

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 25218 of 2019

1. Sk. Manjur @ Shekh Manzur, aged about 62 years, Male, Son of Late Supan @ Shekh Shuppan Resident of Village and P.O.- Dilarpur, P.S. Manihari, District- Katihar.
2. Bibi Noor Jahan, aged about 40 years, Female, Wife of SK. Manjur @ Shekh Manzur, Resident of Village and P.O.- Dilarpur, P.S. Manihari, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Government of Bihar, Department of Revenue and Land Reforms, Patna.
3. The Member, Administrative, Bihar Land Tribunal Patna
4. The Collector of Katihar District at Katihar.
5. The Additional Collector, Katihar.
6. The Sub Divisional Officer, Manihari Sub Division, District- Katihar.
7. The Land Reforms Deputy Collector, Manihari, Sub-Division, District- Katihar.
8. The Circle Officer, Manihari Anchal , District- Katihar.
9. SK. Mangania, Son of SK. Rahmat, Resident of Village Jaffargunj, P.O. Sirnia, P.S. Manihari, District- Katihar.
10. SK. Rahmat Son of Late SK. Supan @ Shekh Shuppan, Resident of Village Jaffargunj, P.O. Sirnia, P.S. Manihari, District- Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jai Krishna Prasad, Advocate
For the State : Mr. Majid Mahboob Khan, AC to AAG 12

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 17-12-2019

Heard learned counsel for the petitioners and learned
AC to AAG 12 for the State.

2. The petitioners have moved the Court for the
following reliefs:



“(I) That to declare the order passed by Respondent no. 3 on 17.10.2019 is null and void as the same is thoroughly perverse and suffers from the malady of suppressio veri suggestio falsi i.e. concealment of the provision of law and facts as well and that the claim of respondent no. 9 is of declaration of Title without possession which can be decided by Civil Court, Only.

(II) That the petitioner and his wife are real owners of the land by virtue of 3 Registered Sale Deeds having peaceful possession annexed herewith, executed by Respondent no. 10 own brother of this petitioner (Sk. Manjur) and Respondent no. 3 has knowingly and willfully failed to consider the material evidence.

(III) That it be declared that Mutation granted in favour of Sk. Mangania (respondent no. 9) is utter violation of the inaudatory provision of Section 5 of The Mutation Act read with Rule 5 (2) (6) of The Bihar Mutation Rules, 2012, and even notice could not be issued with all dishonest intention. Even proper time, required to be allowed, was not allowed. Therefore the mutation order allowed in favour of Respondent no. 9 is void as it was allowed most stealthily. The field staff did not even put any date.

(IV) That it be declared that as per the provision of “Mohammedan Law” the gift deed vide Regd. Gift No. 9804 dated 22.07.1994 in favour of Respondent no. 9, Sk. Mangania, 2 years child, executed by father Sk. Rahmat Respondent No. 10 could not be vaild as Sk. Rahmat himself sold the 3 Regd. Sale Deeds having full ownership and possession and he did not divest himself of ownership and possession as per law, provision of the Mohammedan Law which binds both the parties.

(V) That STAY relating to the order dated 17.10.2019 be granted at the earliest, as the same is perverse, arbitrary and illegal.”



3. The main point of contention of learned counsel for the petitioners is that though there is a registered gift deed in favour of respondent no. 9, but the same not being followed by delivery of possession or relinquishment of ownership, the subsequent sale deed in favour of the petitioner was valid which has wrongly been negated by the authorities below.

4. Learned counsel for the petitioners submitted that under the Mohammedan Law, for a valid gift, it is essential that the donor should divest himself completely of all ownership and dominion over the subject of the gift (section 148 of the Mohammedan Law).

5. In support of such contention, learned counsel relied upon a decision of the Bombay High Court in **Kaddeeranbi v. Fatimabi** reported as **AIR 1981 Bom. 406**, where it has been held that actual delivery of possession may not be insisted upon but other requirement regarding declaration of gift cannot be dispensed with.

6. Having considered the matter, the Court finds that the contention of learned counsel for the petitioner is totally misplaced. The law governing the filed is at slight variance under the Mohammedan Law and the common civil law. Under the Mohammedan Law, a gift is not required to be registered or



scribed. It is oral in the form of a *Hiba* and there can be a *Yadaasht* (document of remembrance) in support thereof declaring that such gift had already been given to the beneficiary and possession has also been given to him. However, if such gift is registered then the common law would prevail and that document would be a presumptive proof of right, title, interest and possession of the beneficiary (donee).

7. In the present case, there was a registered gift deed in favour of respondent no. 9. Once that was prior in time to the sale deed executed in favour of the petitioners, relating to the same land, without setting aside of the said gift deed, no other person could have executed a sale deed with regard to the land in question including the respondent no. 10, who was the executor of the gift deed. The same having been done by respondent no. 10 in favour of the petitioners, much after the registered deed of gift, which he had executed in favour of his son (respondent no. 9), was beyond his capacity to execute. Further, in the case of **Kaddeeranbi** (supra), the fact was completely different. In that case, an alternative plea was taken that a gift had been effected, but the Court has noted that there being no iota of evidence regarding any gift having been made by the father, neither oral nor



documentary, in such background, it was held that such gift cannot be taken into consideration.

8. In the present case, at the cost of repetition, the gift deed is a genuine document which is registered and, thus, the principle of **Kaddeeranbi** (supra), has no application in the facts and circumstances of the present case.

9. For reasons aforesaid, the application stands disposed off. However, it shall be open to the petitioners to assail the deed of gift before the appropriate forum, in accordance with law and legal consequences thereafter shall follow.

(Ahsanuddin Amanullah, J.)

P. Kumar

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