

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Second Appeal No. 312/2022

Ratanlal S/o Late Amra

----Appellant

Versus

Bhawarlal S/o Late Shri Amra

----Respondent

For Appellant(s)	:	Mr. Prem Shanker Sharma with Mr. Jeetendra Kumar Sharma
For Respondent(s)	:	Mr. Sultan Singh Kuri

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

06/02/2025

1. The instant Civil Second Appeal is preferred by the appellants-plaintiffs aggrieved from dismissal of Civil Regular Appeal No.31/2019 (42/2019) passed by learned Additional District Judge, Danta Ramgarh, District Sikar on 23.08.2022 affirming the judgment and decree dated 16.04.2019 in Civil Suit No.88/2012 passed by learned Civil Judge (Senior Division), Danta Ramgarh, District Sikar.
2. Learned counsel for the appellants while relying upon grounds of second appeal submitted that both the Courts below have failed in their duty to consider essential elements of gift as the father of plaintiff was unfit and incapable to execute a gift deed. He further submitted that the property in question is not a personal property of donor and not having any authority to donate it. He also referred the evidence and submitted that even the possession of property was not given in gift and all these grounds

were ignored by the Courts below, in considering the issues raised by appellants.

3. Aforesaid contentions were opposed by learned counsel for the respondents-defendants and submitted that there is a concurrent finding of fact and this Hon'ble Court cannot reopen the issue of fact, and no case is made out for admission. He placed reliance upon judgment in case of **Govindbhai Chotabhai Patel & Ors. Vs. Patel Ramanbhai Mathubhai Civil Appeal No. 7528/2019 (Order dated 23.09.2019).**

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the appellants has placed reliance upon judgments in case of **Bakhtawar Singh Etc. Vs. Smt. Sohbi : 1963 CurLJ 17, Commissioner of Gift-tax, Patiala-II, Patiala Vs. Man Singh : 1980 CLJ (Civil) 447 & Pritam Singh Vs. The Assistant Controller of Estate Duty, Patiala : 1976 PLR 342.**

6. The appellants – plaintiffs have challenged a gift deed dated 03.05.2012 executed by their father in favour of one brother defendant No.1 on 03.05.2012. It is also submitted that soon after the execution of gift deed, the father of plaintiffs (donor) has expired. It is also submitted on record that the property in question is an ancestral property inherited by father of appellants. Learned counsel has referred several judgments and also placed reliance upon Mulla Hindu Law along with rights of coparcener and Hindu Undivided Family.

7. In case of **Govindbhai Chotabhai Patel & Ors. Vs. Patel Ramanbhai Mathubhai (supra)** Hon'ble Supreme Court held that execution is admitted but allegation is about forgery or

fabrication and there is no evidence to substantiate the allegation. The donee was taking care of donor for years and out of love and affection gift deed was executed. Herein this case, the facts are different and so the allegations.

8. Having gone through the entire material on record, I am of considered view that the grounds give rise to following substantial questions of law, which require consideration by this Court:-

(i) Whether in the facts and circumstances of the case, the trial Court and the Appellate Court, both have misconstrued the legal position while deciding the issue in hand and the judgments are perverse and improper?

(ii) Whether Amara was not competent to execute gift deed as he was not only unfit but not empowered legally to gift the property inherited by him as coparcener.

(iii) Whether the essential elements of giving and taking did not took place, hence, gift is invalid?

8. Admit.

9. List for hearing in the month of August, 2025.

(ASHOK KUMAR JAIN),J