

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.186 of 2009

1. Rajendra Prasad Sah, son of Late Sardhari Sah
2. Smt Sawitri Devi, wife of Sri Rajendra Prasad Sah, both residents of village Bisai, P.S. Tarapur, district Munger, at present resident of Mohalla Naya Bazar, Sansar Pokhar, Pachna Road, P.O. + district Lakhisarai

... ... Defendant 1st party- Appellant/s
Versus

1. (i) Mina Devi
1 (ii) Vina Devi
1(iii) Rita Devi
1(iv) Rina Devi
1(v) Sudha Devi, daughters of Late Jagdish Prasad Sah & wife of not known
1(vi) Avinash Kumar
1(vii) Deepak Kumar sons of Late Jagdish Prasad Sah, residents of village Bisai, P.O. Manikpur, P.S. Tarapur, district Munger
...Plaintiffs-Respondents 1st party

2. Satya Narayan Panjiyar son of Late Ram Kishun @ Kishan Panjiyar
3. Rajiv Panjiyar son of Arjun Panjiyar
4. Dilip Panjiyar
5. Shankar Panjiyar
6. Satosh Panjiyar sons of Late Ram Kishun @ Kishan Panjiyar, all residents of village Hasanganj P.O. Mirjanttar, P.S. Kotwali district Bhagalpur at present Mohalla Naya Bazar P.O. & P.S. Lakhisarai, district Munger (Lakhisarai)

Defendants 2nd Parties-Respondents-2nd Parties

Appearance :

For the Appellant/s	:	Mr. Abinash Kumar
For the Respondent/s		Mr. Arun Kumar
		Mr. Ram Vinay Pd. Singh

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 30-01-2018

Heard learned counsel for the parties.

2. The appellants are aggrieved by the judgment and decree dated 27.02.2009 passed by learned Additional District & Sessions Judge, Fast Track Court, III, Lakhisarai, in Sub Judge Title Appeal No. 18 of 1993 whereby he has



affirmed the judgment and decree dated 024.07.1993 and 06.08.1993, respectively, passed by the learned Sub Judge, II, Munger, in Title Suit No. 87 of 1981. The learned Sub Judge, II, Munger, decreed the suit of the plaintiffs-respondents on contest with a direction to the appellants-defendants to hand over the vacant possession of the suit premises to the plaintiffs-respondents. The suit property has been described as plot nos. 2336 and 2334 pertaining to khata nos. 215 and 400 respectively, situated in mauza Kiul Thana Lakhisarai Thana No. 122T No. 2591 *ad measuring* 7 decimals equivalent to 2 katha 2 dhurs and 16 dhurkees. The original plaintiff-respondent died during the pendency of this appeal and has been substituted by his legal representatives and heirs. For the purpose of deciding the present second appeal, all the facts in detail are not required to be elaborated in the present judgment. Suffice it to narrate certain essential facts before coming to the issues framed and decision thereon by the two Courts below. I shall then consider the substantial questions of law which have been framed in the present second appeal.

3. This is not in dispute that one Kali Charan Mandal had executed a gift deed dated 19.01.1974 in favour of the original plaintiff in respect of the suit property. It is the case



of the appellants that before execution of the said gift deed dated 19.01.1974, Kali Charan Mandal had executed an agreement to sell with respect to the same piece of land on 22.12.1973. It is also the case of the appellants that when Kali Charan Mandal refused to execute the sale deed, a suit was filed registered as Title Suit No. 27/37/75 in which a compromise decree was passed on 23.02.1976, according to which said Kali Charan Mandal was required to execute registered sale deed in terms of the agreement to sell.

4. It was the case of the plaintiff in her plaint that she had already accepted the gift deed dated 19.01.1974 and she had got her name mutated. She had given the suit house on rent to the defendant no. 1/appellant for the purpose of running a shop. In course of time, the plaintiff learnt that the appellant had got his name mutated fraudulently in the municipal record without any notice or knowledge to the plaintiff. She also learnt about the filing of said Title Suit No. 27/37/75 for specific performance of contract through Kishun Panjiara and subsequent deed of sale, said to have been executed by the said Kali Charan Mandal and about the compromise petition having been filed in the above suit and obtaining a compromise decree. Taking a plea that Kali Charan Mandal



could not have executed the said sale deed on 29.07.1975 because of his advanced age and incapacity to think and, therefore, could not have filed compromise petition, she filed the Title Suit, after having received a notice from Anchal Adhikari in respect of mutation in the records of local municipality.

5. The defendant-appellant filed his written statement questioning the genuineness of the gift deed dated 19.01.1974. A plea was taken that the Title Suit No. 27/37/75 was brought *bonafide* by Kishun Panjiara which was rightly decreed on compromise after execution of deed of sale on 08.07.1975.

6. This is to be noticed that Kishun Panjiara had executed registered deed of sale in favour of the defendants, who are appellants 1 and 2 herein, on 12.06.1978. The defendant second party, i.e., Kishun Panjiara also filed his written statement supporting the case of the appellants. He asserted that though the plaintiff was not party to Title Suit No. 27/37/75, she had got every knowledge regarding the said Title Suit.

7. Before I proceed further, I must take note of a fact, which is not at all in dispute, that said Kali Charan Mandal died in December, 1975.



8. On the basis of the pleadings on record the trial Court framed altogether ten issues including issues no. 5, 6, 7 and 8 which read, thus:

5. Is the gift deed dated 19.01.1974 valid ?

6. Are the same deeds executed by Kali Charan Mandal and executed in favour of Kali Charan Mandal valid ?

7. Is the Zarbeyana dated 21.12.1973 valid ?

8. Is the decree passed in Title Suit No. 27/75 binding upon the plaintiff ?

9. The parties adduced their evidence both oral and documentary at the trial. Upon appreciation of the evidence on record and discussing the same elaborately in his judgment, the learned trial Court concluded that the deed of gift dated 19.01.1974 was executed without any fraud or misrepresentation or under undue influence. Considering the resistance of the defendant on the plea that delivery of possession is an essential ingredient of gift and there being no land in possession of the donee or donor, gift could not be said to be complete and valid, learned trial Court held that defendant being closely related to the deceased Kali Charan Mandal (maternal grand-son of the appellant) had been living in the house since the life time of Kali Charan Mandal and, therefore, his possession would amount to that of permissive



possession, i.e., possession with the consent of the deceased Kali Charan Mandal. The trial Court, accordingly, held that the deed of gift in question was lawful and valid and decided issue no. 5, accordingly, in favour of the plaintiff.

10. Taking up issues no. 6 and 7 together learned trial Court held that there was no evidence to suggest that Kali Charan Mandal ever required any money to marry the daughter of the plaintiff and for the said purpose he had executed the agreement to sell. This is to be noted that a plea was taken on behalf of defendants that the said agreement to sell was entered into since Kali Charan Mandal required money for the marriage expenses of the plaintiff's daughter. The trial Court, accordingly, held that the defendants failed to establish the necessity of sale of the suit land by Kali Charan Mandal to Kishun Panjiara. The Court, accordingly, held that the said agreement to sell remained inoperative and could not bind the plaintiff.

11. Considering question no. 8 as to whether said compromise decree was binding on the plaintiff or not, the trial Court held that Kali Charan Mandal did not have any right to execute the sale deed in 1975 after having executed the gift deed in 1974 itself, in favour of the plaintiff.



12. In that view of the matter, his vendee also did not acquire any title on the basis of the sale deed executed after execution of the gift deed. The trial Court also held that since plaintiff was not a party to the said suit, the compromise decree could not bind her.

13. After having decided the said issues in favour of the plaintiff, the trial Court decreed the suit, aggrieved with which the appellant filed an appeal giving rise to Sub Judge Title Appeal No. 18 of 1993 in Court of learned Additional District Judge, Fast Track Court, III, Lakhisarai. Learned appellate Court has affirmed the finding recorded by the Court below in respect of all the issues. From the judgment and order of learned appellate Court below I notice that the evidence available at the trial have been duly re-appreciated by him. The judgment of the appellate Court does not suffer from any procedural error inasmuch as lower appellate Court below has considered the entire materials available on record and has discussed the reason while concurring with the findings of the trial Court. Learned appellate Court on the question of execution of agreement to sell has discussed the recitals in the agreement according to which the said Kishun Panjiara was put in possession of the entire suit property whereas Kishun



Panjiara in his deposition in paragraph 6 stated that he had not seen the suit property before its purchase. The appellate Court, accordingly, held that the appellants could not prove that an agreement to sell was executed in the year 1973, between Kali Charan Mandal and Kishun Panjiara.

14. The appellate Court concurred with the findings of the learned trial Court in respect of the execution of the gift deed in favour of the plaintiff and considering the same, he observed that after execution of the deed of gift, since nothing remained with Kali Charan Mandal, he could not execute any sale deed nor enter into any compromise in a title suit in respect of property which was subject matter of gift. Accordingly, the trial Court held that Kishun Panjiara also did not get any right or title to execute any sale deed in favour of the appellants.

15. Assailing the concurrent findings recorded by the courts below, learned counsel for the appellants has submitted that the courts below erred in law in interpreting the gift deed (Ext.4) dated 19.01.1974 as operative, though it was executed subsequent to execution of the agreement for sale (Ext.F) dated 21.12.1973. According to him, the error in the findings recorded by the courts below is apparent since Ext. N, being



the certified copy of the decree passed in T.S. No. 27/37/75, by which the suit for specific performance of contract was decreed on 05.09.1975 on the basis of compromise between the parties, was not considered, though the same was operative.

16. From the substantial questions of law which have been formulated in the memo of appeal, it is evident that the entire case of the appellants is based on the execution of an agreement to sell in the year 1973 by the deceased Kali Charan Mandal and subsequent compromise decree passed in T.S.No. 27/37/75 on the basis of compromise.

17. From the narrative of the case, as noted above and upon perusal of the judgments and decree of the trial court and the appellate court, it is evident that there is concurrent finding by the courts below that the deed of gift dated 19.01.1974 was executed by the said Kali Charan Mandal without any fraud or misrepresentation and it was valid. It is the case of the appellants that possession by the donor over the suit land and transfer of possession to the donee are essential ingredients for constitution of a valid gift. The question of absence of possession on the date of execution of the deed of gift has been raised on the ground that the appellants were in



possession over the suit property on the date of execution of the gift deed. The findings, in this regard, by the courts below on the basis of evidence is clear that the plaintiff was in permissive possession over the suit property, with the consent of the deceased in view of proximity of relationship. After having held the gift deed dated 19.01.1974 to be valid, the learned courts below, in my view, have rightly held that there could have been no question of entering into any compromise by the deceased Kali Charan Mandal with the plaintiff in T.S. No.27/37/75, since he did not any more have the title over the suit property.

18. I notice from the judgment of the trial court that upon consideration of all the evidence(s) on record and on appreciation thereof, the findings have been recorded which are concurrent. Nothing has been shown to suggest that the courts below failed to consider any particular evidence or that the findings recorded by them are either without evidence or contrary to the evidence adduced at the trial. The impugned judgments and decree, therefore, do not suffer from any perversity. In my opinion, this second appeal does not involve any substantial question of law, requiring determination by this Court in the second appellate jurisdiction under Section 100 of



the CPC.

19. I do not find any merit in this second appeal which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

SA/HR/-

AFR/NAFR	NAFR
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