

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.401 of 2016

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1. Madhuri Devi Daughter of Late Anirudh Singh and wife of Sri Tapeswar Prasad Singh
 2. Manoranjan Singh
 3. Niranjana Kumar Singh Both sons of Sri Tapeswar Prasad Singh
All residents of village - Mahisauri, P.S. and District - Jamui.

... .. Appellant/s

Versus

1. Saraswati Devi wife of Sri Shyamlal Tanti Resident of Village - Mahisauri, P.S. and District - Jamui.
2. Rama Devi wife of Kaleswar Tanti Resident of village - Chihotia, P.S. Khaira, District - Jamui.
3. Deoki Devi wife of Sushil Tanti Resident of village and P.O. Daulatpur, P.S. and District - Jamui.
4. Majetar Tanti son of Late Chintamani Tanti
5. Munna Tanti son of Majetar Tanti Both residents of village - Mahisauri, P.S. and District - Jamui.
6. Runna Devi wife of Satpal Tanti Resident of village - Shivgari Tanr, P.S. - Khaira, District - Jamui.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sashi Shekhar Dwivedi, Sr. Advocate
For the Respondent/s : Mr. Ganpati Trivedi, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 31-01-2018

Aggrieved by the judgment and decree, dated 30.06.2016, passed by learned Second Additional District Judge, Jamui in Title Appeal No. 17 of 1996, whereby he has upheld the judgment and decree of the learned Sub Judge-II, Jamui in Title Suit No. 01 of 1989, the appellants have preferred the present second appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code).



2. The appellants are the contesting defendants. The suit was filed by respondent No.1 for declaration of her title and interest over the suit land as described in the schedule of the plaint and for further declaration that the sale deeds dated 28.04.1987 executed in favour of the original defendant Anirudh Singh (since deceased) were void and not binding upon the plaintiff. The plaintiff had also sought for recovery of possession of the suit property and *mesne profit*.

3. There is concurrent findings of fact in respect of execution of gift deed in respect of the property in question executed by one Gouri Devi in favour of plaintiff by the Courts below.

4. I have heard Mr. Shashi Shekhar Dwivedi, learned Senior Counsel appearing on behalf of the appellants under Order 41 Rule 11 of the Code. For the benefit of convenience the parties have been described in terms of their position in the suit.

5. The contesting respondent No.1(Plaintiff) has entered appearance without notice and has been represented by Mr. Ganpati Trivedi, learned Senior Counsel, who has also made his submissions.



6. From the impugned judgments of the Courts below and the submissions advanced on behalf of the parties, it appears that there is no dispute over basic facts.

7. The mother of the plaintiff Gouri Devi (defendant No.2) had purchased .15 decimal of land in Maouza Mahisouri, P. S. Jamui, District- Munger through a registered sale deed, dated 29.04.1976 from one Mandoderi Devi. The defendant No.2 had executed a registered gift deed, dated 29.01.1977, in respect of half of the land (.07 ½) out of .15 decimal in favour of the plaintiff. Defendant No.2, thereafter, executed a deed of cancellation of the said gift on 08.04.1982. She also executed two registered sale deeds in favour of defendant No.1 both dated 28.04.1987. There seems to be no dispute over these facts.

8. Whether the defendant No.2 could cancel the gift deed executed in favour of the plaintiff in respect of the suit property and transfer it in favour of the defendant No.1 though registered deeds of sale is only question which the required consideration by the Court's below and which has been answered in negative, against the defendants.

This is also to be noted that there was a condition mentioned in the gift deed that the donee shall maintain the



donor. It is in this background it has been plea of the defendants that the deed of gift being conditional, it could not be termed as a valid gift.

9. Mr. Shashi Shekhar Dwivedi, learned Senior Counsel appearing on behalf of the appellants, referring to the impugned decisions of the Courts below, has submitted that there is absolutely no consideration by the Courts below of the evidence adduced at the trial. He has submitted that the Courts below has failed to appreciate the evidence of the defendants' witnesses and plaintiff's witnesses also in respect of construction of a house over the suit land by the plaintiff, completely ignoring the contents of exhibit 2/A, which indicates payment of repairing cost of the house situate over the suit property. He has further submitted that the Courts below failed to appreciate that the plaintiffs had a duty to establish their case. He further contends that through sale deed, dated 28.04.1987, the defendant No.2 has transferred residential house over the suit property whereas the description of the land offered through gift deed, dated 29.01.1977, is a vacant land. He has submitted that despite there being evidence that construction was made by defendant No.2 over the suit property by Gouri Devi, the findings recorded by the Courts below that there was no chit of paper to show that



Gouri Devi had constructed the house on the suit land is perverse. The presumption that the plaintiff must have constructed the house over the suit land as recorded by the Courts below is misplaced, he contends. According to the appellants, this second appeal involves following substantial questions of law as framed in the memo of appeal:-

“I. Whether the genuineness as well as validity of gift consisting some condition has been treated as valid deed of gift by both the learned court below in place of conditional deed of gift which does not come under the valid documents of gift?

II. Whether the deed of gift dated 29.01.1997 has not been properly exhibited and merely on the basis of presumption after being seen the contents of deed for cancellation of gift, both the learned Court below came to the conclusion and declared the deed of gift dated 92.01.1977 is a valid and genuine document?

III. Whether both the learned court below failed to appreciate that the testimony of D.Ws as well as P.Ws with regard to construction over the suit land by plaintiff Respondent no.1 having ignored the contents of Ext. 2/A which says about the payment of repairing cost of house situated over the suit property in question?

IV. Whether it is legal judgment and decree can be passed against a dead person, such as defendant no.2 Gauri Devi i.e. mother of plaintiff no.1, who died on 02.02.1996 i.e. during the pendency of the suit, therefore, it is a case of nullity of judgment and decree?



V. Whether the defendant no.2 accrued her right title to transfer the land after canceling the deed of conditional gift if the plaintiff failed to maintain her which is sole condition of the deed of gift?

VI. Whether both the learned court below should have considered the legality of registered sale deed executed by defendant no.2 in favour of defendant no.1 i.e. father of the appellant no.1?

VII. Whether purchaser of undivided interest of coparceners can be advised to file Civil Suit?"

10. It has, in addition, been submitted by Mr. Shashi Shekhar Dwivedi, learned Senior Counsel that the findings recorded by the Courts below outrageously defy logic and suffer from the vice of irrationality, which also raises a substantial question of law. He has placed reliance on Supreme Court's decision in case of ***Municipal Committee, Hoshiarpur Vs. Punjab SEB*** reported in ***(2010) 13 SCC 216***, with reference to paragraph 28 thereof.

11. He has next relied on another Supreme Court's decision in case of ***H. Siddiqui Vs. A. Ramalingam*** reported in ***(2011) 4 SCC 240***, with reference to paragraph 21 thereof to submit that it is the duty of the appellate Court to consider entire evidence and discuss such evidence in detail after formulating the points for consideration for strict compliance of the



provisions under Order 41 Rule 31 of the Code. Adherence to the provisions under Order 41 Rule 31 of the Code is a mandate of law and breach thereof would render the findings of the appellate Court unsustainable, he contends.

12. He has also submitted that on the question as to whether the house over the suit premises was constructed by the plaintiff or the deceased defendant No.2, the Courts could have arrived at any finding upon the evidence adduced on behalf of the plaintiff and not on the ground that the defendants failed to establish their case that the residential house was constructed by defendant No.2, Gouri Devi. He has placed reliance on Supreme Court's decision in case of *Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others* reported in *(2014) 2 SCC 269*.

13. Mr. Ganpati Trivedi, learned Senior Counsel appearing on behalf of contesting respondent No.1 has, on the other hand, submitted that the validity of the deed of gift in favour of plaintiff respondent No.1, dated 29.01.1977 is not at all in dispute. According to him, the deed of gift was handed over by the defendant No.2 immediately after execution of the same, which amounts to acceptance of gift. The fact that the deed of gift was presented by the plaintiff in the trial Court as



evidence goes to suggest that the plaintiff had accepted the deed. He has placed reliance on a decision of this Court in case of ***Samrathi Vs. Parasuram (AIR 1975 Patna 140)***.

14. Upon perusal of the impugned judgment of the trial Court, I find that on the point of execution of gift, learned trial Court had framed following two issues:-

“2. Whether the deed of gift dated 29.1.77 executed in favour of the plaintiff for eastern 0-07 ½ decimals is valid, genuine and free from extraneous?”

3. Whether the house standing on the suit land was constructed by the plaintiff?”

15. There is in fact no denial of the plaintiff's case that the gift deed was executed in favour of the plaintiff in respect of the suit premises. In the gift deed, the land was shown to be vacant. On the date of the filing of the suit, there existed a residential house over the suit property. In view of lack of adequate evidence that the suit house was constructed by Gouri Devi, learned trial Court decided the issues in favour of the plaintiff. On the point of cancellation of the deed of gift through a document, dated 28.04.1987, and execution of sale deed in favour of defendant No.1/appellant, the trial Court had framed three issues, namely, Issues no. 4,5 and 6, which read thus:-



“4. Whether the defendant no.2 had any legal right left to cancel the deed of gift dated 29.1.77 which was executed in favour of the plaintiff?”

5. Whether the defendant no.2 had any right to transfer the suit properties conferring any right, title and interest to defendant no.1?

6. Whether the sale deed executed in favour of defendant no.1 by the defendant no.2 on 28.4.87 is collusive, illegal and void ab-initio?”

16. Learned trial Court after having held the gift to be complete on acceptance while dealing with issues No. 1 and 2, decided issues No. 4,5 and 6 holding that defendant no.2 had no right to transfer the same land to defendant no.1 and accordingly held sale deed dated 28.04.1987, to be illegal and *void ab-initio*.

17. I have perused the judgment of the appellate Court below. From the judgment of the appellate Court, I find that he has independently considered the material evidence on record for reaching the conclusion and affirming the findings recorded by the trial Court.

18. It appears from the judgments and decrees passed by the Courts below that there was a condition mentioned in the gift deed that the donee shall maintain the donor till her life time and accordingly it was plea of the defendants that the gift



deed was cancelled subsequently since the plaintiff had failed to perform her duties. Learned Courts below have discussed the recitals in the deed of cancellation of the deed of gift and have recorded their findings that apparently the deed of gift was not prepared on fraud or undue influence.

19. I do not find much force in the submissions advanced on behalf of the appellants with reference to Supreme Court's decisions in case of *Municipal Committee Vs. Punjab SEB* (supra), *H. Siddiqui Vs. A. Ramalingam* (supra) and *Union of India and others vs. Vasavi Cooperative Housing Society Limited* (supra).

20. The Courts below have considered the evidence on record in correct perspective. In the backdrop of undeniable execution of gift deed in favour of plaintiff by defendant no.2 and proof of acceptance of gift, the Courts below have rightly decided the issues in favour of the plaintiff inasmuch as the defendant no.1 could not have executed the said sale deed dated 28.04.1987.

21. Mr. Trivedi, has rightly placed reliance on a decision of this Court in case of *Samrathi Vs. Parasuram* (supra). The concurrent finding that the gift was accepted by



the plaintiff does not suffer from any infirmity. It is trite that if a document of gift after its execution or registration in favour of the donee is handed over to the donee, which he accepts, it would amount in law to be valid acceptance of the gift. After the said gift in respect of immovable property is accepted by the donee after having received the instrument of gift duly executed and attested, the donor is left with no power to revoke the gift.

22. The Supreme Court had occasion to deal with a similar point in case of *Asokan Vs. Lakshmikutty* reported in **(2007) 13 SCC 210** wherein the Court in no unambiguous terms held that once a gift is complete, it cannot be rescinded. The Court further held that for any reason whatsoever, the subsequent conduct of the donee cannot be a ground for rescission of a valid gift.

23. While laying down the law as noticed above, the Supreme Court observed in paragraph 23 as follows:-

“23..... It is one thing to say that the execution of the deed is based on an aspiration or belief, but it is another thing to say that the same constituted an onerous gift. What, however, was necessary is to prove undue influence so as to bring the case within the purview of Section 16 of the Contract Act. It was not done. The deeds of gift



categorically state, as an ingredient for a valid transaction, that the property had been handed over to the donee and he had accepted the same. In our opinion, even assuming that the legal presumption therefor may be raised, the same is a rebuttable one but in a case of this nature, a heavy onus would lie on the donors”.

24. What emerges from that above is, that;-

(i) When a registered deed of gift itself recites that donor has given possession of the properties gifted to the donee, it is an admission binding on the donor and those claiming under him. Such recital raises presumption and is ordinarily sufficient to hold that there was delivery of possession. (See also 1984 KLT 61(SN), Alavi V. Aminakutty, para 61).

(ii) Once a gift is complete, the same cannot be rescinded and subsequent conduct of the donee cannot be a ground for rescission of a valid gift.

(iii) In the present case all ingredients of a valid gift in the gift deed dated 29.01.1977, provided under Section 122 of the Transfer of Property Act are present.

(iv) There is no evidence to prove undue influence on the donor at the time of execution of gift deed so as to bring it within the purview of Section 16 of the Contract Act.



(v) The donor, in the present case could not have subsequently turned around and rescinded the gift on the ground of non-fulfillment of the promise by the donee to server the donor. This is the view which has been taken by Supreme Court in case of *Asokan Vs. Lakshmikutty* (supra).

25. In view of the above, concurrent findings recorded by the Courts below cannot be said to be perverse or suffering from any legal or factual infirmity requiring this Court's interference under Section 100 of the Code of Civil Procedure.

26. This second appeal does not involve any substantial question of law, which would require determination by this Court.

27. This appeal is, accordingly, devoid of any merit and is, therefore, dismissed.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.03.2018
Transmission Date	08.03.2018

