
(2011) 02 PAT CK 0072
In the Patna High Court
Case No : First Appeal No. 621 of 1977

Shreekant Chaudhary and Others

APPELLANT

Vs

Ramakant Sharma and Others

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Citation : (2011) 02 PAT CK 0072

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The Plaintiffs have filed this first appeal against the judgment and decree dated 30th March 1977 passed by Sri Satya Dev Sharma, the learned Sub Judge, Samastipur in Title Suit No. 125 of 1972 dismissing the Plaintiffs-Appellants' suit.

2. The Plaintiffs-Appellants filed the aforesaid title suit praying for declaration that the deed of gift dated 21.8.1971 executed by Mostt. Rampari Chaudharain in favour of the Defendants is forged and fabricated document and, therefore, prayed for cancellation of the same. It may be mentioned here that the original sole Defendant who was sole Respondent in this appeal died during the pendency of the appeal and his legal representatives have been substituted as Respondents.

3. The Plaintiffs-Appellants prayed for the aforesaid reliefs alleging that their common ancestor was Ranglal Chaudhary who had three sons namely Ram Prasad Chaudhary, Ramniwas Chaudhary and Pyare Chaudhary. Plaintiff Nos. 1 to 3 are the grand sons of Pyare Chaudhary. Ram Prasad's great grand son is Plaintiff No. 4. The second son Ramniwas Chaudhary had a son Asharfi Chaudhary. Jainarain Chaudhary was the son of Asharfi Chaudhary who died issueless leaving being his wife Rampari Chaudharain. After the death of Jainarain his widow Rampari inherited the property of her husband. Because father of Jainarain died when Jainarain was minor so his maternal uncle Laldhari Isser was looking his affairs. Rampari died on 15.6.1972 and funeral rights and Shradh was performed by the Plaintiffs and the Plaintiffs came in possession of the entire property of Rampari Chaudharain.

4. The further case is that after the death of Rampari her brother, the Defendant, came to cultivate the land of Rampari but the Plaintiffs objected him. Subsequent to this the Defendant claimed the lands on the basis of gift deed executed by Rampari. The Plaintiffs applied certified copy of the gift deed and came to know that it is a forged document. Rampari never executed the gift deed. At the relevant time Rampari was very weak and was not capable of knowing the affairs. Although the documents were registered at Dalsingsarai, the Defendant got gift deed registered at Darbhanga. It is quite unnatural that she gifted her entire property without leaving anything for her. In spite of gift deed the Defendant never came in possession therefore, the gift was not completed and the Plaintiffs continued in possession. Jainnarain had no sister in the name of Babubati. The date mentioned in the gift deed are antedated and the document might create many difficulties in future, therefore, the Plaintiffs filed the suit for cancellation of the gift deed.

5. On being noticed the Defendant-Respondent appeared and filed contesting written statement. According to the Defendant the suit is bad for non-joinder of necessary parties. Ashrfi Chaudhary had a son namely Jainarain and a daughter namely Babubati. Babubati is still alive. The Defendant admitted the fact that Jainarain was separated from his co-sharers at the time of her death and his property was inherited by his widow Rampari. Laldhari used to look after the affairs of Jainarain but because of oldness he left the work and therefore, Rampari and Defendant both look after the work of Jainarain. Therefore, on the death of Rampari the funeral expenses and Shradh was performed by the Defendant and not by the Plaintiffs. The Plaintiffs never came in possession of any property of Rampari. Rampari executed a deed of gift dated 21.8.1978 regarding her entire property in the name of the Defendant to the full knowledge of the Plaintiffs. The Defendant accepted the deed and came in possession and is continuing in possession till today. He also sold some lands to meet the funeral expenses of his sister. All the purchasers are in possession of the land sold. The Plaintiffs never obstructed the Defendant's possession. There was no good relationship between Rampari and the Plaintiffs and so Rampari always apprehended danger to her life from the Plaintiffs. On being satisfied with the service of the Defendants she gifted her entire property and at the time of gift she was in full sense and was completely understanding the affairs. The other allegations were denied. It is stated that the gift is valid and genuine document. The deed was scribed at Dalsingsarai but Rampari desired to consult her advocate at Darbhanga so she went Darbhanga and consulted her advocate then on being satisfied she got the document registered at Darbhanga.

6. On the basis of the above pleadings of the parties the learned court below framed the following issues:

No. 1. Have the Plaintiffs got a valid cause of action for the suit ?

No. 2. Is the suit, as framed, maintainable ?

No. 3. Is the suit barred by the law of limitation ?

No. 4. Is the suit barred by the rules of estoppel, waiver and acquiescence ?

No. 5. Is the court fee paid by the Plaintiffs not sufficient ?

No. 6. Is the suit bad for non joinder of parties ?

No. 7. Is the deed of gift dated 21.8.1971 alleged to have been executed by Mosst. Rampari Chaudharain forged, fraudulent and liable to be cancelled ?

No. 8. Are the Plaintiffs entitled to a decree as prayed for ?

No. 9. To what relief, if any, are the Plaintiffs entitled ?"

7. After trial the learned court below came to the conclusion that the Defendant is in possession and the deed of gift Ext. H is not forged and fraudulent document and, therefore, it cannot be cancelled. The learned court below also found that Babubati is the sister of Jainarain, the husband of Rampari but she has not been made party in the suit therefore, the suit suffers from defect of parties.

8. The learned Counsel for the Appellants submitted that the gift deed is forged one and some other lady impersonated Rampari Chaudharain and it was registered at Darbhanga and is a created document.

9. The learned Counsel submitted that the witnesses have supported the possession of the Plaintiffs and, therefore, the Defendant never came in possession of the property on the basis of gift deed. Therefore, the gift deed itself was incomplete. The learned Counsel further submitted that the learned court below has wrongly found that the Defendant was in possession because in fact the Defendant is not the resident of village where the properties is situated. According to the learned Counsel the learned court below has not properly appreciated the evidence. On these grounds the learned Counsel for the Appellants submitted that the judgment and decree are liable to be set aside.

10. On the other hand, the learned Counsel for the Respondents submitted that there is no illegality in the impugned judgment therefore, it cannot be interfered with. According to the learned Counsel the evidence regarding possession of the Defendant has been given by the court below on the basis of oral evidence only and, therefore, the findings are not liable to be interfered with lightly by the appellate court. The learned Counsel further submitted that the disputed signature/ thumb impression of Rampari Chaudharain was examined by the handwriting expert and he found that the signature/thumb impression on the gift deed is of Rampari. The learned Counsel further submitted that there is no impediment or bar in registration of the gift deed at Darbhanga because Rampari has gone to consult her advocate there and after consulting she got it registered there. Therefore, on these grounds alone it cannot be said that the gift deed is either forged or some other lady impersonated her.

11. The learned Counsel further submitted that even if it is held that the gift deed is invalid then also the property devolved on the Jainarain's sister namely Babubati who is still alive and, therefore, on the death of Rampari the property will go to Babubati and not to the Plaintiffs. In such view of the matter, the Plaintiffs have got no locus standi to institute the suit for cancellation of the gift deed. The Plaintiffs are not claiming title on the suit property and, therefore, unless they prove their title on the suit property at their instance, the suit is not maintainable. On these grounds, the learned Counsel submitted that the appeal is liable to be dismissed with costs.

12. In view of the above rival contentions of the parties, the point arises for consideration in this appeal is, as to whether the gift deed Ext. H executed by Rampari Chaudharain in favour of her own brother Sukhdev Sharma is genuine document or whether it is forged, fabricated and obtained by impersonation as alleged by the Plaintiffs and whether the impugned judgment and decree are sustainable in the eye of law.

13. In the present case, it is admitted fact that the husband of Rampari Chaudharain namely Jainarain Chaudhary died in the state of separation and, therefore, his entire property devolved on his widow Rampari Devi. According to the Plaintiff after her death the Plaintiffs came in possession of the property. The Defendant falsely claimed the property on the basis of forged and fabricated gift deed dated 21.8.1971 and the Defendant never came in possession. On the other hand, the Defendants' case is that the Plaintiffs never came in possession of the property and on being satisfied with the service of the Defendant Rampari Devi with full knowledge and sound mind gifted the property to the Defendant.

14. Both the parties have adduced evidences in support of their claim. The Plaintiffs witness i.e. PW 6 has stated that Rampari was seriously ill from some time before her death. However in the cross examination it appears that he has stated that he cannot say as to who was treating her. PW 10 also stated that she was sick. So far this witness is concerned it appears that he is incompetent to say about her sickness because he has stated in cross examination that she is residing at Samastipur. He does not know even the husband of Rampari. PW 24 no doubt has stated that Rampari was his aunt who was ill on 15.8.1971 but in the cross examination he stated that some body told him that Rampari was ill. He is unable to say as to whether anybody was treating her. It appears that the learned court below considering his manner and demeanor said that the witness appears to be a tutored witness.

15. PW 38 has stated that he had gone to examine Rampari and he was paid fee of Rs. 2/-. Medicine was purchased from Dalsinsarai. This witness claimed himself to be the Ayurvedacharya. He has proved his prescription Ext.9 and certificate Ext.10. PW 47, the Plaintiff and this Ayurvedacharya have admitted that there is State dispensary at Dalsinghsarai and allopathic doctors are available there. The Plaintiffs admitted that she was never treated by any allopathic doctor. PW 8, PW 14, PW 15, PW 18, PW 3, PW 34 and PW 40, all are

on the point of possession of the Plaintiffs. From perusal of the evidence of these witnesses it appears that some of them are of different village, some are labourer. PW 47 who is Plaintiff No. 2 himself admitted this fact that some of the gifted property have been sold by the Defendant. Therefore, indirectly he admitted the possession of the Defendant. He also admits in his cross examination that he never paid rent regarding the property of Rampari. Moreover, the Plaintiff has not produced any chit of paper in support of his possession. Likewise as discussed above, the witnesses examined on behalf of the Plaintiffs on the point of illness of Rampari Devi is concerned also they are not reliable. It appears that the Plaintiffs examined PW 27, PW 29, PW 32, PW 39 and PW 42 who have stated that the signature on Ext. H is not of Rampari Devi. It maybe mentioned here that none of them are handwriting expert and, therefore, their statement cannot be relied upon.

16. On the other hand, DW 17 who is attesting witness on Ext. H has stated that the deed was scribed in his presence and the scribe read over and explained to Rampari Devi thereafter understanding the contents thereof Rampari put her signature in presence of the witnesses and this witness also signed on it. He has proved his signature Ext. I. The signature of other witnesses has been marked as I/1 to I/5. He has also stated that because of late it could not be registered on the date when it was scribed therefore, it remained with Rampari. Rampari subsequently consulted her advocate at Darbhanga. This witness has also gone to Darbhanga with Rampari. DW 31 is another attesting witness and his signature has been marked as Ext. I/2, his evidence is in the same line. DW 68 has stated that Rampari was his aunt. She has given Rs. 550/- for purchasing stamp and then Rampari has executed deed of gift in his presence. His signature has been marked as Ext. I/1. DW 62 is the scribe of Ext. H. He has fully supported the case of the Defendant and has stated that at the instance of Rampari he scribed the gift deed and then he read over and explained to her and after understanding the contents of the gift deed Rampari put her signature on Ext. H in presence of witnesses. DW 97 is the Defendant himself who has supported his case. It further appears that the Defendant got the disputed L.T.I of Rampari on Ext. H compared with the admitted signature by an expert. DW 93 had taken the Photograph. The photograph has been marked as Ext. Z series. DW 90 is an expert who is retired D.S.P., C.I.D. He has stated that the disputed and other L.T.I. are of some thumb. He has also stated that he also compared the disputed and admitted writing and found that they are of one and same persons. The report has been marked as Ext. S/2.

17. Ext. A is registered exchange deed dated 24.4.1965 executed by the Plaintiffs in favour of Rampari. This exchange deed shows that some properties were exchanged. Therefore, it proves that Rampari was in possession of the property separate from the Plaintiffs. Further to show the residence of Sukhdeo Sharma Ext. B the sale deed dated 6.2.1961 has been produced. This sale deed has been executed by Ram Niranjana Rai in favour of the Defendant the Sukhdeo Sharma. This sale deed shows that Shukhdeo Sharma had purchased land in the

said village 10 years prior to the execution of gift deed. Therefore, the case of the Plaintiffs that the Defendant had no connection with the village is falsified by this document. Ext. B/2 is another sale deed dated 22.6.1972 executed by Sukhdeo in favour of Aklu Rai. The recital of this document clearly shows that the lands of Rampari were sold by the Defendant for the purpose of meeting the Shradh expenses of Rampari. The said Aklu Rai has been examined as DW 20 who has stated that he is continuing in possession of the purchased land. B/3 is another sale deed executed by the Defendant. Ext. C series are the rent receipt in the name of Defendants. All these documents clearly proves the possession of the Defendants.

18. From perusal of the evidences of PW 3 and PW 34 it is clear that they have admitted in their cross examination that Jainarain had a sister Babubati. The Defendant has also examined DW 7, DW 12, DW 13, DW 51, DW 92 and he himself as DW 97, who all have stated that Babubati is the sister of Jainarain, the husband of Rampari. Therefore, the admission of two P Ws coupled with the evidence of the above D Ws it is clear that Babubati is the sister of Jainarain. Now therefore, on the death of Rampari had there been no gift, the gifted property would have devolved upon Babubati, the sister of Jainarain and not on the Plaintiffs. The Plaintiffs are not claiming for declaration of their title. Therefore, even if they are in possession then also they will not acquire title.

19. I have discussed the oral evidence as well as documentary evidence of both the parties. So far possession and illness of Rampari is concerned only the oral evidences are available on behalf of the both the parties. I have discussed all the oral evidences and I do not find any reason to interfere with the reasonings of the learned court below. In a decision reported in AIR 1983 Supreme Court 114 Madhusudan Das v. Smt. Naraini Bai AIR 1983 Supreme Court 114, the Hon''ble Supreme Court has held that in an appeal against a trial Court decree, when the appellate Court considers an issue turning on oral evidence it must bear in mind that it does not enjoy the advantage which the trial Court had in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate Court should permit the findings of fact rendered by the trial Court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial Court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. This view is again reiterated by the Hon''ble Apex Court in Rajbir Kaur and Another Vs. S. Chokesiri and Co., .

20. In view of my above discussion, I find that Plaintiffs have failed to prove that the gift deed is invalid, forged, fabricated and created documents. The Plaintiffs have also failed to prove that some other lady impersonated Rampari Chaudhrain. The Plaintiffs have also failed to prove that they have come in possession of the property of Rampari on her death. The Plaintiffs have also

failed to prove that on the death of Rampari they inherited her property. On the other hand, the Defendants have been able to prove that the gift deed was executed by Rampari i.e. legal valid and accepted by the Defendants who came in possession thereafter.

21. So far the submission of the learned Counsel for the Appellants that the deed was registered at Darbhanga is concerned, in my opinion on that ground it cannot be said that it is illegal, void or it was forged document. I therefore, confirmed the findings of the learned court below on these points.

22. In view of my above discussion, I find no merit in this appeal. Accordingly, this first appeal is dismissed. In the facts and circumstances of the case, there shall no orders as to costs.