
(2006) 11 GAU CK 0030
In the Gauhati High Court

Debananda Choubey

APPELLANT

Vs

Narayan Bigraha and Another

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Transfer of Property Act, 1882 — Section 128

Citation : (2007) 1 GLT 720

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Sarma, J.—The Title suit No. 3/1987 filed by the respondent having (Sic.) dismissed by the learned Assistant District Judge No. 2, Cachar, Silchar, was challenged in TA No. 6 of 1995 and the learned Appellate Court having allowed the appeal decreed the suit vide judgment and order dated 25.4.1995, defendant has filed this Second Appeal.

2. Heard Mr. N. Choudhury, the learned Counsel, for the defendant/appellant and Mr. M. Singh, the learned Counsel for the plaintiff/respondent.

3. Although the appeal was admitted to be heard on as many as 6(six) substantial questions of law as per order dated 23.8.98, both the learned Counsels have agreed that intact only one substantial question of law which emerges in this appeal which would suffice for the disposal of this appeal, as framed below:

1. Whether the learned court below was correct in law in decreeing the suit of plaintiff on the basis of Exb-1 i.e. Gift Deed dated 7.5.57 ?

4. From the pleadings of the parties, the story that arises pertaining to the dispute may be stated as follows:

Late Mahendrajit Choubey and Haribardhan Choubey (hereinafter referred to as Choubey brothers) were the original owners of the suit land measuring 23 bigha,

7 katha and 1 chatak under the 2nd R.S. Patta No. 12 covered by dag Nos. 80, 81, 82, 83, 84, 85, 86, 92, 130, 85/435 and 85/436. The Choubey brothers maintained a private deity named as "Sri Narayan Bigraha" to perform their personal religious rights. Sri Ambika Choubey, son of Mahendrajit Choubey was appointed as Shebait of the said Brigraha. The Choubey brothers executed a registered gift deed being No. 4856 dated 3.5.57 in favour of Sri Narayan Bigraha. The Choubey brothers executed a registered gift deed being No. 4856 dated 3.5.1957 in favour of "Sri Narayan Bigraha" hereinafter referred to as the "Bigraha", and possession was delivered in favour of the deity through its Shebait. Shebait Ambika had been managing the suit land on behalf of the Bigraha by performing regular puja and other religious ceremonies. The land so gifted by the Choubey brothers, however, has not been mutated in the name of the deity. Debananda Choubey and Smti. Balaraji Choubey, defendant Nos. 1 & 2 respectively laid a claim that they are the legal heirs of late Haribardhan Choubey, one of the original pattadaras of the land, and got their names mutated in respect of the suit land. The name of defendant No. 3 Sanjoy Choubey was mutated on the basis of a gift deed executed by Pandit Mahendrajit Choubey and he also laid claim along with defendant Nos. 1 & 2. Although, after the land was gifted to the Bigraha, the Choubey brothers were having no right, title and possession over the same, the defendants Nos. 1, 2, & 3 got their names mutated claiming rights over the suit land. Hence the plaintiff filed the suit with the prayer for declaration that the Bigraha is the owner of the suit land and has possession over the same. Defendants Nos. 1, 2 contested the suit by filing Written Statement, defendant No. 3 by filing a petition on 20.4.87 admitted the claims of the plaintiff. Usual plea like - that there is no cause of action for the suit; that the suit is not maintainable that the suit is barred by limitation, waiver, estoppel the acquiescence and that the suit has not been properly valued were pleaded in the written statement. The contesting defendants further denied that the suit land was ever dedicated in favour of the Bigraha by executing any gift deed. They further claimed that they have got right, title and interest and also possession over the suit land by virtue of being heirs of the Choubey brothers and prayed for dismissal of the suit.

5. The learned trial court at the conclusion of the trial having dismissed the suit, the plaintiff carried the same into the TA No. 6/95. The learned Additional District Judge, Cachar, the first appellate court, vide judgment and order dated 21.7.98, allowed the appeal and decreed the suit of the plaintiff, which is the subject matter of the present second appeal.

6. In the light of the substantial question so framed for disposal of this appeal, it is now required to be examined how the learned courts below dealt with and decided the matter on the basis of the proved facts in the case. The learned appellate court considered the fact that Exb-"1", i.e. the Gift, deed, dated 7.5.1957 was executed in favour of Narayan Bigraha by the Choubey brothers who were the original owners of the suit land, measuring 23 B, 3 katha 1 chatak containing the part of the suit property. The Exb-"1" which is a certified copy was

admitted into the evidence without any objective (Sic.) as the original certified deed was stated to be lost. The plaintiff took necessary steps for proving the Gift from the record of the Sub-registry which was registered on 7.5.1957. The learned appellate court appreciating the evidence of PW 2 who testified the signature of the donor in the certified copy, on certification of the same with record and stated to have been issued from their office. However, the original book containing the said Gift Deed could not be produced as because the record was not available at that time. On such consideration the learned appellate court accepted said certified copy of the Gift Deed i.e., Exb-1, admitting the same in evidence.

7. The learned appellate court further round that the suit land having been gifted by (sic.) Narayan Bigraha vide Exb-1, subsequent transfer by way of gift to the defendant by Exb-"F" cannot convey or confer any right, title and interest over the suit property covering the earlier Gift deed vide Exb-1. On such consideration, the learned appellate court reversed the judgment of the learned trial court and decreed the suit.

8. Mr. Choudhury, the learned Counsel for the appellant submits the Exb-1, on the face of it is not acceptable, as it is not admissible in evidence. Apart from the fact that the original of the said Gift, deed was never produced, the sequence of events disclosing the facts and circumstances in the said deed did not exist at any point of time. The learned Counsel referring to Exbs - "6A" and "6B" of Annexure-"F" tried to impress that the plaintiff never disclosed the existence of such a Gift deed and even if any such Gift Deed exists, the parties never acted upon it. He further contended that there is no recital in the Gift deed that the gift was accepted on behalf of Bigraha and as such it is an inoperative document without conferring any right upon the donee Bigraha in terms of Section 128 of the Transfer of Property Act. Learned Counsel further submits that in the earlier suit predecessor in interest of both the plaintiff and the defendant joined hands as co-plaintiff for realization of rent from the tenant wherein the competent Civil Court decreed and declared title over an area of 7 bighas of land in their favour.

9. M. Raising the aforesaid contentions it is strenuously submitted that the appellate court reversed the judgment and decree misconceiving the facts arriving at a wrong decision. Mr. Singh the learned Counsel for the respondents on the other hand contends that in-fact that the learned trial court rightly admitted and exhibited Exb-1 gift deed by which the properties, including the suit properties were gifted in favour of Sri Narayan Bigraha, represented by Mohendrajit Choubhey. He further contented that on the face of existence of the said Gift Deed, Exb-1, the defendant are not entitled to raise any claim over the suit properties in their favour and interference with the judgment of the trial court to that effect by the appellate court is well justified.

I have considered the rival submissions made by the learned Counsel for the parties.

10. Regarding the admissibility of the Gift Deed Exb-1, as disclosed above the defendant took all the reasonable steps to prove the same as the original of Exb-"1" is stated to be lost. Admittedly the Exb-"1" is a certified copy issued by the competent authority. In fact Exb-"1" has been duly proved by the official witness, PW 2. That apart, in view of the ratio of the decision of this Court reported in Manindra Kumar Dey and Others Vs. Mahendra Suklabaidya and Others, based on the decision of the Apex Court categorically held that a certified copy of Sale Deed registered under the Registration Act is admissible in evidence. Similar view has also been expressed by this Court in the case of (Md. Saimuddin, Appellant v. Abejuddin Sheikh, Respondent, reported in AIR 1979 Gau 14.

11. I am in agreement with the ratio of the aforesaid decisions and held that Exb-1 which is the certified copy of the original is admissible in evidence and rightly so held by the learned courts below. The circumstances pointed out by Mr. Choudhury that the Gift Deed was not acted upon by the parties at any point of time is not to be accepted in -as- such as, the gift was accepted on behalf of Bigrha and as such it is an inoperative document without conferring any right upon the donee Bigrha in terms of Section 128 of the Transfer of Property Act. Learned Counsel further submits that in the earlier suit predecessor in interest of both the plaintiff and the defendant joined hands as co-plaintiff for realization of rent from the tenant wherein the competent Civil Court decreed and declared title over an area of 7 bighas of land in their favour.

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15. In view of the above discussion, the judgment and decree passed by the learned first appellate court relying on Exb-?1? cannot be said to be illegal, unjust and improper. But there is another aspect of the matter.

Mahendrajit Coubhey was appointed as the Shebait of "Sri Narayan Bigraha", the deity, to whom the suit property was bequeathed. Haribadan Choubhay, the predecessor of the defendant got a joint declaration of having right, title and interest along with Mahendrajit Coubhey, predecessor in interest of the plaintiff, in respect of 7 bighas of land a part of the suit land, which has attained finality. Consequently, the defendant has got the declared title in respect of half of the said area of 7 bigha i.e., over 3 1/2 bigha by virtue of declaration as per Exb-2. Accordingly, the plaintiffs cannot have claim of right over 3 1/2 bigha out of 7 bighas of land which also part of the gifted land vide Exb-?1?.

16. Subject to the aforesaid modification relating to 3 1/2 bigha of land out of the suit land, the judgment and decree passed by the learned appellate court stands confirmed. The appeal is allowed only in respect of 3 1/2 bighas of the suit land over which the predecessor in interest of the defendant got declaration in the earlier suit vide Exb-2.

17. A. Let a decree be drawn up accordingly. No costs.