with the plaintiff and the defendant No.1 impressed the plaintiff that they would serve the plaintiff and his wife like their own son and would shift permanently to the plaintiff's village if the plaintiff agreed to transfer some land in his favour. The plaintiff transferred a substantial portion of land in favour of the defendant No.1 through a registered sale deed but despite execution of the said sale deed, the plaintiff continued to be in possession over the said land. As per the expectations of the plaintiff, the principal defendant No. 1 and his wife, defendant No. 2 served the plaintiff and his wife sincerely and faithfully because of which the plaintiff and his wife put blind faith on them and treated them as their own son and daughter-in-law.

5. With the passage of time, the relationship between the plaintiff and the defendants No. 1 and 13 so developed that they started dominating over the wishes of the plaintiff and the plaintiff became so dependent on the said defendants that they never thought of probing into their acts. Taking undue advantage of the situation, the defendant No. 1



coerced the plaintiff to execute a registered deed of gift in the name of his wife, the principal defendant No. 2 on 01.12.1998. Immediately after execution of the said registered deed of gift on 01.12.1998, the plaintiff realized that he had become a destitute and at the same time, behaviour of the principal defendants changed drastically inasmuch as they started torturing and misbehaving with the plaintiff and his wife. In that perspective, the plaintiff cancelled the deed of gift through a registered deed of cancellation on 12. 12. 1998. It was also the case of the plaintiff that he threatened the principal defendants of legal action for declaration of the registered sale deeds executed earlier as sham and void document whereafter the principal defendants did not insist on enforcement of the deed of gift. The description of land which was transferred in favour of the defendant No. 2 through registered deed of gift finds place in the Schedule-‘C’ which is the subject matter of dispute between the parties.

6. It was further case of the plaintiff in the plaint that the plaintiff asserted his right to ownership over the said Schedule-‘C’ and sold portion of the schedule C land to various persons through registered deeds of sale dated 28.12.1998. On the same day, the plaintiff executed a registered gift deed in



favour of his wife (defendant No. 13, the appellant No. 1, herein), described in Schedule-‘D’ of the plaint. The defendant No. 13 sold 1.90 acres of land out of the scheduled the property to the defendants No. 14 to 17 for valuable consideration and put them in possession over the same. It was the specific case of the plaintiff that upon intervention of respectable people of the village, the defendant No.1 executed deed of *Bajidawa* on 20.03.2001 admitting his unreasonable action on his part in getting the deed of gift executed by the plaintiff by taking undue advantage of his dominating position over the plaintiff and acknowledged the cancellation of deed of gift executed by the plaintiff on 12.12.1998. When the plaintiff learnt that the defendant No. 2 has executed a showy and sham sale deed in favour of the defendants 2nd set so as to create unnecessary controversy and cause injury, he filed the said title suit seeking cancellation of the registered deed of gift dated 01.12.1998 after declaring it to be void, fraudulent, collusive and invalid and therefore not binding on the plaintiff.

7. The defendants No. 1 and 2 contested the suit by filing their written statement. They asserted that after being pleased with the services rendered by them, the plaintiff had executed the registered deed of gift out of his free will when he



was in sound state of mind. They denied the averments in the plaint to the extent it was alleged that the registered deed of gift was executed because of the dominating position of the defendants or there was any kind of coercion applied on the plaintiff for getting the registered deed of gift executed. It was this specific case of the defendants in their written statement that the plaintiff and his wife after being pleased with the services rendered by the defendant No. 1 and specially defendant No. 2 intended to make the gift in favour of the defendant No. 2 and an intention in this regard was expressed to the defendant No. 2 who agreed to accept the deed of gift and accordingly the deed of gift was executed by the plaintiff with respect to Schedule-‘C’ land of the plaint in favour of the defendant No. 2 on the advice of the defendant No. 13 (appellant no. 1 herein) and immediately thereafter put her in possession of the same. According to the said defendants 1 and 2, the plaintiff in collusion with the defendants No. 14 to 17, cooked-up a story as narrated in the plaint which is evident from the fact that immediately after execution of cancellation deed with respect to the suit property and execution of another gift deed in favour of the defendant No. 13 by the plaintiff, the defendant No. 13 executed sale deeds in favour of the said



defendants No. 14 to 17, which are *void ab initio* and no right, title and interest in the property could pass to them since the defendant No. 2 did not have any right, title or interest to transfer. The contesting defendants further asserted that the husbands of the defendants No. 14 to 17 wielded considerable influence in the village because of their association with the extremists groups. The defendants No. 1 and 2 further pleaded that no Bajidawa was ever executed by them, as asserted in the plaint and if any document in support of such plea is produced before the court, the same must be forged and fabricated. They reiterated that the gift was duly accepted by the defendant No. 2 and so far as custody of the deed of gift is concerned, since the defendants No. 1 and 2 were living together with the plaintiff and his wife, all the documents relating to their properties as also the properties of the plaintiff were kept in the same house without any malice.

CASE OF DEFENDANTS NO. 3 TO 12

8. The defendants No. 3 to 12 are the purchasers of the defendant No. 13 who supported the case of the plaintiff and added that the defendant No. 13 Executed the registered sale deeds dated 20.02.2001 with respect to the schedule-C



land of the plaintiff for valuable consideration and they have got mutated their names in the Anchal office.

9. On the basis of rival pleadings of the parties, learned trial court framed altogether nine issues, two out of which, viz. issues No. VIII and IX are relevant, rather crucial for deciding the present case and therefore, are being reproduced hereinbelow: –

“VIII. Is the gift deed dated 01. 12. 1998 executed in the name of defendant No.2 is illegal, void, inoperative and not binding upon the plaintiff and is the said transaction under undue influence and not unconscionable?

IX. Is the plaintiff entitled to get the gift deed dated 01. 12. 1998 standing in the name of defendant No. 2 cancelled?”

10. The plaintiff brought the following three documentary evidence, to prove his case :-

- a. The original deed of gift dated 01.12.1998 standing in the name of the defendant No. 2, executed by the plaintiff. (Exhibit 1)
- b. The deed of cancellation dated 12.12.1998, with objection (Exhibit 3)
- c. The photocopy of *Bajidawa* dated 20.03.2001, with objection (Exhibit 2).

11. The defendants also adduced evidence, both oral and documentary, which I shall refer to, at appropriate stage.



12. On analysis of the evidence adduced at the trial and rival pleadings on record, the trial court decreed the suit in favour of the plaintiff by the judgment and decree dated 04.11.2006/15.11.2006 upon deciding the said Issues No. VIII and IX in favour of the plaintiff. From the judgment of the trial court, it is noticeable that the trial court concluded that the defendants could not establish their case that the deed of gift dated 01.12.1998 was executed out of free will and without coercion rather the defendants No. 1 and 2 misusing the confidence reposed by the plaintiff and his wife in them got the gift deed executed and therefore, the same deserved to be declared void and ineffective. The trial court also concluded that the defendants No. 1 and 2 failed to prove the factum of acceptance of the gift. For reaching this conclusion the trial court took into account the fact that deed of gift was not in possession of the said defendants rather the same was produced as an exhibit by the plaintiff. In the absence of any proof of acceptance of gift, transfer of right, title and interest over the suit property in favour of the defendant No. 2 could not be effected, the trial court observed.

13. The defendants No. 1 and 2 preferred appeal against the judgment and decree of the trial court dated



04.11.2006/15.11.2006, which gave rise to Appeal No. 09/2016/2006 (D.J.). The appellate court below has, by the impugned judgment and decree, reversed the finding recorded by the trial court and has set aside the judgment and decree of the trial court, aggrieved by which the present Second Appeal has been preferred.

14. The matter has been placed for hearing under Order 41 Rule 11 of the CPC.

15. Mr Shashi Shekhar Dwivedi, learned Senior Counsel appearing on behalf of the appellants have submitted that the impugned judgment and decree of the appellate court below is not in conformity with the requirements of Order 41 Rule 31 of the CPC which casts certain duties on the appellate court, while affirming or reversing the judgment of the trial court. According to him, the appellate court below has not considered the reasoning of the trial court given in the judgment for passing decree in favour of the plaintiff/appellant, while reversing the findings of the trial court, and therefore the impugned judgement is unsustainable. He has placed reliance on Supreme Court decision in case of *Chintamani Ammaal vs. Nand Gopal Gounder*, reported in (2007) 4 SCC 163. According to him, the impugned judgment does not contain the



points for determination, the decision thereon and the reasons for such decision which are mandatory requirements under order 41 rule 31 of the CPC. In support of the submission he has referred to Supreme Court decision, in case of **H. Siddiqi v. A. Ramalingam**, reported in (2011) 4 SCC 240 and another decision in case of **B. M. Narayan Gowda v. Shanthamma**, reported in 2001 (5) SCALE 143. He has further submitted that the findings arrived at by the appellate court below by ignoring and excluding relevant materials and taking into account such materials which are completely irrelevant render them perverse. He has, in support of this submission placed reliance on Supreme Court decision in case of **Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and Others**, reported in (2010) 13 SCC 216.

16. He has next submitted that acceptance of a gift by the donee is an essential ingredient and since there was no evidence at all adduced at the trial to prove acceptance of gift, learned appellate court below wrongly held transfer of the suit property through the gift deed dated 01.12.1998 to be complete. In support of what amounts to acceptance, he has relied on the decision of this court, in the case of **Balmiki Mahto and Others v. Kishun Mahto and Others**, reported in



2006 (4) PLJR 276. According to him the appellate court below miserably failed in properly appreciating the evidence adduced at the trial which clearly indicate that the deed of gift dated 01.12.1998 was executed under undue influence of the defendants 1 and 2 since they were in dominating position because of the old age of the plaintiff and his wife who fully depended on them. The deed of gift was apparently not executed out of free will as no one would transfer his entire property through gift and thereby become beggar. To bolster his contention he has heavily relied on the decision of this court in case of **Ramchandra Prasad v. Sital Prasad (AIR 1948 Pat 130)**.

17. With the aid of the submissions as above, learned senior counsel has submitted that present second appeal involves following substantial questions of law: –

I. Whether the impugned judgment of the appellate court below being in teeth of the provisions of Order 41 Rule 31 of the CPC is bad and therefore unsustainable?

II. Whether absence of consideration of reasons assigned by the trial court for decreeing the suit in favour of the plaintiff, before upsetting the findings of the trial court by the appellate court renders the impugned judgment of the appellate court untenable?

III. Whether in the absence of any proof of acceptance of the gift by the donee, the finding of the lower appellate court that the deed of gift dated



01.12.1998 is valid and effective, findings recorded by the appellate court below his perverse?

18. According to him, these questions of law, substantial in nature are in addition to those indicated in the memo of appeal.

19. I will take up first the challenge of Mr. Dwivedi to the impugned order on the ground of breach of the requirements laid down under Order 41 Rule 31 of the CPC. In order to appreciate and address the said challenge I have carefully gone through the impugned judgment of the appellate court below. From the reading of the judgment I notice that after taking into account the rival pleadings on record, evidence adduced at the trial and submissions advanced before it, the appellate court formulated two main points for determination as under;

I. Whether the plaintiff became beggar and destitute after transferring the schedule-C property of the plaintiff to the defendant No. 2 under the registered deed of gift dated 01.12.1998?

And,

II. Whether the registered deed of gift dated 01. 12. 1998 executed by the plaintiff in favour of the defendant No. 2 is valid and operative document and free from coercion, undue influence and unconscionable transaction?



20. In my view these were the only main points available for determination by the appellate court below since the validity of the deed of gift was challenged in the suit on the ground that it was obtained under coercion and influence and not out of the free will and volition. The grounds which have been taken by the appellants in the memo of appeal also revolve around the said two points formulated by the appellate court below, for determination. There can be no gainsaying that the judgment of the appellate court below contains the decision on both the points formulated for determination with reasons for such decision. In my view therefore, the impugned judgment cannot be faulted with on the ground of breach of the requirements under Order 41 Rule 31 of the CPC. I am also not convinced with the submission advanced on behalf of the appellant that the judgment of the appellate court below does not consider the reasoning of the trial court while reversing the findings of the trial court inasmuch as, it is noticeable from the impugned judgment that the appellate court below has independently considered the entire evidence available on record and has dealt with the pleadings and submissions of the parties. The decision of the Supreme Court in case of *Chintamani Ammaal* (supra) does not come in aid of the



submissions so advanced inasmuch as in that case the Supreme Court had occasion to notice that the appellate court had failed to notice the evidence available on record and had reversed the finding merely on the basis of statement of one defendant witness. What I notice from the judgment of the appellate court below is that it has considered the pleadings of the parties, evidence of all the witnesses, exhibits brought on record by the parties in support of their respective cases and the rival submissions advanced in detail and has thereafter recorded the finding that the gift deed dated 01.12.1998 was validly executed by the plaintiff in favour of defendant No. 2 without any coercion and undue influence. The said submission is accordingly rejected.

21. This takes me to the another question, as raised by learned senior counsel *i.e.* Whether in the absence of any proof of acceptance of the gift by the donee, the finding of the lower appellate court that the deed of gift dated 01.12.1998 is valid and effective, is perverse?

22. To answer this question this has to be kept in mind as to whether there was at all absence of any proof of acceptance before the Court below. It is true that the original gift deed was not in possession of the defendants rather the



same was admittedly in possession of the plaintiff. Can it be construed and held on that basis that there was no acceptance of gift by the defendant?

23. The Supreme Court in case of **Asokan Vs. Lakshmi kutti**, reported in **(2007) 13 SCC 210**, had occasion to deal with the mode of proof of acceptance of gift. In my view, the law laid down by the Supreme Court in case of **Asokan** (*supra*) directly applies to the facts and circumstances of the present case. Considering various provisions of The Transfer of Property Act, 1982, more particularly Sections 122 and 123 thereof and the law laid down by Supreme Court in case of **Asokan** (*supra*), in order to constitute a valid gift, its acceptance is essential. The Supreme Court clearly held in the said decision that The Transfer of Property Act does not prescribe any particular mode of acceptance and it is the circumstances attending to the transaction which may be relevant for determining the question. The Supreme Court held that the fact that the possession had been given to the donee also deserves the presumption of acceptance.

24. In the present case, as a matter of fact, no dispute is being raised that the donee was not in possession over the suit land after the deed of gift was executed rather it is



the case of the plaintiff himself that the donee was in possession because of the relationship between them and not by operation of and as consequence of execution of the deed of gift.

25. The stand of the appellants that the gift was not accepted immediately after the execution is antithetical to their fundamental plea that the defendants taking undue advantage of the position had coerced the donor to execute the gift deed. From the findings recorded by the appellate court it appears that the Court noticed the recital in the deed of gift dated 01.12.1998 (Exhibit 1) with respect to acceptance of gift.

26. It is not the case of the appellant that the donee was not aware of the recitals contained in the deed of gift. Silence may also sometimes indicate acceptance of gift and it is not necessary to prove any overt act in respect thereof. An express acceptance is not necessary for completing the transaction of gift, the Supreme Court has held in **Asokan** (*supra*).

27. Once a gift is complete, it cannot be rescinded and the donors cannot subsequently turnaround and cancel a gift.



28. The submission that the donee was left with no piece of land after execution of the gift deed dated 01.12.1998 and she became almost a beggar and therefore it constituted an onerous gift is not much convincing in view of finding recorded by the appellate court below that even after making gift in favour of defendant no. 2, at least 3.17 acres of land was left with the plaintiff and therefore there could be no question of he becoming beggar or destitute.

29. In my opinion, in view of the discussions as above, since no substantial question of law requiring determination by this court arises in the present second appeal, it does not deserve admission and is accordingly dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	05-12-2017
Transmission Date	N/A

