
(2007) 09 AP CK 0068
In the Andhra Pradesh High Court
Case No : SA No. 83 of 1997

Babu Miyan (died) by LRs. and Another	APPELLANT
Vs	
Hussain Bi and Others	RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Transfer of Property Act, 1882 — Section 123

Citation : (2008) 1 ALD 641

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.N. Narasimha Reddy, for the Appellant; Mohd. Shafiuddin, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The legal representatives of the sole defendant in O.S. No. 61 of 1981 in the Court of the Subordinate Judge, Sanga Reddy are the appellants. For the sake of convenience, the parties are referred to, as arrayed in the suit.

2. Plaintiffs filed the suit against the sole defendant, by name Smt. Wahed Bee, for partition of the suit schedule property and allotment of the shares in accordance with the principles of Mohammedan Law.

3. The first plaintiff and the sole defendant were the two wives of late Mahaboob Ali. Plaintiffs 2 and 3 are the sons and the fourth plaintiff is the daughter of the first plaintiff. The second plaintiff and the sole defendant also died and their legal representatives are brought on record. Mahaboob Ali owned and possessed a house and an extent of Ac. 1.14 guntas of land. The plaintiffs pleaded that the suit schedule property is matruka, left by late Mahaboob Ali and according to the principles of succession, the first plaintiff is entitled to 1/6th share, plaintiffs 2 and 3 are entitled to 7/20th share each and fourth plaintiff is entitled to 7/40th share, in all, accounting for 15/16th share. It was also pointed out that the

defendant is entitled to 1/16th share.

4. The suit was resisted by the defendant. She pleaded that the first plaintiff deserted late Mahaboob Ali for about 40 years during his lifetime and that few months before his death, their husband orally gifted the suit schedule property, in favour of herself, the first plaintiff, in equal shares. She further contended that apart from making an oral gift, late Mahaboob Ali executed a gift deed, transferring the suit schedule property in equal halves, to both the wives.

5. The trial Court agreed with the contention of the defendant and passed a preliminary decree, dated 17.12.1984, directing division of the suit schedule properties into two equal shares to be allotted to the first plaintiff on the one hand and the defendant on the other. The claim of plaintiffs 2 to 4 was rejected.

6. Aggrieved by the judgment and decree of the trial Court, the plaintiffs filed A.S. No. 7 of 1985 in the Court of the District Judge, Medak at Sanga Reddy. The appeal was allowed on 31.7.1996, the judgment and the decree passed by the trial Court was set aside and in its place, a preliminary decree as prayed for, was passed. Hence, the second appeal.

7. Sri M.N. Narasimha Reddy, the learned Counsel for the defendant submits that there is sufficient evidence on record in support of the plea of the oral gift in favour of the defendant and the first plaintiff and that there was no justification for the lower appellate Court in upsetting the finding recorded by the trial Court. He submits that even if the document executed by Mahaboob Ali is to be ignored, the plea of oral gift stands established and there was no occasion to disturb the well-considered findings recorded by the trial Court.

8. Sri Mohd. Shafiuddin, the learned Counsel for the plaintiffs, on the other hand, submits that the plea raised by the defendant was self-contradictory, inasmuch as in one and the same stretch, an oral gift, and a document, whose description is doubtful were pleaded. He submits that the very fact that there is no recital about the oral gift in the deed, upon which reliance was placed, discloses that the plea raised by the defendant is not acceptable. He further contends that whenever an oral gift is followed by a document, it must satisfy all the requirements of law including registration.

9. On a consideration of the pleadings before it, the trial Court framed five issues, which are as under:

(1) Whether the present suit after return of plaint in O.S. No. 3 of 1979 on the file of District Munsiff, Sanga Reddy is maintainable ?

(2) Whether the suit schedule property is the matruka of late Mahaboob Ali Khan ?

(3) Whether the plaintiffs are entitled for partition and separate possession of 15/16th share in suit schedule property as claimed ?

(4) Whether late Mahaboob AH gifted the houses and land to the defendant in

view of services rendered by the defendant ?

(5) Whether the suit is properly valued and Court fee paid is sufficient?

10. The second plaintiff deposed as P.W.1 and Exs.A-1 to A-17 were marked. On behalf of the defendant, DWs.1 and 2 were examined and Exs.B-1 to B-17 were marked.

11. As observed earlier, the trial Court passed a preliminary decree, accepting the version of the defendant. In the appeal preferred by the plaintiffs, the lower appellate Court framed only one point, which covered the entire area of controversy, for its consideration.

12. In this second appeal, the question that needs to be answered is, as to whether the oral gift pleaded by the defendant is valid and proved.

13. The relationship of the parties is not in dispute. If the succession according to law is to take place, the claim of the plaintiffs deserves to be accepted. The suit schedule property was acquired by the deceased Mahaboob Ali, by himself. Therefore, he was entitled to gift the same according to his wishes. It hardly needs any emphasis that in Mohammedan Law, oral gift is permissible. Had it been the case of the defendant that the suit schedule property, or part thereof was gifted to her orally by late Mahaboob AH and required amount of oral evidence was adduced, there would not have been any difficulty in accepting her claim. In the written statement as well as during the course of trial, she placed heavy reliance upon a deed said to have been executed by Mahaboob Ali, which is marked as Ex.B-16, in addition to the plea of oral gift. This document has become pivotal from various angles, in the context of the appreciation of the claims of the parties.

14. Ex.B-16 is named as "Will". However, the contents thereof are akin to that of a gift deed. Here again, a note needs to be added. Though the intention of the executant was to gift the property, the devolution was to take place after his death. Therefore, it became hybrid of all possible disposition, which a person can make.

15. Be that as it may, the relevance or importance of this document vis-a-vis the plea of oral gift raised by the defendant has its own significance. Had the oral gift pleaded by the defendant taken place on the same day, on which Ex.B-16 was executed, there would have been a recital about it, in the document. In such an event, Ex.B-16 deserves to be treated as a document, reiterating an earlier transaction of oral gift. However, there is no such reference. The absence of any reference to oral gift in Ex.B-16 virtually belies the theory of such an oral gift. On the other hand, if the oral gift has taken place earlier in point of time, to the execution of Ex.B- 16, the document as well as the transaction under it, become untenable inasmuch as the property was not available to be dealt with by the executant.

16. Notwithstanding these contradictions of fact and law, the matter can be

examined from another point of view. It is permissible for a Mohammedan, to gift his property orally. If the matter ends there, the law does not require any proof in the form of writing. However, where a person who has gifted the property orally, chooses to execute a document, such document must satisfy the requirements of law i.e., registration, acceptance of gift, etcetera. The law in this regard is beyond any pale of controversy and it has been settled in a catena of decisions including the one in Syed Fatahuddin Vs. Golla Shadrak and Another, . It was held as under:

However, where, a gift is made by a Muslim, through a written document, it would become operative only if it is registered. By opting to gift a property, through a written document, a Muslim, virtually sacrifices the exemption granted to him from Section 123 of the Transfer of Property Act, 1882. In Inspector General of Registration and Stamps, Government of A.P., Hyderabad v. Smt. Tayyaba Begum AIR 1962 AP 199, this Court held that once the gift made by a Muslim is evidenced by a written document, registration thereof is mandatory. In applying this principle, a close scrutiny of the facts, need to be undertaken. If the document, by itself, brings about the transaction of a gift, registration becomes mandatory; and if it does nothing more than recording an antecedent oral gift, registration does not become necessary. The oral gift becomes operative, independent of any subsequent evidence, recording the same.

17. Examined, in this background, Ex.B-16 would not be of any help to the defendant, since it was admittedly not registered. Once an oral gift is followed by a written document, the defendant relying upon it, cannot fall back on the oral nature of gift, in case it is not able to sustain the written document. Viewed from any angle, the plea raised by the defendant does not deserve acceptance. This Court is not inclined to interfere with the judgment rendered by the lower appellate Court.

Hence, second appeal is dismissed. There shall be no order as to costs.