

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8648 OF 2014

(@ Special Leave Petition (C) No. 35146/2009)

NARESH SAH & ANR. .. APPELLANTS

VERSUS

BIBI FATIMA (D) THR. LRS. .. RESPONDENTS

O R D E R

Delay condoned.

Application for substitution is allowed.

Leave granted.

The present appeal, by special leave, is directed against the judgment and decree dated 20.07.2009 passed by the High Court of Judicature at Patna in Second Appeal No. 67 of 1997, by which the learned Single Judge, after framing four substantial questions of law, has dislodged the conclusions arrived at by the learned trial Judge in Title Suit No. 98/1986 which has been affirmed by the lower appellate court in Title Appeal No. 94/1995 whereunder the courts below had recorded a finding that the claim of right, title and interest of the defendant Bibi Fatima wife of late Abdul Samad, second son of Nathu Mian in respect of certain properties was sustainable

inasmuch as all the ingredients of oral gift, as provided under the Mohammedan law had been satisfied.

Mr. Shankar Narayanan, learned counsel appearing for the appellants contends that the High Court has erroneously framed the questions elevating the same to the status of substantial question of law which are fundamentally questions of fact. It is his further submission that the High Court has erroneously re-appreciated the evidence on record by coming to hold that the defendants were in possession on the basis of the oral gift made by Nathu Mian in favour of Abdul Samad, as a result of which his wife Mostt. Gujjo and Abdul Hamid were excluded from their shares. He has also relied upon Exhibit 'H', which is the municipal entry of 1977, reflecting that the names of Abdul Hamid and Abdul Samad had been entered into which is demonstrable of the fact that there was no oral gift by Nathu Mian in favour of Abdul Samad in the year 1956.

Learned counsel for the respondent submitted that the High Court, though has apparently made questions of fact as questions of law in an erroneous manner, in reality the questions pertain to the perversity of approach by the courts below and the pervert appreciation of the evidence which, in the obtaining circumstances, has given rise to substantial question of law. Mr. Manish Kumar, learned counsel appearing for the respondents would further contend that evidence that has been brought on record

clearly establishes that the oral gift was proven and, therefore, the High Court has correctly dislodged the finding recorded by the learned Trial Judge.

The last plank of submission by the learned counsel for the respondent is that the appellants had communicated to the respondents to offer Rs.14 lakhs to put the controversy to rest and, therefore, in case the judgment and decree passed by the High Court is set aside, they should be granted Rs.14 lakhs as committed by the appellants.

Ordinarily, we would have adverted to the issues raised by Mr. Shankar Narayanan, but as we find the appellants are purchasers from Abdul Hamid during his lifetime and in praesenti to have peace, have already offered Rs.14 lakhs to the respondents, we are of the considered opinion that cause of justice would be best sub-served, if the appellants pay a sum of Rs.14 lakhs to the respondents by October, 2016 in eight quarterly instalments, commencing 05.10.2014.

As the offer has been made and we have already held that it would sub-serve the cause of justice, the judgments of the High Court and those of the courts below are set aside and it is declared that the sale deed executed in favour of the appellants shall be deemed to be valid, subject to payment of Rs.14 lakhs in favour of the four respondents who are the legal representatives of the

deceased Bibi Fatima. To avoid any kind of controversy, it is directed that each of the legal heirs shall receive a sum of Rs.3.5 lakhs by way of a demand draft drawn on a nationalised bank within the time span and the instalment fixed regard being had to the proportionality.

The appeal is disposed of accordingly. There shall be no order as to costs.

.....J.  
(DIPAK MISRA)

.....J.  
(ROHINTON FALI NARIMAN)

NEW DELHI  
SEPTEMBER 09, 2014

ITEM NO.10

COURT NO.8

SECTION XVI

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 (C) No(s). 35146/2009

(Arising out of impugned final judgment and order dated 20/07/2009  
in SA No. 67/1997 passed by the High Court Of Patna)

NARESH SAH &amp; ANR.

Petitioner(s)

VERSUS

BIBI FATMA (D)

Respondent(s)

(With appln. (s) for c/delay in filing SLP and permission to file  
additional affidavit and permission to file additional documents and  
substitution and office report) (For final disposal)

Date : 09/09/2014 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA  
HON'BLE MR. JUSTICE ROHINTON FALI NARIMANFor Petitioner(s) Mr. Shankar Narayanan, Adv.  
Mr. Gaurav Agrawal, Adv.For Respondent(s) Mr. Manish Kumar, Adv.  
Mr. Piyush Kaushik, Adv.  
Mr. Rakesh K. Sharma, Adv. (NP)UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned.

Application for substitution is allowed.

Leave granted.

Appeal is disposed of in terms of the signed order.

(NAVEEN KUMAR)  
COURT MASTER(RENUKA SADANA)  
COURT MASTER

(Signed order is placed on the file)