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(2020) 08 CHH CK 0056

In the Chhattisgarh High Court

Case No : Second Appeal No.15 Of 2009

Krishi Upaj Mandi, Kawardha — APPELLANT

Vs

Shashi Prabha Devi And Ors — RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

Transfer Of Property act, 1882 — Section 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 122, 123, 126
Madhya Pradesh Land Revenue Code, 1959 — Section 165(6)
Code Of Civil Procedure, 1908 — Section 100

Citation : (2020) 08 CHH CK 0056

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Vinay Pandey, Ashish Shrivastava, Abhishek Sharma, Matin Siddiqui

Final Decision : Allowed

Judgement

@JUDGMENT-JUDGMENT

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellant herein/defendant No.2 are as under:- "1. Whether the first appellate Court is justified in granting decree of declaration of title in favour of the plaintiffs without revocation of registered gift deed dated 28-3- 1979 by registered deed of revocation and / or in accordance with Section 126 of the Transfer of Property act, 1882 by recording a fining which is perverse to the record ?

2. Whether the first appellate Court is justified in reversing the judgment & decree of the trial Court by recording a finding which is perverse to the record ?"

2. The imperative facts required for determination of above-stated substantial questions of law are as under:- [For the sake of convenience, the parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court] (2.1) The suit land bearing Khasra No.147/2 area 1.80 acres

situated at village Sagona, District Kabirdham was earlier held by Thakur Vishwaraj Singh. He being a member of aboriginal tribe with prior approval of the Collector, Rajnandgaon dated 26.3.1979 (Ex.P-2) under Section 165(6) of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter called as 'the Code') gifted the suit property to the State of Madhya Pradesh (Now State of Chhattisgarh) for Mandi purposes of defendant No.2 on 28th March, 1979 (Ex.P-1) and delivered peaceful possession thereof, which was accepted thereafter by the then State of Madhya Pradesh. After death of Thakur Vishwaraj Singh, on 9.5.2006 the plaintiffs being widow, son and daughters of Thakur Vishwaraj Singh filed a suit for declaration of title, possession and for cancellation of gift deed dated 28.3.1979 (Ex.P-1) stating inter-alia that the suit land was gifted by late Shri Thakur Vishwaraj Singh for the purpose of Krishi Upaj Mandi, Kawardha, but thereafter Krishi Upaj Mandi has been constructed and notified on Khasra Nos.34/1, 75/1 and 75/2, total area 20.44 acres and after construction of Krishi Upaj Mandi, Kawardha, it has been notified and therefore, purpose of gift has came to an end and defendant No.2 has violated the terms and conditions of gift deed and as such, the plaintiffs are entitled for such decree as claimed.

(2.2) Resisting the suit, defendant No.1 has filed its written statement. Defendant No.2 has also filed its written statement and denied the averments made in the plaint stating inter-alia that in the gift deed, it has clearly been mentioned that the gifted land will be used only for Mandi purposes, it is reserved for Mandi purpose and it will be used for construction of laboratory, research centre, rest house related to the Krishi Upaj Mandi etc., as such, conditions of gift deed have not been violated by the Krishi Upaj Mandi and the suit deserves to be dismissed.

3. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 16.1.2008, dismissed the suit finding no merit. On appeal being preferred by the plaintiffs, the first appellate Court reversed the judgment & decree of the trial Court and granted decree of declaration of title and possession in favour of the plaintiffs by allowing the appeal. Feeling aggrieved and dissatisfied with the judgment & decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant No.2, in which substantial questions of law have been framed, which have been set-out in the opening paragraph of this judgment for sake of completeness.

4. Mr.Vinay Pandey, learned counsel for the appellant/defendant No.2, would submit that the land gifted to defendants No.1/2 is still lying vacant and it will be used for Mandi purpose and inference cannot be drawn that it has been used for other purpose, it has not been used for any other other purpose and even gift deed has never been revoked by the plaintiffs, as such, the judgment and decree of the first appellate Court granting decree deserves to be set aside.

5. On the other hand, Mr.Ashish Shrivastava, learned counsel for respondents

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No.1 and 2/plaintiffs No.1 and 2, would submit that since Krishi Upaj Mandi, Kawardha has already been constructed in different land bearing Khasra Nos.34/1, 75/1 and 72/2 and it has duly been notified by the State Government as Krishi Upaj Mandi, therefore, the purpose for gift has came to an end and as such, the first appellate Court is absolutely justified in granting decree in favour of the plaintiffs and the second appeal deserves to be dismissed.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

7. Chapter VII of the TP Act provides for mode of making gift. Gift inter vivos is gratuitous transfer of ownership between two living persons and is a transfer of property within the meaning of Section 5 of the TP Act. Section 122 of the TP Act defines "Gift" as under:- "122. "Gift" defined.- "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person called the doner, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.-Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void."

8. The essentials of a valid gift can be enumerated as under:- (See Sehdev Singh Verma v. J.P.S. Verma and Anr. AIR 2016 Delhi 1)

a) There must be transfer of ownership - As in the case of a sale, there must be a transfer of all the rights in the property by the donor to the donee. However, it is permissible to make conditional gifts. The only restriction is that the condition must not be repugnant to any of the provisions of Sections 10 to 34 of Transfer of Property Act, 1882.

b) The ownership must relate to a property in existence - Gift must be made of existing movable or immovable property capable of being transferred. Future property cannot be transferred.

c) The transfer must be without consideration - The word "consideration" refers to monetary consideration and does not include natural love and affection.

d) The gift must have been made voluntary - The offer to make the gift must be voluntary. A gift therefore should be executed with free consent of the donor. This consent should be untainted by force, fraud or undue influence.

e) The donor must be a competent person - In a transaction by way of gift the transferor is called a donor and he divests his ownership in the property so as to vest it in the transferee, the donee. The donor must be a sui juris. He must have attained the age of majority, possess a sound mind and should not be otherwise qualified.

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f) The transferee must accept the gift - The gift must be accepted by the donee himself. Acceptance must be made during lifetime of the donor and while he is capable of giving.

9. Section 123 of the TP Act dealing with making of a gift reads as under:- "123. Transfer how effected.- For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered."

10. Section 126 of the TP Act dealing with suspension/revocation of a Gift reads as under:- "126. When gift may be suspended or revoked.-The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice."

11. Thus, it is clear that deed of gift once executed and registered cannot be revoked unless mandatory requirements of this provision are fulfilled.

12. The Supreme Court in the matter of Renikuntla Rajamma (dead) by legal representatives v. K. Sarwanamma (2014) 9 SCC 445 has held that where the donor had reserved the right to enjoy the property during her lifetime, did not affect the validity of deed. Their Lordships held that gift made by registered instrument duly executed by or on behalf of donor and attested by attesting witness is valid, if the same is accepted by or on behalf of donee.

Such acceptance made during lifetime of donor and while he is still capable of making an acceptance and further held that there is no provision in law that ownership in property cannot be gifted without transfer of possession of such property and condition precedent for gift under Section 122 must be satisfied.

13. In the matter of Philip John Plasket Thomas v. Commissioner of Income-tax, Culcutta AIR 1964 SC 587 the Supreme Court has held that gift can be made subject to conditions, either precedent or subsequent and held as under:-

"12.......A gift may be made subject to conditions, either precedent or subsequent. A condition precedent is one to be performed before gift takes effect; a condition subsequent is one to be performed after the gift had taken

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effect, and, if the condition is unfulfilled will put an end to the gift........."

14. At this stage, it would be appropriate to notice Sections 11 and 31 of the TP Act which state as under:- "11. Restriction repugnant to interest created.-Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.-Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen."

Illustrations

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases."

From a careful perusal, it is quite vivid that ingredients of Section 31 of the TP Act are (1) there should be transfer of property ; (2) an interest therein should be created and (3) a condition should be superadded while creating the interest.

15. In my considered view, the basic distinction between these two provisions relates to (i) direction envisaged in Section 11; (ii) a condition envisaged in Section 31 of the TP Act, (iii) an interest being created absolutely under Section 11 and (iv) an interest being created (not qualified by the word 'absolutely') but with a condition superadded in Section 31 of the TP Act.

16. In the matter of State of U.P. v. Bansi Dhar and others AIR 1974 SC 1084 the Supreme Court has held that where a gift is for a specific charitable purpose, the performance of which is rendered impossible the courts have to consider the gift as a conditional one. It was further held that gift was not gift simplicitor, it was subject to certain conditions, as conditions were not carried, the State could not keep the money and suit was decreed.

17. The Supreme Court in the matter of Thakur Raghunath Ji Maharaj and

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another v. Ramesh Chandra (2001) 5 SCC 18 while following the decision rendered by the Supreme Court in the matter of Banshidhar (supra) has held that the suit property was gifted for specific charitable purpose and condition attached to the gift that in case college building was not constructed within specified time, the plaintiff would be entitled to the property was a valid condition, the donee continued to be trustee and donor could claim back the property on breach of condition mentioned in the agreement. It was held as under:- "5. ....The gift deed and the agreement forming one transaction are to be read together and given effect to accordingly. In other words, the defendants had to take both the benefit and burden. They could not reap the benefit and avoid to unload the burden. Since the defendants did not construct a college building on the suit land, the gift did not come into effect."

18. The Supreme Court in the matter of S. Sarojini Amma v. Velayudhan Pillai Sreekumar AIR 2018 SC 5232 while following its earlier decision i.e. Reninkuntla Rajamma (supra) has held that a gift is a transfer of property without consideration and further held that a conditional gift only becomes complete on compliance of conditions in the deed and held as under:- "19. In the instant case, admittedly, the deed of transfer was executed for consideration and was in any case conditional subject to the condition that the donee would look after the petitioner and her husband and subject to the condition that the gift would take effect after the death of the donor. We are thus constrained to hold that there was no completed gift of the property in question by the appellant to the respondent and the appellant was within her right in cancelling the deed. The judgment and order of the High Court cannot, therefore, be sustained."

19. In the matter of Tila Bewa v. Mana Bewa AIR 1962 Orissa 130 the law relating to revocation of gift upon breach of condition of gift was succinctly stated in following terms:- "The well settled legal position, based on authorities, is that a gift, subject to the condition that the donee should maintain the donor, cannot be revoked under Section 126 of the Transfer of Property Act for failure of the donee to maintain the donor, firstly for the reason that there is no agreement between the parties that the gift could be either suspended or revoked; and secondly, this should not depend on the will of the donor; again, the failure of the donee to maintain the donor as undertaken by her in the document is not a contingency which should defeat the gift; all that could be said is that the default of the donee is that behalf amounts to want of consideration; Section 126 thus provides against the revocation of a document of gift for failure of consideration; if the donee does not maintain the donor as agreed to by the donee, by latter (donor) could take proper steps to recover maintenance; it is not open to a settler to revoke a settlement at his will and pleasure and he has got to get it set aside in a court of law by putting forward such pleas as bear on the invalidity of a deed of gift. Under Section 122 of the Transfer of Property Act, a gift is complete when it is accepted by or on behalf of the donee; where there is evidence that the gift of property by a person to his wife and children was accepted by the donees, the fact, that the donor, who had no other property, stayed on the

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property, even after the gift, does not show that the gift had not taken effect; where no right in the property is reserved in the fact that there is a clause in the deed (as in the present case) that the donee should maintain the donor, does not show that the donor continued to be the beneficial owner; a direction in a gift deed that the donee should maintain the donor till his death will not make the gift a conditional one; if the terms of the gift deed were, that there had been an absolute transfer of the property in favour of the donee, such a direction for maintenance shall be regarded only as an expression of pious wish on the part of the donor.

On the aspect of such pious wishes, the legal position is that where a gift deed, after the operative portion of the deed, provided that the donee was to render services to the donor and to meet the donor's funeral expenses, such directions are only pious wishes and do not give any right to the donor to revoke the gift if the conditions are not observed; when, therefore, there is an out and out transfer, followed by a direction to the donee to maintain the donor, the latter direction is only a pious swish; on the other hand if the gift deed starts with a statement that it is made with the object of providing for maintenance of the donor, and this statement is followed by the operative clause, there can be no doubt that the gift is subject, to the liability to maintain the donor."

20. The Delhi High Court in the matter of Sehdev Singh Verma (supra) has considered the question of revocation of gift upon breach of condition of gift and held as under:- "40. To put it pithily, the position regarding revocation of gift upon breach of condition of gift is this: "there must be a defeasance or default clause in order to make the gift revocable; if there was a condition that on failure to perform any of the conditions the gift will be void; then certainly the gift could have been revoked; but the gift could not be revoked where the document does not make any provision to that effect."

21. Reverting to the facts of the present case in the light of aforesaid legal proposition of law, it would be appropriate to notice para-2 of gift deed dated 28.3.1979 (Ex.P-1), which states as under:- "2. The donor hereby by covanants with the Governor that the gifted land is free from encumbrances and that the donor has power to transfer the same together with all his rights, title and interest into as upon the gifted land. But the essential of the gift is that the gifted land shall be used only for mandi purposes, in case it is used for other purposes than for krishi upaj mandi the donor shall have right to revoke the gift. The collector if he things proper may give land to the donor in exchange."

22. From perusal of para-2 of gift deed, it would appear that gifted land shall be used only for Mandi purposes. In case, it is used for other purposes than for Krishi Upaj Mandi, the donor shall have a right to revoke the gift.

23. In a suit filed by the plaintiffs on 9.5.2006 the following pleadings have been made:-

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"5- ह कि, वर्तमान में कृषि उपजमंडी समिति कवर्धा का कार्यालय एवं प्रांगण पूराना बाजार कवर्धा मे स्थित है कृषि उपज मण्डी कवर्धा द्वारा नये कृषि उपज मंडी कार्यालय एवं प्रांगण के निर्माण हेतु ग्राम तालपुर प0ह0न0 34/1 स्थित ख0न0 75/1 रकबा 8-29 है0 20-44 एकड़ को पट्टा मे प्राप्त करने हेतु प्रस्ताव पारित कर शासन को 4,42,467 रूपये प्रव्याजि अदा कर 37,185 रूपै वार्षिक भू-भाटक पर दिनांक 20.8.02 से 31.3.32 तक की अवधि के लिए पट्टा प्राप्त कर लिया है तथा प्रतिवादी क्रमाँक 2 द्वारा पट्टा में प्राप्त भूमि पर कृषि उपज मंडी कार्यालय एवं प्रांगण का निर्माण पूरा कर लिया गया है। 6. यह कि, छ0ग0 शासन कृषि विभाग द्वारा अपने अधिसूचना क्रमाँक 1590/ डी /15/220/04-05/14-3 रायपुर दिनांक 20-9-2004 के द्वारा नये कृषि उपज मण्डी क्षेत्र के लिए ग्राम तालपुर के ख0न0 75/1 तथा 75/2 रकबा 8-29 हेक्टेयर को समस्त संरचना अहाता, खुलास्थान तथा परिक्षेत्र सहित मण्डी प्रांगण घोषित कर चुकी है जहां निकट भविष्य में मण्डी का कार्य उद्धाटन पश्चात प्रारंभ हो जावेगा। उक्त अधिसूचना में नव- निर्मित मण्डी क्षेत्र की चर्तुसीमा निम्न लिखित अनुसार है- उत्तर में - नयी पुलिस लाइन, दक्षिण में - दुकलहीन बाई गोंड़, एवं फागूराम चंद्रवंशी की कृषि भूमि, पूर्व में - राष्ट्रीय राजमार्ग क्रमाँक 12-ए पश्चिम में - 1 - कलीराम व0 सुमेरी धुर्वे 2 - दुकलहीन बाई गोंड़, 3 - लच्छीराम गोंड़ की कृषि भूमि 7. यह कि, नये मण्डी कार्यालय और प्रांगण के निर्माण कार्य पूर्ण होने के बाद एवं राज्य शासन के द्वारा अधिसूचना जारी होने के बाद अब यह सुनिश्चित हो गया है कि स्व. ठा. विश्वराज सिंह द्वारा मण्डी निर्माण के लिए दान में दी गयी ग्राम सागौना स्थित वादग्रस्त भूमि पर अब मण्डी निर्माण नहीं किया जाएगा। इस तरह दान पत्र का उद्देश्य विफल हो चुका है। इसलिए दानपत्र के शर्तो के अनुसार स्व. ठा. विश्वराज सिंह तथा उनके निधन के बाद वादीगण उक्त दानपत्र को विखंडित कराके वादग्रस्त जमीन का स्वामित्वाधिपत्य वापस प्राप्त करने के अधिकारी हो गये हैं। 8. यह कि, उक्त दानपत्र के परिपेक्ष्य मे राजस्व पत्रों में वादग्रस्त भूमि पर प्रतिवादी क्रमाँक 2 का नाम भूमिस्वामी के रूप मे दर्ज कर दिया गया है जो कि अब निर्रथक एवं अर्थहीन हो चुका है फिर भी उसे औपचारिक पक्षकार बनाया गया है। प्रतिवादी क्रमांक 2 का वादग्रस्त भूमि पर कोई हक अथवा आधिपत्य नहीं है और दानपत्र की शर्तों का उल्लंघन होने के पश्चात् प्रतिवादी क्रमाँक 1 का भी वादग्रस्त भूमि पर कोई हक नहीं है बल्कि स्व. ठा. विश्वराज सिंह तथा उनके निधन के बाद वादीगण को पूर्ववत् स्वामित्वाधिकार प्राप्त हो चुका है।

24. The above-quoted pleading made by the plaintiffs in the aforesaid paragraphs of the plaint only alleges that Krishi Upaj Mandi has been constructed on other land by the Government and it has been notified as Krishi Upaj Mandi by the State Government by notification in official gazette, but the plaintiffs do not even allege that gifted land is being used for any other purposes other than Krishi Upaj Mandi. The evidence on record clearly shows that the suit land is lying vacant and it is not being used for any other purposes, therefore, it cannot be held that the purpose of gift has came to an end. Even it is not the case of the plaintiffs that the suit land is being used for any other purpose than Krishi Upaj Mandi.

25. Apart from this, under Section 126 of the TP Act, revocation of gift is an act of donor. It ought to have been expressly revoked by the plaintiffs before filing the suit, if any, if as per terms and conditions of the gift, the gift is revocable. What has been alleged in the plaint that the purpose of gift has came to an end, whereas it could have been revoked, if any.

The fact remains that neither gift has been revoked under Section 126 of the TP Act nor condition of gift has been violated by using the said land for other than Mandi purposes for what it has been gifted by the then donor late Shri Thakur Vishwaraj Singh and according to the defendants, it is still reserved for Mandi purposes i.e. establishment of laboratory, research centre and rest house etc., as such, the first appellate Court is absolutely unjustified in holding that condition of

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gift (Ex.P-1) has been violated and gift would stand revoked and consequently, the plaintiffs are entitled for decree of declaration of title and possession. Concludingly, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is restored by answering the substantial questions of law in favour of the defendants and against the plaintiffs and resultantly, the plaintiff's suit would stand dismissed.

26. The second appeal is allowed to the extent indicated hereinabove.

27. A decree be drawn-up accordingly.

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