

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No. 246 of 2010

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Ramjee Singh, Son of Kailash Singh resident of Village-Lalganj, P.O + P.S-Nokha,
District-Rohtas.

.... Appellant/s

Versus

1. Maharaj Singh, son of late Chana Chaudhary Vill +P.O- Karwandiya, P.s.
Sasaram, District-Rohtas.

2. Daulatiya Devi, Wife of Sri Upendra Chaudhary resident of Village-Ramgarh
Tola-Agyer District-Rohtas, At present residing at village+ P.O.-Karwandiya, P.S-
Sasaram, District-Rohtas.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. DEO GOVIND PD.

For the Respondent/s : Mr.

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

ORAL JUDGMENT

Date: 21-06-2018

The plaintiff's appeal has been allowed by the learned
Additional District Judge-5th, Rohtas at Sasaram by judgment and
decree dated 20.04.2010 passed in Title Appeal No. 13 of 2003,
aggrieved by which the defendant/appellant has preferred the present
second appeal under Section 100 of Code of Civil Procedure, 1908
(*hereinafter referred to as 'CPC'*).

The plaintiff/respondent had filed Title Suit No. 161 of 1996
for a declaration that deed of gift dated 23.07.1993, said to be
executed in favour of the defendant/appellant, was forged, fabricated
and void, which stood revoked by a deed of cancellation.

It is the plaintiff's case that the plaintiff's father-in-law had



two sisters and the defendant Ramjee Singh (appellant herein) is the grand son of one of the sisters of her father-in-law, who used to stay with them (the plaintiff and her husband) and used to take care of her and her husband. The plaintiff and her husband were willing to execute a deed of will in favour of the defendant/appellant and for the said purpose, the defendant had taken them to Sasaram and having complete faith in the defendant, they had put their L.T.I. on the document, considering the same to be deed of will. It is her further case that after registration of the aforesaid deed, the defendant tried to take forcible possession of the registration receipt which aroused suspicion in their mind. They, however, did not give the defendant the registration receipt. The defendant thereafter stopped serving them. In course of time, the plaintiff realized that on the pretext of getting a will executed, the defendant had in fact got a deed of gift executed in his favour, in respect of the entire property of the plaintiff and her husband. Immediately, after coming to know about mischief of the defendant, they executed a deed of cancellation on 07.09.1993 in respect of the said forged deed of gift, fraudulently obtained. The defendant/appellant attempted to get his name mutated on the basis of said forged deed of gift. The mutation case was rejected by the Circle Officer by an order passed in Mutation case No. 1/95-96. Since the defendant was trying to take forcible possession over the land, based



on the said deed of gift, they filed the suit seeking relief, as noted above.

The defendant contested the suit by filing written statement. He asserted that in lieu of the service rendered by him to the plaintiff and her husband since long, they had executed the gift deed dated 17.03.1997 which was accepted by him and since then, he came in cultivating possession over the suit property, to the knowledge of all. He also asserted that before execution of deed of gift, he used to cultivate the suit property for the plaintiffs and denied the allegation of any fraud.

The Trial Court had framed six issues based on rival pleadings, including issue No. 5 which is crucial and which reads thus:

Issue No. 5:- *Whether the deed of gift dated 23.07.1993 executed by the plaintiffs in favour of the defendant is forged, fabricated, void and it has been revoked by a deed of cancellation.*

The parties adduced their evidence before the trial court, both oral and documentary. The trial court upon consideration of the evidence adduced at the trial recorded the findings that it was an admitted position that the plaintiff intended to execute a deed in favour of the defendant. According to the trial court, the deed of gift executed by the plaintiffs in favour of the defendant was not forged,



fabricated and void document, and it did not stand cancelled by the cancellation deed.

The plaintiff, thereafter, preferred an appeal against the judgment and decree of the Trial Court, which came to be registered as Title Appeal No. 13 of 2003. The Appellate Court, upon examination of the pleadings and evidence, adduced at the trial court, opined that there were two main points for determination as under:-

- I. As to whether the Deed of Gift dated 23.07.1993 said to be executed by the Original Plaintiffs/appellant in favour of the defendant/respondent is forged, fabricated and void document being revoked by the Deed of Cancellation?**
- II. Whether the alleged deed of Gift dated 23.07.1993 executed by the original plaintiffs/appellant in favour of the defendant/respondent is liable to be cancelled, declaring the same as void and illegal?**

The appellate court re-appreciated the evidence adduced before the trial court. He has recorded clear finding that not even a single document was adduced as evidence on behalf of the defendant, though he had examined seven witnesses on his behalf, to support his case. Referring to the evidence of D.W.3, being identifier of the L.T.I.



of the executant of the alleged deed of gift, the appellate court on examination came to finding that execution of the deed of gift marked as Ext.-4 was not with the sweet will of the plaintiff rather it was result of forgery made by the defendant upon the plaintiffs, which were not actually acted upon. The court below held that after execution of the said deed, the defendant did not come in possession of the suit property.

According to the appellant, the finding recorded by the appellate Court is not sustainable for several reasons. It is being contended that the suit ought to have been held to be barred by limitation. It is also the appellant's case that the appellate court has failed to duly appreciate the evidence on record while reversing the findings recorded by the trial court.

I have perused the judgment and decree passed by the courts below and have considered the points taken on behalf of the appellant in the present Second Appeal. It is settled law that the Court under Second Appeal jurisdiction is not required to re-appreciate the evidence, unless findings recorded by the appellate court are shown to be perverse.

I do not find any perversity in the findings recorded by first appellate court. The grounds which have been taken and the questions of law which the appellant has raised to canvass do not give rise to



any substantial questions of law, requiring consideration of this Court in a proceeding under Section 100 of the CPC.

This appeal has no merit. It is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	30.06.2018
Transmission Date	

