

(2010) 08 JH CK 0004
In the Jharkhand High Court
Case No : S.A. No. 223 of 2005

Mahendra Prasad @ Mahendra Dusadh, Rajendra Prasad
Paswan @ Rajendra Dusadh, Birendra Prasad Paswan @
Birendra Dusadh and Dhankumari Dusadhin

APPELLANT

Vs

Basant Dusadh @ Basant Prasad

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Citation : (2010) 08 JH CK 0004

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—Plaintiffs are Appellants. In this second appeal, they have challenged the concurrent findings of facts recorded by the courts below holding that the Plaintiffs have not succeeded in proving their right and title and unity of title and possession of the parties in the suit property and the Plaintiffs are not entitled for the relief of partition or any other relief.

2. The Plaintiffs had filed suit in the court of learned Sub Judge, Chaibasa, praying for a decree for partition of suit property, described in Schedule-A of the plaint, claiming half share, and also for holding that renewal of lease in respect of the suit property in the name of Mundri Dusadhin and deed of gift executed in favour of the Defendant are null and void.

3. The Plaintiffs' case, in brief, was that the parties are governed by Mitakshara School of Hindu Law. The suit property was leasehold property in the name of Jitan Dusadh. He had two sons, namely, Shiv Charan Dusadh and Namdhari Dusadh and one daughter Mundri Dusadhin. Mundri Dusadhin had become widow during lifetime of Jitan Dusadh and came to reside in her paternal home which is the suit house. Among the sons of Jitan Dusadh, Shiv Charan Dusadh had only three daughters, namely, Laxmi, Dan Kumari and Rangmati. Namdhari had one son, namely, Gopal. All the daughters of Shiv Charan Dusadh were married.

Rangmati died issueless. The Plaintiffs are heirs of Dan Kumari. Gopal Dusadh also died issueless. After the death of Jitan Dusadh, his two sons had inherited the suit property. He died prior to coming into force of Hindu Succession Act 1956. Shiv Charan Dusadh and Namdhari Dusadh also died leaving behind the aforesaid daughters and Gopal Dusadh was the only male heir. Gopal Dusadh inherited the entire suit property and remained in possession of the same. After the death of Gopal Dusadh, his mother and aunt inherited the suit property. Mundri Dusadhin, being a married daughter, was excluded from inheritance. Dan Kumari, daughter of Shiv Charan Dusadh became widow and she also came back to her parental home. She was living with her mother-Bigni Dusadhin. After the death of Gopal Dusadh, father of Defendant used to visit Chaibasa occasionally. He had greedy eye over the suit property. He took advantage of illiteracy of Bigni Dusadhin and Lakhia Dusahin and got the lease of the suit property renewed in the name of Mundri Dusadhin in connivance of Khas Mahal authorities. Lease was renewed in the name of Mundri without any notice. Father of the Defendant influenced Mundri Dusadhin and got a deed of gift executed in favour of the Defendant. Recently, in the month of July, 1996, the Defendant-Basant Dusadh came to Chaibasa from Adityapur, where he was working. Plaintiffs allowed him and his family to occupy a portion of the suit house, After some time, the Defendant started claiming right and title over the suit property on the basis of the gift deed. The Plaintiffs pleaded that the gift deed executed by Mundri Dusadhin is illegal and void. The Defendant has not acquired any right, title over the suit property by virtue of the said gift deed.

4. The Defendant appeared and contested the suit. In his written statement, besides taking the ground of legal bar and maintainability of the suit, he specifically pleaded that there was no unity of title and possession between the parties and the simple suit for partition is not maintainable. The Defendant claimed that the suit property exclusively belonged to and was possessed by Mundri Dusadhin-daughter of Late Jitan Dusadh. The suit property was a leasehold property under the State of Bihar and the lease in respect of the property was renewed in the name of Mundri Dusadhin by Khas Mahal authorities in T.K.M. Case No. 388(L) of 1965. She had been in continuous possession of the said property till she gifted the property to the Defendant by virtue of registered deed of gift. The said transfer was made after obtaining permission from Khas Mahal authority, as required under the terms of the lease. The Defendant, thereafter, got his name mutated in respect of the suit property. Jamabandi has been all along running in his name and he has been paying rent to the Khas Mahal authority. The Defendant further pleaded that Holding Nos. 1020 and 1024 belonged to Jitan Dusadh. He died leaving behind two sons, namely, Shiv Charan Dusadh and Namdhari Dusadh and daughter, namely, Mundri Dusadhin. Mundri Dusadhin became widow and had come back to her paternal home. There was a partition between Shiv Charan Dusadh and Namdhari Dusadh. In that partition, Holding No. 1020 was allotted to the share of Shiv Charan Dusadh and Holding No. 1024 was allotted to the share of Namdhari Dusadh. After the death of

Namdhari Dusadh, Gopal Dusadh inherited the suit property. Gopal Dusadh also died in 1959 without any issue. Mundri Dusadhin was living with Gopal Dusadh in the suit property. Gopal Dusadh had two wives, who also died. After the death of Gopal Dusadh and his wives, Mundri Dusadhin came in exclusive possession over the suit property. On that basis, lease was renewed in her name by the Khas Mahal authority. Mundri Dusadhin by virtue of registered deed of gift dated 14th November, 1967 transferred the suit property in favour of the Defendant. The Defendant accepted the gift and came in exclusive possession of the suit property. In spite of the knowledge of renewal of the lease, exclusively in the name of Mundri, the Plaintiffs never raised any objection. The Plaintiffs did not challenge renewal of the lease by the Khas Mahal authority. Plaintiff No. 1-Dari Kumari rather got the lease of Holding No. 1020 renewed in respect of the property, which belonged to her maternal grandmother. The Plaintiffs were allowed to live in the house as licensee, but when they were asked to vacate the house, they filed the said suit, claiming share in the house. There was, thus, no cause of action for filing the suit.

5. On the basis of the pleadings of the parties, learned Trial Court framed as many as eight issues, which are as follows:

- (i) Is the suit as framed maintainable?
- (ii) Whether parties have got cause of action over the suit?
- (iii) Is there unity of title and possession between the parties to the suit with respect to suit property?
- (iv) Whether suit property is joint property of parties to the suit or whether the same was the property of Mundri Dusadhin who has gifted the same to Defendant by virtue of registered Deed of Gift dated 14th November, 1967?
- (v) Whether holding No. 1020 was self-acquired property of Bigni Dusadhin and same was acquired by virtue of purchased by Dhan Kumari Dusadhin or whether the same was joint family property of Shiv Charan Dusadh and Namdhari Dusadh, sons of Jitan Dusah. If the said holding was held to be joint family property of Shiv Charan and Namdhari. Whether the same was purchased any manner alleged by Defendant?
- (vi) Whether there has been partition in between Shiv Charan Dusadh and Namdhari Dusadh with respect to Holding No. 1024 and 1020?
- (vii) Whether Plaintiffs are residing in suit property with the permission of Defendant?
- (viii) To what relief or reliefs Plaintiffs are entitled?

6. Learned Trial Court, on conclusion of the trial, held that the simple suit for partition is not maintainable, as the same has been prayed as a consequential relief after holding the renewal of deed of gift illegal and void. He further held that there was no unity of title and possession and the Defendant acquired

exclusive right, title and interest over the suit property. On the basis of a deed of gift dated 14th November, 1967, prior to the Defendant, Mundri Dusadhin had acquired right, title and interest over the suit property after the renewal of the lease in her name. He concluded that the Plaintiffs are not entitled to get any relief and dismissed the suit.

7. The Plaintiffs, thereafter, preferred appeal in the court of learned District Judge, Chaibasa, being T.A. No. 4 of 2003. The said appeal was finally heard and decided by the 1st Additional District Judge, Chaibasa.

8. Learned lower appellate court heard the parties and after thorough discussion of facts and evidences on record framed two points for decision. Learned lower appellate court decided both the points against the Appellants, holding that there is no infirmity in the findings of the Trial Court and the Defendant has valid right and title over the suit property and the Plaintiffs did not succeed to prove their claim made in the plaint. He also concurred with the finding that there is no unity of the title and possession of the parties and dismissed the appeal.

9. Learned Counsel for the Appellants sought to challenge the said judgment and decree on the ground that the findings arrived at by considering the evidences in wrong prospective and that the lower appellate court has not discussed all the evidences in detail. Learned courts below should have considered that the suit property originally was leased out in the name of Jitan Dusadh and that all the heirs and the successors of Jitan Dusadh had share in the said leasehold property. Renewal in the name of Mundri Dusadhin, as such, was not proper and legal. Learned courts below, therefore, ought to have held that renewal of the lease in favour of Mundri Dusadhin did not confer exclusive right, title on her and she had no legal right to transfer the suit property in favour of the Defendant by virtue of registered deed of gift. Learned courts below on that basis should have held that there was unity of title and possession and should have granted decree for partition, as prayed for by the Plaintiffs. He further submitted that though the Trial Court has discussed all the evidences in detail, learned lower appellate court, being last court of fact, should have also dealt with all the evidences and materials on record in detail. Learned lower appellate court has not done so and has not acted as last court of fact and the impugned judgment and decree is liable to be set aside.

10. I have heard learned Counsel for the parties and considered the submissions. I have also perused the judgment of learned Trial Court as well as learned lower appellate court. Learned Trial Court has discussed all the evidences in detail and has come to the finding that there is no unity of title and possession between the parties regarding suit property. He has recorded reasons in detail, which are based on evidences. Learned lower appellate court has also discussed the facts and evidences in detail. In Paras-14 and 15 of the judgment, learned lower appellate court has thoroughly considered the evidences adduced on behalf of the Plaintiffs and the Defendant and then has come to the finding that there is no illegality in the finding of the learned Trial Court that the Defendant has got right

and title over the suit property. He also held that there is no unity of title and possession of the parties. Learned lower appellate court, thus, concluded that the Trial Court has not erred in deciding the issues and dismissing the Plaintiffs' suit. On the basis of the said finding, he dismissed the appeal.

11. It is well settled that the findings of fact arrived at by two courts are binding in second appeal and if the findings are not perverse and illegal, the same cannot be interfered with by the second appellate court. In *Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan* AIR 1999 SC 3067, the Supreme Court has held that the second appellate court has no jurisdiction to interfere with the concurrent findings of two courts and substitute its subjective satisfaction in the evidences of the said courts.

12. On perusal of the impugned judgment of the learned courts below, I find that the findings recorded by them are based on evidences on record and the same are not perverse and illegal.

13. I, therefore, find no error in the findings, making out any ground for interference by this Court. Both the courts below have gone into the facts, evidences and material on record in detail. Learned lower appellate court has also discussed the evidences.

14. I, therefore, find no substance in the submissions of learned Counsel for the Appellants that the facts and materials have been considered in wrong prospective or lower appellate court has not discussed the evidences on record.

15. In view of the above discussions, there is no merit in this second appeal, which is, accordingly, dismissed.