

(1997) 04 PAT CK 0056
In the Patna High Court
Case No : First Appeal No. 206 of 1973

Brij Mohan Agarwalla (Kathuria)

APPELLANT

Vs

Smt. Narmada Devi

RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Citation : (1997) 2 BLJR 1144

Hon'ble Judges : Onkar Narain Asthana, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

O.N. Asthana, J.—This is the first civil appeal against the judgment and decree of Additional Subordinate Judge I, Dhanbad dated 19th December, 1972 in Title Partition Suit No. 19 of 1969 where the Trial Court Judge dismissed the claim of the plaintiff-appellant.

2. The plaintiff-appellant filed the suit for the partition in respect of three houses and the apportenant land described in Schedule A claiming half share.

3. Late Ram Dayal Agrawal, a Hindu governed by Mitakshra School of Hindu Law was married to Mukhi Bai @ Mukhda Sethani, and as Ram Dayal had no issue he adopted Radha Krishna Agrawal as his son. Ram Dayal Agrawal died in 1919 A.D. The son Radha Krishna Agrawal was married to Smt. Murli Sethani. Radha Krishna Agrawal died in the year 1939 A.D., and Mukhi Bai died later on in 1949 A.D. Radha Krishna Agrawal had two daughters Panna Devi and Narmada Devi and this Narmada Devi is the defendant-respondent in the case. She is married to Jai Narain Ritolia. Smt. Panna Devi died in the life time of her mother Smt. Murli Sethani leaving behind her son the plaintiff Brijmohan Agrawal. This Panna Devi was married to Gyani Ram. Murli Sethani died on 22nd May, 1968.

4. The plaintiff pleaded the case that after the death of Radha Krishna Agrawal his widow Murli Sethani came to possess the Schedule A properties jointly with the defendant Narmada Devi and the plaintiff's mother Panna Devi, and after the

death of Panna Devi her interest devolved on the son Brijmohan Agrawal; that Murli Sethani died on 22nd May, 1968 at the age of 70 years and she was bed ridden about last six months or more before her death ailing from intestinal tuberculosis since long, and she was cared for and nursed by the plaintiff and that the plaintiff performed the last rites and sradh of Murli Sethani.

5. The plaintiff claims half share in these properties.

6. The defendant Narmada Devi raised the defence that Mukhi Bai was a rich girl from her maternal side, and Mukhi Bai acquired lands and properties shown in Schedule A of the plaint from her personal monies and these properties never belonged to Ram Dayal Agrawal; that on 7th February, 1947 Mukhi Bai along with her widow daughter-in-law Murli Sethani gifted the half property Item No. 3 of Schedule-A of the plaint to this defendant Narmada Devi as a reward of her services to her grand-mother and mother, and since then this defendant came into possession of this house property item No. 3; that after the death of Mukhi Bai her properties being the Stridhan were inherited by her daughter-in-law Murli Sethani; that this defendant served her mother and her mother Murli Sethani executed a registered deed of gift gifting the house properties Item Nos. 1 and 2 of Schedule A of the plaint to this daughter-defendant Narmada Devi by registered gift deed dated 9th January, 1968, and since then this defendant is in possession of these properties.

7. The Trial Court arrived at the findings that these properties belong to Mukhi Bai, and the plaintiff failed to prove that these properties belonged to Ram Dayal Agrawal, and that Mukhi Bai and Murli Sethani gifted all these properties through the gift deeds dated 7th February, 1947-Exhibit-A/I and 9th January, 1968 Exhibit-A to the defendant Narmada Devi.

8. Learned Advocate for the plaintiff-appellant raised the contentions in this appeal that all these house properties were the ownership of Ram Dayal Agrawal, that Mukhi Bai was simply a limited owner, and that the execution of the deeds of gift had not been proved and it has also not been proved that Murli Sethani and Mukhi Bai executed deeds of gift voluntarily and with understanding.

9. Undisputedly the ownership documents of all these three house properties were in the name of Mukhi Bai. The plaintiff Brijmohan Agrawal P.W. 14 deposed for the first time in the Court on oath that in business community the landed properties were purchased in the name of the ladies of the house to avoid payment of income tax. The plaintiff did not raise an such pleading in the plaint that Ram Dayal Agrawal gave the whole consideration of these sale deeds from his income, and Ram Dayal purchased these house properties in the name of his wife Mukhi Bai to avoid the wrath of income tax authorities. This suggestion of the plaintiff Brijmohan for the first time on oath is not acceptable and, thus not enough to hold that these properties were the ownership of Ram Dayal Agrawal. This plaintiff Brijmohan has admitted in his statement on oath in paras 4 and 5 that during her life time Mukhi Bai was in possession of all these three houses,

and both these ladies let out the house on rent and both these ladies realised the rent. This statement of the plaintiff also goes to show that Smt. Mukhi Bai was possessing all the three houses and was dealing with them by letting them out as her personal property. Learned Advocate for the plaintiff-appellant has drawn attention to the recital in the gift deed dated 9th January, 1968 Exhibit-A where Murli Sethani mentioned that she inherited these properties from Mukhi Bai and Ram Dayal Agrawal and urged that this recital proves that Ram Dayal was the owner of the property. The recital in itself is not enough to prove the ownership of Ram Dayal Agrawal in this house. The daughter-in-law Murli Sethani might be having her own impression about the ownership of the house and she gave that recital. It is not the admission of the defendant Narmada Devi herself so as to read it out in full against the defendant Narmada Devi. The onus was on the plaintiff-appellant to prove that these properties were the ownership of Ram Dayal Agrawal. The plaintiff has failed to prove that these properties were the ownership of Ram Dayal Agrawal.

10. All these properties belong to Mukhi Bai. The adopted son Radha Krishna Agrawal died in the life of Mukhi Bai leaving behind his widow Murli Sethani. Thus the inheritance of Mukhi Bai on her death devolved on the daughter-in-law Murli Sethani. [Even if the ownership of the property at any stage vested in the adopted son Radha Krishna Agrawal the same passed on to the widow Murli Sethani (wife) on the death of Radha Krishna Agrawal to the exclusion of the daughter.]

12. Shaligram Pathak D.W. 3, an attesting witness has proved the execution of the deed of gift executed by Mukhi Bai and Murli Sethani gifting the house item No. 3 of Schedule A of the plaint to the daughter Narmada Devi. The gift was made in reward to the services and affection given by Narmada Devi to her grand-mother and mother. At that time Murli Sethani joined in making the gift as next reversioner to her mother-in-law Mukhi Bai. Babulal D.W. 1, an old tenant in the house property No. 175 which was gifted to Narmada Devi by this gift deed of 7th February, 1947 has stated on oath that he started paying rent to Narmada Devi. The acceptance of this gift by Narmada Devi is established.

13. On death of Mukhi Bai in 1949 A.D., daughter-in-law Murli Sethani inherited the house properties item Nos. 1 and 2 of Schedule A of the plaint. Murli Sethani was the owner of both these houses item Nos. 1 and 2 and she gifted them to her daughter-defendant, Narmada Devi on 9th January, 1968 through registered deed-Exhibit-A as the reward for the services of Narmada Devi to the mother. H.C. Chatterjee D.W. 2 stated on oath that he prepared this deed of gift as the scribe, and he also signed as one of the attesting witnesses to this deed of gift. He stated that he went twice to the house of Murli Sethani--once to collect the facts from Murli Sethani and to know her intention and he prepared the deed of gift as desired by Murli Sethani and he read out and explained to her and she accepted the same, and that he went again to the house of Murli Sethani along with the Registrar, Registration and he signed the deed of gift as the attesting

witness. Admittedly both these ladies Murli Sethani and her mother-in-law Mukhi Bai were Pardanasin lady. Learned Advocate for the plaintiff-appellant urged that H.C. Chatterjee was not knowing Murli Sethani from before and thus it is very likely that some other lady put her thumb-impression on the deed of gift-Exhibit-A. No such case has been pleaded by the plaintiff Brijmohan in the plaint that some other lady was set up and the thumb impression of that lady were taken on the deed of gift. In absence of such pleadings on the part of Brijmohan, and looking into the presumption that correct dealings are made, it shall be accepted that Murli Sethani executed this deed of gift-Exhibit-A on 9th January, 1968 gifting the house property of Schedule 1 and 2 of Schedule-A to her daughter Narmada Devi. The scribe H.C. Chatterjee went twice to the house of Murli Sethani and thus obviously interrogated her name, husbands name etc. as well, and the Registrar, Registration would have also inquired the name and husband's name as well. It is simply a presumptive argument on behalf of the plaintiff-appellant that some lady other than Murli Sethani might have executed the deed of gift-Exhibit-A.

14. Relating the alleged illness of Murli Sethani no Doctor has been examine, and no prescriptions of any Doctor had been filed. The plaintiff Brijmohan P.W. 14 has stated in paragraph 23 of his statement that no prescriptions of the Doctors are with him. The plaintiff did not make any statement about any impairment of understanding on the part of Murli Sethani on oath in the Court. The plaintiff has admitted in his statement that the name of Narmada Devi was mutated on the basis of this gift deed dated 9th January, 1968 in Municipal office, and he did not raise any objection to that mutation. The plaintiff has admitted that the became aware of this deed of gift before the filling of the suit. The plaintiff did not raise any specific pleading in the plaint if Murli Sethani lost her memory or capability of understanding the things due to any illness or otherwise; or some women was set up other than Murli Sethani for the execution of this deed of gift-Exhibit-A. A general statement of the plaintiff on oath that these gift deeds are forged and fabricated document is not accepted.

15. Sagarmal P.W. 5 has said that Murli Sethani was ailing for the last four or five years before her death due to bone T.B. and she was unable to move for the last two years. This witness had no relationship, and Murli Sethani was living in Parada. This witness stated that he did not know which Doctor treated Murli Sethani. This witness stated that one and half years before her death he saw Murli Sethani last but he had no talk with Murli Sethani. Shyam Sundar Singh P.W. 6 stated that Murli Sethani suffered from tuberculosis two years prior to her death, and she was confined to bed six or seven months before her death, and she had no adequate power of understanding. This witness is not a relation but he is friend of the plaintiff This witness stated when he met last four or five months before her death she recognised him and she asked him about his well being. Safi Ahmad P.W. 7 stated that Murli Sethani was ailing since long and she was totally unable to move and confined to bed. He admitted that he had no concern with Murli Sethani and her family. He stated that he met her last five or

six years back. This witness stated that he did not come to know what trouble and ailment Murli Sethani suffers from. This witness stated in para 7 of his statement that he has seen mother's sister of the plaintiff in the house of Murli Sethani. Ghanshyam Das Gupta P.W. 8 stated that Murli Sethani was ill at the time of her death and she was not in a position to move. This witness stated that he did not know from what disease Murli Sethani was suffering from.

16. Arjun Prasad P.W. 10 stated that he served as servant of the plaintiff for a couple of years and he purchased medicine for Murli Sethani, Murli Sethani suffered from intestinal tuberculosis. He stated further that five to six months prior to her death she (Murli Sethani) became confined to bed. This witness stated that step-mother of this plaintiff Brijmohan was the daughter of Murli Sethani. This incorrect deposition creates much doubt if Arjun Prasad P.W. 10 was ever the servant of the plaintiff Brijmohan and was attending and bringing medicine for Murli Sethani.

17. The above evidence led from the side of the plaintiff at best shows that Murli Sethani probably suffered from tuberculo- is two years before her death, and her physical movement outside the bed became some what restricted five to six months prior to her death. There is nothing to show that Murli Sethani lost her capacity of understanding the things. It is held that both the deeds of gift are the genuine document and all the three houses became the properties of the donee the defendant Narmada Devi.

18. The appeal is dismissed with costs.