

TS 42/15
Khagen Medhi
vs
Naren Rajbongshi
Anjana Rajbongshi

Form no. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Nalbari

IN THE ORIGINAL COURT OF THE MUNSIFF NO.1, NALBARI

Present: Rubina Yasmin, AJS

Dated: 16th day of June, 2020

Title suit: 42/2015

KHAGEN MEDHI.....Plaintiff

Versus

NAREN RAJBONGSHI

ANJANA RAJBONGSHI.....Defendants

This suit/ case coming on for final hearing on the 16th day of June, 2020 in the presence of:

Mr. I . G. Rahman --- Advocate for the Plaintiff

Mr. Hiren Chandra Deka &

Mr. Arup Baishya ---Advocate for the Defendant

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And having stood for consideration to this day, the court delivered the following judgment:

JUDGMENT

This is a suit for declaration of right, title and interest, cancellation of gift deed no. 2266/1990, cancellation of sale deed, no. 2215/00, 1201/02 and 595/05 recovery of possession and consequential relief.

1. Plaintiff's suit in brief is that, father Late Gobinda Medhi had two wives and he is the first son of Late Gobinda Medhi. Defendant Naren Rajbongshi (Medhi) is the second son of Garga Ram Medhi. Plaintiff claimed that suit land mentioned in the Schedule 'Kha' 'Ga' 'Gha' 'Unga' 'Pratham Cha' 'Ditiya Cha' 'Bargya Ja' 'Barja' 'Niya' 'Murdhanya Ta' are the ancestral property of the plaintiff measuring total land of 17 bighas 4 kathas 11 lechas and he is entitled to get 1/3 share of the said property. Plaintiff further claimed that gift deed no. 2266/1990 executed by late Garga Ram Medhi in favour of defendant no. 1 and husband of defendant no. 2 by father of plaintiff on 25.8.1990 is forged and fraudulent one, as plaintiff's father did not execute the gift deed in his lifetime. Plaintiff also claimed that sale deed no. 2215/2000 executed by Naren Rajbongshi and Garga Ram Medhi on 29.8.2000, sale deed no. 1201/2002 executed by defendant no. 1 and 2 on 10.5.2002 and sale deed no. 595/2005 executed by defendant no. 1 on 16.3.2005 are illegal and liable to be cancelled. Plaintiff further stated that on 4.2.2015, 28.2.2015 and 3.3.2015 defendant dug earth over the land to which plaintiff objected. Defendant then threatened the plaintiff with dire consequences. Hence, plaintiff has filed this suit for declaration of right, title and

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interest, cancellation of gift deed no. 2266/1990, cancellation of sale deed no. 595/2005, 2215/2000 and 1201/2002.

2. Defendant no. 1 and 2 on pursuant to receipt of summons appeared before the court and filed their written statement jointly denying claim of the plaintiff. Defendant stated that Pobin, brother of Gobinda Medhi is sharer of the suit Patta and as such, plaintiff is not at all entitled to the 1/3rd share over the suit patta. They further stated that mother of the plaintiff left Late Gobinda taking plaintiff with her during his childhood. So, Gobinda with a view to avoid future dispute in respect of his property, duly and voluntarily executed gift deed no. 2266/1990 in favour of defendant no. 1 and husband of defendant no. 2 in respect of the suit land. Since then, they have been in possession of the said land and by virtue of said gift deed and possession, they got their name mutated in the revenue record. After the death of her husband name of defendant no. 2 has also been mutated over the said land by right of inheritance. Defendant out of the said gifted land sold some land to different purchasers and handed over possession of the land to said purchasers. After the death of Gobinda, defendant no. 1 and husband of defendant no. 2 brought the plaintiff with them and also gave him land vide Patta no. 273, 223 and 230 of village Digheli wherein plaintiff used to reside. But subsequently plaintiff sold about 1 bigha 3 kathas 10 lechas to Bondhu Kalita and Mahesh Kalita and hence, plaintiff's claim over scheduled land is not tenable and prayed to dismiss the suit of the plaintiff.

3. It is pertinent here to mention that plaintiff while filing the suit has not mentioned about the cancellation of sale deed as he had no knowledge about the same. During the trial he amended the plaint and inserted about the same praying for cancellation of above said

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sale deed. Defendant also filed additional written statement stating that plaintiff's amended pleading is not at par with the order of the Court which allowed the amendment prayer in Misc J case no. 4/17

ISSUES FRAMED

4. Considering rival pleadings between the parties my learned predecessor has framed following issues in this suit:

1. Whether there is cause of action for the suit?
2. Whether the suit is maintainable in its present form?
3. Whether the suit is time barred?
4. Whether the suit is bad for non-joinder of necessary parties?
5. Whether the gift deed no. 2266/90 is forged, void and liable to be cancelled?
- 6 Whether plaintiff has any right, title and interest over the suit land?
7. Whether plaintiff is entitled to the decree as prayed for?
8. To what other relief(s) the parties are entitled to?

5. Both sides have submitted evidence on affidavit of 4 witnesses

and also exhibited documents to establish their claims.

6. I have heard arguments for both sides. Both sides have also submitted written argument.

7. Now let me decide the case in hand issue wise.

ISSUE NO. 1:

Whether there is cause of action for the suit?

Plaintiff has filed this suit claiming that the suit land is ancestral

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property and that, he has 1/3rd share over the said property along with other defendant no. 1 and 2. He further stated that defendant has illegally executed gift deed no. 2260/1990 showing that the same was executed by his father late Garga Ram Rajbongshi voluntarily and later, defendant has sold some portion of the suit land to other purchaser. Moreover on, 4.2.2015, 28.2.2015 and 3.3.2015 defendant dug earth over the suit land while dispossessing the plaintiff. Hence, he has filed the suit for declaration of his title and cancellation of gift deed and sale deed and recovery of possession.

Per contra, defendant has stated that plaintiff was given some portion of land from the suit land and that, his father late Garga Ram Rajbongshi has executed valid gift deed in favour of defendant no. 1 and husband of defendant no. 2. The said gift deed is valid one and in view of the same, they acquired mutation and sold certain portion of suit land to other purchaser.

Considering rival pleadings between the parties, it is found that that there is cause of action for filling of this suit and hence the plaintiff has right to seek relief against defendant. Hence the issue is decided in affirmative.

ISSUE NO. 2:

Whether the suit is maintainable in its present form?

With regards to this issue, though defendant has submitted in their written statement that suit is not maintainable in its present form, but has failed to show as to how suit is not maintainable. Hence, issue is decided in negative.

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ISSUE NO. 3:

Whether the suit is time barred?

Defendant in their written statement stated that the suit is barred by law of limitation, as plaintiff has filed the suit beyond period of 3 years from the date of execution or from the date of knowledge of gift deed. Defendant has stated that plaintiff at para 20 of the plaint cited date of execution of gift deed and sale deed to be cause of action for his suit. So from date of cause of action the suit is apparently time barred, as plaintiff has nowhere mentioned date of knowledge of such deeds.

This is a suit for declaration of right, title and interest, cancellation of deed, recovery of Khas possession and consequential relief. Article 58 of the Limitation Act prescribes period of 3 years to file the suit for declaration from the date when his right to suit accrues. If contention of the defendant that Article 58 applies to the suit for possession based on title where declaration of title is also sought, is accepted it would amount to ignoring the relief for recovery of possession. If such suits were to be decided with reference to Article 58 on the ground that the declaration is sought for, application of Article 65 to the suit for possession would be rendered otiose. Therefore, in a suit filed for declaration of title to the suit land with relief of possession, Article 65 of the Limitation Act would be applied and not Article 58. As the plaintiff has averred that he was dispossessed from the suit land on 4.2.2015, 28.2.2015 and 3.3.2015 and that, he has filed suit in the year 2015 for declaration of title along with recovery of possession hence, suit is well within the period

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of limitation. The issue is therefore decided in negative.

ISSUE NO. 4:

Whether the suit is bad for non-joinder of necessary parties?

Defendant in their written statement has submitted that plaintiff has claimed 1/3rd share in the suit land. However, predecessor of plaintiff and defendant had another brother namely Pabin and his legal heirs are alive, but has not been impleaded in the suit. Moreover, plaintiff has also failed to implead several other recorded Pattadars having right, title, interest and possession in the suit Patta. Further, plaintiff has challenged the sale deed, but has failed to implead the purchaser of such sale deed in this suit. It is an admitted fact that suit is ancestral one and Late Garga Ram Rajbongshi is the owner of the entire suit land. As it is not a partition suit, therefore, impleadment of legal heir Pabin and other co-pattadars is not necessary. The purchaser of the sale deed are also found to be not necessary parties, as the matter in controversy is related to declaration of right, title and interest of the plaintiff over the suit land and also recovery of possession of the land and such matter can be decided without the presence of the purchaser of the sale deed. Moreover, plaintiff has made an alternative relief praying before the court to adjust other portion of suit land, if sale deed is not cancelled in any manner. Therefore, the suit can be well adjudicated without the presence of the purchaser of the sale deed. Hence the issue is decided in negative.

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ISSUE NO. 5 & 6:

Whether the gift deed no. 2266/90 is forged, void and liable to be cancelled? Whether plaintiff has any right, title and interest over the suit land?

These two issues are taken together, as they are co-related. It is an admitted position that suit land is ancestral land hence apparently plaintiff has right, title and interest over the suit land by right of inheritance unless contrary is proved by defendant. Plaintiff in his plaint and evidence on affidavit stated that his father has never executed gift deed no. 2266/1990 dated 25.8.1990 in favour of defendant no. 1 husband of defendant no. 2 and hence the same is forged and fraudulent one. Learned counsel for plaintiff side has argued on the validity of the gift deed stating that essential ingredients of gift deed has not been fulfilled in this instant case. It is a mandatory provision that delivery of gifted property must at the time of execution be accepted by the donee. He has exhibited copy of gift deed as Exhibit no. 10. At this the defendant side has made counter argument stating that since execution of the gift deed, suit land have been in possession of the defendants hence acceptance of gift is implied from the fact that suit land was possessed by the defendant after the execution of gift deed. Learned counsel for the defendant side has also submitted a citation AIR 1985 HP 109 of Himachal Pradesh High Court wherein it was held that express acceptance by the donee is not necessary to complete a gift. The acceptance of a gift can be either express or implied. At this, I would also like to cite the ratio held in the case of **Ashokanan Vs. Laxmi Kutti & ors. (2017) 13 SCC 210**, wherein the Hon'ble Apex Court in para 14 held “ *It is, however, beyond any doubt or dispute in order to*

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constitute a valid deed acceptance is essential. Transfer of Property Act does not prescribe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question. There may be various means to prove acceptance of gift. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raises presumption of acceptance". It further held that Silence may also indicate acceptance. It is not necessary to prove any overt act in respect thereof as an express acceptance is not necessary for completing the transaction of gift.

Thus from the aforesaid observation it can be held that fact of acceptance need not necessarily be expressive. The fact that the suit land has been in possession of the donee and that the gift deed is with the donee raises the presumption of acceptance. Now let me see if plaintiff could establish that the gift deed NO. 2266/90 is fraudulent one by any other manner.

Learned counsel for the plaintiff has argued that Golok Rajbongshi Dw 2 , who is witness to the gift deed, during his evidence, has stated that he writes his name as GolaK and not Golok. He further stated that in the witness signature of the gift deed Golok has put his signature as Golok, but in the next page, he has written as Golak. Evidence of Dw 2 Golok Rajbongshi is thoroughly perused and on perusal it is seen that said Dw 2 has identified the executor Gobinda and has also admitted that he was the witness to the gift deed and has also identified his signature in the said deed. Though, plaintiff has tried to prove that there has been difference in the signature in the gift deed, but has not made any effort to send the said deed to forensic lab for expert opinion. Moreover, bare perusal of the signature

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of Dw 2 in his affidavit and cross examination and in the gift deed, no difference is found among the signatures rather Dw 2 has admitted the fact of execution of gift deed. Further, Dw 4 Lalit Kalita is writer of the said deed. He has also clearly deposed about the execution of the gift deed. Further, plaintiff has also argued that Dw 4 Lalit Kalita stated that said deed was written in Tarani Sangha whereas Dw 2 stated the same was written in Sub-Registrar office and hence, there has been contradiction with regards to the place of execution between two witnesses. At this, I would like to point out to Learned counsel for plaintiff side that alleged deed is said to have executed in the year 1990 and Dw 2 and 4 have deposed their evidence before court in the year 2019. Therefore, it is likely that witnesses fail to recollect the exact place of execution of the gift deed after gap of 29 years.

Plaintiff has in no way could establish that the gift deed was fraudulently executed by the defendant. Hence, plaintiff has failed to prove the gift deed no. 2266/1990 as forged and fraudulent one and that, his father has not volutarily executed the same. Furthermore it is also essential to discuss as to whether the father of the plaintiff had the right to dispose his ancestral property to one son at the detriment of other. In this instant suit both the parties are Hindus and as they hail from Assam the principle of Dayabhaga Schools of law is applicable. Unlike the Mitakshara law, son has no right by birth in the property of a father irrespective of the fact whether it is separate or ancestral property. Father may dispose of the property at his will. Therefore, the father of plaintiff can gift the ancestral land to defendant 1 and 2 and the plaintiff could not establish that the said gift deed was fraudulently executed by the defendants. Hence plaintiff has no right title and interest over the suit land. The gift deed no.

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2266/90 is valid. Hence both the issue are decided in negative

ISSUE NO. 7:

Whether plaintiff is entitled to the decree as prayed for?

To what other relief the parties are entitled?

Plaintiff has prayed for declaration of right, title and interest over the suit land and cancellation of gift deed no. 2266/90 and sale deed no. 2215/2000, 1201/2002 595/05. Plaintiff has failed to establish that the gift deed is forged. Defendants were gifted the suit land by their father and legal right was conferred upon them vide said deed. As gift deed no. 2266/1990 is held to be valid therefore, defendant no. 1 and 2 has every right to sell their portion of land from suit land to several other purchasers and hence the said sale deed as executed by defendants are valid deed. Therefore plaintiff's prayer for cancellation of sale deed is also rejected. Hence, issue is decided in negative.

Order

In view of the discussion and decision made above plaintiff is not entitled to any decree as prayed for and the suit is dismissed on contest without cost.

Prepare a decree accordingly.

This suit is disposed of on contest without cost.

Given under my hand and seal of this court on this 16th day of June, 2020.

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Appendix

Plaintiff's Witness

1. PW 1 - Khagen Medhi
2. PW 2 - Samudra Pathak
3. PW 3 - Hitesh Rajbongshi
4. PW 4 - Dilip Das

Plaintiff's Exhibits

1. Exhibit 1 to 8 - Jamabandi of Suit Patta
2. Exhibit 9 - Reveue receipt
3. Exhibit 10 - Certified copy of Gift Deed No. 2266/90
4. Exhibit 11 to 13 - Copy of sale deed no. 2215/00,
1201/02, 595/05
5. Exhibit 14 - Revenue receipt
6. Exhibit 15 - Clearance certificate

Defendant's witness

1. DW 1 - Naren Rajbongshi
2. DW 2 - Golak Rajbongshi
3. DW 3 - Girin Rajbongshi
4. DW 4 - Lalit Kalita

Defendant's Exhibits

1. Exhibit 'Ka' to 'Niya' - Jamabandi of Suit Patta
2. Exhibit 'Ta' - Gift Deed No. 2266/90
3. Exhibit 'Tha' - Revenue Receipt

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