

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 33 OF 2015**

1. Narayan Sadanand Komarpant
alias Dilkush Sadanand Komarpant
son of late Sadanand Komarpant
service, 55 years old, and his wife,
 2. Sunita Narayan Komarpant,
45 years old housewife,
Both Indian Nationals, and
Resident of House No.129,
Palolem, Cancona Goa.
- ... Appellants

V e r s u s

1. Sudha Sadanand Komarpant,
widow of late Sadanand Komarpant,
and daughter of late Balkust B. Komarpant,
73 years old, House wife,
resident of House No.263,
Devabag, Canacona, Goa.
 2. Vithaldas V. Pagi,
son of Venkatrai Pagi,
bachelor,
major, Indian National,
resident of House No.658,
behind Rupa Photo Studio,
Chaudi, Canacona Goa
 3. Sayed Abdul Rehman,
Major, Indian National,
resident of House No.442,
Colomb, Canacona Goa.
- Respondents

Mr. S. G. Desai, Senior Advocate with Mr. S. Keny, Advocate for the appellants.

Mr. A. F. Diniz and Mr. Ryan Da Piedade Menezes, Advocate for the respondent no.1.

Coram:- F. M. REIS, J.

Date:- 1st July, 2016

ORAL JUDGMENT

Heard Mr. S. G. Desai, learned Senior Counsel appearing for the appellants and Mr. A. F. Diniz, learned counsel appearing for the respondent no.1.

2. The above appeal challenges the judgments passed by the Courts below whereby a suit filed by the respondent no.1 came to be decreed and consequently, a deed of gift dated 12.10.2010 came to be declared as null and void.

3. Mr. S. G. Desai, learned Senior Counsel appearing for the appellants has vehemently criticized the judgments passed by the Courts below specially the manner of appreciation by the learned Lower Appellate Court of the appeal preferred by the appellants on the ground that the learned Judge has not complied with the provisions of Order 41 Rule 31 of the Civil Procedure Code in recording the contentions

advanced by the appellants and giving reasons as to why such contentions are accepted or refused. The learned Senior Counsel has pointed out that the suit filed by the respondent no.1 was on the ground that the subject deed of gift dated 12.10.2010 was executed by fraud and by misrepresenting the contents of such document. The learned Senior Counsel further pointed out that the evidence on record clearly reveals that in fact the respondent no.1 who is the mother of the appellant no.1 had proceeded to execute two deeds of gift in favour of the appellant no.1. The learned Senior Counsel further pointed out that the first deed of gift was executed way back in the year 18.09.2006 whereby half of the subject plot surveyed under No.117/7-A was gifted in favour of the appellant no.1. It is further submitted that thereafter the remaining half of the plot was gifted in favour of the appellant no.1. The learned Senior Counsel further submits that the evidence required to establish fraud in terms of Section 17 of the Contract Act is not at all found in the evidence and the documents produced by the respondents and as such, the Courts below were not justified to decree the suit filed by the respondent no.1. The learned Senior Counsel further pointed out that it is the case of the respondent no.1 that she was misled by the appellant no.1 to proceed to the office of the Sub Registrar when in fact according

to her she intended to go to the office of the Mamlatdar at the request of the appellant no.1. It is further submitted that this contention of the respondent no.1 is without any basis when it is an admitted fact that on both the occasions when the deed of gift was executed, the respondent no.1 had proceeded to the office of the Sub Registrar only. The learned Senior Counsel further submits that the respondent no.1 has failed to produce any corroborated evidence to substantiate the claim that the appellant no.1 had committed a fraud on the respondent no.1. The learned Senior Counsel has thereafter taken me through the evidence of PW2 and PW3 to point out that these witnesses do not in any way support the case of the respondent no.1 to establish her claim that the deed of gift was executed by a fraud. It is further submitted by the learned Senior Counsel that the evidence of DW3 who was the Sub Registrar at the relevant time clearly established that the respondent no.1 had willingly executed the gift deed. The learned Senior Counsel further pointed out that though initially the first deed of gift was executed in 2006, the respondent no.1 intended to convey the remaining half of the subject plot surveyed under no.117/7-A in favour of the other son but however, as the other son had not shown interest in the remaining half, the respondent no.1 willingly executed the subject deed

of gift in favour of the appellant no.1. The learned Senior Counsel has thereafter taken me through the provisions of Section 96 as well as Section 107 of the Civil Procedure Code to point out that the predicates of the jurisdiction of the First Appellate Court in considering the appeal preferred by the appellants have not been satisfied which would call for interference of this Court in the present Second Appeal. The learned Senior Counsel has also pointed out that the contentions which were raised by the appellants before the learned Lower Appellate Court have not been recorded nor considered while dismissing the appeal preferred by the appellants. The learned Senior Counsel as such points out that there are two substantial questions of law which arise in the present appeal as to whether there was enough evidence on record to render a finding on fraud in terms of Section 17 of the Contract Act and whether the learned Lower Appellate Court has considered the material on record as an Appellate Judge while disposing of the appeal preferred by the appellants.

4. On the other hand, Mr. A. F. Diniz, learned counsel appearing for the respondent no.1 has supported the impugned judgments. The learned counsel has pointed out that both the Courts

below upon appreciation of evidence on record have concurrently come to the conclusion that the respondent no.1 has established her case that the subject deed of gift executed on 12.10.2010 is vitiated by fraud. The learned counsel further pointed out that there is no perversity in such findings nor disclosed by the learned Senior Counsel appearing for the appellants which would call for interference by this Court under Section 100 of the Civil Procedure Code. The learned counsel further pointed out that after the plot was purchased by the respondent no.1 from the original Bhatkar, the survey holding was partitioned between the original owner and the respondent no.1 whereby the portion of the plot purchased by the respondent no.1 was allotted a survey number namely 117/7-A. The learned counsel further submits that thereafter the respondent no.1 partitioned the said plot into two plots namely plot 'A' and plot 'B' and by the first deed of gift executed in the year 2006 plot 'B' was gifted in favour of the appellant no.1. The learned counsel further pointed out that the respondent no.1 never intended to execute a deed of gift in favour of the appellant no.1 as the second plot bearing plot no. 'A' was reserved to be conveyed in favour of her other son. The learned counsel further pointed out that the respondent no.1 was deceived to proceed to the office of the Sub-Registrar on the pretext that

the survey records had to be corrected before the Mamlatdar and not to the office of the Sub Registrar. The learned counsel further pointed out that the fact finding Courts have also noted that it is not disputed that the respondent no.1 was illiterate and uneducated. The learned counsel further submits that the respondent no.1 never intended to execute a deed of gift and as such the fact finding Courts have rightly come to the conclusion that the requirements of the provisions of Section 17 of the Contract Act have been duly satisfied to decree the suit filed by the respondent no.1.

5. I have carefully considered the submissions of the learned counsel and I have also gone through the records. On perusal of the judgment of the learned Trial Judge, I find that the learned Judge upon appreciation of evidence on record has come to the conclusion that the respondent no.1 who is the plaintiff in the suit has established her case and as such declared the subject deed of gift as null and void. The learned Lower Appellate Court after reappreciating the evidence on record based on the contentions advanced by the parties has come to the conclusion that the respondent no.1 was entitled for the relief sought in the suit and consequently, dismissed the appeal preferred by the

appellants. While examining the evidence on record, the learned Lower Appellate Court has noted that the respondent no.1 was illiterate and uneducated. This in fact has not been disputed by the appellants herein. Even on perusal of the deed of gift, I find that it was signed by the respondent no.1 in Marathi language though the deed of gift is in English language. In fact, DW2 who was examined in the Court has stated that the Sub Registrar who is DW3 had not asked any questions to the respondent no.1 before signing such deed. But however, DW3 in his affidavit in evidence has stated that the respondent no.1 has stated that she was willing to execute a deed of gift in favour of the appellant no.1. The learned Lower Appellate Court has however noted the cross examination of DW3 on such aspect. Discussing such inconsistent material on record, the Courts below have disbelieved the evidence of DW2 and DW3 with that regard. These findings of fact cannot be re-appreciated by this Court in the present Second Appeal to come to any contrary findings as the approach of the Courts below cannot be said to be erroneous in law.

6. The undisputed fact disclose that the respondent no.1 was an illiterate person and there is no material on record to show that prior to

the execution of the subject deed of gift, the contents thereof were in fact explained to the respondent no.1 who is stated to have no knowledge of English language. In such circumstances, the inference and conclusion drawn by the fact finding Court that the deed of gift is vitiated by a fraud cannot be faulted. The contention of the appellants that the subject gift deed was executed because the other son of the respondent no.1 showed no interest in the plot reserved by the respondent no.1 to him has not been established or accepted by the fact finding Courts. There is no cogent or reliable evidence on record to show the reason as to why the respondent no.1 would execute a deed of gift exclusively to one son, the appellant no.1 herein of the whole plot. It cannot be forgotten that after the plot was purchased by the respondent no.1 from the Bhatkar, a separate survey number namely 117/7-A was allotted to the whole plot. The respondent no.1 partitioned the subject plot into plot 'A' and plot 'B'. Though there was a serious dispute raised by the learned Senior Counsel appearing for the appellants to that effect, nevertheless, the Schedule of the deed of gift executed in the year 2006 clearly suggest that at that point of time plot 'B' which was gifted to the appellant no.1, the boundary of such plot 'B' is shown to be plot 'A' of the same property surveyed under No.117/7-A. All these facts would

disclose that there is no perversity in the findings of the fact arrived at by the Courts below. On perusal of Section 17 of the Contract Act relied upon by Mr. Desai, learned Senior Counsel appearing for the appellants, I find that the conjoint reading of the evidence on record and the consequent findings by the Courts below would clearly suggest that the material required to establish fraud in terms thereof has been clearly satisfied. In such circumstances, on perusal of the proposed substantial questions of law framed by the appellants, I find that such substantial questions of law would entail reappreciation of evidence which this Court cannot exercise in terms of Section 100 of the Civil Procedure Code as no perversity therein is established. In such circumstances, I find that there are no substantial questions of law which arise in the present Second Appeal for consideration. The appeal stands accordingly rejected.

F. M. REIS, J

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