

HON'BLE SRI JUSTICE R. KANTHA RAO
Civil Revision Petition No.4781 of 2015

ORDER:

Heard Sri M.R.S. Srinivas, learned counsel appearing for the petitioners. Though notice was served on the respondent, he did not appear in person or through counsel, before this court.

2. The 1st petitioner herein is the plaintiff in OS No.35 of 2010 on the file of the Principal Junior Civil Judge, Peddapuram. She instituted the suit against the respondent/defendant, for recovery of possession in respect of item No.2 of the plaint schedule property. The 1st petitioner claims that she is the absolute owner of item No.1 of the plaint schedule property and alleged that the respondent/defendant occupied 15 cents of land in item No.1 of the plaint schedule property and thus, she has shown the same as item No.2 in the plaint schedule, which is in possession of the respondent. She sought relief in the suit for recovery of possession in respect of item No.2 of the plaint schedule property. The respondent/ defendant filed written statement before the trial court contesting the suit.

3. It is submitted by the learned counsel appearing for the 1st petitioner before the trial court that during the pendency of the suit, 1st petitioner gifted item No.1 of the plaint schedule property in favour of the 2nd petitioner by executing a gift deed dated 18.10.2012 and also delivered possession of the same. Item No.2 is part of item No.1 of the plaint schedule property. Therefore, it is contended that by virtue of the gift deed executed by the 1st petitioner in favour of the 2nd petitioner, the 2nd petitioner stepped into shoes of the 1st petitioner and the 2nd petitioner became necessary party to the suit, being a donee under the gift deed. The 1st petitioner filed subject petition to add the 2nd

petitioner as a party to the suit, contending that without her presence, there would not be proper and complete adjudication of the dispute between the parties. The said petition was opposed by the respondent/defendant contending that by filing suit for recovery of possession, the 1st petitioner admitted that the item No.2 of the plaint schedule property is in possession of the defendant and therefore, she cannot deliver possession of item No.2 to the 2nd petitioner, as the 1st petitioner herself is not in possession of the property. It is further contended that by virtue of Section 52 of the Transfer of Property Act, the 1st petitioner cannot transfer item No.2 to the 2nd petitioner, when the suit is pending for adjudication. It is further contended that since the gift is not complete without delivery of actual possession of the property, the gift is not valid and the petition is filed only to harass the respondent/ defendant by protracting the litigation and therefore, the petition is liable to be dismissed.

4. The petitioners filed affidavits in support of their contentions and also filed certified copy of the registered gift deed dated 18.10.2012 executed by the 1st petitioner in favour of the 2nd petitioner, into the court. However, it is the specific contention of the respondent/defendant that even according to the 1st petitioner, 15 cents of land is in occupation of the respondent/defendant, for which, she filed the suit for recovery of possession and when the suit is pending, she cannot deliver possession of the disputed property in favour of the 2nd petitioner.

5. Learned trial court accepted the contention of the respondent/defendant and held that the 1st petitioner without having possession over item No.2 of the schedule property, cannot deliver possession to the 2nd petitioner under the gift deed. The trial court further observed that the recitals in the gift deed dated 18.10.2012 shows that the 1st

petitioner delivered entire property to the 2nd petitioner and thus the said recital is only a nominal one and in fact, no possession was delivered. Learned trial court went on observing that even otherwise, if the property is not delivered to the 2nd petitioner as mentioned in the gift deed dated 18.10.2012, it has to be presumed that the gift has not been acted upon by the parties and therefore, the question of 2nd petitioner stepping into the shoes of the 1st petitioner does not arise, since it is settled law that gift will complete only when the property is delivered by the donar. The learned trial court also took a view that during pendency of the suit, the 1st petitioner has no right to transfer the subject property in favour of a third party, as the doctrine of *lis pendens* embodied under Section 52 of the Transfer of Property Act comes into play. The trial court ultimately held that executing such a gift deed is an abuse of process of law and consequently, it will lead to further litigation and conflict between the parties and holding as such, the trial court dismissed the said petition filed under Order 1 Rule 10 CPC.

6. It is no doubt true that the essential requirement of execution of a gift deed is delivery of possession of the property. However, under law, a symbolic possession of the property can also be delivered to the donee. The only contention of the 1st petitioner is that since she executed the gift deed in respect of item No.2 of the schedule property in favour of the 2nd petitioner, the 2nd petitioner became owner of the property and without her presence, there would not be complete and effective adjudication of the issue involved in the suit.

7. It is not the case where the 1st petitioner executed the gift deed in favour of the 2nd petitioner and suppressed the said fact. The 1st petitioner discloses the said fact before the trial court and sought to implead the 2nd petitioner as a party to the suit. If the 1st petitioner has not disclosed the said fact, the respondent/defendant would be in

disadvantageous position and the situation would lead to multiplicity of litigation. Since the suit is for recovery of possession, the 1st petitioner intends to implead the 2nd petitioner, as she transferred the property in her favour by way of gift deed, as a necessary party. Whether there was actual delivery of possession in favour of the 2nd petitioner by the 1st petitioner and it is valid or not, will be adjudicated during the course of trial in the suit. Since the item No.2 of the plaint schedule was transferred to the 2nd petitioner under a gift deed dated 18.10.2012, without the presence of the 2nd petitioner, there cannot be any complete and effective adjudication of the dispute between the parties. Therefore, this court is of the considered view that the trial court committed error in dismissing the petition filed by the 1st petitioner under Order I Rule 10 CPC to implead the 2nd petitioner.

8. In the above circumstances, the order dated 10.09.2015 passed by the trial court is set aside and IA No.416 of 2015 in OS No.35 of 2010 is allowed.

9. The civil revision petition is accordingly allowed. No order as to costs. Miscellaneous petitions, pending if any in this civil revision petition, shall stand closed.

R. KANTHA RAO, J

Date: 04.12.2015
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