

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.596 of 2019

Dasrath Singh, Son of Late Siya Singh, Resident of Village Akashpur, P.S.
Muffassil (Begusarai), Sub- Division and District- Begusarai.

... .. Appellant/s

Versus

1. Dilip Choudhary, son of late Sukhdeo Choudhary, Resident of Village Dumari, P.S. Muffassil, Sub- Division and District- Begusarai.
2. Maya Devi wife of Ram Binod Choudhary, Resident of Village- Daniyalpur, Tolla, Bhattaper Chati Dirga Asthan, P.S. Teghra, Distt- Begusarai.
3. Balram Singh, son of late Siya Singh Resident of Village Akashpur, P.S.- Muffassil (Begusarai), Sub- Division and District- Begusarai.
4. Arjun Singh son of late Siya Singh Resident of Village Akashpur, P.S.- Muffassil (Begusarai), Sub- Division and District- Begusarai.
5. Ramashish Singh son of late Siya Singh Resident of Village Akashpur, P.S.- Muffassil (Begusarai), Sub- Division and District- Begusarai.
6. Nunudai Devi daughter of late Siya Singh Resident of Village Akashpur, P.S.- Muffassil (Begusarai), Sub- Division and District- Begusarai.
7. Urmila Devi daughter of late Siya Singh Resident of Village Akashpur, P.S.- Muffassil (Begusarai), Sub- Division and District- Begusarai.
8. Dulo Devi daughter of late Siya Singh Resident of Village Akashpur, P.S.- Muffassil (Begusarai), Sub- Division and District- Begusarai.
9. Madhusudan Kumar son of Arjun Singh Resident of Village Akashpur, P.S.- Muffassil (Begusarai), Sub- Division and District- Begusarai.
10. Shankar Sah Son of Daho Sah Resident of Village Dumari, P.S.- Muffassil (Begusarai), Sub- Division and District- Begusarai.
11. Shekhar Sah Son of Daho Sah Resident of Village Dumari, P.S.- Muffassil (Begusarai), Sub- Division and District- Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Md. Waliur Rahman, Advocate
Mr. Nishant Kumar Sinha, Advocate

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

9 28-04-2025 Heard Mr. Md. Waliur Rahman, learned counsel for
the appellant.

2. This Second Appeal has been filed against the



judgment and decree of affirmance dated 01.08.2019 passed by learned Additional District Judge-VI, Begusarai in Title Appeal No. 20 of 2005, whereby judgment and decree dated 17.10.2005 passed by learned Sub Judge-III, Begusarai in Title Suit No. 54 of 1988 has been upheld.

3. The suit was filed for setting aside judgment and decree dated 23.12.1982 passed in Title Suit No. 171 of 1982 by learned Munsif-II, Begusarai and also for cancellation of Sale Deed Nos. 5712, 5713 dated 05.06.1992 and Sale Deed No. 5714 dated 30.12.1993. The said suit was decreed by the learned Sub-Judge-III, Begusarai, against which defendants filed Title Appeal No. 20 of 2005, which was dismissed by the learned Additional District Judge, VI, Begusarai which is under challenge in the instant Second Appeal.

4. The case of the plaintiff is that Manakia Devi, who is the maternal aunt of the plaintiff, executed a gift deed on 01.03.1982 in favour of the plaintiff out of love and affection. The plaintiff accepted the deed of gift and came in possession thereof as donee and got her name mutated in revenue records of State of Bihar and paid rent to the State of Bihar. Further case of the plaintiff is that Title Suit No. 171 of 1982 was filed by Manakia Devi for cancellation of gift deed dated 01.03.1982



registered in favour of Meena Devi as she has no right, title on the basis of gift deed. It is further contended that the plaintiff had never been served any summon/notice in Title Suit No. 171 of 1982. Title Suit No. 171 of 1982 was filed on 26.11.1982 which was decreed *ex parte* against the defendant/appellant on 23.12.1982 within 27 days of filing of the aforesaid suit. Learned trial court set aside the judgment and decree dated 23.12.1982 and sale deeds dated 05.06.1992 and 30.12.1993 is also set aside/ cancelled.

5. Further case of the plaintiff is that an agreement to sale dated 18.12.1991 (Exhibit-1) was executed by plaintiff in favour of Dasrath Singh with respect to 11 Katha 14 durs for consideration of Rs. 1,30,000/- and said Dasrath Singh paid Rs. 10,000/- as earnest money. It is further contended that Dasrath Singh could not pay the rest consideration money. There was condition in the agreement that if the due amount is not paid and the sale deed is not executed, the advance money will be forfeited. It is further pleaded that Dasrath Singh in collusion with others got sale deeds executed from Monakia Devi. She also stated that she filed the said deed of agreement to sale (Ext.-1) and she knew about that sale deeds after obtaining certified copy of the same. The name of Sukhdeo also figures as



executant with Monakia in that sale deed. It is further pleaded that Sukhdeo Chaudhary had no concern with the said land. The said sale deeds were executed by Monakia Devi on 05.06.1992 and on that basis, the defendant nos. 2 to 6 dispossessed the plaintiff out of suit land which they had no right. Original Defendant no. 2, Dasrath Singh entered into an agreement with plaintiff on 18.12.1991 and agreement to sale was executed with regard to Survey Plot No. 818 measuring an area 11 katha 14 dhurs for a sum of Rs. 1,30,000/-. The plaintiff obtained certified copy of the plaint and judgment and decree of Title Suit No. 171 of 1982 on 06.04.1998 and the plaintiff brought the suit to set aside the judgment and decree dated 23.12.1982 passed in Title Suit No. 171 of 1982 by learned Munsif, Begusrai and also for setting aside the sale deed dated 05.06.1992, Deed nos. 5712, 5713 and 5714 dated 30.12.1999 and also for declaration that after granting reliefs, the deed of gift dated 01.03.1992 be declared valid, legal and also for recovery of possession.

6. On summon, defendant nos. 2 to 6 appeared and filed their written statement and raised objection with regard to the cause of action and stated that the suit is barred by law of limitation. In their written statement, it is stated that Title Suit



between Monakia Devi and the vendor of these defendants and Meena Devi, was decreed on 23.12.1982 after proper adjudication. It is quite false to say that Monakia Devi executed a deed of gift in favour of plaintiff on 01.03.1982 out of love and affection. The plaintiff had not come in possession of the land. It is further pleaded that the said Meena Devi performed marriage with a Muslim Man and she left the place of residence. Monakia Devi came in possession of the said land and she also filed suit for cancellation of deed dated 01.03.1982 in the Court of Munsif-2, bearing Title Suit No. 171 of 1982. After due process, the suit was decreed on 23.12.1982. It is also contended that the said Monakia Devi was examined in the court as witness and hence it is wrong to say that defendant no. 1 obtained her L.T.I. on blank paper and filed the suit without her consent. It is further contended that the execution of the deed of agreement is neither admitted nor denied but the contents are emphatically denied. The plaintiff had knowledge of the cancellation of the deed of gift since 1982 and she had also the knowledge of the execution of sale deeds in favour of defendants since the date of execution of the sale deeds. It is further submitted that since the registration of sale deed the appellants are in possession of the suit land.



7. Considering the aforesaid facts and circumstances of the case and averments made by the appellant and materials on record including the judgment of the learned courts below, it appears that the learned appellate court below, which is final court of facts, clearly held that Title Suit No. 171 of 1982 was filed by Monakia Devi against the sole plaintiff, Meena Devi for cancellation of gift deed dated 01.03.1982. The said suit was filed on 26.11.1982 which was decreed on 23.12.1982 (within 27 days of filing of the aforesaid suit). The hasty manner of the learned trial court in deciding Title Suit No. 171 of 1982 has cast very grave suspicion on it. It has been held that Monakia Devi has herself written in the registered gift deed that she has delivered the possession of the gifted land to the donee namely, Meena Devi. It is further held that appellant/D.W.-2 himself admitted that he has agreed to buy the disputed land from the plaintiff. This fact shows the possession of the plaintiff over the disputed land. It is further held that in Title Suit No. 171 of 1982 the summons was issued on 28.11.1982 against the defendant/donee(present plaintiff/respondent). The order sheet of the learned lower court shows that the summon was received with entry that the defendant/donee i.e. the present respondent/plaintiff has run away with a Muslim Boy. Therefore



the service of notice through paper publication was ordered. On 18.12.1982 the court received the paper cutting of the publication of notice and fixed next date on 20.12.1982 for ex-parte hearing. On 20.12.1982, the case was heard ex parte and judgment was passed on 23.12.1982 decreeing the suit i.e. within 27 days of filing of the suit.

8. In view of the aforesaid facts and circumstances of the case as well as materials on record, it is quite apparent that the impugned judgments and decree of the courts below are covered by the finding of facts and no question of law, much less substantial questions of law, arises for consideration in the instant Second Appeal.

9. Accordingly, this appeal is dismissed at the stage of hearing under Order XLI Rule 11 of the Code of Civil Procedure.

10. Pending Interlocutory Application(s), if any, shall stand disposed of.

(Khatim Reza, J)

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