

(1976) 05 SC CK 0027

In the Supreme Court Of India

Case No : Civil Appeal No. 1194 of 1968

L. Babu Ram

APPELLANT

Vs

Raghunathji Maharaj and Others

RESPONDENT

Date of Decision : 07-05-1976

Acts Referred:

Citation : AIR 1976 SC 1734 : (1976) 3 SCC 492 : (1976) 8 UJ 590

Hon'ble Judges : S. Murtaza Fazal Ali, J; P. N. Bhagwati, J; A. C. Gupta, J

Bench : Full Bench

Advocate : C.B. Pai, S. K. Bagga, Uma Mehta and S. Bagga, for the Appellant;

Final Decision : Dismissed

Judgement

P.N. Bhagwati, J.—This appeal by certificate is directed against the judgment of the Allahabad High Court reversing a decree passed by the Civil Judge, Etah. The original decree was passed by the Civil Judge on 31st March, 1953 in a suit instituted on 10th August, 1950. The judgment of the High Court reversing it was given on 31st January, 1964. It took nearly eleven years for the High Court to dispose of the appeal before it. Then followed an appeal to this Court by certificate. The certificate proceedings took about four years. It was on 22nd January, 1968 that the certificate was granted. The appeal which came to be filed on the strength of this certificate had then to undergo a period of incubation in this Court for about eight years before this Court could get time to take it up for hearing, at long last, the unfortunate and heroic saga of this litigation is coming to an end. It has witnessed a silver jubilee, thanks to our system of administration of Justice and our callowness and indifference to any drastic reforms in it. Cases like this, which are not infrequent, should be sufficient to shake our social as well as judicial conscience and activate us to move swiftly in the direction of overhauling & restructuring the entire legal and judicial system. The Indian people are very patient, but despite their infinite patience, they cannot afford to wait for 25 years to get justice. There is a limit of tolerance beyond which it would be disastrous to push our people. This case and many

others like it strongly emphasise the urgency of the need for legal and judicial reform, A little tinkering here and there in the procedural laws will not help. What is needed is a drastic change, a new outlook, a fresh approach which takes into account the socio-economic realities and seeks to provide a cheap expeditious and effective instrument for realisation of justice by all Sections of the people, irrespective of their social or economic position or their financial resources.

2. The dispute in this appeal relates to a property situate in the town of Etah. The property consist of a residential house and three shops. One Shri Krishna Das was the owner of the property and by a deed dated 18th October, 1884 he made a disposition of the property in favour of his daughter-in-law Smt. Deva. Smt. Deva in her turn executed two gift deeds, one dated 13th January, 1916 in respect of two shops in favour of Shri Raghunathji Maharaj, the 1st respondent and the other dated 18 h June, 1949 in respect of the residential house and the remaining shop in favour of her daughter's son Mool Chand, the 2nd respondent. On the death of Smt. Deva, which occurred on 12th April, 1950, the appellant claiming to be the nearest collateral in the family of Shri Krishna Das, filed suit No. 18 of 1950 in the court of the Civil Judge, Etah claiming that under the deed 18th October, 1884, smt. Deva was given only a life interest in the property and she was, therefore, not entitled to gift any portion of the property in favour of the 1st or the 2nd respondent beyond her life time and or her death, he became the owner of the property as the nearest collateral in the family of Shri Krishna Das and hence was entitled to possession of the property from the 1st and the 2nd respondents, Respondents Nos. 3 to 9 were impleaded as defendants in the suit as they were tenants in respect of certain portions of the property. There was no contest against the claim of the appellant on the part of respondents Nos, 3 to 9 and they expressed their willingness to pay rent to whosoever was declared to be the owner of the property. The 1st and the 2nd respondents, however, seriously disputed the claim of the appellant and contended this Stat Deva was the full owner of the property under the deed dated 11th October, 1884, and she was therefore, entitled to gift portions of the property in favour of the 1st and the 2nd respondents and convey full title to them and the appellant had no right, title or interest in any portion of the property. The main question which, therefore, arose for consideration on these pleadings was as to what was this nature of the interest conveyed to Smt. Deva under the deed dated 18th October, 1884, whether it was life interest or ful1 ownership. One other subsidiary question was also raised on the pleadings and that was whether the 2nd respondent was the daughter's son of Smt. Deva. The trial Court held, on a construction of the deed dated 18th October, 1884, that Smt. Deva was only a life estate holder and she was, therefore, not entitled to convey title to the property in favour of respondent Nos. 1 and 2 beyond her life time and since the appellant WAS the nearest reversioner in the family of Sri Krishna Das, he became the owner of the property on her death and was accordingly entitled to possession of the same from respondents Nos. 1 and 2. The trial Court also found from the evidence on record that the 2nd respondent was the son of the

daughter of Smt. Deva, but on the view taken by it in regard to the construction of the deed dated 18th October, 1884, it decreed the suit of the appellant. The decree was, however, reversed by the High Court in appeal at the instance of respondents Nos. 1 and 2. The High Court did not set aside the finding of the Trial Court that the 2nd respondent was the son of the daughter of Smt. Deva but, on the question of construction of the deed dated 18th October, 1884, it took a different view. The High Court held that what was given to Smt. Deva under the deed dated 18th October, 1884 was full ownership and the gift deeds executed by her were valid and effective and the appellant consequently did not acquire any right, title or interest in the property on her death. In the result, the suit of the appellant was dismissed by the High Court. The appellant thereupon preferred the present appeal in this Court by obtaining a certificate from the High Court.

3. It is not necessary for the purpose of this appeal to decide which of the two constructions of the deed dated 18th October, 1884 is correct, whether the one adopted by the trial Court or the one which found favour with the High Court. We will assume with the appellant that the construction placed by the Trial Court is correct and that accepted by the High Court is erroneous. The deed dated 18th October, 1884, so far as material, runs as follows:

I am in proprietary possession of the property mentioned above. In order to avoid future disputes, I have, of my own accord and free will, while in a sound state of body and mind made a gift of...one house pucca and Kham, situate in Bazaar Khana, Qasba Etah and two shops built pucca and Kham, situate in Main Ganj Wasta Etah, to my daughter in law Mst. Dewa and have executed this deed of gift in favour of my...daughter in-law aforesaid. I have removed my possession and occupation from the property and have put the women in possession and occupation thereof. The Musammats, aforesaid should remain in possession and occupation of the property like myself. I shall have no claim thereto. But so long as I am alive, I shall remain the owner in possession of the said property. After my death, the musammata shall become the owners in possession of the property as specified in this document. My daughter in law shall have no right to make any kind of transfer in respect of the property given to her by me. So long as she remains alive, she shall be the owner in possession thereof. After her death the members of her family shall be the owner thereof.

4. It is clear that even on the view that Smt. Deva was given only a life interest in the property under the deed dated 18th October, 1884, the disposition of the property made by the settlor after her death was that "the members of her family shall be the owner thereof". It is significant to note that the settlor did not use the words that on the death of Smt. Deva "the members of my family shall be the owners thereof", but provided that "the members of her family shall be the owner thereof". The property was, therefore, plainly and unquestionably given to the members of the family of Smt. Deva on her death and it was not to go to the members of the family of the settlor. Now, the 2nd respondent was the son of the

daughter of Smt. Deva and he was, therefore, the nearest member of her family. The appellant was merely a collateral of Shri Krishna Das and could not possibly be regarded as a member of the family of Smt. Deva. The conclusion must, therefore, inevitably follow that, even if Smt. Deva had merely a life interest under the deed dated 18th October, 1884, the property, on her death, went to the 2nd respondent as the nearest member of her family and not to the appellant. The High Court was in the circumstances right in taking the view that the appellant had no right, title or interest in the property and was not entitled to possession of the same.

5. The appeal is accordingly dismissed, but in the circumstances, there will be no order as to costs.