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Court : Patna

Decided On : Sep-14-2011

Judge : V. NATH

Appeal No. : Second Appeal No. 286 of 2009

Appellant : Smt. Subhamati Devi and Others

Respondent : Awadhesh Kumar Singh and Others

Judgement :

1. Heard Mr. D.K. Sinha, learned Sr. Counsel appearing on behalf of the appellants.
2. This appeal has been filed against the judgment and decree dated 9th April 2009 passed by the Additional District Judge, Fast Track Court No.1, Aurangabad, reversing the judgment and decree dated 9.7.2002 passed by Sub-judge -V, Aurangabad, in Title Suit No. 189/91/36/2000.
3. The plaintiffs have filed the suit for declaration that the deed of gift dated 27.1.1989 executed by Ambika Singh in favour of the defendants is illegal document and not binding upon the plaintiffs. Bereft of details it would suffice to mention here that one Bharosa Singh had executed a gift of deed in favour of Rasdhari Singh who was the predecessor of the plaintiffs. As the said gift of deed of the year 1919 was exclusively in the name of Rasdhari Singh, the plaintiffs have asserted that Ramdhari Singh and his son Ambika Singh did not acquire any right

title and interest in the property covered by the said gift deed. The plaintiffs have also stated that Ambika Singh had filed Title Suit No. 10 of 1989 for partition of the joint family property including the properties covered by the gift of deed of 1919 and simultaneously he had executed a gift deed dated 27.1.1989 in favour of defendant nos. 1 to 7 which is a void document as a coparcener in his status as such could not have executed or alienated joint family property by way of gift. However, the defendants have contended that there was separation and Ambika Singh had separated from the joint family in the year 1982 -1983 and as such he was fully competent to execute the gift deed in question.

4. The trial court after considering the evidence and rival cases of the parties has come to the finding that the gift deed dated 27.1.1989 by Ambika Singh is a valid and legal document. However, in appeal by the plaintiffs, the appellate court reversed the finding of the trial court and has come to hold that the gift deed of Ambika Singh who was a coparcener was not a valid document with regard to coparcenaey property.

5. Mr. Sinha, the learned Sr. Counsel in support of this appeal has submitted that the appellate court has erred in law in framing a new issue and giving a finding thereupon without remitting the matter back to the trial court. He has further submitted that the finding by the trial court regarding validity of deed of gift dated 27.1.1989 is unassailable in the facts of the case and the appellate court has committed an error of law in reversing the said finding.

6. From the perusal of the impugned judgment of the appellate court it appears that the appellate court has mainly proceeded to record its conclusion on the basis of well settled principle of Hindu Law that a coparcener cannot alienate the joint family property by way of gift without the consent of other coparceners and such gift deed would be void altogether and even not binding upon the alienating coparcener. There is no dispute that Ambika Singh had filed Title Suit no.10 of 1989 for partition in which he had also included the properties subject matter of the gift of deed dated 27.1.1989. The allegation of separation even if it is accepted to be true cannot be sufficient to disrupt the joint status of the family which can be disrupted only on a partition by metes and bounds and the different coparceners

coming in exclusive possession of their shares. In a Hindu Undivided Family the partition is complete only when the title over the joint family property which is vested in the coparcenary is transformed into different titles of the co-sharers after allotment of their shares and putting them in exclusive possession of the same. In [Santan Nr. Tewary Vs. Saran Nr. Tewary and others]A.I.R. 1959 Patna 331 a division bench of this court has succinctly explained this principle of Hindu Law in the following words:

“..... This principle follows from the fundamental concept of joint ownership and possession giving each joint owner a right to transform this joint ownership and possession into several and independent ownership and possession, but this transformation cannot in the eye of law be held to have been brought about unless and until the entire process of transformation starting from the ascertainment of the share of each joint owner and ending in the actual delivery to him of the property given to him forming his share of the joint property, has been gone through; so long as this does not take place , the title and possession of all the co-sharers continues to be joint. It is only when the last stage has been completed that each owner ceases to be a co-sharer with the other.”

7. Mere assertion of separation is not sufficient to entitle a coparcener to alienate the coparcenary property by gift. In the present case this aspect is further fortified by the admitted fact of filing of title Suit No. 10 of 1989 for partition by Ambika Singh accepting unity of title and jointness of possession over the suit land between parties to the suit in which the defendant /respondents of the present appeal were defendants and the property subject matter of the gift deed had also been included in the suit property. The said suit was abandoned as per the submission of the learned counsel for the appellants, after the death of Ambika Singh. There is no evidence on record to establish the partition in the joint family of the appellants and the respondents. The Apex Court in [T.Venkata Subbamma Vs T. Rattamma] A.I.R. 1987 SC 1775 after taking notice of the authoritative texts on Hindu Law and different decisions on the issue has affirmed the view and held:

“There is a long catena of decision holding that a gift by a coparcener of his undivided interest in the coparcenary property is void”.

8. For the forgoing reasons it is held that the appellate court has rightly come to the finding that Ambika Singh has no right to gift the joint family property and as such has rightly reversed the judgment and decree of the trial court. No substantial question of law is involved in this appeal which is accordingly dismissed.

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