NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Judgment Reserved on :18.09.2020
Judgment delivered on:29.09.2020

Second Appeal No.216 of 2010

1. Ramkaran (died) through LR's

1(a) Ragmen, Widow of Late Ramkaran, aged about 70 years,

1(b) Hanslal S/o Late Ramkaran, aged about 48 years,

Both are residents of Village Salka, Tah. Bhaiyathan, District Surajpur (CG)

1(c) Mutobai, D/o Late Ramkaran, aged about 50 years, R/o Odagi, Tah. & District Surajpur (CG)

1(d) Birjhobai, D/o Late Ramkaran, aged about 45 years, R/o. Village Karwa, Tah. & District Surajpur (CG)

1(e) Guddibai, D/o Late Ramkaran, aged about 40 years, R/o Village Bhatgaon, P.S. Bhatgaon, District Surajpur (CG)

2. Devsharan Son of Late Rangu, aged about 57 years,

3. Ramsaran, Son of Late Rangu, aged about 47 years,

4. Sumira D/o. Late Dilbes, aged about 35 years,

5. Rajesh Son of Late Dilbes, aged about 31 years,

6. Samay Lal Son of Late Dilbes, aged about 28 years,

7. Jhingo Bai D/o. Late Rangu, aged about 42 years,

Appellant No.2 and 3 R/o. Village Karounti, Tahsil Odgi, District Surguja (CG)

Appellant No.4, 5 and 6 R/o. Village Pondi, Tahsil Pratappur, District Surguja (CG)

Appellant No.7, R/o. Village Gonda, Tahsil Prat-appur, District Surguja (CG)

---- Appellants/Plaintiffs

Versus

1. Thakur Dayal (died) through LR's

1-A) Maharajo Bai Wd/o Late Thakur Dayal, aged about 65 years, 1-B) Radheshyam S/o Late Thakur Dayal, aged about 43 years,

1-C) Pankaj S/o Late Thakur Dayal, aged about 39 years,

1-D) Urmila D/o Late Thakur Dayal, aged about 33 years,

1-E) Parmila D/o Late Thakur Dayal, aged about 30 years,

Respondent No.1-A to 1-E are resident of village Karauti, Tahsil Odgi, Distrit Surajpur (CG)

1-F) Shamil Ram S/o Late Thakur Dayal, aged about 36 years, resident of village-Salka, Post-Bhatgaon, Tahsil Bhaiyathan, District Surajpur (CG)

---- LR's of Defendant No.1

2. State of Chhattisgarh, Through : The Collector, Surguja, Ambikapur (CG)

---- Respondents

For Appellants/Plaintiffs:
Mr.J.K.Shashtri, Advocate
For LR's of Respondent No.1/Defendant No.1:
Mr.Sushil Dubey, Advocate
For Respondent NO.2/State:
Mr.Ravi Bhagat, Dy.G.A.

<u>Hon'ble Shri Justice Sanjay K. Agrawal</u>

<u>C.A.V. Judgment (Thro. Video Conferencing)</u>

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellants/plaintiffs are as under:-

> "1. Whether the finding of the lower appellate Court relating to absence of pleading of *bakshishnama* (gift deed) is perverse ?
>
> 2. Whether the finding of the lower appellate Court relating to gift deed is perverse ?"
>
> [For the sake of convenience, the parties would

be referred hereinafter as per their status and ranking shown in the suit before the trial Court].

2. The suit property was earlier settled in favour of Jhulan Rajwar. He died issueless leaving his wife Smt.Sonmat. It is the case of the plaintiffs that his wife Sonmat executed a gift deed dated 22.5.62 (Ex.P-7) in favour of Rangu Rajwar, plaintiffs predecessor-in-title and on strength of said gift deed, they came into possession over the suit land, but the defendant started interfering with their possession leading to filing of the suit for permanent injunction simpliciter.

3. Resisting the suit, the defendant filed his written statement and denied the averments made in the plaint stating inter-alia that gift deed (Ex.P-7) alleged to be executed in favour of Rangu Rajwar is forged document. It was further pleaded that Jhulan Rajwar had executed a Will on 5.3.42 in favour of Budhu, as such, the plaintiffs are not entitled for decree of permanent injunction as they are not in possession of the suit land and the defendant has perfected his title by way of adverse possession.

4. The trial Court upon appreciation of oral and documentary evidence available on record by its judgment and decree dated 11.7.2008 dismissed the suit holding that gift deed dated 22.5.62 (Ex.P-7) executed by Sonmat in favour of Rangu Rajwar is forged document, the plaintiffs are not in possession of the suit land and Jhulan has not executed any Will dated 5.3.42 in favour of Budhu. On appeal being preferred by the plaintiffs, the first appellate Court dismissed the appeal affirming the judgment and decree of the trial Court dismissing the suit. Feeling aggrieved and dissatisfied with the judgment & decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which substantial questions of law have been framed, which have been set-out in the opening paragraph of this judgment for sake of completeness.

5. Mr.J.K.Shashtri, learned counsel for the appellants/plaintiffs, would submit that both the Courts below concurrently erred in holding that the plaintiffs have failed to prove valid execution of gift deed dated 22.5.62 (Ex.P-7) by Sonmat in favour of Rangu Rajwar, their predecessor-in-title and thereby recorded a perverse finding which deserves to be set aside and the suit deserves to be decreed.

6. On the other hand, Mr.Sushil Dubey, learned counsel for legal representatives of respondent No.1/defendant

No.1 would support the judgment and decree of both the Courts below.

7. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. Chapter VII of the Transfer of Property Act, 1882 (hereinafter called as 'TP Act') provides for mode of making gift. Gift inter vivos is gratuitous transfer of ownership between two living persons and is a transfer of property within the meaning of Section 5 of the TP Act. Section 122 of the TP Act defines "Gift" 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 doner, 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."

9. The essentials of a valid gift can be enumerated as under:-

(See **Sehdev Singh Verma v. J.P.S. Verma and Anr.**[1])

1 AIR 2016 Delhi 1

a) There must be transfer of ownership – As in the case of a sale, there must be a transfer of all the rights in the property by the donor to the donee. However, it is permissible to make conditional gifts. The only restriction is that the condition must not be repugnant to any of the provisions of Sections 10 to 34 of Transfer of Property Act, 1882.

b) The ownership must relate to a property in existence – Gift must be made of existing movable or immovable property capable of being transferred. Future property cannot be transferred.

c) The transfer must be without consideration – The word "consideration" refers to monetary consideration and does not include natural love and affection.

d) The gift must have been made voluntary – The offer to make the gift must be voluntary. A gift therefore should be executed with free consent of the donor. This consent should be untainted by force, fraud or undue influence.

e) The donor must be a competent person – In a transaction by way of gift the transferor is called a donor and he divests his ownership in the property so as to vest it in the transferee, the donee. The donor must be a sui juris. He must have attained the age of majority, possess a sound mind and should not be otherwise qualified.

f) The transferee must accept the gift – The gift must be accepted by the donee himself. Acceptance must be made during lifetime of the donor and while he is capable of giving.

10. Section 123 of the TP Act dealing with making of a gift reads as under:-

"**123. Transfer how effected.-** For the purpose of making a gift of immoveable 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 moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.
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> Such delivery may be made in the same way as goods sold may be delivered."

11. Section 126 of the TP Act dealing with suspension/revocation of a Gift reads 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.
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> 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."

12. Thus, it is clear that deed of gift once executed and registered cannot be revoked unless mandatory requirements of this provision are fulfilled.

13. The Supreme Court in the matter of **Renikuntla Rajamma (dead) by legal representatives v. K. Sarwanamma**[2] has held that where the donor had reserved the right to enjoy the property during her lifetime, did not affect the validity of deed. Their Lordships

2 (2014) 9 SCC 445

held that gift made by registered instrument duly executed by or on behalf of donor and attested by attesting witness is valid, if the same is accepted by or on behalf of donee. Such acceptance made during lifetime of donor and while he is still capable of making an acceptance and further held that there is no provision in law that ownership in property cannot be gifted without transfer of possession of such property and condition precedent for gift under Section 122 must be satisfied.

14. Similarly, in the matter of **Asokan v. Lakshmikutty and others**[3] the Supreme Court has laid down the principles for proving the gift and held as under:-

> "13. We have noticed the terms of the deeds of gift. Ex facie, they are not onerous in nature. The definition of "gift" contained in Section 122 of the Transfer of Property Act provides that the essential elements thereof are:
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> (i) the absence of consideration;
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> (ii) the donor;
>
> (iii) the donee;
>
> (iv) the subject-matter
>
> (v) the transfer; and
>
> (vi) the acceptance.
>
> 14. Gifts do not contemplate payment of any consideration or compensation. It is, however, beyond any doubt or dispute that in order to

3 (2007) 13 SCC 210

constitute a valid gift acceptance thereof is essential. We must, however, notice that the Transfer of Property Act does not prescribe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question. There may be various means to prove acceptance of a gift. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raises a presumption of acceptance. [See Sanjukta Ray v. Bimelendu Mohanty[4], Kamakshi Ammal v. Rajalakshmi[5] and Samrathi Devi v. Parsuram Pandey[6]]

15. Concept of payment of consideration in whatever form is unknown in the case of a gift. It should be a voluntary one. It should not be subjected to any undue influence.

16. While determining the question as to whether delivery of possession would constitute acceptance of a gift or not, the relationship between the parties plays an important role. It is not a case that the appellant was not aware of the recitals contained in deeds of gift. The very fact that the defendants contend that the donee was to perform certain obligations, is itself indicative of the fact that the parties were aware thereabout. Even a silence may sometime indicate acceptance. It is not necessary to prove any overt act in respect thereof as an express acceptance is not necessary for completing the transaction of gift."

15. Reverting to the facts of the present case in the light of aforesaid principles of law enunciated by Their Lordships of the Supreme Court in the above-stated judgments (supra), it is quite vivid that in the instant case, Sonmat is said to have executed a gift deed in favour of Rangu Rajwar vide Ex.P-7 in

4 AIR 1977 Ori 131
5 AIR 1995 Mad 415
6 AIR 1975 Pat 140

presence of two witnesses namely Duhan and Budhuram, but both have died and they have not been examined. On behalf of the plaintiffs, only son-in-law of scribe Mohd.Asraf Ali (PW-2) has been examined. He has only proved the signature of scribe Niyamtulla, but overwriting made in the body of gift deed has not been explained. Even possession over the suit land has not been found with plaintiffs, successor-in-interest of Rangu by both the Courts below. Both the Courts below have recorded a finding that firstly, the execution of gift dated 22.5.62 (Ex.P-7) has not been proved as overwriting creates doubt particularly the name of Rangu, plaintiffs' predecessor-in-title has been substituted by overwriting and it has not been certified by initial of person making the gift and secondly, the plaintiffs have not been found to be in possession of the suit land. On that basis, gift deed has been held to be forged document and as such, validity of gift has not been found established. Except self-serving statements of the plaintiffs and statement of son-in-law of scribe Mohd.Asraf Ali (PW-2) who has only certified the signature of his father-in-law Niyamtulla in the gift deed, no evidence has been brought on record to prove the valid execution and attestation of gift, as such, finding recorded by two Courts below holding that gift by Sonmat in favour of Rangu, predecessor-in-interest of the plaintiffs, has not been established is finding of fact based on evidence available on record. It is neither perverse nor contrary to record. I do not find any perversity or illegality in said finding. Accordingly, the substantial questions of law are answered in favour of the defendant and against the plaintiffs.

16. Consequently, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

17. A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-