

(1960) 09 GUJ CK 0009
In the Gujarat High Court
Case No : A.F.O.D. No. 76 of 1960

Bai Chandan

APPELLANT

Vs

Sheth Rajakbhai Karimbhai and Another

RESPONDENT

Date of Decision : 07-09-1960

Acts Referred:

Evidence Act, 1872 — Section 101, 103

Citation : AIR 1962 Guj 9 : (1961) GLR 283

Hon'ble Judges : V.B. Raju, J;N.M. Miabhoy, J

Bench : Division Bench

Advocate : S.H. Sheth, for the Appellant; M.H. Chhatrapati, for the Respondent

Final Decision : Allowed

Judgement

Raju, J.—This is a first appeal by the original plaintiff Bai Chandan, widow of Maneklal Himatlal, who filed a suit for a declaration that the

suit property bearing Municipal No. 927 of Prantij, belongs to her and that her son, defendant No. 2 has no right, title or interest in it, and for an

injunction to restrain defendant No. 1, who had obtained a decree against defendant No. 2, from selling it in Darkhast as Property of defendant

No. 2. The suit has been dismissed by the Joint Civil Judge, Senior Division, Ahmedabad.

2. In the plaint, the plaintiff alleged that her husband Maneklal Himatlal, who had died in 1942, had made a gift in her favour in 1932 of the suit

property, as he had married a third wife without the plaintiff's consent and in order to appease the plaintiff, who had objected the third marriage of

Maneklal. The gift was registered on 27-6-32. Having learnt that the defendant No. 1 who had obtained a decree against her son, defendant No.

2, and had Put the suit house to sale in execution of that decree, the plaintiff

filed a suit for a declaration and for an injunction as stated above. The pleas taken up by defendant No. 1 in his written statement, in so far as they are necessary for the purpose of this appeal, are that the suit house was ancestral property and therefore Maneklal had no right to gift it to his wife, the plaintiff.

* * * * *

* * * * *

3. In appeal, it is urged by the learned counsel for the appellant that defendant No. 1, who alleged that the suit property was ancestral, had failed to prove that it was ancestral Property. It is urged that defendant No. 1 in his evidence has admitted that there was no evidence to prove that the suit house was the ancestral property of Maneklal and that the evidence of defendant No. 1 that he had seen Himatlal, the father of Maneklal, residing in the suit property, and that therefore the suit house was ancestral cannot be relied upon, as obviously defendant No. 1 is interested in this property.

4. In reply, the learned advocate for the respondent No. 1 has urged that the burden which is on the plaintiff to prove that the property was the self-acquired property of Maneklal has not been discharged.

* * * * *

* * * * *

7. By the gift deed the suit house was gifted to the plaintiff. The plaintiff relies upon the gift deed and when she relies on the gift deed to prove her title, it is for her to prove that her title is established as a result of the gift deed. Her title to the suit property would be proved only if Maneklal, the donor of the gift was entitled to make the gift. Maneklal was a member of the joint family and he would be entitled to make the gift of the property only if the property was his self-acquired Property. It is true that in the written statement defendant No. 1 has alleged that the property was ancestral property. It is true that the burden of proving an allegation rests on the person who makes that allegation. This principle however does not apply where the burden of proving the contrary is already on the plaintiff. If the burden is on the plaintiff to Prove that a property is the self-acquired property of Q, then merely because the defendant alleges in his written

statement that the property is the ancestral property of Q and not his self-acquired property, the burden of proving this allegation does not lie on the defendant. The plaintiff has filed the suit and relies on the gift deed to prove her title to the suit property. The main burden of proving her title to the suit property rests on the plaintiff who has therefore to establish that Maneklal the donor of the gift, had a right to make the gift. He would have such an authority only if the property was his self-acquired property. It is therefore for the plaintiff to prove that the suit house was the self-acquired property of Maneklal.

* * * * *

* * * * *

12. We therefore hold that the plaintiff has succeeded in proving her title to the suit property. The burden was on the plaintiff to prove her case of title by gift to the suit property and to prove that that property was self-acquired property of Maneklal the donor, and she has succeeded in discharging this burden.

* * * * *

* * * * *