

IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No. 41 of 2014

Anant Mahto & Ors.				Appellants
<i>Versus</i>				
Dripnath Mahto & Ors.				Respondents

CORAM : HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellants	: Mr. Amar Kr. Sinha, Advocate
	: Mr. K.K. Ambastha, Advocate
	: Mr. Sumit Kumar, Advocate
For the Respondents	: Mr. B.K. Prasad, Advocate
	: Mr. Rohit Sinha, Advocate

Order No.12 Dated- 01.10.2024

Heard the parties.

This appeal will be heard on the following substantial questions of law:-

- (i) Whether in view of the failure of the plaintiffs to prove the fraud beyond reasonable doubt both the courts below have committed perversity by holding that the gift deed which has been marked Ext. 2/G is *void ab initio* by ignoring the settled principle of law that undivided share of a coparcener can be a subject matter of sale/transfer but the possession cannot be handed over to the vendee as has been held by the Hon'ble Supreme Court of India in the case of **Gajara Vishnu Gosavi vs. Prakash Nanasaheb Kamble** in Civil Appeal No. 1292 of 2022 dated 16.09.2009 reported in [2010 (1) JCR 7 (SC)]?
- (ii) Whether both the courts below have committed a perversity by not holding that there was a prior partition between the plaintiffs and the defendants on the basis of the inter-se transaction between the parties by way of gift and sale in view of the judgment of the Division Bench of Hon'ble Patna High Court in the case of **Ram Bahadur Nath Tiwary vs. Kedar Nath Tiwari & Ors.** reported in AIR 1977 Patna 59?

(iii) Whether both the courts below have committed perversity by making out a case out of its own that the gift deed which has been marked Ext. 2/G though was pleaded by the plaintiffs was *void* because of practicing fraud and fraud beyond reasonable doubt was not established by the plaintiffs as is required in view of the settled principle of law as has been reiterated by the Hon'ble Supreme Court of India in paragraph no.7 in the case of **Union of India vs. Chaturbhai M. Patel & Co.** reported in AIR 1976 SC 712; by holding that *inter alia* the gift deed executed by Dukhu Mahto is *void ab initio* on the ground that the same has been executed in respect of joint family property by a coparcener without partition by metes and bounds, even though the same was not the case of the plaintiffs?

Admit.

Call for the Lower Court Records.

Mr. Bhupal Krishna Prasad, Advocate receives notice of the appeal on behalf of the respondent no.2. Appeal is already abated against the respondent nos. 3 to 5.

The appellants are directed to file requisites for service of notice on the respondent nos. 1 (a) to 1 (d) by registered post with A/D as well as under process of the court within four weeks failing which; this appeal shall stand dismissed without further reference to the Bench.

Rule is made returnable within six weeks.

In case, the requisites are filed, list this appeal after receipt of the service report of the notice issued to the said respondents.