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SRI RAM NIWAS TODI AND ANR.

v.

BIBI JABRUNNISSA AND ORS.

AUGUST 6, 1996

B

[M.M. PUNCHHI, AND K. VENKATASWAMI, JJ.]

*Mohammedan Law :*

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*Gift—Oral gift—Plaintiff-respondent in possession of house property alongwith land appurtenant thereto—Oral gift of the property by father-in-law of plaintiff—Respondent in her favour—There was also a written but not registered gift deed—Held, it could not be said that in presence of written gift there was no oral gift—It was followed by possession making the gift, complete as was rightly held by the three courts below—High Court was right in upholding the gift.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2276 of 1987.

From the Judgment and Order dated 24.9.86 of the Patna High Court in Appeal from Decree Nos. 596 & 597 of 1979.

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H.K. Puri for the Appellants.

Mohd. Kazim Sher for P.S. Jha, for the Respondents.

The following Order of the Court was delivered :

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Before the Trial Court it was admitted that the suit land measuring 41.5 decimals was homestead land and several houses of *phoos* (thatch) and tiles were constructed thereon, which were in occupation of the plaintiff-respondent since long, even prior to the gift Ex. 1 executed in her favour by her father-in-law. Since the parties were Mohamedans, an oral gift by a father-in-law to his daughter-in-law was permissible but here was one which was written but not registered. It could not, in any event, be said that in presence thereof there was no oral gift. Significantly, it was followed by possession making the gift complete and that is the finding of all the three courts below.

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The debate before the High Court centered round the erroneous

premise that the gifted property was agricultural land to which the provisions of the Bihar Tenancy Act, 1885 as also the Bihar Land Reforms (Fixing of Ceiling Area and Acquisition of Surplus Land) Act got attracted. Even so, taking into account those provisions, the High Court came to the conclusion that the oral gift made by a Mohamedan would prevail over the provisions in the tenancy laws, which required occupancy rights to be transferred by means of a registered deed. We think that it was unnecessary for the High Court entering into such controversy and putting the tenancy laws at a disadvantage over Muslim personal law. Once it stood established that the property in dispute was house-property, which included open spaces of land appurtenant and subservient thereto, to which the plaintiff-respondent was put in possession after an oral gift in her favour, that *per se* should have been enough to keep her suit decreed rejecting the pleas of the defendants-appellants that the gift as invalid, making the natural heirs of the deceased owner claim it by inheritance.

In this view of the matter we affirm the orders of the High Court to the extent to which we agree as to the validity of the gift on its own, denuding its judgment of the discussion on the tenancy laws. The appeal is accordingly dismissed. No costs.

R.P.

Appeal dismissed.