

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.346/2022

Vinod Shankarrao Chafekar and another

...Versus...

Ramesh Ramkrushna Banait and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri B.K. Pal, Advocate for appellants
Shri S.M. Nafde, Advocate for respondent no.1

CORAM : AVINASH G. GHAROTE, J.

DATE : 13/09/2022

1. The only ground raised by Shri Pal, learned counsel for the appellants is that under the gift-deed dated 01/01/1987 (pg.151) there is no acceptance by the present respondent no.1/plaintiff, nor was he placed in possession thereof. The gift-deed has subsequently been revoked by the owner on 25/05/1992 (pg.153). He therefore submits that once it is established that under the gift-deed dated 01/01/1987 there was no delivery of possession nor acceptance by the donee or anyone on his behalf, the gift remained incomplete and therefore, was no gift in the eye of law.

2. Shri Nafde, learned counsel for the respondent no.1 submits by inviting my attention to the judgment of the learned Trial Court and specifically the consideration of issue no.2 therein, which is in relation to the possession of the respondent no.1/plaintiff of the suit field, on the basis of the gift-deed dated 01/01/1987 from the date of the gift, that the respondent no.1/plaintiff had already accepted the gift on the date of the gift itself and was also placed in possession, which was indicated by the plaint in Regular Civil Suit No.117/1994 filed by the donor (Balaji Rajeram Banait) against the respondent no.1 (plaintiff)/donee (Ramesh Ramkrushnaji Banait) claiming cancellation of the gift-deed as well as possession of the suit field from the present respondent no.1/plaintiff. The plaint in Regular Civil Suit No.117/1994, has been exhibited before the Trial Court as Exh.118.

3. The plaint in Regular Civil Suit No.117/1994 [Balaji Rajeram Banait Vrs. Ramesh Ramkrushnaji Banait] (pg.148) seeks a decree of the deed of gift being null and void, in operative and also a decree for possession (pg.150-prayer clause), which would indicate an admission on part of the donor himself, that the donee was placed in possession of the property in question at the time of the deed of gift. It is not in dispute that Regular Civil Suit No.117/1994, came to be dismissed as abated sometime in the year 1995. The learned Trial Court has therefore rightly answered issue no.2 framed in

this regard based upon the averments and the prayer clause in Regular Civil Suit No.117/1994. The learned Appellate Court has also answered point no.2 in the affirmative holding that on the date of the gift itself the respondent no.1/plaintiff was placed in possession, for which in addition to the plaint in Regular Civil Suit No.117/1994 reliance is also being placed upon 7/12 extract at Exh.116. The learned Appellate Court has also noticed that the defendant no.1 i.e. the appellant no.1 herein has also filed a counter-claim for possession, which would indicate that the donor had lost possession. That being the position, I do not see any substantial question of law being made out on the above count. No other point was argued. The second appeal is therefore dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar