

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.399 of 2009**

Prakash Narayan Singh, Son of late Sundar Lal Singh, resident of Village-  
Nawabganj, P.S Manihar, District Katihar

... .. Appellant/s

Versus

- 1(a) Dayamani Devi, wife of late Jagat Narayan Singh
- (b) Sprimati Devi, wife of late Jagat Narayan Singh
- (c) Kamla Prasad, Son of Late Jagat Narayan Singh
- (d) Sulekha devi daughter of late Jagat Narayan Singh
- (e) Julekha Devi daughter of late Jagat Narayan Singh
- (f) Rekha Devi daughter of late Jagat Narayan Singh, all resident of village  
-Nawabganj, P.S. Manihari, District-Katihar
2. Smt. Chano Devi, wife of Bhola Singh
3. Bhola Singh, son of Laxman Singh
4. Kamta Prasad Son of Jagat Narayan Singh, all resident of Village-  
Nawabganj,. P.S-Manihari, District-Katihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                                                    |
|----------------------|---|--------------------------------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Shashi Shekhar Dwivedi, Sr. Advocate<br>Ms. Sangeeta Sharma<br>Mr. Ranjan Kumar Dubey<br>Mr. Laxman Lal Pandey |
| For the Respondent/s | : | Mr. P. K. Jaipuriyar                                                                                               |

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date : 27-08-2018**

This is defendant's second appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'), against the judgment of reversal dated 30.07.2009, passed by learned First Additional Sessions Judge, Katihar, in Tittle Appeal No. 18 of 1996, whereby and whereunder learned first appellate court has decreed the suit in favour of the plaintiffs-respondents which was dismissed by learned Sub-



Judge III, Katihar in Title Suit No. 34 of 1992.

2. The appeal has been heard under Order XLI, Rule XI of the Code.

3. I have heard Mr. Shashi Shekhar Dwivedi, learned Senior Counsel, appearing on behalf of the appellant and Mr. P. K. Jaipuriya, learned counsel, appearing on behalf of the contesting respondents.

4. The Suit was filed by the plaintiffs-respondents for declaration that the sale-deed nos. 11680 and 11681, both dated 21.08.1990, detailed in Schedule A of the plaint, purported to have been executed by the plaintiff no. 1 (since deceased and substituted by legal heirs) in favour of the defendant was void, illegal and inoperative documents in law and the same had not been executed and registered by plaintiff no. 1 and, therefore, it did not confer any right, title and interest in the suit land detailed in Scheduled B, upon the defendant. The specific case of the plaintiffs was that plaintiff no. 1 held and possessed the said *raiya* land of Khata No. 391, Khesra No. 272 admeasuring 2 decimal, RS Khata No. 119, RS Plot No. 271 admeasuring 5 decimal, RS Plot No. 304 admeasuring 4 decimal, RS Plot No. 40 admeasuring 78 decimal (total 89.1/2 decimal) situate in Mouza Nawabganj, P.S. Manihari and R.S.



Khata No. 792, R.S. plot no. 1305 admeasuring 81 decimal situate in Mouza-Baholia, P.S.-Manihar, District-Katihar and was coming in possession of the suit land on payment of rent to the State of Bihar. She had gifted the land of R.S. Khata No. 792 admeasuring 81 decimal to Chano Devi (plaintiff no.2) by a registered deed of gift dated 17.11.1990 and put her in possession over the said land. She had also gifted the land of R.S. Khata No. 391 and R.S. plot no. 119 to plaintiff no. 3 on 17.1.1990 by a registered deed of gift and had put him in possession thereof. Further, lands of R.S. Khata No. 119 admeasuring 78 decimal was gifted by her to the plaintiff no. 4. Defendant, being the nephew (son of husband's brother) of plaintiff no. 1, had been approaching her on several occasions to donate the said lands to him, being apprehensive that she may bequeath the lands to the plaintiff nos. 2 to 4 who were maintaining proximity with plaintiff no. 1 and taking care of her. The plaintiff, however, chose to gift the entire land as noted above to the plaintiff no. 1. It was also asserted in the plaint that defendant having failed in his attempt to get the lands transferred in his favour through gift by the plaintiff no. 1, he set up a lady namely Runa Devi, wife of Narayan Rai, as plaintiff No. 1 and by practising fraud and misrepresentation upon



District Sub-Registrar, Katihar, got executed and registered the two sale-deeds on 21.08.1990 in respect of the suit land. In course of time, she learnt about the fraud committed by the defendant. She obtained certified copies of the two sale deeds and immediately, after learning about the fraud, filed a complaint case against the defendant and the said Runa Devi. She asserted in the plaint that she had never executed any sale deed nor the defendant even came in possession over the suit land, rather plaintiff nos. 2 to 4 were in possession of the same on the basis of the deed of gift executed by her, since a cloud was being cast on the title of the plaintiffs over the suit land because of fraudulent execution of the sale deed in favour of the defendant. After having obtained the sale deeds on 21.08.1990, the cause of action arose leading to institution of the suit. The appellant-defendant contested the suit by filing written statement. He took preliminary objection, *inter alia*, that the plaintiffs were bound to pay *ad valorem* court fee on the consideration amount mentioned in the sale-deed because the plaintiffs were seeking relief of declaration of sale-deeds to be void and inoperative on the ground of forgery. He asserted that the land of R.S. Khata No. 19 of Mouza-Baholia were the *kaimi raiyati* land of Yogendra Prasad Singh and Sundar Lal in equal



share as recorded in R.S. Khatian. The land of R.S. Khatian no. 391 of Mouza-Nawabganj, R.S. plot no. 792 of Mouza-Bahoalia, was purchased in the name of Mahamaya Devi. Yogendra Prasad Singh died leaving behind his widow Most. Mahamaya Devi (plaintiff no. 1). He denied execution of gift deed in favour of plaintiff nos. 2 to 4 and the case of putting them in possession thereof. He asserted that the said deeds of gift in favour of plaintiff nos. 2 to 4 are collusive and fraudulent deeds. Denying the assertion of the plaintiffs that he had set up Runa Devi before the Sub-Registrar for execution and registration of the sale-deed, he stated that after the death of husband of plaintiff no. 1, the defendant used to look after her and when she was in need of money, the plaintiff no. 1 had offered to sell the lands which he purchased for valuable consideration on 21.08.1990 and since then he has been coming in possession over the suit land. He denied the allegation of forgery in execution of sale-deed.

5. Based on rival pleadings, the trial court framed 10 issues, out of which following issues are relevant for the present adjudication:-

*“5. Has the suit been grossly undervalued and the Court-fees paid insufficient and whether the plaintiffs are*



*bound to pay Advalorem Court-fee of the valuation of the consideration money given in the sale deeds.*

*6. Whether both the sale deeds dated 21.8.90 purported to have been executed by plaintiff no. 1 in favour of defendant is void, illegal and inoperative document and whether the same have been obtained by practicing fraud from the plaintiff no. 1 by the defendant in getting both the sale deeds?*

*7. Whether the deed of gift executed by plaintiff no. 1 in favour of plaintiff no. 2 to 4 are genuine valid in respect of the suit land or not?"*

6. The parties adduced their evidence at the trial, both oral and documentary.

7. It is clearly discernible from the rival claims of the parties that the core controversy before the trial court was whether the sale deeds registered on 21.08.1990 were brought into existence by fraud having been practised by the defendant. As has already been noticed above, whereas it was the plaintiffs' case in their plaint that the impugned sale-deeds were executed by Runa Devi, it has been the case of the defendant-appellants that the sale deeds were executed by plaintiff no. 1, Mahamaya



Devi. It transpires from the impugned judgment and decree of the first appellate court that an expert was appointed by the court, who was examined as PW-10 at the trial, based on forensic examination done by him. He deposed in his evidence that the disputed LTIs were not of Mahamaya Devi. Privately appointed expert was also examined as DW-8, who, according to the trial court, did not give any evidence to the effect that the sale-deeds were forged. Based on the evidence of the expert, in his cross-examination, the trial court concluded that LITs on first pages of both the sale-deeds, were of Mahamaya Devi, which is corroborated by the evidence of DW-12 (Runa Devi) herself. The defendant had largely relied upon the report of the privately engaged expert DW-8, who, in his evidence, deposed that all the thumb prints had been imprinted by one and the same person and matched the specimen imprint of Mahamaya Devi, taken in court. Based on appreciation of the oral and the documentary evidence, the trial court recorded his finding that the plaintiffs failed to prove that the defendant obtained the sale-deeds from the plaintiff no. 2, by practising fraud on her. The trial court further observed that the plaintiffs failed to discharge their onus of proving fraud by the defendant in getting the sale deeds executed. After having held so, the trial court recorded



that after the title passed on to the defendant through the two sale-deeds, the plaintiff did not have any surviving saleable interest in the suit property, meaning thereby that she did not have any right to execute the deeds of gift in favour of the plaintiff nos. 2 to 4. The trial court further held, in that background, that no title passed in favour of the plaintiff nos. 2 to 4, by virtue of execution of the deeds of gift in their favour by Mahamaya Devi. The trial court thereafter took up the issue no. 5, as to whether the plaintiffs were bound to pay *ad valorem* court fee of the valuation of the consideration money given in the sale-deeds. After having been examined the nature of relief sought by the plaintiffs, learned trial court held that since the plaintiffs wanted a decree of recovery of possession along with the cancellation of the deeds, in view of the findings recorded in respect of possession, the claim of plaintiffs came under Schedule (I) Article (I) of the Court Fees Act of 1870 and, therefore, the plaintiffs were required to pay *ad valorem* court fee of Rs. 37000/- which they had not done. Learned trial court decided the said issue also against the plaintiffs.

8. Learned appellate court, after having discussed the rival contentions of the parties, took up issues no. 6, 7 and 8 first for discussion, in order to reappraise the evidence available on



record and the findings recorded by the trial court. Noticing the conflicting findings and evidence of the two experts, one engaged by the court and the other privately engaged by the defendant in respect of the LTIs available on the impugned sale deeds and admitted LTI of plaintiff no. 1, the trial court proceeded to determine the question of genuineness of LTI of plaintiff no. 1 on the sale deeds on the basis of evidence, on the principle that when there is conflict of opinion between the two experts, the court is competent to form its own opinion with regard to signature on a document. The trial court found that while examining the sale-deeds (Exhibit-A-A/1) and the LTIs over it, which had been compared with the photograph of LTIs sent for examination, the expert (PW-10), appointed by the court, clearly stated that both the LTIs differed materially. In that background, the first appellate court formed its own opinion that another expert i.e. DW-8, who had been called by the defendant, would have certainly supported the case of the defendant. The first appellate court noticed the uncontroverted evidence that the plaintiff no.-1, being a teacher, was able to read and write and put her signature and in that background appearance of LTI on the sale deeds, created serious doubt and suspicion over genuineness of the sale-deeds. Upon re-appraisal



of evidence, the learned first appellate court found that it was the plaintiff no. 1 and Bhola Singh, who had been coming in possession over the land in dispute and rejected the claim of the lawful possession of the defendant over the suit land. Learned appellate court further noticed that there was no evidence by the defendant of payment of consideration money of Rs. 37000/- by the defendant to the plaintiffs, to establish the *bona fide* of his claim that the sale deeds were executed by the plaintiff No. 1 in his favour.

9. The first appellate court, thus, conclusively held that the LTIs available on the disputed sale deeds were not of Mahamaya Devi (plaintiff no. 1, since deceased). He also held that there was no evidence to establish payment of consideration money by the defendant to the plaintiff. On the question of requirement of payment of *ad valorem* court fee, learned first appellate court affirmed the finding recorded by the trial court on the reasoning that where impersonation had occurred i.e. another person executed sale-deeds before the Registrar, such impersonation is deemed to have been committed on both i.e. the Registrar and also on the so called executant and where the cancellation of the document is necessary in order to grant such relief to the plaintiff, affected under impersonation, court fee



must be paid by way of *ad valorem* court fee under Section 7(iv) of the Court Fees Act, 1870. In that background, while declaring the sale-deeds to be void, inoperative and not binding upon the plaintiffs, directed the plaintiffs to file *ad valorem* court fee within the period of 20 days, failing which the appeal would be deemed to have been dismissed.

10. It has been stated at the bar that the *ad valorem* court fee has already been paid by the plaintiffs in the court below, within the time stipulated in judgment of the first appellate court.

11. Assailing the impugned judgment and order of the first appellate court, Mr. Shashi Shekhar Dwivedi, learned senior counsel, has contended that it was the specific case of the plaintiff as developed in the plaint that the sale deeds were executed by Runa Devi by an act of impersonation in the name of plaintiff no. 1. In such circumstance, in order to successfully establish her case of alleged fraud committed in execution of the impugned sale deeds, it was incumbent upon plaintiffs to establish that the LTIs available on the sale-deeds were of Runa Devi. He contends that since no step was taken to compare the LTIs available on the sale-deeds with the admitted LTIs of Runa Devi, the suit must have failed and it was rightly dismissed by



the trial court. He has secondly submitted that there being concurrent findings recorded by the courts below that the plaintiffs were required to pay *ad valorem* court fee, which admittedly the plaintiff(s) had not paid, the appellate court below ought not to have reversed the judgment and decree of the trial court. With the aforesaid submission, he contends that the present second appeal involves following two substantial questions of law:-

(i) Whether, since the plaintiffs failed to establish their case of fraud by impersonation of Runa Devi for the purpose of execution of the sale deeds in favour of the defendant, the finding recorded by the first appellate court that the sale deeds were fraudulently obtained and, therefore, void, illegal and inoperative, suffers from perversity? and,

(ii) Whether, in the background of the findings recorded by the courts below that the plaintiffs have not paid the requisite *ad valorem* court fee, the suit could have been decreed by the first appellate court in an anticipatory manner, and on this score also the judgment and decree of learned first appellate court deserves interference?



12. Mr. Jaipuriyar, learned counsel appearing on behalf of the respondents, on the other hand, has argued that there is no infirmity in the finding recorded by the first appellate court, which is based on due appreciation of evidence on record. According to him, the first appellate court has fully discharged its obligation as the last court of facts by dealing with each and every issue with reference to the evidence adduced before the trial court. He contends that the appellate court has assigned the reasons for reversing the findings recorded by the trial court, which are cogent.

13. Relying on the Supreme Court's decision in case of *Dharmarajan and others Vs. Valliammal and others* reported in *(2008) 2 SCC 741*, he contends that the finding recorded by the first appellate court on a question of fact need not be interfered with by this Court in second appellate jurisdiction, unless the findings are found to be perverse. Responding to the submission made by Mr. Dwivedi, on obligation to pay *ad valorem* court fee, he has placed reliance on Supreme Court's decision in case of *Tajender Singh Ghambhir and another Vs. Gurpreet Singh and others* reported in *(2014) 10 SCC 702*. Reliance has also been placed on another Supreme Court's decision in case of *Mannan Lal Vs. Chhotaka Bibi*,



*(Dead) by Lrs. B. Sharda Shankar and others* reported in *(1970)1 SCC 769*. He has further referred to a decision of this Court in case of *Rambharosa Lal Vs. Smt. Binda Devi and another (AIR 1956 PATNA 203)* and a judgment of Orissa High Court in case of *Netramani Dibya and Ors. vs. Dasarathi Misra and Ors (AIR 1986 ORISSA 235)*.

14. I must address the submission of Mr. Dwivedi first that in order to establish their case, the plaintiffs ought to have proved what they had asserted in their plaint i.e. Runa Devi was made to stand before the Sub-Registrar for execution and registration of the sale-deeds, in question. There is a finding of fact recorded by the appellate court below that the LTIs available on the sale-deeds, in question, were not of Mahamaya Devi (plaintiff no. 1), whereas the said sale-deeds were shown to have been executed by Mahamaya Devi. This finding of fact has been recorded by the first appellate court on appreciation of evidence upon discussing them with reference to the issues framed. The appellate court has assigned the reasons in his judgment for reversing the findings recorded by the trial court.

15. This is not being disputed that there was conflict of opinions between the experts. In the said backdrop, learned appellate court below proceeded to re-appraise the evidence to



form its own opinion in respect of the signatures on a document. Weighing the conflicting evidence of the court-engaged expert and the expert engaged by the defendant with other evidence adduced at the trial that the plaintiff no. 1 was a literate lady and had been teacher, was capable of putting her signature and, therefore, there was no reason for marking her thumb impressions on the sale deeds; the appellate court below has recorded the findings as noted above. The plaintiffs were, thus, able to discharge their onus of establishing that the sale-deeds were not executed by Mahamaya Devi.

16. In my considered view, once the plaintiffs were successful in establishing before the appellate court that the LTIs on the sale deeds were not of Mahamay Devi, they were not required to prove further that the LTIs were of Runa Devi in order to get a declaration that the sale-deeds were void, illegal, inoperative and not binding; merely because it was pleaded in the plaint that Runa Devi was made to put her thumb impressions on the sale-deeds. I do not find any force in submission in this regard made by Mr. Dwivedi, learned senior counsel for the appellant.

17. I reiterate here that the finding recorded by the first appellate court on the point of execution of sale-deeds, in



question, of the same being fraudulently obtained, is purely a question of fact. It is settled principle that the Court exercising power under Section 100 of the Code is not expected to undertake the course of re-appreciation of evidence and record findings different from those recorded by the appellate court below, merely because another view is possible view. This view finds support in the decisions of Supreme Court in the cases reported in *(1997) 4 SCC 713 (Panchugopal Barua and others Vs. Umesh Chandra Goswami and others)*, *(1997) 5 SCC 438 (Kshitish Chandra Purkait Vs. Santosh Kumar Purkait and others)*, *(1999) 7 SCC 303 (Ram Kumar Agrawal & Anr. Vs. Thawar Das (Dead) Through Lrs.)*, *(2007) 1 SCC 546 (Gurdev Kaur and Ors. Vs. Kaki and Ors.)* and *(2008) 2 SCC 741 (Dharmarajan and Ors. vs. Valliammal and Ors.)*.

18. Situated thus, submissions advanced by Mr. Dwivedi with reference to the proposed first substantial question of law, is not sustainable in my opinion and is, accordingly, rejected.

19. Coming to the second submission that after having held that the plaintiffs have not paid *ad valorem* court fee, the appellate court ought not to have decreed the suit, I find force in submission of Mr. Jaipuriyar, learned counsel for the



plaintiffs/respondents, who has rightly placed reliance on the Supreme Court's decision in case of ***Tajender Singh Ghambhir and another Vs. Gurpreet Singh and others*** (supra). The Supreme Court, dealing with the provisions under the Court Fees Act, 1870, observed in paragraph 7 as follows:-

*“7. While referring the provisions of Sub-sections (2) and (3) of Section 6, we shall refer to “plaint” which for the purposes of this discussion may be read to include “memorandum of appeal” as well. Sub-section (2) of Section 6 provides that in plaint in which sufficient court-fee has not been paid, such plaint shall not be acted upon unless the Plaintiff makes good the deficiency in court-fee within such time as may from time to time be fixed by the Court. Sub-section (3) provides that if a question of deficiency in court-fee in respect of any plaint is raised and the Court finds that the court-fee paid is insufficient, it shall ask the Plaintiff to make good the deficiency within the time which may be granted and in case of default, the plaint shall be rejected. The main provision of Sub-section (3) mandates the Court to record a finding whether court-fee paid is sufficient on the question being raised by the concerned*



*officer Under Section 24A. It further provides that in answer to that question if the Court finds that court-fee paid is deficient, the Court may allow Plaintiff to make up that deficiency within time so fixed by the Court. Then there is a proviso appended to Sub-section (3) which provides that Court may, for sufficient reasons to be recorded, proceed with the suit if security is given by the Plaintiff for payment of the deficiency in court-fee within time that may be granted by the court. It, however, requires the Court not to deliver the judgment till such time deficiency is not recovered and if the deficiency in court-fee is not made good within such time as the Court may from time to time allow, the Court may dismiss the suit or appeal.”*

20. The Supreme Court has categorically held, while dealing with the scheme of the Act, that it casts duty on the court to determine as to whether or not the court fee paid on the plaint is deficient and if the court fee is found to be deficient, then give an opportunity to the plaintiff to make up such deficiency within the time that may be fixed by the court. Dealing specifically with sub-Section (2) and (3) of Section 6 of



the Act, the Apex Court has held that there is an important thread that runs through the said two sub-Sections, i.e. for payment of court fee, time must be granted by the court and if despite the order of the court, deficient court fee is not paid, then consequence as provide therein must follow.

21. In view of clear enunciation of law laid down by the Supreme Court in case of *Tajender Singh Ghambhir and another Vs. Gurpreet Singh and others* (supra), I have no hesitation in coming to a definite conclusion that adverse consequence of non-payment of requisite court fee will ensue only if despite the order of the court deficiency in court fee is not made good. At the same time, it is the mandate of law under the Act that for payment of deficit court fee, time has to be granted by the court. The Supreme Court referring to Section 12(ii) of the Act in clear terms, held that the appellate court is empowered to direct the party to make up deficit court fee in the plaint at the appellate stage. Similar view has been taken by the Supreme Court in case of *Mannan Lal Vs. Chhotaka Bibi, (Dead) by Lrs. B. Sharda Shankar and others* (supra).

22. In view of the above noted discussions, in my considered opinion, the present second appeal does not involve any substantial question of law.



23. This appeal has, accordingly, no merit and  
deserves to be dismissed at this stage.

24. No order as to cost(s).

**(Chakradhari Sharan Singh, J)**

Ashish/-

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