

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Second Appeal No.1165 of 2017

JUDGMENT:

This second appeal arises out of the concurrent judgments of both the Courts below, dismissing a suit for cancellation of a gift deed.

2. Heard Mrs. Pulipati Radhika, learned counsel for the appellant and Mr. P. Prabhakara Rao, learned counsel for the respondent-caveator.

3. The appellant herein filed a suit in O.S.No.565 of 2013 on the file of III Additional Junior Civil Judge's Court, Vijayawada, praying for cancellation of a gift deed executed on 31-12-2001 and for a consequential permanent injunction. The case of the appellant/plaintiff before the trial Court was that the property described in the plaint schedule was purchased by him under a registered sale deed dated 15-11-1990; that the respondent/defendant is his sister; that in the year 2001, the respondent made a proposal for joint construction of a new building in the plaint schedule property, since the property adjoining the appellant's property was owned by her; that to enable her to take a loan from the bank, she needed a nominal gift deed in respect of the plaint schedule property; that the respondent promised to re-convey the property to the appellant after the complete discharge of the loan; that believing the representations made by the respondent, the appellant executed a gift deed dated 31-12-2001 and registered the same in the office of the Sub-Registrar; that even after execution of the gift deed, the physical

possession of the land was not handed over to the respondent; that the respondent constructed a RCC building in the year 2001 in the plaint schedule property and obtained a loan from Union Bank of India in the year 2002 for the construction of a first floor; that the appellant and his family members are residing in the schedule property; that the appellant also repaid huge amounts to the loan account in the Union Bank of India; that the defendant discharged the entire loan to the extent of her share and hence, the appellant requested the respondent to have the gift deed cancelled; that however, she refused to do it leading to the police complaint and a lot of disputes between the parties and that therefore, he was compelled to file the suit for cancellation of gift deed.

4. The respondent filed her written statement contending, *inter alia*, that two adjoining properties measuring 121 square yards each were purchased by the appellant and the respondent in the year 1990 under two different sale deeds; that in the year 2001, the appellant executed a registered gift deed out of his free will and consent; that the gift deed was executed since the appellant had availed some financial assistance from the respondent; that the gift was accepted and the respondent took possession of the property; that thereafter the respondent obtained approval of a building plan on 03-02-2002 for the construction of a ground and first floors in the entire extent of 242 square yards; that the respondent also availed a housing loan from Union Bank of India; that in the year 2005, the entire loan was cleared; that ever since the date of construction, the respondent is in possession and enjoyment of the entire building, by

paying taxes to the Panchayat; that when the respondent was away from Vijayawada on account of employment of the respondent's husband, the appellant made a request to give one portion of the first floor on the ground that he wanted to put his son in St. Ann's school, within a walkable distance; that the respondent's mother was occupying to one portion, but she passed away on 24-03-2012; that when the respondent and her husband went for Hajj pilgrimage, they requested the appellant to collect the rent; that after their return, they wanted the rent collected by the appellant to be handed over to them; that however, the appellant started claiming that he is the owner of the property; that thereafter disputes arose leading to the filing of the suit; and that the suit was barred by limitation.

5. The trial Court framed six issues for consideration which are as follows:

- 1) Whether the suit is barred by limitation as contended by the defendant?
- 2) Whether the plaintiff is entitled for decree against the defendant for cancellation of Gift deed vide document No.2749/2001, dated 31-12-2001 of SRO, Gundala, Vijayawada as prayed?
- 3) Whether the registered gift deed dated 31-12-2001 vide registered No.2749/2001 of S.R.O., Gunadala is really a nominal document and executed by plaintiff under undue influence of defendant as alleged by plaintiff?
- 4) Whether the registered gift deed was accepted and acted upon by the parties or not?
- 5) Whether the plaintiff is really continued his possession and enjoyment as rightful owner after execution of registered gift deed in favour of defendant or not?
- 6) To what relief?

6. The appellant examined himself as PW.1 and marked 10 documents. He also examined another person by name Khaleel Haffiz Khan, who was the husband of a lady, who worked in the Moulana Abdul Kalam Kuddus Municipal Corporation Urdu High School along with the mother of the parties to the suit. He also happened to be the uncle of PW.1's wife. PW.3 was the sister's daughter of the mother of the parties to the litigation. Another person examined as PW.4. The maternal grandmother of PW.4 was the sister of the mother of the parties.

7. The respondent examined herself as DW.1. She examined her husband as DW.2 and her husband's sister as DW.8. She filed 9 documents as Exs.B.1 to B.9.

8. On an appreciation of the evidence on record, the trial Court came to the conclusion on issues 2 to 5 that the appellant was not entitled to have the gift deed cancelled and that it was not a nominal document executed under undue influence and that the gift deed was acted upon. On Issue No.1, the trial Court concluded that the suit was hit by long lapse of time. Accordingly, the trial Court dismissed the suit.

9. The first Appellate Court framed the following issues as arising for consideration.

- (1) Whether the trial Court came to the right conclusion in negating the plaintiff's claim of cancellation of gift deed executed by him?
- (2) Whether the trial Court rightly concluded that the claim of the plaintiff is barred by time also?
- (3) To what relief?

10. After analysing the entire evidence independently, the First Appellate Court came to the conclusion that the appellant was not entitled to have the gift deed cancelled and that the long silence on the part of the appellant in seeking reliefs debarred him from any remedy. Aggrieved by such concurrent judgments, the appellant has come up with the above appeal.

11. The learned counsel for the appellant has raised the following substantial questions of law.

- 1) Whether the judgment and decree of the lower appellate Court in confirming the judgment and decree of the trial Court and in dismissing the appeal to set aside the judgment and decree passed for cancellation of gift deed dated 31-12-2001 executed by the appellant in favour of the respondent is legally sustainable?
- 2) Whether the lower Appellate court is right in dismissing the appeal and confirming the trial Court judgment filed for cancellation of gift deed dated 31-12-2001 is legally sustainable?
- 3) Whether the courts below are right in dismissing the suit and confirming the same in appeal for cancellation of gift deed dated 31-12-2001 executed by the appellant in absence of examination of any independent witness as required under law to prove that gift deed dated 31-12-2001 Ex.A.2 is valid one?
- 4) Whether the Courts below are right in giving finding that Exhibit A2 is valid one and further coming to conclusion that Exhibit A2 gift deed exhibited by appellant voluntarily out of love and affection in favour of respondent/defendant in the absence of examination of attestors required U/Sec.68 of the Evidence Act?

- 5) Whether the courts below are right in coming to a conclusion that suit is barred by limitation even though there is no limitation of period prescribed for cancellation of gift deed?
- 6) The Courts below ought to have considered the plea of the appellant that the gift deed is executed by undue influence and coercion and all threat by the defendant which can be proved at the face of Exhibit A.2.

12. Out of the above questions, the first two are only questions of fact and not substantial questions of law. The third and fourth substantial questions of law revolve around the manner of proving the execution of a gift deed. According to the learned counsel for the appellant, an independent witness ought to have been examined and in terms of Section 68 of the Evidence Act, the attestors ought to have been examined. But Section 68 of the Evidence Act, which applies only to documents required by law to be attested, is not applicable to any document other than a Will, which has been registered in accordance with the provisions of the Registration Act. This is by virtue of the proviso to Section 68. Moreover the provisions of Chapter-VII of the Transfer of Property Act, 1882, starting from Section 122 up to Section 128, shall not affect any rule of Mohammedan law. Therefore, the third and fourth questions of law are irrelevant.

13. The fifth substantial question of law with regard to the limitation is completely misconceived. There is no provision for cancellation of a gift deed. Once a gift deed is executed and registered in accordance with law, the title and ownership passes on

to the donee. Therefore, the donor will have no right for the cancellation of the gift deed. This is why no specific period of limitation is prescribed for cancellation of gift deed.

The sixth question of law revolves around facts. The plea that the gift deed was executed by undue influence, coercion, and threat, was negated by both the Courts below on the basis of evidence. Therefore, I see no substantial question of law to entertain the above second appeal. Hence, it is dismissed.

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

V. RAMASUBRAMANIAN, J

Date: 17-11-2017

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