

THE HIGH COURT OF TRIPURA

AGARTALA

RSA No. 25 of 2009

Defendant-Appellants:

- 1. Smt. Chhabi Podder,**
W/o. Shri Binoy Krishna Podder.
Mathchowmuhani, Shibnagar, P.S: East
Agartala, District : West Tripura.
- 2. Shri Binoy Krishna Podder,**
S/o. Late Satish Chandra Podder,
Mathchowmuhani, Shibnagar, P.S: East
Agartala, District : West Tripura.

By Advocates :

Mr. D. K. Biswas, Adv.
Mr. S. Lodh, Adv.

Plaintiff-Respondent :

- 1. Shri Krishna Podder,**
Son of Late Satish Chandra Podder, C/o. Shri
Girindra Kumar Paul, Bordowali, P.S: West
Agartala, District: West Tripura.

Defendant-Respondent :

- 2. The Deputy Collector,**
Sadar Revenue Circle, O/o the Sub-Divisional
Magistrate, Agartala, West Tripura.

By Advocates :

Mr. K. N. Bhattacharji, Sr. Adv.
Mr. A. Das, Adv.
Mr. N. Majumder, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : **21st July, 2015.**

Date of Judgment & Order : **14th October, 2015**

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER

Briefly stated the facts of the case are that the plaintiff, Shri Krishna Podder (respondent No.1) in this appeal filed a suit against her sister-in-law Chhabi Podder and brother Shri Benoy Krishna Podder, husband of the defendant No.1 as well as the Deputy Collector, Sadar Revenue Circle, who was respondent No.3 in the suit.

[2] In this suit it was alleged that the scheduled property was originally owned by Chhabi Podder. She sold this property on 09.07.1975 to her mother-in-law, Sakhin Bala Podder for a consideration of Rs.9,000/-. It is further alleged that though Sakhin Bala Podder became owner of the suit property she permitted her elder son, defendant No.2, husband of the defendant No.1 to continue to possess the said land but this possession was permissive possession. The scheduled land was mutated in favour of the Sakhin Bala Podder. Thereafter on 09.07.1991 Sakhin Bala Pada executed a gift deed in favour of the plaintiff in respect of the suit land and many other pieces of land. On the same date she also executed another gift deed in favour of Shri Shyama Prashad Podder, another son of Sakhin Bala Podder. Thereafter, the plaintiff requested her brother to vacate the suit land and hand over the possession of the same but he refused to hand over the possession.

[3] The case of the defendants 1 and 2 is that though the land was sold by defendant No.1 to her mother-in-law but this sale was a mere paper transaction and that the mother-in-law never became owner of the suit land. It is also alleged that thereafter the defendants raised certain construction on the suit land to the knowledge of the plaintiff and

therefore, the gift deed cannot affect their rights and is a mere paper transaction. It is also contended that since no possession was delivered pursuant to the gift deed the gift has not been completed and, therefore, is invalid. It was also urged that the gift deed was executed by Sakhin Bala Podder when she was unwell and, therefore, should not be relied upon.

[4] The learned trial Court after recording evidence decreed the suit in favour of the plaintiff and held that the plaintiff is the owner of the suit land and entitled to get possession thereof. It was also directed that in the khatian, exhibit-3 showing the defendant No.1 to be in reverse possession was illegal and void.

[5] Aggrieved by this judgment the defendants 1 and 2 filed an appeal which has been dismissed. Hence, the present second appeal.

[6] This second appeal was admitted on the following questions of law:

"(i) Whether the judgment of both the courts below can be sustained by interpreting the intention of the transferor in terms of Section 8 of the Transfer of the Property Act;

(ii) Whether the findings of the learned courts below that the gift was a valid one contrary to the law settled by the Hon'ble Supreme Court can be sustained;

(iii) Whether 'acceptance' occurring in Section 122 of the T. P. Act is complete without delivering possession of gifted property."

As far as the question No.1 is concerned I fail to understand that what is the meaning of question No.1. Section 8 of the Transfer of Property Act, 1882 deals with operation of transfer, it also provide that unless a different intention is expressed or necessarily implied, the transfer of property passes forthwith to the transferee and shall include easements annexed thereto.

[7] The case of the defendants appears to be that the sale deed was a paper transaction with a view to avoid some family problems and it was never acted upon. This submission has rightly been rejected by both the Courts below. The defendant No.2, husband of defendant No.1 has in his cross-examination stated as follows:

****** In the year 1975 my wife executed a deed of sale in favour of my mother namely, Sakhin Bala Podder and the said deed was registered accordingly. My mother became the owner of the said land by virtue of the said sale deed. ******

He has admitted that his mother has became owner of the suit land and therefore, I find that no question of law as envisaged under question No.1 arises and, therefore, the said question is answered against the appellant and in favour of the respondents.

[8] The defendants had also made a faint attempt to challenge the legality of the gift deed by contending that the gift deed was executed by the mother, Sakhin Bala Podder at a time when she was unwell. Even as per the case of the appellant, the mother was admitted in hospital in December, 1990. The gift deed was executed on 09.07.1991 i.e. seven months later. Admittedly the mother died in 2000. Furthermore, as per the statement of the husband in the year 1995 he came to know about the gift

deed having been executed by his mother in favour of the plaintiff. He or his wife never challenged the gift deed and, therefore, it is too late in the date for them to urge that the gift deed is invalid.

[9] It would also be pertinent to mention that by the same very gift deed the mother had gifted many other properties to the plaintiff, Chhabi Podder. She had also executed another gift deed on that very date in favour of her other son Shri Shyama Prashad Podder and the gift deed in favour of Shri Sayama Prashad Podder has not been challenged and even the gift deed in favour of the plaintiff with regard to the other properties has not been challenged. It would be pertinent to mention that even the defendants have obtained a number of properties on the basis of gift deeds executed by Sakhin Bala Podder. If Sakhin Bala Podder was not in a fit position to execute the gift deeds, both these gift deeds should have been challenged in their entirety and the defendants cannot urge that only a part of one of the gift deed executed on 09.07.1991 is illegal. No medical evidence was led to prove that the mother was suffering from any serious illness which would disentitled her from executing the gift deed.

[10] The main argument of Sri D. K. Biswas, learned counsel for the appellant is that since this possession was never delivered pursuant to the sale deed, the gift was not complete and, therefore, no title passed pursuant to the gift deed executed in 1991.

[11] In support of his contention the learned counsel has relied upon the judgment of the Apex Court in ***Naramadaben Maganlal Thakker Vrs. Pranjivandas Maganlal Thakker and others : (1997) 2***

SCC 255 and **Baby Ammal Vrs. Rajan Asari : (1997) 2 SCC 636**. In both these cases it was held that a gift was not complete if the possession of the immovable property was not handed over. In another case **K. Balakrishnan Vrs. K. Kamalam and others : (2004) 1 SCC 581** a different view was taken. Thereafter in **Renikuntla Rajamma (Dead) By Legal Representatives Vrs. K. Sarwanamma {(2014) 9 SCC 456}** an order was passed on January 31, 2007 referring the matter to a larger Bench. A three Judge Bench of the Apex Court in **Renikuntla Rajamma (Dead) By Legal Representatives Vrs. K. Sarwanamma : (2014) 9 SCC 445** dealing with this issue held as follows:

"16. The matter can be viewed from yet another angle. Section 123 of the T.P. Act is in two parts. The first part deals with gifts of immovable property while the second part deals with gifts of movable property. Insofar as the gifts of immovable property are concerned, Section 123 makes transfer by a registered instrument mandatory. This is evident from the use of word "transfer must be effected" used by Parliament in so far as immovable property is concerned. In contradiction to that requirement the second part of Section 123 dealing with gifts of movable property, simply requires that gift of movable property may be effected either by a registered instrument signed as aforesaid or "by delivery". The difference in the two provisions lies in the fact that in so far as the transfer of movable property by way of gift is concerned the same can be effected by a registered instrument or by delivery. Such transfer in the case of immovable property no doubt requires a registered instrument but the provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. If the intention of the legislature was to make delivery of possession of the property gifted also as a condition precedent for a valid gift, the provision could and indeed would have specifically said so. Absence of any such requirement can only lead us to the conclusion that delivery of possession is not an essential prerequisite for the making of a valid gift in the case of immovable property.

18. We are in respectful agreement with the statement of law contained in the above passage. There is indeed no provision in law that ownership in property cannot be gifted without transfer of possession of such property. As noticed earlier, Section 123 does not make the delivery of

possession of the gifted property essential for validity of a gift. *****

19. The above decision clearly rests on the facts of that case. If the gift was conditional and there was no acceptance of the donee it could not operate as a gift. Absolute transfer of ownership in the gifted property in favour of the donee was absent in that case which led this Court to hold that the gift was conditional and had to become operative only after the death of the donee. The judgment is in that view clearly distinguishable and cannot be read to be an authority for the proposition that delivery of possession is an essential requirement for making a valid gift."

The law is now, therefore, settled that delivery of possession of the gifted property is not essential to make the gift valid. In view of the law laid down by the Apex Court questions 2 and 3 have to be decided against the appellant and in favour of the respondents. Therefore, there is no merit in appeal.

[12] At the time of hearing another point was raised by Sri D. K. Biswas that a suit by the plaintiff who was out of possession of the suit land would not lie and in this behalf he relied upon certain observations made in ***Debi Singh Vrs. Bhim Singh and others : AIR 1971 Delhi 316*** wherein in para-8 the Delhi High Court relying upon Section 5 of the Specific Relief Act, 1963 held that the plaintiff has to show that he is a person entitled to get possession and hence he must show that he had possession before the alleged trespassers got possession. In my view this judgment is not at all applicable in this case.

[13] The admitted facts are that the Sakhin Bala Podder was the owner of the property. The defendant had failed to show that possession was never handed over to Sakhin Bala Podder. In any event, the sale deed in favour of Sakhin Bala Podder was never challenged. That sale deed

shows her to be in possession and the land was mutated in her favour. Thereafter she also executed a gift deed which was not challenged by the defendants despite their having knowledge of the execution of the sale deed. The possession of the defendants was permissive possession and they became trespassers only when the plaintiff asks them to vacate the land in question.

[14] In view of the above discussion, I find no merit in the appeal which is accordingly dismissed with costs assessed at Rs.10,000/-. Exemplary costs have been awarded against the defendants who are in possession and have managed to delay handing over possession of the property to the plaintiff for many years.

CHIEF JUSTICE