

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.278 of 2017

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Sujit Kumar son of Late Satto Mahto, resident of village +P.O. and P.S. Baheri, Dist. Darbhanga

... .. Plaintiff/Appellant/s

Versus

1. Shivji Sharma son of Nathuni Sharma
2. Upendra Sharma son of Shivji Sharma
3. Ram Vilash Sharma son of Ramjee Sharma
4. Lakshmn Sharma son of Ramjee Sharma

All R/o village + P.O. and P.S. Baheri Dist. Darbhanga

... .. Defendant/Respondent 1set

5. Vijay Kumar Mahto son of late Satto Mahto, resident of village + P.O. and P.S. Baheri, Dist. Darbhanga.

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Appearance :

For the Appellant/s	:	Mr. Bhubneshwar Prasad, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

7 04-07-2024 This Second Appeal has been filed against the judgment and decree dated 28-02-2017, passed by 3rd Additional District Judge, Darbhanga, in Title Appeal No. 52 of 2010 affirming the judgment dated 30-08-2010 passed by Sub Judge IV Darbhanga, in Title Suit No. 29 of 2005.

2. The plaintiff No.1 is the appellant before this Court. So far Plaintiff No.2 is concerned, he did not choose to assail the judgment of both the learned Courts below and he did not file any appeal before this Court, and as such, the appellant made him as respondent No.5 in the instant Second Appeal. The plaintiffs filed suit for declaration of title and recovery of possession, which was dismissed by the learned Trial Court.



Aggrieved by the judgment of the learned Trial Court the plaintiffs filed Title Appeal No. 52 of 2010, which also got dismissed by the learned Appellate Court on 28-02-2017.

3. The case of the plaintiffs is that they assert their claim on the basis of oral gift as well as registered gift deed executed by Purni Devi widow of Ram Mahto (Ram Mahto died in the year 1910) *vide* registered sale deed dated 26-02-1941, in favour of ancestor of the plaintiffs. Both the Courts below have held that ancestor of the plaintiffs have no right, title or interest on the basis of gift deed. The said land was executed by Purni Devi in favour of the ancestor of the defendants in the year 1911. The learned Appellate Court mentioned that on perusal of evidence of PW-6, who is appellant No.1 in the learned lower appellate Court, it is transpired that he has stated that the disputed land of CS plot No. 4846 out of which one katha 16½ dhurs was sold by his ancestor Bachchu Mahto to one Mahabir Mandal through registered sale deed (Ext.1) and disputed land CS Plot no. 4846 is situated in the north of the same. From perusal of Ext. 1, it appears that in the northern boundary name of Nathuni Mistry is mentioned, who is the ancestor of the defendants, which shows that plaintiffs-appellants also admit that suit plot is situated in the north of land



of Mahabir Mistry. No documentary evidence has been filed on behalf of the plaintiffs-appellants to show that after the said oral gift, the plaintiffs were in possession of the disputed land. It is the case of the plaintiffs that father of plaintiffs orally let out the suit land to Nathuni Mahto on monthly rental, but the plaintiffs could not produce any cogent documentary evidence against Exts. F and B.

4. On the other hand, considering the documentary evidence produced by the defendants-respondents, it appears from Ext. F that Purni Devi executed sale deed of suit land in favour of Gopi Mahto and Ext. B shows that said Gopi Mahto executed deed of mortgage dated 21.02.1929 in favour of Nathuni Mahto with respect to suit land and Ext. B/1 shows that Nunuwati Devi wife of Gopi Mahto and she and on behalf of her minor son executed sale deed in favour of defendants with respect of suit land and Exts. A and C shows that *Jamabandi* receipt issued by the landlord and rent receipt were issued in the name of Nathuni Mahto. It appears from Exts. D and D/1 that RS Khatyan of Khata No. 1154 and 1073 which are carved out from CS khata no.833 CS plot no. 4846 is in the name of Nathuni Mahto, father of the defendant-respondent no.1. This fact has not been disputed by the plaintiffs. Survey



purcha with respect to CS khata no. 883 was in the name of said Nathuni Mistri. Plaintiffs have proved only three documents Ext.1, and Ext.2 gift deed and Kewala and Ext. 3 information petition under Section 144 Cr.PC with respect to suit land. The defendants have produced and proved series of documents with respect to the suit land. So presumption goes in favour of the defendants. Both the court below have held that Purni Devi was fully entitled to execute sale deed in favour of Gopi Mahto in the year 1911 herself and on behalf of her minor son and on the basis of Ext. F defendants are coming in possession over the suit land. She had no right to execute a registered gift deed with respect to the same land in favour of the ancestor of the plaintiffs and on the basis of Ext. 2 delivery of possession of the disputed land had not been transferred from the doner to donee. Both the court below have rightly held that the said registered gift deed is not valid under the law.

5. In view of 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 finding of facts and no question of law much less substantial question of law arises for consideration in the instant Second Appeal.



6. Accordingly, this Second Appeal is dismissed at the stage of admission itself under Order XLI Rule 11 of the Civil Procedure Code.

(Khatim Reza, J)

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