IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.161 of 2023

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Kailash Nath Pandey Son of Late Supan Pandey Resident of Village Khalpura Kamla Goltenganj, P.S.- Chapra Muffasil, P.O.- Goltenganj, District- Saran.

... ... Appellant/s

Versus

1. Shambhunath Pandey Son of Late Supan Pandey Resident of Village Khalpura Kamla Goltenganj, P.S.- Chapra Muffasil, P.O.- Goltenganj, District- Saran.
2. Kumar Ravi Shankar @ Niraj Kumar Pandey Son of Shri Shambhu Nath Pandey Resident of Village Khalpura Kamla Goltenganj, P.S.- Chapra Muffasil, P.O.- Goltenganj, District- Saran.
3. Kumar Rajeev Ranjan @ Bablu @ Dablu Son of Shri Shambhu Nath Pandey Resident of Village Khalpura Kamla Goltenganj, P.S.- Chapra Muffasil, P.O.- Goltenganj, District- Saran.
4. Sanjeev Kumar @ Dablu Son of Shri Shambhu Nath Pandey Resident of Village Khalpura Kamla Goltenganj, P.S.- Chapra Muffasil, P.O.- Goltenganj, District- Saran.
5. Renuka Devi Wife of Jai Mangal Singh, Daughter of Shambhunath Pandey Resident of Village Sihariya, P.O.- Berue, P.S.- Baniyapur, District- Saran.
6. Smt. Sunita Mishra Wife of Harendra Mishra, Daughter of Shambhunath Pandey Resident of Village Maghor, P.O.- Sultanpur, P.S.- Basantpur, District-Siwan.
7. Laxmina Devi Wife of Kailash Nath Pandey Resident of Village Khalpura Kamla Goltenganj, P.S.- Chapra Muffasil, P.O.- Goltenganj, District- Saran.

... ... Respondent/s

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with

SECOND APPEAL No. 160 of 2023

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Laxmina Devi, Wife of Kailash Nath Pandey Resident of Village Khalpura Kamla Goltenganj, P.S.- Chapra Muffasil, P.O. Goltenganj, District- Saran.

... ... Appellant/s

Versus

1. Shambhunath Pandey, Son of Late Supan Pandey Resident of Village Khalpura Kamla, P.S.- Chapra Muffasil, P.O. Goltenganj, District- Saran.
2. Kumar Ravi Shankar @ Niraj Kumar Pandey, Son of Shri Shambhu Nath Pandey Resident of Village Khalpura Kamla, P.S.- Chapra Muffasil, P.O. Goltenganj, District- Saran.
3. Rajeev Ranjan @ Bablu, Son of Shri Shambhu Nath Pandey Resident of Village Khalpura Kamla, P.S.- Chapra Muffasil, P.O. Goltenganj, District- Saran.
4. Sanjeev Kumar @ Dablu, Son of Sri Shambhu Nath Pandey Resident of

Village Khalpura Kamla, P.S.- Chapra Muffasil, P.O. Goltenganj, District- Saran.

5. Renuka Devi, Wife of Jai Mangal Singh, Daughter of Shambhunath Pandey Resident of Village Sihariya, P.O.- Berue, P.S.- Baniyapur, District- Saran.

6. Smt. Sunita Misra, Wife of Harendra Mishra, Daughter of Shambhunath Pandey Resident of Village Maghor, P.O.- Sultanpur, P.S.- Basantpur, District- Siwan.

... ... Respondent/s

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Appearance :
(In SECOND APPEAL No. 161 of 2023)

For the Appellant/s	:	Mr. Pushkar Narayan Shahi, Sr. Adv. With Mr. Shivam, Adv.
For the Respondent/s	:	Mr. Raghib Ahsan, Sr. Adv. With Mr. Sunil Kumar, Adv.

(In SECOND APPEAL No. 160 of 2023)

For the Appellant/s	:	Mr. Pushkar Narayan Shahi, Adv. With Mr. Shivam, Adv.
For the Respondent/s	:	Mr. Raghib Ahsan, Sr. Adv. With Mr. Sunil Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA

CAV ORDER

6 24-07-2025 Heard Mr. Pushkar Narayan Shahi, learned counsel for the appellant and Mr. Raghib Ahsan, learned senior counsel for the respondents.

2. The present two appeals arise out of the common judgment and decree dated 13.02.2023 of affirmance passed in Title Appeal No. 38 of 2017 and Partition Appeal No. 45 of 2017 by the learned Additional District Judge-Vth, Saran, whereby the learned Appellate Court upheld the common judgment and decree dated 17.03.2017 passed in Partition Suit No. 01 of 1991 and Title Suit No. 61 of 1992.

3. The Partition Suit No. 01 of 1991 was filed by the plaintiff, namely, Kailash Nath Pandey to carve out one-fourth

share over the properties given in Schedule Nos. I to IV of the plaint.

4. The Title Suit No. 61 of 1992 was filed by Sambhunath Pandey and Kishori Devi, who were defendant nos. 3 and 4 in Partition Suit No. 01 of 1991 for setting aside the gift deed dated 25.02.1991 executed by Supan Pandey and Tetra Devi in favour of Laxmina Devi wife of Kailash Nath Pandey (plaintiff of Partition Suit No. 01 of 1991) on the ground that the gift deed is forged, fabricated, illegal, invalid and void document. Both the Partition Suit No. 01 of 1991 and Title Suit No. 61 of 1992 were amalgamated and tried together by the learned Trial Court.

5. In Partition Suit No. 01 of 1991, the plaintiff has pleaded that Supan Pandey is the *karta* of joint hindu family. The defendant nos. 1 and 2 are the father and mother of the plaintiff and defendant no. 3 is the brother of plaintiff. Defendant no. 4 is the wife of defendant no. 3, namely, Sambhu Nath Pandey. It is further case of the plaintiff that the family of the plaintiff has 12 *Bighas* of ancestral land which is fertile land and paddy crops, wheat, potato, onion and sugarcane were grown up and from the usufruct of the said property and income from joint family property, the joint family has purchased the

land in Patna and Nawada town over which there is joint possession of the family. It is further contended that the defendant no. 4 was very clever lady and had got the confidence of the joint family. It is further pleaded that some of the lands were purchased in the name of defendant no. 4 from the income of the joint family over which the defendant no. 4 is mere a trustee. The details of the ancestral property has been given in Schedule-I, the details of purchased property has been given in Schedule-II, the details of residential property has been given in Schedule-III and the details of orchard has been given in Schedule-IV of the plaint. The plaintiff has ¼ th share over the properties mentioned in schedules and defendant no. 4 has no share on the ancestral property but to avoid the dispute in future she has also been made party to the suit. It is further contended that partition has not taken place by metes and bounds and the defendants have denied partition. Hence, the suit arose.

6. On summons, defendant no. 1, namely, Supan Pandey has filed his written statement and supported the case of the plaintiff and stated that the partition in the family has taken place on the day of *Makarshankranti*, 1991.

7. On the other hand, defendant no. 4 appeared and filed his written statement and pleaded that she has purchased

some properties from her *streedhan* and plaintiff has also included the same for partition which is mentioned in the Schedule-I of the written statement. It is further pleaded that the husband of the defendant no. 4 was in Government service and she has also got jewellery and cash money from her father and mother. So, she has collected the money from which she has purchased some land over which she has got possession. It is further contended that defendant no. 1, namely, Supan Pandey was an advanced age person of 85 years and he was the patient of Asthama and his mental condition was not stable and defendant no. 2 Tetra Devi was dumb and deaf by birth. The plaintiff used to live in the house and he has prepared some document by taking benefit of mental condition of defendant nos. 1 and 2. The plaintiff is the *karta* of the family and not the defendant no. 1. It is further pleaded that husband of the defendant no. 4 sent money which was earned from his service by which the joint family properties were purchased. It is specifically mentioned that no property from the joint family fund has been purchased in Patna and Nawada. Some property has been purchased by the defendant no. 4 from her *streedhan*. No property has been purchased by the joint family fund by making this defendant as trustee. The plaintiff has not included some land which has been purchased by the joint family fund. It is further submitted that no partition in the joint family has taken place. The defendant no. 4 is not a coparcener and she should not be made a party in the suit. Hence, the suit is mis-joinder of parties.

8. A separate written statement has also been filed by defendant no. 3, namely, Sambhunath Pandey, who is the husband of defendant no. 4, supporting the case of defendant no. 4 and further contended that he joined the job and entered in service in the year 1964 and before his appointment, financial condition of his family was not good. The joint family property has been purchased from earning which was saved by him. It is further pleaded that the plaintiff wants to take the whole joint family property. It is vehemently submitted that defendant nos. 1 and 2 were not able to come to the court and taking benefit of their mental and physical condition, the plaintiff had filed *vakalatnama* of defendant no. 1 and a forged and fabricated gift deed had been made to be executed in the name of his wife. This defendant had taken certified copy of the gift deed and came to know about the fraudulent act of the plaintiff. Further, he has stated that the gift deed is void because the defendant nos. 1 and 2 were not in a proper mental capacity to execute any deed.

Hence, it has been obtained by undue influence. Further, it is contended that it is not legally executed and duly attested. The registration of the said deed has been done by impersonating before Registrar in place of defendant nos. 1 and 2. The personal properties of his wife has also been included in the gift deed and prayed to reject the suit.

9. The intervenor defendant no. 5, namely, Laximina Devi has also filed her written statement and she has supported the case of the plaintiff. It is further pleaded that the partition among the joint family had taken place on the day of *Makarsankranti* in the year 1991. She has not denied the income of defendant nos. 3 and 4 but she has stated that Supan Pandey also had his own income. Supan Pandey had purchased some properties from his income which is the joint family property. It is vehemently submitted that Plot Nos. 293, 70, 385, 386, 95 and 404 are the personal properties of Supan Pandey and joint family has got nothing to do with it. It is vehemently submitted that defendant nos. 1 and 2 had executed a gift deed in favour of her and she has got half share of the joint family property. Defendant nos. 3 and 4 were not giving any income to the joint family and their behaviour towards their parents were also not good due to which defendant nos. 1 and 2 had executed the gift

deed in favour of defendant no. 5 on 25.02.1991.

10. So far Title Suit No. 61 of 1992 which was filed by the plaintiffs, who are also defendant nos. 3 and 4 in Partition Suit No. 01 of 1991 is concerned, it was filed for declaring the gift deed dated 25.02.1991 as forged, fabricated, invalid, inoperative and not binding upon the plaintiffs and is liable to be set aside. During the pendency of the aforesaid partition suit bearing Partition Suit No. 01 of 1991, Supan Pandey died on 04.01.1992 leaving behind his two sons, namely, Kailash Nath Pandey and Sambhunath Pandey. It is further pleaded that two and half years before the death of Supan Pandey, his mental condition was not good and he was also suffering from Asthama. Plaintiff no. 1 was in service since 1964 and due to illness of Supan Pandey, Kailash Nath Pandey became *karta* of joint family. The mother of plaintiff no. 1 and Kailash Nath Pandey (plaintiff of Partition Suit No. 01 of 1991) was dumb and deaf by birth and she was not in a capacity to do anything. Kailash Nath Pandey has made Supan Pandey as his puppet and got a gift deed executed just after filing of Partition Suit No. 01 of 1991. It is pleaded that Kailash Nath Pandey has also included the properties of the wife of plaintiff no. 1, namely, Kishori Devi in the present suit and he has prepared a forged

and fabricated gift deed just after filing the partition suit as Kailash Nath Pandey has included the property of the wife of plaintiff no. 1, hence, she was made plaintiff as plaintiff no. 2 in the present case. The gift deed dated 25.02.1991 is forged and fabricated and is liable to be set aside.

11. It is further pleaded that at the time of execution of gift deed, the properties were joint. Hence, defendant nos. 1 and 2 had no right to execute the gift deed with regard to joint family property. Supan Pandey and Tetra Devi was not willing to execute a gift deed in favour of Laximina Devi, defendant no. 1 and their signature and thumb impression have been taken on the plain stamp paper by exercising undue influence. The gift deed is not legally executed and attested and there is no offer and acceptance regarding the same. Supan Pandey and Tetra Devi never appeared before the Registrar. It is further pleaded that Supan Pandey and his wife had no right to execute the gift deed regarding the purchased property of Plaintiff no. 2, Kishori Devi, hence, this gift deed is illegal. Plaintiff no. 2 has purchased the land in her name from her *streedhan* which she had got from earning of her husband and also from her father and her mother. Defendant no. 1, Laxmina Devi, got no possession over the same. It is further contended that when the

plaintiffs came to know about the alleged gift deed, then, he told to defendant no. 1 to execute return deed but she did not execute the same. Hence, this suit has been filed.

12. Defendant no. 1 Laxmina Devi (Title Suit No. 61 of 1992) has filed her written statement. Besides the formal denial, she has pleaded that the joint family of Supan Pandey was partitioned on the day of *Makarsankranti* in the year 1991 by which Supan Pandey and his wife got half share and their two sons, namely, Kailash Nath Pandey and Sambhunath Pandey got one-fourth share. It is further contended that Supan Pandey got married the daughters of the plaintiffs and arranged for the education of their sons by helping them financially. Hence, Supan Pandey had asked the plaintiff no. 1 to give some money for marriage and education of children of defendant no. 1, but the plaintiff did not accept the same and then the gift deed was executed. It is further pleaded that some properties from the joint family fund have been purchased in the name of plaintiff no. 2, namely, Kishori Devi as trustee. It is further submitted that the conduct of defendant was good towards Supan Pandey and his wife but the conduct of the plaintiffs was not good towards them. Hence, they have offered defendant no. 1 to execute the gift deed which has been accepted by her.

Thereafter, Supan Pandey had purchased the stamp paper and gift deed was executed over which Suresh Sharma and Kameshwar Sharma were the witnesses. The gift deed was presented before the Registrar and it was duly executed. Thereafter, this defendant got possession over 6 Bighas, 14 Katha and 9 ¾ dhurs land. It is further denied that Supan Pandey was suffering from any diseases and his mental condition was good and he was *karta* of the family till the partition had taken place. It is vehemently submitted that at the time of death of Supan Pandey, his age was 64-65 years. It is a wrong to say that the wife of Supan Pandey was dumb and deaf by birth. Both the husband and wife had executed the gift deed in their fit mental condition in favour of defendant no. 1 Laxmina Devi. Recently, the plaintiffs have taken the wife of Supan Pandey in their favour and she was placed in the Court by tutoring that she has nothing to say in the Court. The Court has pointed out the demeanour of Tetra Devi regarding this but this witness was tutored. There is no undue influence of Kailash Nath Pandey over Supan Pandey. The Partition Suit No. 01 of 1991 has not been filed in order to execute a gift deed by taking the benefit of mental condition of Supan Pandey. The gift deed is legally executed and attested and has not been obtained by undue influence and it is not forged and fabricated document.

13. On the basis of the pleadings of both the parties in Partition Suit No. 01 of 1991 and Title Suit No. 61 of 1992, the issues were framed as both the Partition Suit No. 01 of 1991 and Title Suit No. 61 of 1991 were amalgamated and tried jointly.

14. Learned Trial Court after scrutinizing the evidence and materials on record has held that the plaintiff claimed his one-fourth in the suit property and defendant nos. 1, 2 and 3 have also the share of one-fourth. Since, defendant nos. 1 and 2 died during the pendency of the suit, who were the father and mother of the plaintiff, and defendant no. 3, the share of defendant nos. 1 and 2 of Partition Suit No. 01 of 1991 will devolve equally upon the plaintiff and defendant no. 3. However, the properties purchased in the name of Kishori Devi (plaintiff no. 2 of Title Suit No. 61 of 1992) is not a joint family property. Hence, by excluding the properties in the name of Kishori Devi (defendant no. 4 of Partition Suit No. 01 of 1991), both the plaintiff and defendant no. 3 (Partition Suit No. 01 of 1991) are entitled to half and half share in the joint family properties given in the Schedules of the plaint of Partition Suit No. 01 of 1991 except the properties which are in the name of defendant no. 4, namely, Kishori Devi.

15. So far Title Suit No. 61 of 1992 is concerned, the plaintiff of this case has challenged the gift deed dated 25.02.1991 executed in favour of Laxmina Devi executed by Supan Pandey and his wife Tetra Devi on various grounds as invalid, void and not binding on the plaintiffs of Title Suit No. 61 of 1992. The plaintiff has stated that Supan Pandey was not mentally and physically fit and at the time of execution of deed of gift he was 85 years of age and Tetra Devi wife of Supan Pandey was deaf and dumb since birth. Taking benefit of mental and physical condition of Supan Pandey and Tetra Devi, Kailash Nath Pandey had brought into existence deed of gift in favour of his wife Laxmina Devi. Tetra Devi who is one of the executant of gift deed had been brought before the Court on 29.09.1992 as a special witness by the plaintiffs of Title Suit No. 61 of 1992 to show that Tetra Devi was deaf and dumb and was not fit to execute the gift deed. Learned counsel for the plaintiffs of Title Suit No. 61 of 1992 had asked “What is your name?”, “What is your husband’s name?”, “Whether you have executed any document?” The answer of all three questions was that she is unable to speak. The plaintiff of Partition Suit No. 01 of 1991 Kailash Nath Pandey had asked the question in place of his learned counsel that How many sons do you have? The answer

written by the Court is that she turned her face to other side, thereafter, on all questions asked by Kailash Nath Pandey and his learned counsel, the witness had not stated anything. The examination of Tetra Devi corroborates the pleadings of plaintiffs of Title Suit No. 61 of 1991 that she was dumb and deaf. Laxmina Devi (donee) has pleaded that the executant has been purchased forcefully. But no evidence, whatsoever, in this regard had been adduced on behalf of Laxmina Devi and Kailash Nath Pandey. It is further held that it is admitted fact that after the execution of gift deed Supan Pandey died on 04.01.1992 and the plaintiff Sambhu Nath Pandey (plaintiff no. 1 of Title Suit No. 61 of 1992) had filed his written statement in Partition Suit No. 01 of 1991 on 29.04.1991. In his written statement he has pleaded all grounds of invalidity of the gift deed as pleaded by him in Title Suit No. 61 of 1992. It is further noted that both the executant of gift deed were alive at the time of filing of written statement by Sambhunath Pandey and Supan Pandey had also filed his written statement. No effort was made by the plaintiff of Partition Suit No. 01 of 1991 to bring Supan Pandey before the Court to remove the doubt regarding their mental and physical fitness. At least Supan Pandey should have been examined as special witness but no such step had been taken on behalf of Kailash Nath Pandey. The plaintiffs of Title Suit No. 61 of 1992 has produced Exts. A and A1 which are prescription and certificate of doctor of Mental Hospital, Kanke, Ranchi which shows that Supan Pandey was admitted in Ranchi Mental Hospital. Ext. A1 equally speaks that doctor A.K. Gupta (Psychiatrist), Ranchi Mansik Arogyashala, Ranchi had certified that Supan Pandey aged about 84 years had been admitted for the treatment from 1990 to October, 1991 and was suffering from Senile Dementia. Hence, the plaintiffs of Title Suit No. 61 of 1991 have proved that Supan Pandey was suffering from Senile Dementia at the time of execution of gift deed. By taking benefit of mental and physical condition of Supan Pandey and Tetra Devi, Kailash Nath Pandey had brought into existence the deed of gift in the name of his wife Laxmina Devi which is not legally executed and attested, in the gift deed, the personal properties of Kishori Devi has also been included, therefore, the deed of gift dated 25.02.1992 is illegal, inoperative, invalid, void document and not binding upon the plaintiffs of Title Suit No. 61 of 1992 and the gift deed dated 25.02.1991 has been set aside. So far properties purchased in the name of Kishori Devi (defendant no. 4 of Partition Suit No. 01 of 1991) is concerned, the plaintiff of Partition Suit No. 01 of 1991 has pleaded that

Supan Pandey had full confidence in Kishori Devi and he had purchased some properties in her name as trustee from the nucleus of joint family property and all the members of joint family were beneficiaries. The defendant nos. 3 and 4 (Partition Suit No. 01 of 1991) have pleaded that defendant no. 4 is not coparcener and the properties purchased in her name is not joint family property. Both the parties during their evidence have tried to show their income. PW-1 (plaintiff) in Partition Suit No. 01 of 1991 himself has admitted in his cross-examination that there was no saving of his family from cultivation from the time of his father. Hence, he has admitted that there was no saving of the family from the cultivation. The plaintiff during his evidence tried to improve his case that Supan Pandey was giving loan to others and he was also taking the settlement of bonds. He had income from the same and from that income he had purchased the joint family property in the name of Kishori Devi. This fact has not been pleaded by the plaintiff in his claim. These facts are beyond the pleadings of the plaintiff and have no evidentiary value. The plaintiff has not given any evidence which may suggest that the properties in the name of Kishori Devi had been purchased from the nucleus of the joint family. Hence, the plaintiff failed to prove that property purchased in the name of

Kishori Devi is also a joint family property. Ext.-D, which has been produced on behalf of defendant nos. 3 and 4 (Partition Suit No. 01 of 1991) shows that it is informatory petition given by Kishori Devi in the Court of learned S.D.M. on 19.10.1990. She has given the information that when she was getting ready to go to her father’s house for Chhath Puja, her original sale deed got missing from her briefcase and was apprehensive that anybody may misuse the same. This informatory petition was filed much before filing of the suit. On conclusion, the learned Trial Court has held that the properties purchased in the name of Kishori Devi had not been purchased from the nucleus of joint family fund. The sale deed Exts.-1A and 1B had been purchased in the name of Kishori Devi prior to 1988 and the suit by the plaintiff has been filed in the year 1991 over which he has claimed that Kishori Devi is only *Benamidar* and the Trial Court has relied upon a decision of the Apex Court in the case of ***R. Rajagopal Reddy (Dead) By L.Rs. & Ors. vs. Padmini Chandrasekharan (Dead) By L.Rs.*** reported in ***AIR 1996 SC 238*** and has also held that the suit of the plaintiff as far as the sale deed in the name of Kishori Devi is concerned, is barred by Section 4(1) of Benami Transaction Act. Therefore, to the extent of the properties purchased in the name of Kishori Devi, the claim of the plaintiff is barred. Learned Trial Court held that excluding the properties which has been purchased in the name of Kishori Devi, all other properties were joint at the time of filing of the suit, therefore, there is unity of title and unity of possession between the parties except properties purchased in the name of Kishori Devi. Therefore, Title Suit No. 61 of 1992 has been decreed and deed of gift dated 25.02.1991 executed by Supan Pandey and Tetra Devi in favour of Laxmina Devi has been set aside and the suit for Partition Suit No. 01 of 1991 has been decreed on contest and held that plaintiff is entitled upto half share over the properties given in the schedules of the plaint except the properties purchased in the name of defendant no. 4, namely, Kishori Devi.

16. Being aggrieved by the common judgment and decree of the Trial Court dated 17.03.2017 passed in Partition Suit No. 01 of 1991 and Title Suit No. 61 of 1992, two Title Appeals were preferred. Title Appeal No. 38 of 2017 was preferred on behalf of Laxmina Devi whereas Title Appeal No. 45 of 2017 preferred by Kailash Nath Pandey. Both the appeals were heard together and decided by a common judgment dated 13.02.2023.

17. Learned Appellate Court after considering the

materials on record as well as impugned judgment under appeal has affirmed the common judgment and decree of the learned Trial Court and dismissed the appeals *vide* common judgment dated 13.02.2023 and learned Appellate Court held that Supan Pandey died at the age of 92 years. This fact has been admitted by PW-1, husband of Laxmina Devi, in his cross-examination, therefore, at the time of execution of gift deed in favour of Laxmina Devi his age was 90 years. The gift deed was executed by Supan Pandey and Tetra Devi. Only Tetra Devi had been brought before the court as special witness by the plaintiffs of Title Suit No. 61 of 1992. She was examined as a special witness on 29.09.1992. The learned counsel on behalf of plaintiffs of Title Suit No. 61 of 1992 had asked questions and Kailash Nath Pandey had also asked the questions but she didn't speak on asking the question by Kailsh Nath Pandey, she had turned her face to the other side. On the other hand, Laxmina Devi has pleaded that Tetra Devi (one of the doner of the gift deed) was coerced and brought before the Court exercising undue influence. This pleading has not been supported by any evidence adduced on behalf Laxmina Devi and Kailash Nath Pandey. Moreover, one of the attesting witness of the gift deed has been examined. He deposed that the document (gift deed) was neither presented before him nor executed in presence of attesting witness. The said witness also deposed that the scribe of the deed was not known. On the contrary, plaintiffs of Title Suit No. 61 of 1992 and defendant nos. 3 and 4 of Partition Suit No. 01 of 1991 has successfully proved the documents with regard to mental illness of Supan Pandey by way of Exts. A and A1. The plaintiff of Partition Suit No. 01 of 1991 has failed to demolish the case of the defendant nos. 3 and 4 of Partition Suit No. 01 of 1991 and plaintiffs of Partition Suit No. 61 of 1992 respectively. Therefore, the learned court has held that the deed of gift is not a legally executed, attested and proved according to the law.

18. The learned Appellate Court further contended that the properties purchased in the name of Kishori Devi (plaintiff no. 2 in Title Suit No. 61 of 1992/defendant no. 4 in Partition Suit No. 01 of 1991) through Exts. 1A, 1B and 1C (all these sale deeds exhibited as above) were purchased before 1988 and the present suit was filed in the year 1991. The plaintiff of partition suit has claimed that Kishori Devi was *Benamidar*. The Appellate Court has relied upon the decision of the Apex Court in the case of ***R. Rajagopal Reddy (Dead) By L.Rs. (Supra)*** reported in ***AIR 1996 SC 238,*** and has held that

the suit is barred by Section 4 (1) of Benami Transaction Act and accordingly held that properties purchased in the name of Kishori Devi are not joint family properties. Accordingly, the properties in the name of Kishori Devi was excluded from the properties mentioned in the schedules of plaint (Partition Suit No. 01 of 1991) and held that the plaintiff is entitled to half share of the properties given in schedule of the plaintiff except the properties purchased in the name of defendant no. 4.

19. Considering the rival submissions and materials available on record including the judgments of the courts below, it appears that the learned courts below after considering the pleadings of the parties and evidence adduced by them came to a definite conclusion that the properties were purchased by Kishori Devi from her *streedhan*. PW-1 (plaintiff in Partition Suit No. 01 of 1991) himself admitted in his cross-examination that there was no saving of his family from cultivation from the time of his father. The plaintiff could not prove that the properties were purchased in the name of Kishori Devi from joint family fund. The plaintiff PW-1 has admitted that there was no saving of the family from the cultivation, rather, defendant no. 4 Kishori Devi purchased a part of the suit properties mentioned in the Schedule-I of her written statement.

She has got jewellery and cash from her father and mother. It is also admitted fact that husband of defendant no. 4, namely, Sambhunath Pandey was in Government Service since 1964. She has saved and deposited the money from which she has purchased lands over which she has got possession. There is no evidence on record to prove that the properties in the name of Kishori Devi had been purchased from the nucleus of joint family. So far gift deed executed by Supan Pandey and Tetra Devi, both the courts have held that both the executants of the gift deed were alive at the time of filing of the partition suit. Supan Pandey was not brought before the Court to remove the doubt about his mental and physical fitness. No steps were taken on behalf of Kailash Nath Pandey to bring Supan Pandey in Court while Tetra Devi, another executant of the gift deed has been examined in the Court at the instance of plaintiffs of (Title Suit No. 61 of 1992), who proved that she is dumb and deaf and was not fit to execute the gift deed. Parties had asked the question from her but she did not speak a single word. The questions were asked by Kailash Nath Pandey and his counsel to Tetra Devi (special witness) but she had not stated anything. On asking the question by Kailash Nath Pandey, the mother of Kailash Nath Pandey (special witness) had turned her face to the other side. The learned courts below considered the action and gesture of special witness and the fact that the age of Supan Pandey at the time of execution of gift deed, was 90 years old. The Exts. A and A1, medical certificate as well as prescription of Manshik Arogayasala, Ranchi, showing that Supan Pandey was admitted for the treatment from 1990 to Oct, 1991 and was suffering Senil Dementia was not disproved by the plaintiff Kailash Nath Pandey as well as Laxmina Devi intervenor defendant no. 5 in Partition Suit No. 01 of 1991 and defendant no. 1 of Title Suit No. 61 of 1992. The attesting witness on behalf of Kailash Nath Pandey, who has been examined in the present case, has clearly stated that the deed of gift was not written in his presence and he did not know who had written the document. This fact proves that he had no knowledge about the execution of the gift deed. The gift deed was not proved according to law. Therefore, gift deed is not legally executed and attested.

20. Considering the findings of both the courts below, I am not inclined to interfere with the concurrent findings of the courts below. It is quite apparent that judgment and decree of the learned courts below are covered by the findings of the facts and no question of law much less substantial question of law

arises for consideration in the instant Second Appeals.

21. Thus, both the appeals are dismissed at the stage of hearing under "Order XLI Rule 11 C.P.C."

(Khatim Reza, J)

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