SUDISH PRASAD & ORS. A

v.

BABUI JONHIA ALIAS MANORAMA DEVI & ORS.

(Civil Appeal No.1012 of 2013)

FEBRUARY 7, 2013 B

[SURINDER SINGH NIJJAR AND M.Y. EQBAL, JJ.]

Suit – Title suit – Plaintiff claiming title over the property left by her father – Allegation that defendant appointed as guardian of her father was in possession of the property even C *after the death of her father – Plea that after the mother of the plaintiff remarried after her father's death, plaintiff became the sole owner – Defendant stating that he was not in possession of the property and that some portion of the property was orally gifted to him by the father of the plaintiff – Trial court partly* D *decreed the suit holding that she was entitled to only half share, as for half share her mother acquired the right of widow's estate and that she was not entitled to the part of property gifted by her father to the defendant – First appellate Court affirmed the decree – Division Bench of High Court set aside* E *the decree holding that the plaintiff was entitled to the entire property – On appeal, held: Plaintiff was entitled to decree in her favour – Defendant No. 1 was in the helm of affairs pertaining to the property for the benefit of widow and the plaintiff after the death of the owner and for the benefit of* F *plaintiff after the civil death of the widow (due to her remarriage) – The claim of defendant by way of oral gift has no sanctity.*

Plaintiff-respondent No. 1 field a suit for title over the suit property. The case of the plaintiff was that the suit G **property originally belonged to her father 'S'. The property was being managed by defendant No. 1 as he was appointed as guardian of 'S' by the Court. Defendant No. 1 taking advantage of his position, got executed two**

 H

A *'zerpesgi'* deeds, one in favour of his nephew 'M' and another in favour of one 'D' without any consideration. After the death of 'S', the property was in possession of his widow 'P' and the plaintiff was a minor. After 2 to 3 months of the death of 'S', 'P' married 'M', and after the B remarriage, plaintiff inherited the suit property. Defendant No. 1 was still in possession of the property.

The defendants contested the suit, stating that 'S' had taken possession of his property after attaining majority. 'S' orally gifted some part of land to defendant C No. 1 in lieu of his services as guardian and also for performing shraddh of his mother, and that *'zerpeshgies'* were genuine transactions.

Trial court decreed the suit in part holding that D plaintiff was entitled to half share in the property and for half share her mother 'P' acquired the right of widow's estate by adverse possession. The Court also held that plaintiff was not entitled to recover the possession of that part of the property which was orally gifted by 'S' to E defendant No. 1.

Single Judge of High Court affirmed the judgment of trial court. In LPA, Division Bench of High Court set aside the decree passed by courts below and declared title and ownership of the plaintiff in respect of the entire suit F property left by 'S'. Hence the present appeal by defendant-appellant.

Dismissing the appeal, the Court

G HELD: 1. Once a person is appointed by the Court to be a Guardian of the property of ward, he is bound to deal with the property as carefully as a man of ordinary prudence would deal with it, if it were his own property. He is bound to do all acts for the protection and benefit H of the property. A Guardian appointed by court cannot

deal with the property by way of sale, mortgage, charge or lease without the permission of the court and against the interest of minor. A Guardian stands in a fiduciary relation to his ward and he is not supposed to make any profit out of his office. On being appointed as Guardian of the property of minor, he is to act as a trustee and he cannot be permitted to gain any personal profit availing himself of his position and such action of the Guardian while dealing with the property against the interest of ward would be voidable in the eye of law. [Paras 12 and 13] [811-B-E]

2. Defendant No. 1, immediately after the appointment as Guardian of 'S' started dealing with the property against his interest. Not only he entered into a compromise in a suit filed in 1933 but executed two *'zerpesgi'* deed in the year 1940 in favour of his nephew 'M' and also in favour of one 'D' without the permission of court and without any consideration. After the death of 'S' in 1946 at the age of 23 years, leaving behind the plaintiff who was only 3 years old, he continued in possession of the suit property as trustee. He claimed to have acquired a portion of the suit property alleged to have been orally gifted to him by 'S' lieu of his services as Guardian. The said claim by way of oral gift has no sanctity in the eye of law. The Division Bench of the High Court has considered all these facts and also the claim of widow of 'S' over the suit property although she remarried 2-3 months after the death of 'S'. The Division Bench rightly came to the conclusion that the question of anyone acquiring any interest in any part of the said estate through adverse possession never arose inasmuch as the property in question remained in the custody of the guardian all throughout and through the custody of the guardian, the property was in fact *custodia legis*. The properties of 'S' remained *custodia legis* all throughout and, accordingly, there was no question of

anyone acquiring the same by adverse possession. On the civil death of the widow, the properties vested in the daughter, i.e. the plaintiff. Thus, defendant No. 1 during his lifetime, was holding the properties in question initially for the benefit of 'S' and upon his death for the benefit of his widow and upon her civil death for the benefit of the plaintiff. He continued to be in the helm of the affairs pertaining to the properties of 'S' for the sole benefit of the plaintiff after the civil death of the widow and, accordingly, the suit ought to have been decreed in favour of the plaintiff directing discharge of defendant No. 1 with a further direction to furnish accounts pertaining to the properties in question. [Paras 14 and 15] [811-F-H; 812-A-E, G; 813-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1012 of 2013.

From the Judgment & Order dated 16.4.2007 of the High Court of Judicature at Patna in L.P.A. No. 58 of 1993.

Sunil Kumar, Anil K. Jha, Rohini Prasad for the Appellants.

A.N. Choudhary, Chander Shekhar Ashri for the Respondents.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Leave granted.

2. Aggrieved by the judgment and decree dated 16.04.2007 passed by the Division Bench of the Patna High Court in LPA No. 58/1993, the defendant-appellant preferred this appeal before this Court. By the impugned judgment, the Division Bench allowed the appeal holding that the plaintiff-respondent became the absolute owner of the suit properties.

3. The plaintiff-Respondent No.1 filed Title Suit No.12/3 of 1965/71 in the Court of Subordinate Judge, Siwan for

declaration of title over the suit property. The case of the plaintiff, *inter-alia,* is that Sukai Mahto is last male holder of the properties described in Schedule 1 , 2, and 3 of the plaint. He died leaving behind his widow Mst. Parbatia and one daughter, that is the plaintiff of this suit. Mst. Parbatia after the death of Sukai Mahto remarried in *Sagai Form* with Mahadeo Mahto son Ramsharan Mahto. Hurdung @ Bacha Mahto who is defendant No.12 in this suit was born out of the wedlock Mahadeo through Parbatia after he remarried. Mahadeo Mahto died about 12 to 16 years ago. Mst. Dhanwatia was the first wife of Mahadeo Mahto. Now, after the death of Mahadeo Mahto both his widows Mst.Dhanpatia and Mst. Parbatia remarried in *Sagai Form* with Gopal Mahto defendant.No.2 and Bal Kishun Mahto. Plaintiff's further case was that Bal Kishun Mahto who was *Chachera* uncle of Sukai Mahto was appointed guardian of Sukai Mahto by the order of district judge in the year 1930 to look after the person and properties of Sukai Mahto during his minority. Bal Kishun Mahto as guardian of Sukai Mahto had instituted a suit against one Keshwar Mahto which was numbered as T.S. No. 35/33. That suit was compromised whereby Keshwar Mahto gave the property described in Schedule 1 of the plaint to Sukai Mahto. Sukai Mahto was not a prudent man and was not sufficiently intelligent to understand his interest as Bal Kishun continued to look after his properties even after he attained majority. Besides that he was minor according to law because Bal Kishun was appointed guardian through the court. Balkishun taking advantage of his position got executed two *zerpesgi* deed dated 26.06.1940 in favour of his nephew Mahadeo Mahto and also in favour of Deoraj Mahto without consideration. Even after Sukai Mahto attained majority Bal Kishun Mahto continued to look after his properties. Sukai Mahto died in the year 1946 at the age of 23 years and at the time of his death the plaintiff was only three years of age. Now after the death of Sukai Mahto his properties were inherited by his widow but his widow Mst. Parbatia remarried after three to four months after Sukai's death. So the properties were inherited by the plaintiff after Parbatia's

A remarried. Bal Kishun defendant No.1 continued to look after the properties of the plaintiff even after remarriage of Mst. Parbatia. Hence the possession of Bal Kishun allegedly continued as a constructive trustee on behalf of the plaintiff. Defendant No.1 has sold many of the costly trees of *sesam,* B *mango and mahuwa.* Now the plaintiff was married on 08.07.61 and the plaintiff's *gawana* took place in 1962 and since then the plaintiff is living in her *sasural.* Plaintiff seeing dishonest intention of defendant No.1 demanded possession of the properties but defendant No.1 failed to do so. Hence this suit C has been brought.

4. The suit was contested by the defendant-appellant by filing written statement. Defendant Nos.1 to 3 have filed a joint written statement. These defendants have stated in para 5 of the written statement that they do not deny the statements D contained in para 1 to 4 of the plaint i.e. statements contained in paras 1 to 4 are admitted specifically. In para 3 of the plaint the plaintiff has said that Sukai died leaving behind his widow Mst.Parbatia and a daughter i.e. the plaintiff. They have further stated that Mst. Parbatia remarried with Mahadeo soon E thereafter Sukai had become major before institution of T.S.No. 35/33 and he had taken possession of his properties from Bal Kishun Mahto and had taken accounts from him. Therefore, nothing is due against Bal Kishun during minority of Sukai Mahto. Balkishun had properly managed his properties and F performed sharadh of his mother. Hence after Sukai attained majority, he orally gifted 1 B 14 dhurs to defendant No.1 in presence of *panchas* in lieu of his services as guardian and also in lieu of performing his sharadh. After the death of Sukai his properties were inherited by his widow Mst. Parbatia. Now G Mst. Parbatia remarried with Mahadeo and since then the plaintiff and Mst. Parbatia started residing with Mahadeo. There was no question of defendant No.1 managing the properties as a trustee. Sukai Mahto had executed *zerpesgi* deed and got consideration. He had also executed another *zerpesgi* dated H 26.04.40 in favour of Mahadeo Mahto and consideration was

duly paid. The *zerpeshgies* were genuine transactions and it is not a fact that Mahadeo Mahato got it executed by Sukai by undue influence. Defendant No.1 was never in possession of the properties of Sukai after his attaining majority, as a trustee. He was never in possession as a trustee after the death of Sukai on behalf of the plaintiff. Now these defendants have stated in para 35 of the written statement that except the properties described in Schedule Ka of the written statement, other properties after the death of Sukai came in possession of his widow Mst. Pabatia and after her *sagai* the properties were inherited by the plaintiff and is coming in possession of the plaintiff.

5. Defendant No.12 has filed separate written statement. Substance of the defence is that the suit is not maintainable; the plaintiff has no cause of action for the suit; that the suit is barred by limitation; the plaintiff has no right, title and interest to the suit land. The genealogical table given in the plaint is not correct. The plaintiff is not the daughter of Sukai but the plaintiff is the daughter of Mahadeo through Mst. Dhanwatia defendant No.10. The plaintiff has no title nor the plaintiff was ever in possession of the suit land. Defendant No.12 Hurdung Mahto is the son of Mahadeo Mahato through Mst. Parbatia. It is correct that Sukai died in 1946 leaving behind his widow Mst. Parbatia and Mst. Parbatia came in possession over all his properties. Mst. Parbatia remarried with Mahadeo in *sagai* form two to three months after the death of Sukai. Now Mst. Parbatia gave birth of defendant No.2 through Mahadeo Mahto. Now this defendant Hurdung Mahato became major during the pendency of his suit. Now mother of Hurdung died during his childhood. The mother of Hurdung died more than 10 years ago. After the death of his mother Parbatia, the step mother of Hurdung, that is, Dhanwatia looked after the affairs of defendant No.12 after the death of his father. After sagai of Dhanwatia the entire properties of Sukai came in possession of Mahadeo Mahto and so long as Mahadeo was alive he remained in possession. After the death of Mahadeo, Hurdung came in possession.

A Dhanwatia is the step mother of Hurdung. Now she has remarried with Gopal Mahato. Now under influence of Gopal Mahto, Dhanwatia wants to deprive defendant No.12 Hurdung from his properties and Gopal wants to acquire those properties for his son defendant No.10. Defendant No.1 is old man. Now B defendant No.2 by bringing father of defendant No.1 and Jagdeo in collusion want to grab the properties of this defendant. Now this suit has been filed by the plaintiff at the instance of Gopal Charbaran Mahato was the Mukhia Gopal was created some documents by bringing Mukea in his C collusion. Sukai was never illiterate. Defendant No.1 had given up possession of the properties of Sukai during the life time of Sukai. He had also rendered all his accounts and the suit was brought surreptitiously without knowledge of the defendant No.12 and that defendant No.12 came to know about the suit then he filed this written statement. The plaintiff was not born D in *Magh,* 1252F, but the plaintiff was born in Falgun, 1947 and the plaintiff was not major at the time of filing of this suit. The age of the plaintiff was not 20 years at the filing of this suit.

6. On the basis of the pleadings of the parties, the trial E court framed the following issues:

1. Whether the suit as framed is maintainable?

2. Whether the plaintiff has cause of action for the suit?

F

3. Whether the suit is barred by law of limitation?

4. Whether the plaintiff has subsisting title over the suit land?

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5. Whether the plaintiff is entitled to recover possession from any of the defendants who is held to be in possession over the suit land?

6. Whether Sukai Mahato had made oral gift of 1B 14 H dhurs in favour of Balkishun defendant No.1 and

whether Balkishun remained in possession of that land and whether his title is perfected by adverse possession over that area? A

7. Whether the plaintiff's is entitled to demand account from Balkishun Mahato and also recovery of dues from Balkishun as claimed in the plaint? B

8. Whether the plaintiff is entitled to recover mesne profits from any of the defendants?

9. Whether the plaintiff is entitled to any relief or reliefs? C

7. While deciding issue No.4 as to whether the plaintiff has subsisting title over the suit land, the trial court after discussing the evidence proceeded to decide the legal issue and held that after remarriage Parbatia lost her title and interest in the estate of her previous husband but she continued in possession of the property even after remarriage hence her possession according to law continued to be that of trespasser. The trial court further held that possession of Parbatia even after remarriage cannot be said to be as a constructive trustee of the plaintiff and she was holding the property independently treating the property as her widow's estate. The trial court consequently held that she acquired a right of widow's estate by adverse possession. D E

8. While deciding issue Nos. 3 and 5 the trial court held that since the suit was filed within 12 year from the date of death of Mst. Parbatia the suit is not barred by limitation and the plaintiff is entitled to half share in the suit property. Curiously enough, while deciding issue No.6 regarding the validity of oral gift, the trial court held that Bal Kishun being in possession of property allegedly under the oral gift, the plaintiff is not entitled to recover possession of the same. Hence the suit was decreed in part. F G

9. Aggrieved by the said judgment and part decree both parties preferred appeals before the High Court which were H

A disposed of by a common judgment. The learned Single Judge concurred the finding recorded by the trial court and dismissed the appeal. The plaintiff respondent then filed Letters Patent Appeal before the Patna High Court against the judgment of a learned Single Judge passed in appeal and the same was
B registered as LPA No.58/1993. The Division Bench of the Patna High Court after elaborate discussion of the evidence and facts and also the law allowed the appeal and set aside the judgment and decree passed by the trial court and the first appellate court. The Division Bench declared title and
C ownership of the plaintiff-Respondent in respect of the entire suit properties left by Sukai. Hence this appeal by defendant-Appellant.

10. Mr. Sunil Kumar, learned senior counsel appearing for the Appellants assailed the impugned judgment rendered by
D the Division Bench as being illegal, perverse in law and contrary to facts and evidence available on record. Learned senior counsel firstly contended that the Division Bench erred in law in not holding that the guardianship ceases automatically, on minor attaining majority and no order by the court is necessary
E for declaring Sukai Mahto as major. He further submitted that Mst. Parbatia, widow of Sukai Mahto remained in possession of her previous husband's estate even after remarriage claiming title by adverse possession. Learned counsel strenuously contended that Bal Kishen Mahto, uncle of Sukai
F Mahto was appointed guardian in the year 1930 to look after the properties of Sukai Mahto during minority and, the moment Sukai Mahto became major, the guardianship ceases automatically. According to the learned counsel even Bal Kishun Mahto having been in continuous possession of the suit
G property acquired title by adverse possession in respect of 1B 4 Dhurs of the land and building. The Division Bench committed serious illegality in so far as it failed to take into consideration that Mst. Parbatia was holding the properties independently and not as a trustee. Consequently, Hurdung came in possession
H after the death of his mother Mst. Parbatia. In the result, the suit

filed by the plaintiff-respondent ought to have been dismissed as barred by limitation and adverse possession. A

11. We do not find any substance in the submission made by the learned counsel for the appellant.

12. Indisputably defendant No.1 Bal Kishun Mahto was appointed as Guardian of Sukai by the order of District Judge. Once a person is appointed by the Court to be a Guardian of the property of ward, he is bound to deal with the property as carefully as a man of ordinary prudence would deal with it, if it were his own property. He is bound to do all acts for the protection and benefit of the property. A Guardian appointed by Court cannot deal with the property by way of sale, mortgage, charge or lease without the permission of Court and against the interest of minor. B C D

13. It is well settled law that a Guardian stands in a fiduciary relation to his ward and he is not supposed to make any profit out of his office. On being appointed as Guardian of the property of minor, he is to act as a trustee and he cannot be permitted to gain any personal profit availing himself of his position and such action of the Guardian while dealing with the property against the interest of ward would be voidable in the eye of law. E

14. Coming back to the instant case it appears that Bal Kishun Mahto immediately after the appointment as Guardian started dealing with the property against the interest of Sukai. Not only he entered into a compromise in a suit filed in 1933 but executed two zerpesgi deed in the year 1940 in favour of his nephew Mahadev Mahto and also in favour of Dev Raj Mahto without the permission of Court and without any consideration. After the death of Sukai Mahto in 1946 at the age of 23 years leaving behind the plaintiff who was only 3 years old, he continued possession of the suit property as trustee. Curiously enough the said Bal Kishun Mahto claimed to have acquired a portion of the suit property alleged to have been orally gifted F G H

A to him by Sukai in lieu of his services as Guardian. The said claim by way of oral gift has no sanctity in the eye of law.

15. The Division Bench of the High Court in the impugned judgment has considered all these facts and also the claim of Parbatia over the suit property although she remarried 2-3 B months after the death of Sukai Mahto. The Division Bench rightly came to the following conclusion:

"In the instant appeal, the plaintiff-appellant is contending that the question of anyone acquiring any interest in any C part of the said estate through adverse possession never arose inasmuch as the property in question remained in the custody of the guardian all throughout and through the custody of the guardian the property was in fact custodia legis. Having regard to the fact that Bal Kishun was, D admittedly, appointed as a guardian of the person and the property of Sukai and, admittedly, there being no order of discharge, in law, it must be held that the properties of Sukai remained custodia legis all throughout and, accordingly, there was no question of anyone acquiring the E same by adverse possession.

Bal Kishun, as the guardian of the person and property of Sukai, was holding the same for the benefit of Sukai during his lifetime and upon his death for and on behalf of the person who was entitled to inherit the property of Sukai in F accordance with the laws of inheritance. Inasmuch as the properties in question were not coparcenary properties, the widow was entitled to inherit before the daughter, but on the civil death of the widow, the properties vested in the daughter, i.e. the plaintiff. Thus, Bal Kishun, during his G lifetime, was holding the properties in question initially for the benefit of Sukai and upon his death for the benefit of his widow and upon her civil death for the benefit of the plaintiff. Inasmuch as the court did not authorise dealing of any part of the estate of Sukai in any manner H whatsoever, neither Sukai, during his liefetime, nor Bal

Kishun in his life time and at the same time not even the widow of Sukai, namely, Parbatia or the plaintiff, upon the civil death of Parbatia, could deal with the said properties in any manner whatsoever. As a result, the conclusion would be that Bal Kishun remained accountable in respect of the properties in question to the true owner thereof until his death, when in fact he stood discharged in law from the guardianship of the properties of Sukai,although by reason of death of Sukai, Bal Kishun stood discharged of the guardianship of the person of Sukai from the date of the death of Sukai.

In those circumstances, the one and the only logical conclusion that could be arrived at one the basis of the evidence on record that Bal Kishun continued to be in the helm of the affairs pertaining to the properties of Sukai for the sole benefit of the plaintiff after the civil death of Parbatia and, accordingly, the suit ought to have been decreed in favour of the plaintiff directing discharge of Bal Kishun with a further direction to furnish accounts pertaining to the properties in question."

16. In our considered opinion, the Division Bench rightly allowed the appeal and set aside the judgment and decree passed by the trial court and the first appellate court which were totally perverse in law.

17. For the reasons aforesaid, there is no merit in this appeal which is accordingly dismissed.

K.K.T. Appeal dismissed.