

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.101 of 2007

1(a). Most. Lal Muni Devi, W/o of Late Ramkishun Singh

1(b). Shashi Kumar Singh, S/o of Late Ramkishun Singh

1(c). Arun Kumar Singh, S/o of Late Ramkishun Singh

1(d). Kamlesh Kumar, S/o of Late Ramkishun Singh

All are residents of Vill-Mahuar, P.S.-Ramgarh, P.O.-
Sahuka, Dist.-Kaimur, Bhabhua

... .. Appellant/s

Versus

Murahu Singh, son of Ram Lochan Singh, resident of Vill-Awariha, P.S.-
Bhabhua, P.O.-Bhabhua, Dist.-Kaimur, Bhabhua

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Syed Firoz Raza, Sr. Adv.

Mr. Ashok Kumar, Adv.

For the Respondent/s : Mr. Praveen Prabhakar, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 26-09-2025

This Second Appeal has been filed against the judgment and decree dated 04.05.2007 passed in Title Appeal No. 03/21 of 2005 by the learned Additional District Judge, Fast Track Court-Vth, Bhabua, Kaimur, whereby, the judgment and decree dated 18.12.2004 passed in Title Suit No. 201 of 1996 by the learned Munsif, Bhabua, Kaimur has been affirmed.

2. The plaintiff's heirs are the appellants and the defendant is the respondent in the present appeal.



3. The present appeal was admitted on 26.10.2009 and following substantial questions of law were formulated while admitting the appeal:-

(i). Whether the court of appeal below itself finding impugned deed of gift dated 29.11.1976 (Exhibit 5) to be doubtful was justified in rejecting the claim of the plaintiff only on the basis of Exhibits D and E which were orders passed the by the Director of Consolidation and the High Court?

(ii). Whether the aforesaid orders (Exhibits D and E) being only on the question of sanction granted by the Consolidation authorities without going into the genuineness and validity of the deed of gift, the learned courts below were justified in refraining themselves from taking into consideration genuineness and validity of the impugned deed?

4. The plaintiff filed Title Suit No. 201 of 1996 for declaration of Gift Deed No. 7866 dated 29.11.1976 executed by Rambriksh Singh in favour of defendant, namely, Murahuh Singh as null and void, illegal and also for permanent injunction over the suit land of Schedule-Gha of the plaintiff. The Schedule-Gha is part of Schedule-G which is property of Gift Deed No. 7866 executed by Rambriksh Singh in favour of Murahuh Singh (defendant).

5. The case of the plaintiff as pleaded in the plaintiff is that Narkhu Rai was the ancestor and he had three sons, namely, Bharosa



Rai, Jaipal Rai and Shisupal Rai. Jaipal Rai died issueless, Shisupal Rai had three sons; Mahavir Rai, Mahadeo Rai and Sahdeo Rai. These three brothers died leaving behind Asharfi Kunwar, Sonia Kunwar and Batasi Kunwar as their wives (widows). They were alive at the time of Cadestral Survey. Bharosa Rai died leaving behind two sons, namely, Hit Narayan Rai and Jagdeo Rai. Hit Narayan Rai died leaving a son Sitaram Singh. The plaintiff is son of Sitaram Rai. Jagdeo Rai died leaving behind a son Subedar Singh, Subedar Singh also died leaving behind son Rambriksh Singh. The wife of Rambriksh Singh pre-deceased him and he died issueless on 25.11.1979 while living with the plaintiff. After the death of Rambriksh Singh, his property devolved upon the plaintiff, namely, Ramkishun Singh as heir. It is further case of the plaintiff that the family of Narhu Rai had possessed the land at the time of Cadestral Survey in the year 1908-09 and at the time of Cadestral Survey grandfather of the plaintiff Hit Narayan Rai and Rambriksh Singh, Asharfi Kunwar, Batasi Kunwar, Sonia Kunwar were alive and their names stood in the Cadestral Survey also. The wives of Mahavir Rai, Mahadeo Rai and Sahdeo Rai were alive but they had no right in the property of Shisupal Rai and the property of Shisupal Rai devolved on Hitnarayan, grandfather of plaintiff and Asharfi Kunwar, Sonia Kunwar and Batasi Kunwar were only maintenance holders. Further case of the plaintiff is that the land of R.S. Khata No. 150 was in the



name of Ramkishun Singh and Rambriksh Singh. Due to the old age of Rambriksh Singh, when he had lost his memory, the defendant got executed a gift deed dated 29.11.1976 in his favour from Rambriksh Singh by playing fraud, which is under challenge in the suit. It is further contended that Rambriksh Singh never executed any gift deed as alleged and when it came to his knowledge about the alleged gift deed, he cancelled the same by registered cancellation deed dated 12.02.1977, but the defendant infuriated by the order dated 23.09.1996 passed by this Court in C.W.J.C. No. 2393 of 1985 and C.W.J.C. No. 4033 of 1985, threatened to dispossess the plaintiff and started creating disturbance in his peaceful possession over the suit land. The defendant wants to claim exclusive title over the suit land. The plaintiff resisted the defendant not to claim and set up exclusive title over the suit land and not to disturb the plaintiff in his peaceful possession over the suit land, but the defendant paid no heed, ultimately he denied on 29.09.1996, hence the suit has been filed.

6. On summons, the defendant appeared and filed his written statement. Apart from ornamental objection, the defendant pleaded that Rambriksh Singh was not residing with the plaintiff. The entry of R.S. Khatiyan in the name of the plaintiff is wrong. The plaintiff has wrongly inserted his name in Revisional Survey Khatiyan No. 150 because Rambriksh Singh was rustic and illiterate person. The said Ram Briksh was an old man and no service was



done by the plaintiff to Rambriksh Singh. After the death of Rambriksh Singh his *sharad* was performed by the defendant. There was ill-will between the plaintiff and Rambriksh Singh. Murah Singh (defendant) is grandson of Gangiya Devi, who was sister of Rambriksh Singh and due to love and affection, Rambriksh Singh executed the alleged gift deed in the favour of the defendant. The deed of gift has been validly executed by Rambriksh Singh after getting permission from the Consolidation Authority and the deed of gift has not been cancelled by Rambriksh Singh and the permission as granted by the Consolidation Authority has not been set aside in presence of the defendant. It is further case of the defendant that the transfer deed executed by Rambriksh Singh after execution of gift deed is forged and fabricated as Rambriksh Singh had no right to execute any deed in favour of Nathuni Singh and the land transferred to school by Rambriksh Singh was with the consent of the defendant. It is pleaded that the payment of rent had not been made by Rambriksh Singh and has stated that the plaintiff cannot get any benefit of rent paid to the Government. It is further pleaded that the defendant and the plaintiff both have challenged the order before this Hon'ble High Court. It is also contended that the land which covers the deed of gift is in possession of the defendant and description of land as described in the plaint is wrong and baseless. The plaintiff has executed some forged deeds covering some portion of the suit



land in favour of his sons, namely, Shashi, Arun and Rakesh by impersonating another person in place of Rambriksh Singh. There was a criminal proceeding between Rambriksh Singh and the plaintiff. The defendant is not related with Shri Niwas Singh but he is a relative of Rambriksh Singh. The defendant is grandson of sister of Rambriksh Singh. Further case of the defendant is that the gift deed has been executed by Rambriksh Singh in lieu of service rendered by the defendant voluntarily. There has been acceptance of deed of gift that it is valid and legal. The plaintiff has no concern with the gift property. Neither plaintiff is heir nor legal representative of Rambriksh Singh. The plaintiff has filed the present suit only to harass the defendant.

7. On the basis of the pleadings, the learned Trial Court had framed issues. On analyzing the evidences and materials on record, the learned Trial Court dismissed the suit holding that the deed of gift is valid up to half share and further held that the deed of gift executed in favour of defendant is not valid up to the entire share and the defendant cannot acquire right and title of the entire land.

8. Aggrieved thereof, the plaintiff assailed the judgment and decree of learned Trial Court by way of filing Title Appeal No. 03 of 2005/Trial Court Case No. 21 of 2005 before the learned lower Appellate Court, which was also dismissed affirming the finding of the Trial Court with observation that the land sold by the parties will



be adjusted in their respective share. Learned counsel for the appellants submits that from the pleadings of both the parties, it appears that admittedly the land in question was jointly recorded in the name of Ramkishun Singh and Rambriksh Singh and there was no partition by metes and bound and as such the share of Rambriksh Singh was not decided. Learned counsel for the appellants further submits that the main issue involved in this case is that whether a deed of gift can be executed with respect to the undivided property or not. It is apparent from the Trial Court judgment that Ext.-6 and Ext.-6A produced on behalf of the plaintiff is the *Khatiyani* which was jointly recorded in the name of Ramkishun Singh and Rambriksh Singh and in the absence of any partition and allocation of separate share, the deed of gift cannot be executed and cannot be held to be valid in accordance with law as for the deed of gift, there must be an important requirement that donee has to come in immediate possession over the property gifted but as the share was not bifurcated, the donee could not have come in possession and the deed of gift has never come in force and became inoperative but despite that the learned Trial Court has held that the deed of gift is valid up to the half share without going into the legal position based only on the order of Consolidation Authority i.e. Ext.-D, who had no authority to conclude that the parties have half and half share.



9. It is further submitted that so far the finding of the lower Appellate Court is concerned, the Appellate Court has come to the conclusion by discussing the evidence that the defendant has not given the details of land of the gift nor has disclosed the boundaries of the gifted land which creates a doubt that he never came in possession on the basis of deed of gift and it has been inoperative and in absence of donee's possession, the deed of gift cannot be held to be valid but despite that the Appellate Court has affirmed the judgment of the Trial Court.

10. Learned counsel for the appellants further contended that so far Ext.-D and E are concerned, Ext.-D is the order passed by Director Consolidation, Patna and Ext.-E is the order passed by this Court in writ jurisdiction i.e. C.W.J.C. No. 4033 of 1985. It appears from the judgment of the courts below that Appellate Court has solely relied upon the order of the Consolidation Authority and the order passed by this Court which cannot be justified and be a ground for holding that the deed of gift was valid, genuine and was executed in accordance with law. However, the deed of gift has to be decided independently according to its spirit and intention of the donor, the property given in gift but it appears that the learned Trial Court and lower Appellate Court only on the basis of Ext.-D and Ext.-E have held that the deed of gift is genuine and did not take any stress to formulate question of law that Whether the donor was competent to



execute deed of gift in joint family property? The share of Rambriksh Singh and Ramkishun Singh has not been allotted by metes and bound both are having joint unity of title and joint unity of possession over the gifted property. In such view of the matter, the gift cannot be held to be genuine and valid.

11. It is further submitted that from perusal of Ext.-A marked by the defendant, it appears that there is averment by Rambriksh Singh that the property mentioned in the Deed of gift is exclusively in possession of Rambriksh Singh which was given in partition and as such the finding of the Trial Court as well as Appellate Court appears to be totally mis-conceived. From perusal of Ext.-6 and 6A, it appears that Ramkishun Singh and Rambriksh Singh have equal share in the property and the entire property was given in gift for which Rambriksh Singh was never competent as it was in the name of both persons. The evidence was adduced by the witnesses of the gift deed and they have also denied its execution and as such, the deed of gift appears to be not genuine. The evidence adduced by the defendant has not established the relationship with Rambriksh Singh or his branch nor the defendant has filed any document to establish relationship with Rambriksh Singh though from the record it appears that it is contrary.

12. Learned counsel for the appellants vehemently submits that a gift of a coparcener with regard to undivided property is void



in law as it finds support from judgment in the case of ***Thamma Venkata Subbamma (Dead) by L.R. Vs. Thamma Rattamma and Ors.*** reported in ***AIR 1987 SC 1775***. The Apex Court has held that a gift by a coparcener of his undivided interest in the coparcenary property is void. The same view has been taken in a decision in the case of ***Sabitri Devi and Ors. vs. Lakhan and Ors.*** reported in ***AIR 2017 Pat 85***, wherein, it has been held that gift by a coparcener of undivided share is void transaction since there is unity of title and possession between the parties and there was no partition. The so called gift is void document and no valid right, title and interest will pass.

13. Learned counsel for the appellants further submits that gift of undivided share in the joint family property is void in the eye of law. Section 122 of the Transfer of Property Act defines 'Gift' as transfer of certain existing movable and immovable property voluntarily and without consideration. The gift deed in the present case is void as it is not a gift deed of certain properties in the sense that undivided share in joint family property is never certain, it is, rather, fluctuating. The gift of undivided share in the joint family property is also void under Hindu Law as per Article 258 of Mulla's Hindu Law which denotes that no coparcener can dispose of his undivided interest in the coparcenary property by gift. The coparcener may, however, can make a gift of his interest with the



consent of other coparcener, otherwise, the same shall be invalid. This view has been taken in the case of *Shri Raja Ram and others Vs. Poonam Kumari* reported in **2025 (5) BLJ 230**. In the light of above discussion, the deed of gift dated 29.11.1976 executed by Rambriksh Singh without consent of the other coparceners in favour of Murahhu Singh is null and void.

14. On the other hand, learned counsel for the sole defendant/respondent submits that the respondent did not take interest to contest the present appeal and submits before this Court to permit the respondent to withdraw himself from defending the appeal. In this regard, a detailed supplementary affidavit by way of reply to I.A. No. 03 of 2019 has been filed by the respondent on 26.08.2019, which is on record. In view of the affidavit filed by the respondent, it is specifically submitted that the subject matter of the dispute in the present appeal is the registered Gift Deed No. 7866 dated 29.11.1976 allegedly executed by Rambriksh Singh in favour of Murahhu Singh, son of Late Ram Lochan Singh without obtaining permission under Section 5 of the Consolidation of Holding Act. It is further submitted that R.S. Khatiyan of Khata No. 150 of Mauza-Jangalchhera as well as R.S. Khatiyan No. 233 of Mauza-Mahuar are recorded in joint name of Rambriksh Singh and Ramkishun Singh having equal share. The lands of Khata No. 233 being 58 decimals of



Mauza-Mahuar and lands of Khata No. 150 of Mauza-Jangalchhera being 12.85 acres were subject matter of dispute.

15. Learned counsel for the respondent further submits that the property under gift was admittedly joint property of Ramkishun Singh and Rambriksh Singh and there was title and possession of both the coparcener. It is further contended in the affidavit that any gift with respect to joint family property cannot be gifted and as such gift deed is *void ab initio*. It is further contended through supplementary affidavit filed by the respondent that the respondent was not related to Rambriksh Singh in any manner. The family of the appellants and the respondent have separate genealogy. Two genealogical table have been mentioned in supplementary affidavit, first genealogical table is of Ramkishun Singh and Rambriksh Singh and second genealogical table is of Late Kunj Bihari Singh, who was the ancestor of Murah Singh(respondent). It is further contended that subsequently, it came to knowledge of the Murah Singh (respondent) that Rambriksh Singh cancelled the registered Gift Deed No. 7866 dated 29.11.1976 by executing registered Deed of Cancellation No. 744 dated 14.02.1977 stating, therein, that *Khatiyani Raiyat*, Rambriksh Singh never executed Gift Deed No. 7866 dated 29.11.1976, rather, it was impersonated. It is further pleaded in the supplementary affidavit filed by the respondent and categorically averred that the present respondent is a stranger to



the family of Rambriksh Singh and is even stranger to village-Mahuar and he never claimed any property of the family of Rambriksh Singh. The alleged gift deed might have got executed by impersonating the respondent under conspiracy. The case has been filed before consolidation authorities as well as in this High Court; Murahuh Singh never preferred any writ case or Letters Patent Appeal before this Court. The disputed land never came in possession of the respondent. In paragraph 21 of the reply to the supplementary affidavit filed in I.A. No. 03 of 2019, it is specifically mentioned that the respondent do not have any right or share on the aforesaid disputed land and also do not have anything to do with the property of others. The disputed land does not belong to him. In future, he will never sue in any Court related to aforesaid related land and also will not present any claim before this Court. Lastly, the respondent, Murahuh Singh admitted the right, title and interest and possession of the appellants, who are heirs of deceased Ramkishun Singh (original plaintiff), who died during pendency of the present appeal.

16. Considering the submissions made by the parties and materials on record as well as impugned judgments and the stand taken by the respondent, who by way of filing affidavit resiled from his claim, so far, the substantial questions framed with regard to validity of gift deed dated 29.11.1976 executed by Rambriksh Singh in favour of Murahuh Singh (respondent) is concerned, the property



under gift is admittedly recorded jointly in the name of Rambriksh Singh and Ramkishun Singh. There is no material to show that the coparcenary between Rambriksh Singh and Ramkishun Singh had broken before the said Gift and in absence of any partition or without the consent of other coparcener, gift of joint property is not permissible. A gift by a coparcener of his undivided interest without consent of other coparcener in the joint family property is not valid in law. It is settled law that a coparcener can make a gift of his undivided interest in the coparcenary property to the other coparcener or to a stranger with the consent of all other coparceners and such a gift would be quite legal and valid but in the present case, there is no case of any consent having taken from other coparceners. Both the courts have not gone into the basic question of gift in this case but only relied upon Exts. D and E, i.e., the order passed by the consolidation authorities as well as order passed in writ jurisdiction. The validity of gift deed or cancellation of gift deed has to be decided in a suit or an appeal. It is apparent from the record that there is no proof of earlier partition between the two brothers, namely, Rambriksh Singh and Ramkishun Singh. There is no case of the defendant/respondent that before execution of the gift deed any consent was obtained from other coparceners.

17. In such view of the matter, in absence of any consent before execution of gift deed of the joint family property, the same is



void. The question of law of consent having not been pleaded would not be accepted in the teeth of judgment of Hon'ble Apex Court in the case of ***Gurucharan Singh Vs. Kamla Devi*** reported in ***AIR 1977 SC 5***, wherein, it has been held that a pure question of law going to the root of the case and based on undisputed or proved facts and reason out of common question of the parties could be raised even at the court of last resort. Moreover, the respondent in the present case has resiled from his claim before this Court and also filed affidavit clearly admitting that the property in gift was never in possession of the respondent-defendant and was not acted upon and accepted the claim of the plaintiff/appellants. The property, in question, was joint property of Rambriksh Singh and Ramkishun Singh. Since Rambriksh Singh died issueless and his total property devolved on the plaintiff as the original plaintiff is first cousin of Rambriksh Singh. Therefore, the courts below have wrongly held that the gift deed is valid and operative up to the extent of half share of Rambriksh Singh executed in favour of Murah Singh (defendant). There is a catena of decisions of the Apex Court holding that a gift by a coparcener of his undivided interest in the coparcenary property is void. Moreover, the defendant/respondent has resiled from his claim with regard to the suit property. Therefore, the plaintiff is entitled for the entire property in the suit.



18. In the light of the narrative and discussions (*supra*), there can be no doubt that learned courts below have erred and was not justified in holding that the gift deed is valid and operative to the extent of half share of Rambriksh Singh and decreed the suit partially with regard to only half share of the original plaintiff.

19. In the facts and circumstances of the case, the substantial questions of law formulated are answered in favour of the plaintiff.

20. This Second Appeal is, thus, allowed having merit in it.

21. Accordingly, the judgments of the courts below are set aside and the suit of the plaintiff/appellants stands decreed. The plaintiff is held to be entitled for the entire suit property.

22. Pending interlocutory applications, if any, shall stand disposed of.

23. There shall be no order as to costs.

(Khatim Reza, J)

prabhat/-

AFR/NAFR	AFR
CAV DATE	05.08.2025
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