

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.2618 of 2020

ORDER:

This writ petition is filed questioning the inaction of respondent No.2 in receiving the sale deed executed by the petitioners in respect of all that southern portion of H.No.12-12-97, Plot No.4, admeasuring 500 square yards in Sy.No.199/1, Sithaphalmandi, Secunderabad.

It is the case of the petitioners that originally the property admeasuring 800 square yards in Plot No.4 in Sy.No.199/1 situated at Sithaphalmandi, Secunderabad was self acquired property of father of petitioner Nos 1 and 2 and husband of petitioner No.3 by name Chadalvada Subramanyam having purchased the same under a registered sale deed dated 29-11-1952 vide document No.1003/1952 and constructed a house after obtaining building permission and was in peaceful possession of the said property. That father of petitioner Nos1 and 2 and husband of petitioner No.3 executed a registered Will and testament on 16-09-2002 being registered as document No.92/2002, BK-III at SRO Marredpally. As per the said Will he bequeathed 250 square yards each in favour of petitioner Nos 1 and 2 being his daughters and 300 square yards to his son by name C.Ramchandra Prasad. It is also stated that father of petitioner Nos 1 and 2 bequeathed life interest in respect of property in favour of petitioner No.3 to enjoy the property during her lifetime without any right of alienation/to create any charge over the said property. After her death, the property

would devolve on petitioner Nos 1 and 2. After death of her husband, petitioner No.3 is in possession of the property and enjoying the same. The petitioner No.3 has become very old and not being able to manage her affairs effectively and is being taken care of by petitioner Nos 1 and 2 and resides with petitioner No.1. Therefore, after consultation with each other the petitioners decided to dispose of the property in question and executed a sale deed dated 29-01-2020. But respondent No.2 refused to register the sale deed on the ground that there cannot be alienation during life time of petitioner No.3 on the ground that she has life interest on the property as per Will deed, dated 16-09-2002, executed by her husband by name late Chadalvada Subramanyam and there cannot be alienation during the life time of petitioner No.3. Hence the present writ petition is filed.

Learned counsel for the petitioners submits that even life interest in the property can be transferred by virtue of Section 10 of the Transfer of Property Act, 1882 and there is no such prohibition for transfer. He also submits that what is sought to be transferred by petitioner No.3 is only her life interest in the property.

Heard learned Assistant Government Pleader for Revenue.

Section 10 of the Transfer of Property Act reads as under:

Condition restraining alienation:-

“Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from

parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.”

In the judgment of **Sridhar v. N.Revanna**¹, the Supreme Court held in para No.18 as under:

“ Section 10 expressly provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void. According to Section 10 any condition restraining the transferee the right of alienation is void. A plain reading of Section 10 of Transfer of Property Act makes it clear that the condition in the gift deed dated 05.06.1957 that defendant No.1 shall not alienate the property is a void condition. ”

The Supreme Court in para No.19 also held as under:

“ Learned counsel for the respondents has rightly placed reliance on the judgment of Allahabad High Court in Smt.Brij Devi v.Shiva Nanda Prasad, AIR 1939 Allahabad 221, wherein the High Court had occasion to consider Sections 10 and 126 of the Transfer of Property Act. In the above case also gift deed came into consideration which contained a condition that “ The donee or his successors will have no right to transfer or mortgage.” The Division Bench of the High Court had laid down:

¹ 2020 SCC Online SC 171

“Now the law of conditions in regard to the transfer of property is contained in Ch. 2 of the [T.P. Act](#). No condition therefore, in our judgment, imposed upon a donee can be valid if it is inconsonant with the provisions of [Section 10](#) of the Act. The contention, of learned Counsel for the plaintiffs that [Section 126](#) is an absolute exception to [Section 10](#) and that in view of the terms of the former Section the donor was entitled to impose a condition entitling him to revoke upon any event happening including an alienation by the donee, provided that event did not depend on the will of the donor in our judgment is unsound. It is the duty of the Court to give full effect to every Section of an enactment. We see no difficulty in reconciling the provisions of [Sections 10](#) and [126](#). [Section 10](#) embodies the general principle that a transfer of immovable property may not impose a condition restraining the transferee from alienating the interest conveyed to him absolutely except in the case of a lease where the condition is for the benefit of the lessor. This general provision, in our judgment, applies to all transfers including gifts. Apart from the condition restraining alienation by a lessee, there is no other exception.

Having regard to the judgment of the Supreme Court, as per Section 10 of the Transfer of the Property Act, any transfer subject to a condition restraining the transferee from disposing of his/her interest in the property is void. The Division Bench of Allahabad High Court in **Brij Devi v. Shiva Nandan Prasad** stated supra also held that [Section 10](#) embodies the general principle that a transfer of immovable property may not impose a condition restraining the transferee from alienating the interest conveyed to him absolutely except in the case of a lease where the condition is for the benefit of

the lessor. It is also held that this general provision, in our judgment, applies to all transfers including gifts. Apart from the condition restraining alienation by a lessee, there is no other exception.

It is relevant here to extract Section 71 of the Registration Act, 1908 (for short “the Act”), which reads as under:

Reasons for refusal to register to be recorded.—

(1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words “registration refused” on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

As per Section 71 of the Act, respondent No.2 is bound to receive the documents and register, if the same are in order as per the Indian Stamp Act, 1899 and the Registration Act and Rules made thereunder. Otherwise he shall record the reasons for refusal of the registration.

Since it is stated that petitioner No.3 is only transferring her life interest in the property, which was granted towards her

by way of Will deed, dated 16-09-2002 executed by her husband, respondent No.2 cannot refuse to register the sale deed presented by the petitioners.

In view of above facts and circumstances of the case, respondent No.2 is directed to receive and register the document presented by the petitioners, if the same is in order as per the provisions of Indian Stamps and Registration Act and the Rules made thereunder, and if the subject property is not included in the list of prohibited properties for registration as per Section 22-A of the Act or not prohibited for registration by any order/injunction passed by the Court or competent authority. If he wants to refuse registration, he shall record reasons and communicate the same to the parties. It is also directed that respondent No.2 shall insist the presence of petitioner No.3 and make sure that out of her free will, she signed on the document in question.

With the above directions, the writ petition is disposed of. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.RAJASHEKER REDDY,J

10-02-2020
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