

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11362 of 1993

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1. Shivjee Rai,
 2. Rajballam Rai,
 3. Binda Rai,
 4. Rajendra Rai,

All sons of late Anuplal Rai, r/v Repura, P.S.-Patepur, District-Vaishali.

.... Petitioner/s

Versus

1. Joint Director of Consolidation, Muzaffarpur
 2. Deputy Director of Consolidation at Hajipur.
 3. Consolidation Officer, Patepur Anchal, District-Vaishali
 4. Indra Mohan Rai, s/o Laldeo Rai
 5. Lal Mohan Rai, s/o Deo Narayan Rai
- Both r/v Bardiha, P.S.-Patepur, District- Vaishali
6. Indradeo Rai,
 7. Ram Sarath Rai, both sons of Deo Lal Rai.
 8. Ram Chandra Rai,
 9. Lakshman Rai,

Sons of Jagdeo Rai, r/v Repura, P.S.-Patepur, District- Vaishali

10. Peyari Devi, w/o Sukha Rai, r/v Mitubpur, P.S.-Goraul, District-Vaishali.
11. Basmati Devi, w/o Surat Rai, r/v Bardiha, P.S.-Patepur, District- Vaishali.
12. Jagdeep Rai, s/o Amilal Rai,
13. Parwati Devi, w/o Jagdeep Rai, both r/v Mohiya Malpur, P.S. -Patepur, District-Vaishali.
14. Kismatia Devi, w/o Ram Nandan Rai, r/v-Kutupur, District-Vaishali.
15. Ram Pravesh Rai, s/o Surji Devi, r/v Lagurao, P.S.-Mahua, District- Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. NARESH CHANDRA VERMA
Mr. Natraj Verma

For the Respondent/s : Mr. Sunil Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 15-02-2018

Heard both sides.

The petitioners in this writ petition seek quashing of the
order dated 23.08.1993 passed in Consolidation Revision Case No.
1052 of 1987 (Annexure-5), order dated 30.03.1987 passed in



Consolidation Appeal Nos. 274 of 1986-87 (Annexure-4) and order dated 24.09.1986 passed in Consolidation Case No. 162 of 1986 (Annexure-3).

The facts, in brief, giving rise to the filing of this writ petition is that one Daroga Rai is said to have executed a deed of gift in favour of Anuplal Rai, the father of the petitioners on 07.05.1975.

On the basis of the aforesaid gift deed, Anuplal Rai filed petition before the Consolidation Officer, Patepur to get his name entered in the record of rights during the consolidation proceeding, but the Consolidation Officer rejected the petition of Anuplal Rai and his legal heirs holding that the gift deed is void. Thereafter, the appeal and the revision preferred by the petitioners have also been dismissed.

Learned counsel for the petitioners submits that Daroga Rai executed the deed of gift with regard to the lands of different plots of Khata No. 22 Area 3.41 acres in village Repura, Anchal-Patepur, District- Vaishali in favour of Anuplal Rai, the father of the petitioners on 07.05.1975. Before execution of the deed of gift, Daroga Rai applied for permission to execute the deed of gift vide Case No. 480 of 1974 and the Consolidation Officer granted permission vide order dated 12.04.1975. Daroga Rai thereafter executed the deed of gift. It has further been submitted that even if Daroga Rai filed the suit for setting aside the deed of gift executed in



favour of Anuplal Rai, the aforesaid deed of gift cannot be said to be void *ab initio*. Daroga Rai alleged that deed of gift was brought into existence after playing fraud and forging his thumb impression/signature, but unless a court of competent civil court declare the deed illegal and inoperative, the Consolidation Authority has got no jurisdiction to declare the deed of gift void and ignore the same while preparing the records of rights under Section 10 of the Consolidation Act.

Learned counsel for the petitioners has placed his reliance on a judgment of this Court in case of ***Kailasi Devi Vs. State of Bihar & Ors.*** reported in ***2008(2)PLJR 722*** in which Hon'ble Single Judge of this Court has held, relying upon a judgment of a Full Bench of this Court in case of ***Kalika Kuar @ Kalika Singh Vs. the State of Bihar & Ors.*** reported in ***1989 PLJR 1203***, that it is not open to the Consolidation Court to declare a voidable document to be an invalid piece of document. This jurisdiction is only vested in the civil court having jurisdiction. It has further been submitted that a Consolidation Court cannot avoid a voidable document. The void document is such which is executed in contraventions of any law. It has nowhere come in the entire case that the deed of gift executed by Daroga Rai is void *ab initio* in view of the provisions of any law either contained in the Consolation Act or any other law, such as, Hindu Succession Act.



On the contrary, learned counsel for the respondents submits that the Consolidation Officer as well as the Appellate and the Revisional Authority have categorically held that Daroga Rai executed the deed of gift with regard to the lands inherited by him from his ancestors. The Authority has held that if Daroga Rai had executed the deed of gift out of his free will, he would have no occasion to challenge the same deed of gift in Title Suit No. 22 of 1977, which abated under Section 4(c) of the Consolidation Act.

On perusal of the records and after considering the submission of both sides, I find from the pleadings of both the parties that Daroga Rai executed the deed of gift on 07.05.1975 after obtaining permission from the Consolidation Officer in Case No. 480 of 1974. The Consolidation Authority granted permission on 12.04.1975. Of course, Daroga Rai also filed Title Suit No. 22 of 1977 to declare the deed of gift fraudulent, illegal and inoperative as he did not put his signature on the same, but from allegation itself, on which the suit was filed, it appears that the aforesaid deed of gift cannot be said to be a void document unless the same is declared by the competent civil court having jurisdiction. The Consolidation Authority has got no jurisdiction to declare a deed of gift as void and ignore it.

Having considered the facts aforesaid, I find that the deed



of gift, on the face of it, is not a void document but the Consolidation Authority have illegally and without having jurisdiction declared the same to be void.

Accordingly, the orders dated 23.08.1993 passed in Consolidation Revision Case No. 1052 of 1987 (Annexure-5), dated 30.03.1987 passed in Consolidation Appeal No. 274 of 1986-87 (Annexure-4) and dated 24.09.1986 passed in Consolidation Case No. 162 of 1986 (Annexure-3) are set aside.

The present writ petition is allowed.

(Prabhat Kumar Jha, J.)

Rakhi

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	27.02.2018
Transmission Date	

