

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.34 of 2018

1. Kalawati Devi and Anr W/o Sri Sita Ram Sah @ Sitabi Sah
2. Siya Devi @ Seeta Devi, W/o Sri Parsadi Sah both resident of Laxmipur- Maheshpur Tola Athgama, P.S.- Kharik, P.O.- Akidatpur, Sub- Divisional, Naugachia, District- Bhagalpur.

... .. Appellants

Versus

Rajendra Sah S/o Late Jagdambi Sah, resident of Laxmipur- Maheshpur Tola Athgama, P.S.- Naugachia, Hal- Kharik, District- Bhagalpur.

... .. Respondent

Appearance :

For the Appellants	:	Mr. Manoj Priyadarshi, Advocate
	:	Mr. Ashok Kumar Yadav, Advocate
For the Respondent	:	

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

12 28-04-2023 Heard Mr. Manoj Priyadarshi, learned counsel for the appellants.

The instant second appeal has been filed against the judgment and decree of affirmance. The title suit bearing Title Suit No. 59 of 2004 filed for declaration of right, title, and interest over the suit land and also for declaration of sale deed dated 03.06.2002 was null and void and in operative in nature.

The plaintiff and defendants are members of their respective Hindu family governed by the Mitakshra School of Hindu Law. Ishwar Sah and his brother Ayodhya Sah jointly held and possessed 92 decimals of land of Khata No. 148, Plot No. 352, Area 49 decimals, 353 area 28 decimals and 354 area



15 decimals. The plaintiff is the descendant of the Ishwar Sah and the defendants are the wives of maternal grandson of Ayodhya Sah. Ishwar Sah has only son, namely, Jagdambi Sah, he was inherited the undivided share of his father in the above said property and came in joint possession of the same.

The case of the plaintiff is that in the revisional survey the said property jointly recorded in the name of Ayodhya Sah and Jagdambi Sah having equal share. There was amicable oral partition in between Jagdambi Sah and Ayodhya Sah with respect to the aforesaid property and in favor of Ayodhya Sah 18 decimal of plot no. 352 and 28 decimal of plot no. 353 land was allotted and remaining half land in total of 92 decimal allotted to Jagdambi Sah and they came in separate possession of their respective shares allotted in the aforesaid amicable partition. Further, case of the Plaintiff is that Ayodhya Sah had two daughters, namely, Sakuna Devi and Maina Devi. Sakuna Devi was married with Baldev Sah and Maina Devi was married with Debi Sah. Further, case of the plaintiff is that Ayodhya Sah in his life time gifted entire property of his share which was allotted to him in the aforesaid partition to his daughter's sons (Sita Ram Sah and Prasadi Sah) by executing a deed of gift dated 17.09.1973 bearing plot no. 352 area 18 decimal and 353



area 28 decimal and they came in possession of gifted property. Daughter's son of Ayodhya Sah, namely, Sitaram Sah got married to Kalawati Devi defendant no. 1 and Prasadi Sah got married to Siya Devi defendant no. 2. It is contended that the daughter's sons of Ayodhya Sah sold 15 decimal land of plot no. 352 to Jagdambi Sah, the father of the plaintiff. The plaintiff's father was allotted plot no. 352 measuring 31 decimal and entire plot no. 354 measuring 15 decimal of Khata No. 148 (makan mai sehan) wherein he is residing with his family. The second daughter of Ayodhya Sah Maina Devi neither had nor have any manner of right title or possession over any portion of plot no. 354 of Khata No. 148. Further case of the plaintiff is that on 28.12.2004, the defendants came to the plaintiff and threatened to dispossess the plaintiff from the suit property saying that it has been purchased the suit land from her husbands on 03.06.2002, hence, the necessity for the suit arose. Further, case of the plaintiff is that the defendants have no manner right, title or possession over the suit property.

After summons, defendants appeared in the suit and filed their written statement and denying the claim of the plaintiff and raised objection with regard to maintainability of the suit and also suit is barred by the law of limitation and other



ornamental objections. It has been asserted that Khata No. 148 R.S. Plot No. 352, 353 and 354 were recorded jointly in the name of Jagdambi Sah and Ayodhya Sah along with R.S. Khata No. 40 with R.S. Plot No. 190 area 20 decimals and accepted the genealogy given by the plaintiff. Both the defendants are the wives of grandsons (maternal) of Ayodhya Sah. The defendants further contended that Ayodhya Sah has executed a deed of gift on 17.09.1973 with respect to plot no. 190, 352, 353 in favour of Sitaram Sah and Prasadi Sah and both are remained in residential possession over plot no. 354 since their maternal grand father and also came in peaceful possession over gifted land. Defendant also submitted that it is false to say that Ayodhya Sah had or have no manner of right, title or possession over any portion of the property of plot no. 354 of Khata No. 148 but Ayodhya Sah had half share in plot no. 354 which was inherited by maternal grand sons Sitaram Sah, Prasadi Sah and daughter Maina Devi and thereafter these successor interest sold the same in favor of these defendants *vide* registered sale deed 801 dated 03.06.2002 and these defendants are coming in peaceful residential possession over the said land.

After analysing the material on record, it has concurrently held that the suit property is not the property,



which was gifted by Ayodhya Sah in favour of Sitaram Sah and Prasadi Sah. Sitaram Sah and Prasadi Sah are the title holder of plot no. 352, area 18 decimals and 353 area 28 decimals total area 46 decimals. The suit land is part of allotted property of Jagdambi Sah entire property was orally partitioned and plot no. 352 area 31 decimals and 354 area 15 decimals (Total 46 decimals out of 92 decimal) was allotted to Jagdambi Sah. It was noticed by the lower courts that in revisional survey Khatian 92 decimals was recorded in the name of Jagdambi Sah and Ayodhya Sah in equal share. The said property was partitioned by way of oral partition. The case of partition is also proved by the act of Ayodhya Sah who gifted the 46 decimals of plot no. 352 and 353 to his grandsons. They sold 15 decimals land of plot no. 352 to Jagdambi sah (Father of the plaintiff) which proved that oral partition and also the gift deed dated 17.09.1973 both the lower courts held that the land of plot no. 352 measuring 18 decimals and plot no. 353 measuring 28 decimals was allotted to Ayodhya Sah and Jagdambi Sah was allotted 31 decimals of plot no. 352 and 15 decimals of plot no. 354. Sitaram Sah and Prasadi sah and Maina Devi had no title of the suit land.

Considering the aforesaid facts and materials on



record, it is quite apparent that the judgments and decree of courts below are covered by the findings of facts and no question of law, much less substantial question of law arises for consideration in the instant second appeal which is, accordingly, dismissed.

(Khatim Reza, J)

Gaurav Kumar/-

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