

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.70 of 2019

Mukesh Kumar Son of Sri Nawal Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna at present village-Barigora, Ps-Parsudih, Po-Rahargora, District-Jamshedpur

... .. Appellant/s

Versus

1. Deo Kali Devi Wife of Late Laxmi Narain Singh Resident of Village-Baraipur, Po-Dihari now Barah, Ps-Punpun, District-Patna
2. Rabindra Kumar Singh @ Nepali Son of Late Laxmi Narain Singh Resident of Village-Baraipur, Po-Dihari now Barah, Ps-Punpun, District-Patna
3. Jai Prakash Singh @ Bhola Son of Late Laxmi Narain Singh Resident of Village-Baraipur, Po-Dihari now Barah, Ps-Punpun, District-Patna
4. Sunil Kumar Singh Son of Late Laxmi Narain Singh Resident of Village-Baraipur, Po-Dihari now Barah, Ps-Punpun, District-Patna
5. Meenwa Devi D/o Late Laxmi Narain Singh, W/o Sri Indradeo Singh Resident of Village-Berthu, Tarawan, Ps-Dhanarua, Po-Paveri, District-Patna
6. Bijwanti Devi D/o Late Laxmi Narain Singh, W/o Sri Kamod Singh Resident of Village- Khajpura, Po-Vetnenari College, Ps-Rupaspur, District-Patna
7. Sri Nawal Kishore Singh Son of Late Ram Baran Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna
8. Sri Akhilesh Kumar Son of Sri Nawal Kishore Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna
9. Sri Jagdish Singh Son of Late Chhatrapati Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna
10. Sri Bijindra Singh Son of Late Mithila Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna
11. Sri Yogendra Singh Son of Late Mithila Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna
12. Sri Pintu Singh Son of Sri Bijindra Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna
13. Sri Rintu Singh Son of Sri Bijindra Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna
14. Sri Sanjay Singh Son of Sri Jogendra Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna
15. Sri Dhananjay Singh Son of Sri Jogendra Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna
16. Sri Upendra Singh Son of Sri Jagdish Singh Resident of Village-Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna
17. Sudhir Singh Son of Sri Jagdish Singh Resident of Village- Chaduaara, Po-Jet Dumari, Ps-Punpun, District-Patna



... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pravashankar Mishra, Advocate
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

11 11-02-2025 Heard learned counsel for the appellant.

2. This second appeal has been filed by plaintiff-appellant-appellant against the judgments and decree of affirmance.

3. The matter arises out of Title Suit No. 356 of 1999, which was filed by plaintiff for declaration that the preliminary and final decree passed in Title Suit No. 20/1981 by the learned Sub-Judge-II, Patna is illegal, fraudulent, void and not binding upon the parties and the same be set aside and also be declared that the deed of gift dated 15-04-1991 executed by Nath Kuer in favour of Laxmi Narayan Singh and the order dated 04-12-1999 passed by the Circle Officer, Punpun in Mutation Case No. 87/1996-1997 are illegal, void and not binding along with the relief of injunction.

4. The aforesaid suit was dismissed by the learned Sub Judge-VII, Patna, vide judgment and decree dated 30-05-2006 against which the plaintiff-appellant filed Title Appeal No. 75 of 2006, which was also dismissed by the



learned Additional District Judge -X, Patna vide its judgment and decree dated 30-11-2018. Against the aforesaid judgment and decree of the learned Court of appeal below, the instant second appeal has been filed by the plaintiff- appellant.

5. The case of the plaintiff is that Nath Kuer (original defendant no.1) filed a Title Partition Suit No. 20 of 1981 against the plaintiff and defendants for 1/4th share in the joint family property with wrong and incorrect address of the plaintiff and other defendants. The further case of the plaintiff is that the plaintiff and one Mithila Singh were residing in Jamshedpur as they were in job at Jamshedpur. It is specifically stated that no summon of Title Partition Suit No. 20 of 1981 was ever served to him. It is further pleaded that plaintiff of Title Partition Suit No. 20 of 1981 filed '*Vakalatnama*' of Jagdish Singh and Nawal Kishore (father of the plaintiff) and Yogendra Singh by forging their respective signatures. It is further pleaded that Nawal Kishore never executed any '*Vakalatnama*' and never appointed any advocate in the suit in question. *Guardian ad litem* (GAL) appointed on the petition of the plaintiff in that suit for this plaintiff and other minor defendants had not properly protected the interest thereof. The defendant no.1 (plaintiff of Title Partition Suit No. 20/1981) by playing fraud obtained a decree



of partition.

6. On the other hand, defendant Nos. 1 and 2 pleaded that defendant no.1 had filed Title Partition Suit No. 20 of 1981 against the plaintiff and defendant nos. 3 to 15 with their correct address on which process were served on all the defendants. It is further pleaded that Naval Kishore Singh, Jagdish Singh and Jogender Singh appeared and filed 'Vakalatnama' on their behalf and their sons, but they left *pairvi*. The other defendants did not appear. It is further pleaded that at that time, the plaintiff and his brother Akhilesh Singh were minors under the guardianship of their father as Guardian, and as such, *Guardian ad litem* (GAL) was appointed for minors and he filed written statement on their behalf and contested the suit, thereafter, a preliminary decree for partition was passed. No any fraud was played by the defendant No.1, namely, Nath Kuer in that suit.

7. Separate written statement has also been filed on behalf of defendant nos. 3, 6, 8,10,11 and 13. It is contended that Tota Singh died long ago in the state of jointness, leaving behind his two sons, namely, Achay Lal Singh and Chatrapati Singh, who came in joint possession of entire joint family property, which is agricultural land as well as homestead land. Thus, these defendants have supported the case of the plaintiff



with respect to the partition between the parties in the year 1969 followed by a memorandum of partition as well as residing place at Jamshedpur and in support of their pleadings, seven witnesses have been examined on behalf of defendant nos. 4 to 6, 8,10, 11 and 13 and also filed memorandum of partition (Ext. A/A) dated 05-04-1979 and rent receipt (Ext. B series) in support of their case. Defendant nos.1 & 2 have filed certified copy of judgment and final decree, order sheets of Title Partition Suit No. 20 of 1981, certified copy of delivery of possession report and order dated 19-09-1990 of Execution Case No. 5/89, certified copy of order dated 04-12-1998 passed in Mutation Case No. 87/96-97 which were marked as Exts. C, D, E, F, G, and H respectively.

8. After hearing the learned counsel for the appellant and on perusal of the materials on record, including the judgment of the learned courts below, it appears that the learned Court of appeal below, which is the final court of facts, after considering the pleadings of the parties and evidence adduced by them came to a clear finding that the plea regarding non serving of summons as taken by the plaintiff has not been proved by the plaintiff. The plaintiff has not called for summons and *Vakalatnama* filed in the aforesaid suit, nor he has produced any



documents that Ram Baran Singh, Mithla and Nawal Singh were residing at Jamshedpur at that time when the alleged *Vakalatnama* said to have been executed by them was filed. The plaintiff-appellant was duty bound to prove the fact that no notice was ever served in Title Partition Suit No. 20 of 1981. The plaintiff did not take any step to call for the service report from the records of Title Partition Suit No. 20 of 1981. The learned Court below has further held that the plaintiff has failed to call for the '*Vakalatnama*' filed in Title Partition Suit No. 20 of 1981 and get it confirmed by sending the same to handwriting expert. The learned Court of appeal below has further held that the plaintiff has failed to prove that any fraud was committed on the part of the defendant-respondent in Title Partition Suit No. 20 of 1981 and has further observed Nath Kuer, after getting the final decree, has rightly executed the deed of gift dated 15-04-1991 in favour of her brother Laxmi Narayan Singh. Considering the aforesaid facts and circumstances, the learned court of appeal below affirmed the judgment and decree of learned Trial Court and dismissed the appeal.

9. After hearing the submissions made on behalf of the appellant and after perusal of materials on record, including



the judgment of the learned Courts below, it would appear that the specific case of the plaintiff is that there is non service of summons and non execution of '*Vakalatnama*' in Title Partition Suit No. 20 of 1981, but the said summons and '*Vakalatnama*' have not been brought on record nor any steps have taken by the plaintiff to call for the same to disprove the personal service and forged signature on the said '*Vakalatnama*'. The plaintiff has vehemently taken a plea that prior to that suit an oral partition was taken place in the year 1969-70 followed by a memorandum of partition (Ext. A/A) dated 05-04-1979 by the *Panches*. The *panches* were examined on behalf of the plaintiff and they stated, in their evidence, that they were appointed by all the parties, who signed on memorandum of partition. But, both the courts below, from perusal of the memorandum of partition, have held that only two persons, namely, Jagdish Singh and Mithla Saran Singh have signed thereon and the signature of other parties, including defendant no.1 Nath Kuer have not been found. It shows that defendant no.1 has not signed thereon nor the grandfather of the plaintiff, Rambaran Singh has signed. The *panches*, in their evidence, have disclosed that the defendant no.1, Nath Kuer was not present at the time of preparation of memorandum of partition nor she



signed. This specific finding has been given by the learned Trial Court in its judgment. Both the learned courts below have rightly disbelieved the case of plaintiff with regard to partition followed by memorandum of partition. The said memorandum of partition was not signed by all the members of the joint family. Though at the time of filing of the present suit, Rambaran Singh was alive, but he did not challenge the decree passed in Title Partition Suit No. 20 of 1981. It is apparent from the records that the land in question was given in possession of Nath Kuer in Execution of final decree on 19-09-1990 and the gift deed was executed by Nath Kuer in favour of her brother Laxmi Narayan Singh on 15-04-1991 and the mutation order in favour of Laxmi Narayan Singh was passed on the basis of the gift deed dated 15-04-1991 and therefore, the gift deed followed by possession is legal and valid.

10. Considering the aforesaid facts and circumstances as well as materials on record, it is quite apparent that the impugned judgment and decree of the courts below are covered by the findings of fact and no question of law, much less substantial questions of law arises for consideration in the instant Second Appeal.

11. Accordingly, this appeal is dismissed at the stage



of hearing under Order XLI Rule 11 of the Code of Civil Procedure.

12. Interlocutory applications, if any, shall stand disposed of.

(Khatim Reza, J)

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