

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.89 of 1989

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Sri Bindeshwar Prasad Singh Son of Late Ram Ekbal Singh, Resident of
Village - Nawadiha, P.O. Saidpur, P.S. Sonapur, District- Saran.

... .. Defendant-Appellant-Appellant

Versus

1. Smt. Deopari Devi D/o late Shri Abhay Narayan Singh, Wife of Shri Raghunath Singh, Resident of Village Masarh, Police Station Udant Nagar, District Shahabad now Bhojpur.
2. Smt. Rampari Devi D/o late Abhay Narain Singh, Wife of Shri Brahmdeo Singh, Resident of Village Bharehra, Police Station Bichala, Jagdishpur, District Shahabad now Bhojpur.

.....Plaintiffs-Respondents-Respondents

3. Sri Akhleshwar Prasad Singh Son of Late Ram Ekbal Singh, Resident of Mohalla Bartan, P.O. Dhanbad District- Dhanbad.
4. Shanti Singh Wife of Sri Gangadhar Singh, D/o Late Ram Ekbal Singh, Resident of Mohalla Kazipur, P.O. Bankipur, P.S. Kadam Kuan, District- Patna.
5. Smt. Kanti Singh Wife of Sheo Narayan Singh, D/o late Ram Ekbal Singh, Resident of Mohalla L.I.C. Colony, P.O. Chitragupta Nagar, P.S. Kankarbagh, District- Patna.

... .. Heirs of Defendant-Heirs of Appellant—Heirs of Appellant

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Appearance :

For the Appellant/s : Mr. Jyotindra Pratap Singh, Advocate
For the Respondent/s : Mr. Girijanand Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 06-01-2026

Suit Valued at : Rs.6000/-
Appeal Value at : Rs.6000/-

The present second appeal has been filed against
the judgment and decree passed and prepared on 17.08.1988 and
02.09.1988 respectively, by 2nd Additional District Judge, Saran
at Chapra in Title Appeal No.165 of 1981/16 of 1987, affirming



the judgment and decree dated 14.08.1981, passed by the 6th Additional Sub-ordinate Judge, Saran in Title Suit No.69 of 1976/61 of 1981.

2. This second appeal has been filed against the concurrent judgment and decree passed by the original Court and the appellate Court. The sole appellant, who preferred the present memorandum of appeal, died on 17.09.1997 leaving behind his four heirs and legal representatives. His heirs and legal representatives had been substituted. One of his heir and legal representative has been added as appellant in the present appeal, but his other heirs and legal representatives have been permitted to add as respondent Nos.3 to 5 vide order dated 20.05.1998. Appeal notice was validly served upon the respondents and then the present appeal has been fixed under the heading for final hearing, before Hon'ble Bench. Subsequently, vide order dated 01.07.2024, this second appeal has been fixed for *ex parte* hearing under the provisions of Order 41 Rule 17(2) of the Code of Civil Procedure, 1908. Learned Counsel has pleased to argue this matter and also filed written argument on the substantial question of law framed.

3. Counsel for the appellant submits that the original plaintiffs (present respondent Nos.1 & 2) filed a suit for



declaration that the deed of gift dated 21.09.1972, Exhibit-B, executed by the plaintiffs in favour of the defendant was declared null and void, inoperative and not binding upon the plaintiff and further prayer has been made for cancellation and setting aside the alleged deed dated 21.09.1972.

4. The case of plaintiffs-respondents-respondents Nos.1 and 2, in brief, is that the plaintiff Masomat Mahajan Kunwar's husband Abhay Narayan Singh died on 13.09.1972 leaving behind his widow Masomat Mahajan Kunwar and two daughters as his only heirs and legal representatives, who inherited and came into possession of the entire property of Abhay Narayan Singh including the residential house, which is the subject matter of the present dispute, i.e., impugned deed of gift dated 21.09.1972, in which they were living since life time of Abhay Narayan Singh. It has been further contended that defendant Ram Ekbal Singh being the neighbour started pretending to be a real sympathizer and well wisher suggested them to get their names mutated in respect of the property inherited by them in order to avoid probable grabbing of their property by co-sharer/*Pattidar* of Abhay Narayan Singh. The further case is that Masomat Mahajan Kunwar was simply an illiterate and *Pardanasi* lady, upon offered to help them in this



regard, the defendant-appellant-appellant Ram Ekbal Singh took LTI of the plaintiff as well as obtained signatures of her daughters with short text at his dictation on several stamp blank papers on false pretext that those papers would be used for mutation of their name in the revenue records of the State. The said defendant Ram Ekbal Singh just after two days of Shradh Ceremony approached Masomat Mahajan Kunwar and represented to her that the Block Development Officer had gone there for conducting an enquiry in connection with mutation case. He again took the LTI of Mahajan Kunwar and signature of her daughters on certain papers and subsequently used those papers, fraudulently obtained deed of gift executed by them in his favour in respect of their house. When the plaintiffs-respondent-respondent received information in this regard, they obtained certified copy of alleged gift deed dated 20.09.1972 on 17.04.1975 and found that false recitals were made in the deed and the identifier and witnesses all are strangers and not known to them. The documents of deed were never read over and explained to the plaintiffs nor did they executed the same and the recitals made in the deed were absolutely false and wrong. As a matter of fact defendant/ Ram Ekbal Singh was not in any manner related to Abhay Narayan Singh (husband of Masomat



Mahajan Kunwar) nor did he ever serve Abhay Narayan Singh nor did he perform the Shradh of Abhay Narayan Singh and neither Masomat Mahajan Kunwar nor her daughters did any advise for execution of deed of gift in favour of the defendant. There have been neither offer and acceptance nor possession of the house was handed over by the Masomat Mahajan Kunwar to Ram Ekbar Singh.

5. The defendant came with the case in the suit that the deed of gift (Ext-B) was perfectly genuine and it is binding on the plaintiffs. It has been alleged that Ram Ekbal Singh was nephew of Abhay Narayan Singh with whom he had great love and affection. He was rendered the services to Abhay Narayan Singh, spent huge amount of money and under such circumstances out of love and affection Masomat Mahajan Kunwar and her daughter executed deed of gift in respect of small *Khaparpos* house after fully understanding the intrinsic and implication of execution of such deed. Defendant-appellant-appellant contended that the document was executed and registered in accordance with the provisions of law. It was read-over and explained to the plaintiff, who executed the same after understanding fully well the contents thereof. The identifier, the subscriber and the attesting witnesses were well



known to the plaintiff and no deception or fraud was practiced. There was proper offer and acceptance for the execution of deed of gift which was properly executed and registered at the residence of the plaintiffs. It has also contended that Abhay Narayan Singh himself intended to gift certain property to the defendant and plaintiff had also advised him to executed some deed of gift in favour of the plaintiff. It has also been contended that after the execution of the deed of gift, possession over the house was delivered to the defendant Ram Ekbal Singh and the plaintiff Masomat Mahajan Kunwar could not be said to be in legal occupation of the disputed house and she was living therein with the permission of the defendant.

6. The said title suit has been filed by plaintiffs-respondents-respondents in the year 1976 and finally decided on 14th August, 1981 in Title Suit No.69 of 1976/61 of 1981. The Trial Court has framed three issues. The most relevant issue is issue No.III. i.e., *Is the deed of gift in question fraudulent, null and void, inoperative and not binding on the plaintiffs and liable to be cancelled and set aside?*

7. The said issue No.III was decided by the Trial Court in para-8 onward and finally reached on conclusion that: *under the facts, circumstances and evidence discussed above*



give rise to the inevitable and irresistible conclusion that the defendant practiced fraud on the plaintiffs and inducing misrepresentation to them, they took their thumb impression and signature on stamped blank papers on false pretext. That they were to be used for mutation of their names and surreptitiously and fraudulently the defendant by bringing the ascribe. The identifier and the witnesses in collusion converted these papers, into the deed of gift and got the same executed on behalf of the plaintiffs, in his favour which was in respect of the only residential house of the plaintiffs and that the plaintiffs never executed the deed knowing and understanding the contents thereof and that the registration of the document too was not legal and valid. And the deed of gift was also not completed on account of absence of ingredients of gift viz. offer and acceptance and delivery of possession. Obviously the deed of gift is fraudulent, null and void inoperative and not binding on the plaintiffs. The plaintiffs must be held competent and justified in impugning and repudiating the deed in question.

8. During discussion, the Trial Court has discussed Section 123 of the Transfer of Property Act, 1882, which deals transfer how effected and further discussed about the ingredients that for the purpose of making a gift of



immovable property, transfer must be effected by a registered document signed by or on behalf of the donor and attested by at least two witnesses. It has been discussed that in the present suit out of two attesting witnesses, one witness has been acted as identifier. Thereafter, there is only one witness as the registering officer cannot be the attesting witness. Since one person Yasoda Nand Mishra has acted as identifier and he cannot be taken into consideration as witness and other person is the Registrar. The suit was allowed and decreed in favour of plaintiffs-respondents-respondents. Thereafter, the original defendant Ram Ekbal Singh preferred title appeal, which was numbered as Title Appeal No.165 of 1991/16 of 1987. The appellate Court has discussed in detail about Ext-B, which is the impugned deed of gift dated 21.07.1972 allegedly executed by Mahajan Kunwar, Deopari Devi and Ram Pari Devi to Ram Ekbal Singh for suit land. During discussion the appellate Court stated that “the stamp is purchased on 19.09.1972 by Suraj Narayan Singh with alleged claim of authority Mahajan Kunwar. The document is ascribed by Sakaldeep Prasad on 21.09.1972. The document bears thumb impression purporting to be of Mahajan Kunwar as endorsed by alleged Yasodanand Mishra on 21.09.1972. The document also purports to bear thumb impression and



signatures of Rampari Devi and Deopari Devi, their purported endorsement on first page includes recital “*Bakshish Nama Likha To Sahi Kul Majbun Padkar Aur Padhbakar Samajh Liya*” .

Both endorsements, namely, alleged letters of Rampari Devi and Deopari Devi have same recital and bears signature besides thumb impression dated 20.09.1972. The other pages do not bear such recital. The first page is not attested by any witness. The second page has alleged attestation by Yasodanand Mishra and by Suraj Narayan Prasad. The third page and fourth page do not bear any attestation. The fifth page, which is last page, bears endorsement of ascribe of Sakaldeo Prasad. Thus, the document purports to be ascribed, executed and attested on 21.07.1972 on three stamp papers and two blank papers purported to be purchased on 19.09.1972 by Suraj Narayan Singh and this bears thumb impression dated 29.09.1972 allegedly of plaintiff Mahajan Kunwar and Deopari on back of first page endorsed by alleged Yasodanand Mishra and this document appears to bear signature of Ram Ekbal Singh dated 28.09.1972 along with one thumb impression. The back of second page bears alleged signature and thumb impression of Ram Pari on 29.09.1972 and also signature and



thumb impression of Yasodanand Mishra on 29.09.1972. It also appears from the endorsement in reading on back of first page that the registration authority visited the resident of Mahajan Kunwar, Deopari and Rampari in village Nawadih. This endorsement in red ink is in 14th line on back of first page. It does not bear signature of any person nor it bears any date nor it is said in this endorsement as to at what place this endorsement is written by the person who wrote. It further appears on back of first page, which is last page that it bears emboss seal stamped with writings indicating that it was registered on 23.11.1972 under the particular mentioned therein. It further appears from front of first page that there is some endorsement therein including expenses Rs.56.12 and also some other charge for convenience and peon and in this manner this guarded total Rs.65.62/-. The identifier Yasodanand Mishra has not been examined. The appellate Court has categorically find as like that of original Court that upon careful perusal of the gift deed, it has been found that gift is not dully attested because DW 4 is not reliable and other identifier-cum-attesting witness has not been examined. It has also been found that statement of PW 1 and PW 2 indicate clearly that they never came face to face with any subscriber, identifier and witness and the statement of



PW 1 and PW 2 are definitely reliable at these points because of many other circumstances also which the appellate Court has indicated in the judgment and conclusively the appellate Court has found that Exhibit-B is not duly registered because there is much hide and seek. The petition for commission for Registrar is withheld. The receipt for fee of commission is withheld. No body takes responsibility to have brought registrar to the house of Mahajan Kunwar. The Registrar came along with some person, who may be any ascribe because of DW 2 claimed that he never brought the Registrar and there is no reason as to why Registrar DW 5 must know the house of Mahajan Kunwar. He heard few words from behind Parda while himself sitting at Darbaja and felt that it is an admission of execution. No body told him that executents are behind Parda. DW 5 did not put signature below his endorsement. There is no authenticity he visited the house of plaintiff on 29.09.1972 nor there is authenticity that he has definitely visited the house of the plaintiff nor there is authenticity that plaintiffs were behind Parda, when DW 5 was at Darbaja of the alleged executent and, hence, there is no legal registration Ext-B.

9. In this view of the matter, both the original Court as well as the appellate Court have raised doubt on the



validity of Ext-B, which is the alleged deed of gift.

10. Here in the second appeal, the substantial question of law, which has been framed by this Hon'ble Court vide order No.4 dated 12.02.1990 reads as under:

*“Whether the court-below
has misconceived the recital of execution in
the deed?”*

11. With a view to decide the said substantial question of law in his favour, the appellant submits that the deed of gift was executed by the plaintiffs-respondents-respondents after going through the recital of the deed and the same was executed in accordance with law with full compliance of Section 123 of the Transfer of Property Act, 1882 (4 of 1882), which requires the consideration of this Court. Learned Counsel for the appellant further submits that there are five witnesses DW 1 to DW 5, who supported the story of the defendant-appellant-appellant but it has not been considered at all and, therefore, the said decision of the Trial Courts are bad in law. Since the reliance has been made by the Counsel for the appellant is on Section 123 of the Transfer of Property Act, 1882. Therefore, it is necessary for this Court to test it. Sections 122 and 123 of the Transfer of Property Act, 1882 state as



follows:

“122. “Gift” defined.-

“Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.- Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

123. Transfer how effected.- For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold



may be delivered.”

12. It is the categorical direction of Section 123 of the Transfer of Property Act, 1882 that the Gift of immovable property must be effected (i) by a registered instrument (ii) signed on behalf of the donor, (iii) attested by at least two witnesses.

13. From the deed it becomes crystal clear that Yadodanand Singh was the identifier and the same Yasodanand Singh had also signed at one page as witness. Deopari and Rampari are claiming that their signature has been obtained by fraud. Upon perusal of Ext-B, it further transpires that the said deed of gift is of five pages. On the last three pages, there are no signature of witnesses, only in second page there is signature of one witness. Therefore, the said Ext-B does not fulfill the ingredient of Section 123 of the Transfer of Property Act, 1882, and, hence, this Court is of the firm view that the said Ext-B is not said to be a gift of deed and, hence, the ingredients of 123 of the T.P. Act are lacking. It is due to this reason that the substantial question of law that whether Court below has misconceived the recital of execution of the deed cannot be decided in favour of appellant. Hence, on the substantial question of law that whether the court-below has misconceived the recital of execution of the gift deed, this Court is of the firm



view that when the said deed does not fulfills the basic ingredients of Section 123 of the Transfer of Property Act, 1882, there is no question of going through the recital of the execution of the deed and whatever be the discussion about the said Ext-B on factual matrix as well as discussing evidence, this Court is of the firm view that there is no need of any interference in the concurrent finding of the Courts-below and in result, the second appeal is dismissed.

14. Office is directed to return back the lower court records to the Trial Court.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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