
(2003) 09 JH CK 0073
In the Jharkhand High Court
Case No : AFAD No. 51 of 1990 (R)

Ramjeet Mahto and Others

APPELLANT

Vs

Baban Mahto and Others

RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Transfer of Property Act, 1882 — Section 112

Citation : AIR 2004 Jhar 58 : (2004) AIR Jhar HCR 281 : (2003) 4 JCR 268 :
(2003) 2 JLJR 301 : (2004) 1 CCC 464

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : Manjul Prasad, for the Appellant; Shekhar Sinha, for the Respondent

Final Decision : Allowed

Judgement

Vishnudeo Narayan, J.—This appeal at the instance of the plaintiffs-appellant has been directed against the impugned judgment and decree dated 9.2.1990 and 21.2.1990 respectively passed by Shri Philip Topno, 1st Additional District Judge, Daltonganj at Palamau in Title Appeal No. 16 of 1984 whereby and whereunder the appeal filed by Rupdhari Mahto (since dead), the original defendant-respondent was allowed and judgment and decree dated 8.2.1984 and 20.2.1984 respectively passed by the Additional Munsif, Daltonganj at Palamau in Title No. 19 of 1981 was set aside.

2. The plaintiff-appellant had filed the said title suit for declaration of their right title and interest in respect of the suit land by virtue of the registered deed of gift dated 11.4.1972 (Ext. 2) executed by original defendant-respondent Rupdhari Mahto in their favour and for confirmation of their possession in respect thereof and in the alternative for recovery of possession.

3. The case of the plaintiffs-appellant is that Khudi Mahto died leaving behind his two sons, namely, Bharosi Mahto and Rupdhari Mahto and the ancestral family property recorded in his name in cadastral Survey Records of Right as well as

acquired by him in his life devolved upon his two sons and they have also inherited the properties of Mohari Mahto, the full brother of Khudi Mahto on his death and. thereafter, there had been an amicable partition between Bharosi Mahto and Rupdhari Mahto in respect of the entire properties and they were coming in exclusive cultivating possession in respect of the land allotted to their respective share. Defendants-respondents Rupdhari Mahto is issueless Bharosi Mahto had four sons, namely, Achaibar Mahto, Ayodhya Mahto @ Jodhi Mahto, Kauleshwar Mahto and Balkesh Mahto. Said Balkesh Mahto died in the year 1967 leaving behind his widow Phuleshwari Mathowain and two minor sons, namely, Ramjeet Mahto and Lalan Mahto Kauleshwar Mahto had two sons, namely, Rajendra Mahto and Balram Mahto and four daughters. Said Phuleshwari Mahtowain and Kauleshar Mahto always looked after the comfort of Rupdhari Mahto and his wife Ratwa Mahtowain as well as the cultivation of Rupdhari Mahto and due to the service rendered by them Rupdhari Mahto was very much pleased and had lover for the sons of Kauleshar Mahto and Balkesh Mahto, deceased and in view of the services rendered by them Rupdhari Mahto, the defendant-respondent proposed to gift his entire properties to the sons of Kauleshar Mahto and Balkesh Mahto, deceased and Phuleshwari Mahtowain and Kauleshar Mahto agreed to the proposal of gift made by Rupdhari Mahto and accordingly, the defendant-respondent Rupdhari Mahto executed a registered deed of gift 11.4.1972 in favour of the plaintiffs-appellant who are the sons of Kauleshar Mahto and Balkesh Mahto. The deed of gift was scribed at the instance of defendant-respondent Rupdhari Mahto and the scribe read over and explained the contents of the gift, to him and after understanding the contents of the gift defendant-respondent Rupdhari Mahto executed the deed of gift and the attesting witnesses witnessed the deed of gift at his instance. It is also alleged that defendant-respondent Rupdhari Mahto was a literate person and he also verified the contents of the deed of gift and he himself presented the deed of gift before the Sub-Registrar, Daltonganj for registration and admitted the execution in respect thereof without any undue influence and misrepresentation and Phuleshwari Mahtowain and Kauleshar Mahto the mother and father of plaintiffs-appellant No. 1 to 2 as well as of plaintiffs-appellant No. 3 and 4 respectively accepted the deed of gift on their behalf and came in possession of the properties covered under the deed of gift and they came in cultivating possession over the suit land. Defendant-respondent Rupdhari Mahto also handed over the registration receipt to Kauleshar Mahto aforesaid who withdrew the original deed of gift from the registration office. It is alleged that, thereafter, the plaintiffs-appellant filed a case for mutation of their names in respect of the gifted properties before the Circle Officer, Patna which was allowed without any objection raised by Rupdhari Mahto and, thereafter, defendant-respondent Rupdhari Mahto filed an objection at the instance of Achaibar Mahto the eldest son of Bharosi Mahto aforesaid, before the Circle Officer, Patna which was rejected and, thereafter, Rupdhari Mahto filed an appeal against the order of mutation at the instance of Achaibar Mahto which was allowed by Deputy Collector, Land Reforms, Sadar, Daltonganj and the mutation order of the Circle

Officer was set aside and the revision filed by the plaintiffs-appellant was allowed by the Additional Collector, Palamau and, thereafter, the defendant-respondent Rupdhari Mahto filed revision before the Commissioner, Chotanagpur, South Division at the instance of Achaibar Mahto which was allowed and it was observed in the order dated 5.3.1979 by the Commissioner that the parties might seek relief in Civil Court and, thereafter, apply for mutation. It is pertinent to mention here that defendant-respondent Rupdhari Mahto had made out a case before the Revenue authorities that he had intended to execute a Will and he could not distinguish between deed of Will and deed of gift and so he executed a deed dated 11.4.1972. It is also alleged that defendant-respondent Rupdhari Mahto also executed a deed of cancellation dated 28.6.1973. The further case of the plaintiffs-appellant is that the deed of gift is irrevocable and they have already acquired indefeasible title and possession over the suit land by virtue of the deed of gift dated 11.4.1972 and they are in possession thereof and in view of the observation of the Commissioner, South Chotanagpur Division they had filed the suit for declaration of their title in respect of the suit land and also prayed for confirmation of possession and in the alternative for the recovery of possession.

4. The case of the defendant-respondent Rupdhari Mahto, inter alia, is that he has never executed any deed of gift rather due to pressure and undue influence and on account of his old age he was made to understand that he will execute a Will in favour of the plaintiffs-appellant who were all minor and he will remain in cultivating possession of all his lands till his life and he was also prevailed upon by Kauleshar Mahto and Phuleshwari Mahtowain who were then showing great attention of service to him and his wife that by executing such deed of Will they will take personal interest in him and his wife and shall give them proper comfort and make arrangements for their daily meals for their whole life and on such assurance he was allured to execute and register a deed appointing the plaintiffs-appellant as his successor and, accordingly, he came to Daltonganj and executed a deed but later on they began to neglect him and his wife and failed to give help in the cultivation and, thereafter, Kauleshar Mahto and Phuleshwari Mahtowain took steps for the mutation of the names of the plaintiffs-appellants over his land and after making enquiry he learnt to his utter surprise that Kauleshar Mahto and Phuleshwari Mahtowain in collusion with the scribe and attesting witnesses got the deed of gift fraudulent executed in favour of the plaintiffs-appellant and as such he cancelled the deed of gift by executing a deed of cancellation dated 28.6.1973. The further case of the defendant-respondent is that the plaintiffs-appellant were minors and not capable of accepting the gift and Kauleshar Mahto and Phuleshwari Mahtowain being their guardians have also not accepted the gift in question and they have never come in possession over the gifted property and this defendant-respondent is in cultivating possession over the entire suit land and thus the deed of gift is void ab initio and has not conferred any right title or interest or possession to the plaintiffs-appellant or their guardlines i.e. Kauleshar Mahto and Phuleshwari Mahtowain. It is also alleged that the defendant-

respondent and never agreed to execute any deed of gift and the contents of the deed of gift was never read over and explained to him and he was kept in dark about the recital of the alleged deed of gift. It is also alleged that scribe and the identifying witnesses are the men of Kauleshar Mahto and he had directed the scribe to draft a Will but the scribe in collusion with them fraudulently scribed a deed of gift.

5. In view of the pleadings of the parties the learned trial Court framed the following issues for adjudication which runs thus :

- (i) Is the suit maintainable as framed?
- (ii) Have the plaintiffs any cause of action for the suit?
- (iii) Is the suit bad on account of nonjoinder of necessary parties?
- (iv) Have the plaintiffs acquired valid title and possession over the landed property by virtue of deed of gift dated 11.4.1972?
- (v) To what relief or reliefs are the plaintiffs entitled?

6. The learned trial Court while deciding issue No. (iv) has held that the deed of gift (Ext. 2) has conferred title to the plaintiffs-appellant in respect of the suit property and they have got title over the gifted property but they are having no possession over the same and the plaintiffs-appellant are entitled to declaration of their title only and their possession over the suit property cannot be confirmed as they are not in possession of the suit property. In view of the finding aforesaid the suit was decreed in part.

7. Aggrieved by the judgment and decree of the trial Court the defendant-respondent preferred Title Appeal No. 16 of 1984, The appellate Court below on reappraisal and re-appreciation of the evidence oral and documentary on the record came to the finding that the deed of gift (Ext. 2) did not confer any title to the respondent (i.e. plaintiffs-appellant in this Second Appeal) over the land involved in the deed of gift because there was no acceptance of the same by them or by their guardians in the eye of law and they could not acquire any valid title and possession over the land by virtue of the deed of gift (Ext. 2). It has also been held by the learned appellate Court below that the plaintiffs-appellant were never in possession over the same and the finding of the trial Court in respect of the title of the plaintiffs-appellant in the suit property was set aside but the finding of the trial Court regarding possession of the defendant-respondent Rupdhari Mahto was confirmed. In view of the finding aforesaid the appeal was allowed.

8. Being aggrieved and dissatisfied with the judgment of the learned appellate Court below the plaintiffs-appellant had come before this Court in Second Appeal.

9. This Court while admitting the appeal for hearing formulated the substantial question which runs thus :

"Whether in view of the judgment of this Court in *Jadav Goala v. Badri Jairam Santhal* 1957 BLJR 62, the learned Court of appeal below committed an error in holding that no gift shall be accepted on behalf of the minors?"

10. Assailing the impugned judgment it has been submitted by the learned counsel for the plaintiffs-appellant that finding of the learned appellate Court below is erroneous being contrary to the mandatory provisions of law applicable in the case as well as the settled legal proposition of law on the basis, of pronouncement made in the case of *Jadav Goala v. Badri Jairam Santhal* 1957 BLJR 62. It has also been submitted that it is well settled that the High Court while considering the matter in exercise of its jurisdiction in Second Appeal would not reverse the finding of fact as recorded by the Courts below. But it is not an absolute proposition and in a case where the finding is recorded without any legal evidence on the record, or on misreading of evidence or suffers from any legal infirmity, which materially prejudices the case of one of the parties or the finding is perverse, it would be open for the High Court to set aside such a finding and to take a different view. It has further been submitted that a minor is competent to accept a gift and it has been settled by the ratio in the case of *Jadav Goala*, (supra) by a Bench of the Patna High Court. It has also been submitted that it has been held in the case of *Jadav Goala*, (supra) that as long as the acceptance of a gift does not emphasis any obligation on a minor he can accept a gift as contemplated by Section 122 of the Transfer of Property Act and the minority by itself is no bar to the acceptance as contemplated by Section 122 of the said Act and the learned appellate Court below had acted contrary to the settled proposition of law in respect thereof and has committed a manifest error in allowing the appeal of the defendant-respondent and setting aside the decree of the trial Court which had declared the right title and interest in the suit property in favour of the plaintiffs-appellant. Relying upon the ratio of the cases of *Lakshmi Amma Kalliyani Amma v. Kunji Pillai Amma Kutty Amma and Ors.* AIR 1954 TC 348 and *Adhikari Narayanamma Vs. Adhikari Thabitinaidu*, it has been submitted that question where the gift was accepted by the donee will have to be tested upon the evidence and circumstances of the case and one such circumstance is the fact that the original deed of gift was produced in the Court by the plaintiffs-appellant and Section 122 of the Transfer of Property Act lays emphasis only on the execution of the deed of gift and not so much on the actual delivery of possession of the property and handing over the deed of gift is sufficient in itself to establish, the transfer of possession and the actual taking over possession by the donee is not necessary and here in this case defendant-respondent *Rupdhari Mahto* who was a literate person capable of understanding and having sound disposing mind had executed the deed of gift (Ext. 2) and he has himself scribed in the execution portion of the deed of gift that "he is executing a gift" and in view of the settled law in the case of *Jadav Goala*, (supra) the learned appellate Court below has committed an error taking a contrary view as settled by the Patna High Court. Lastly it has been contended that there is specific recital in the deed of gift itself that possession has been

given to the donees and in view of this recital there is presumption that the gift has been accepted by the plaintiffs-appellant or his guardian on their behalf and viewed thus the impugned judgment is erroneous and contrary to establish principle of law and thus it is unsustainable.

11. Refuting the contention aforesaid it has been submitted by the learned counsel for the defendant-respondent that all the plaintiffs-appellant were admittedly minor when the deed of gift was executed in their favour by defendant-respondent Rupdhari Mahto and the deed of gift was neither accepted by the donees nor by their guardians and once there is no acceptance of the deed of gift it cannot be operative and no transfer can be effected and in the absence of any cogent evidence regarding acceptance of the gift by the donees or their guardian they cannot claim any title over the suit land and in this view of the matter the ratio of the case of *Jadav Goala*, (supra) has no application in this case.

12. It will admit of no doubt that Ext. 2 is the deed of gift dated 11.4.1972 purported to have been executed by the defendant-respondent Rupdhari Mahto in favour of the plaintiffs-appellant who were admittedly minor under the guardianship of their father Kauleshar Mahto and of their mother Phuleshwari Mahtowain respectively. Original defendant-respondent Rupdhari Mahto had died during the pendency of this appeal and his legal representatives are on the record. Both the Courts below have concurrently held that defendant-respondent Rupdhari Mahto had duly executed a deed of gift (Ext. 2) in favour of the plaintiffs-appellant and there is no evidence on the record to suggest that the deed of gift (Ext. 2) was got executed on misrepresentation or on fraud. The learned appellate Court below has come to the conclusion that the plaintiffs-appellant could not acquire valid right title and interest and possession over the suit property in view of the fact that there was no acceptance of the gift either by the plaintiffs-appellant or by their guardians in the eye of law in view of the evidence on the record. Section 122 of the Transfer of Property Act defines gift which runs thus :

"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."

The plaintiffs-appellant in this case have been non-suited only on the ground that there is no evidence on the record to establish the fact that the donee or his legal guardians on their behalf have accepted the gift in question executed by defendant-respondent Rupdhari Mahto, There is averment in para 11 of the plaint that Phuleshwari Mahtowain and Kauleshar Mahto, the respective mother and father of the plaintiffs* appellant i.e. the donees accepted the gift on behalf of

the plaintiffs-appellant and came in possession of the gifted property. There is further averment in para 12 of the plaint that defendant-respondent Rupdhari Mahto and made over the registration receipt to Kauleshar Mahto, the father of plaintiffs-appellant Nos. 3 and 4 and since he had accepted the gift so Kauleshar Mahto withdrew the original deed of gift from sub-registration office and the original deed of gift in normal course came in possession of the plaintiff-appellant. It is pertinent to mention here that the said deed of gift has been brought on the record from the custody of the plaintiffs-appellant and the said deed of gift is Ext. 2 in this case. PW 11 Kauleshar Mahto aforesaid has deposed that the donees came in possession of the property covered under the deed of gift after its execution. He has also deposed to have withdrawn the deed of gift from the registration office. There is also evidence on the record that for several years Kauleshar Mahto had paid the rent of the gifted property. PW 11. Kauleshar Mahto has deposed in the most clear and unequivocal terms that he had conducted the entire work relating to the execution and registration of the deed of gift in question. What more is required for acceptance of the gift by the donees through their respective legal guardian in view of the evidence on the record referred to above. The gift must be accepted by the donee or by someone on his behalf and an offer without acceptance by the donee cannot complete the gift. It is settled principle of law that normally a donee is expected to accept a gift which is not onerous. What the law requires is acceptance of the gift after its execution and there must be something shown on the record to indicate an acceptance. The acceptance may be signified by an overt act such as the actual taking possession of the property, custody of the deed of gift or such acts by the donee as would in law amount to taking possession of the property. There is specific recital in the deed of gift handing over of possession to the donees and in this case the possession of the donee over the gifted property supports its acceptance. The acceptance may be made either by the donee or by anyone on his behalf and the legal guardian of a minor is competent to accept a gift on behalf of the said minor. The finding of the learned appellate Court below that there was no acceptance of the gift either by the donee or by their guardians in the eye of law is erroneous in view of the evidence on the record referred to above and the same is equally against the ratio of the case of *Jadav Goala*. (supra).

13. I, therefore, see substance in the contention of the learned counsel for the plaintiffs-appellant. The impugned judgment, therefore, suffers with legal infirmity which has materially prejudiced the case of the donees and the finding of the learned Court below in respect thereof is perverse and it is open for this Court to set aside such a finding and to take a different view. I am fortified in my view as per the ratio of the case of *Neelakantan and Others Vs. Mallika Begum*, in this regard. The plaintiffs-appellant have acquired valid right title and interest in the gifted properties and they are also entitled for recovery of possession in respect thereof.

14. There is merit in this appeal and it succeeds. The appeal is hereby allowed.

The impugned judgment of the learned appellate Court below is hereby set aside and suit of the plaintiffs-appellant is decreed. The right, title and interest of the plaintiffs-appellant are hereby declared in the suit property and they are entitled to recover the possession over the same in accordance with law. In the facts and circumstances of this case there shall be no order as to costs.