

**Rameshwar Singh and ors. Vs. Harendra Singh and ors.**

**Rameshwar Singh and ors. Vs. Harendra Singh and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/137402](http://sooperkanoon.com/137402)

**Court :** Patna

**Decided On :** Nov-30-2007

**Judge :** Syed Md. Mahfooz Alam, J.

**Acts :** [Hindu Succession Act, 1956](#) - Sections 14(1); Hindu Women's Right to Property Act, 1937; Evidence Act - Sections 115; Transfer of Property Act - Sections 124; Indian Penal Code (IPC) - Sections 420 and 467

**Appeal No. :** Appeal From Original Decree No. 454 of 1977

**Appellant :** Rameshwar Singh and ors.

**Respondent :** Harendra Singh and ors.

**Advocate for Def. :** S.K. Mazumdar, Sr. Adv. Ramesh Kr. Choudhary, Mallika Mazumdar and Bishwanath Chaudhary, Advs.

**Advocate for Pet/Ap. :** Sidheshwari Pd. Singh, Sr. Adv. and Uday Shankar Sharan Singh, Adv.

**Judgement :**

**S.M.M. Alam, J.**

1. This First Appeal has been preferred against the judgment dated 13th May, 1977 passed by Sri Raj Kishore Sharma, 5th Additional Sub-ordinate Judge, Siwan in Title Suit No. 56/5 of 1969/1977 whereby he has been pleased to decree

the suit of the plaintiffs-appellants in part on contest against defendant Nos. 1 and 2 and on compromise against defendant No. 3 and declared plaintiffs' title with respect to the properties described in Schedule IV of the plaint and with regard to the properties described in Schedule I to III of the plaint, the learned Sub Ordinate Judge declared the title of the plaintiffs which were not covered under the deeds of gift dated 22.2.69 executed by Ramadhar Singh in favour of defendant No. 1 and 2.

2. The case of the plaintiffs-appellants, in brief, is that one Narsingh Singh was the father of original plaintiff No. 1 Ramadhar Singh. Original Plaintiff No. 2 Smt. Swaro Devi was the mother of Ramadhar Singh. The said Narsingh Singh died in the year 1942 leaving behind him his widow Smt. Sawaro Devi (original plaintiff No. 2) and his only son Ramadhar Singh (original plaintiff No. 1). The father of plaintiff No. 1, namely, Narsingh Singh possessed zamindari interest to the extent of one pai 13 kauri in Tauzi No. 4248 of village Dhonekhurd and Karanpura. Besides that he possessed the dihbasgit land with house in village Done. The tauzi also comprised of bakast land. After vesting of zamindari, the bakast land of the above mentioned tauzi became 'kast lands' of the original plaintiff, the details of which has been given in Schedule I of the plaint. The dihbasgit land belonging to Narsingh Singh has been described in Schedule II of the plaint. After the death of Narsingh Singh, both the original plaintiffs Ramadhar Singh and Smt. Sawaro Devi inherited Schedule I and II properties, each having half share in the property. Accordingly, they came in possession of the property and remained in continuous possession. Further case of the plaintiffs is that original plaintiff No. 2 Smt. Sawaro Devi purchased lands from Inguri Devi and others from her personal money which she got from her Naihar through registered sale deed dated 4.9.63. Although she had purchased the said land from her personal income but she purchased the lands in the name of plaintiff No. 1 Ramadhar Singh, who was her only son and in spite of the fact that the said deed was in the name of Ramadhar Singh, he was never in possession of the land purchased from Inguri Devi nor he had any right title over the said land which exclusively belonged to original plaintiff No. 2. The said lands have been described in Schedule III of the plaint. Further case of the plaintiffs is that plaintiff No. 1 Ramadhar Singh was an illiterate and foolish person and was living in bad company. He was suffering from epilepsy (Mirgi) and was

addicted to Ganja and Bhang. It is further said that under the influence of Ganja and Bhang he always used to loose his senses. Defendant No. 3 Bashishtha Singh had negotiated with the said Ramadhar Singh to purchase 5 Katthas of land appertaining to Plot No. 1025 of village Karanpura for consideration of Rs. 2000/- and after that Bashishth Singh took Ramadahr Singh along with his friend Shri Kishun Prasad, Ram Deo Harijan and Khobhari Singh to Mairwa Registration Office and got the stamp purchased in the name of Ramadhar Singh and handed over the same to deed writer Kishun Prasad. Thereafter, defendant No. 3 and his above mentioned friends took thumb impression of Ramadhar Singh on stamp paper and gave instruction to the Scribe for execution of the deed. After that all the above mentioned persons took Ramadhar Singh to market and administered some intoxicants in the breakfast offered to Ramadhar Singh, as a result of which, Ramadhar Singh lost his senses and then they all came to registration office where the sale deed was executed, attested and presented for registry. It is said that Ramadhar Singh admitted the execution of the sale deed before the Sub-Registrar and handed over registration receipt to defendant No. 3 after making endorsement over the same. Regarding the payment of consideration money, defendant No. 3 assured the said Ramadahar Singh that the payments would be made at his house. Since Ramadhar Singh had complete faith on defendant No. 3, as such, he did not raise any objection but the consideration money was not paid to Ramadhar Singh by defendant No. 3 in spite of repeated demands. After the execution and registration of the sale deed, the defendant No. 3 disclosed that he had purchased the house and the basgit land of the original plaintiff by virtue of the sale deed executed by Ramadhar Singh in his favour and when the fact of sale and purchase came to the knowledge of original plaintiff No. 2 Smt. Sawaro Devi, who happened to be the mother of Ramadhar Singh, she obtained certified copy of the aforesaid sale deed and learnt that defendant No. 3 had obtained sale deed from Ramadhar Singh with respect to 3 Katthas 9-1/2 dhur of valuable homestead land situated in market place described in Schedule IV of the plaint. It has been stated that actually the valuation of the land was not less than rupees twenty thousand which could not have been sold for only rupees two thousand as consideration money. It has further been stated that defendant No. 3 had obtained the said sale deed from Ramadhar Singh while he was in the state of intoxication

and by practising fraud upon him for which original defendant No. 1 Ramadhar Singh had filed a criminal case under Sections 420 and 467 of the Indian Penal Code on 11.8.69 in the court of the Sub-Divisional Magistrate, Siwan, against defendant No. 3 and others and the Sub-Divisional Magistrate had sent the case to the Court of Sri D.P. Sinha, Magistrate for enquiry.

3. Further case of the plaintiffs is that Paras Singh, who is a cunning man and shrewd litigant was trying to grab their property. He persuaded Ramadhar Singh to file an appeal against the order of Sub-Divisional Magistrate sending the complaint for enquiry to Sri D.P. Sinha, Magistrate and on that pretext the said Paras Singh took Ramadhar Singh to Chapra along with Jamadar Singh, who was his friend. Ramadhar Singh had no experience of fighting litigation and for the first time he visited Chapra and taking advantage of inexperience of Ramadhar Singh, Paras Singh took his thumb impression on several blank stamp papers on the pretext that the same were required for the purpose of filing an appeal before the Sessions Judge. Original plaintiff No. 2 Smt. Sawaro Devi had no knowledge about the above mentioned facts but when Paras Singh returned home, he disclosed that he had obtained deeds of gifts from Ramadhar Singh and then the original plaintiff obtained certified copy of the deeds of gift and came to know that on 22.2.69 Paras Singh had fraudulently obtained forged and fabricated gift deeds appertaining to lands described in Schedule V of the plaint in the name of defendant Nos. 1 and 2, both minor sons of Abhinandan Singh of village Ahirauli Baghal situated at a distance of 16 miles from the plaintiffs' village. It has been stated that the sister of Paras Singh is married to Rabindra Singh, elder brother of defendant Nos. 1 and 2. Abhinandan Singh, father of defendant Nos. 1 and 2 is related to Paras Singh and, so, Paras Singh managed to get deed of gift executed. It is said that the deeds of gift dated 22.2.69 executed by Ramadhar Singh in favour of defendant Nos. 1 and 2 are illegal, forged, fabricated and without consideration and not binding upon the plaintiffs. It is further said that Ramadhar Singh had not executed the deeds of gift in favour of defendant Nos. 1 and 2, who were never related to the original plaintiffs and neither defendant Nos. 1 and 2 nor their parents had ever served the plaintiffs. The deeds of gift were neither read over nor explained to Ramadhar Singh nor Ramadhar Singh put his thumb impression or signature on any said deeds. He also did not ask any person to

attest the said deeds of gift. It is further said that Ramadhar Singh never presented the deeds of gift before the Registrar for registration nor he admitted the execution of the deeds of gift and there was every likelihood that Paras Singh might have manufactured the deeds of gift and he might have converted the blank stamp papers on which he had obtained thumb impression of Ramadhar Singh for bringing the forged deeds of gift in existence and the said Paras Singh might have presented the said forged deeds of gift before the Registrar for registration. It has been stated that through the said gift deeds or through the sale deed the defendant Nos. 1, 2 and 3 have neither acquired any title nor they are in possession of the suit land, rather, the present plaintiffs being the agnates of the original plaintiff No. 1 Ramadhar Singh are entitled to inherit the suit properties.

4. According to the written statement filed by the respondent Nos. 1 and 2, their case, in brief, is that Narsingh Singh, father of original plaintiff No. 1 Ramadhar Singh died one and half year after the great earth quake of 1934 and after his death original plaintiff No. 1, Ramadhar Singh, his only son inherited the entire property as per the Hindu Law prevalent at that time. The original plaintiff No. 2 Smt. Sawaro Devi remained simply a maintenance holder. The defendant Nos. 1 and 2 have denied that Ramadhar Singh was illiterate and foolish. They have also denied that Ramadhar Singh was suffering from epilepsy and was addicted to Ganja and Bhang under the influence of which he used to loose his senses. Both the defendants have also denied that Smt. Sawaro Devi had purchased any property by virtue of the sale deed dated 4.9.1963 executed by Smt. Inguri Devi from her personal money derived from her Naihar. They have claimed that Ramadhar Singh had acquired the suit property from his personal income in which his mother Smt. Sawaro Devi had no interest. It has been stated that the sale deed executed by Ramadhar Singh in favour of defendant No. 3 is genuine and for consideration but the defendant No. 3 had gone in collusion with the plaintiffs and had filed the compromise petition on 25.5.1970 in order to defeat the claim of defendant Nos. 1 and 2. It is said that the fact that the defendant No. 3 had gone in collusion with the plaintiffs is established from the fact that on the date on which the compromise was filed the defendant No. 3 took a sale deed from the plaintiffs with respect to the same lands in the name of his Sala Rama Shanker Singh. It was further said that Abhinandan Singh and Rabindra Singh are not the relations

of Paras Singh and it is false to say that Paras Singh wanted to grab the property of the plaintiffs. It has also been denied that Paras Singh had advised Ramadhar Singh to file an appeal against the order of Sub-Divisional Magistrate and for that purpose he brought Ramadhar Singh to Chapra with Jamadar Singh to file appeal. The defendants have also denied that Paras Singh took Ramadhar Singh in court room at Chapra and obtained his thumb impression on blank stamp paper for the purpose of filing the appeal. It has been stated that the two deeds of gift executed by Ramadhar Singh in favour of defendant Nos. 1 and 2 were executed by the said Ramadhar Singh on his own accord and after fully understanding the recitals made in the two deeds. The original plaintiffs had full knowledge about the recitals and execution of the gift deeds and it is false to say that any forgery was committed upon the original plaintiff No. 1 for getting the gift deeds executed. It has been contended that defendant Nos. 1 and 2 have acquired good title to the properties covered under the gift deeds and after the execution of the gift deeds they have been coming in possession of the lands mentioned in the gift deeds. The gift deeds are genuine and valid documents. It is further said that defendant Nos. 1 and 2 are the sons of Abhinandan Singh, who happens to be the Fufera brother of Ramadhar Singh. The said Ramadhar Singh was unmarried and there was no one to look after him and his mother and, so, Ramadhar Singh kept defendant No. 1 with him. The father of the defendants used to serve the plaintiffs and they were pleased with the services of the defendant. Being pleased with the services of the defendant No. 1, Ramadhar Singh desired to execute two deeds of gift in favour of defendant Nos. 1 and 2. Accordingly, he (Ramadhar Singh) purchased the stamp paper and got the gift deed scribed under his instruction and after understanding the recitals of the deeds he executed both the gift deeds by putting his thumb impression and also his signature. Paras Singh and Jamadar Singh were the attesting witnesses of the said deeds. After execution of the deeds Ramadhar Singh personally presented the deeds before the Registrar and admitted its execution. It is said that defendant Nos. 1 and 2 through their father accepted the deeds of gift and came in possession over the land covered by the deeds. They have further stated that the suit as framed is not maintainable and the same is barred by estoppel and law of limitation. The plaintiffs have got no cause of action and the suit is liable to be dismissed.

5. Although the defendant No. 3 appeared in the suit but he did not file any written statement, rather, on 25.5.1970 a compromise petition was filed on his behalf disclaiming his right, title and interest in the properties (Schedule IV properties) purchased by him by virtue of sale deed dated 19.8.1968 executed by original plaintiff No. 1 Ramadhar Singh. However, the court did not pass any order on the compromise petition and simply kept the compromise petition on record with observation that the same will be considered at the time of judgment.

6. From perusal of the lower court records, it appears that on the basis of the pleadings of the parties the learned trial court has framed as many as nine issues for determination in the suit which are as follows:

(i) Is the suit as framed maintainable?

(ii) Have the plaintiffs got any cause of action for the suit?

(iii) Is the suit barred by limitation?

(iv) Is the suit barred by estoppel?

(v) Is the court fees paid sufficient?

(vi) Are the two deeds of gift dated 22.2.1969 executed by Ramadhar Singh in favour of defendants 1 and 2 genuine, valid and for consideration and binding on the plaintiffs ?

(vii) Is the sale deed executed by Ramadhar Singh in favour of defendant No. 3 genuine, valid and operative?

(viii) Have the present plaintiffs any right, title and interest in the disputed properties described in Schedules I to III of the plaint?

(ix) Are the plaintiffs entitled to any relief? If so, with respect of what properties and to what extent?

7. From perusal of the impugned judgment it appears that issue No. vi and viii were considered by the trial court as main issues and after making full discussions

on both the issues, the learned 5th Additional Sub-Judge, Siwan, decreed the suit of the plaintiffs in part declaring the plaintiffs' title with respect to the properties described in Schedule IV of the plaint and with respect to the properties described in Schedule I and III the plaintiffs' title was declared to the extent which are not covered by the two deeds of gift dated 22.2.1969 executed by Ramadhar Singh in favour of defendant Nos. 1 and 2. The Court below further held that the two deeds of gift dated 22.2.1969 executed by Ramadhar Singh in favour of defendant Nos. 1 and 2 are genuine, valid and binding upon the plaintiffs.

8. From the arguments advanced by the learned Counsel of both the parties before this Court, following points arise for determination in this appeal:

(I) Whether the finding of the trial court that the two deeds of gift dated 22.2.1969 executed by Ramadhar Singh in favour of defendant Nos. 1 and 2 are genuine, valid and binding upon the plaintiffs ?

(II) Whether a gift comprising present and future property is void with respect to the property acquired after execution of gift deed?

Since these two points are main points involved in this case, as such, I would like to confine myself to the discussions on these points.

9. Both the points are being taken up together for convenient sake. Admittedly, the properties covered by the deeds of gift (Ext. B and B/1) are both purchased as well as ancestral lands. According to the case of the plaintiffs, Ramadhar Singh had half share in the ancestral property and the remaining half share belonged to his mother Most. Swaro Devi. According to the plaint, the husband of Most. Swaro Devi, namely, Narsingh Singh died in the year 1942, and since Most. Swaro Devi remained alive after coming into force of the [Hindu Succession Act, 1956](#), as such, she was absolute owner of half share in the ancestral property of her husband and, so, Ramadhar Singh had no right to transfer the half share of Most. Swaro Devi to defendant Nos. 1 and 2 by virtue of the gift deeds. Regarding the purchased property, the plaintiffs' pleading is that although the property was purchased in the name of Ramadhar Singh but actually Most. Swaro Devi, the mother of Ramadhar Singh had purchased the said land from her own fund which

she had obtained from her Naihar and, so, she was the real owner of the property and her son Ramadhar Singh had no right to transfer the property by virtue of any gift.

10. From perusal of the judgment it appears that the trial court in order to decide this point had framed two questions which are as follows:

(i) Whether Narsingh Singh died one and half years after the great earth quake of 1934 or in the year 1942?

(ii) Whether the purchased lands covered by the two deeds of gift are self acquired properties of Most. Sawaro Devi or self acquired property of Ramadhar Singh ?

11. It appears that the learned trial court after making discussions on point (i) has come to the finding that Narsingh Singh died in the year 1942. On coming to this finding, the learned trial court has placed reliance upon the evidence of P.Ws.3, 9, 10, 19 and 27 besides Ext.1/G. In this regard, the learned court below has also scrutinized the evidence of the defendants' witnesses i.e. D.Ws.14, 15 and 16 and on scrutiny of the evidence of both the parties the learned trial court held that Narsingh Singh died in the year 1942. He has also observed that even from the evidence of defendants' witnesses, namely, D.W.14, 15 and 16 it is established that Narsingh Singh was alive till 1941 which proves the case of the plaintiffs that Narsingh Singh died in the year 1942. It appears that the trial court has given much weightage to Ext.1/G which is a sale deed dated 22.3.1937 executed by Narsingh Singh and relying upon this document the trial court held that since Narsingh Singh was alive till the year 1937, so, the document disproves the case of defendant Nos. 1 and 2 that Narsingh Singh died one and half year after the 1934 earthquake. I am of the view that this finding of the trial court that Narsingh Singh died in the year 1942 is correct and based on correct appraisal of evidence available on record and, as such, the same is hereby upheld.

12. After passing of Hindu Women's Right to Property Act, 1937, the status of a Hindu widow considerably changed and from maintenance holder she became limited owner and in the joint family property the widow of the deceased coparcener got the same interest as her husband had in the joint family property. As

it has been held above that the finding of the trial court that Narsingh Singh, the husband of Most. Sawaro Devi died in the year 1942, is correct, therefore, after the death of Narsingh Singh his widow Most. Sawaro Devi will inherit the interest of her deceased husband and in this way Ramadhar Singh will inherit half share in the ancestral property, whereas, another half will go to his mother Sawaro Devi. It is also established law that after coming into force of Hindu Women's Right to Property Act, 1937 and before coming into force of [Hindu Succession Act, 1956](#), the status of Most. Sawaro Devi in the property of her husband was of limited owner but admittedly Smt. Sawaro Devi remained alive even after coming into force of [Hindu Succession Act, 1956](#), and so, by virtue of Sub-section 1 of Section 14 of the said Act, she became the full and absolute owner of the property of her husband. I, therefore, find no difficulty in holding that after the death of Narsingh Singh, his widow Most. Sawaro Devi and his son Ramadhar Singh each had inherited half and half share in the ancestral property.

13. From the perusal of the impugned judgment it appears that although the trial court has also come to the finding that after the death of Narsingh Singh, his son Ramadhar Singh inherited half share in the ancestral property, whereas, another half was inherited by his widow Smt. Sawaro Devi but the trial court has opined that although Ramadhar Singh had only half interest in the ancestral property on the date on which the two deeds of gift (Exts.B and B/1) were executed but after the death of Most. Sawaro Devi which had occurred on 9.1.71, Ramadhar Singh inherited the entire interest of his father Narsingh Singh in the ancestral property and, as such, he became absolute owner of the entire ancestral property left by Narsingh Singh and, so, Ramadhar Singh or the present plaintiffs are stopped from challenging the two deeds of gift dated 22.2.1969 in view of the principle laid down under Section 115 of the Evidence Act.

14. During the course of argument, this finding of the learned trial court was vehemently challenged by the plaintiffs-appellants. The first contention was that according to Section 124 of the Transfer of Property Act, gift of future interest is void under law and, admittedly, on 22.2.69 when the two deeds of gift were executed by Ramadhar Singh, his mother Most. Sawaro Devi was alive and she was the full owner of her half share in the ancestral property meaning thereby that

on the alleged date of execution of the gift deed Ramadhar Singh had only half share in the ancestral property left by his father and, so, he was not entitled to execute gift deed with respect to the entire ancestral property left by his father. At best he could have gifted only half share in the ancestral property and, therefore, the execution of gift by Ramadhar Singh with respect to half share of his mother could not be held to be valid.

15. It appears that the view of the trial court was that Ramadhar Singh being the sole heir of Most. Sawaro Devi was entitled to inherit the entire property left by her and, therefore, Ramadhar Singh, who is the executant of the gift deeds can not challenge the validity of the gift deed on the ground that on that date on which the alleged gift deeds were executed he had only half share in the ancestral property. I think that the view taken by the learned trial court is not correct in view of the fact that after coming into force of [Hindu Succession Act, 1956](#), the status of a Hindu widow had completely changed and she became the full owner of her share in the property of her deceased husband in stead of limited owner so, on the date on which the two deeds were executed by Ramadhar Singh he was not the full owner of the entire ancestral property, rather he had only half share in the ancestral property. Section 124 of the Transfer of Property Act lays down that a gift of future property is void. For better appreciation Section 124 is quoted below: Section 124 Gift of Existing & Future Property: 'A gift comprising both existing and future property is void as to the latter'. The very wordings of Section 124 specify that a gift is a transfer of existing property and there can be no alienation of a thing not in existence. The section further clarifies that where a gift was made of all the present and future properties the transfer is good as to the property existing on the date of execution of gift but bad as to after acquired property. It has come on record that Narsingh Singh, the husband of Sawaro Devi died in the year 1942 by which time Hindu Women's Right to Property Act 1937 had already come in existence and by virtue of coming into force of the said Act, Sawaro Devi would acquire the same interest in the property as her husband had in the ancestral property but her status would be of limited owner. Admittedly, Sawaro Devi was alive even after coming into force of [Hindu Succession Act, 1956](#) and so by virtue of Sub-section (1) of Section 14 of the Act her status of limited owner would be abolished and she would acquire the status of full owner. For better appreciation

Sub-section (1) of Section 14 is quoted below:

Any property possessed by a female Hindu whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

16. Thus, it is established that on 22.2.1969 when the two gift deeds were executed by Ramadhar Singh his mother Sawaro Devi was the full and absolute owner of 1/2 of the ancestral property and her interest in the property could not have been inherited by her son Ramadhar Singh till she was alive. I have already referred above that as per Section 124 of the Transfer of Property Act, gift of future property is void meaning thereby that execution of gift deed by Ramadhar Singh in favour of defendant Nos. 1 and 2 with respect to the 1/2 share of Mostt. Sawaro Devi in the ancestral property was void and so defendant Nos. 1 and 2 would not acquire legal title with respect to the 1/2 share of Mostt. Sawaro Devi in the ancestral property by virtue of the two gift deeds dated 22.2.1969 and thus, the gift with respect to the 1/2 share of Mostt. Sawaro is bad in law. However, Section 124 of T. P. Act lays down that a gift comprising both existing and future property is void as to the future property only meaning thereby that it is valid with respect to the existing property and so, on this ground the entire gift executed by Ramadhar Singh cannot be said to be invalid. I, therefore, hold that the two gift deeds dated 22.2.1969 (Exts. B and B/1) executed by Ramadhar Singh in favour of defendant Nos. 1 and 2 are valid in respect of half share of Ramadhar Singh in the ancestral property but it is void with respect to half share of Mostt. Swaro Devi and since with respect to half share of Mostt. Swaro Devi, the gifts were void, as such Ramadhar Singh or the present plaintiff cannot be stopped from challenging the two deeds of gift and the principle of estoppel as laid down under Section 115 of the Evidence Act shall not apply. So, the finding of the lower court in this regard is erroneous and the same is set side and it is held that as the gift of future property is void, as such Ramadhar Singh or the present plaintiff cannot be estopped from challenging that the gift with respect to the half share of Mostt. Sawaro Devi was bad in law and through the said gift defendant Nos. 1 and 2 did not acquire valid title with respect to the land of Mostt. Sawaro Devi.

17. It has been submitted by the learned Advocate of the plaintiffs-appellants that the gift deeds also comprise purchased lands of Ramadhar Singh but actually the said lands were purchased by his mother Sawaro Devi in the name of her only son Ramadhar Singh and, as such, Sawaro Devi was the real owner of the said purchased land and so, Ramadhar Singh also had no right to execute the gift deed with respect to the said purchased land. In this regard the finding of the trial court is that there is no reliable evidence on record that Mostt. Sawaro Devi had her own source of income and she had purchased the said land from her own income in the name of her son. I am of the view that this finding of the trial court is correct and based on evidence available on record and accordingly, I hold that the purchased lands covered by two deeds of gift are the self-acquired property of Ramadhar Singh and not self-acquired property of Mostt. Sawaro Devi and Ramadhar Singh had every right to execute the gift deeds with respect to the said property.

18. Now I would like to scrutinize - whether the two deeds of gift dated 22.2.69 (Exts. B and B/1) executed by Ramadhar Singh in favour of defendant Nos. 1 and 2 are genuine, valid and binding upon the plaintiffs.

19. From perusal of the judgment of the trial court it appears that the trial court has discussed this issue from paragraphs 21 to 32 of the judgment and after considering all the materials available on record, the trial court at para 33 held in the following manner:

Thus, on a consideration of the evidence on the record and the facts and circumstances of the case discussed above I find and hold that no fraud was practiced with regard to the execution of two deeds of gift. I, therefore, hold that that two deeds of gift dated 22.2.69 executed by Ramadhar Singh in favour of defendant Nos. 1 and 2 are genuine, valid and for consideration and binding on the present plaintiff. This issue is, therefore, decided accordingly.

20. The said finding of the trial court has been vehemently challenged by the learned Advocate of the plaintiffs-appellants on the following grounds:

(i) That the donees were not close relatives of Ramadhar Singh, as such there was no occasion for the donees or his parents to render the service to Ramadhar Singh or Mostt. Swaro Devi.

(ii) That the two deeds of gift were never executed by Ramadhar Singh nor Ramadhar Singh had accepted the execution of the deeds of gift before the Registrar.

(iii) That defendant Nos. 1 and 2 were minors at the time of execution of the deeds of gift and as such they were not in a position to give consent.

(iv) That the circumstances show that the gift deeds were brought in existence by playing fraud upon Ramadhar Singh who was of weak mind and habituated of taking Bhang, Ganja and was also suffering from epilepsy and he was also illiterate and rustic man.

21. From perusal of the judgment of the trial court it appears that the trial court has elaborately discussed all the abovementioned points in the judgment and after making full discussion the trial court came to the conclusion that defendant Nos. 1 and 2 are the Phuphera brothers of Ramadhar Singh, as such they had occasion to render services to Ramadhar Singh through their guardians since they were minors. The above finding of the trial court is based on the evidence of D. Ws. 3, 5, 6, 7, 10, 11, 12, 13, 14, 15 and 16. I have gone through the evidence of the above said witnesses and come to the conclusion that the trial court has come on right decision and as such, the said finding is hereby upheld.

22. With regard to the execution of the two deeds of gift by Ramadhar Singh, it has been held by the trial court that there is no reliable evidence on record that Ramadhar Singh was illiterate and was in the habit of taking Ganja and Bhang and that he was suffering from epilepsy. The trial court has further held that Ramadhar Singh himself executed the two deeds of gift by putting his thumb impression as well as his signature which were attested by two witnesses, namely, Paras Singh and Jamadar Singh and Paras Singh also identified Ramadhar Singh before the Registrar. It appears that the attesting witnesses, namely, Jamadar Singh and Paras Singh were examined as D.Ws. 8 and 11, respectively and both the

witnesses have deposed that at the instance of Ramadhar Singh, both the gift deeds were scribed by deed writer and then Ramadhar Singh put his signature over both the deeds and on his request, they, signed over the gift deeds as attesting witnesses. D.W.11 has further deposed that besides putting his signatures on the deeds of gift as attesting witness, he was also identifier of Ramadhar Singh on the deeds of gift. D.W.16 Abhinandan Singh has also supported the above fact in his deposition. From the evidence of above said witnesses it is established beyond doubt that the two deeds of gift were duly executed by Ramadhar Singh and the finding of the trial court in this regard is correct.

23. Regarding the plea of the plaintiff that the two deeds of gift were brought into existence by playing fraud upon Ramadhar Singh, the court held that Ramadhar Singh was not of unsound mind and he was neither illiterate nor a foolish man and was not addicted to intoxicant. He was also not suffering from epilepsy and so, the plea of the plaintiffs that the two deeds of gift were brought in existence by playing fraud upon Ramadhar Singh is not correct. I am of the view that from the presence of L.T.I as well as the signature of Ramadhar Singh on the two deeds of gift and coupled with the evidence of D. Ws. 8 and 11 it is established beyond doubt that Ramadhar Singh had executed the two deeds of gift with his free will and consent and no fraud was played upon him. I, therefore, uphold the finding of the trial court in this regard.

24. It has been argued by the learned Advocate of the appellants that at the time of execution of the gift deeds admittedly, the defendant Nos. 1 and 2 were minor and as such, they were not capable of giving their consent and so any gift without the consent of donee is void. As against this, the argument of the learned Advocate of the respondents is that there is settled law that if the donee is minor gift can be accepted by the guardian of the minor on his behalf. I am of the view that the argument of the learned advocate of the respondents is correct and there is settled law that if the donee is minor then gift can be accepted by the guardian of the minor. The evidence on record shows that the gift was accepted by D.W.16 on behalf of his minor sons (defendant Nos. 1 and 2). In such view of the matter, I do not find any legal lacuna in execution of the gift deeds (Exts. B and B/1).

Accordingly, I uphold the finding of the trial court that the two deeds of gift dated 22.2.1969 (Exts. B and B/1) executed by Ramadhar Singh in favour of defendant Nos. 1 and 2 are genuine and valid document and the same are binding on the plaintiffs.

25. On consideration of the entire facts and materials available on record, I am of the view that this appeal should be allowed in part and hence, this appeal is allowed in part and the finding of the trial court whereby the trial court has declared that defendant Nos. 1 and 2 have acquired valid title of the entire lands covered by the two deeds of gift dated 22.2.69 executed by Ramadhar Singh in their favour is set aside and it held that by virtue of the two deeds of gift dated 22.2.69 executed by Ramadhar Singh that defendant Nos. 1 and 2 have acquired valid title of the lands covered under the aforesaid gift deeds except with respect to half share of Mostt. Swaro Devi in the ancestral property. The other findings of the trial court are upheld.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**