
(2012) 08 PAT CK 0013
In the Patna High Court
Case No : Second Appeal No. 426 of 1990

Sk. Qayum and Others	Vs	APPELLANT
Mostt. Ambeya Khatoon and others		RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Specific Relief Act, 1963 — Section 31

Citation : (2012) 08 PAT CK 0013

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Advocate : Archana Meenakshee, for the Appellant;

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—The defendants have filed this second appeal against the judgment and decree dated 5.7.1990 passed by the 3rd Additional District Judge, East Champaran Motihari in Title Appeal No. 71 of 1998/ 73 of 1989 dismissing the appeal and thereby confirming the judgment and decree of the trial court dated 31.5.1988 passed by Sri Bindheshwari Prasad Baitha, Munsif, Motihari in Title Suit No. 45 of 1971 decreeing the plaintiffs respondents" suit. The original plaintiff Mostt. Tasliman filed the aforesaid title suit for the declaration of her title on the suit land and confirmation of possession and also further for declaration that the deed of gift dated 10.3.1969 is void, illegal and are not binding on the plaintiff Tasliman. The plaintiff prayed the aforesaid relief alleging that the defendant No. 1 asked her to execute Mokhtarnama i.e. power of attorney in favour of the defendant No. 1 on the ground that she has become now very old and, therefore, the plaintiff accompanied him to registry office but the defendant No. 1 got two gift deeds executed on 10.3.1969 and registered. The plaintiff signed the gift deed believing the same to be the Mokhtarnama deed and, therefore, the said gift deeds may be declared as void, illegal.

2. The defendants appellants who are the donee filed the contesting written statement alleging that in fact the gift deed is valid, genuine and it was executed

and registered by the original plaintiff after fully knowing its contents and implication thereof.

3. The trial court recorded a finding that the gift deeds are not valid. The present appellants filed title appeal before the lower appellate court. The appellate court also dismissed the appeal recording the finding that the execution and registration of the gift deed are doubtful and all the witnesses examined on behalf of the defendants have rightly been not relied upon by the trial court and, therefore, dismissed the appeal.

4. On 17.8.1992 the following substantial questions of law were formulated at the time of admission of appeal :

(a) Whether when the plaintiff came with a definite story that she wanted to execute a Mokhtarnama but it was found by both the courts that she executed two deeds which were separate transaction one in favour of defendant No. 1 and another in favour of defendants 2 to 8 the Court below should have held that the plaintiffs' case of execution of a Mokhtarnama was false ?

(b) Whether when plaintiff made Sk. Nathuni as defendant No. 14 challenging him but later on 11.9.1971 and 18.11.1971 by Ext.3 and 3(a) during the pendency of the suit sold the properties to Nathuni (Defendant No. 14) conclusively proved that the deeds of gift of 10.3.1969 were genuine documents and the suit has been filed at the instance of Nathuni (Defendant No. 14) who after procuring the alleged sale deeds during the pendency of the suit made himself as plaintiff No. 2 the courts below acted illegally in not considering the same ?

(c) Whether the court below acted illegally in not considering that in para 7 of the plaint the plaintiff specifically stated that plaintiff was dispossessed from the land clearly proved that the deed of gift was acted upon ?

(d) Whether when plaintiff No. 1 Tahsilan cancelled the deed of gift on 20.1.1972 the court of appeal below should have held that u/s 31 of the Specific Relief Act the deed of cancellation is illegal and void ?

5. After notice the respondents appeared. However, it may be mentioned here that when this second appeal is being heard nobody appeared on behalf of the respondents.

6. The learned counsel for the appellants submitted that the original plaintiff Tasliman has not been examined in this case. After her death the defendant No. 14 got himself substituted and transposed as plaintiff but he was also not examined in this case. None of the courts below have considered the evidences of the plaintiffs in support of the case of the plaintiffs pleaded in the plaint. According to the learned counsel both the gift deeds are registered gift deeds and, therefore, there is presumption of its validity. In such circumstances the onus is on the defendants to have rebutted the presumption of genuineness of the gift deeds but both the courts below placed wrong onus on the appellants and

discarded the evidence of the witness on flimsy grounds and also both the courts below relied upon inadmissible evidences i.e. the cancellation deed executed by Mostt. Tasliman canceling the registered gift deed unilaterally. According to the learned counsel after execution and registration of the gift deeds and delivering of the possession of the gifted property to the donee the original plaintiff could not have unilaterally cancelled the gift deed. As provided u/s 31 of the Specific Relief Act the only option of the plaintiff was to file suit for cancellation of the gift deed and, therefore, the courts below have wrongly relied upon the cancellation deed.

7. As stated above nobody appeared on behalf of the respondents.

8. In the case of Prem Singh and Others Vs. Birbal and Others, the Apex Court has held that there is a presumption that a registered document is validly executed. The registered document therefore, prima facie would be valid in law. The onus of prove thus would be on a person who leads evidence to rebut the presumption. Recently in the case of Sitasaran Prasad vs. Manorama Devi 2012 (2) BLJ 165 this Court has held that a registered sale deed is presumed to have been validly executed with all its legal consequences. Such a document cannot be said to be void ab initio. There cannot be presumptive invalidly attached to such a transaction. Such document remains valid on principle that apparent state of affairs is real state of affairs, until facts invalidating the same are established. In this case also the gift deeds are registered documents therefore, the same principle will apply here also. It is the plaintiffs' case that the defendant No. 1 got the gift deed executed and registered on misrepresenting the fact that she was executing the Mokhtarnama. In such circumstances, it was the onus on the plaintiffs to have proved this fact by adducing evidence but from perusal of the judgments of both the courts below case of them have considered the evidences of the plaintiffs as to whether the plaintiffs has been able to rebut the presumption available under law in favour of the appellants.

9. It appears that none of the courts below have considered the effect of cancellation deed and its legality or otherwise. Section 31 of the Specific Relief Act provides that any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable and the court may in its discretion so adjudged it and order it to be delivered up and cancelled. In the present case admittedly, the original plaintiff no doubt filed the suit for cancellation of the gift deed but prior to the decree of the court she executed the cancellation deed and then she sold the property to the defendant No. 14 Nathuni during the pendency of the suit. None of the courts below have also considered about the fact that two registered deeds were executed and the original plaintiff has not been examined. Even Nathuni the subsequent purchaser has not been examined in support of the pleadings pleaded in the plaint. None of the courts below have also considered the fact that the plaintiff herself admitted that she was dispossessed by the defendants

therefore, it appears that the donee are in possession of the property gifted. In my opinion, therefore, the courts below have proceeded to decide the matter by approaching the case in wrong angle and discarded the evidences of the defendants on flimsy grounds. None of the courts below have considered the evidences adduced by the plaintiffs as to whether those evidences are in conformity with the pleadings and as to whether the plaintiffs have been able to prove that in fact Mostt. Tasliman signed the registered gift deeds under wrong impression that she was signing Mokhtarnama. All these discussions cover the four substantial questions of law formulated. In my opinion, therefore, the impugned judgment and decree of the lower appellate court are not sustainable in the eye of law. All the substantial questions of law are answered in favour of the appellants. In the result, this appeal is allowed. The judgment and decree of the lower appellate court is set aside and the matter is remanded back to the first appellate court for a fresh decision according to law on the basis of the evidences and materials available on record. Since the matter is very old, therefore, the lower appellate court shall try to pass a fresh judgment according to law after hearing the parties as early as possible.