

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.273 of 2014

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Lal Muni Devi Wife of Daya Shankar Giri Resident of Village & P.O. Bhagwatpur,
Police Station - Taraiya, Dist.-Saran (Chapra)

..... Plaintiff Respondent

.... Appellant

Versus

1. Sri Bhagwan Rai Son of Akshay Lal Rai
2. Prabhu Rai Son of Akshay Lal Rai
3. Sanjhari Devi Wife of Krishna Rai
4. Radhey Shyam Rai Son of Krishna Rai
5. Abhay Kumar Son of Krishna Rai
6. Govind Kumar Son of Krishna Rai
7. Munita Kumari Daughter of Krishna Rai
8. Sarita Devi Daughter of Krishna Rai
9. Laljhari Devi Daughter of Abhaylal Rai, Wife of Kapildeo Rai
10. Jairani Devi Daughter of Abhaylal Rai, Wife of Kapildeo Rai
11. Mati Devi Daughter of Sheoji Rai, wife of Kameshwar Rai
12. Sudama Rai Son of Sheo Rai
13. Supan Giri Son of Dgru Giri
14. Shankar Giri Son of Dagru Giri
15. Manager Giri Son of Dagru Giri
16. Baban Giri Son of Dagru Giri
17. Shiva Devi Daughter of Dagru Giri
18. Manmati Devi Wife of Kapildeo Giri
19. Binod Giri Son of Kapildeo Giri
20. Dharamsheela Kumari Daughter of Kapildeo Giri
21. Rita Kumari Daughter of Kapildeo Giri
22. Pramila Devi Daughter of Kapildeo Giri
23. Uemila Devi Daughter of Kapildeo Giri All are residents of village & P.O. Bhagwatpur, Police Station - Taraiya, Dist.-Saran (Chapra)

..... Defendants Appellants

.... Respondents

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Appearance :

For the Appellant/s : Mr. Dhruv Narayan, Sr. Advocate
Mr. Bashishtha Narayan Mishra, Advocate

For the Respondent/s : Mr. Arun Kumar Prasad, Advocate
Mr. Kapildeo Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-03-2017

Heard Mr. Dhruv Narayan, learned Senior Counsel appearing
on behalf of the appellant.

2. At the out set learned Senior Counsel for the appellant has



submitted that the Interlocutory Application (I.A. No. 630 of 2017) is not being pressed. The said Interlocutory Application is accordingly dismissed as not pressed.

3. The plaintiff is the appellant in this appeal against the judgment and decree of reversal dismissing the suit.

4. The plaintiff filed the suit for setting aside the respective sale deeds executed by defendant No. 5 in favour of defendant Nos. 1 to 4 on different dates. It was the case of the plaintiff that the suit property belonged to the family of Salik Giri, who died leaving behind two sons namely Sunder Giri and Shyam Giri. Sunder Giri left behind one son namely Shiv Nandan Giri. Shiv Nandan Giri had a son namely Jagdish Giri and the plaintiff is daughter of Jagdish Giri and the widow of Jagdish Giri was Pashupato Kunwar. In the branch of Shyam Giri, his son Ambika Giri succeeded his father Shyam Giri but died in the year 1935. According to the case of the plaintiff, Ambika Giri left behind his widow Sanmato Kuwar who was defendant No. 5 in the suit. The plaintiff challenged the sale deeds executed by defendant No. 5 Most. Sanmato Kuwar in favour of defendant Nos. 1 to 4 on various dates. It was the specific case of the plaintiff that Sanmato Kuwar was a maintenance holder and had never been in possession over the property of Salik Giri. It was also the case of the plaintiff that entire property of the family of Salik Giri was transferred to the plaintiff by gift deeds.

5. The defendant Nos. 1 to 5 filed their joint written statement contesting the assertions made by the plaintiff and resisting the reliefs as prayed.

6. The trial court returned the finding on the issue with regard



to the year of death of Ambika Giri holding that Ambika Giri died in the year 1940. Further, while considering the issue of ouster of Sanmato Kuwar from possession of the property of the family of Salik Giri, the trial court came to the finding that Sanmato Kunwar was in constructive possession of the suit property and was continuing as member of the family of Salik Giri. The suit was, however, decreed by the trial court on the basis of the finding that the consideration money was not paid by defendant Nos. 1 to 4 to Sanmato Kunwar (defendant No. 5). The defendants preferred appeal against the judgment and decree of the trial court. The appellate court below on reappraisal of evidence has reversed the finding of the trial court on the issue that no consideration was paid by defendant Nos. 1 to 4 to defendant No. 5 for the different sale deeds. As there was no cross appeal or objection by the plaintiff against the finding that Ambika Giri died in the year 1940 it has been further held that his widow Sanmato Kunwar continued in possession of the property as member of the family of Salik Giri. The appellate court below accordingly has allowed the appeal by the impugned judgment and decree.

7. Mr. Dhrub Narayan, learned Senior Counsel appearing for the appellant, has submitted that the appellate court below has committed grave illegality in not appreciating the entire evidence and not reconsidering the issue pertaining to the year of death of Ambika Giri as well as ouster of Sanmato Kuer by the plaintiff from possession of the suit property. During the course of submission, it has not been disputed that no cross objection was filed by the plaintiff against the finding on the issue of year of death of Ambika Giri and against the finding holding that



Sanmato Kuer was not ousted and was in constructive possession over the suit property. Learned Senior Counsel has, however, placed reliance in support of his submission on the decision of the apex Court in the case of ***Santosh Hazari vs. Purushottam Tiwari (2001) 3 SCC 179*** and has emphasised that the appellate court below was required to consider all the issues even if no appeal or cross objection was filed. No other submission has been made on behalf of the appellants.

8. After considering the submission and perusal of the judgments of both the courts below it is manifest that the plaintiff filed the suit for setting aside the sale deeds executed by defendant No. 5 in favour of defendant Nos. 1 to 4 on various dates respectively. The spinal issue pertaining to the year of death of Ambika Giri, husband of defendant No. 5 Sanmato Kunwar, has been decided by the trial court holding that Ambika Giri died in the year 1940. The further issue pertaining to the possession of Sanmato Kunwar over the suit property has also been decided against the plaintiff holding that Sanmato Kunwar was in constructive possession over the suit property as a member of the family of Salik Giri. It is, therefore, apparent that after death of Ambika Giri in the year 1940 his widow Sanmato Kunwar became limited owner over the property of the share of Ambika Giri in the joint family. There is no dispute that Sanmato Kunwar was alive in the year 1956 which is also apparent from the fact that Sanmato Kunwar has been impleaded as defendant No. 5 in the present suit. The conclusion is therefore inevitable that the defendant No. 5 Sanmato Kunwar has thus acquired absolute title in the property of her deceased husband Ambika Kunwar in the joint family property. It is further also



demonstrably clear that the plaintiff could not have acquired interest on the basis of gift deed executed by her mother for the property of the share of Sanmato Kunwar. As the findings of the trial court relating to the year of death of Ambika Giri and the possession of Sanmato Kunwar over the suit property were not challenged by the plaintiff by preferring cross objection, the findings of the trial court attained finality between the parties and could not have been reopened. The submission by the learned Senior Counsel for the appellant has no substance that the appellate court below in this fact situation was still required to reconsider all the issue even when the findings of the trial court on those issues have not been questioned by filing appeal or cross objection. The decision in the case of **Santosh Hazari (supra)** is of no help to the appellant in the present setting of facts. It is also nowhere the case of the plaintiff that the sale deeds in question were fictitious or farzi rather specific objection to those sale deeds were on the ground of non payment of consideration money. The plaintiff being stranger to the sale deeds could not have questioned the validity of the same on the ground of non-payment of consideration money and that too in view of the fact that in the joint written statement filed by the defendants the fact of payment of consideration money was accepted by the vendor – defendant No. 5.

9. This Court has also not been persuaded to find any perversity or unreasonableness in the conclusions by the appellate court below. Even otherwise also the appellate court below has passed the impugned judgment and decree on the basis of scrutiny of the evidence on record.



10. In the ultimate eventualate, this Court holds that there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
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