

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.205 Of 2018
(Through video conferencing mode)

Japamali Bhaisa and others ***Appellants***

Mr. A.K. Mohanty, Advocate.

-versus-

Harekrushna Ghusi and others ***Respondents***

CORAM: JUSTICE ARINDAM SINHA

ORDER
24.01.2022

Order
No.

3.

1. Mr. Mohanty, learned advocate appears on behalf of appellants. He submits, his clients were plaintiffs. They were unsuccessful in both Courts below.

2. He submits, the short point is whether there could be made a gift of a part of unpartitioned joint family property. He submits, the common ancestor was Bati Bhaisa. Said ancestor left behind two sons, Ujagar and Barun. Barun had one son Dinabandhu Bhaisa. Dinabandhu had a daughter, who in turn had three sons. Dinabandhu executed gift in respect of suit property in favour of one of the sons (defendant no.1) of his daughter. Since there was no partition of the ancestral property left behind by the common ancestor, no part of it

could have been transferred by way of gift. Hence, claim in suit for declaration, cancellation and permanent injunction.

3. Issue nos. 3, 4, 5 and 6 as appearing in judgment of the trial Court are reproduced below:

“(III) Whether there is any cause of action?

(IV) Whether the registered gift deed executed by Dinabandhu Bhaisa and his wife on dtd. 02.06.72 and corrected on dtd.17.11.72 in favour of defendant No.1 is valid one and is the gift duly accepted?

(V) Whether the ancestral properties are mutually partitioned by metes and bounds among the Bati Bhaisa and the co-shares possessed their respective share separately?

(VI) Whether the plaintiffs have right, title and interest over the suit land?”

4. The trial Court analyzed pleadings, evidence and arguments of the parties before it. It appears from the judgment, inter alia, as follows:-

(i) D.W.1 deposed that all ancestral properties belonging to Bati Bhaisa were mutually partitioned by metes and bounds amongst his successors, prior to year 1940.

(ii) Said witness further deposed, Dinabandhu Bhaisa and his wife executed gift deed in his favour on 2nd June, 1972, registered on the same day in respect of a portion of the lands that fell to share of Dinabandhu's father (Barun) in the amicable partition.

(iii) D.W.3 and 4 were independent witnesses, who said that they have seen suit land and same is possessed by defendant no.1 by virtue of the gift deed.

(iv) On behalf of plaintiff it was argued that the suit is not a suit for complete partition but is only in respect of land corresponding to the gift deed.

(v) Exts. Q, R and S tendered by defendant no.1 clearly show there was amicable partition between co-sharers and that they were possessing lands separately. Furthermore, plaintiff no.1 admitted in the plaint that after death of Bati Bhaisa, his next successor as per the genealogy are possessing few undivided, unequal parcel of lands respective of quality and quantity, among themselves by amicable settlement.

(vi) View expressed by judgment reported in **2014 (1) CLR 327** on presumption of partition was relied upon.

5. Appellants on their own say they have not filed for partition. On the contrary they have filed for declaration that the gift could not have been made since there had not been partition. Both Courts below appear to have concluded on presumption of amicable partition asserted by defendant no.1 as supported by Exts. Q, R and S being sale deeds executed individually by some co-sharers in respect of parts of claimed undivided ancestral property. As such, there does not appear to be any substantial question of law in relation to appreciation of pleadings or evidence as made by the Courts below, involved for admission of the appeal.

6. There is no substantial question of law involved in the appeal and it is dismissed.

(Arindam Sinha)
Judge

Sks