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SLP(C)No. 16327-16328 OF 1998
ITEM No.1

Court No. 7

SECTION XVII
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.16327-16328/1998

(From the judgement and order dated 16/04/1998 in CR 1/98 and judgment and decree dated 5-11-1997 in SA 183/1980 of The HIGH COURT OF PATNA AT RANCHI)

JAGASSI DEVI & ORS

Petitioner (s)

VERSUS

SHAMBHU RANA & ORS

Respondent (s)

(With prayer for interim relief)
(With Appln(s). for exemption from filing O.T.)
(For Final Disposal)

Date : 29/01/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s) Mr. Santosh Kumar, Adv.,
Mr. C.K. Nayak, Adv.,
Mr. P.R. Tiwari, Adv.,
Mr Pavan Kumar, Adv.

For Respondent (s) Mr. Manoj Goel, Adv.,
Mr. Shuvodeep Roy, Adv.,
Mr. Avinash Kumar Adv. for
Mr. Brij Bhusan, Adv.

UPON hearing counsel the Court made the following

O R D E R

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Leave granted.

Mr. Santosh Kumar learned counsel appearing for the appellants made his submissions from 10.35 a.m. to 11.00 a.m.

The civil appeals are dismissed in terms of the signed order. No order as to costs.

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(R.K. Dhawan)
Court Master

(D.D.Jindal)
Assistant Registrar

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2002@@
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Jagassi Devi & Ors.

Appellant(s)

versus

Shambhu Rana & Ors.

Respondent(s)

O R D E R@@
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Leave granted.

These appeals are directed against the Judgment and Order of the High Court at Patna. The contextual facts depict that the respondents herein, as plaintiffs, filed a civil suit for partition before the Munsif at Chatra as regards their half share in the suit property appertaining to Khata No.16. The plaintiffs contended that the lands were raiyati lands and were recorded in the names of two brothers, namely, Lakshman Badhi and Laliya Badhi, being sons of Gyani Badhi. They had equal shares in the suit property and it was specifically recorded in the record of rights. Lakshman Badhi died about 40 years back leaving behind three sons, namely, Sohar Barhi, Late Barhi and Barhe Barhi and these sons have been arrayed as Defendant Nos. 1 to 3 in the civil suit filed by the respondents ...2/-

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herein. Late Barhi has no son and has only a daughter and she has been made as Defendant No.5. It has been the case of the respondents-plaintiff that after the death of Lakshman Badhi, his sons and other co-sharers amicably divided the land to the extent of half and half as against the total area according to the convenience, but without, however, dividing by metes and bounds. Laliya Barhi, the record depicts, remained in continuous possession of the land which fell to his share and after his death, his descendants, namely, the plaintiff-respondents were in possession and the other half remained in possession of the Defendant Nos. 1 to 4. In the meantime, however, Defendant No.1 had gifted away not only the latter's share but also that of the plaintiffs, to his daughter, namely, Defendant No.5 in the civil suit.

The plaintiffs' suit was contested by the Defendant Nos. 1 to 3 and 5 by filing a joint written statement while admitting the same, specifically raised a defence on the plea of adverse possession since their father being in possession of the land to the exclusion of the respondents-plaintiff. The suit was, however, dismissed by the learned Trial Judge. The First Appellate Court, however, also came to the finding that the suit was not maintainable in the present form but, however, negatived3/-

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the contention of adverse possession as there was no right, title and interest declared in favour of the appellants herein. The matter subsequently went before the High Court and the High Court allowed the appeal by recording reasons in para 13 to the following effect:

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13. In that view of the matter, I find that the learned courts below had committed error of law in dismissing the suit of the plaintiffs praying partition if their half share. Their half share not being in any way dependent on the gift deed of defendant No.5. The question of declaration of title or for setting aside the gift deed is of no bearing in the present suit of partition and the plaintiffs can very well get their half share partitioned.

Hence, the appeal is allowed and the suit of the plaintiffs is hereby decreed preliminary for getting partition of their half share of the suit properties. The plaintiffs should get cost of all the courts in their favour. The preliminary decree be drawn up accordingly.

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It appears on the factual score, that the High Court was concerned about the factum of ownership as regards the execution of the deed of gift. The High Court proceeded to record that the plaintiffs, being the respondents herein, are not concerned about the declaration of the gift deed in favour of the Defendant No.5 to be void or voidable but are interested about their half share within the suit property. They could not be deprived of such right.

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Incidentally, be it noticed that the record of rights itself provides joint ownership and the ownership has not been curtailed in any way whatsoever by the declaration of rights so far as the appellants are concerned. The acquiescence or waiver shall have to be proved against the title or the other co-sharers which is adverse to the latter. In the event of there being no such declaration, the question of execution of a deed of gift containing that part of the immovable property would not arise. A person cannot confer a title on to somebody without having any right or capacity to confer. In our view, the High Court's judgment cannot be faulted on any counts. A person not having any title can not confer a title on to another. These appeals, thus, fail and are dismissed.

Since, the suit is for partition of the property, the trial court would do well to take steps in the matter of appointment of a Commissioner for partition so that no further delay is caused in the matter of declaration of shares amongst the parties.

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(U.C. BANERJEE)

.....J
(BRIJESH KUMAR)

New Delhi,
January 29, 2002.