



\$-

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ RFA 747/2019, CM APPLs. 37124/2019 & 37917/2021

Between: -

RAJNEESH KUMAR SHARMA
S/O LATE RADHEY SHYAM SHARMA
R/O 824 STREET NO.11, FIELDGANJ,
LUDHIANA, PUNJAB

.....APPELLANT

(Through: Mr.Vijay Kumar Gupta and Mr.Mehul Gupta, Advocates)

AND

**1. JAGANNATH SHARMA (SINCE DECEASED) THROUGH
LRS**

A. INDIRA SHARMA
W/O LATE JAGANNATH SHARMA

B. GIRISH SHARMA
S/O LATE JAGANNATH SHARMA

C. MANOJ SHARMA
S/O LATE JAGANNATH SHARMA

D. SANJAY SHARMA
S/O LATE JAGANNATH SHARMA

ALL BEING RESIDENT OF 272/4 NEW JANAKPURI,
NEAR GROVER SCHOOL, SALEEM TIBRI,
LUDHIANA, PUNJAB.

Signature Not Verified

Digitally Signed
By:MAANAS JAJORIA
Signing Date:08.08.2024
17:47:05
2. BIMLA PRABHAKAR

.....RESPONDENT NO.1

Signature Not Verified

Digitally Signed
By:PURUSHAINDR
KUMAR KAURAV



W/O OM PRAKASH PRABHAKAR
R/O 342/LA NETAJI NAGAR,

NEAR DASHMESH COLD STORAGE,
LUDHIANA, PUNJAB

.....RESPONDENT NO.2

3. DELHI DEVELOPMENT AUTHORITY
VIKAS SADAN, NEW DELHI.
THROUGH ITS CHAIRMAN

.....RESPONDENT NO.3

4. THE SUB REGISTRAR,
OFFICE OF SUB REGISTRAR-II,
JANAKPURI, NEW DELHI

.....RESPONDENT NO.4

(Through: *Mr.Piyush Kant Jain, Mr.Inderpal Khokar and Ms.Neha, Advocates.*)

%

Reserved on: 02.07.2024
Pronounced on: 07.08.2024

J U D G M E N T

This appeal is directed against the judgment and decree dated 16.07.2019 passed in Civil Suit No.13536/2016 by the Court of Additional District Judge-02, District West, Tis Hazari Court, Delhi, decreeing the civil suit filed by the plaintiff/respondent no.1 *qua* declaration/cancellation of documents, possession, recovery of mesne profit, damages and injunction.

DESCRIPTION OF PARTIES

2. The respondent no.1, namely, Jagannath Sharma (since

deceased) filed civil suit against the present appellant and Respondent Nos.2 to 4.

Signature Not Verified
Digitally Signed
By:MAANAS JAJORIA
Signing Date:08.08.2024
17:47:05

Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR KAURAV



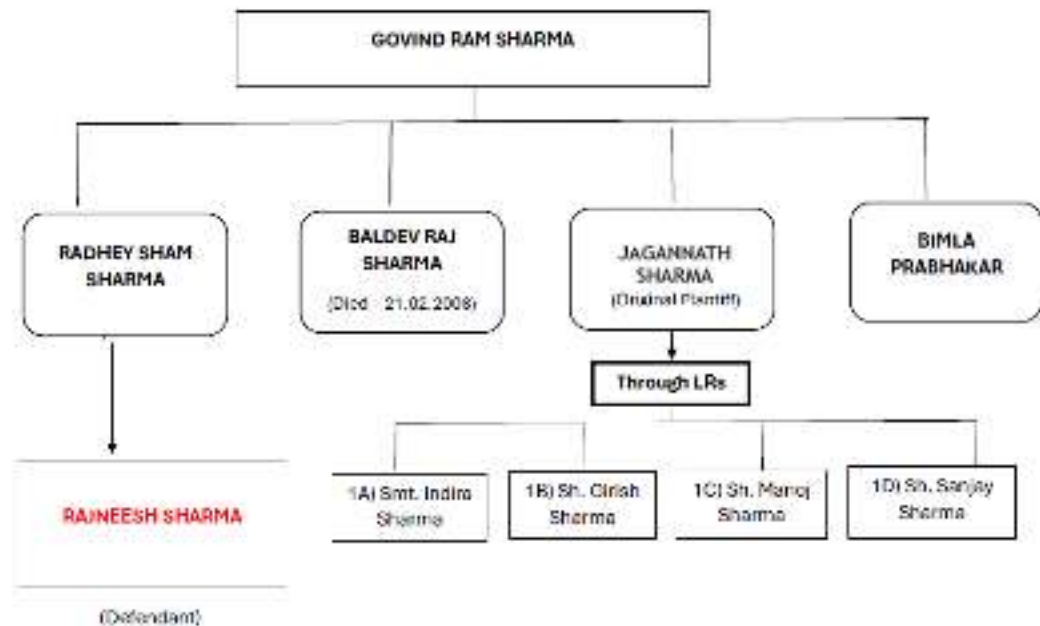
3. The parties to the dispute and their depiction before the trial court and this court is as shown below:-

S.No	Names of the parties	Before trial court	Before this Court
1	Rajneesh Kumar Sharma	Defendant No.1	Appellant
2	Jagannath Sharma (<i>Deceased</i>)	Plaintiff Thr. LR.s. 1A – Smt. Indira Sharma 1B – Sh. Girish Sharma 1C – Sh. Manoj Sharma 1D – Sh. Sanjay Sharma	Respondent No.1 Thr. LR.s. 1A – Smt. Indira Sharma 1B – Sh. Girish Sharma 1C – Sh. Manoj Sharma 1D – Sh. Sanjay Sharma
3	Smt. Bimla Prabhakar	Defendant No. 2	Respondent No. 2
4	Delhi Development Authority	Defendant No. 3	Respondent No. 3
5	The Sub Registrar	Defendant No.4	Respondent No. 4

4. The *inter se* relationships of the parties is also shown by the following family tree:

Signature Not Verified
Digitally Signed
By:MAANAS JAJORIA
Signing Date:08.08.2024
17:47:05

Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR RAURAV



BRIEF FACTS

5. The facts of the case exhibit that one Baldev Raj Sharma was the owner of the suit property situated at House No.C-2/34, Janakpuri, New Delhi (*hereinafter referred as "suit property"*). He was visually impaired by birth and remained unmarried until his death on 21.02.2008. The respondent No.1 remained under the impression that the estate of deceased Baldev Raj Sharma shall be devolved upon the legal heirs in equal proportion as he had died intestate. However, he discovered that a gift deed and a Will concerning the property of the deceased had been executed in favour of the appellant and was registered at the office of respondent No.4 i.e. Sub-Registrar.

6. Aggreived thereby, respondent no. 1 moved the trial court for declaration/cancellation of gift deed dated 08.03.2007, possession of suit property, recovery of mesne profit, damages and injunction against the appellant. It is stated by respondent no.1 that deceased



the age of 74 years, and no instrument was executed by the deceased in respect to his property. The deceased Baldev Raj Sharma was old and suffered from neurological ailments which made him mentally incapacitated.

7. The appellant appeared before the trial court and filed his written statement contesting the plaint on the ground that the deceased, although visually impaired, was not incapacitated. The appellant has placed reliance on his educational and professional background stating that deceased Baldev Raj Sharma was well qualified (M.A in English) and taught in a Blind School, Panchkuian Road, Delhi. It is stated that the deceased was also an astrologer/fortune teller and had many disciples in Delhi. Emphasising on the cordial relationship between them, the appellant stated that the deceased had always treated him as his own son and the appellant had rendered selfless services to him during his lifetime.

8. In the written statement, various other averments were made asserting the validity of the gift deed in question. After framing the issues and recording the evidence of the witnesses, the trial court decreed the civil suit in favour of the respondent no.1 and against the present appellant. Thus, aggrieved by the judgment and decree, the appellant has preferred the instant appeal under Section 96 of the Code of Civil Procedure, 1908 ("CPC").

SUBMISSIONS

9. Learned counsel Mr. Vijay Kumar Gupta appearing for the appellant assails the impugned judgment and decree on the following main grounds:-

Signature Not Verified
Digitally Signed
By: MAANAS JAJORIA
Signing Date: 08.08.2024
17:47:05

(i) Trial court has miserably failed to appreciate the provisions of Section 60 of the **Indian Registration Act, 1908**

Signature Not Verified
Digitally Signed
By: KUNAL KUMAR KRAV
KUMAR KRAV



1908”] which provides that registered document shall be admissible for the purpose of proving that the document has been duly registered in the manner provided under the Act. He submits that the gift deed in question is a registered document and hence, the contents thereof are admissible in law.

- (ii) The appellant specifically invited attention to the endorsement appearing in the gift deed (Ex. P-3/D-1) and the fact that the contents of the document were explained to the parties who understood the conditions and admitted them as correct. He submits that the impugned judgment and decree would not sustain in view of the aforesaid legal provisions and the findings of the trial court are clearly unsustainable.
- (iii) A perusal of depositions of attesting witnesses namely, Pritam Kumar (PW2) and Ram Lal (PW3) unequivocally prove that the gift deed (Ex.P-3/D-1) was indeed attested by them and the deceased was aware about the contents of the document.
- (iv) He further submits that the signatures of the attesting witnesses and also the thumb impression of the donor Baldev Raj Sharma are undisputed. Therefore, in light of the provisions of Sections 90 and 91 of **The Indian Evidence Act, 1872**, any oral evidence contrary to the document is not acceptable. The execution of the document and its registration are further supported by the Junior Assistant who appeared as PW5 from the office of Sub-Registrar. Thus, once the gift deed has been legally registered, the same cannot be called into question.



- (v) The fact that the Sub-Registrar, when he registered the deed, clearly remarked that the contents of the documents were explained to the parties who understood the contents and admitted them as correct, supports the validity of gift deed.
- (vi) Ram Lal (PW3) clearly admits that the deceased was hale and hearty at the time of signing the gift deed.
- (vii) In addition, the appellant adduces the discharge summary of the deceased indicating the hospitalisation period from 22.01.2007 to 05.02.2007. It is averred that the deceased was admitted for gastrointestinal ailments and meningitis which were cured and on discharge, he could talk and walk without support. He, therefore, emphasises that the deceased was fully capacitated physically as well as mentally to execute the gift deed.
- (viii) The alleged disease of Dementia from which the deceased suffered has been held not to be a mental incapacity and accordingly, the execution of the gift deed cannot be doubted merely on this ground.

10. To support his arguments, learned counsel for the appellant has placed reliance on the decisions in the cases of ***Raja Ram v. Jai Prakash Singh***¹, ***Brij Raj Singh v. Sewak Ram***², and ***Mahesh Chander Ahuja v. Tilak Raj Ahuja***³.

11. The arguments advanced by the learned counsel appearing for the appellant are vehemently contested by the legal representatives of respondent No. 1.

¹ (2019) 8 SCC 701

² (1999) 4 SCC 331

³ 2018 SCC OnLine Del 7295



12. Mr. Piyush Kant Jain, learned counsel appearing for respondent Nos.1A to 1D submits as follows:-

- (i) The impugned judgment and decree are in accordance with law and does not call for any interference. He submits that the challenge to the gift deed has sustained before the trial court mainly on the ground that the attestation made by the witnesses was improper due to concealment of the contents of document from the executant and execution could not be said to be done voluntarily, given the mental unsoundness of the executant.
- (ii) In addition, the execution of gift deed is illegal under Section 122 of the **Transfer of Property Act, 1882** [hereinafter '**TP Act**'] for non-fulfilment of the two essential ingredients i.e. a) it should be executed voluntarily b) it should be without consideration by the donor to the donee. Both the ingredients have not been complied with while executing the gift deed. The involuntariness can be deduced from the fact that signatures and thumb impression were taken on the back side of the document and the gift deed was executed in a car and not in the Sub-Registrar's office. The appellant (DW1) has admitted to have paid the stamp duty of Rs. 42,000/-.
- (iii) The execution of the deed is also in contravention of the requirements under Section 123 of the TP Act as the two attesting witnesses were unrelated to the deceased and were also not aware of the contents of the gift deed as has been deposed by them.



- (iv) In furtherance of challenge to the validity of the gift deed, the respondents have brought to attention the physical incapacity of the deceased i.e. blindness and fragile health. It is stated that the deceased did not suffer from Dementia *simpliciter* rather, suffered from a grave form of dementia known as Multi Infract Dementia [“MID”] which is caused by multiple strokes damaging brain tissues, resulting in memory loss.
- (v) The evidence is already on record which unquestionably proves that the deceased was a known case of MID and was taking a prescription of Aricep, a memory enhancing drug which helps memory function. Such was the intellectual incapacity of the deceased which supports the contention of the respondents that the deceased could not have executed the gift deed on his own volition.
- (vi) The presumption attached with registered documents under Section 60 of the Act of 1908 could only be attracted when the provisions under Sections 34, 36, 58 and 59 of the Act of 1908 are adhered to. In the instant case, the respondent no. 1 has been successful in proving that the provisions under Sections, 34, 36, 58 and 59 of the Act of 1908 have not been complied with, and therefore, no presumption in favour of the document under Section 60 of the Act of 1908 is attracted.
- (vii) It is submitted that the evidence of Pritam Kumar (PW2) and Ram Lal (PW3), if read holistically, would reveal that the deceased did not sign the document in the presence of the Sub-Registrar and in fact, he was not even produced before



the Registrar. The witnesses also remained in the car and did not go to the Sub-Registrar's office and therefore, such a gift deed cannot be said to have been legally executed.

(viii) With regard to the admission of oral evidence, it is to be noted that Explanation 3 to Section 91 read with Proviso 2 to Section 92 of the Indian Evidence Act, 1872 provides for acceptance of oral evidence if a document is alleged to have been executed under undue influence.

13. In rejoinder submissions, learned counsel appearing for the appellant contends that the case of the plaintiff/respondent no.1 was not of non-execution/certification of the document, but was that of improper registration of the document itself. He, therefore, submits that in the absence of a specific case being set up by the plaintiff before the trial court, the plaintiff at the appellate stage cannot take a stand to challenge even the execution of the document itself. He specifically points out paragraph no.17 of the plaint to substantiate his argument.

14. I have heard the learned counsels appearing for the parties and have perused the record.

ANALYSIS

15. The principal question which arises for consideration is whether the gift deed dated 08.03.2007 could be said to have been validly executed in view of the provisions enshrined in Sections 122 and 123 of the TP Act, and consequently, could it be said to have been validly registered in accordance with the Act of 1908?

16. Chapter VII, Sections 122 and 123 of the TP Act deals with



would mean that the transfer of certain existing movable or immovable property, made voluntarily and without consideration by one person called the donor, to another, called the donee and accepted by or on behalf of the donee. The 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 becomes void. From the aforesaid definition of gift, the following essential elements are borne out:-

- a. Transfer of movable or immovable property by donee to donor
- b. Such transfer should be voluntary and without consideration
- c. Such transfer should be accepted by the donee during the lifetime of donor

17. It is well settled that merely because the parties are closely related to each other, no presumption of undue influence can arise. A gift by a person to his relative can be spontaneous so long as the essential ingredients of gift are met. Even old age or any ailment etc. alone are not the disabilities for free and voluntary gift. In fact, a presumption of undue influence merely on the basis of close relationship between the parties would effectively put every gift made out of natural love and affection under the umbrella of scrutiny. Such is not the intent of the law as it could have absurd consequences in the society.

18. In the case of ***Sonia Bhatia v. State of U.P.***⁴, it has been held as under:-

“The word consideration is used in the same sense as is used in the Indian Contract Act, 1872 and excludes natural love and

Signature Not Verified

Digitally Signed
By: MAANAS JAJORIA
Signing Date: 08.08.2024
17:47:05

⁴ (1981) 2 SCC 585

Signature Not Verified

Digitally Signed
By: PURUSHAINDRA
KUMAR RAURAV



affection. However, a gift in consideration of a donee undertaking the liability of the donor cannot be said to be gracious and is not a gift”

19. In the instant case, however, elements of voluntary transfer and absence of consideration are the factors which arise for adjudication. It is trite law that a gift has to be a gracious transfer and it does not contemplate any consideration or compensation.

ABSENCE OF CONSIDERATION

20. It is submitted by Mr. Piyush Kant Jain, learned counsel for plaintiff that the appellant (DW1) has admitted in paragraph nos.15 and 16 of his evidence that he had paid an amount to purchase the stamp duty and from a perusal of the gift deed (Ex. P-3/D-1), it is clear that the amount was of Rs. 42000/-.

21. According to Black’s Law Dictionary [7th Edn.], consideration is defined as “*any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.*” The definition primarily provides that the concept of consideration involves subtle characteristics. It could be in the form of conferment of any benefit on the promisor or sufferance of any prejudice by any person as an inducement to the promisor.

22. One of the foremost requisites of a valid gift is that the consideration, if any at all, is traceable in the spiritual benefit or natural love and affection between the parties. A gift is a voluntary transfer of property without consideration and a parting by owner of

the property without any pecuniary benefit. A complete absence of



consideration marks the transfer as a gift and differentiates it from a grant. A gift has aptly been described as a gratuity and an act of generosity and stress is on the fact that if there is any consideration involved, then the transaction ceases to be a gift. A complete absence of consideration is the main hallmark, which distinguishes a gift from a grant or for that matter other transactions which may be for valuable or adequate consideration. A gift is undoubtedly a transfer which does not contain any element of consideration in any shape or form, neither as an advantage nor as a prejudice. In fact, where there is any equivalent or benefit measured in terms of money in respect of gift, the transaction ceases to be a gift and assumes a different colour⁵.

23. In the case of *Asokan v. Lakshmikutty*⁶, the Hon'ble Supreme Court observed that the concept of payment of consideration, in whatever form, is unknown in the case of a gift. It should be a voluntary one and should not result from any undue influence.

24. The appellant submits that the deceased executed the gift deed in his favour out of love and affection for the selfless services rendered by him to the deceased in times of his need. It is to be noted that the appellant admits to have paid the stamp duty and registration charges. However, no case was set up to the effect that the deceased had executed the gift deed only because payment of stamp duty was offered by the appellant.

25. On examination of facts and circumstances at hand, it can be said that the amount paid by the appellant for stamp duty was only to facilitate the deceased who was visually impaired and of old age to execute the gift deed. Moreover, the payment of stamp duty is neither



stated to be a condition precedent for execution of the gift deed nor its absence is stated to be fatal to the validity of its execution. It may be further noted that the stamp duty is payable to the government for registration of gift deed as required under the Indian Stamp Act, 1899. It cannot be treated akin to the consideration which is paid to the party.

26. Thus, this fact alone does not vitiate the essential ingredient of lack of consideration as provided in Section 123 of the TP Act.

VOLUNTARINESS

27. In light of the controversy involved, the issue regarding voluntariness of the deceased in the transfer of property by way of gift falls for consideration.

28. The admission and discharge summary of the deceased, dated 05.02.2007 [Ex. PW 1/12 (colly)], clearly records that the deceased donor suffered from a proven case of MID, which, by definition, is a common cause of memory loss in older people. Notably, MID is caused by multiple strokes (disruption of blood flow to the brain) which lead to damaged brain tissue and is not curable. The deceased was hospitalised from 22.01.2007 to 05.02.2007, immediately before the deed was executed on 08.03.2007. The appellant (DW1) admits that the deceased was under treatment till 29.03.2007 and ultimately, the donor died on 21.03.2008. Admittedly, he was prescribed the medicine 'Aricep' which is a memory enhancing drug. A perusal of the evidence of the Neurosurgeon (PW4), who had treated the deceased, explains the mental fragility of the deceased and the medicine is thus

Signature Not Verified
Digitally Signed
By:MAANAS JAJORIA
Signing Date:08.08.2024
17:47:05

found to have been prescribed to the donor for mental instability. The

Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR RAURAV



registration of the document has taken place on 08.03.2007 and thus, at the time of registration, as discernible from the medical record, the donor was taking medicine for loss of memory and his mental faculties were becoming slow. The trial court has considered the aforesaid aspect in paragraph no. 33 to 37 of the impugned judgment.

29. The decision of the Supreme Court in the case of **Keshav v. Gian Chand**⁷, has a significant bearing on the present facts and circumstances. In the said case, it was held as under:-

“11. The fact in issue in the present case is the voluntariness and animus necessary for the execution of a valid gift deed, which is to be examined on the basis of evidence led by the parties who could depose for the truth of this fact in issue. Decision and determination of the fact in issue is by examination of the oral evidence of those persons who can vouchsafe for the truth of the facts in issue....”

30. On the conspectus of the aforesaid discussion, it is seen that the donor was incapacitated and was unable to take any decision on his own volition and free will. The findings to this effect are impeccable and unassailable. The same are, therefore, sustained.

31. Besides the aforesaid, it is also pertinent to examine as to whether the gift deed was properly registered under Section 123 of the TP Act.

32. For the sake of clarity, Section 123 of the TP Act reads as under:-

“For the purpose of making a gift of immovable 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.”

Signature Not Verified

Digitally Signed
By: MAANAS JAJORIA
Signing Date: 08.08.2024
17:47:05

⁷ (2021) 18 SCC 121

Signature Not Verified

Digitally Signed
By: PURUSHAINDRA
KUMAR KAURAV



33. It is thus seen that for the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument and signed by or on behalf of a donor and attested by at least two witnesses. For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed or by delivery. Such delivery may be made in the same way as goods sold may be delivered.

34. The law requires that the attesting witnesses should have signed the gift deed in the presence of the executant. The essential conditions of a valid attestation under Section 3 of the TP Act are that, two or more witnesses must have seen the executant sign the instrument or have received from him personal knowledge of his signature, and with a view to attest or to bear witnesses to this fact, each of them has signed the instrument in the presence of the executant. The execution of gift deed does not mean mechanical act of signing the document or getting it signed without understanding the contents thereof.

35. The evidence of Pritam Kumar (PW2) states that the thumb impression of the deceased was obtained on the documents already prepared by the appellant, and neither the deponent nor any other person had actually read over the contents of the document to the deceased. He further states that they went to the computer room of the Sub-Registrar office for photographs one and a half hour after the signatures were put by them in the car outside the Sub-Registrar's office.

36. It is stated by Ram Lal (PW3) that he came to attest the documents on being called by Pritam Kumar (PW2). It is admitted by him in his evidence that the contents of the documents were not read



Registrar. He further stated that he was not even aware of the medical treatment which the deceased had been availing. It is amply clear from the reading of the evidence of Pritam Kumar (PW2) and Ram Lal (PW3) that the signatures put by these two witnesses were not in accordance with the requirements of Section 123 of the TP Act.

37. In order to sustain the presumption of registration under Section 60 of the Act of 1908, compliance of the provisions under Sections 34, 36, 58 and 59 of the said Act is required. Section 59 of the Act of 1908 states:-

“59. Endorsements to be dated and signed by registering officer.

The registering officer shall affix the date and his signature to all endorsements made under Sections 52 and 58, relating to the same document and made in his presence on the same date.”

38. The Sub-Registrar has endorsed the gift deed by stating that the contents of the document were explained to the parties. The position of this endorsement requires scrutiny in view of the oral and documentary evidence adduced on record. The attesting witness Pritam Kumar (PW2) admits that he and the second witness Ram Lal (PW3) did not visit the office of Sub-Registrar on 08.03.2007, the date of registration of gift deed. In addition, Ram Lal (PW3) stated that he did not appear before the Sub-Registrar for purpose of registration of the gift deed (Ex. P3/D1). It is relevant here to note the fact that the Sub-Registrar, who had registered the gift deed, was never examined for the purpose of proving it or defending it. Instead, a Junior Assistant from the office of the Sub-Registrar appeared before the trial court only for the purpose of producing the summoned record. It is clearly depicted by the above series of admissions that the

Signature Not Verified
Digitally Signed
By:MAANAS JAJORIA
Signing Date:08.08.2024
17:47:05

endorsement of Sub-Registrar as to the valid registration of the said gift deed is implausible.

Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR KAURAV



39. It becomes necessary to take note of The Delhi Registration Rules, 1976 which prescribes the procedure and rules to be complied with by the Sub-Registrars in registration of documents. It is pertinent to note that Rule 34 clearly states that if the executant is unable to read, the contents of the deed shall be read out loud to the executant and the registering officer has to make sure that all the parties have understood the contents. In addition, Rule 35 makes it obligatory on the officer to ensure that the execution is done by the executant before admitting the same.

40. The trial court, in paragraph nos. 33 to 37 of the impugned judgment, has correctly held as under:-

“33.The evidence of plaintiff witnesses examined clearly reflects that the attesting witnesses had not read over the document to the deceased before its execution. Even, the Sub-Registrar concerned had not done so. In fact, neither the witnesses nor the executant had appeared before the Sub-Registrar at the time of the registration, therefore, there was no question of Sub-Registrar reading the contents- of the' impugned documents to the blind and old deceased, who also suffered from serious disease of dementia apart from various physical ailments coupled with meningitis (brain fever) and had remained hospitalized for long period immediately preceding the execution of impugned documents and had been undergoing follow up treatment even after 08.03.2007. It is also important to note that at the time of execution of documents the deceased was on medicine Aricep, prescribed for loss of memory.

34. I have examined carefully the medical documents of the deceased regarding his treatment at Satguru Apollo Hospital, Ludhiana, Punjab. In the light of deposition of medical witness Dr. Rupinder Singh Bhatia (PW-4), Senior Consultant, Neurology Department in the same hospital, which have been admitted by both the sides at the time of final arguments. Perusal of the same reflects that the patient was known case of chronic multi infarct dementia, hypertension and diabetes and he also suffered from meningitis (brain fever). The patient was restless and had agitated higher mental functions. The case history was given to the doctors by none, other than appellant no-1 himself, as per which, the patient suffered from dementia for the last more than 25 years. The history was given on 22.01.2007 (date of admission in hospital). Some days before



to his admission in hospital he had started sleeping throughout the day and remained awake at night, While the patient was admitted in the hospital, the doctor had noted in his progress sheet that he was in distress. He did not answer questions and did not follow all commands and was not co-operating and suffered from progressive dementis with deterioration in mental faculties. He was restless and deliripi/S and talked excessively and irrelevant and was moving all limbs and also suffered loss of recent memory. He also suffered depression since last six months prior to admission and was on anti-depressants. This is significant mental illness apart from various physical ailments from which the deceased suffered at the time of his admission. His condition had improved to some extent during his stay in hospital and he recovered from meningitis (brain fever) but further follow up treatment was continued. Dementia is a mental incapacity that continues to increase with advancement of age. Further, the deceased was blind since childhood.

35. The above reflects serious mental health issues and I am of the considered opinion that the deceased was not competent/mentally sound enough to understand the consequences of his actions and did not understand the implications of executing the impugned document i.e. gift deed dated 08.03.2007. He was not in capacity to exercise his volition as his cognitive faculties were significantly impaired. In these circumstances, I am unable to hold that the condition precedent for effecting gift of immovable property i.e. transfer of immovable property voluntarily was satisfied.

36. Not only this, in over all circumstances of the deceased, as mentioned above, I am also unable to hold that the gift was free from undue influence. The deceased was wholly dependent upon appellant no-1 for his care and had been living with him since more than one year prior to his death. During this period, he had been seriously ill and was taken care of only by the appellant no-1. He could not be expected to exercise his free volition, in these circumstances, even assuming for the sake of arguments that the man was mentally fit and understood the consequences of his actions because appellant no-1 was in a position to exercise undue influence over his judgment.

37. For the above mentioned reasons, I hold that the alleged gift deed executed on 08.03.2007 by the deceased, in favour of appellant no-1 is liable to be cancelled. Though, the issue regarding will has not been framed but the will was also executed under same circumstances and on the same day and would have had met the same fate as the gift deed. This issue is, therefore, decided in favour of plaintiff and against appellant no-1."



41. In light of the aforesaid examination of evidence as well as the rival submissions, it could be deduced that the gift was not executed voluntarily by the deceased Baldev Raj Sharma. The basic ingredients of valid execution, attestation and registration are conspicuously absent from the face of the record. The gift deed dated 08.03.2007 cannot be said to have been executed validly and does not satisfy the essential requirements under Sections 122 and 123 of the TP Act.

42. In view of the above, it would be right to hold that the trial court has fairly taken the view that the alleged gift deed dated 08.03.2007 is invalid and thus, the decision of the trial court must be sustained. The consequential orders are also upheld. It is ordered accordingly.

43. Accordingly, the appeal stands dismissed. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 07, 2024/p/MJ