

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.204 of 2017

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Noori Wife of Dr. Md. Mushtaque Alam, Daughter of Saghir Ahmad,
Resident of Mohalla - Line Bazar, Police Station - K. Hat, Sahayak, District -
Purnea.

... .. Petitioner/s

Versus

Saghir Ahmad Son of Late Nazir Ahmad Resident of Mohalla and Post Office
- Line Bazar, Ward No. 29, Police Station - K. Hat Sahayak, District - Purnea,
holding registered power of Attorney of his son namely Sarfaraz Ahmad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shailendra Kumar Dwivedi
For the Respondent/s	:	Mr. Rajiv Ranjan Jha, Adv.
	:	Mr. Sanjay Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 11-07-2019

Heard the parties.

I.A. No. 01 of 2019

This interlocutory application has been filed for
condonation of delay of 25 days in filing the present civil
revision.

Sufficient reasons has been shown to condone the
delay in filing civil revision, accordingly the Interlocutory
application is allowed and the delay in filing this civil revision
is condoned.

I.A No. 01 of 2019 is disposed of.

C.R. No. 204 of 2017

2. This civil revision application has been filed for



setting aside the order dated 10.08.2017 passed by learned Sub-Judge-1, Purnea in Title Suit No. 120 of 2015 by which the learned court has rejected petition dated 16.03.2017 filed under Order 47 Rule 1(A) of the C.P.C. for review of the order dated 16.02.2017.

3. Plaintiff/petitioner filed Title Suit No. 120 of 2015 in the court of learned Sub-Judge-1, Purnea for declaration of his right, title and interest over the suit land on the basis of oral gift made by her elder brother Sarfaraz Ahmad. It is further case of plaintiff that defendant Saghir Ahmad is the father of plaintiff and Sarfaraz Ahmad is the elder brother of plaintiff who acquired 5 kathas of land vide registered sale deed dated 10.04.1991 and out of love and affection made oral gift of said land to the plaintiff on 10.01.1996 and same was accepted by the plaintiff and she came in exclusive possession over the land by constructing boundary wall.

4. Subsequently, his elder brother Sarfaraz Ahmad executed a registered power of attorney dated 17.09.2011 in the name of his father Saghir Ahmad with respect to said land and he started to negotiate to transfer the suit land, as such, plaintiff filed this suit for declaration of her right, title and interest over the suit land on the basis of oral gift.



5. On summons being issued defendant appeared and filed their written statement and during pendency of suit on account of intervention of well wishers both parties agreed to settle the dispute and defendant admitted the right, title and interest of the plaintiff over the suit land on basis of oral gift and accordingly a compromise petition dated 16.01.2016 was filed in the court below and court below after examination of the parties and being satisfied about the factum of compromise accepted the compromise petition and decreed the suit on the basis of compromise petition vide judgement and decree dated 18.02.2017 and compromise petition formed part of the decree, however, a condition was imposed that unless the compromise decree is registered under the Indian Registration Act, in view of provisions of Sections 17 and 49 of the Indian Registration Act the title and interest over the suit property will not pass to the plaintiff.

6. Plaintiff thereafter filed a review petition on 16.03.2017 under Order 47 rule 1 A of C.P.C. to review the judgement and decree dated 18.02.2017 and to set aside that part of judgement and decree in which it was observed that title and interest over the suit property will not pass to the plaintiff unless the compromise decree is registered which is not required under



the Mohammedan Law where oral gift is permissible and no registration is required for such oral gift. However, the review petition was rejected by the court below by the impugned order dated 16.02.2017 against which present revision has been filed.

7. Under the Mohammedan Law the three essential requisites to make a gift valid (i) declaration of the gift by the doner (ii) acceptance of the gift by the donee (iii) delivery of possession. No written document is required. Section 129 of the Transfer of Property Act excludes the Mohammedan Law from the purview of Section 123 which mandates that the gift of immovable property must be effected by a registered instrument.

8. Under Mohammedan Law writing is not essential to the validity of gift either of movable or immovable property. Donor should completely divest himself of all ownership and possession over the subject of gift and writing is not required and consequently oral gift need not be registered under the Registration Act. There is no requirement that oral gift deed which has been accepted by a compromise decree in absence of its registration the title and interest will not pass from donor to donee. The title and interest over the gifted property under Mohammedan Law passes on delivery of possession and its acceptance by the donee.



9. Accordingly, the civil revision is allowed and that part of the judgement and decree which directs that the title and interest in the suit land will pass only if the compromise decree is registered is set aside.

10. The civil revision petition is allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.10.2019
Transmission Date	N.A.

