(1977) 08 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1594 of 1977

Fateh Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 29-08-1977

Acts Referred:

Contract Act, 1872 — Section 2, 25
Transfer of Property Act, 1882 — Section 122
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 5(2), 5(6)

Citation : (1977) AWC 534

Hon'ble Judges : Amitav Banerji, J

Bench : Single Bench

Advocate : S.S. Tyagi, for the Appellant;

Final Decision : Allowed

Judgement

Amitav Banerji, J.—This writ petition raises an interesting question namely, whether a gift of agricultural land after the 24th day of January 1971 is to be ignored on the ground that no monetary consideration is involved in the transaction. In the proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, as amended, the Prescribed Authority as well as the Appellate Authority declined to take into consideration the transfers made by the Petitioner to his sons after 24th January, 1971. The Prescribed Authority held that the gift deed was not executed in good faith but only for the object of avoiding the consequences of the Act. The Appellate Authority, however, ignored the gift deed on the ground that the gift deed was without consideration and, therefore, did not come within the meaning of the word ''transfer'' as used in the Proviso to Sub-section (6) of Section 5 of the Act. In other words, the Appellate Authority took the view that a gift deed was not a transfer of land within the purview of the Act.

2. Learned Counsel for the Petitioner contended that a gift was a transfer of land and could not be ignored merely because there was no passing of money. It was

contended that the words "adequate consideration" would not merely include monetary consideration but also other considerations like love, affection, moral or spiritual benefits. His further contention was that in view of explanation I of the sub-section the transfer of land included any admission, acknowledgment, relinquishment or declaration in favour of a person made in any deed or instrument, all of which could be made without the passing of any monetary consideration. Learned Counsel also relied on two decisions of the High Courts of Patna and Madras. In the case of Debi Saran Koiri and Another Vs. Nandalal Chaubey and Others, the Division Bench held that the word ''consideration'' used in Section 122 of the Transfer of Property Act meant valuable consideration and not consideration in the shape of conferring spritual benefit to the donor. "Consideration contemplated by Section 122 must be valuable consideration, that is, consideration either of money or of money''s worth". In Kulasekaraperumal Vs. Pathakutty Thalevanar and Others, a learned Single Judge of the Madras High Court had held that to sustain a contract it has always been understood that consideration meant something which was of some value in the eye of the law. It is further held, "The word ''consideration'' used in Section 122 of the Transfer of Property Act is used in the same sense as the term is defined in the Indian Contract Act." Learned Counsel contended that the provisions of Section 122 of the Transfer of Property Act indicated that a gift is a transfer without consideration, that is, consideration which is weighed in money. It was contended that a gift involved consideration other than money and thus the word ''consideration'' used in Section 5(6) Proviso, was of wider import than contemplated in Section 122 of the Transfer of Property Act.

3. Learned Standing counsel supported the view taken by the Appellate Authority and contended that the gift deed has to be excluded from the purview of Section 5(6) of the Act for it was without consideration as understood u/s 122 of the Transfer of Property Act. He relied on the dictionary meaning of the term to say that the word ''consideration'' necessarily involved a reward or compensation. Lastly, he contended that under Explanation II to Sub-section (6) the burden lay on the Petitioner to prove that the transaction was done in good faith and for adequate consideration. The Prescribed Authority gave a finding of want of good faith in the transaction. The order of the Appellate Authority was one of affirmation. Consequently, the writ petition was liable to be dismissed on this ground alone.

4. Having considered the respective contentions I must at the very out set indicate that I am unable to accept the contention of the learned Standing Counsel that the view taken by the Appellate Authority is correct. In my opinion, the order of the Appellate Authority is manifestly erroneous in law and must be set aside. The reasons are indicated below.

5. Section 5(6) reads as follows:

Section 5(6). In determining the ceiling area applicable to a tenure holder, any transfer of land made after the twenty fourth day of January 1971 which but for the transfer would have been declared surplus land under this Act, shall be ignored and taken into account:

Provided that nothing in this sub-section shall apply to:

(a) a transfer in favour of any person (including Government) referred to in Sub-section (2).

(b) a transfer proved to the satisfaction of the Prescribed Authority to be in good faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for the immediate or deferred benefit of the tenure holders or other members of his family.

Explanation I. For the purposes of this sub-section, the expression ''transfer of land made after the twenty fourth day of January 1971'' includes:

(a) a declaration of a person as a co-tenure-holder made after the twenty fourth day of January 1971, in a suit or proceeding irrespective of whether such suit or proceeding was pending on or was instituted after the twenty fourth day of January 1971)

(b) any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner.

Explanation II. The burden of proving that a case falls within Clause (b) of the proviso shall rest with the party claiming its benefit.

The above section provides that the transfer of land made after the 24th day of January 1971 is to be ignored and not taken into account except where the transfer has been made in favour of person mentioned in Section 5(6) or a transfer which has been made in good faith, for adequate consideration, and under an irrevocable instrument not being a benami transaction or for the immediate or deferred benefit of the tenure holders or other members of his family. The question, therefore, is that the Prescribed Authority is to be satisfied that the transfer made after the 24th day of January, 1971 fulfils the three requirements of Clause (b) of the proviso. If the Prescribed Authority came to the conclusion that there was want of good faith or want of adequate consideration or the transaction was benami transaction then in that event the transfer was to be ignored. This is however subject to an appeal.

6. The appellate authority has held that the transfer in the present case, namely, the gift deed has to be ignored for the reason that it was without consideration. For the same reason he also held that it was not in good faith. Gift is defined in Section 122 of the Transfer of Property Act. It is a transfer of movable or immovable property made voluntarily and without consideration by a person to another and accepted by the latter. In the present case the gift is of immovable property, namely, agricultural land and is without consideration, that is without monetary consideration. It would not be a gift if there was monetary

consideration. The word ''consideration'' in Section 122 of the Transfer of Property Act means monetary consideration or consideration which could be weighed in money. The consideration as contemplated u/s 122 of the Transfer of Property Act and Section 2(d) of the Contract Act are not involved in a gift. Is there any consideration which goes into the making of the gift deed? There is a consideration in every transaction be it a gift or relinquishment. All of them may not be valued in terms of money''s worth but may be in respect of certain other terms namely, love and affection, nearness of the parties, spiritual or moral benefit etc. These considerations are relevant and material ones in the matter of a gift or relinquishment. In the Patna case referred to above it was observed :

There must be some sort of consideration in every gift, for instance, a consideration of an expectation of spiritual or moral benefit or consideration of love and affection. Such considerations are not considerations contemplated in Section 122.

Section 25 of the Contract Act provides: An agreement made without consideration is void, unless:

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other.

The above provision indicates that natural love and affection is a relevant consideration between near relations. Consequently, the consideration involved in a gift would not come within the meaning of the word "consideration" as defined in Section 2(d) of the Contract Act.

7. The question, therefore, is: What is the correct meaning of the words "adequate consideration" as used in Clause (b) of the proviso to Sub-section (6) of Section 5 of the Act? "Adequate" only qualifies the word ''consideration'' about the quantity or quality thereof. I am not prepared to give the words "adequate consideration" a narrow and restricted meaning, for the reason that it is not called for. A gift by a father to his sons is not prohibited under the Act. It is not treated to be null and void under the Act if executed after the 24th day of January 1971. It remains. The only question is whether it is to be taken into consideration or not. A perusal of the Explanation I of Sub-section (6) makes it clear that the expression "transfer of land made after the twenty-fourth day of January, 1971" includes a declaration of a person as co-tenure-holder after the 24th day of January, 1971 in a suit or proceedings and any admission, acknowledgment, relinquishment or declaration in favour of a person to the like effect, made in any other deed or instrument or in any other manner. The declaration thus made in a suit or proceeding may not be based on a consideration as contemplated u/s 122 of the Act. Similarly, any admission, acknowledgment, relinquishment or declaration made in an instrument or deed may not be made in consideration of money. A declaration of a person as a co-tenureholder in a suit or proceeding may or may not be based on the passing of

consideration. It may be based on a gift, or relinquishment, or admission or acknowledgment and the like, none of which involve the passing of monetary consideration. These actions cannot be restricted only to those cases where there is a monetary consideration. Thus the Act contemplates acts which do not involve passing of consideration as understood in Section 2(d) of the Contract Act. Explanation I of Section 5(6) of the Act makes it clear that a transfer of land after the 24th day of January 1971 may include such transactions evidenced by a deed or declaration of a court of law which do not involve a payment in money''s worth or passing of monetary consideration. The Supreme Court in the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Juggilal Kamalapat, has equated a deed of relinquishment with a deed of gift. Relinquishment does not involve any question of compensation or payment of reward. Consequently, the same rule of interpretation is to be applied in respect of a deed of gift. There is no dispute that a gift is a transfer. I am, therefore, of the opinion that a gift of land has also to be considered in the same way as any other transfer made after the 24th day of January 1971.

8. in the Law Lexicon by Venkataramaiya, there is a reference to an American decision which defines the word ''consideration''. It reads:

Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor. Hence doing only of what one is already under obligation to do is not "consideration" for a contract.

9. This definition no where indicates that there must be a monetary compensation or the payment in money''s worth to constitute a "consideration."

In the Webster''s Third New International Dictionary the word "consideration" has been defined in eight different ways. It will be relevant to quote the third, fifth, seventh and eighth meaning differently.

3. Something that is considered as a ground of opinion or action: motive, reason (weighing severals): a taking into account.

5. A result of reflecting or ponderings: mature opinion.

7. Esteem, regard, estimation.

8. Something given as recompense: as payment, reward, something that is legally regarded as the equivalent or return given or suffered by one for the act or promise of another: an act or forbearance or the promise of it done or given by one party in return for the act or promise of another.

10. It is, therefore, apparent from the above that the meaning of the word "consideration" is not restricted only to the payment or reward or return in money. To take such a narrow view of the matter would be to restrict the meaning given even in Explanation I to Sub-section (6). There are other

considerations apart from monetary recompense in a gift. In my opinion, the meaning of the word "consideration" cannot be restricted to the meaning given in Section 122 of the Transfer of Property Act.

11. In view of the above, the order of the Appellate Authority must be struck down and quashed. It will, however, be necessary that the case be sent back to the Appellate Authority to consider whether there was good faith involved in the transfer or not. The Prescribed Authority had given a finding but the Appellate Authority had not given any finding on that point and its order does not show that the point was considered. Every tenure holder aggrieved by the order of the Prescribed Authority is entitled to an appeal on questions of fact before the Appellate Authority. It is not the function of this Court in writ jurisdiction to appraise evidence. Since the Appellate Authority has not applied its mind to direction that it should consider the appeal afresh, keeping in view the observations made above.

12. In the result, therefore, the writ petition succeeds and is allowed. The impugned order is set aside and quashed and a direction is issued that the appeal shall be heard expeditiously and in accordance with law, keeping in view the observations made above. However, in the circumstances of the case I make no order as to costs.

