
(2014) 03 PAT CK 0017
In the Patna High Court
Case No : Second Appeal No. 254 of 2009

Sanjogia and Others

APPELLANT

Vs

Vijay Yadav and Others

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2015) 2 PLJR 614

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Rajesh Kumar and Manish Kumar, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.

1. The petitioners who are the heirs of the original plaintiff, are aggrieved by the judgment and decree dated 21.3.2009 passed by learned Additional District Judge-cum-Fast Track Court-IV, Siwan in Title Appeal No. 54 of 1993, whereby he has set aside the judgment and decree dated 19.5.1993 passed by learned 5th Sub-Judge, Siwan in Title Suit No. 276/1978; in the present second appeal under Section 100 of the Code of Civil Procedure. Learned Trial Court had decreed the suit holding the title of the original plaintiff over the suit, property. Briefly stated, the facts of the case are that one Ram Ekbal Choudhary had two, daughters, Dhanwatia and Rajwatia (the plaintiff). Munari was the wife of Ram Ekbal Choudhary. The parents of the original plaintiff were originally residents of Village-Hathauri. They however settled at Village-Mahpur. The original plaintiff (Rajwatia) was married from that village (Mahpur) and her sister Dhanwatia got married with the cousin of the plaintiff's husband, of the same village i.e. Kaushar. The defendants 1st set/Respondent 1st set are the heirs of said Dhanwatia, as Dhanwatia at the time of institution of the suit was no more. Plaintiff's case before trial court was that parents of the plaintiff and said Dhanwatia had no male issue and after marriage of both the sisters i.e.

Dhanwatia and Rajwatia (Plaintiff), there was no person left at Village-Mahpur to look after and take care of their mother Munari. Munari is. said to have donated, as per plaintiff's case, her entire landed property admeasuring 4 Bighas 15 Kathas and 10 Dhurs to both the sisters by a deed of gift executed on 31.1.1951 and put them in possession over the said property. There is no dispute between the parties up to this stage. The dispute arises thereafter.

2. Plaintiff's further case was that she and her husband, after some time, left their Village-Kaushar and settled at Village-Mahpur to serve her parents. Dhanwatia, the plaintiff's sister, however remained at Village-Kaushar and never came in possession over the gifted property. The original plaintiff asserted that she took her parents for pilgrimage and performed last rites of her mother at her own expense. The plaintiff further pleaded that after death of Dhanwatia in 1968, her husband attempted to grab certain part of the gifted property, leading to a Panchayati held in the year 1972 wherein it was decided that the plaintiff, in fact, had served her mother, incurred all expenses of pilgrimage, funeral and last rites and she had been in continuous physical possession of the entire gifted land included the part gifted in favour of Dhanwatia and therefore, the property should go to the plaintiff; but since gift deed was executed in name of plaintiff and her sister Dhanwatia both, so as to quell the matter, some amount should be given to the defendant 1st Set. It was decided in said Panchayati to pay a sum of rupees two thousand to the defendant 1st set which amount was paid. It was also case of the plaintiff that the plaintiff's sister Dhanwatia had already relinquished her right by executing a deed of relinquishment in favour of the plaintiff.

3. The contesting defendants resisted the suit by filing written statement and denied the plea of Panchayati having ever been held. They also took a plea that some dispute had arisen with respect to land and, therefore, it was decided ultimately that mother of Defendant No. 1 (Dhanwatia) would alone remain in possession over the gifted land and land of Village-Kaushar will remain with the plaintiff and her husband and accordingly they came in possession over the respective properties of Village-Mahpur and Village-Kaushar.

Learned trial Court on the basis of rival pleadings framed altogether four issues including issue No. 3 which reads as follows:--

"Is the story of Panchayati and payment of money by the plaintiff to the defendant is correct and whether defendant's story with respect to exchange of property of Kaushar and Mahpur between the plaintiffs and her sister Dhanwantia or the defendant is correct."

4. It appears that the parties adduced oral as well as documentary evidence in support of their respective case. Learned trial Court on analysis of the evidence accepted the story of Panchayati and payment of money by the plaintiff to the defendant and refused to accept the plea of the defendant with respect to exchange of property of Kaushar with Mahpur between the plaintiff and her sister

Dhanwatia. The Court came to a finding that after execution of the deed of gift dated 3.1.1951, the original plaintiff came in possession over the entire land and she dealt with the said property, whereas the heirs of Dhanwatia never came in possession over the property transferred to her through the deed of gift.

5. Learned first Appellate Court however, while dealing with the judgment and decree passed by learned trial Court refused to accept the story of Panchayati as well as the alleged relinquishment of her part of the gifted property by Dhanwatia in favour of Rajwatia primarily on the reasoning that neither the documents of said Panchnama nor the deed of relinquishment was a registered document so as to affect transfer of immovable property in favour of the plaintiff. He placed reliance upon a judgment of this Court reported in *Mt. Haliman and Others Vs. Md. Manir and Others*, . The first Appellate Court held that the deed of relinquishment and Panchnama were not admissible as evidence, they being not registered documents. The first Appellate Court dealt with the evidence available on record as well as has given reasons for reversing the findings of learned trial Court. The reasons assigned -for reversing the findings cannot be said to be perverse. I am also of the view that the story of relinquishment of her share of gift property by Dhanwatia, in favour of the plaintiff could not be accepted and has rightly been not accepted as the deed of relinquishment was not registered document. It is settled law that an instrument releasing the right, title and interest of the releaser without consideration in favour of a person/persons can operate as transfer by way of gift only if such instrument is registered..

6. Reliance has been placed by learned counsel for the Appellants upon Apex Court judgments reported in (1996) 9 SCC 370 in the case of *Roshan Singh and Others Vs. Zile Singh and Others*, in the case of *Roshan Singh v. Zile Singh* in support of his plea that the deed of relinquishment was not required to be registered. Submission to this effect, in my opinion, is misplaced. These cases relied upon by learned counsel for the Appellants deal with documents/Memorandum recording past oral partition of the joint Hindu Family property or a document pertaining to family arrangement, which in fact do not involve any transfer of property. By deed of relinquishment, in favour of person, a transfer of immovable property takes place and, therefore, documents are required to be mandatorily registered.

7. In the present case, the plaintiff's claim of title over the suit property is based on three grounds. Firstly, that she came in possession over the entire property transferred by Most. Munari by the deed of gift dated 31.1.1951 in favour of both the sisters. Secondly, that Dhanwatia had relinquished her share of the said property in favour of Rajwatia and; thirdly, that there was a Panchayati between the parties as noted above. In the absence of any registered document pertaining to transfer of the property, gifted to Dhanwatia, the plaintiff's claim of relinquishment of said property" in her favour was rightly turned down by the first Appellate Court. The first Appellate Court considered the oral evidence of the defendant witness No. 10 who is said to have stated that Dhanwatia came in

possession over her share of the gifted property immediately after execution of the deed of gift dated 3.1.1951.

8. I do not find any illegality or perversity in the impugned judgment of the first Appellate Court and I am of the opinion that the present second appeal does not involve any substantial question of law which requires determination by this Court. This appeal is accordingly dismissed.