

19 09.06.23

Ct. No. 04

akd

S.A. 88 of 2020

Sri Dhanapati Mondal & Anr.

Vs.

Smt. Dipali Dey & Anr.

Mr. Partha Sarathi Bhattacharyya,

Mr. Kazi Sajjad Alam.

... for the appellant.

The instant Second Appeal arises from a judgement and decree passed by the learned Additional District Judge, Arambagh, Hooghly in Title Appeal no. 4 of 2020; whereby and whereunder the judgement and decree of the Trial Court was set aside and the plaintiffs' right in respect of the suit premises was declared.

The suit came to be filed at the behest of the plaintiffs/respondents for declaration of their title and permanent injunction. It is averred in the plaint that the suit property originally belonged to the elder brother of the grandfather of the plaintiffs, namely Krishna Das Mondal, who during his life time gifted the suit property to the extent of undivided half share each in favour of the plaintiffs by virtue of two gift deeds bearing nos. 208 and 209 in the year 1980. It is further averred in the plaint that immediately upon execution and registration of the said deeds of gift, the plaintiffs/respondents are cultivating the suit property exercising the right, title and interest thereupon.

It is alleged that the defendants started creating obstruction and even tried to take forceful possession of the suit property, which constrained the plaintiffs to approach the Court by filing of the suit for declaration and permanent injunction.

It appears from the record that the plaintiffs claim their right, title and interest on the basis of the aforesaid two deeds of gift executed by the said Krishna

Das Mondal. The defendants/respondents contested the said proceeding and sought to impinge the aforesaid deeds of gift solely on the ground that the donee never accepted the gift and, therefore, it cannot be regarded as valid deed of gift.

It was sought to be contended before the Court that in order to effectuate the gift in favour of a donee one of the essential conditions enshrined under Section 122 of the Transfer of Property Act is that the donee must accept the said gift.

The Trial Court proceeded to disregard the aforesaid deeds of gift solely on the ground that there is no acceptance by the plaintiffs and, therefore, the ingredients required in this regard on the basis of the provisions contained under Section 122 of the Transfer of Property Act has not been satisfied. A point is sought to be taken that if there is no acceptance of the gift, plaintiffs/respondents cannot laid their claim on the basis thereof.

The Appellate Court held that there is no substance in the stand of the defendants/appellants on the above score and, in fact, the plaintiffs/respondents accepted the gift immediately upon its execution and registration thereof and approached the competent authority for correction of entry in the Record of Rights and started discharging its statutory obligation by depositing the land revenue applicable in this regard.

Section 122 of the Transfer of Property Act does not postulate that at the time of execution of the deed of gift by the donor, the donee must put its signature on the said document. What essential ingredients required in this regard is that the donee must accept the gift, which can be reasonably ascertained from the conduct and the manner in which the property is dealt with.

It admits no ambiguity that upon execution, registration and acceptance of the deeds of gift, the title passes to the donee and it denudes the donor's right, title and interest in respect of the subject property. The moment donee approach the competent authority to get their name mutated in the Record of Rights and pay the land revenue, it implies the acceptance of the deed of gift and, therefore, we do not find any justification in the point that there is a complete lack of acceptance at the behest of the donee.

Though feebly it has been argued that the deed of gift has not been proved by calling the attesting witness, but we find from the discussion of the Appellate Court that the execution and registration of the deeds of gift has not been disputed by the defendants. The only challenge, which was thrown over the said document, was in relation to non-acceptance by the donee and, therefore, it is too late to contend that the deeds have not been proved.

From whatever angle we look at do not find any involvement of substantial question of law warranting invocation of power under Order XLI 41 Rule 11 of the Code of Civil Procedure.

The appeal is thus dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

