

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.29 of 2015

1. Shanti Devi, widow of Late Bahadur Mahto
2. Andu Mahto
3. Uday Mahto, both 2 and 3 are sons of Late Bahadur Mahto
4. Basamti Devi
5. Soshanti Kumari @ Rina Devi, Both daughters of Late Bahadur Mahto,
All residents of East Lohanipur, P.S.- Kadamkuan, District- Patna

... .. Appellant/s

Versus

1. Laxman Mahto, son of Late Ganauri Mahto
2. Smt. Devanti Devi, wife of Laxman Mahto
3. Jantu
4. Sunil
5. Vicky, All 3 to 5 are sons of Laxman Mahto, residents of East Lohanipur,
P.S.- Kadamkuan, District- Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mritunjay Prasad Singh, Advocate
For the Respondent/s : Mr. Deepak Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 29-09-2022

This Second Appeal has been preferred against the judgment and decree dated 31.05.2014 and 13.06.2014 respectively passed by Sri Ravi Shankar Sinha, the Adhoc Additional District and Sessions Judge-1, Patna in Title Appeal No. 6 of 1997 by which the said appeal was allowed and the judgment and decree dated 10.12.1996 and 16.12.1996 passed in Title Suit No. 82/89-79/96 by Sub Judge VII, Patna, has been set aside.

The original plaintiff Bahadur Mahto filed the Title Suit No. 82/89-79/96 praying to declare that plaintiff has got right and title over the Suit



Property and to declare that the registered sale deed dated 11.12.1987 executed by Manorama Devi in favour of Laxman Mahto with regard to Suit Property is illegal, inoperative and not binding on the plaintiff and also for declaration of possession of the plaintiff with alternative prayer that if he is found dispossessed, decree for recovery of possession be passed and the plaintiff be put in possession thereof and the relief of injunction was also sought.

The case of the plaintiff is that north to the plot no. 224, there was Parti land having area of 1.16 dhurs belonging to one Mostt. Gangia Devi, pertaining to Municipal Plot No. 1357. The said Gangia Devi sold Municipal Plot No. 1357 to Smt. Manorama Ganguly through registered sale deed dated 07.01.47. Manorama Devi entrusted the land to plaintiff for care taking and later on Manorama Ganguly and her husband orally gifted the said Municipal Plot no. 1357 to the plaintiff out of love and affection. Plaintiff after taking possession of the Suit land, started cultivating crops and vegetables and constructed some rooms on the Suit land and also installed deities thereon and the Suit Property came in exclusive possession of the plaintiff, who has also perfected his title over the same by law of adverse possession. The further case of the plaintiff is that the said Suit Property is his personal property but his brother Ganauri Mahto started demanding partition in the said property. The plaintiff's name has been mutated in Municipal records and is paying Municipal Tax for the house existing on the Suit land and also installed deities



and he is in possession but the defendants are interfering in his peaceful possession challenging his title.

It is further, stated that the sale deed dated 11.12.1987 is a forged and fabricated by impersonating Manorama Ganguly. Hence he filed the suit.

The case of the defendants is that plaintiff never separated from his father and brother and the house constructed over Municipal Plot No. 1357 was constructed from the income of defendant no.1 and his mother. The said suit property was purchased by Manorama Ganguly from Gangia Devi but Manorama Ganguly never gifted suit land to the plaintiff and plaintiff never came in possession over the suit land and never cultivated crop as alleged. Further case of the defendant is that Manorama Devi sold the disputed land through registered sale deed dated 11.12.1987 for a valuable consideration of Rs. 49,000/- and put defendants in possession thereof. After purchasing the said land, defendants constructed room thereon. Defendants have got their name mutated in Seriasta of Patna Municipal Corporation and paying rent and also paying rent to the State of Bihar and getting receipt therefor. It is further stated that story of oral gift is altogether wrong and false. Defendants have right, title and possession over the suit land and the claims of the plaintiff are wrong and false. After purchase, defendants have constructed rooms over the disputed land and they are living therein. The learned Trial Court vide judgment dated 10.12.1996 decreed the suit in favour of the plaintiff against which the appeal was filed vide Title Appeal No. 6 of 1997. The First



Appellate Court allowed the appeal and judgment and decree passed by the learned Trial Court had been set aside.

Learned counsel for the appellants submits that the findings by the First Appellate Court are perverse due to non-consideration / misconstruction of exhibits 2 to 5 showing continuous possession of plaintiff over the suit land and without giving any cogent reason the First Appellate Court reversed the judgment of Trial Court acting contrary to the mandatory provisions of Order XLI Rule 31 and 32.

It is further submitted that the first appellate court failed to appreciate that appellants were in peacefull possession since long for more than 13-14 years and the respondents have forcibly taken possession of the said land illegally and started constructing Kachcha house over the suit property. The first appellate court completely failed to appreciate that trial court has rightly decided issues involved in the suit after judiciously considering the evidences of the parties and materials available on record.

From perusal of the impugned judgment, it appears that on issue no. 4 as to whether the sale deed dated 11.12.1987, executed by Manorama Ganguly in favour of defendant no. 2 is legal, genuine and valid and operative, the trial court has held that the same is invalid and inoperative document on the ground stated in paragraph 27 of the impugned judgment. In para 28 of the impugned judgment the first appellate court held that the said grounds taken by the trial court are not sustainable on six grounds, firstly, Hindu Law does not



recognize oral gifts , secondly, Section 123 of the Transfer of Property Act envisages that in a gift of immovable properties, transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses, thirdly, the learned trial court did not take notice of the fact that Manorama Ganguly had left Patna permanently and Laheriasarai had become fixed place of abode, fourthly, the son of the vendor, who could have challenged the deed in question, as admitted its execution, fifthly, it was incumbent upon the plaintiff, who has challenged the deed in question as forged and fabricated to prove his contention, whenever he has completely failed to shoulder the burden, sixthly, save and accept the words of mouth, nothing cogent has been brought on record on behalf of the plaintiff to prove that the sale deed was not executed legally and validly and the same does not contain the signature of the vendor. It was further held that even the son of vendor, who is D.W-7 Ranjan Ganguly has admitted the fact of execution before the court. He is the person, who is one of the attesting witness of sale deed in question. Even he has admitted the execution of sale deed by his mother who is vendor so there remains no doubt regarding the genuineness of the sale deed in question.

It appears that the main issues before the court below were firstly whether the oral gift alleged to be given by the Manorama Ganguly was valid and in accordance with law, secondly that the sale deed executed by Manorama Ganguly was valid or not? The learned First Appellate Court on the basis of



Section 123 of the Transfer of Property Act, held that the oral gift is not permissible and accordingly, he disbelieved the theory of the plaintiff. The First Appellate Court found that when the son of the vendor has already admitted the execution of registered sale deed then there is no question of any doubt in the genuineness of the sale deed. The first appellate court has applied his judicial mind and his finding of facts is based on evidence which is not perverse.

In my considered view, finding of the Appellate Court is based on cogent reasons and it requires no interference. The appellants failed to point out any substantial question of law involved in this case. In my considered opinion also no substantial question of law arise in this case which is required to be determined by this Court.

In view of the aforesaid discussion, this Second Appeal is dismissed.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	NAFR
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