

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Second Appeal No.302 of 2014**

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1. Gwalin Devi @ Gwalin, wife of Late Thakur Mistri  
2. Madan Sharma  
3. Krishna Sharma  
4. Jogendra Sharma, sons of Late Thakur Mistri  
All residents of Village Dhumnagar Sofawa Tola, PO Dhumnagar, PS Nautan,  
District West Champaran  
..... Plaintiffs ..... Appellants  
..... Appellants

Versus

Bibi Ainul Nesha, daughter of Late Israil Mian, wife of Pir Mohammad Mian,  
resident of Village Amawa Majhar, PO Amawa, PS Bettiah Mufassil, District West  
Champaran  
..... Defendant ..... Respondent  
..... Respondent

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**Appearance :**

For the Appellant/s : Mr. Bashishtha Narayan Mishra  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 28-02-2017**

Heard Mr. Bashishtha Narayan Mishra, learned Counsel  
appearing for the appellants.

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

3. The plaintiffs filed the suit for the relief of declaration that the  
gift deed dated 15.12.1987 executed by defendant No. 1 in favour of  
defendant No. 2 was illegal, inoperative, not binding on the plaintiffs and  
further relief was for setting aside the same. The plaintiffs also prayed  
for grant of permanent injunction restraining the defendants from  
interfering in the possession of the plaintiffs over the suit land. The  
defendants denied the claim of the plaintiffs as made and resisted grant  
of the relief.



4. Both the courts below have returned the findings on the issues against the plaintiffs. The suit was accordingly dismissed and thereafter the appeal by the plaintiffs has also been dismissed by the impugned judgment and decree.

5. Mr. Mishra, learned Counsel for the appellants, has submitted that both the courts below have not properly appreciated the evidence on record and the findings, therefore, are vitiated. The learned Counsel has placed the portions of the judgments of both the courts below in order to substantiate his submissions. During the course of submission, however, it has been accepted by the learned Counsel for the appellants that the plaintiffs have not prayed for declaration of right, title and interest over the suit land before seeking the relief against the gift deed said to have been executed by defendant No. 1 in favour of defendant No. 2 or for the relief of permanent injunction. No other submission has been made on behalf of the appellants.

6. After considering the submissions and perusal of the judgments of both the courts below, it is manifest that both the courts below on consideration of the evidence on record have come to the concurrent findings that the plaintiffs have failed to establish their claim over the suit land by cogent and convincing evidence. It is not the case on behalf of the appellants that the findings of fact by the courts below have stemmed out of non consideration of evidence or are dehors established principle of law. The appellate court below has also come to the finding that the reliefs as prayed by the plaintiffs against the gift deed in question could not have been granted in absence of the relief for declaration of right, title and interest over the suit land and the court



below has come to the conclusion that the plaintiffs’ suit is barred by Section 34 of the Specific Relief Act.

7. The findings have been recorded by both the courts below on the basis of evidence, which were acceptable and could have been relief upon. This Court is not persuaded to find that the conclusions by both the courts below for non suiting the plaintiffs are perverse or unreasonable in any manner.

8. Ex consequenti, 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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