IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

507

RSA No.1969 of 1997 (O & M)
Date of Decision:23.03.2018

Nand Lal@ Nand Kishore and another ...Appellants

Versus

Shanti and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surinder Gandhi, Advocate
for the appellants.

Mr. R.N. Lohan, Advocate
for the respondents.

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ANIL KSHETARPAL, J.(Oral)

CM No.857-C-2015

Application is allowed.

Main Case

Defendants-appellants are in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the learned trial Court.

In the considered opinion of this Court, question which requires determination is whether, before it can be held that registered gift is proved, it is required to be proved that the donor had intention to gift and donee had rendered services to the donor?

Dispute in the present case is with respect to a registered gift deed executed by late Sh. Brij Bhushan, husband of the plaintiff on 22.04.1970 in favour of his sister-in-law i.e. brother's wife. It is not in dispute that late Sh. Brij Bhushan remained alive for almost 12 years after the execution and the registeration of the gift deed. Late Sh. Brij Bhushan never challenged or doubted the validity or correctness of the aforesaid gift deed.

Both the Courts have recorded a concurrent finding that the execution and the registeration of the gift is proved. However, the learned First Appellate Court has reversed the finding of the learned trial Court on the ground that the defendants-appellants have failed to prove that the executor (donor) was intending to execute the gift deed and no evidence has been led to the effect that the donee was serving the donor.

It may be noticed that the gift deed is attested by four attesting witnesses out of them two have been examined in the Court.

Execution and registeration of gift is governed by Chapter 7 of the Transfer of Property Act. Section 122 defines the Gift, whereas Section 123 prescribes the procedure for execution and registeration of the gift deed. Sections 122 and 123 are extracted as under:-

> *"122. "Gift" defined.—"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.*
>
> *Acceptance when to be made - Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.*
>
> *If the donee dies before acceptance, the gift is void.*

> ***123. Transfer how effected.****-For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.*
>
> *For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.*
>
> *Such delivery may be made in the same way as goods sold may be delivered."*

By reading the aforesaid provision, it is clear that the gift must be made through a registered instrument, signed by or on behalf of the donor and attested by at least two witnesses.

It is further provided that transfer may be effected either through a registered instrument signed as aforesaid or by delivery in case of movable property.

In the present case, the gift is through a registered instrument coupled with delivery of possession as it is with respect to immovable property.

As noticed above, donor and donee are close relative. Donee is sister-in-law of donor (brother's wife). It is recorded in the gift deed that the donee is taking care of the donor.

Learned First Appellate Court has wrongly put onus on the donee to prove intention of the donor. The intention of the donor to gift the property is proved from the reading of the registered gift deed. Even late Sh. Brij Bhushan has acknowledged that the donee is serving him, coupled with the fact that this donor has remained alive for almost 12 years after execution of the gift deed. At no point of time, late Sh. Brij Bhushan during his life time ever doubted the validity of the gift deed.

In view of the aforesaid, the judgment under challenge passed by the learned First Appellate Court is set aside and that of learned trial Court is restored. Hence, question of law is answered in favour of the appellants.

Hence the regular second appeal is allowed.

23.03.2018 **(ANIL KSHETARPAL)**
sheetal **JUDGE**

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No