

28.06.2023

SAT 75 of 2023

Court : 04
Item : 49
Matter : SAT
Status : DISMISSED
Bench ID : 266048
Transcriber : NANDY

Satish Ghosh
Vs.
Chand Mohan Paloi & Ors.

Mr. Gopal Chandra Ghosh, Advocate
Mr. Uttam Kumar Bhattacharya, Advocate
Mr. Kaustav Mishra, Advocate

.....for the Appellant

1. Both the Courts have concurrently held that the plaintiff/appellant has miserably failed to prove his case and such concurrent findings of fact sought to be assailed in the instant appeal. The plaintiff/appellant filed the said suit assailing the deed of gift executed and registered by him in favour of the defendant nos. 1 and 2 in respect of the properties mentioned in 'Ga' schedule solely on the ground that the property comprised in deed of gift was secured on misrepresentation and on perpetration of fraud. Though the particulars of fraud and the nitty-gritty thereof have not been pleaded in the said suit but we find that the entire case is founded upon a plea of misrepresentation.
2. The plaint proceeds that the sons of the plaintiff/appellant were engaged in avocation and the defendant no. 1, who is the son-in-law of his elder brother, was, in fact, looking after the original plaintiff. It further proceeds that on a day when the original plaintiff fell sick, the said defendant no. 1 took him for admission to the hospital and but it was communicated that a bond is required to be executed before the admission can be made in any of the hospital. The original plaintiff was thereafter taken to the sub-registry office where the said purported deed of gift was executed by him on an impression that the same is executed in relation to a bond required for his admission in the hospital and, therefore, the deed of gift is required to be declared null and void and be cancelled.

3. Though the defendants have taken a defence that originally the entire property belonged to the aforesaid two brothers namely the original plaintiff and his elder brother namely Nitai, but the original plaintiff was all along dealing the aforesaid joint properties as his exclusive properties depriving the widow and daughter of the elder brother as he expired when those daughters were very young. It is further alleged that the original plaintiff never looked after the family of the elder brother and ultimately a 'shalish' was conducted on the intervention of the local people wherein it was decided that a deed of gift shall be executed by the original plaintiff in favour of the defendant nos. 1 and 2.
4. The parties adduced evidence and both the Courts held that the plaintiff has miserably failed to prove that the purported deed of gift was obtained on misrepresentation which is now sought to be assailed in the instant appeal. However, during the pendency of the appeal an application under Order 41 Rule 27 of the Code of Civil Procedure was taken out by the plaintiff/ appellant seeking to rely upon certain documents in respect of the contention that the aforesaid property was self-acquired property and the name of the original plaintiff was recorded in the record of rights.
5. The Appellate Court rejected the said application as the said additional evidence would neither have any impact on the decision taken by the Trial Court nor required for the purpose of delivering the judgement.
6. The Counsel for the appellant submits that those documents are relevant for the purpose of determining the issue and, therefore, the Court ought not to have rejected the same in a manner as has been done by the Appellate Court.
7. We do not find any substance in the submission of the

appellant advanced on the rejection of an application under Order 41 Rule 27 of the Code filed before the Appellate Court. The issue, whether the property of the original plaintiff is self-acquired or a joint property, was inconsequential for the simple reason that the suit was filed seeking declaration that the deed of gift purportedly executed by the original plaintiff is invalid, illegal having obtained on misrepresentation. It is, therefore, immaterial whether the property was a self-acquired or a joint property, which at best be called to be accidental one because of the defence having taken by the defendant nos. 1 and 2.

8. The plaintiff has to proceed on the basis of the case made out in the plaint and should not take advantage of weakness in the defence nor is permitted to expand the case beyond the peripheral of the plaint and the cause of action pleaded therein. Even if, for argument's sake, the property comprised in schedule 'Ga' is considered to be a self-acquired property of the original plaintiff yet it does not invalidate the deed of gift executed by him in respect of thereof as the gift is also an incident of transfer under Section 122 of the Transfer of Property Act.
9. The moment the donor having right, title and interest in respect of the property, gifted the same to a donee upon execution and registration of the deed of gift and the same is accepted by the donee, it divests all such right, title and interest of the donor into the donee. The acceptance must be express or implied. The original deed of gift was duly accepted and, therefore, the condition enshrined under Section 122 of the Transfer of Property Act stands satisfied.
10. However, a plea is taken in the plaint that immediately in a close proximity of time the original plaintiff also executed several deeds of gift in favour of his

grandchildren and the moment a loan was to be secured on the basis of the aforesaid deeds of gift, the defendant nos. 1 and 2 disclosed that the said property has already been gifted. The aforesaid statement is made for the purpose of gaining knowledge of the execution of the said purported deed of gift but does not render the deed void as the person upon divesting his right, title and interest cannot re-divest such right, title and interest into any person.

11. A plea is also sought to be taken at the Bar that the purported deed of gift is contrary to what was intended and expressed in the 'salish'. According to Mr Ghosh, learned Advocate appearing for the appellant, 66 decimals of land was sought to be transferred by way of deed of gift but, in fact, the purported deed of gift shows 84 decimals of land. The original plaintiff did not take any step for rectification of the mistake nor any prayer is made in the instant suit in this regard. The issue is whether the said deed of gift was executed voluntarily with free mind and upon taking conscious decision and not tainted by any misrepresentation as alleged in the plaint.
12. Both the Courts after scanning the evidence do not find that the plaintiff have been able to prove the allegation of misrepresentation and, in fact, the attesting witnesses to the said deed of gift also deposed and confirmed the execution of the said deed by the original plaintiff.
13. We thus do not find any substantial question of law involved in the instant appeal.
14. The appeal being **SAT 75 of 2023** is thus **dismissed**.
No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

