

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5717 OF 2021
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 3506/2019)

SONAMATI DEVI & ORS.

Appellant(s)

VERSUS

MAHENDRA VISHWAKARMA & ORS.

Respondent(s)

O R D E R

Leave granted.

This appeal challenges the judgment and order dated 03-11-2017 passed by the High Court of Judicature at Patna in Second Appeal No. 333/2017.

By registered gift deed dated 01.12.1998, one Yadunandan Mistri, who was issueless, gifted an extent of 2.92 acres of land in favour of the second respondent, the wife of his nephew, on the assumption that his nephew i.e. the first respondent would take care of Yadunandan and his wife in their old age.

However, finding himself to be victim of fraud and undue influence, said Yadunandan immediately sought to cancel the gift vide cancellation deed dated 12.12.1998.

A *Bajidawa* was later executed by the first respondent relinquishing the

claim over the property given vide deed of gift dated 01.12.1998.

Since despite said *Bajidawa*, the land was not made over, Civil Suit No.41/2001 (renumbered as 148/2001) was filed by said Yadunandan in the Court of Additional Sessions Judge-II, Gaya, for declaration that the gift deed dated 01.12.1998 was obtained by practicing fraud and undue influence and therefore, be declared to be void.

During trial, a photocopy of *Bajidawa* dated 20.03.2001 was produced on record and was marked as Exhibit-2.

The brother of the first respondent was examined by Yadunandan as PW-5 who deposed to the execution of the *Bajidawa* dated 20.03.2001.

One of the issues framed for consideration by the Trial Court was:-

“8. Is the alleged gift deed dated 01.2.1998 in favour of defendant number 2, void and ineffective and not binding on plaintiff.”

Considering the circumstances on record, the Trial Court by its judgment and order dated 04.11.2006 decreed the suit. Insofar as the matter pertaining to *Bajidawa* was concerned, the observations of the Trial Court were:-

“The plaintiff’s counsel also drew attention towards *Bajidawa* in favor of plaintiff in which he has accepted that the has wickedly with intention of usurping the property of plaintiff serve him to win his trusts and thus got a gift deed executed in the favor of his wife which is completely void and they did have no objection to get it cancelled from the court. The learned counsel for defendants asserts that the original documents have not been written by the defendant and rather a photocopy has been declared as forged by defendant. Therefore this document is invalid and has no

importance. He further pleaded that even if the contents of Bazidawa are supposedly true, they are the statements of defendant 1 only while the gift deed is not affected in any manner as it affects the rights of Defendant No. 2 who has acquired rights therein. This is why the rights acquired by Defendant no. 2 in this respect, are not affected in any manner. In their reply the plaintiff has pleaded that the burden of proof lies on defendant to prove the Bazidawa as forged. When the evidence in this regard are observed, it is quite clear that the plaintiff has given evidence that the original Bazidawa is lost and so they have submitted a photocopy. It is remarkable that P.W.S Balram Vishwakarma who is witness to Bazidawa has testified in the court that the Bazidawa has been written on direction of the defendant 01 and he has signed it after understanding the crux of the same. Another important fact is that one of the witness to the Bazidawa is Vishwakarma i.e. Brother of defendant but he never testified in the court in opposition of the facts in the Bazidawa. P.W. 05 Balram Vishwakarma has in Para 23 of his Cross, clearly stated that the Bazidawa was written in front of him and that Mahender said that he will write the Bazidawa as long as he gets a part of the land mentioned in the Kewala. Because of this, even after the cancellation Deed, Mahender was made to write the Bazidawa. Only when Yadunandan accepted the right of Mahender over the said part of land did Mahender wrote the Bazidawa. Remarkably the defendants would never present any proof which could render the Bazidawa. Now as far as the question of admitting and corroborating the same is, the plaintiff and PW. 5 has stated in this regard that the original Bazidawa is lost and the Counsel for plaintiff plead to admit it as a secondary evidence which has been permitted by the court. Patna High Court in 2002(2) P.L.J.R Page 772 has laid down that photocopy can be accepted as secondary evidence in this regard. P.W. 4 has accepted in his testimony that the original documents was a photocopy in front of him and there was seen no reason to disbelieve it and therefore it is inferred that the plaintiff has proved exhibit 2 under the provisions of India Evidence Act and the court can draw conclusions from this exhibit.”

The conclusions drawn by the Trial Court were :-

“...Therefore, it is completely established that the defendant no.1 taking undue benefit of his close relation and blind trust and exercising undue influence on the plaintiff got a gift deed executed in his favour and so an adverse conclusion is drawn against the defendant. ...”

The respondents carried the matter further by filing Appeal No.09/2016

[93/2006 (D.J.)] which was allowed by the Lower Appellate Court vide order

dated 19.04.2017. The Lower Appellate Court refused to rely on Exhibit-2 on the ground that the original of the document in question was not produced on record.

The decision of the Lower Appellate Court was called in question by the appellants i.e. the wife and other successors in interest of said Yadunandan by filing Second Appeal No.333 of 2017 which was rejected by the High Court. The High Court found that once the gift was complete, it could not be revoked and as such the decision of the Lower Appellate Court did not call for any interference.

Heard Mr. Deepak Nargolkar, learned Senior Advocate for the appellants and Mr. Haraprasad Sahu, learned Advocate for Respondent Nos. 1 & 2. The subsequent purchasers from the first respondent, though served, have chosen not to enter appearance in the matter.

It is true that original of *Bajidawa* dated 20.03.2001 was not produced on record. However, in view of the testimony of PW-5, who was none other than the brother of the first respondent, the circumstances in which the original gift deed was executed and the manner in which *Bajidawa* was entered into become quite clear.

It is well known that fraud vitiates every solemn act¹. The finding rendered by the Trial Court that the gift deed was brought about by practicing fraud and undue influence is unassailable.

¹ *Behari Kunj Sahakari Avas Samiti vs. State of U.P.* (2008) 12 SCC 306: paragraph 22

The assessment made by the Trial Court, therefore, did not call for any interference. Considering the totality of circumstances, in our view, the High Court and the Lower Appellate Court were in complete error. We, therefore, allow this appeal, set aside the view taken by the High Court and Lower Appellate Court and restore the order passed by the Trial Court.

Since the gift deed was brought about as a result of fraud and undue influence, the concerned Executing Court, as and when the execution petition is filed, shall do well to see that the decree is executed as early as possible and the appellants are given their rightful due.

With these observations, the appeal is allowed without any order as to costs.

.....J.
[UDAY UMESH LALIT]

.....J.
[S. RAVINDRA BHAT]

.....J.
[BELA M. TRIVEDI]

New Delhi;
September 15, 2021.

ITEM NO.8 Court 2 (Video Conferencing) 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). 3506/2019

(Arising out of impugned final judgment and order dated 03-11-2017
in SA No. 333/2017 passed by the High Court Of Judicature At Patna)

SONAMATI DEVI & ORS. Petitioner(s)

VERSUS

MAHENDRA VISHWAKARMA & ORS. Respondent(s)

(IA No. 7973/2019 - EXEMPTION FROM FILING O.T.)

Date : 15-09-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Deepak Nargolkar, Senior Advocate
Mr. Shantanu Sagar, AOR

For Respondent(s) Mr. Haraprasad Sahu, Adv.
Mr. Sanjeev Kumar, Adv.
Mr. Pranaya Kumar Mohapatra, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(VIRENDER SINGH)
BRANCH OFFICER

(SIGNED ORDER IS PLACED ON THE FILE)