



IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No. 399 of 2024

An appeal under Section 100 Code of Civil Procedure.

Tajamul Khan

.....

Appellant

-Versus-

Abdul Salam Khan and Others

.....

Respondents

Advocate(s) appeared in this case:-

For Appellant : M/s. S.K. Nayak-2,
K. Jena, S.S.K. Nayak,
A. Mallick & P.K.Parida,
Advocates

For Respondents :

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

30.04.2025

SASHIKANTA MISHRA, J.

This is an appeal by the defendant against a confirming judgment. The suit filed by the plaintiffs being



decreed by the trial Court was confirmed in appeal by the 1st Appellate Court.

2. For convenience, the parties are referred to as per their respective status in the court below.

3. The plaintiffs' filed the suit for partition and declaration that the gift deed purportedly executed by Kurban Bibi in favour of defendant vide deed No. 3917 on 15.11.2010 is void. The plaintiffs' case, briefly stated, is that the plaintiffs and the defendant are brothers and sisters. Their father Abdul Satar Khan died in the year 2006 and their mother Kurban Bibi died in the year 2012 at the age of 84. Their father had purchased the schedule property in his name out of his income. Lot No. 4 of the schedule property was however purchased in the name of his wife. Lot No.5 of the schedule property was inherited by Kurban Bibi from her parents. After death of their parents, the plaintiffs and defendant inherited the same. The plaintiff Nos.1 and 2 and defendant claimed 1/5th share each and plaintiff Nos. 3 to 6 claimed 1/10th share each in the schedule property. The property was not partitioned by metes and bounds. There was dissension



among the brothers for which, on the advice of their well-wishers, they decided to partition the property. At that time, the defendant disclosed that he had acquired Schedule 'Kha' property from their mother on the strength of the registered gift deed dated 15.11.2010. According to the plaintiffs, the gift deed was obtained by practicing fraud as because of her old age, she had lost her hearing, had very poor vision and had also lost her memory. Further, their mother was also unable to move properly. Taking advantage of her illness the defendant took their mother to Bhadrak for consultation with the doctor in the rickshaw of one Sofian Khan. However at Bhadrak the defendant fraudulently managed to get the gift deed executed and registered. Their mother was entirely unaware of the recitals of the gift deed, which was neither read over nor explained to her. She also never had independent advice. Basically on such facts and as the defendant was not agreeable to an amicable partition, the plaintiffs filed the suit.

4. The defendant contested the suit by filing written statement denying the plaint averments and



claiming that the plaintiffs have no locus standi to challenge the registered gift deed. It was pleaded that the property covered under the gift deed was the purchased property of Kurban Bibi, which she had purchased on 28.09.1993 vide deed No. 2976 for consideration of Rs.4,000/- from Abdul Samad and was in possession since then. The land was also mutated in her name and she was paying rent regularly. She also inherited Ac.1.55 decimals from her paternal property, which was also mutated and described in Lot No.5 as her exclusive property. The defendant was looking after the comfort and taking care of Kurban Bibi. As such, being satisfied with the conduct of the defendant and out of love and affection, she voluntarily executed the gift deed in his favour and also delivered possession. The gifted property was subsequently mutated in the name of the defendant and he is paying rent to the government since then. The plaintiffs, despite being aware of the gift, have filed the suit making false allegations. The gift deed was scribed by one Bhimsen Arakha on the instructions of Kurban Bibi in presence of witnesses, namely, Sufiyan Khan and Sarat



Chandra Behera. Sufiyan Khan is the brother-in-law of Kurban Bibi. The scribe read over and explained the contents and purport of the deed.

5. Basing on the rival pleadings, the trial court framed in the following issues for determination:-

- i. Whether the suit is maintainable?*
- ii. Whether the plaintiffs have any cause of action to institute the present suit and the suit is bad for mis joinder of cause of action?*
- iii. Whether the plaintiffs are entitled to 4/5 share out of the suit land?*
- iv. Whether the gift deed vide Regd. No. 3917 dt 15.11.2010 can be declared as void & illegal and no title was passed to the defendant by virtue of this gift deed ?*
- v. To what other reliefs, the plaintiffs are entitled to?*

6. The trial Court took up issue Nos. (iii) and (iv) for determination at the outset. After considering the oral and documentary evidence, the trial court was not inclined to believe the plea set up by the defendant as regards the execution of the gift deed in his favour by his mother Kurban Bibi. He also found that the attesting witnesses had completely failed to prove the execution of



the document. On such findings the remaining issues were answered accordingly and the suit was decreed by holding that the plaintiffs are jointly entitled to 4/5th share from the suit land and the defendant is entitled to 1/5th share thereof. Further, the gift deed dated 15.11.2010 was declared void and illegal.

7. The defendant carried the matter in appeal, which was heard and disposed by the learned Additional District Judge, Bhadrak. After considering the contentions and the grounds raised, the 1st Appellate Court did not find any reason to interfere with the finding of the trial Court. The appeal was thus dismissed.

8. Being further aggrieved, the defendant has filed the present second appeal.

9. Heard Mr. S.K.Nayak, learned counsel for the defendant-appellant on the question of admission of the appeal.

10. Mr. Nayak submits that as per the Article 149 of Mulla's Mohammedan Law, three ingredients are necessary to be satisfied to prove the validity of a gift deed executed by a Muslim, namely, (i) declaration of the gift by



the donor, (ii) acceptance of gift by the donee and (iii) delivery of possession. According to Mr. Nayak all the three ingredients have been satisfactorily proved by the defendant through oral and documentary evidence. The trial Court as well as 1st Appellate Court committed manifest error in misreading the evidence and wrongly doubted the valid execution of the deed.

11. On perusal of the judgment passed by the trial court, it is seen that according to the plaintiffs, the gift deed in question was obtained by defendant fraudulently taking advantage of the old age of the donor, namely, Kurban Bibi. Moreover, she was said to be suffering from some diseases including hearing and vision impairment. It is also borne out from the evidence on record that the donor (Kurban Bibi) was illiterate as is evident from the fact that she affixed her thumb impression on the so-called gift deed. The fact that Kurban Bibi was not in normal physical and mental state has not been disproved by the defendant. That apart, the trial Court has taken into account the circumstances under which the gift deed was executed and registered as has come out from the



evidence on record. The trial Court also found that none of the attesting witnesses could prove the attestation of the document as required under Section 68 of the Indian Evidence Act. It has not been demonstrated as to how such findings are wrong or perverse so as to persuade this Court to interfere. Even otherwise, after going through the reasoning adopted by the trial court, this Court finds nothing wrong in its approach as the oral and documentary evidence has been considered keeping the law in perspective. The 1st Appellate Court has also taken note of the settled position of law that when a document is said to be executed by an old, illiterate and pardanashin lady, the burden is always on the person who claims benefit of it. As already discussed, the defendant could not successfully discharge the burden to the satisfaction of the court below.

12. This Court after perusing the impugned judgment has found, no reason to interfere inasmuch as the concurrent findings of fact rendered by both the courts below are neither perverse nor against the evidence on record nor are such as a prudent person would not



arrive at. It is the settled position of law that concurrent findings of fact are not to be interfered with routinely in second appeal.

13. For the foregoing reasons therefore, this Court finds no merit in the second appeal so as to be admitted for hearing. The appeal is therefore, dismissed.

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(Sashikanta Mishra)
Judge

B.C. Tudu

Signature Not Verified

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