

---

**(2011) 05 JH CK 0094**  
**In the Jharkhand High Court**  
**Case No : S.A. No. 173 of 2006**

Loboni Khalkho

APPELLANT

Vs

Shovanan Toppo

RESPONDENT

---

**Date of Decision :** 13-05-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100  
Registration Act, 1908 — Section 17(1), 17A, 49  
Transfer of Property Act, 1882 — Section 122

**Citation :** (2011) 05 JH CK 0094

**Hon'ble Judges :** Poonam Srivastav, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

Poonam Srivastav, J.—The instant second appeal arises out of a judgment and Decree dated 27.05.2006 passed by District Judge, East Singhbhum, Jamshedpur in Eviction Appeal No. 14 of 2004, confirming the judgment dated 25.09.2004 and decree signed on 08.10.2004, passed by Munsif, Jamshedpur in Eviction Suit No. 25 of 2000.

2. In the present second appeal, the substantial question of law framed at the time of "Admission", is quoted below:

Whether the learned courts below have recorded their finding misconstruing Exhibit "A" which is at least a declaration showing the nature of possession of the Defendant-Appellant?

3. The facts of the case as pleaded in the plaint is that the grand mother of the Plaintiff was the original owner of the entire holding No. 1203 of Sonari Christian Basti, Sonari. The Defendant/Appellant was inducted as a tenant in respect of a room accommodation with asbestos-roof measuring 6" x 8". The disputed premises was detailed in the schedule at the foot of the plaint. At the time of induction, the Appellant paid rent of Rs. 15/- per month besides the electrical

charges. According to the Appellant, the relationship of landlord -tenant with the original land-lady continued till the year 1978.

4. The Plaintiff's grand mother died in the same year and thereafter, his mother inherited the property being the only legal heir and successor. The Plaintiff's mother stepped in the shoes of the land-lady and the Appellant continued in occupation.

5. The claim of the Plaintiff is that she continued paying rent of Rs. 15 initially, which was subsequently enhanced to Rs. 20 per month on mutual agreement between the Appellant and the Plaintiff's mother.

6. In the year 1985, the Plaintiff's mother died and the entire holding devolved upon the Plaintiff. It is further pleaded that the Defendant stopped payment of rent w.e.f. March, 1995. The Plaintiff made repeated request but his demand of rent was not acceded by the Appellant and as a consequence, he did not receive any rent thereafter.

7. The suit was instituted for arrears of rent as well as on the ground of personal necessity. A legal notice was given on 26th April, 2000. Thereafter, despite repeated requests to the Defendant for handing over vacant possession, the Appellant refused to vacate the premises. Consequently, the suit was instituted. Plaintiff has claimed arrears of rent only for a period of three years i.e. June, 1997 till May, 2000 @Rs. 20/- per month. Time barred rent up till May, 1997 was not claimed.

8. The Defendant filed her written statement and she denied the relationship of landlord and tenant though, it was admitted that initially the Plaintiff was inducted as a tenant from month to month in the year 1968 in respect of two rooms and varandah of holding No. 1203, Sonari Christian Basti. The claim of the Defendant is that the grand mother of the Plaintiff subsequently gifted the accommodation in which she is living. Smt. Hiramani Toppo (grand mother) executed a Gift Deed on 29.04.1974 on account of humanitarian services rendered to her.

9. It is further stated that Smt. Hiramani Toppo has specifically mentioned in the deed that no rental will be paid by the Appellant and none of the legal heirs or successor of Smt. Hiramani Toppo will have the right to disturb the Appellant from her peaceful possession and enjoyment of the accommodation in question during her life time. But this was with an embargo that the Appellant had no right of transfer of the said accommodation. She denied that she ever paid rent either to the mother or to the Plaintiff.

10. The Trial Court framed as many as seven issues which are enumerated below:

(i) Whether the suit as framed is maintainable?

(ii) Whether the Plaintiff has got valid cause of action for the suit?

(iii) Whether there is relationship of landlord and tenant between the parties?

- (iv) Whether the Defendant is a defaulter in payment of rent of the suit?
- (v) Whether the disputed premises is required by the Plaintiff for its personal necessity?
- (vi) Whether the suit is fit to be decreed? And
- (vii) Whether the Plaintiff is entitled to any other relief or reliefs ?

10. The alleged gift deed was seriously challenged by the Plaintiff which also forms part of the record as Ext.-A.

11. Heard Shri V.P. Singh, Sr. Advocate and Bhaiya Viswajee Kumar, Advocate appeared for the Appellant and Shri Biren Poddar, Sr. Advocate assisted by Shri Deepak Sinha on behalf of the Respondents.

12. The learned Counsel appearing on behalf of the Appellant has disputed the relationship of landlord and tenant and has contended that the instant suit for eviction was not maintainable specially in view of the Deed (Ext.-A). His contention is that the Defendant at the very outset denied the relationship of landlord and tenant between the Plaintiff and the Defendant. The submission is that Ext.-A was not accepted as a Gift Deed or a Sale Deed by two courts below on the ground of its non registration. Even then, the said Deed was sufficient proof of the fact that the relationship between the Plaintiff and the Defendant is not of landlord and tenant since there is not an iota of evidence to substantiate that any rent was paid at any stage. Therefore, the suit for eviction under the " Bihar Building (Lease, Rent and Eviction) Control Act, 1982 is not maintainable. Learned Counsel emphasized that no doubt Section 17A of the Registration Act, 1908 makes registration compulsory of the instrument of gift of immovable property. It is further stressed that assuming that the Deed was not registered but it was exhibited during the course of proceeding and a perusal of the same clearly negates the relationship of landlord and tenant.

13. It is further contended that in the event Ext.-A is taken into consideration, the possession of the Defendant is "permissive possession" at the instance of Late Hiramani Toppo, the grand mother. The counsel has stressed on Ext.-A which renders the entire case for ejection not maintainable specially on the ground of arrears of rent and bonafide need since the said Deed, though unregistered, could very well be read for collateral purposes and this by itself would render the claim of the Plaintiff or Plaintiff's mother unsustainable.

14. Lastly, learned Counsel has contended that Ext.-A may also be treated as a whole or alternatively as a Deed of declaration or WILL which does not require any registration under the Registration Act and, therefore, the Courts below erred in law in not treating her possession in either of the aforesaid capacity. Learned Counsel has cited two decisions reported in Bhaiya Ramanuj Pratap Deo Vs. Lalu Maheshanuj Pratap Deo and Others, [Para-21 and 22] and 2001(2) PLJR 372 (SC) [P. Kanthimathi and Ors. v. Mrs. Beatrice Xavier] [Para 6, 7 and 8].

15. The emphasis is that the Apex Court held in the decision of P. Kanthimathi and Ors. (Supra) that any relationship between two persons may be Created through agreement and, similarly if can be changed through agreement subject to limitation under law.

16. The next decision relied upon is Babu Fazal Haq and Ors. v. Lala Data Ram and Anr. reported in AIR 1975 All 373 (D.B.) [para 11 and 21]. This decision has been cited in support of the argument that Ext.-A, if not a Sale or a Gift Deed, then at least is a Deed of license granting a permissive occupation which the Defendant was entitled to enjoy during her life time. A licence does not grants any title and also passes no interest but at the same time the occupation on the basis of licence does not render possession illegal.-

17. The last decision relied upon by the learned Counsel is AIR 2010 SCW 3605 [Dinesh Kumar v. Yusuf Ali].

18. I have examined the two Judgments of the Court below as well as given a careful consideration to the arguments advanced in respect of Ext,-A. The substantial question of law has been framed only in respect of the said document which is at least a declaration showing the nature of the possession of the Defendant and the Appellant.

19. The Ext.-A is admittedly an unregistered document which the Defendant claims to be a Gift Deed. Gift is defined in Section 122 of the Transfer of Properties Act.

122. "Gift" defined - "Gift" is the transfer of, certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, 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.

20. Thus, a gift is a transfer of property and it is apparent that the transfer has to be an absolute one. Besides, Section 17(1) of the Registration Act makes registration compulsory. Section 49 of the Registration Act deals with effect of non registration of document required to be registered. Section 49(c) specifically prohibits that any document essentially to be registered, if not registered, cannot be received as evidence in support of any transfer effecting such property or conferring such power unless it has been registered. "

21. Thus, the claim of the Defendant that it was a Deed of Gift, cannot be accepted for the aforesaid reason. Besides, a reading of the document makes it clear that it was only for the limited period during the life time of the Defendant and it was not an absolute transfer or gift. In the circumstances, the Appellant's contention that Ext-A is a Gift Deed, cannot be sustained.

22. The argument of the learned Counsel that it was a WILL, can also not be accepted for the reason that the WILL is either required to be probated or at least proved during the proceeding in the Court below by the attesting witnesses. Having failed to do so, the document Ext.-E can not be accepted as a WILL also.

23. Counsel appearing on behalf of the Respondents have placed the deposition of DW-T before the Munsif. There is unequivocal admission in paragraph-15 of her cross examination that she is living in the disputed accommodation since 1968 as a tenant. She has also admitted that the Plaintiff's mother used to accept rent from her. Though she has stated that she does not remember exactly as to how long did she pay rent but then she has also stated that the rent was paid up till year 1974. Admission by the Appellant that rent was increased by Plaintiff's mother and she paid rent to her, is sufficient to come to a conclusion that rent was paid even after death of Hiramani Toppo. On the face of clear admission there is no scope of further analysis of Ex.-"A".

24. The cross examination of the Defendant herself completely demolishes the argument of the learned Counsel on behalf of the Appellant as the Defendant was also not able to state the month or date or any witnesses present at the time of execution of Ext.-A. Therefore, it is apparent that Ext.-A, which is the foundation of the defence of the Appellant, has no legs to stand.

25. The Defendant, after this admission, cannot be allowed to take a complete "U" Turn and deny being a tenant of the said premises. There is no material or substance to support the claim of the Gift and, therefore, Ext.-A cannot be accepted as a Gift or a WILL. Similar view was expressed in the case of Firm Dressco through Raghubansh Mani and Ors. v. Lakshman Prasad and Ors. reported in 2007 (2) PLJR 738.

26. In the circumstances, for the reasons detailed hereinabove, the arguments on behalf of the Appellant that Ext.-A was misconstrued by the Court below, cannot be accepted. The substantial question of law framed in the Second Appeal is neither substantiated nor can be accepted and the findings recorded on the basis of the appraisal of evidence and the facts pleaded by the respective parties, cannot be interfered in exercise of jurisdiction u/s 100 Code of Civil Procedure

27. The Apex Court, in the case of Hari Singh v. Kanhaiya Lal in C.A. No. 10756 of 1996 decided on 7th September, 1999, expressed the similar view that the High Court cannot set aside concurrent finding of fact without there being a substantial error glaring on the fact of the evidence and, therefore, I am of the view that the question raised in the instant appeal is devoid of merit. There is no substance. The Second Appeal is accordingly dismissed.

No order as to costs.