
(2009) 02 CHH CK 0008
In the Chhattisgarh High Court

Chhotelal Kewat

APPELLANT

Vs

Rajmati Kewat (Smt.)

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

Citation : AIR 2009 Chh 43 : (2009) 2 CGLJ 109 : (2009) 2 MPHT 58

Hon'ble Judges : D.R. Deshmukh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.R. Deshmukh, J.—The appellant/defendant is aggrieved by the judgment and decree dated 3-4-2002 passed in Civil Appeal No. 15-A/2000 by the Vth Additional District Judge, Bilaspur reversing the judgment and decree dated 31-7-2000 passed in Civil Suit No. 149-A/1998 by the VIth Civil Judge Class II, Bilaspur.

2. The respondent/plaintiff instituted Civil Suit No. 149-A/1998 for declaration of title over land Khasra No. 237/2 area 1.00 acre situated in Village Bodri, Chakarbhata, Patwari Halka No. 1, Revenue Circle and Tehsil Bilha, District Bilaspur on the basis of a Will executed by Shriram on 18-1-1986 in her favour.

3. It is not in dispute that Shriram is the brother of Banduram, i.e., the husband of the respondent/plaintiff and the appellant/defendant is the son of Dhandu, who was also the brother of Shriram. The Trial Court reached a finding that execution of the document (Exh. P-I) dated 18-1-1986 by Shriram in favour of the respondent/plaintiff was established. However, it held that being titled cDIhlukek it was a gift-deed and for non-registration, the document (Exh. P-I) did not confer any valid title over the suit land to the respondent/plaintiff. Being aggrieved, the respondent/plaintiff preferred Civil Appeal No. 15-A/2000. The Lower Appellate Court proceeded on the assumption that the document (Exh. P-I) was a Will and instead of recording a reasoned finding regarding the construction of the document (Exh. P-I) held that execution of the Will (Exh. P-I)

by Shriram in favour of the respondent/plaintiff was proved and, therefore, while reversing the judgment and decree passed by the Trial Court decreed the suit in favour of the respondent/plaintiff.

4. The following substantial questions of law have been framed for determination of this appeal:

(1) Whether after the death of Shriram, the appellant-Chhotelal or the respondent Smt. Rajmati inherited the property by succession; and

(2) Whether Exh. P-I, dated 18-1-1986 is a gift deed or a Will ?

5. Heard Shri Rajeev Shrivastava, learned Counsel for the appellant and Shri G.S. Agrawal, learned Senior Advocate for the respondent at length. Record is perused.

6. The moot question that arises for determination in this appeal is whether the document (Exh. P-I), dated 18-1-1986 is a gift-deed or a Will ? In view of" the concurrent finding recorded by both the Courts below, execution of the document (Exh. P-I), dated 18-1-1986 by Shriram in favour of the respondent/plaintiff is not in question in this appeal. While the Trial Court erroneously construed the document (Exh. P-I) to be a gift-deed on the basis of its title cDhlukek the Lower Appellate Court, without assigning any reasons, proceeded on the assumption that the document (Exh. P-I) was a Will and after elaborately discussing the evidence held that execution of the Will (Exh. P-1) by Shriram was proved and reversed the judgment and decree passed by the Trial Court.

7. In the above circumstances, I shall now proceed to construe the document (Exh. P-I). The document (Exh. P-I), dated 18-1-1986 is as under:

eu ds esa Jhjke oYn frgkjh lk% pdkj HkkBk r% oks ftyk fcykliqj dk fuoklh gwa tks fd vius [kkrs dh tehu ftldk uacj jdck uhps ntZ gS ml tehu dks jkterh ifr cUnwjke dsoV lk% gjnh dyk r% oks ftyk fcykliqj okys ds ikl cDhlukek bLVke fy[k fn;k tc rd eS ftUnk jgwaxk rc rd esjk ijolh djsxk vkSj esjs ejus dk Hkh fdjh;k dje djsxk esjs ej tkus ds ckn esjs gd okys tehu dk ekyhd jterh ckbZ jgsxh blfy, blfy, ;g cDhlukek bLVke nks xokg ds lkeus fy[k fn;k fd ljdkj esa lun jgs oDr t:jh ij dke vkosA

xokg cdye jketh ;kno iap 1- ve:nkl rk% 18@1@86 2- thjk[kku [kljk ua- jdck 237@2 100&yxku vxawBk fu"kk u l x fJjke dsoV

8. The principles for construing whether a document is a Will or a gift were succinctly elaborated in Ponnuchami Servai v. Balasubramanian and Ors. AIR 1982 Mad 281, as under:

6. The question whether a particular document is a testamentary or a non-testamentary instrument has been gone into in several cases. It is enough to mention two of the latest Bench decisions, namely, (1) Commr. of Gift Tax Madras v. C. Thiruvengkata Mudaliar ILR (1977) Mad 53 : 1977 Tax LR 1187 and (2) Ramaswami Naidu Vs. M.S. Velappan and Others, . Though the second

decision does not refer to the first, to which I was a party, still the principles enunciated in both the decisions are not materially different. Normally speaking, every document has to be construed with reference to the language it contained and therefore a decision construing one document cannot be an authority for construing another document except to the extent that the said decision may lay down certain principles or guidelines. The principles enunciated in this class of cases is that a testamentary bequest is revocable as the interest contemplated therein is intended to pass only after the lifetime of the testator, While a settlement or a gift which comes into operation immediately is irrevocable. Even if a Will contains a clause that it is not revocable, the law makes it revocable whereas in a gift or settlement if there is a clause that the settler or donor can revoke it, still it will remain irrevocable under the law, because the donee obtains his interest in the property on the execution of the document itself. Consequently, whether a particular document contains a provision as to whether it is revocable or irrevocable is not decisive of the question whether it is a Will or a gift. Similarly, the caption or the nomenclature given by the parties to the transaction is again not decisive of the question as to whether it is a Will or a gift. If a particular document provides for immediate transfer of the interest from the original owner to somebody else, notwithstanding the fact that the parties called it a Will, it would operate only as a gift. Similarly, if a document contains provisions which showed that the disposition would come into existence only on the death of the executant of the document, even if the parties call it a settlement, it would be only a Will. The fact of registration alone would not render the document a settlement if it, in other respects, is a Will. Thus, the real and the only reliable test for the purpose of finding out whether the document constitutes a Will or a gift is to examine the nature of the disposition under the document to see whether it had transferred any interest in praesenti in favour of the settlee or whether it intended transfer of interest in favour of the beneficiary only on the death of the executant.

9. Bearing the above principles in mind, a perusal of the document (Exh. P-I), dated 18-1-1986 leaves no room for any doubt that the document (Exh. P-I) constitutes a Will because the nature of the disposition under the document is such that it did not transfer any interest in praesenti in favour of the settlee, but it intended to transfer interest in favour of the beneficiary only on the death of the executant. In this view of the matter, the document (Exh. P-1), dated 18-1-1986 is, in sum and substance, a Will and not a gift-deed. Substantial question of law No. (2) is answered accordingly.

10. In view of the above, substantial question of law No. (1) would not arise for determination.

11. In the result, the appeal fails and is accordingly dismissed. In the facts and circumstances, parties shall bear their own costs.

12. A decree be drawn accordingly.