

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1640 of 2019
In
Civil Writ Jurisdiction Case No.3832 of 2016

1. Md. Ashmuddin @ Md. Asmuddin Son of Late Md. Safi Resident of Mohalla- Pathan Toli, P.S.- Aurangabad, District- Aurangabad. Presently residing at 24, Lock Gate Road, P.O.- Cossipore, P.S.- Chitpore, Kolkata (West Bengal), PIN- 700002.
2. Sabana Khan @ Shabana Khan Wife of Md. Ashmuddin @ Md. Asmuddin Resident of Mohalla- Pathan Toli, P.S.- Aurangabad, District- Aurangabad. Presently residing at 24, Lock Gate Road, P.O.- Cossipore, P.S.- Chitpore, Kolkata (West Bengal), PIN- 700002.

... .. Appellant/s

Versus

1. The State of Bihar through the District Magistrate, Aurangabad.
2. Mohammad Akbar Hussain Kureshi Son of Mohammad Habibullah Kureshi Resident of Mohalla- Ward No.10 Aurangabad, P.S.- Aurangabad, District- Aurangabad.
3. Salma Khatoon Wife of Md. Junaid Ansari and Daughter of Late Md. Safi Resident of Mohalla- Pathan Toli, P.S.- Aurangabad, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bhanu Pratap Singh, Advocate
For the Respondent/s : Mr. Md. Khurshid Alam (AAG-12)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 03-10-2023

Heard the parties.



2. The appellant is aggrieved by the order dated 05.09.2019 passed by learned Single Judge in CWJC No. 3832 of 2016 (preferred by the respondent no. 3) by which after taking into account the submissions put forward by the writ petitioner (the respondent no. 3), the Court held that the award in question dated 12.05.2011 and 21.06.2011 passed by the permanent Lok Adalat, Aurangabad in Pre-Litigation Case No. 24 of 2011 be set aside in view of the fact that permanent Lok Adalat do not have jurisdiction to entertain Pre-Litigation case in connection with validity of gift in question. Thus, the prayer was allowed and the order passed by the permanent Lok Adalat in Pre-Litigation Case No. 24 of 2011 was set aside.

3. Both the appellant no. 1 as also the writ petitioner-respondent no. 3 are brother and sister while the appellant no. 2 is the wife of the appellant no. 1.

4. The case in nutshell is/are that Late Md. Safi and Bibi Khairunnisa (parents of the appellant no. 1) were having landed properties in the district of Aurangabad. Bibi Khairunnisa died earlier while Md. Safi died in the year 1998.

5. The couple were blessed with five sons and four daughters namely, Md. Alimuddin, Dr. Md. Mohiuddin, Md. Ashmuddin (the appellant herein), Md. Shamshuddin, Md.



Allauddin (all sons), Saleha Khatoon, Saimunnisa, Salma Khatoon (respondent no. 3 herein) and Shamima Khatoon (all daughters).

6. Further in the year 2004, all the brothers and sisters save and except Samima Khatoon jointly executed a registered general power of attorney in favour of Salma Khatoon for 3 '*kathas*' 7 '*dhurs*' of land in khata no. 98, plot no. 347.

7. Later, the appellant no. 1 herein executed a deed of gift in favour of his wife (appellant no. 2) on 13.04.2011. This was done behind the back of the other claimants of late Md. Safi and Bibi Khairunnisa claiming that it was gifted by his father.

8. Thereafter, the appellant no. 2 filed Pre-Litigation Case no. 24 of 2011 on 27.04.2011 impleading the appellant no. 1 (the husband) as opposite party. Thereafter, they took the matter to permanent Lok Adalat held at Aurangabad on 12.05.2011 and 21.06.2011 and on the basis of compromise petition, the same got stamped through the Lok Adalat in Pre-Litigation Case No. 24 of 2011.

9. Aggrieved and upon knowledge of the same, the writ petition was preferred by the sister, Salma Khatoon stating that since they were never impleaded as opposite party in Pre-



Litigation Case No. 24 of 2011, the same is not binding upon them. Further, the Title Suit no. 193 of 2015 and Title Suit no. 194 of 2015 were also filed in the matter.

10. The writ petition was taken up by the learned Single Judge on 05.09.2019 and the following order was passed :

“Despite valid service of notice, the respondents no. 2 and 3 have not bothered to appear before this Court, however the respondent no. 4 has duly entered his appearance through the learned counsel appointed by him. It is jointly submitted by the learned counsel for the parties that since two Title Suits are already pending, bearing Title Suit no. 193 of 2015 and Title Suit no. 194 of 2015, before the learned Sub-Judge, Aurangabad, the award in question dated 12.05.2011 and 21.06.2011 passed by the permanent Lok Adalat, Aurangabad in Pre-litigation case no. 24 of 2011 be set aside, especially in view of the fact that the Permanent Lok Adalat was not having jurisdiction to entertain pre-litigation case in connection with the validity of the Gift Deed in question.



Accordingly, the order dated 12.05.2011 and 21.06.2011 passed by the Permanent Lok Adalat in Pre-litigation case no. 24 of 2011 is set aside, with consent of the parties.

The writ petition stands allowed.”

11. Aggrieved by the writ Court's order, now it was the turn of the couple to approach this Court in the present appeal.

12. Heard the parties.

13. Learned Counsel for the appellants submit that admittedly the land was gifted by the parent of appellant no. 1 to him which he gifted to his wife. Some dispute arose between the couple which led the lady to file the Pre-Litigation Case No. 24 of 2011 against the appellant no. 1 and later, they came to compromise which resulted into grant of award by the permanent Lok Adalat on 12.05.2011 and 21.06.2011.

14. Although he conceded that for a piece of land, a power of attorney was executed in favour of the writ petitioner-respondent no. 3 but she in turn sold the plot no. 346 under khata no. 98 to one Sanjida Khatoon in January, 2012 without having any right to sell the said land.

15. The further submission is that appellant no. 2 also



executed a sale deed on 09.10.2012 in favour of respondent no. 2 with respect to the said land.

16. We have heard learned Counsel for the appellants and have perused the documents on record as also the order of the learned Single Judge dated 05.09.2019.

17. On the basis of the claim that the father of the appellant no. 1 gifted a piece of land to him, the appellant no. 1 gifted it to his wife (the appellant no. 2). Further, as the dispute arose, Pre-Litigation Case no. 24 of 2011 was filed which ultimately led to passing of award by the permanent Lok Adalat on 12.05.2011 and 21.06.2011. In the entire episode between the couple, none of the appellant no. 1's family member was made party.

18. In the writ petition, as observed by the learned Single Judge despite valid service of notice, the appellant chose not to appear/contest.

19. Further, this Court has noticed that Title Suit no. 193 of 2015 and Title Suit No. 194 of 2015 are pending before the learned Sub-Judge, Aurangabad and the parties will have all the opportunities to contest their respective claims by putting forward their submissions/documents/witnesses etc. The appellants being the sole parties in the pre-litigation case, the



award passed does not bind the other claimants to the property. At best it can only regulate the rights of the husband & wife and in that circumstance, it is to be taken as a collusive affair. The award passed in the Pre-litigation case does not in any manner affect the rights of the other claimants to the property.

20. In the aforesaid background, the order dated 05.09.2019 in CWJC No. 3832 of 2016 passed by the learned Single Judge needs interference only to the extent of the consent recorded to set aside the award. The award cannot regulate the rights of the other claimants to the property, the siblings of the first appellant or their legal heirs.

21. The appeal stands disposed off with the above observation.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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