

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1104 of 2017

1. Smt. Lalithambal @ Lalitha, Daughter of Natarajan Subramani and wife of Late Akhilesh Prasad.
2. Mr. Abhijeet Singh Son of Late Akhilesh Prasad.
3. Miss. Aditi Singh daughter of Late Akhilesh Prasad.
All are residents of Road No. 0 Extn., Gandhi Murti, East Patel Nagar, P.S. Shastri Nagar, District - Patna.

Defendant Nos. 1 to 3/appellants

Versus

1. Smt. Suchitra Kumari wife of Late Akhilesh Prasad.
2. Shruti Kumari minor daughter of Late Akhilesh Prasad under guardianship of her natural guardian and mother Smt. Suchitra Kumari.
Both residents of village - Parsa, P.S. Naubatpur, District – Patna, presently residing at Road No. 4, Mohalla - Mahesh Nagar, P.S. - Patliputra, P.O. Keshri Nagar, Town and District – Patna.

Plaintiffs/Respondents 1st set

3. Life Insurance Company of India, Branch No. 1, Jeewan Deep Building, Exhibition Road, Patna – 800001.
4. Life Insurance Company of India, Branch No. II, Fraser Road, Patna.
5. Life Insurance Company of India, Branch No. IV, Fraser Road Patna, Jeevan Prakash Building, P.B. No. 135, Patna-800001.
6. State Bank of India, PBS, Sri Krishnapuri, Patna.
7. The Post Master of Post Office, in the campus of Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna.

Remaining defendants/respondents 2nd set

Appearance :

For the Appellant/s	:	Mr. Jitendra Kishore Verma, Adv.
	:	Mr. Abhishek Anand, Adv.
For the Respondent Nos. 1 and 2	:	Mr. Mr. J.S. Arora, Sr. Adv.
For the respondent bank No. 6	:	Mr. Sanjay Singh Thakur, Adv.
	:	Mr. Baua Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 05-11-2019

Heard the parties.

2. This miscellaneous appeal has been filed for setting
aside the order dated 05.07.2017 passed in Title Suit No. 92 of



2016 passed by learned Sub-Judge 1st, Patna by which the learned court below has allowed the application filed by plaintiffs under Order 39 Rule 1 and 2 of CPC.

3. Plaintiffs have filed title suit No. 92 of 2016 for declaration that deed of gift executed by Late Akhilesh Prasad in favour of defendant No. 2 is void and defendant No. 2 acquired no title on basis of said gift deed. It has been further prayed that the movable properties detailed in schedule II, III and IV of the plaint are the properties of plaintiffs in which defendants have no right and interest.

4. Plaintiff No. 1 is legally wedded wife and plaintiff No. 2 is minor daughter of late Akhilesh Prasad. Late Akhilesh Prasad was employed in Bihar State Electricity Board and prior to his appointment 2 kathas of land in Patna was purchased by his father, upon which a dwelling house was constructed which is schedule-I of the plaint. It is further stated that said late Akhilesh Prasad fell into illicit relation with Lalithambal @ Lalita defendant No. 1. Late Akhilesh Prasad executed a deed of gift in favour of defendant No. 2, who is son of defendant No. 1 with respect to schedule-I property which is void as late Akhilesh Prasad would not have executed a gift of joint family property in which plaintiffs have equal shares. Plaintiffs have



further alleged that substantial deposits were made by late Akhilesh Prasad in State Bank of India and in the post office as well as he had purchased the policies of life insurance company in which defendant Nos. 2 and 3 were made nominees as detailed in schedule-II, schedule-III and schedule IV of the plaint but they are not entitled to withdraw the amount as they are not legal heirs and successors to the properties of deceased late Akhilesh Prasad.

5. Defendants in their written statement have stated that late Akhilesh Prasad out of his self earning and saving had constructed house over purchased land after obtaining housing loan from electricity board. The properties detailed in schedule I of the plaint is not joint family house of the plaintiffs or the ancestral properties of late Akhilesh Prasad rather it is his self acquired properties, as such, he had every right to execute deed of gift in favour of defendant No. 2 who is his son. It has been further stated that the relations between plaintiff No. 1 and late Akhilesh Prasad were strained and late Akhilesh Prasad had filed Matrimonial Case No. 78 of 1995 in the court of Principal Judge, Family Court, Patna for grant of decree of divorce. Plaintiff No. 1 had also filed Maintenance Case No. 57 (M) of 2007 in the Family Court, Patna for grant of maintenance



against late Akhilesh Prasad.

6. Plaintiffs filed an application under Order 39 Rule 1 and 2 of CPC to restrain defendant nos. 1 to 3 from alienating and encumbering the immovable suit properties as detailed in Schedule-I of the plaint and also to restrain the LIC, SBI, and post office from releasing the money in favour of defendant Nos. 1 to 3 who were account holders/joint account holders under said deposits and nominees in Insurance Policies. In the LIC policies as detailed in schedule II of the plaint defendant Nos. 2 and 3 are nominees. The concern offices of LIC are impleaded as defendant Nos. 4, 5 and 6. Late Akhilesh Prasad had also deposited the money in the bank and post office as fixed deposits in the name of defendant No. 1, 2 or 3 or in the joint name the concern bank and post office have been impleaded as defendant Nos. 7 and 8 and deposit and fixed deposits made in bank are detailed in schedule III and details of deposits in post office are schedule IV of the plaint.

7. The trial court by its order dated 05.07.2017 allowed the injunction petition filed by plaintiffs with respect to schedule-I, II and III properties as detailed in the plaint and also directed defendants to deposit the money which they had withdrawn from LIC and the bank and the post office.



8. It has been submitted on behalf of plaintiffs that nominees does not get right of inheritance by nomination rather on the death of the policy holder the amount of policy devolves upon his legal heirs as per Hindu Succession Act.

9. It is submitted on behalf of defendants that the name of defendant No. 2 and 3 were incorporated in LIC Policies by Late Akhilesh Prasad out of his free will and they are also his legal heirs and not strangers. The deposits in the account of defendant Nos. 1, 2 and 3 are their exclusive money. Defendant No. 1 is self employed and has good income and saving.

10. It is an admitted position that plaintiff Nos. 1 and 2 are residing in the suit premises as detailed in schedule I of the plaint whereas defendant No. 1 to 3 are residing in a tenanted premises, as such, the order passed by the trial court restraining the defendant from alienating schedule I property requires no interference. However, as far as movable properties as detailed in schedule II, III and IV of the plaint which are LIC policies, bank deposits and post office deposits in which defendant Nos. 2 and 3 are nominees in schedule II LIC policies and defendant No. 1, 2 and 3 are either account holder or joint account holders with respect to schedule III and IV properties, there was no occasion for the trial court to restrain defendant Nos. 1 to 3 from



withdrawing the maturity claim from LIC or withdrawing the amount from fixed deposits or deposits in the bank or post office, as said amount were deposited in the accounts maintained by defendant Nos. 1 to 3 singly or jointly, as such, the order passed by the trial court restraining the defendants from withdrawing the amount from LIC, bank and post office as a nominee or account holder is set aside.

11. The miscellaneous appeal filed on behalf of defendant/appellant is partly allowed. However, it is made clear that the present order is subject to final outcome of the title suit.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.11.2019
Transmission Date	N.A.

