(2012) 04 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5634 of 2012

Gargagaboyina Radhakrishnad and another — APPELLANT

Vs

The District Registrar and others — RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Citation : (2012) 5 ALD 228

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Rajasekhar, for the Appellant;

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioners and respondent No. 4 are brothers. The 4th respondent owned premises bearing No. 14-2-12, comprising of ground and first floors, at Anakapalle, Visakhapatnam District. He executed a gift deed dated 05.01.2005 in favour of the 1st petitioner in respect of first floor and a gift deed dated 23.06.2005 in favour of the 2nd petitioner in respect of ground floor. The petitioners state that possession of the property was delivered to them and that ever since then, they are in enjoyment of the same. The 4th respondent executed two deeds of cancellation on 18.12.2010 cancelling the gift deeds referred to above. They were registered by the Sub-Registrar, Anakapalle, 2nd respondent herein. The petitioners challenge the action of the 2nd respondent in registering the said deeds of cancellation. They contend that the absolute title in respect of the property stood transferred in their favour with the execution of gift deeds and acceptance thereof and that the 2nd respondent ought not to have registered the deeds of cancellation, unless they are executed with the participation of all the parties to the transaction.

2. No counter affidavits are filed by the respondents.

3. Sri P.Rajasekhar, learned counsel for the petitioners submits that the registration of the documents by the 2nd respondent is contrary to Rule 26 (k) of

the A.P. Rules framed under the Registration Act (for short ''the Rules'') and the judgment of the Supreme Court in Civil Appeal No. 317 of 2006. He submits that once the transfer of immovable property by way of gift, is complete, it can be cancelled only with the participation of both the parties.

4. Learned Government Pleader for Revenue appearing for respondents 1 and 2 and Sri M.Sree Rama Rao, learned counsel for the 4th respondent on the other hand submit that the petitioners have to approach the Civil Court for necessary declaratory relief. It is urged on behalf of the 4th respondent that the gifts were conditional and since the petitioners violated the condition to maintain the 4th respondent, he has cancelled gift deeds.

5. Sri N.Ranga Reddy, learned counsel for the 3rd respondent submits that the Municipal Corporation has no role to pay in the matter.

6. When a gift deed is executed, it is almost a unilateral transaction. It is devoid of any consideration and the donor chooses to transfer his title in favour of the donee out of love and affection. The participation of the donee is not at all contemplated, till the deed is executed. The donor is entitled to cancel the gift deed, as long as the gift is not accepted, by the donee. Law does not stipulate any uniform pattern of acceptance of gift. It can be in the form of accepting possession of the property soon after the execution of the gift deed, or acknowledgment, by the donor, of the existing possession of the donee. Once the gift is accepted, the right of the donor to unilaterally cancel the gift deed ceases to exist.

7. The 4th respondent does not dispute the fact that he executed gift deeds in favour of the petitioners and that they are in possession of the property that was gifted to them. Whether such possession was delivered prior or subsequent to the execution of the gift deeds, it became absolute with the acceptance of the gifts. The gift deeds could have been cancelled, only with the consent or participation of the donees i.e., the petitioners. In case, the 4th respondent felt that there exist circumstances warranting cancellation of the documents, he could have filed suits for cancellation of the gift deeds, in a Court of law.

8. The principle of estoppel gets attracted in such matters. Though the accrual of the property to a donee may be without consideration, he alters his position, may not be to his detriment, with the acceptance of gift from the donor. Thereafter, he takes several steps for effective enjoyment of the property, as desired by the donor. This may sometimes, require him to incur expenditure or to devote his attention and endeavour, which he could have spared for other similar activities. For instance, a donee may construct a house on the plot of land gifted to him by the donor. This can certainly be treated as instance of change of position, on the representation made by the donor. This however is not to suggest that a deed of gift cannot be cancelled at all. Depending upon the circumstances, the cancellation can be made with the participation and consent of the donee, or by filing a suit.

9. Further, the Government of A.P. framed Rule 26(k) of the Rules, which prohibits the registration of the documents through which the previous transactions are sought to be cancelled unilaterally. Recently, the Supreme Court in Civil Appeal No. 317 of 2007 held that cancellation of a sale deed or other deeds of transfer without participation of all the parties to it cannot be sustained in law.

10. Therefore, the writ petition is allowed. It is however made clear that it shall be open to the 4th respondent to avail the remedies in accordance with law. The miscellaneous petition filed in this writ petition is also stands disposed of. There shall be no order as to costs.