

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.79 of 2018

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Indrajeet Chaudhary Son of Late Damari Chaudhary, Resident of mohalla-
Purani Gudari, Naya Bazar Ward No. 11, Police Station- Bettiah Town,
District- West Champaran.

... .. Appellant/s

Versus

1. Raj Kishore Prasad Son of Late Bhagwan Prasad, Resident of mohalla-
Purani Gudari, Naya Bazar Ward No. 11, Police Station- Bettiah Town,
District- West Champaran.
2. Surendra Kishore Sharma Son of Late Narsingh Pandey, Resident of
mohalla- Purani Gudari, Ward No. 06, Police Station- Bettiah Town,
District- West Champaran.
3. Munna Kumar Prasad @ Manoj Kumar Son of Raj Kishore Prasad, Resident
of mohalla- Purani Gudari, Naya Bazar Ward No. 06, Police Station-Bettiah
Town, District- West Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Bashishtha Narayan Mishra
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 16-08-2019

Heard Mr. Bashishtha Narayan Mishra, learned
counsel for the appellant.

(2) The appellant filed this appeal against the
judgment and decree dated 25.01.2018 passed by Additional
District Judge VI, West Champaran, Bettiah in Title Appeal
No.74 of 2016 by which the learned Additional District Judge
affirmed the judgment and decree dated 14.09.2016 passed by
Sub Judge-I, West Champaran, Bettiah in Title Suit No.80 of
2009 decreeing the suit of the plaintiff.



(3) The appellant is the defendant 1st set in the suit.

The plaintiff filed the suit seeking relief for declaration that the plaintiff and his wife have got title over the suit land by virtue of sale deed executed by Surendra Kishore Sharma on 14.11.2000 and the possession of the defendant 1st set be declared illegal and encroacher upon the suit land and the defendant 1st set be restrained from changing or encumbering the suit properties.

(4) The case of the plaintiff in brief is that suit land was recorded in the name of Brajesh Lal who orally gifted the property on 28.02.1951 to Mahavir Mishra. Mahavir Mishra died issueless in the year 1965 and his own brother, Janardan Mishra inherited the property of Mahavir Mishra. Rajpati Kuer, widow of Janardan Mishra executed a registered sale deed on 17.06.1986 with regard to the suit land in favour of Surendra Kishore Sharma and Surendra Kishore Sharma by registered deed sold 10 dhurs of land to the plaintiff and remaining 10 dhurs land to the wife of the plaintiff on 14.11.2000. Wife of the plaintiff died. The defendant is tenant of Surendra Kishore Thakur but defendant stopped paying rent to the plaintiff and, therefore, plaintiff filed Eviction Suit No.159 of 2003 for eviction of the defendant but the aforesaid suit was dismissed on 17.02.2009 holding that complicated question of title is



involved. Thereafter, the plaintiff-respondent brought the Title Suit No.80 of 2009.

(5) The defendant 1st set contested the suit by filing written statement. Defendant claimed title and possession over the land by virtue of oral agreement to sale from Mahavir Mishra and Mahavir Mishra put him in possession over the land after receiving Rs.2,000/- as consideration amount but unfortunately, Mahavir Mishra died in the year 1965 and the sale deed could not be executed but the defendant remained in possession as owner of the land and he was never remained as a tenant of Surendra Kishore Sharma or the plaintiff.

(6) Learned Sub Judge on the basis of the pleadings of the parties settled many issues including the issue whether the plaintiff has got title over the land and the defendant, by virtue of an oral agreement to sale, got title and possession over the land. Learned Sub Judge held that plaintiff got title over the suit land by virtue of sale deed and the defendant did not have any title over the suit land by virtue of an oral agreement to sale said to have been arrived at between defendant 1st set and Mahavir Mishra, accordingly, decreed the suit in favour of the plaintiff. The appellate court on reappraisal of the evidence on record held that respondent No.1 got the title over the land being



purchaser from Surendra Kishore Sharma who purchased the land from legal heirs and representatives of Mahavir Mishra and dismissed the appeal.

(7) Mr. Bashishtha Narayan Mishra, learned counsel for the appellant submits that Brajesh Lal was admittedly the recorded tenant of the suit land. Brajesh Lal is said to have orally gifted the property in favour of Mahavir Mishra on 28.02.1951 but Mahavir Mishra before his death put the defendant-appellant in possession of the property by virtue of an oral agreement to sale after receiving part consideration amount. It is submitted that there was oral gift deed by which Brajesh Lal donated the property to Mahavir Mishra but the gift deed was not registered. Mr. Mishra citing judgment of Hon'ble Supreme Court reported in AIR 1997 Supreme Court 127(Smt. Gomitibai v. Mattulal) submits that gift deed acted upon by the donee but the same was not registered in accordance with the Registration Act. In absence of any registered instrument of gift and acceptance thereof by the donee, the property in question could not be said to have been transferred to proposed donee. Mr. Mishra also placed reliance on judgment reported in 2014(2) PLJR 405(Md. Akil Ahmad & Ors. v. Baleshwar Pd. Gupta & Ors.) in which it has been held that "gift deed must be



effected by registered instrument signed by or on behalf of the donor.” Therefore, Mahavir Mishra himself did not have any title over the suit land and the plaintiff has also got no title. This is the substantial question of law arises for consideration in this second appeal.

(8) It is evident from perusal of pleadings of both the parties that the plaintiff claimed himself to be purchaser of the suit land from Surendra Kishore Sharma by a registered deed dated 14.11.2000. Admittedly, Surendra Kishore Sharma purchased the suit land by registered sale deed dated 17.06.1986 executed by Rajpati Kuer, widow of brother of Mahavir Mishra. Mahavir Mishra died in and around 1965 leaving behind no issue and on such, the plaintiff claimed title over the land. The defendant contested the suit and claimed title over the land by virtue of an oral agreement to sale said to have been arrived by Mahavir Mishra before his death. Defendant never took plea that Mahavir Mishra did not have any title by virtue of an oral agreement. Once the defendant himself claimed title by virtue of an oral agreement to sale from Mahavir Mishra, the defendant cannot be allowed at the stage of Second Appeal to take plea that Mahavir Mishra had no title over the land. It is needless to reiterate that under Section 123 of the T.P. Act read with



provisions of Registration Act, the gift deed by which the title of a land is transferred by way of gift to a donee, such gift deed is required to be registered and the acceptance of donee is also essential but defendant never pleaded that Mahavir Mishra being donee did not accept the gift deed and the gift deed was not registered, therefore, Mahavir Mishra did not have any title over the land rather the defendant-appellant himself claimed title from Mahavir Mishra. Therefore, at the stage of Second Appeal, the appellant cannot be allowed to make a third case without pleading the facts in his written statement contesting the suit.

(9) It is further submitted that appellant-defendant No.1 came in possession of the land by virtue of an oral agreement to sale but admittedly, Mahavir Mishra did not execute any sale deed. There is no evidence on this point that Mahavir Mishra ever received any part consideration or consideration amount from the appellant and put the appellant in possession of the land thereof. Therefore, the claim of the defendant-appellant that he has been put in possession of the land and by virtue of the provision of Section 53A of T.P. Act he perfected his title and, therefore, defendant 1st set is in possession of property in pursuance of part performance of an



agreement but I find that there is no evidence on this point and both the Courts have concurrently held after taking into consideration the oral as well as documentary evidence that defendant No.1 was not put in possession of the disputed suit land in pursuance of oral agreement to sale. Therefore, I do not find any substance in the submission of the learned counsel for the appellant.

(10) Having considered the facts aforesaid and discussion made above, I do not find any substantial question of law arises for consideration in this second appeal. Accordingly, this second appeal is dismissed. Consequently, I.A. No.1 of 2019 is also dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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