HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

AS No.2778 of 1999

JUDGMENT:

This appeal arises out of a decree and judgment dated 28.09.1999 passed in Original Suit No.2 of 1998 by the II Additional District Judge, Vijayawada.

2. As this is a first appeal and for the sake of convenience, the parties are referred to as 'plaintiff' and 'defendant' only.

3. The suit was filed by one P. Supriya Devi for a declaration that she is the absolute owner of the plaint schedule property and for a consequential relief of possession directing the defendant-Sri Ayyappa Devastanam Trust to deliver vacant possession by revoking a gift deed dated 01.11.1972 and for other reliefs.

4. The case of the plaintiff is that her father-M. Ramabrahmam and herself are the joint owners of the suit schedule property. She states that for the construction of a temple of Lord Sri Ayyappa Swamy, her father gifted the property to the first defendant. The plaintiff, who is a minor by then, was also added as a party to the said gift deed. The case of the plaintiff is that the defendant has not adhered the terms of the gift deed and that therefore she is entitled to a declaration

that the gift has become void and is to be revoked. As she is the sole legal heir of her late father-Ramabrahmam, she has inherited all of his properties and therefore she is seeking a relief of the revocation of said gift deed, resumption of possession, mesne profits etc.

5. The defendant filed a written statement opposing the claim made by the plaintiff. They state that the gift is not only for construction of a temple, but is for fulfilment of other projects of the defendant-trust also. They also pleaded that she did not challenge the gift deed after attaining the majority. According to the defendant-trust, the gift deed was fully acted upon after acceptance. Therefore, they state that the plaintiff is not entitled to any of the reliefs that are prayed for. The lower Court framed three issues:

1. Whether the plaintiff is entitled to the declaration as prayed for?
2. Whether the plaintiff is entitled to the consequential relief of possession of plaint schedule property?
3. To what relief?

6. The parties went to trial after the issues were framed. PW.1 was examined, who is the plaintiff herself and she marked Exs.A.1 to A.8. For the defendant, three witnesses were examined as DWs.1 to 3 and Exs.B.1 to 7 were marked. After the trial, the lower Court dismissed

the suit on merits with costs. Questioning the same, the present appeal is filed by the plaintiff.

7. This Court heard Sri Srinivas Velagapudi, learned counsel for the appellant/plaintiff and Sai Gangadhar Chamarty, learned counsel for the defendant-trust.

8. The essential point that arises for consideration in this case is whether the plaintiff is entitled to seek a relief that the gift deed dated 01.11.1972 is to be cancelled? and if so, whether she is entitled to any of the further reliefs that are prayed for?

9. The lower Court framed this point as issue No.1 correctly. Both the learned counsel appearing for the appellant/plaintiff and the respondent/ defendant-trust have argued essentially on the validity of the gift deed. The plaintiff argued that the gift deed is not an absolute gift and that as the conditions of the gift are not fulfilled, the same can be revoked. On the other hand, the argument of the learned counsel for the respondent/ defendant-trust is that the conditions of the gift are not merely for construction of a temple, they are for other objects also. He also argued that the conditions in the gift are absolute and that once there is an acceptance of the gift, the same cannot be revoked.

10. Therefore, this Court is proceeding to decide the fundamental and essential point involved in this appeal is whether the terms of the gift deed are absolute and the same cannot be revoked?

11. To decide this question, the terms of the gift deed are very important. The conditions stipulated in Ex.A.1-gift deed are also reproduced by the lower Court in Telugu in its judgment and were also referred to by both the learned counsel. A reading of the gift deed makes it clear that the property was donated and delivered to the first defendant to enjoy the same with absolute rights and for the purpose of construction of a temple of Lord Sri Ayyappa Swamy and for attending to the other objects of the first defendant-trust. It is pertinent to note here that there is no clause of revocation in the gift deed. No time limit is fixed in the gift for the construction of the temple nor is there a clause for resumption/revocation in case of non-fulfilment of the conditions of the gift.

12. In this case, PW.1 was examined as a witness to prove her case. The genesis of litigation, according to the plaintiff, is an application in OP No.198 of 1994 filed by the defendant-trust seeking permission to sell the suit schedule property to a third party. A copy of the OP is filed as Ex.A.8 through PW.1. In this application, the

defendant-trust sought to sell the suit schedule property in order to gainfully utilize the proceeds for constructing the building of Sri Ayyappa Swamy temple, which is commenced with the available funds, at a place called at Gollapudi. In the said OP, which is filed for permission to alienate the property, the plaintiff sought to implead herself and opposed the application by filing IA No.9 of 1996. At this stage, the defendant-trust decided to withdraw the said application. Therefore, no further proceedings were taken in OP No.198 of 1994.

13. The plaintiff thus alleges that the defendant did not act in furtherance of the said gift deed and hence she is entitled to the declaration. The defendant-trust on the other hand states that they have taken over the property by accepting the gift, levelled the site, constructed compound walls, but could not proceed with further construction as there were some objections on the ground of vaasthu etc. They have also pointed out through oral and documentary evidence that they have safeguarded the property since long and the objects of the trust are not merely to construct the Ayyappa Swamy temple in the site, but to construct other temples, grant-in-aid hospitals, religious institutions, day-to-day administration of the temple of Sri Ayyappa Swamy and various other things, which are part of the aims and

objects of the trust. They have also pointed out that when an attempt was made by the State Government under the Land Acquisition Act to acquire the property, the defendant-trust has safeguarded the property by filing an appropriate writ petition before this Court, due to which Section 4 (1) notification that has been issued for acquisition was cancelled under Ex.B.3-order dated 27.03.1986 in WP No.7371 of 1985.

14. This Court on an examination of the facts and the figures notices that the OP.No.198 of 1994 was filed by the defendant-trust seeking permission to sell the property and to utilize the proceeds for the 'purpose' of the trust only. This Court on an examination of the terms and conditions of the gift deed has noticed that the terms of the gift deed do not state that it is only for the purpose of construction of a temple. The gift is for the purpose of construction of the temple and for other purposes also. The first essential prerequisite of a gift viz., transfer of certain immovable property made voluntarily and without consideration is fulfilled (Section 122 of the Transfer of Property Act). Another essential feature as enumerated in Section 123 of the Transfer of Property Act, 1882 viz., the execution of a registered instrument signed by the donor and attested by two witnesses is also admitted. The plaintiff herself admits that the gift was given on

01.11.1972 through a registered gift deed (Doc.No. 3477/1972). Therefore, this Court is of the opinion that in this case all the essential points of a gift are fulfilled. There is a voluntary transfer of immovable property made without consideration. There is a registered instrument effecting the transfer. The same is admitted in the plaint also. Therefore, this Court is of the opinion that the essential conditions of the gift are fulfilled. Acceptance is also visible from the pleadings; oral and documentary evidence. There is a prayer in the suit for redelivery of possession also, which implies that the defendant-trust was put in possession also and they continued to be in possession.

15. The question that survives for consideration is whether the gift can be revoked. Under Section 126 of the Transfer of Property Act, 1882, a gift can be revoked only under certain conditions. The Section is to the following effect:

> "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."

16. A plain language reading of this Section makes it clear that the gift can be revoked on the occurrence of a specified event which does not depend upon the Will of the donor. Unless and until the specified event (which does not depend upon the Will of donor) actually happens, the gift cannot be revoked. In addition the other grounds for revocation of a contract (excluding want or failure of consideration) are also available like fraud; coercion etc.

17. In the case on hand, there is no condition for revocation of the gift deed nor is there an event; the non-performance of which leads to a revocation. The gift deed was accepted and admittedly the possession was with the defendant-trust for a long period of 25 years. From 1972 till the filing of present suit in December 1997, the plaintiff did not take any steps for revocation. Even if the objection of the plaintiff in OP No.198 of 1994 is considered, it is only in 1996 that she filed an application in IA No.9 of 1996 seeking her impleadment. Therefore, for a long period of 24 years, she was silent and kept quiet. The evidence on record indicates that she was aware of the activities of the defendant-trust. Even otherwise, within three years after attaining the majority,

she did not challenge the gift. She did not plead and prove any vitiating factors which would entitle her to seek cancellation. The only ground urged is that the Ayyappa Swamy temple was not constructed. Fraud; deceit; coercion; mistake of fact etc., which are the grounds to avoid the gift are neither pleaded nor proved.

18. This Court also notices that the lower Court did consider Section 126 of the Transfer of Property Act and came to a conclusion that there are no conditions in the gift deed which make it possible for the Court to revoke the same. The Court also notices that the conduct of the appellant/plaintiff estopps her from claiming any right. Paragraphs-13 to 17 of the impugned judgment set out the discussion on this subject. The property admittedly is not donated for the sole purpose of construction of the temple. There is no clause in the gift deed for revocation. Therefore, the lower Court held that the question of granting any relief to the appellant/ plaintiff on the ground that the purpose is not fulfilled is not made out. The purpose of the gift deed as noted includes various other objectives of the trust and not merely the construction of one Ayyappa Swamy temple in the suit schedule land. Therefore, this Court is also of the opinion that the appellant/plaintiff is not entitled to

any relief. Hence, this Court concurs with the findings of the lower Court on issue No.1.

19. The learned counsel for the appellant/plaintiff vehemently argued that the father of the plaintiff did not have any right to alienate the property and that he did not have power to gift the property in favour of a third party. The learned counsel also argued that the gift is *per se* void and that therefore no right is conferred on the respondent/defendant-trust. The learned counsel also cited the case law to the effect that the power to gift the joint family property is very limited and it does not extend to executing a gift.

20. The learned counsel for the respondent/ defendant-trust on the other hand argued that the plaint is absolutely silent about the "power" of the father or the 'lack of power' to execute the gift deed. The plaintiff merely states that they are joint owners and that a gift was executed. The plaint proceeds on the basis that it was accepted between the plaintiff and the defendant-trust that confirmation of the gift would be got from the plaintiff after she attains majority. The entire suit proceeds thereafter on the ground that the defendant did not fulfil the objects of the trust. There is absolutely no whisper about the lack of power in the father to execute a gift deed or to transfer a minor's share. This Court is therefore of the opinion that in the absence of any

foundation is being laid in the plaint or in the evidence that is introduced in the lower Court, it is not permissible for the counsel to argue that the gift is *per se* bad. Except the ground raised that the defendant did not fulfil the conditions stipulated in the gift, no other ground is raised. Hence, no other ground can be urged.

21. The learned counsel for the appellant/plaintiff rightly pointed out that the defendant-trust has set up a plea of adverse possession. This Court is of the opinion that the learned counsel is right in his submission; that a plea based on title and adverse possession are mutual and inconsistent pleas. The learned counsel cited the case law which is clearly to the effect that a plea of adverse possession will not be available until the defendant gives up a plea of title to ownership. He also cited a judgment of the Hon'ble Supreme Court in ***Roop Singh (dead) through LRs v. Ram Singh (dead) through LRs***[1] wherein it was held in para-9 as follows:

> "…………………………………… Once it is admitted by implication that plaintiff came into possession of the land lawfully under the agreement and continued to remain in possession till the date of the suit, the plea of adverse possession would not be available to the defendant unless it has been asserted and pointed out hostile animus of retaining possession as an owner after getting in possession of the land."

22. In the case on hand, this Court notices that there is no evidence to prove the necessary ingredients of adverse possession and although the plea is raised in the

[1] (2000) 3 SCC 708

case, it is not followed up anywhere in the evidence. This Court therefore holds that the defendant-trust is not eligible to raise the plea of adverse possession or make any claim based on adverse possession. Despite the plea has confined itself to the case of title based on the gift deed only. Unless it gives up the plea of title through the gift, it cannot raise the plea of adverse possession.

23. In view of all the above, this Court is of the opinion that the plaintiff has failed to prove that the gift deed in question is capable of being revoked. The absence of a clause for revocation; the plaintiff's long silence and the fact that the gift deed is not merely for construction of a temple does not allow her to seek any relief in this case.

24. The appeal is therefore dismissed. The decree and judgment dated 28.09.1999 passed in O.S.No.2 of 1998 by the II Additional District Judge, Vijayawada is affirmed. But in the circumstances of the case, there shall be no order as to costs.

25. Miscellaneous Petitions, if any, pending in this appeal shall also stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 18.07.2018
Isn