

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.150 of 2010

=====

KANHAIYA PRASAD SWARNKAR S/O LATE RAMESHAR PRASAD
R/O MOHALLA- MOHANPUR KHALASI, P.S.+P.O.- JAMALPUR,
DISTT.- MUNGER

... .. Appellant/s

Versus

1. SMT. SABITRI DEVI W/O RAM RATAN BIND R/O MOHALLA-
MOHANPUR, P.O.+P.S.- JAMALPUR, DISTT.- MUNGER
2. RAM RATAN BIND S/O LATE DHANUSHDHARI BIND R/O
MOHALLA- MOHANPUR, P.O.+P.S.- JAMALPUR, DISTT.- MUNGER

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Ragib Ahsan, Sr. Advocate with Mr. Wasi Akhtar
For the Respondent/s	:	Ms. Sushmita Mishra, Mr. Ram Sevak Choudhary

=====

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

ORAL ORDER AND JUDGMENT

8 11-12-2018 The defendant first party of Title Suit No. 75 of 2005, which was dismissed by learned Sub-Judge-I, Munger is the appellant in the present second appeal putting to challenge the judgment and decree dated 06.02.2010, passed in Title Appeal No. 19 of 2007 by learned A.D.J. (F.T.C.-II), Munger, whereby the learned first appellate Court has reversed the said judgment and decree dated 23.04.2007, passed by learned Sub-Judge-I, Munger.

2. The suit was filed by the plaintiff/respondent seeking declaration of title and restoration of possession of the suit land as described in Schedule II of the plaint as also for



setting aside a sale deed dated 01.12.2004 executed by Parwati Devi in favour of the appellant/first party.

3. Briefly narrated, it has been the case of the plaintiff that said Parwati Devi had purchased 1 katha of land with a house as described in Schedule I of the plaint from one Md. Zahur through a registered sale deed executed on 19.04.1969. She executed a registered deed of gift in favour of her daughter, Dulari Mani (Defendant No.2), who was a minor at that point of time. Nearly 14 years thereafter, Parwati Kuer purchased half of the said land from Dulari Mani admeasuring 10 dhurs through registered sale deed dated 19.09.1988, which she subsequently transferred in the name of Tribhuwan Rai. Dulari Mani (defendant No.2) was having right title and possession over half of the land gifted in her favour admeasuring 10 dhurs, which is the suit property. She had let out one room out of the two rooms of the house over the suit land in favour of plaintiff Savitri Devi in 2002. The other room was let out in favour of one Raj Kumar. Subsequently through sale deed dated 09.05.2005, she executed a sale deed in favour of the plaintiff Savitri Devi, whereafter the other defendant Raj Kumar vacated the suit premises on 10.05.2005. In the meanwhile, Parwati Kuer executed a registered sale deed dated 01.12.2004 in respect of



the same property which became subject matter of sale deed dated 09.05.2005 executed by Dulari Mani (defendant No.2).

4. With the pleadings as above noted, the plaintiff put to challenge the sale deed dated 01.12.2004, executed in favour of defendant No.1 by Parwati Kuer on the ground of same being illegal, inoperative and fraudulently obtained. The plaintiff also claimed that after the sale deed dated 09.05.2005, was executed in her favour by defendant No.2, defendant No.1 dispossessed her from the suit property illegally and by means of force and accordingly she sought restoration of possession also as a relief.

5. The defendant first party/appellant resisted the claim of the plaintiff by filing written statement. She asserted, *inter alia*, that he being the son of the sister of Parwati Kuer was living in the suit house with her and denying that Dulari Mani (defendant No.2) was daughter of Parwati Devi, questioned the *bona fide* of the gift deed dated 11.12.1974, executed in her favour. Defendant No.2 also entered appearance and filed a separate written statement supporting the claim of the plaintiff.

6. Based on rival pleadings, the trial Court framed altogether seven issues including issued No. VI as to whether the plaintiff had got any valid right title and possession over the suit property.



7. The contesting parties adduced their evidence, both oral and documentary, in support of their respective claims. Evidently, the case of the defendant before the trial Court was that since gift deed dated 11.12.1974, was executed in favour of Dulari Mani when she was minor and did not have capacity to accept, the said gift dated 11.12.1974, was invalid. Based on the said contention, it was the defendant's case that there was no conveyance of title through gift deed dated 11.12.1974, in favour of Dulari Mani (defendant No.2). The said contention of the defendant was accepted by the trial Court in its judgment and decree dated 23.04.2007. The trial Court also held that though the property which was the subject matter of the gift deed dated 11.12.1974, was situate in the district of Munger, execution of gift deed in the registry at Ara in the district of Bhojpur was not permissible, in view of Section 28 of the Indian Registration Act. Having reached this finding, learned trial Court viewed that Dulari Mani did not have any right title and interest over the suit property which she could not have sold in favour of the plaintiff through registered sale deed dated 09.05.2005. With this reasoning, the learned trial Court dismissed the suit.

8. Learned first appellate Court has, however,



reversed the findings of the trial Court assigning the reasons that since execution of gift deed was by mother in favour of her minor daughter, incapacity of acceptance would not render the gift deed void or ineffective. Dealing with the reason assigned by the trial Court that the gift deed was wrongly registered with the registry at Ara in Bhojpur district instead of Munger district, learned first appellate Court upon noticing the evidence on record that Parwati Kuer had acquired certain immovable property in 1973, in the district of Bhojpur, reversed the finding of the trial Court on this count also. The first appellate Court, thus, having noticed no illegality in execution of gift deed dated 11.12.1974, held the sale deed dated 01.12.2004, executed by Parwati Kuer in favour of appellant/defendant No.1 to be inoperative since Parwati Kuer did not have any right title and interest over the suit property when she executed the sale deed dated 01.12.2004.

9. Learned Senior counsel appearing on behalf of the appellant assailing the impugned judgment of the first appellate Court reversing the findings of the trial Court has vehemently argued that the impugned judgment suffers from perversity inasmuch as oral evidence adduced at the trial on behalf of the appellant/defendant no.1 has not at all been considered. He has



accordingly submitted that this is the substantial question of law which the present second appeal involves.

10. Learned counsel appearing on behalf of the respondents, on the other hand, has justified the decision of the first appellate Court and has submitted that before reversing the findings recorded by the trial Court, the first appellate Court has dealt with the reasons assigned by the trial Court and has explained in detail why the findings of the trial Court could not be sustained.

11. After having heard learned Senior counsel appearing on behalf of the appellant and learned counsel appearing on behalf of the respondent, I am of the considered view that finding of the first appellate Court holding transfer of the suit property through gift deed dated 11.12.1974, by Parwati Kuer in favour of defendant No.2 (Dulari Mani) to be legal and valid, cannot be said to be unjustified in the facts and circumstances of the case as noted above. Further, the findings recorded by the first appellate Court that Parwati Kuer held immovable property in the district of Bhojpur on the date of execution of gift dated 11.12.1974, does not appear to be without evidence and, therefore, suffering from any perversity.

12. In my view, the present second appeal does not



involve any substantial question of law, requiring consideration
by this Court.

13. This appeal is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

arun/-

U			
---	--	--	--

