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Court : Patna

Decided On : Nov-28-2006

Judge : Barin Ghosh and Madhavendra Saran, JJ.

Appellant : Rajendra Singh and anr.

Respondent : Smt. Draupadi Devi and ors.

Disposition : Appeal dismissed

Prior history : Barin Ghosh and Madhavendra Saran, JJ. 1. A partition suit was filed by the son and the daughter against the step Mother and step sisters as well as the grand father. During the pendency of the suit, the grand father died. It is the grand father, who is alleged to have sold a part of the joint family property and gifted another part of it. It is being contended that the part which was gifted formed part of Schedule I properties, which admittedly was joint family properties, and accordingly tha

Judgement :

Barin Ghosh and Madhavendra Saran, JJ.

1. A partition suit was filed by the son and the daughter against the step Mother and step sisters as well as the grand father. During the pendency of the suit, the grand father died. It is the grand father, who is alleged to have sold a part of the joint family property and gifted another part of it. It is being contended that the part

which was gifted formed part of Schedule I properties, which admittedly was joint family properties, and accordingly that gift could not be interfered with.

2. In the plaint, it was contended that the Schedule II properties though stand in the name of the step mother but those properties are joint family properties inasmuch as those properties were purchased from the funds of the joint family and that the same were purchased in the name of the step mother to save those properties from the ceiling proceedings.

3. Contentions, as were raised by the plaintiffs, were accepted in toto by the learned trial Judge, but the learned Single Judge of this Court, in appeal, totally reversed the findings of the trial Judge.

4. In this Letters Patent Appeal, it was urged on behalf of the appellants that it having been proved that the consideration for acquiring the Schedule II properties came from the joint family till. Schedule II properties should have been treated as Joint family properties. It was also urged that inasmuch as the grand father made the gift out of admitted Joint family properties, described in Schedule I to the plaint, and in as much as by mistake the learned Single Judge considered the same to be part of the Schedule II properties, the gift must be upheld.

5. We have gone through the judgments rendered by the Trial Court as well as the Appeal Court. We have also gone through the records to the extent our attention thereto was drawn. The learned Trial Court felt that immediately before the purchase of the Schedule II properties, a part of the joint family properties had been sold by the late father of the plaintiffs, which fetched nearly Rs. 9,000/- and, ten days later. Schedule II properties were purchased at a consideration of Rs. 45,000/- and, accordingly, it is probable that the sale consideration to the extent of Rs. 9,000/- of the joint family properties had been utilised for purchase of the Schedule II properties. The learned Judge, however, did not make any effort to ascertain whether having regard to the nature of the income available it was possible that the joint family had Thirty Six thousand rupees to finance purchase of the Schedule II properties. The learned trial Judge put the burden on the step mother to establish that she had enough money to purchase Schedule II properties. For the reasons already recorded in the judgment and order of the

learned Appeal Court and for the fact that the property was purchased in the name of the lady of the house during the lifetime of her husband and father-in-law, the same established principally that the property was purchased for the benefit of the lady in question. The learned Appeal Court held rightly that the burden of proof to establish that the finance came from the joint family lies on the plaintiffs for it is they who had alleged the same and accordingly it was upto them to prove the same, and that the plaintiffs failed to discharge their initial onus even, apart from making bald statements from the witness box. The learned Appeal Court rightly held that when the Ceiling Act authorizes a family to keep a limited area of land and includes in that family both husband as well as wife, the reason, as put forward, by the plaintiffs for acquiring the property in benami of the wife by the husband is totally laughable.

6. We, therefore, are of the view that the learned Appeal Court rightly upheld that the plaintiffs failed to discharge the initial onus pertaining to their burden to prove that the Schedule II properties were purchased out of joint family funds.

7. In a Mitakshara family, a co-parcener by birth gets a right to share the joint family properties to the extent of his share therein. If he is not the Karta of such family, then the Karta of such family manages the Joint family properties for his benefit as well for the benefit of other co-parceners. As a co-parcener, such a member of the Joint family properties may put the joint family into disruption by asking for a partition of the Joint family properties and may obtain his separate allotment in such properties. If however, he does not do so during his lifetime, on his death, his right to share the joint family properties to the extent of his entitlement thereto evaporates. In the instant case, before the partition was effected by metes and bound, the grand father sought to make a gift, that has no effect at all. Admittedly, the grand father died after the Partition Suit was filed and before the preliminary decree thereon was passed and apart from recording the death of the grand father, he having had no heir or legal representative apart from those who had already been arrayed as parties to the suit, no substitution was effected.

8. In those circumstances, we uphold the preliminary decree as awarded by the learned Appeal Court and dismiss this Letters Patent Appeal.

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