

(2005) 10 PAT CK 0034
In the Patna High Court
Case No : Civil Revision No. 493 of 2005

Kalawati Devi (Smt.)

APPELLANT

Vs

Parmanand Mandal and Another

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Citation : (2005) 10 PAT CK 0034

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Heard learned counsel for the parties. Petitioner is the defendant in Title Suit No. 62 of 2001, which was filed by the opposite parties (sons of Chunni Mandal) for declaration of their title and also for declaration that deeds of gift executed on 21.7.1999 and 25.11.2000 by defendant 1st Party (Chunni Mandal) in favour of his daughter defendant 2nd party (petitioner) was void.

2. Petitioner (defendant No. 2) is aggrieved by order dated 6.12.2004 passed in the aforesaid suit, by which the learned Subordinate Judge-1, Purnea rejected her petition dated 11.5.2004 for marking the two deeds of gift as exhibits in the above mentioned title suit.

3. It transpires from the arguments on behalf of the parties as well as from the materials on record that earlier the petitioner (defendant No. 2) had filed a petition in the learned Court below on 20.2.2004 (Annexure-4) for examining the deed writer and on its basis marking the deeds of gift as exhibits, but the said petition was rejected by the learned lower Court on 22.3.2004 (Annexure-6) as DW 9 being only the deed writer (Katib of the deeds), cannot prove the gifts and hence liberty was given to the defendant-petitioner to prove the gift deeds according to the provision of Sections 5 and 68 of the Indian Evidence Act, (hereinafter referred to as "the Act" for the sake of brevity). It is also apparent that thereafter the executant of the deeds, namely, Chunni Mandal (defendant 1st party) died on 31.11.2004, but before that he had filed a joint written statement on 16.7.2001 (Annexure-2) alongwith his daughter (defendant 2nd

party-petitioner) in paragraph 15, 16 and 22 of which it was specifically stated that the suit property was exclusively owned by him, which he gifted to his daughter (defendant No. 2-petitioner) by executing the aforesaid deeds of gift, which were also duly registered and she came in exclusive possession of the suit/land as absolute owner thereof.

4. In the aforesaid circumstances, the surviving defendant, namely, defendant No. 2 (petitioner) filed another petition (Annexure-7) in the Court below stating that since defendant No. 1 has already in his written statement, admitted the execution of the deeds by him and the gift of suit properties to his daughter defendant No. 2 (petitioner), no attesting witness was required to prove the deeds as per the proviso to Section 68 of the Act and accordingly prayed that the said deeds of gift be marked as exhibits. This petition of the defendant-petitioner has been rejected by the learned Court below by the impugned order dated 6.12.2004 only on the ground that a similar petition filed by the defendant-petitioner had already been rejected by that Court on 22.3.2004 and hence there was no occasion for entertaining the second petition.

5. It is apparent from the records that the contents of the deeds have been duly proved by their scribe, namely, DW 9 and only the question of proving the execution of the said deeds remained and hence the defendants (petitioner) and her late father) filed petition dated 20.2.2004 (Annexure-4) for marking the said deeds of gift as exhibits in the suit on the basis of the deposition of the scribe as he will also be deemed to be marginal witness. However, the said petition was rightly rejected by the learned Court below by its order dated 22.3.2004 (Annexure-6) as a deed writer cannot be legally deemed to be witness to the execution of the deed and the defendants were directed to take steps in accordance with Section 68 of the Act. In the said circumstances, it is quite apparent that the second petition filed by the defendant on 11.5.2004 (Annexure-7) under the proviso to Section 68 of the Act for marking the deeds of gift as exhibits on the basis of specific admission by its executant was in compliance of the earlier order of the learned Court below dated 22.3.2004 and the said two petitions filed by the defendant dated 20.2.2004 (Annexure-4) and 11.5.2004 (Annexure-7) were completely different in nature, but the learned lower Court wrongly assuming that they were similar in nature passed the impugned order rejecting the second petition filed by the defendant-petitioner.

6. Section 68 of the Indian Evidence Act, 1872 provides that:-- "If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence--Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908) unless its execution by the person by whom it purports to have been executed is specifically denied." Here in the instant case

admittedly the documents in question are gift deeds registered under the provisions of the Indian Registration Act, 1908 and their execution has never been denied by the person, who has. executed them, namely, defendant No. 1 Chunni Mandal, rather he had specifically stated in his written statement filed in the instant suit itself that he as exclusive owner of the suit property executed the said deeds of gift and got them registered in favour of his daughter (defendant No. 2), whereafter she became absolute owner thereof. Hence, in the aforesaid circumstances and as per the above mentioned proviso to Section 68 of the Act it is not necessary to call any attesting witness to prove the execution of the deeds in question for admitting them as evidence or exhibits in the suit. In this connection reference may be made to a decision of the Hon"ble Apex Court in the case of Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., .

7. Furthermore, Section 58 of the Act specifically provided that no fact need to be proved in any proceeding which the parties thereto admit at the hearing. Here in the instant case the contents of the deeds are already proved, whereas the execution of the deeds in question are admitted by the plaintiffs themselves and the only dispute as raised in the plaint is that the said deeds were ab initio, void as its executant, namely, defendant No. 1 had no right, title or interest in the suit property, which exclusively belonged to the plaintiffs. Thus, in the said circumstances even if any of the attesting witnesses is alive, there was no need to prove the admitted fact of execution of the deeds in question by defendant No. 1, who is now dead, and accordingly it was the duty of the Court to admit the said deeds in evidence marking them as exhibits specially when they were the main documents around which the entire case revolved.

8. In the aforesaid facts and circumstances, the impugned order of the learned Court below is illegal and bad and it had committed a clear error of jurisdiction by refusing to admit the deeds of gift as exhibits in the suit. Accordingly, this civil revision is allowed, the impugned order is set aside and the learned Court below is directed to admit the deeds of gift in question as evidence and mark them as exhibits in the suit.