

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1806 of 2015

In

Civil Writ Jurisdiction Case No.5515 of 2004

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Sri Nath Sharma S/o Sri Sudarshan Sharma, Resident of Ahirauli, P.S.- Buxar (industrial), Dist Buxar, at present residing at Budhanpurwa, ward No.10 (old ward no,2), P.S.- Buxar(town), Dist- Buxar.

... ..Petitioner-Appellant

Versus

1. The State of Bihar.
 2. The District Magistrate, Buxar.
 3. The Sub-Divisional Officer, Buxar.
 4. The Circle Officer, Buxar Block at Buxar.
 5. The Superintendent of Police, Buxar.
 6. The town Deputy Superintendent of Police Buxar, Dist- Buxar.
 7. The Officer-in charge, Buxar town, P.S.- Buxar, Dist- Buxar.
-Respondents-Respondents 1st set
8. Most. Chanda Devi wife of Late Ram Chandra Sharma
 9. Sri Anand Kumar Sharma
 10. Amar Kumar Sharma
 11. Ravi Kumar Sharma All sons of Late Ram Chandra Sharma represented under the guardianship of Mosmat Chanda Devi
 12. Naina Kumari D/o late Ram Chandra Sharma, represented under the guardianship of mosmat Chanda Devi, Serial No. 8 to 12 all resident of main road, Bangali Tola Buxar, P.S.- Buxar Town, Dist- Buxar.
- ... Respondents-Respondents 2nd set
13. Daya Shankar Singh S/o Late Kamla Prasad Singh
 14. Anil Kumar Singh S/o Sheo Shankar Singh
 15. Vijay Shankar Singh
 16. Rama Shankar Singh Both sons of Late Kamla Pd. Singh
 17. Hari Bhushan Singh S/o Vishwamitra Singh
 18. Shashi Bhushan Singh S/o Sudesh Singh
 19. Naneet Singh S/o Vijay Shankar Singh
 20. Sri Krishna Singh S/o Daya Shankar Singh Serial No.13 to 20 resident of Village- Sisradh, P.S.- Rampur, Dist- Buxar.
 21. Girija Shankar Singh S/o Late Kesho Singh
 22. Binay Pd. Singh S/o Krishna Singh
 23. Manoj Kumar Singh S/o Uma Shankar Singh serial No. 21 to 23 resident of Village- Hethwa, P.S.- Rajpur, Dist- Buxar.
 24. (a) Ram Chhabila Rai husband of deceased respondent no.24 and father of respondent no.26
(b) Dropti Devi daughter of deceased respondent no.24
(c) Manjula Rai daughter-in-law of respondent no.24 and wife of respondent no.26
(d) Amar Nath Rai grandson of late respondent no.24 and son of deceased respondent no.26
(e) Sobha Rai
(f) Juhi Rai, both daughters of deceased respondent no.26 and granddaughters of respondent no.24, all residents of Ram Bagh, P.P.-Road Buxar, P.S Buxar (town) Distt. Buxar



25. Ashutosh Kumar, son of Ram Chhabila Rai, resident of Ram Bagh, P.P. Road,
Buxar, P.S. Buxar (town) Distt. Buxar

... .. Respondents- Respondents 3rd set

Appearance :

For the Appellant/s	:	Mr. Baxi S.R.P.Sinha, Sr. Advocate Mr. Achhaibar Singh
For the State		Ms. Shilpa Singh, G.A.12
For the Defendant		Mr. Ashwini Kumar Rai
For defendant (intervenor)		Mr. Nirbhay Prashant

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 11-07-2018

This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna, is filed to question the judgment and order of a learned Single Judge dated 31.07.2015, passed in CWJC No. 5515 of 2004, whereby the writ petition has been dismissed.

In the opinion of the learned Single Judge, the issue raised, involved disputed questions of fact; the relief prayed was resting on a right claimed through a deed of gift and the writ proceeding suffered from non-joinder of parties as several respondents in the writ petition were not even parties to the suit contested in between the parties. It is taking note of such circumstance that the learned Single Judge, even while dismissing the writ petition, granted liberty to the appellant-



writ petitioner to approach the civil court of competent jurisdiction for declaration of his right, title and possession over the land in question, after impleading the private respondents and other necessary parties.

We have heard Mr. Baxi S.R.P.Sinha, learned Senior Counsel, appearing for the appellant-writ petitioner, with the Advocate-on-record Mr. Achhaibar Singh, Ms Shilpa Singh, learned G.A.12, Mr. Ashwini Kumar Rai, learned counsel appearing for respondent nos. 13 to 26 and Mr. Nirbhay Prashant, who appears for the intevenor, seeking to get impleaded in the appeal.

Conscious of the nature of issue involved, we, instead of passing any order on the interlocutory application which may unnecessarily prolong the proceeding, have allowed Mr. Prashant to address the Court on the legal issues arising in the case.

Before we proceed to record our opinion on the contest, we deem it necessary to reproduce the prayer made by the appellant as the writ-petitioner, before the learned Single Judge which runs as under:-

“(i) To issue an appropriate writ in the nature of mandamus or any other appropriate writ order or direction



commanding the official respondents to provide the protection to the petitioner and his family members for their life and properties and also issue a further direction to oust the unlawful elements who under the political and Administrative patronage have forcibly occupied the petitioner's house bearing holding no. 833, situated in ward no. 2/10 and adjoining lands bearing khata no. 2 (old) 40/66 (New), Plot No. 47 (old), 1389, 1390A 1390B and 1391 (New) Area-1 Acres 15 Decimal situated in Mauja- Sohani Pati, (Mohalla-Budhanpurva) in thana no. 331 in the town of Buxar.

(ii) This Hon'ble Court may further be pleased to adjudicate and hold that all transactions made after the judgment pronounced by Civil Court and High Court and Supreme Court declaring the title and possession of the petitioner is illegal, inoperative and not binding upon other petitioner or any one.

(iii) This Hon'ble Court may further appropriate writ order or direction commanding the respondents to hold that the action of private respondents dispossessing the petitioner and his family members from his house and properties after committing a loot-pat (a serious offence of dacoity) is a procedure which is



absolutely unknown to the law and as such they are liable for saviour punishment.

(iv) This Hon'ble Court may further be pleased to hold that the act of official respondents not taking quick and prompt action against the other act of private respondents is highly illegal, malafide and contemptuous in nature.”

The foundation for the appellant-writ petitioner to seek the relief aforementioned, lies in the deed of gift dated 17.12.1979, said to have been executed by one Kashi Mistri, the maternal grand father of the writ-petitioner. The facts on the record of the writ proceeding would also confirm that a suit was filed by the donor Kashi Mistri and some others, seeking to declare the deed of gift dated 17.12.1979 as a void document, not binding on the plaintiff(s), with a further prayer for injunction against the defendant from interfering with the possession of the plaintiff(s). The suit was decreed in favour of the plaintiff(s) as it transpires from the judgment placed on record vide Annexure 16 to the writ petition. Feeling aggrieved, the donee, who is also before this Court, filed Title Appeal No. 54 of 1985 and vide judgment and order passed on 25.07.1988, the appeal was allowed and the judgment and decree of the trial court was set aside. The donor, in the meanwhile, had deceased.



Feeling aggrieved by the judgment and decree of the first appellate court, the legal heirs of the donor i.e. respondent nos. 8 to 12 filed S.A.No. 312 of 1992 which was dismissed vide judgment and order dated 26.04.1994. Copy of the judgment and order passed by the first appellate court and the second appellate court are at Annexures-2 and 3, respectively, to the writ proceeding. Not being satisfied, the legal heirs of the donor moved before the Supreme Court by filing SLP (Civil) No. 16045 of 1988 and which also has been dismissed on 27.10.1998 vide Annexure-5. The litigation thus between the parties came to a finality on 27.10.1998 when the challenge led by the legal representatives of the donor as to the validity of the deed of gift came to a close. It is almost six years thereafter that the writ petition in question was filed with the relief(s), as noted above.

It is the complaint of the petitioner that the private respondent, who are 19 in number, have been disturbing him with the possession over the gifted property, the details of which finds mentioned at paragraph 1(i) of the writ petition as also at paragraph 2 of the memo of appeal. A plain reading of the relief(s) prayed by the writ-petitioner would confirm that while seeking a writ in the nature of mandamus to command the



official respondents in providing protection to the writ petitioner and his family members as well to prevent the unlawful elements from disturbing them from occupation of the property in dispute that a declaration is sought on the title and possession of the writ-petitioner over the property in question. Allegations have also been made against the private respondents of indulging in criminal activities and the sole basis of all the reliefs so prayed lies in the gift deed in question and the ultimate dismissal of the suit of the donor.

Mr. Sinha has laboured hard to persuade this Court that a dismissal of the suit filed by the donor to declare the said deed of gift void and inoperative, ipso facto, would confirm the title and possession of the appellant-petitioner over the property in question. However, no order of any court of competent civil jurisdiction has been brought either on the record or by way of the submissions which would persuade this Court to appreciate the argument of Mr. Sinha regarding conferment of title and possession over the land in question, of the donee, simply by execution of a deed of gift. That the parties are on litigating terms, is no more in dispute rather stands discussed in the appeal as well as in the interlocutory application so filed by the intervenor. Although neither the judgment/decreed of the trial



court nor the decree of the first appellate court which dismissed the suit and whose decree has been confirmed until the Supreme Court, has been placed on record by either of the parties but we are persuaded to go with the opinion of the learned Single Judge to hold that since the writ-petitioner has arrayed 19 respondents to the writ application with more claiming impleadment to interlocutory application, the matter requires resolution before the civil court of competent jurisdiction. The suit was inter-party between the donor and the donee with the legal heirs of the donor succeeding to pursue the cause initiated by the donor, after his death.

Mr. Sinha, learned Senior Counsel for the appellant would remind the Court of the plenary powers for directing restoration of possession vested in the writ Court. May be, in exceptional circumstances, there would be no restrictions on such exercise but the contest in hands lies on a totally different pedestal for in the present dispute, except for the right claimed by the writ-petitioner on the basis of the deed of gift, there is no evidence that the donor put the donee in possession. On the contrary, the donor went ahead to file suit for cancellation of the deed itself, which though stood negated but the issue, whether or not the deed of gift did confer title on the donee over the



property in question, is yet to be resolved before the court of competent civil jurisdiction, not to speak of the declaration of possession.

We are conscious of the relief prayed by the donor-plaintiff in the suit which stands discussed in the judgment of the trial court placed on record at Annexure-16 to the writ proceeding, for issue of injunction restraining the defendant from interfering with the possession of the plaintiff(s) over the suit property. Meaning thereby, even though a deed of gift is said to have been executed on 17.12.1979, the possession was yet to be delivered on the donee and even though this may not be an essential ingredient to test the validity of the gift deed as held in the judgment of the Hon'ble Supreme Court reported in **AIR 2014 SC 2906 (Renikuntla Rajamma Vs. K. Sarwanamma)** where in it has held in a different context, that a delivery of possession is not an essential requirement in a gift of immovable property nonetheless, the issue of conferment of title yet remains open. Thus, even if the suit filed by the donor for cancellation of the deed of gift got dismissed at the appellate stage, this dismissal ipso facto did not confirm title and possession of the donee over the suit land, because the prayer in that suit confirms that the possession yet remained with the



donor.

In our opinion, whatever be the right that came to be vested in the donee under the deed of gift dated 17.12.1979, it requires a confirmation by a court of competent civil jurisdiction on the conferment of title as well as on the issue of possession. Unfortunately, the donee never took any such steps, rather claimed to be in possession of the suit property which claim runs counter to the prayer made in the suit and even the spirited argument of Mr. Sinha urging exercise of plenary jurisdiction to direct handing over of possession, creates serious doubts over the assertion made on possession. It is perhaps taking note of such disputed nature of facts that the observation of the learned Single Judge has come on record in refusing to grant indulgence/relief in the writ proceeding.

The interlocutory application filed by the intervenor seeking impleadment also questions the very locus of the petitioner to raise the claim, besides indicating that a title suit in between the proposed intervenor and appellant bearing Title Suit No. 300 of 1998 is pending before the Sub Judge-I, Buxar.

The discussions above are sufficient to confirm the opinion of the learned Single Judge that the relief prayed by the appellant-writ petitioner in the background of the disputed issue



accompanying such relief, a writ remedy was not a proper course and rightly liberty has been granted to the petitioner to seek his remedy before a civil court of competent jurisdiction for until such time that the right of the donee under the deed of gift comes to be recognized by such court, the relief so prayed in the writ application becomes an academic exercise.

For the reasons so discussed and considering that liberty has already been granted by the learned Single Judge to the appellant-writ petitioner for legal recourse, we are not persuaded with the argument of Mr. Sinha to interfere with the judgment and order of the learned Single Judge.

The appeal is dismissed.

I.A. No. 1458 of 2018 stands disposed of.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.08.2018
Transmission Date	

