THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5734 of 2011

ORDER:

This civil revision petition by the petitioners/defendants under Section 115 of the Code of Civil Procedure is directed against the orders dated 23.11.2011 of the learned IV Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar whereby the said learned Judge while over ruling the objection of the defendants held that the gift deed dated 16.04.1968 is admissible in evidence though unregistered and permitted PW1 to tender the same in evidence.

2. I have heard the submissions of the learned counsel for the parties. I have perused the material record including the gift deed, which is in Urdu, and also the two translations filed along with the material papers, which are said to be at variance in regard to the aspect as to whether the property was delivered prior to the execution of the said document or under the said document. Be that as it may.

3. The facts, as per the submissions made at the hearing, in brief, are as follows:

The plaintiffs brought the suit against the revision petitioners/defendants 1 and 2 for a perpetual injunction in respect of various extents in survey no.358 (old survey no.33) of Chandanagar village, Serlingampalli Revenue Mandal morefully described in the plaint 'A', 'B' & 'C' schedules annexed to the plaint. The revision petitioners/defendants 1 and 2 are resisting the suit *inter alia* contending that the 1st defendant had purchased the property of an extent of Ac.2.08 guntas in survey no.358 under a regular registered sale deed dated 26.09.1964 which is within specific boundaries as mentioned in the schedule annexed to the said sale deed and that the defendants are running a petrol bunk since a very long time in the said property and that the plaintiffs are now relying upon a subsequent deed of gift dated 16.04.1968 and brought the suit for perpetual injunction after obtaining mutation, which is under challenge in a writ petition before this Court.

4. As per the submissions of the learned counsel for the plaintiffs, the plaintiffs 6 to 9 have purchased under two sale deeds of February 2004 and August 2007 Ac.0.29 guntas of property out of total Ac.2.37 guntas and that after excluding Ac.2.08 guntas of the property covered by the sale deed of the defendants of the year 1964 still there is a balance of Ac.0.29 guntas and that in regard to the said Ac.0.29 guntas, the Mandal Revenue Officer had granted mutation and the same was confirmed by the Revenue Divisional Officer and also the J.C (Appeals) and that, therefore, the defendants had preferred a writ petition before this Court challenging the said mutation and that whether the said Ac.0.29 guntas is a part and parcel of the property covered by 1964 sale deed of the defendants is a question to be decided on merits in the suit and that the trial Court was correct in admitting the document in view of the decision of the Supreme Court in **Hafeeza Bibi and others v.**

Shaikh Farid (dead) by LRs and others [(2011) 5 SCC 654].

5. Now the core question is - 'whether the trial Court was in error in admitting the Gift deed dated 16.04.1968 in evidence when it was tendered by PW1 for being marked?'

6. The question in regard to the admissibility of the subject document is no longer *res integra* in view of the aforementioned decision of the Supreme Court. The Supreme Court in the cited case having referred to a passage in Mulla's 'Principles of Mahomedan law' had held that the distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to be in conformity with the rule of gifts in Mohammadan Law. Though the position was succinctly stated in the above mentioned lines, still it is advantageous to refer to the passage in the text of Mulla and the ratio in the cited decision, which are as follows:

> **Mulla, Principles of Mahomedan Law (19th Edition), Page 120, states the legal position in the following words :**
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> **"Under the Mahomedan law the three essential requisites to make a gift valid : (1) declaration of the gift by the donor: (2) acceptance of the gift by the donee expressly or impliedly and (3) delivery of possession to and taking possession thereof by the donee actually or constructively. No written document is required in such a case. Section 129 Transfer of Property Act, excludes the rule of Mahomedan law from the purview of Section 123 which mandates that the gift of immovable property must be effected by a registered instrument as stated therein. But it cannot be taken as a sine qua non in all cases that whenever there is a writing about a Mahomedan gift of immovable property there must be registration thereof. Whether the writing requires registration or not depends on the facts and circumstances of each case."**
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> **29. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a**

> **written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law.**

In the above cited decision, the Supreme Court had over ruled the Full Bench decision of this Court in **Government of Hyderabad (Deptt.of Revenue) v. Tayyaba Begum [AIR 1962 AP 199].** The law is well settled that mere marking of a document is not proof. As fairly conceded it is for the plaintiffs to prove the necessary requirements for a valid gift under Mohammedan Law and it is for the Court below to adjudicate, as to whether the three essential requirements are fulfilled or not, at an appropriate stage, that is, after the stage of adduction of evidence by both the sides is complete and when the matter reaches the stage of evaluation and appreciation of the evidence and adjudication.

7. Viewed thus, this Court finds that the trial Court need not be faulted for admitting the document as the decision of the trial Court is in consonance with the ratio of the decision of the Supreme Court.

8. In the result, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

29.02.2016
Vjl