
(1986) 11 MP CK 0020
In the Madhya Pradesh High Court
Case No : F.A. No. 222 of 1981

Kalyani Mitra

APPELLANT

Vs

Hindu Milan Mandir and others

RESPONDENT

Date of Decision : 29-11-1986

Acts Referred:

Transfer of Property Act, 1882 — Section 122

Citation : (1988) MPLJ 284

Hon'ble Judges : G.C. Gupta, J

Bench : Single Bench

Advocate : R.C. Khare with A.K. Pathak, for the Appellant; S. Nagrath, for the Respondent

Final Decision : Allowed

Judgement

G.C. Gupta, J.

This is plaintiffs appeal whose suit for declaration of her title over the suit house and a further declaration that the gift deed dated 22-12-1978 (Ex.C-4) was void and of no legal consequence has been dismissed by the judgment and decree dated 26-10-1981 passed by Shri M.M. Bauri, IV Addl. Judge to the Court of Distt. Judge, Bilaspur in Civil Suit No. 42-A/80.

The suit was originally filed by late Smt. Manorama Dutt who was admittedly the owner of the suit property consisting of a house situated in Tikarapara in Bilaspur. It was alleged that she was the absolute owner of the suit house which was also in her possession. That she was an old lady of about 90 years of age and was, therefore, physically and mentally weak and unable to take any decision by herself. She alleged that on 22-12-1978 when she was alone in her house the original defendant Bholanath Dutt and few others came in the evening and told that the government officials have come to take her signatures on some papers and thereby obtained her thumb impressions on some papers without telling her what they were. She further alleged that she subsequently learnt she

has been made to execute a will in favour of defendant Bholanath and gift away her house to respondent Hindu Milan Mandir. She therefore, appeared before the Registrar and filed an affidavit dated 3-1-1979 saying that she had neither executed the Will nor any gift deed. She by this very document cancelled the Will. A notification in the local newspaper dated 7-1-1979 and in Yugdharma, Raipur on 13-1-1979 was also published. Since the gift deed could not have been cancelled by her, she filed the present suit for cancellation thereof and declaring her own title over the suit property. The respondents filed their joint written statement and asserted that she had executed the gift deed voluntarily and without any pressure. They, therefore, pleaded that the gift having become final, could not be revoked. They also denied all adverse allegations against them and prayed for dismissal of the suit. The learned trial judge, on consideration of oral and documentary evidence on record held that the gift deed was valid and voluntarily executed. The learned judge also held that respondent No. 1 was a legal person and was consequently in a position to accept the gift. It was also held that the gift deed has not only been executed but also implemented. On these findings the suit was dismissed.

It may be noticed that original plaintiff Smt. Manorama died during the pendency of the suit and the present appellant has been substituted in her place as her legal representative by order of the trial court. Defendant Bholanath Dutt died during the pendency of the appeal. On an application filed by the appellant the name of this respondent was deleted from the appeal. That is how the present appeal survives only against original defendants Nos. 1 and 3.

Submission of the learned counsel for the appellant is that late Smt. Manorama Dutt was old and infirm lady and had never intended to gift her property as alleged. Surrounding circumstances, according to the learned counsel would indicate that Smt. Manorama Dutt could not have executed a gift and rendered herself homeless and shelterless. Subsequent conduct of late Smt. Dutt also, according to the learned counsel, supports the aforesaid contention. The manner in which Mrs. Dutt's thumb impressions were taken on papers, when she was literate and usually signed documents, would also create serious doubts about the voluntary nature of the gift. It is also submitted that respondent No. 1 in whose favour the alleged gift deed has been executed, is not a legal person and was therefore, incapable of accepting the gift. The gift according to the learned counsel, is not complete and of no legal consequence whatsoever. Learned counsel for the respondents however submitted that the gift deed satisfies all requirements of Section 122 of the Transfer of Property Act and has been validly accepted by respondent No. 3. Relying on evidence of Bholanath, it was submitted that the gift was voluntary and intentional. Allegations of undue influence and misrepresentation, according to the learned counsel, have no factual basis. On the contrary it is submitted that the present case has been started not by the original Plaintiff Smt. Manorama Dutt but by Dharendra, the son-in-law of present appellant, who somehow wants to be benefited by the litigation. It is, therefore, prayed that the present appeal be dismissed with costs.

A gift, according to accepted meaning of the term, consists of relinquishment of one's own right in the property and the creation of the right of another. The creation of another man's right is completed of his accepting the gift and not otherwise. It is well settled that a gift once completed is binding upon the donor and cannot be revoked by him. *Deokuar vs. Mankuar*, 1894 (17) All 1 21 Indian Appeals held that when a gift is made by a Hindu widow the burden lies upon the donee to show that she made a gift with a full understanding of what she was doing and was aware of her rights. After coming into force of Transfer of Property Act on 1-7-1882 the traditional Hindu law on the point has undergone some changes. Provisions of Section 122 of the said Act apply to all gifts made by Hindus by virtue of Section 129 thereof. Under the circumstances, we will have to refer to those provisions to determine principles which should govern decision of this case. Section 122 of this Act defines a gift as a transfer of certain existing moveable and immoveable property voluntarily and without consideration by the donor and acceptance thereof by or on behalf of the donee. Considering the requirements of a voluntary gift the Supreme Court in *Subhas Chandra Das Mushib Vs. Ganga Prosad Das Mushib and Others*, , held that law as to undue influence is same in case of a gift inter vivos as in case of a contract. In *S. Rathnam Naidu and Another Vs. Kanni Ammal and Others*, , the donor was found to be completely in the hands of the donee and no independent legal advice was available to the donor. The court held that the gift was made under undue influence. In *Smt. Kartari Vs. Kewal Krishan and Others*, , it was held that if the transaction of gift appears to be unconscionable, the burden of proving that the gift was not induced by undue influence lies upon the person who was in a position to dominate the will of the donor. In *Sukhdeo vs. Champadebi*, AIR 1985 Pat. 89, it was held that for proof of undue influence one has to show that the party exercising the influence was in a position to influence the will of the other and that the donee used that position to obtain unfair advantage. The court further held that more than mere influence is undue influence. An influence of coercive nature devoid of willingness, some acts of over reaching is known as undue influence. To establish undue influence there must not only be an atmosphere of suspicion, but definite and clear evidence of the same. Further in *Subhas Chandra's case (supra)*, the Supreme Court held that merely because the parties were nearly related to each other or merely because that the donor was old or of weak character, no presumption of undue influence can arise. It was further held that the court trying a case of undue influence must consider 2 things to start with, namely, (1) are the relations between the donor and the donee such that the donee is in a position to dominate the will of the donor, and (2) has the donee used that position to obtain an unfair advantage over the donor. Upon the determination of these issues a third point emerges, which is that of the onus probandi. If the transaction appears to be unconscionable, then the burden of proving that the contract was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other. The allegations of the parties to the present appeal will have to be examined in the context of aforesaid law.

Yet another facet of the law regarding gift is that the donee must be an ascertained or ascertainable person. In *Shri Ram Kishan Mission and Another Vs. Dogar Singh and Others*, where a gift was made for purposes of a Dharamshala to be named after the donor's deceased husband, it was observed that Section 122 of the Transfer of Property Act could not be attracted as it was not a deed of gift in favour of a living object. Though there appears to be a controversy whether an unregistered society would be a person capable of being the donee, the law is clear that there must be actual acceptance of gift in fact though such acceptance need not be expressed. In *Mahabir Vs. Anjuman Wazifatul Muslimin*, gift to Anjuman was held valid but in an early case *Mathura Kuer Vs. Dharam Samaj*, transfer to Dharam Samaj was held invalid. From the language of the section it appears that the donee may not himself accept the gift which can be accepted by some one else on his behalf, indicating thereby that if the person accepting the gift is a real person and accepts under proper authority, the gift would be completed. In this view of the matter the actual donee may be a person suffering from legal disability such as a minor. In all such cases if a person under disability is properly represented the acceptance of such a representative would meet the basic requirements of this section. Under the circumstances even if it was to be assumed that respondent No. 1 was an unregistered body, if the person accepting the gift on its behalf was otherwise competent to do so and has actually done so, no fault could be found on the basis of its unregistered character. Keeping these legal principles in mind the facts of the case may now be examined.

It was alleged in the plaint that respondent Hindu Milan Mandir is not a registered society (para 10) and hence it was submitted that it was not a legal person and could not have validly accepted the gift (para 24). The respondents' reply to these allegations was in the affirmative (paras 11 and 22). It was however asserted that respondent No. 1 is a legal person as it is a branch of Bharat Sevashram Sangh which is a registered organisation (para 24). In view of this plea it will require examination if the respondent No. 1 was a legal person. That Bharat Sevashram Sangh is a registered society, appears to be clear from documents Ex. D-11 and D-12. That respondent Hindu Milan Mandir has been approved and appointed by the said registered society is also clear from document Ex. D-11. Receipts Exs. D-3 to D-6 further show that this respondent had been paying money from time to time to the registered society. Statement of Shri Jugalkishore (DW 6) would indicate that Hindu Milan Mandir is a branch of Bharat Sevashram Sangh but the aforesaid fact is not corroborated by documentary evidence. Documentary evidence only indicates that Hindu Milan Mandir is affiliated to Bharat Sevashram Sangh and is not its branch. This is also the statement contained in gift deed Ex. C-4. A branch of institution does not change its name nor works as an affiliate. It works as the institution itself. Under the circumstances it is not possible to believe that Hindu Milan Mandir is a branch of Bharat Sevashram Sangh. Further fact that Jugalkishore (DW. 6) is the

President of respondent Hindu Milan Mandir would indicate that it has its own executive committee and works independently as an institution. That was perhaps the reason why in cross examination this witness asserted that Hindu Milan Mandir was a body registered under the Societies Registration Act (para 24). He had however to admit that it was not registered with the Registrar of Societies but was registered with the registered society i.e. Bharat Sevashram Sangh. Bharat Sevashram Sangh because of its registration may be a legal person, but any one registered with such a legal person does not acquire the status of a legal person. The status of a legal person has to be conferred by statute and no provision in any statute has been cited at the Bar to indicate how an association registered with a registered association would also be deemed to be registered, It is therefore not possible to accept the submission that Hindu Milan Mandir even though it was not registered under any statute, was a legal person.

This however is not conclusive of the matter as the gift can be accepted even on behalf of an unregistered body provided the person accepting it is a real person and acts for such an association. Under the circumstances it may be examined if someone has accepted this gift either expressly or impliedly. There is nothing on record to indicate that any one was authorised by the Hindu Milan Mandir to accept this gift on its behalf. There is of course, the evidence of Jugalkishore (DW 6) that a meeting of the executive committee was called to consider the request of Smt. Manorama Dutt about the gift and for meeting expenses (para 16). Unfortunately this witness in his statement does not say whether the executive committee also authorised him to accept the gift on its behalf. Bholanath (PW 4) is the cashier of the institution and has deposed that a meeting dated 17-12-1978 was called to consider the question of acceptance of gift from Smt. Dutt. This witness again does not say if anyone was authorised to accept the gift. The resolution dated 17-12-1978 is also not on record. Then neither Jugalkishore (DW. 6) nor Bholanath (DW 4) state as to who gave the proposal of gift on behalf of Smt. Dutt, nor there is any written proposal in that behalf. From the evidence of Jugalkishore, it appears that Bholanath Dutt (DW 1) was the person who had orally requested Hindu Milan Mandir to accept the gift. Bholanath Dutt as D.W. 1 has himself admitted that he had conveyed the proposal to Hindu Milan Mandir and also Ramkrishna Mission on behalf of Smt. Dutt. Smt. Dutt (PW 1) had denied having authorised this witness to convey such a proposal and had alleged that he had misrepresented about the whole thing. Under the circumstances if Bholanath Dutt was not authorised to convey the proposal of gift, the whole transaction would fail. Except for ipse dixit of Bholanath on this matter there is nothing on record. It is rather surprising that such an important transaction should have been accepted on the oral statement of a person who himself was trying to secure some benefits. It cannot be overlooked that a will was also written in favour of this witness which was cancelled soon thereafter. The will was really a part of the transaction of the gift having been executed at the same time and would indicate the interestedness of Bholanath. Be that as it may the fact

that Bholanath Dutt was the nephew of Late Smt. Dutt and would have otherwise inherited her property, indicates that Bholanath Dutt was in a hurry to get the property for himself. It is doubtful if the lady would have used him to convey the important proposal like the gift. Submission of the learned counsel for the respondents that the lady was under the influence of Dharendra (PW 3) and therefore used Bholanath appears to have no factual base. Bholanath was extensively cross examined but not even single instance was cited to indicate how he used pressure on Smt. Dutt. Such a suggestion was not even given to Smt. Dutt. The only suggestion that was made to her was that she was not contesting the suit herself burnt was Dharendra who was contesting. The suggestion was, however rejected, and the lady asserted that she was the real contestant. Under the circumstance there appears to be no justification for Bholanath to propose acceptance of gift to respondent Hindu Milan Mandir and consequently Hindu Milan Mandir was not justified in passing resolution to incur expenses.

There appears to be some doubt about what was really proposed. From the evidence of Bholanath Dutt (DW 1) it would appear that Mrs. Dutt had expressed her desire to donate her property to Ramkrishna Mission and the witness had met Swami Pranvanand (DW 7) in that connection. Swamiji was conveyed that the lady wanted to give her property on the condition that the institution would maintain her during her life time and that the property would become the property of Ramkrishna Mission after her death. There is nothing to doubt the correctness of statement of Swami Pranvanand and hence it will have to be held that Mrs. Dutt wanted to remain the owner of the property during her life time and be maintained by the donee as long as she lived. This was not the proposal conveyed to the respondent Hindu Milan Mandir. Bholanath (DW. 1) does not say that Smt. Dutt later on changed her mind and agreed to donate her property unconditionally. Considering the fact that the suit house was the only shelter available to her, it appears unlikely that she would prefer to become shelterless. If this was the condition attached to the gift the respondent would have accepted the same either with the condition or not at all. Since the condition was not accepted and there was no proposal for any unconditional gift the whole transaction must fall through.

Then, there is no evidence whatsoever of any one that the gift was accepted. The resolution dated 17-12-1978 is prior to the gift and would not be of any avail. In the absence of resolution itself it is not possible to know its terms. The acceptance however must be only when the gift has been made and not before it. There is nothing whatsoever on record to indicate that that gift was accepted by any one in any manner. It is true that Jugalkishore (DW 6) has asserted subsequently that the gift has been made. His letter Ex. D-9 would show such an assertion but this letter in the context of dispute which arose immediately thereafter, can have no value. Hindu Milan Mandir has an executive committee which alone could have accepted the same. Admittedly the body never passed any resolution accepting gift Ex. C-4 after it was written. Jugalkishore was never

authorised for the purpose and therefore his act would not be the act of acceptance on behalf of respondent No. 1.

The upshot of the aforesaid discussion is that no one accepted the gift Ex. C-4 on behalf of respondent No. 1. Respondent No. 1 itself never accepted it as its executive committee never met and considered the gift deed. The gift deed itself was not given by Smt. Dutt to any one. From the evidence of Jugalkishore (DW. 6) it would appear that the scribe Shri Singh had taken the gift deed and next day Shri Bholanath Chakladhar gave the gift deed to him (para 21), Bholanath Chakladhar (DW 4) however does not say that he handed over the gift deed to Jugalkishore. Shivpujan Singh (DW 2) who is the scribe does not say that he has taken away the gift deed after it was executed by Smt. Dutt. Nor does he say that it was he who gave the gift deed to Jugalkishore. It is therefore clear that there is no acceptable evidence on record to hold how the document came in possession of Jugalkishore. It must consequently be held that there is no evidence of acceptance of gift expressly or impliedly. As a necessary consequence it has to be held that the gift deed Ex. C-4 does not meet the legal requirements of Section 122 of the Transfer of Property Act.

The evidence on record raises sufficient doubt about proper execution of the gift deed. It has already been noted that the lady was about 90 years old and almost infirm. Bholanath (DW 1) was her husband's brother's son and therefore closely related. According to his evidence he was looking after Smt. Dutt. Therefore relation between the two was such that Bholanath Dutt was in a position to influence her. The fact that the gift deed renders her homeless at the ripe age, makes execution of such a deed rather unnatural. Evidence of Swami Pranvanand who was approached for accepting the gift indicates that she had never intended that she should be rendered shelterless. On the contrary Swamiji's evidence expressed her intention to be provided with love, care and affection at that age. Then admittedly the lady used to sign as she was literate. There is no valid explanation as to why she was made to put her thumb impression. Explanation given by Bholanath Dutt (DW 1), Shivpujan Singh (DW 2), Bholanath (DW 4) and Bimlendra Singh (DW 5) that it was dark and the lady was not in a position to sign at so many places, does not appear reasonable. In case Mrs. Dutt was inclined to execute the gift deed as it is sought to be canvassed, she would have willingly signed at as many places as the law required. Then the deed itself was taken away by the Registrar which again is unusual. Even if it was necessary to take it away, there is no reason why it was not returned to the lady. The further fact that Dharendra (DW 3) and the appellant were admittedly looking after her but were kept ignorant about it, indicates that it was done secretly and not openly. Though it was submitted that Dharendra was using undue influence on Mrs. Dutt, it has already been held that there is no evidence on record to prove the same. It also cannot be ignored that neither actual nor symbolic possession of the property was given after the gift deed. All these circumstances coupled with her cancellation of the will and the suit for cancellation of gift make it doubtful if there was voluntary execution of

the gift. The gift as noticed earlier has to be voluntary. The gift which is induced by undue influence or misrepresentation or is obtained under circumstances which indicate that it was not voluntary, cannot be recognized in law.

The upshot of the discussion aforesaid is that the gift deed dated 22-12-1978 (Ex. C-4) was not executed in accordance with law and had therefore no legal effect. The appeal consequently succeeds and is allowed. The impugned judgment and decree are set aside. The declaration as prayed for is granted by holding that late Smt. Manorama Dutt continued to be the owner of the suit house and the gift deed dated 22-12-1978 was illegal and void. The appellant shall be entitled to costs of this appeal. Counsel's fee as per schedule.