
(1983) 03 KAR CK 0021
In the Karnataka High Court
Case No : RSA 492/75

Byamavva

APPELLANT

Vs

Venkappa and Another

RESPONDENT

Date of Decision : 29-03-1983

Acts Referred:

Contract Act, 1872 — Section 16

Citation : (1983) 2 KarLJ 387

Hon'ble Judges : Q. N. Sabhahit, J

Judgement

1. This appeal by the plaintiff is directed against the judgment and decree dated 5-3-1975 passed by the Addl. Civil Judge, Hubli in RA No. 121/71 on his file, allowing the appeal on reversing the judgment and decree dt. 2-12-1970, passed by the Prl. Munsiff, Hubli, in LC Suit No. 241/67, on his file, decreeing the suit of the plaintiff as prayed for.

2. One Sannatammappa was the owner of the suit land. He died leaving behind him his widow the present plaintiff-appellant and thereafter the plaintiff started cultivating the land through hired labourers. Sometime thereafter one Hanumanthappa Gori started claiming that he was a tenant of the suit land and he got his name entered in the record of rights". Disputes arose between the plaintiff and the said Hanumanthappa. It was then that the first defendant and one. Basappa assured the plaintiff that they would help her in getting possession of the suit land back from Hanumanthappa and in that connection defendant No. 1 represented that the plaintiff should execute a document to enable him to help her. Accordingly, she executed a document. Subsequently, she got removed the obstruction from Hanumanthappa and continued in possession and enjoyment of the suit land. She even mortgaged the suit property in favour of one Maruthi Yadav under Ext. P 1 on 14-6-1965. The mortgage deed was attested by the first defendant and when the first defendant and another person who claimed to be a tenant under him, namely the second defendant started obstructing possession of the mortgagee, he instituted a suit at OS No. 110/67 and obtained a judgment for permanent injunction against them as per Ext. P 10. Thereafter, she received

notice as per Ext. P 13 on 18 10-1966 from the talati for the entry of the name of the first defendant as the owner of the suit land. That set her on enquiry and she came to know that defendant 1 had obtained a gift deed from her. She never intended to execute a gift deed. Hence, the alleged gift deed if at all, was nominal. So, she instituted a suit for declaration that the alleged gift deed was nominal and for declaration of title of the suit land and for injunction against defendants.

3. The suit was resisted by the defendants by filing their written statement. They contended that the plaintiff executed a gift deed Ext. P 1 on 30-5 1960 fully knowing the contents of the deed. According to them, it was meant to be acted upon and in fact defendant 1 had leased the property in favour of defendant 2. Hence, they prayed that the suit should be dismissed.

4. The trial Court raised the following issues as arising from the pleadings: x x

5. The trial Court, appreciating the evidence on record, held that the alleged gift deed was merely nominal and was never meant to be acted upon and in that view the trial Court held that the suit was in time and decreed the suit of the plaintiff as prayed for. Aggrieved by the said judgment and decree, defendant 1 went up in appeal before the learned Civil Judge, Hubli, in RA No. 121/71 on his file and the learned Civil Judge who heard the appeal, re assessing the evidence on record held that the gift deed Ext. P 1 was executed legally and validly and in that view he held that the plaintiff had no right, title or interest in the suit property, she had not even possession of the suit land. Hence, he allowed the appeal, set aside the judgment and decree of the trial Court and dismissed the suit of the plaintiff. Aggrieved by the said judgment and decree, the plaintiff has instituted the above second appeal before this Court.

6. The learned Advocate appearing for the appellant strenuously urged before me that the Court below was not justified in thinking that the gift deed was executed by the plaintiff fully knowing its contents and of her free will in favour of defendant 1. He submitted that the matter was fully discussed by the trial Court and the first appellate Court failed to consider the unique perspective of the case inasmuch as the first appellate Court totally ignored the fiduciary relationship between the plaintiff and defendant 1. The first defendant was admittedly a paramour of the plaintiff, plaintiff being a young widow. In that view he submitted that the trial Court was perfectly justified in holding that the burden of proving that the gift was executed out of free will and volition by the plaintiff was on the first defendant who was in a position to dominate the will of the plaintiff. Since the first appellate Court completely lost sight of it, he submitted that the judgment and decree of the first appellate Court could not be sustained.

7. As against that, the learned Advocate appearing for the contending respondent-defendant 1 argued supporting the judgment and decree of the first appellate Court.

8. The sole point therefore, that arises for my consideration in this appeal is:

Whether the first appellate Court was justified in ignoring the peculiar relationship of the plaintiff and defendant 1 and circumstances under which the alleged gift deed was executed?

9. In this connection it is necessary to recall the facts proved and admitted in the case. The plaintiff, Byamavva, lost her husband Sannatammappa when she was about 20 years of age. Even according to the learned Civil Judge she was staying in Havanur. She was a helpless young widow. It was in that context that the first defendant started obliging her by helping her in the matter of cultivation and further helped her when disputes arose between her and Hanumanthappa in the matter of cultivation of the land. Probably such acquaintance developed into friendship which culminated in intimacy and the first defendant in his evidence clearly admitted that after the death of her husband he developed intimacy with the plaintiff and that she was living as his mistress. He further admitted in his evidence that he had influence over her. It is in this background that the alleged gift came into existence and it is necessary to recall the law in the matter of execution of a deed of gift in such circumstances. The High Court of Bombay had on an occasion to consider a similar question by a Division Bench in the case *Shivgangawwa v. Basangouda Govindgouda*, AIR 1938 Bom. 304. In that case also a young widow who inherited her brother's property had no relative to look after her and there was thus none who could give her disinterested advice. Her husband's brother came and lived with her appropriating her income. The widow quarrelled with him and during the quarrel she was thrown out of her property. Through the advice and assistance of an influential watandar patil, she recovered her property back. The said patil lived with the widow in a state of immorality and having obtained from the widow a gift of all her property drove her away. The question that came up for consideration was whether the gift was voluntary and was executed out of free will. Considering the background and perspective of the case, their Lordships held that:

"In a Court of equity, when a person obtains any benefit from another, whether under a contract or as a gift, by exerting his influence which, in the opinion of the Court, prevents the grantor from exercising an independent judgment in the matter in question, the latter can set aside the contract or revoke the gift. The Court of equity then imposes upon the grantee the burden, if he wishes to maintain the contract or gift, of proving that in fact he exerted no influence for the purpose of obtaining it. This rule of equity is not restricted to cases where strictly or technically fiduciary relationship is established. The rule has been extended to cases where the possibility of exercising influence exists from confidence created or established by the relation between the donor and donee. The application of the rule of presumption must depend not merely upon the circumstances attending the transaction but upon the relationship itself. The relation of paramour and mistress may be included in such cases if the party obtaining the benefit is in a position to dominate and influence the will of the other."

10. As stated above, defendant 1 himself has admitted in his deposition that he was not only the paramour of the plaintiff, a young widow, but that he was also in a position to dominate and influence her will. Therefore, the facts of the present case fall within the purview of the decision of the Bombay High Court and the burden of proving that the alleged gift was executed by the plaintiff by her free will and volition would be on the defendant and in such cases it would be incumbent on the defendant to adduce evidence of the attestors or of any other persons concerned, to satisfy the Court that he did not exert his influence over the plaintiff in getting the gift executed.

11. A Division Bench of the Tranvancore-Cochin High Court in the case *Janaki Amma v. Parameswaran Nair*, AIR 1954 TC 407, has broadly categorised the cases of setting aside gifts on the ground of undue influence into two classes. The Court has observed thus:

"The cases in which the Court enables the donor to set aside a voluntary gift on the ground of undue influence may be divided into two classes; first where the Court has been satisfied that the gift was the result of influence expressly used by the donee for the purpose; secondly, where the relations between the donor and the donee have at or shortly before the execution of the gift been such as to raise a presumption that the donee had influence over the donor. The first class of cases may be considered as depending on the principle that no one shall be allowed to retain the benefit arising from his own fraud or wrongful act. In the second class of cases, the Court interferes not on the ground that any wrongful act has in fact been committed by the donee, but on the ground of public policy, and to prevent the relation which existed between the parties and the influence arising therefrom being abused."

The High Court has further observed:

"Where a gift is challenged on the ground of undue influence, it is necessary for the donee to prove that the gift was the result of the free exercise of independent will. The most obvious way to prove this is by establishing that the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent and qualified person so completely as to satisfy the Court that the donor was acting independently of any influence from the donee and with the full appreciation of what he was doing."

12. Considering from that point of view, it is obvious that the trial Court was perfectly justified in coming to the conclusion that the first defendant failed to adduce any evidence to satisfy the Court that he did not exert any influence over the plaintiff in abusing the confidence that the plaintiff reposed in him in the peculiar relationship of paramour and mistress existing between the parties, especially so, when the first defendant admitted in his deposition that he had influence over the plaintiff and that he could influence her will.

13. The first appellate Court has totally ignored this aspect. At one stage in the judgment the first appellate Court observed in para 14 of the judgment thus:

"So, I do not wish to discuss these decisions at this stage."

But the fact remains that at no stage of the judgment the first appellate Court discussed the decisions cited, with the result that it entirely lost perspective of the case and its unique feature as brought out in the evidence that the plaintiff was the mistress of the first defendant who was her paramour. Obviously the Court did not appreciate the peculiar relationship of the parties and the probability of the first defendant misusing the confidence that was reposed in him by the plaintiff. It is because of that reason manifestly that the first appellate Court jumped to the conclusion that the execution of the gift deed was proved as legal and valid. I am unable to bring myself to agree with such a finding by the first appellate Court arrived at without appreciating the facts of the case in their proper perspective and without considering the admission made by the first defendant in his deposition. I am satisfied that the trial Court has gone into this matter in the proper perspective and has arrived at a proper conclusion.

14. There are other reasons also why I am persuaded to agree with the finding of the trial Court in preference to the decision arrived at by the first appellate Court. The 1st appellate Court has not properly appreciated the subsequent conduct of the parties. It is true that it is not necessary under the TP Act that possession of the property gifted should be handed over to the donee all at once as under the Muslim Law. But the fact remains that since the gift is registered, the ownership of the property vests with the donee and it would no longer be vested in the donor. It is in this context that we have to appreciate the fact that under Ext. P. 11 the present plaintiff after the alleged gift deed Ext.P 1 dt. 30-5-1960, mortgaged the suit property with possession in favour of Maruti Yadav on 14-6-1965. This document is attested by the first defendant. The first appellate Court strangely thinks that it has no significance whatsoever. If the ownership of the property vested in the first defendant as per Ext, P 1 the gift deed, it is unthinkable that plaintiff could mortgage the property in favour of Maruthi Yadav. It is that which is commented upon by the trial Court and the significance of that is completely lost by the first appellate Court. The conduct of the first defendant is not consistent with the fact that the suit property was gifted in his favour under Est. P-1 by the plaintiff and that the parties intended the gift to be real. The fact that the property was enjoyed by the plaintiff even after the alleged gift as her own and she exercised acts of ownership would clearly establish the case of the plaintiff that the alleged gift was merely nominal and that it was never meant to be acted upon.

15. Similarly, after the mortgage, Maruti Yadav instituted a suit at OS No. 110/67 against the present defendants on the ground that they started disturbing his possession. The suit was for permanent injunction. After contest, the suit was decreed against present defendants 1 and 2. They never went up in appeal. It has become final against them. If defendant 1 was really the true owner of the property by gift nothing was easier for him than to resist the suit for injunction on that ground. Injunction cannot issue against the true owner. The first

appellate Court has ignored that fact also. In the circumstances, therefore, I am constrained to hold that the trial Court was fully justified in coming to the conclusion that the alleged gift was merely nominal and fictitious and never meant to be acted upon and as such the plaintiff continued to be the owner of the suit property. The first appellate Court without considering the facts on record, without appreciating the evidence in its proper perspective and without applying its mind properly, has set aside the judgment and decree of the trial Court and it is clearly illegal and erroneous.

16. It is true that the plaintiff was not in actual possession of the suit land on the date of the suit, because, the property was admittedly mortgaged in favour of Maruti Yadav in 1965 for a period of 10 years. That being so, the plaintiff, was not entitled for injunction. Since I have held that Ext. P-1 is nominal and fictitious there is no question of setting aside such a document. It has to be merely declared so and the question of limitation does not arise for giving such a declaration. Therefore, the trial Court was perfectly justified in holding that the suit was not barred by time.

17. In the result, therefore, the appeal is allowed. The judgment and decree of the first appellate Court are set aside and the judgment and decree of the trial Court are partly modified. The plaintiff's suit for declaration that she is the owner of the suit property is hereby allowed. Her prayer for injunction, however, is rejected since she was not in actual possession of the suit property on the date of the suit.

18. There shall be no order as to costs of this appeal.