
(2011) 04 JH CK 0014
In the Jharkhand High Court
Case No : Writ Petition (C) No. 2541 of 2009

Mundrika Devi	Vs	APPELLANT
Sohan @ Sohar Mahto and Others		RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Evidence Act, 1872 — Section 101

Citation : (2011) 04 JH CK 0014

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present writ petition has been preferred by the original Plaintiff in Title Suit No. 180 of 1997, against the order passed by learned Additional MunsifI, Giridih dated 29th January, 2009, whereby, an application has been given by the original Defendants that the Plaintiff may be directed to prove his case on the basis of three issues recast by the trial court vide order dated 15th January, 2009. This application, preferred by original Defendant, has been accepted by the trial court and the present Petitioner (original Plaintiff) has directed to prove his case on the basis of three recast issues. Against this order, passed by the trial court, present petition has been preferred.

2. Having heard learned Counsel for the Petitioner (original Plaintiff) and looking to the dispute between the parties to the suit, No. error has been committed by the trial court in allowing the application preferred by the original Defendants for recasting the issues and, therefore, I see No. reason to entertain this writ petition mainly for the following facts and reasons:

(i) It appears that the original Plaintiff, who has filed Title Suit No. 180 of 1997, is claiming her title over the suit property mainly on the basis of gift deed dated 22nd June, 1987. The gift was given by Bhukhal Mahto.

(ii) It appears from the written statement filed by Defendant Nos. 3 and 4 as well

as by other Defendants that there was one common ancestor, namely, Nanku Mahto. The written statement reveals the fact that the property was never partitioned and Bhukhal Mahto was never the sole owner of the property, in question and, therefore, he cannot gift the said property to the Petitioner.

(iii) This Court has perused the written statement filed by the Defendants, which was pointed out by learned Counsel for the Petitioner (original Plaintiff). Looking to these written statements, it appears that rightly the trial court has recast the issues regarding validity of the gift deed. Even otherwise also, burden of proof, as per Section 101 of the Indian Evidence Act, 1872 is upon the present Petitioner (original Plaintiff). "Affirmanti, non negenti onus probatio" (burden of proof lies who affirms, and not upon him who denies). Thus, it is affirmed by the present Petitioner (original Plaintiff) that there is a valid gift in her favour and, therefore, burden of proof lies upon her. Thus, the trial court has rightly appreciated the written statements filed by the original Defendants.

(iv) Following are the issues, which are recast:

(a) whether the gift made in favour of the Plaintiff/Petitioner by her uncle is valid?

(b) Whether the parties had common ancestor namely Nanku Mahto and whether suit properties was partitioned among his legal heir?

(c) Whether the Plaintiff was duly adopted by her uncle?

(v) Looking to the aforesaid issues, which were recast by the trial court vide order dated 15th January, 2009 Plaintiff has to prove his case. The order passed by the trial court dated 15th January, 2009 is absolutely true and correct. Looking to the dispute between the parties, basically burden of proof is upon the Plaintiff, as stated hereinabove as per Indian Evidence Act, 1872 and, therefore, rightly the trial court has directed the Plaintiff to lead the evidence as per the issues which are recast.

3. In view of the aforesaid facts and looking to the impugned order, I see No. error in the order passed by the trial court. There is No. substance in this writ petition and, hence, the same is, hereby, dismissed.