

Taramani Devi and ors. Vs. Govind Ram Sharma and anr.

Taramani Devi and ors. Vs. Govind Ram Sharma and anr.

SooperKanoon Citation : sooperkanoon.com/124262

Court : Patna

Decided On : Jan-09-2002

Judge : Someshwar Nath Pathak, J.

Appeal No. : Appeal from Appellate Decree No. 436 of 1986

Appellant : Taramani Devi and ors.

Respondent : Govind Ram Sharma and anr.

Disposition : Appeal Allowed

Prior history : S.N. Pathak, J. 1. This second appeal has been preferred against the judgment dated 17th March, 1986 and decree dated 8th April, 1986 passed by the 3rd Additional District Judge, Bettiah, in Title Appeal No. 16/99 of 1984-85 confirming the judgment and decree dated 19th May, 1984 and 30th May, 1984 respectively passed by 2nd Additional Munsif, Bettiah (West Champaran), in Title Suit No. 68/82/T.S. 2/84. The plaintiffs of the suit are the appellants here. 2. The plaintiff-respondents' case in

Judgement :

S.N. Pathak, J.

1. This second appeal has been preferred against the judgment dated 17th March, 1986 and decree dated 8th April, 1986 passed by the 3rd Additional District Judge,

Bettiah, in Title Appeal No. 16/99 of 1984-85 confirming the judgment and decree dated 19th May, 1984 and 30th May, 1984 respectively passed by 2nd Additional Munsif, Bettiah (West Champaran), in Title Suit No. 68/82/T.S. 2/84. The plaintiffs of the suit are the appellants here.

2. The plaintiff-respondents' case in the lower Court was that there was one Ram Chandra Singhanian who left behind four sons, namely, Chhedilal, Madan Lal, Ramautar and Haridwar. The suit Plot No. 32 among other plots were owned by Ram Chandra Singhanian and in the year 1950, the four sons entered into partition of their family property by registered deed and the suit Plot No. 32 under Khata No. 7 fell to the share of Haridwar Singhanian (Defendant No. 2 the suit). However, subsequently, Defendant No. 2 ruined his business and he wanted to shift to Nepal to launch any fresh business and towards this end, he took money from the plaintiffs who are Madan Lal Singhanian and Ram Autar Singhanian. However, Defendant No. 2 failed in his business in Nepal also and he came back and was allowed to live in a portion of the house of the plaintiffs. He was also allotted to Kathas of land already allotted to the plaintiffs' father. The entire area of the suit Plot No. 32 was given to the two plaintiffs jointly by Ram Autar Singhanian, Defendant No. 2 in the year 1954. Since then, the plaintiff-respondents were coming in possession of the suit land which was 7 kathas 4 1/2 dhurs out of Plot No. 32 along with other portion of this plot but Defendant No. 1 who is shrewd man and was of devious character came in contact with Defendant No. 2 Haridwar Singhanian who was prevailed by upon Defendant No. 1 to execute a fraudulent deed of gift dated 25th July 1975 (Ext-B) and on the basis of the same, they tried to get his name mutated in Mutation Case No. 109/1978-79. The Circle Officer, by wrong and illegal order passed in this mutation case, allowed Defendant No. 1 Gobind Ram Sharma to be mutated for the suit land. Then, the plaintiffs preferred appeal before the D.C.L.R. (Revenue Appeal No. 54 of 1981). The D.C.L.R. remanded the matter back to the Circle Officer to pass order after notice to all the interested parties and after inquiry into the factum of possession. However, the Circle Officer again passed an erroneous order of mutation in favour of Defendant No. 1. The plaintiffs had, therefore, filed the suit for declaration that the deed of gift was void and illegal. That was the sole relief sought by the plaintiff-respondents.

3. The Defendant No. 1 filed his separate written statement and among other formal objections, he built up a substantive case from paragraph 18 of the written statement that, of course, the suit plot was subject of partition among the four sons of Ram Chandra Singhanian in the year 1950, but subsequently, in the year 1954 that partition deed of 1950 was challenged by Ram Autar Singhanian who was minor in the year 1950 and then, there was repartition of the family lands as a result of which several lands were exchanged among the four brothers and the eastern half of Plot No. 32 was given to the plaintiffs by Haridwar (Defendant No. 2), but the western half of 7 dhurs was retained by Haridwar Singhanian. In the year 1971, Defendant No. 2 gifted the disputed land (suit land) to Defendant No. 1 on the occasion of Shraddh ceremony of Chhedilal Singhanian on account of the fact that Defendant No. 1 Gobind Ram Sharma was a Joshi of the family of the plaintiffs. However, in order to avoid unnecessary controversy, a registered deed of gift was executed by Defendant No. 2 on 25th July, 1975 regarding the suit land. Thereafter, Defendant No. 1 obtained mutation of the suit land on 21st August 1979 by the order of the Circle Officer and he had been coming in possession of the same. The plaintiffs had no title and the deed of gift was valid, legal and legitimately executed by Defendant No. 2.

4. The Defendant No. 2 Haridwar Prasad Singhanian had filed a separate written statement and he had supported the case of the plaintiffs regarding the transfer of the suit plot to the plaintiffs by him in the year 1954. This defendant, however, did not contest the suit nor did he appear during the trial to support any of the parties.

5. I find that the trial Court and the appellate Court both held that since the plaintiffs were claiming the suit land or, in other words, the suit plot on the basis of the same being given to them on account of the money which the Defendant No. 2 Haridwar Prasad Singhanian had taken from them, the aforesaid transaction was a sale of land which was oral and, therefore, the plaintiffs had acquired no title over the same. It was further held by the two Courts below that since the Circle Officer passed order of mutation in favour of the Defendant No. 1, it was to be held that Defendant No. 1 was in possession of the suit land which was the western part of Plot No. 32. The plaintiff-appellants were not entitled to seek a declaration regarding the deed of gift dated 25th July, 1975. It was further held by the two

Courts below that the deed of gift dated 25th July, 1975 (Ext.-B) was valid and legal.

6. Before I proceed to discuss the legal and factual aspect of the cases of the parties, I would like to observe that the Courts have to record their findings within the scope of the pleadings of the parties. The Courts have no business to introduce an third case in order to record a particular finding of their own. The plaintiffs' pleading was that Plot No. 32 in its entire area (14 Katha 9 dhurs) was given to them by Haridwar Prasad Singhania in the year 1954 and the reply to this pleading of the plaintiffs by the Defendant No. 1 was that in the year 1954, there was re-partition of the family property and all the four brothers had exchanged certain lands among them-selves and the eastern half of the Suit No. 32 was given to the plaintiffs by the Defendant No. 2. This pleading of the defendants indicates that in the year 1954, there was of course, re-arrangement of certain family lands among the four brothers of the plaintiff's family. This being the case, the opinion of the two Courts below that the suit land was orally sold to the plaintiffs on account of the money which the Defendant No. 2 had taken from the plaintiffs was an opinion beyond the pleadings and off the point. When the defendant claiming that only eastern half was given to the plaintiffs, the Courts had to give a definite finding as to whether the entire suit plot fell to the share of the plaintiff in the family re-arrangement of the year 1954. It is cardinal principle of law that what is admitted by the defendants must go in favour of plaintiffs and then the plaintiffs are not required to prove this fact. Now the question simply would be to consider whether even the western half of 7 katha 4/2 dhurs had gone to the share of the plaintiffs or whether it was retained by Defendant No. 2 Haridwar Prasad Singhania. I find that none of the Courts below properly addressed this issue and analysed the evidence in order to come to a definite finding. The appellate Court considered the evidence of P.Ws. 5 and 7 on behalf of plaintiff-appellants and rejected their testimony without valid and cogent reason. Whereas he relied on the evidence of D.W. 14 who was Defendant No. 1 himself and thus he adopted double standard in anylysing the ocular evidence of the parties. It appears, both the Courts depended on the premise that the transfer of the suit land to the plaintiffs was in lieu of money which was taken by Haridwar Prasad Singh and since this transfer was unregisterd, it did not confer any title on the plaintiffs. But

when the pleading of the plaintiff-appellants was that in the year 1954 itself, they had come in possession of the entire suit plot by way of family arrangement, it was the bounden duty of the Courts below to find out whether the plaintiffs had proved this assertion of theirs. In this connection, the circumstances of the case also gained relevance and importance. It is apparent that the order of the CO. dated 27th December, 1982 indicated that Jamabandi No. 14 existed in the name of Madanlal Singhania (Plaintiff No. 1) over 7 katha 4 dhurs which was the suit land. The boundary of the suit land given in the deed of gift (Ext-B) also indicated that on the eastern direction, there was land of the plaintiffs. So admittedly, on the eastern boundary of the suit land, there was land of the plaintiffs and when Jamabandi of suit-land of 7 katha 4 1/2 dhurs existed in the name of Madan Lal, that will give a circumstance and will substantiate the case of the plaintiffs that the western half of Plot No. 32 along with eastern half fell to the share of the plaintiffs. This circumstance was ignored by the two lower Courts. In such a circumstance, the evidence of P. Ws. 5 & 7 should have been considered in its proper light and it should not have been brushed aside simply because P. W. 5 in his cross-examination failed to give the time of talk regarding the exchange of land between the family members of the plaintiffs. This P.W. 5 had clearly stated that Haridwar (D.W. 2) asked Madanbabu (Plaintiff No. 1) to take the disputed land. P.W. 7 was Madanlal Singhania. Evidence of P.W. 7 was also discarded by the appellate Court without any valid reason and he accepted the evidence of D.W. 14 (Defendant No. 1) in toto. Thus, he adopted double standard in discarding and accepting the evidence of the parties. The appellate Court opined that since Haridwar was still having 2 kathas of the suit plot, this negated the pleading of the : plaintiffs that they were given suit plot of Haridwar. But this view of the appellate Court is neither here nor there. This is so because the plaintiffs frankly admitted in 'their pleading that Haridwar was allowed to live in a portion of the house owned by the plaintiffs and he was given also 2 Kathas of the suit plot. This in itself will not mean that Haridwar had or was having subsisting possession over the suit land which was the western half of Plot No. 32. This is so because Haridwar came back from Nepal and in the year 1954, there was re-arrangement of family property and the suit plot was given to the plaintiffs and simply because Haridwar was allowed 2 kathas of this plot, that will not mean that he is having title

over the suit land of 7 katha 4 1/2 dhurs. The Jamabandi No. 14 running in the name of Madanlal, belied this story of Haridwar having subsisting title over the suit land. These circumstances would have been specifically considered by the two Courts below in order to give a finding regarding validity of the deed of gift. This is more so because Defendant No. 2 Haridwar Prasad Singhania did not appear to support the case of the gift of suit land to Defendant No. 1. It is also surprising that when in the year 1971 itself, Haridwar gifted the suit land orally to Defendant No. 1, the latter did not apply for mutation prior to the year 1978. Deed of gift was effected in the year 1975 and this defendant applied for mutation in the year 1978. All these facts would be a dent in the case of Defendant No. 1 regarding acquisition of the suit land by gift from Defendant No. 2. The fact of Jamabandi existing in the name of Madan Lal would also show that he had come in possession of the suit land by the family arrangement of the years 1954 and, thus, he had perfected title by adverse possession before the alleged deed of gift executed in the year 1975. Ext-G which was an order dated 27th December, 1982 passed by the Circle Officer on remand from the D.C.L.R. further indicated that the earlier order of the Circle Officer passed on 21st August, 1979 mutating the name of the Defendant No. 1 was passed without notice to the parties because the remand order clearly directed him to give notice to the parties and enquire about the factum of possession. However, the CO. again passed the same order on 27th December, 1982. But, the suit was already filed on 9th September, 1982. The above facts and circumstances would further indicate that the order of the CO. was passed without ascertaining the actual state of affairs existing on the spot.

7. Now, the question is whether the deed of gift was void ab initio. A deed of gift for immovable property must be registered one and must be signed by two attesting witnesses. The contesting Defendant No. 1 claimed oral gift in the year 1971 and the suit land was gifted to him on the occasion of Shradh of Chhedi Lal Singhania. Plaintiffs' pleading was that the Shradh of Chhedi Lal Singhania was performed by his adopted son and not by Haridwar Prasad Singhania and so there was no question of the suit land being gifted by Defendant No. 1. Ext-5 was filed to show that Chhedi Lal Singhania had adopted a son. This was a registered deed of adoption. It is further not understandable as to why Haridwar would gift his own land on the occasion of Shradh of Chhedi Lal when Chhedi Lal had admittedly

have his own land falling to his share on account of partition in the year 1950. If it is presumed that he died without any issue and his property was inherited by his three other brothers in that case also, the land to be gifted should have been the land which were inherited by the three brothers on the death of Chhedi Lal. It is, therefore, a bit inexplicable circumstance that it would be Haridwar to gift a particular piece of land to the priest and that would be the suit land. So in all circumstances, the registration of the already gifted land in the year 1971 was shrouded in mystery and the circumstances were all dubious. The plaintiffs' pleading in this connection that Haridwar had fallen in bad company of Defendant No. 1 and, therefore, the deed of gift was fraudulently obtained, would receive a circumstantial credence. In this backdrop, it has to be considered whether this gift of deed is a valid one. I have already held above that the circumstances indicated that Haridwar was divested of his title over Plot No. 32 and so he had nothing to transfer by way of gift or sale to any person. Hence, the deed of gift would be ipso facto a null and void document and the order of mutation passed in favour of Defendant No. 1 during the pendency of the suit would not give any credible circumstance in favour of the defendant No. 1 over the suit land. Since the deed of gift was void ab initio, there was no need for its declaration or cancellation within three years of its execution. So, the suit was maintainable even though preferred after three years of execution of the deed and so that plaintiffs were deemed to be in possession in view of the circumstances discussed above. So they were not required to seek any relief.

8. In the result, I am of the opinion that the judgments of the two Courts below suffered from illegality and irregularity. This appeal is, accordingly, allowed and the judgments and decrees of the two Courts, below are set aside. The plaintiffs suit shall stand decreed for the reliefs claimed.

9. In the circumstances of the case, there will be no order as to costs.