

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Second Appeal No.369 of 2016

ORDER:

The 3rd defendant in a suit for declaration of title and recovery of possession, has come up with the present second appeal, challenging the concurrent judgments and decrees of both the Courts below.

2. Heard Sri K.S. Murthy, learned counsel for the appellant/3rd defendant and Sri V. Padmanabha Rao, learned counsel for the 1st respondent/plaintiff.

3. The 1st respondent herein filed a suit for a declaration that she is the absolute owner of the suit schedule property, having obtained the same under a registered Gift Deed dated 22-04-2006. The 1st respondent/plaintiff, claimed to be the adopted daughter of the 2nd respondent herein (who is now no more and who was the 1st defendant in the suit). The 1st respondent/plaintiff was also the natural daughter of the 2nd defendant in the suit who is the 3rd respondent herein.

4. The claim of the 1st respondent/plaintiff in the suit was that her adoptive mother namely the 1st defendant gifted the suit schedule property to her under a registered Gift Deed dated 22-04-2006. According to the 1st respondent/plaintiff, the gift was accepted, the original gift deed was handed over and the possession of the suit property was also handed over to her and that she started collecting rents from the tenants.

5. The defendants 1 and 2 did not choose to file a separate written statement. The 3rd defendant filed a written statement claiming that the gift deed dated 22-04-2006 was secured by playing fraud upon the 1st defendant and that after it came to light, the 1st defendant cancelled the gift deed, by executing a cancellation deed. Thereafter the 1st defendant allegedly executed another gift deed in favour of the 2nd defendant on 11-09-2006 and the 2nd defendant in turn executed a gift deed dated 06-10-2006 in favour of the 3rd defendant.

6. In the light of the above pleadings, the trial Court framed three issues for consideration, which read as follows:

- 1) Whether the gift deed dated 22-4-2006 is valid and binding on defendants?
- 2) Whether the plaintiff is entitled for declaration as prayed for?
- 3) To what relief?

7. The 1st respondent/plaintiff examined herself as PW.1, her husband as PW.2 and one M.A. Narendra Rao, one of the attestors of the gift deed as PW.3. 11 documents were marked on the side of the plaintiff as Exs.A.1 to A.11.

8. On the side of the defendants, the mother of the 3rd defendant was examined as DW.1 and the son of the plaintiff was examined as DW.2. 6 documents were marked on the side of the defendant as Exs.B.1 to B.6.

9. Since the entire case revolved around the deed of cancellation of gift dated 11-09-2006, the trial Court went into the question of validity of the cancellation of gift, with particular reference to Section 126 of the Transfer of Property Act, 1882. After taking note of the decision of the Supreme Court in ***K. Balakrishnan v. K. Kamalamma*** reported in **2004 (1) ALT 51 (SC)**, the Court below held that the prerequisites for cancellation of a gift deed are not satisfied. Therefore, the trial Court decreed the suit with costs declaring the 1st respondent/plaintiff as the owner of the plaint schedule property, by virtue of the gift deed dated 22-04-2006.

10. In the regular appeal before it, the first Appellate Court framed 3 points for decision and found after a careful analysis of the oral and documentary evidence as well as the legal prescriptions that the judgment of the trial Court did not warrant any interference. As a matter of fact, the appellant herein who was the appellant before the first Appellate Court filed four additional documents and they were marked as Exs.B.7 to B.10. But those documents did not advance the case of the appellant. Therefore, the first Appellate Court confirmed the judgment of the trial Court. Hence, the present appeal.

11. The appellant has raised the following questions as substantial questions of law arising for consideration in the second appeal.

- A) Whether the Courts below are right in considering that mere referring the word as daughter itself does not invalidate the gift deed as this relationship is not true?

- B) Whether gift deed obtained by playing fraud or coercion can be sustained at all in the name of technicalities?
- C) Whether relationship is not necessary for obtaining for gift deed, and is it not hit by Section 11 (2) of the Hindu Adoption and Maintenance Act?
- D) Whether the courts rightly appreciated the proposition of the plaintiff who instead of establishing her own case relied on the versions and alleged deficiencies in the version of the defendants?
- E) Whether the judgment and decree dated 27-08-2010 passed by the trial court and later it was confirmed by the appellate court is liable to be set aside?

12. But unfortunately for the appellant, none of them could be considered as a substantial question of law. The case with which the 1st respondent/plaintiff went before the trial Court was that she has obtained the suit schedule property under a registered gift deed dated 22-04-2006. The execution as well as the registration of the gift deed by the 1st defendant in favour of the plaintiff was not at all denied. What was pleaded by the appellant herein was that the gift deed dated 22-04-2006 was obtained from the 1st defendant by playing fraud upon her. But the 1st defendant never took steps to have the gift deed set aside on the ground of fraud. On the contrary, she chose to execute a deed of cancellation on 11-09-2006.

13. It is well settled that a unilateral cancellation of gift is not possible in view of Section 126 of the Transfer of Property Act.

Hence, both the Courts below were right in decreeing the suit in favour of the 1st respondent/plaintiff.

14. The question as to whether the 1st respondent/plaintiff was a daughter or not and whether there was valid adoption or not, does not arise for consideration, in view of the fact that the execution of the gift deed is not disputed. Therefore, question A raised by the appellant, does not arise.

15. The 1st defendant never went to Court alleging fraud against the 1st respondent/plaintiff. Therefore, question B raised by the appellant also does not arise.

16. Question C is obviously incorrect. It is only for a deed of settlement that there must be a relationship between the parties. In respect of a gift, there is no prohibition in law that it should be only in favour of the descendants or ascendants or relatives.

17. Questions D and E revolve around questions of fact.

18. Therefore, I do not see that any substantial question of law arises for consideration in the appeal. Hence, the Second Appeal is dismissed.

As a sequel, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 27-08-2016

Ksn