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(1977) 03 AHC CK 0021

Allahabad High Court

Case No: Second Appeal No. 653 of 1966

Rajpat and Others	APPELLANT
Vs	
Jagannath Misra and Another	RESPONDENT

Date of Decision: March 8, 1977

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 101

Citation: AIR 1977 All 558

Hon'ble Judges: M.P. Mehrotra, J

Bench: Single Bench

Advocate: V.D. Ojha and G.P. Bhargava, for the Appellant; Trikoli Nath, for the Respondent

Final Decision: Dismissed

Judgement

M.P. Mehrotra, J.
This is the defendant"s Second Appeal. Both the courts below have concurrently decreed the plaintiff"s suit. The brief facts are reproduced from the following passage from the judgment of the lower appellate court.

2. Jagannath respondent filed the suit with the allegation that the following pedigree will be helpful in following the case:--

```
                                                                    JOKH
              ____________________________________________|____________________
              |
      Ram Anand
   _______|_____________________________________________________________________
   |                            |                                              |
Mst. Nimra            Mst. Patiraji                          Ghora Roo
   |                            |
```

Ram Karan Ram Bahal

Amongst the descendants of Jokhu only plaintiff and his two sister''s sons Ram Bahal and Ham Karan are now alive. The plaintiff is now the full owner of entire property of Jokhu''s branch. The plaintiff is old and so several persons are keen to take away his property. The plaintiff does not want to give his properties to any person in his lifetime and except his sister''s sons he has no affection for any other persons. These sister''s sons are his legal heirs. Defendants well-wishers secretly and fraudulently with the help of '' fraudulent scribe and witnesses got a gift deed prepared and registered with-out the knowledge of the plaintiff by falsely putting forward some other persons in place of the plaintiff. By the deed it is alleged that the plaintiff has gifted his properties to the defendants Nos. 1 to 3. The plaintiff in fact did not execute this document. Defendants Nos. 1 to 3 had conducted mutations proceedings secretly but the plaintiff came to know of it and preferred objections. Thereafter a criminal complaint in respect of this deed was also started which was pending at the time of institution of this suit. The plaintiff in order to protect his rights filed the suit for cancellation of the sale deed dated 24-1-1963.

3. Defendants Nos, 1 to 3 were impleaded under the guardianship of their mother Smt. Sheokumari. A compromise was filed admitting the claim on 4-10-63 but it was rejected by the Court. Thereafter defendants under the guardianship of Smt. Hubrali filed their written statement. They asserted that Ram Karan and Ram Behal are not the sister''s sons of plaintiff. The true pedigree is as given below and according to this pedigree Roopa Ram was the common ancestor of the parties:--

```
                                                                    ROOP
                              ______________________________|_________________
                              |
                    Bhojairam alias Hennu
                              |
                        Jokhu
        _____________|__________                                        ___
        |                                        |
      Musairam                      Ramanand                            Ram M
    ___________________________|_______                          |
    |                          |                            |
 Baljnath                Jagannath              Ghurahu  ___________|_______
Smt. Ananti                  (D)                                |
                                                            Bhagwati Pd.
                                                          Smt. Dulari Devi
```

In the branch of Jokhu Ram Jagannath is now only alive. He transferred several of his properties; on persuasion of the well-wishers of the family he executed the gift of remaining property in favour of the defendants. The defendants are minor and their grandmother is old and the original gift has been secreted away due to defendant''s inexperience. The defendant''s mother has been fraudulently made to file a compromise in the court.

4. The learned two courts below accepted the plaintiff''s claim and decreed the suit. The defendants have therefore preferred this appeal.

5. Both the courts below have held that the gift deed in question was never executed by the plaintiff Jagannath and that some one else executed the document misrepresenting himself to be Jagannath, the plaintiff. So far as the agricultural plots in dispute are concerned I have by my separate order allowed the defendants appellant''s application u/s 5 of the U.P. Consolidation of Holdings Act and have abated the appeal and the suit from which it has arisen in respect of the said plots as they have come under consolidation operation. So far as the rest of the property is concerned, the appeal, however, is still alive. However in view of the fact that a pure finding of fact has been recorded by the courts below holding that the document in question did not bear the thumb impressions of the plaintiff and the same was not thus executed by the said plaintiff, no interference is required in the instant appeal.

6. I, therefore, dismiss the appeal but in the circumstances make no order as to costs.