

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.31 of 2018

Shushila Devi, Wife of Dhruv Rai, Daughter of Yadu Rai, Resident of Village-
Chanchoura, Post office- Chanchoura, Police Station- Chapra (Muffasil),
District- Saran.

... .. Appellant/s

Versus

1. Most. Gyanti Kuer, Wife of Late Krishna Rai, Daughter of Chhathi Lal Rai, Resident of Village Chanchoura, Post Office- Chanchoura, Police Station- Chapra (Muffasil) District – Saran. (deleted vide order dated 14.07.2022)
2. Dhruv Rai, Son of Amodha Rai, Resident of Village Chanchoura, Post office- Chanchoura Police Station- Chapra (Muffasil) District – Saran.
3. Smt. Prabhawati Devi, Daughter of Chhathi Lal Rai, Resident of Village- Chanchoura, Post Office- Chanchoura, Police Station- Chapra (Muffasil) District – Saran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Abhya Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

10 17-04-2023 This Second Appeal has been filed by the defendant-
appellant against the judgment and decree of affirmance.

This Second Appeal has been filed against the judgment and decree dated 31.10.2017 passed in Title Appeal No. 66 of 2006 by the learned Additional District Judge 2nd Saran, Chapra whereby judgment and decree dated 22.07.1999 passed in Partition Suit No. 289 of 1994 by the learned Sub Judge 1st Saran, Chapra has been affirmed.

The plaintiff was the original respondent no. 1 in the present Second Appeal, who died on 08.04.2019 during the pendency of this appeal. She was issueless widow and her



husband namely, Krishna Rai had already died, who had one brother namely, Dhruv Rai. Dhruv Rai is already on record as respondent no. 2. Father-in-law and mother-in-law of respondent no. 1(Plaintiff) are no more. The plaintiff had executed deed of gift in favour of Prabhawati Devi, who is already on record as respondent no. 3. The name of respondent no. 1 was deleted by the order dated 14.07.2022 passed by a co-ordinate Bench.

The case of the plaintiff is that Dular Bhagat was the common ancestor of the parties, who died leaving behind him a son Baldeo Raut, who also left behind him only one son Ram Lakhan Raut. The said Ram Lakhan Raut also died leaving behind him his two sons namely Parma Rai and Amodha Raut. Amodha Rai (defendant no. 1) had also two sons namely, Krishna Rai and Dhruv Rai. Krishna Rai also died leaving behind his wife namely, Gyanti Kuer, as his only heir having no issue. Gyanti Kuer, widow of the deceased Krishna Rai was the plaintiff while Dhruv Rai was defendant no. 2 and his wife Sushila Devi was defendant no. 3. Chaurasiya Devi wife of Amodha Rai also intervened during the pendency of the case and she was made party as defendant no. 4. After the death of Ram Lakhan Raut, the entire lands came in possession of his



two sons namely, Parma Rai and Amodha Rai (defendant no. 1). It is further contended that Parma Rai, full brother of Amodha Rai, also died leaving behind his wife Kaushalya Devi but while he was alive, the land recorded in the name of Baldev Raut and Ram Lakhan Raut and were divided between two brothers namely Parma Rai and Amodha Rai and accordingly Parma Rai remained in possession of land allotted to his shares and half of the land remained in possession of defendant no. 1 (Amodha Rai). Further case of the plaintiff is that defendant no. 2 being a handicapped was married with defendant no. 3 but after the said marriage, the behaviour of defendant no. 1 with plaintiff changed. It is further stated that about 10 to 11 years back the family of Amodha Rai (defendant no. 1) separated in mess and residing separately and husband of the plaintiff also started cultivating the lands separately to the extent of his 1/4th share but no any partition was effected in meets and bounds. The husband of the plaintiff died 6-7 years back and after his death, the lands cultivated by her husband came in her exclusive possession. After the death of husband of the plaintiff, behaviour of defendant no. 1 with the plaintiff became very much rude and she was driven out from the matrimonial house for which criminal case was also filed but the same ended in compromise



with intervention of relatives and well wishers. It is contended that defendant no. 3 belongs to a very poor family and for that reason only, her marriage was performed with defendant no. 2. After sometime, defendant no. 1 transferred the lands of schedule 3 in favour of defendant no. 3 by virtue of registered sale deed for some ulterior motive. The said transfer, in fact, was made with a view to grab up the share of the plaintiff. During the pendency of the suit, defendant no. 1 and 4 also transferred the lands in favour of defendant no. 2 by virtue of registered deed of gift but the said documents being forged and fabricated document never came in operation. The plaintiff has also stated that because the ancestral properties had already been partitioned between two brothers Parma Rai and Amodha Rai, hence, the heirs of Parma Rai have not been made party to the suit. The plaintiff, therefore, sought relief to partition the entire land mentioned in different schedules to the plaint and pass decree in respect of $\frac{1}{4}$ share as also to declare the sale deed executed by defendant no. 1 in favour of defendant no. 3 as without consideration, sham and showy and not binding on her.

On the other hand, it appears that three sets of defendants have filed their separate written statements in the suit. Appellant-defendant had filed her written statement



separately in the present case. Defendant no. 1 and 2 had jointly put in their written statement while defendant no. 4 had separately filed her separate written statement to contest the suit. The common defence of these defendants are that the suit is barred by limitation and is not maintainable. They have also taken a plea of non-joinder of necessary party. Defendant no. 1 and 2 (father and son) had contended in their joint written statement that Parma Rai was elder to defendant no. 1 and so long he remained alive, he was the *karta* of the family and out of the nucleus and saving in the family, considerable properties were acquired which are shown in schedule- I to the written statement, but the plaintiff has intentionally not included the same in the plaint and as such the suit suffers from partial partition. The defendant denies the story of partition between two brothers Parma Rai and Amodha Rai. They remained joint till the death of Parma Rai. The ancestral properties are still joint between two sons of Ram Lakhan Raut and, therefore, the heirs of Parma Rai are necessary parties to the suit.

It is stated that 10 years back there was separation between Parma Rai (defendant no. 1) and Amodha Rai and the entire properties were divided to the extent of half each but no any partition in meets and bounds was effected. The defendant



completely denied the statement regarding pleadings that defendant no. 2 was a handicapped person and for that reason he was married with defendant no. 3 who hail from a very poor family. It is further submitted that the family of defendant no. 3 is very rich and sound and out of the Stridhan and savings, defendant no. 3 purchased schedule 3 properties from defendant no. 1(Father-in- law of the defendant no. 3) who was in the necessity of money for the benefit of the joint family. Since the defendant no. 1 is the *karta* of the family therefore, he had a right to dispose of the joint family properties for the benefit of the family and as such the sale deed standing in the name of defendant no. 3 is binding on the plaintiff also and the question of partition of the said property does not arise. The deed of gift and Will executed by defendant nos. 1 and 4 in favour of defendant no. 2 are valid document and they are also binding on the plaintiff. Allegation regarding amount to the tune of Rs. 42,000/- is lying in the Bank of India in the name of defendant no. 2 and similarly allegation that defendant no. 1 has also Rs 41,000/- in the Bank of India has been denied by the defendant in their written statement.

Defendant no. 3 has also filed written statement separately from which, it appears that her written statement is



similar to that of the written statement filed by defendant no. 1 and 2. It is contended that sale deed was executed by defendant no. 1 (father-in-law) in favour of her (defendant no. 3) for the purpose of marriage of his daughter. The sale deed was made by defendant no. 1 as *karta* of the family.

Defendant no. 4 also filed her written statement which is also similar with that of written statement filed by defendant no. 1, 2 and 3 and nothing new has been alleged in her written statement. However, regarding execution of deed of gift dated 08.02.1995, she has stated that the document of aforesaid gift is quite genuine and valid and said gifted land was in possession of the said defendant.

Both the lower courts i.e. the learned trial court as well as learned appellate court after perusing the materials available on record, have held that Parma Rai was, in fact, not joint with his brother, Amodha Rai but there is cogent evidence on the record to show that they were separate and Amodha Rai (defendant no. 1) also dealt with the properties separately which is quite evident from Ext. 1/A. The learned trial court further held that P.W 6, who is the son of Parma Rai, has himself asserted that the entire properties have already been partitioned between the father and his uncle Amodha Rai (defendant no. 1)



and held that there has been complete partition between the two brothers Parma Rai and Amodha Rai, therefore, the properties of Parma Rai are not required to be brought on record nor his heirs are necessary parties to the suit. The learned trial court after detailed discussion held that the sale deed (Ext. A) said to be executed by defendant no. 1 in favour of his daughter-in-law (defendant no. 3) is a sham and showy document. From the evidence on record, it has been established that the consideration money against the sale deed did not pass but it was mere paper transaction. The defendant no. 1 was not examined by the defendant side so that whole truth could have come on record but he was purposely withheld and was not brought to the witness box. In such circumstances, the learned trial court held that the sale deed, in question, cannot be said to be legal and valid document and also held that defendant no. 1 had also no any right to execute such document when admittedly the plaintiff's husband was separate from him. The defendant no. 4 also executed a deed of gift (exhibit A/1) during the pendency of the case which shows that these defendants are in hurry to dispose of the property only with an intention to disentitle the share of the plaintiff and to take away her legal right and two documents exhibit A and A/1 were also declared



as illegal, void and not binding on the plaintiff and held that plaintiff is only entitled to 1/8th share in the suit properties. According to the Hindu Succession Act, the husband of the plaintiff died leaving behind a widow (plaintiff) and mother (defendant no. 4) inherited his properties and the entire properties of the joint family of Amodha Rai in which Krishna Rai (the husband of the plaintiff) was entitled to 1/4th share and after his death his 1/4th share will again devolve upon his widow (plaintiff) and his mother (defendant no. 4), one share each. Hence, plaintiff is entitled to a decree for partition in respect of 1/8th share in the suit properties.

The learned appellate court after analysing the impugned order and evidences on record, has also held that the sale deed executed by Amodha Rai in favour of Shushila Devi is without consideration, sham and showy and during the pendency of appeal intervenor-respondent no. 4 executed gift deed in favour of defendant no. 2, which has not been accepted by the appellate court and confirmed the judgment and decree of trial court.

On perusal of impugned judgment and decree as well as the materials on record, it is apparent that plaintiff was issueless widow of Krishna Rai. On the basis of documentary as



well as oral evidences adduced by the parties, both the courts have held that the property of Ram Lakhan Raut was separate in half each of the two sons of Ram Lakhan Raut, defendant no. 1 Amodha Rai have got half property of Ram Lakhan Raut and both the courts have held that the sale deed executed by defendant no. 1 in favour of defendant no. 3 (Shushila Devi) is sham and showy and executed without any consideration and also without any necessity of the joint family benefits as substantial amount was deposited in the Bank account as well as gift deed executed by defendant no. 4 in favour of defendant no. 2 is also of the period when Title Appeal was pending and both the courts concurrently held that plaintiff is entitled to 1/8th share.

Considering the aforesaid facts and circumstances of the case as discussed above, it is quite apparent that the judgments and decree of the courts below are covered by the findings of fact 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)

Sankalp/-

U			
---	--	--	--

