IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.40 of 2018
In
Civil Writ Jurisdiction Case No.7050 of 2015

==

Maya Devi, Wife of Ram Chandra Mandal Resident of Village - Bela Singar, Tola - Lakshminiya, Police Station - Nirmali, District - Supaul.

... ... Appellant/s

Versus

1. The State of Bihar
2. The Inspector General Registration, Department of Registration, Excise and Prohibition, Government
3. The Inspector Registration Office, Department of Registration, Excise and Prohibition, Government o
4. The Registrar-cum-District Magistrate, District - Supaul.
5. The Sub Registration, Nirmali, District - Supaul.

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Abhay Kumar Thakur, Advocate Mr. Arvnendra Kumar Thakur, Advocate Ms. Sukriti Kumari, Advocate
For the Respondent/s	:	Mr. Prabhu Narayan Sharma, AC to AG
For the Invervener	:	Mr. Manish Kumar No. -13, Advocate Mr. Rohit Kumar, Advocate

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-09-2019

Heard learned counsel for the appellant, learned counsel for the State and learned counsel for the Intervener, who has preferred I. A. No. 2 of 2019 claiming certain rights over the land which is subject matter of the gift-deed set up by the appellant the registration whereof is in dispute.

WEB COPY

The petitioner filed the writ petition giving rise to this appeal praying for a command to the Registrar, Supaul and Sub-Registrar, Nirmali for supply of a registration certificate treating the document described by the petitioner as a gift-deed in her favour, said to have been executed by her grand father-in-law, late Sitaram Mandal on 13th of August, 1998.

The background in which this prayer was made in this writ petition appears to be that the document was presented but on account of non-registration of the said document and its availability, the petitioner had to suffer in the litigation that was contested by her on the strength of the gift-deed. Accordingly, the jurisdiction under Article 226 was invoked for a direction for the aforesaid purpose.

Reliance has been placed on Section 57 of the Registration Act, 1908 to contend that the obligation cast on the Registering Authority having not been carried out, the mandamus as prayed for deserves to be granted.

Learned counsel for the petitioner has also invited the attention of the Court to the judgement of the Apex Court in the case of *Subramania Gurukkal Vs. Shri Patteswaraswami*

WEB COPY

Devasthanam [1993 Supp (4) SCC 519], to urge that the continuous entries, revenue and other official entries have a presumptive value and a presumption can be drawn on the strength of such entries which the petitioner claims to be in existence and supports her claim.

Another judgement to the same effect in the case of *Vatticherukuru Village Panchayat & Ors. Vs. Nori Vekatrama Deekshithulu & Ors. [1991 Supp (2) SCC 228]* has also been cited at the bar.

Replying to the said submission, learned counsel for the State submits that such a writ petition has been rightly dismissed on the ground of laches inasmuch as the gift-deed was stated to have been presented in the year 1998 and in the absence of any material to demonstrate that the said pursuit was carried either by the donor or by the petitioner who is the donee. A writ petition filed for the said purpose in the year 2015 has been rightly dismissed on the ground of laches.

Learned counsel for the Intervener has brought on record the outcome of the litigation instituted by the petitioner herself in respect of the cancellation of sale-deed of a part of

WEB COPY

the property under the gift-deed which suit came to be dismissed and the appeal filed against the same also came to be dismissed.

Learned counsel for the Intervener submits that the said judgements would demonstrate that the issue relating to deriving title from the said gift-deed dated 13.08.1998 had been raised, and therefore once the suit has been dismissed, the petitioner cannot be now permitted to assail the cause of dismissal indirectly through this writ petition.

It is submitted that the appeal filed against the judgement of the trial court also met the same fate and in the absence of any further pursuit, the said evidence clearly demonstrates that the petitioner has been unable to establish her claim on the strength of the said gift-deed.

The other facts have also been brought on record in the Intervention Application with regard to the transaction of the property but the same is not relevant for the purpose of the present controversy.

Having considered the submissions raised and having perused the facts on record, what we find is that the petitioner-

WEB COPY

appellant claims succession to certain plots of land on the strength of the gift-deed dated 13.08.1998 said to have been executed by her grant father-in-law, late Sitaram Mandal. From the judgement in relation to the cancellation of a sale-deed, which has been brought on record by the Intervener, and which judgement has not been disputed by the petitioner, categorically indicates that the issue relating to the acquisition of property by late Sitaram Mandal was under a cloud inasmuch as the gift-deed did not narrate as to from where did Sitaram Mandal acquired the said property.

The suit was ultimately dismissed with the aforesaid observation and therefore if the appellant had any desire to contest the said finding she ought to have carried the matter further, more so when the fist appeal filed against the same had also been dismissed by the learned Additional District & Sessions Judge, Supaul.

Learned counsel for the petitioner has informed that no second appeal was filed and consequently in view of the said finding having been recorded, it appears that the present

WEB COPY

proceedings have been initiated only for the purpose of overcoming the said findings.

The learned Single Judge was therefore right in not proceeding to entertain the writ petition after a lapse of 20 years that too even on an issue which could only have been raised for a declaration by the appellant in respect of the gift-deed in her favour said to have been executed by late Sitaram Mandal.

In the above circumstances, no mandamus can be issued to the Registrar or the Sub-Registrar for the relief as prayed for in the background aforesaid even if it is presumed that the document had been presented for registration and could not be registered on account of the circumstances that have been explained in the counter affidavit filed by the respondent-State, namely, the respondent nos. 2 to 5. We may put on record that paragraph 6 to paragraph 8 of the said counter affidavit categorically indicates the circumstances in which the document could not be registered and therefore the second finding recorded in the suit referred to hereinabove that

WEB COPY

the property could not have been transacted without the deed having been registered also stands confirmed.

Consequently, for all the reasons and the facts aforesaid the observation made by the learned Single Judge in the last paragraph of the judgement is appropriate and we do not find any reason to interfere with the same.

The appeal is accordingly dismissed.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

skm/krishna

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	09.09.2019
Transmission Date	

WEB COPY