

*** THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

+S.A No.1054 of 2016

% 02-01-2017

#Smt. Syamala Raja Kumari and others.

....Appellants.

Vs.

\$ Alla Seetharavamma and another.

.... Respondents.

!Counsel for the petitioner : Kowturu Pavan Kumar.

Counsel for the Respondent: Sreenivasa Rao Velivela

<Gist :

>Head Note:

? Cases referred:

1. AIR 2014 SC 2906
2. 2013 (5) ALD 711



THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

SECOND APPEAL No.1054 of 2016

Date:02.01.2017

Between:

Smt. Syamala Raja Kumari and
others.

... Appellants.

AND

Alla Seetharavamma and another.

...Respondents.



THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

SECOND APPEAL No.1054 of 2016

JUDGMENT:

Vide the present second appeal, the appellants have assailed the Judgment & Decree dated 19-10-2016 passed in A.S.No.75/2016 on the file of I Additional District Judge, Guntur whereby confirmed the Judgment & Decree dated 12-11-2015 passed in O.S.No.50/2012 on the file of the Senior Civil Judge, Mangalagiri, Guntur District.

2. The appellants have filed the present second appeal on the substantial questions of law as under:-

“1. Whether the Courts below were justified in considering the Ex.A1/Ex.B-2 deed dated 19-03-2005 executed by S. Narapa Reddy as an irrevocable gift settlement deed in favour of the respondent Nos.1 and 2/plaintiffs though the recitals in the said deed provided for retaining of life interest in the property in S. Narapa Reddy himself and after his demise to his wife?

2. Whether the Courts below were justified in holding that the revocation deeds executed by S. Narapa Reddy were void and not binding upon the respondent Nos.1 & 2 even in the absence of any prayer sought for by the respondent Nos.1 & 2 in this regard?

3. Whether both the Courts were justified granting the reliefs sought by the respondent Nos.1 & 2 in the absence of any prayer in suit against the revocation deeds executed by the father of the respondent Nos.1 & 2 and also the substantial registered sale deed dated 04-04-2012 in favour of the appellant Nos.2 & 3?

4. Whether the trial Court was justified in holding that the appellant Nos.2 & 3 are not bonafide purchasers for valuable consideration merely because the counsel for the appellant No.1 had received notice about the filing of the suit on 02-04-2012 and the sale deeds in favour of the appellant Nos.2 & 3 were executed on 04-04-2012?”

3. Learned counsel for the appellants submits that the document-Ex.A1 executed is a Will, not a gift deed and the Will can be conditional and revocable, if revoked in the same manner as executed earlier. Admittedly, Ex.A1 is a registered document, which can be revoked subsequently by another registered document, but the issue before the Court below was that whether the document-Ex.A1 was a Will or a gift deed.

4. Learned counsel for the appellants submits that the said document was a Will and in Will, some conditions can be affixed while exhibiting such document, whereas in case of gift, the said document is absolute and there cannot be any condition. In case of gift, whether it is gifted in favour of some one out of love and affection or not gifted any of the property over a right therein.

5. On a perusal of the impugned order, the Court below has discussed that when the gift may be suspended or revoked. For the said purpose, Section 126 of Transfer of Property Act is relevant, which is reproduced as under:-

“126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift, which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.”

6. It is not in dispute that the gift is to be executed only out of love and affection. As per Ex.B2-gift settlement deed executed by donar, the donar executed the said gift deed out of love and affection towards the plaintiffs. Ex.B2 is a valid gift deed and it is a registered one. It is executed by owner and attested by two attestors. In fact, the execution of gift deed is not in dispute.

7. The donar in Exs.B3 & B4 revocation deed clearly admitted about the execution of Ex.B2-gift settlement deed. Even Ex.B5-registered sale deed also, the donar mentioned execution of Ex.B2-gift settlement deed in favour of the plaintiffs.

8. To substantiate as recorded above, it is necessary to note down that the original gift settlement deed dated 19-03-2005 executed by Narapa Reddy in favour of the plaintiffs and his wife Annapurnamma was marked as Ex.B2. The said document-Ex.B2 recited in the said deed that the plaintiffs are the daughters, the donar wanted to gift the schedule property in their favour out of love and affection. Under the said document, life interest right was retained by the donar-Narapa Reddy. As mentioned in the said document that after the death of donar, his wife shall enjoy the property without any right of alienation till her death and thereafter, the donees-plaintiffs can enjoy the property with absolute rights. However, there are no conditions imposed by the donar for gifting the said property in favour of the plaintiffs. The said document makes it clear that it is not at all a Will and it is only a gift deed and what was retained by the donar is right to enjoy the property till his death and similarly, his wife also was enjoyed the property till her death. The wife of the donor

predeceased him. But on 13-02-2008, the donor-Narapa Reddy executed Ex.B3-revocation deed. In the said revocation deed, the donor admitted that he executed a gift settlement deed in favour of the plaintiffs out of love and affection. But the reasons mentioned by the donor for revocation of the gift deed are that the plaintiffs are not taken care of him and his wife and they are not visiting his house and they lost his confidence and so, he revoked the gift settlement deed executed in the year 2005. Again on 07-02-2012, the donor executed another revocation deed vide Ex.B4, wherein he mentioned that the plaintiffs obtained the gift settlement deed by misrepresenting him. But the said fact is not mentioned in the earlier revocation deed dated 13-02-2008. So for the first time in Ex.B4-revocation deed, the donor has mentioned that the donees obtained the gift settlement deed by misrepresenting him and by inducing him. Thereafter, on 15-02-2012, the donor executed Ex.B5-sale deed in favour of the first defendant in respect of the schedule property. In the said sale deed also, the donor clearly admitted the fact that he executed gift settlement deed in favour of the plaintiffs on 19-03-2005 and thereafter, his wife Annapurnamma died on 13-07-2008.

9. It is important to note that in the said sale deed, the donor has not mentioned that the plaintiffs obtained gift settlement deed by misrepresenting him and by inducing him. However, it was mentioned that as he was in need of money for his maintenance, medical expenses and for discharging debts, he cancelled the gift settlement deed by execution of revocation deed i.e., Ex.B4.

10. To substantiate the above opinion, the Court below observed that once a valid gift has given by the donor and was accepted by donees, the same cannot be revoked for any reason. As per the provisions of Section 126 of the Transfer of Property Act, if the gift is a conditional one, and the donee has not fulfilled the condition, then the donor may get some right to revoke the gift. In the case in hand, the donor-Narapa Reddy has gifted the schedule property to the plaintiffs with absolute rights, but he retained his right to enjoy the property till his death. Simply because, the donor has retained the right to enjoy the property, it cannot be said that the absolute gift of schedule property was made in favour of the plaintiffs.

11. In the present situation, a case of **Renikunta Rajamma (died) by L.Rs vs. K. Sarwanamma**¹ is relevant whereby held that *“the recitals in the gift deed also prove transfer of absolute title in the gifted property from the donor to the donee. What is retained is only the right to use the property during the life time of the donor, which does not in any way affect the transfer of ownership in favour of the donee by the donor.”*

12. In case of **Nakka Parthasarathy vs. Nakka Krishnaveni and others**², wherein held that *“when once the gift deed is voluntarily made without there being any coercion or undue influence, the acceptance of the gift by the donee would be complete even though the deed of gift is not delivered to the donee and the gift property continues to be in the donor’s possession.”*

¹ AIR 2014 SC 2906

² 2013 (5) ALD 711

13. In the present case, as per the terms of Ex.B2-gift settlement deed, after the death of donor-Narapa Reddy, the plaintiffs would get absolute rights in respect of the schedule property. By executing the said gift settlement deed, the donor has divested his right in the schedule property so he cannot unilaterally execute any revocation deed for revoking the gift settlement deed executed by him in favour of the plaintiffs. So the revocation deeds executed by the donor vide Exs.B3 & B4 are not binding on the plaintiffs as said deeds are not valid. So once the donor had no right to revoke the gift settlement deed validly executed by him in favour of the plaintiffs, he cannot alienate the schedule property in favour of the first defendant by executing Ex.B5-sale deed.

14. It is pertinent to mention here that within two months from the date of obtaining Ex.B5-sale deed, the first defendant in turn alienated the schedule property in favour of defendants 4 & 5. The sale transaction entered by the first defendant in favour of defendants 4 & 5 is subsequent to the filing of the suit.

15. As stated by the counsel for the respondents that the property in question has only been got vacated vide order passed in E.P.No.1/2016 by the Senior Civil Judge, Mangalagiri. Consequently, the respondents 1 & 2 are in possession. Even otherwise, the questions of law framed by the appellants has no legal issue therein and find no perversity or illegality in the orders passed by the two Courts below. Therefore, I find no grounds to interfere with the decisions taken by them.

16. Accordingly, finding no merits, this Second Appeal is dismissed and as a sequel, miscellaneous petitions, if any, pending in this second appeal, shall stand dismissed. No costs.

JUSTICE SURESH KUMAR KAIT

Date:02-01-2017

Note: L.R Copy to be marked.

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