IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 1st OF AUGUST, 2025

SECOND APPEAL No. 1173 of 2025

SMT. RAMPHOOL AND OTHERS

Versus

DHARMENDRA KUMAR GUPTA AND OTHERS

Appearance:

Shri Avinash Zargar - Advocate for the appellants.

Ms. Vandana Shrivastava – Panel Lawyer for the respondents 2 and 3/State.

ORDER

This second appeal has been preferred by the appellants/defendants 1-5 challenging the judgment and decree dated 4/4/2025 passed by Principal District Judge, District Panna in RCA No.3/2024 affirming the judgment and decree dated 20/12/2023 passed by First Additional Judge to the Court of First Civil Judge Senior Division, Panna in Civil Suit No.22-A/2015, whereby both the Courts below have decreed the respondent 1/plaintiff's suit for declaration of title and for declaring the gift-deed dated 23/5/2000 (Ex.P/1 and D/4) to be not binding on the plaintiff in respect of an area 0.24 hectare of survey No.1132/2/*Ka*/1*Ka* total area 1.794 hectare situated at Amanganj, District Panna as well as for permanent injunction.

2. Learned counsel for the appellants/defendants submits that the plaintiff had willingly gifted the suit land admeasuring 0.24 hectare of survey No.1132/2 in favour of defendant 1-Smt. Ramphool and handed

over possession, although wrongly her name was mutated in the revenue papers over an area 0.024 hectare in place of 0.24 hectare, regarding which an application (Ex.P/16) for correction of revenue record was filed (which from the registration number, appears to have been filed in the year 2013-2014), but thereafter because of filing of the instant civil suit, proceeding for correction of revenue record was stayed and correction could not be done. He submits that after a long lapse of period of 15 years, the plaintiff instituted the suit for declaring the gift-deed to be not binding on the plaintiff in respect of an area 0.24 hectare without seeking any rectification as required under Section 26 of the Specific Relief Act, 1963. He submits that although the plaintiff has pleaded fraud in the plaint, but both the Courts below have found that no fraud was committed by the defendant 1, hence, in absence of proof of fraud and in view of concurrent findings of facts relating to fraud recorded by Courts below, the impugned judgment and decree declaring the gift-deed to be not binding on the plaintiff in respect of an area 0.24 hectare, are not sustainable. He submits that in spite of declaring the gift-deed to be valid in respect of an area 0.024 hectare, both the Courts below have committed an illegality in holding the plaintiff to be owner/bhumiswami and in possession of the entire area of the land, i.e. 1.794 hectare. He submits that although both the Courts below have decreed the counterclaim also filed by the defendants 1-5 in respect of an area 0.024 hectare, but the defendants were entitled for decree in respect of the entire area 0.24 hectare covered by the registered gift-deed (Ex.P/1 and D/4). He also submits that merely on the basis of intention of the parties, the registered gift-deed could not have been declared to be not binding on the plaintiff. With these submissions, he prays for admission of the second appeal.

3. Heard learned counsel for the appellants/defendants 1-5 and perused the record.

4. Perusal of registered gift-deed (Ex.P/1 and D/4) shows that it was executed in respect of an area 0. 24 hectare of survey No.1132/2. At page No.2 of the gift-deed, boundaries of the property have been given, apparently in the shape of a plot, showing the gifted property as a sold property. The gift-deed does not contain any fact that the donee has accepted the gift-deed.

5. In the present case, the dispute is to the effect, as to whether the document (Ex.P/1) was executed in respect of an area 0.24 hectare or in respect of an area 0.024 hectare. The plaintiff has in support of his case, filed several documents (Ex.P/1 to P/33) showing that after execution of the aforesaid gift-deed, in fact the name of defendant 1-Smt. Ramphool was mutated over an area 0.024 hectare and not over an area 0.24 hectare and this fact has not been disputed by the defendants, but it has been said that it was wrongly done and for correction of the same, an application (Ex.P/16) was filed, which remained pending due to filing of the present civil suit.

6. It is also clear from the record that original gift-deed has not been placed on record, which must be in possession of the defendants, however, they have stated that after execution of the gift-deed by the plaintiff, the same was not handed over to the defendant 1, but the plaintiff has denied this fact and alleged that the gift-deed is in possession of the defendant 1.

7. For the reasons best known to the defendants, the defendant 1, in whose favour the gift-deed is said to have been executed, has not come in the witness-box, which is fatal to the case of the defendants. In the case of Vidhyadhar Vs. Manikrao and another, **(1999) 3 SCC 573** Hon’ble Supreme Court has held as under:-

> *"**17.** Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh [AIR 1927 PC 230 : 32 CWN 119] . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh [AIR 1930 Lah 1 : ILR 11 Lah 142] and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh [AIR 1931 Bom 97 : 32 Bom LR 924] . The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in Sardar Gurbakhsh Singh case [AIR 1927 PC 230 : 32 CWN 119]. The Allahabad High Court in Arjun Singh v. Virendra Nath [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box."*

8. In the present case, the document whereby defendant 1 is claiming right over the suit property is said to be a document of gift-deed and in absence of any acceptance of the same, on the document itself, she was required to come in the witness-box with a view to prove the factum of acceptance, as has been held by Hon'ble Supreme Court in the case of Baby Ammal Vs. Rajan Asari, **(1997) 2 SCC 636**.

9. In view of the aforesaid and as has been held by Hon'ble Supreme Court, as the defendant 1 has not come in the witness-box to prove her case of execution of gift-deed and has not permitted herself to be cross-examined by the plaintiff, therefore, an adverse inference deserves to be drawn against her in the manner that she is accepting the case of the plaintiff to be true.

10. From the documentary evidence placed on record showing mutation of the defendant 1 over an area 0.024 hectare, it is clear that she was accepting herself to be owner/bhumiswami of an area 0.024 hectare and not 0.24 hectare.

11. Although both the Courts below have said that the area mentioned in the document/gift-deed (Ex.P/1 and D/4) is not a result of fraud, but from the documentary evidence available on record and as the defendant 1 has not come in the witness-box, therefore, it appears that some mistake has occurred at the time of execution of the document while mentioning the area and taking into consideration this aspect of the matter and even in absence of any fraud, Courts below have decreed the suit holding the gift-deed to have been executed only in respect of an area 0.024 hectare.

12. So far as the argument raised by learned counsel for the appellant to the effect that the Courts below have declared the plaintiff to be owner of the entire area 1.794 hectare, is concerned, it is clear from the judgment and decree passed by Courts below that at the time of declaring the plaintiff to be owner/bhumiswami of an area 1.794 hectare, the Courts below have also held the defendant 1 to be owner/bhumiswami of an area 0.024 hectare of survey No.1132/2/*Kha*.

13. In view of the aforesaid discussion, this Court does not find any illegality in the impugned judgment and decree passed by Courts below.

14. Resultantly, in absence of any substantial question of law, this **second appeal fails and is hereby dismissed**.

15. Pending application(s), if any, shall also stand disposed of.

(DWARKA DHISH BANSAL)
JUDGE

Arun*