

(1996) 09 AP CK 0070
In the Andhra Pradesh High Court
Case No : L.P.A. No. 221 of 1990

Mahendra Apex Corporation Ltd.

APPELLANT

Vs

Jafrulla and Others

RESPONDENT

Date of Decision : 04-09-1996

Acts Referred:

Citation : (1997) 2 ALT 259 : (1997) 2 DMC 173

Hon'ble Judges : Lingaraja Rath, J;C.V.N. Shastri, J

Bench : Division Bench

Advocate : P. Nagaraja Rao, for the Appellant; K. Soma Konda Reddy, for the Respondent

Final Decision : Allowed

Judgement

Lingaraja Rath, J.—The judgment of the learned Single Judge reversing the decision of the Executing Court in E. A. No. 51/83 in E.P. 4/83 in O.S. No. 6/78 is in challenge. The learned Subordinate Judge, Adoni dismissed the claim petition of the respondents who had made the application under Order 21, Rule 58 of the CPC opposing the attachment of the scheduled properties standing in the name of the judgment-debtor in the suit.

2. The respondents preferred the claim on the plea that the attached properties have been gifted to them by the father by an oral gift on 1.1.1967, which fact was subsequently recorded in a Memorandum on 15.9.1969 and that thereafter, they have been throughout in possession of the properties. Since, under the Mohammedan Law, gift of immovable properties does not require registration, the gift in their favour was valid as the possession had been delivered to them and they were in possession. The application was resisted by the decree-holder disputing the gift saying that there was no gift on 1.1.1967 and the Memorandum was a collusive one created to defeat the decree. The Executing Court held the gift to be invalid and inoperative and rejected the application.

3. The learned Single Judge took a contrary view and upheld the gift and

allowing the claim. Ex. A-I is the Hiba executed by the judgment-debtor on 15.9.1969. Ex. A-19 is the Memo issued to the Sanitary Inspector to collect taxes in respect of the mill with effect from 1.4.1978 i.e. the date from which mutation had been effected in the municipal records. Exs. A-8 to A-13 are the receipts of payment of property taxes and licence fee from the date of Ex. A-19. On the basis of these documents, it is the claim of the respondents to have come into the possession of the properties pursuant to the oral gift. An English translation of Ex. A-I has been made available, which is accepted by both the parties. There is no mention in the Deed of there having been an oral gift earlier and that the Deed was only one recording such fact at a subsequent point of time. If, in fact, an oral gift had been made on 1.1.1961 and Ex. A-I has been created to record the fact, it would have been essential to state such fact in the Deed. But, the document is singularly silent on that. A portion of the document reads as follows :

"I have gifted out of my volition of the house (floor mill house) bearing Door No. 100 in the 10th Ward Chunnambhatti Street, Yammiganur in favour of Zafrullah Abdul Jabbar and Mohammed Iqbal and to-day it self i.e. 15.9.1969 I have handed over possession to the minors by appointing guardian their own mother Smt. Rasool Bee. Rasool Bee took possession of the said house from me for the minors."

4. On a plain reading, the recital shows as if the gift has been made by virtue of the document and possession being handed over on the basis of the Deed itself. Similar recitals appear at different places in the body of the document. A further recital which is clinching that there was no earlier oral gift, is the following :

"I hereby solemnly declare that from this day onwards (15.9.1969) I shall have no right, interest or title with the properties mentioned above and on the other hand the donees whose names are mentioned above shall be the absolute owners."

It is thus clear that the judgment-debtor admitted of his having the right, interest and title till the date of the Deed and only on the deed being executed, he relinquished his right, interest and title in the property. There is, hence, no escape from the conclusion that Ex. A-I was not a Memorandum of an oral gift made earlier, but was itself a gift Deed under which properties were admitted to be conveyed by way of gift to the respondents.

5. It is well settled in law that even though under the Mohammedan Law, a registered document is not necessary for effecting a gift, and that it can be made orally, yet, when the parties to the transaction do not take recourse to the Mohammedan Law and only purport to make the gift according to the ordinary law of the land under the Transfer of Property Act, registration of the document under which the gift is made, is compulsory. A Full Bench of this Court in Inspector General of Registration and Stamps, Govt. of Hyderabad Vs. Smt. Tayyaba Begum, explained the law following the decision of the Privy Council in Subramanian v. Lutchman AIR 1923 P.C. 50, as follows :

"What follows from Section 129 is that it is needless for a Mohammedan to execute a registered instrument to settle his property on some one. In such a case, it is sufficient to conform to the rule of Mohammedan Law. An oral gift could be made followed by delivery of the property. That section dispenses with the necessity to execute registered instruments in cases falling u/s 129. But it does not prevent persons governed by the rules of Mohammedan Law to effect a transfer in the manner contemplated by Section 123. It is only in cases where the parties avail themselves of the benefit of the rule of Mohammedan Law in this behalf, they are not required to have a stamped document duly registered.

In this connection, we may turn to the provisions of Section 17 of the Indian Registration Act. That requires inter alia all non-testamentary instruments, which purport to or operate to create any right, title or interest in immovable property to be compulsorily registered."

6. Since we have found that Ex. A-I was not a Memorandum of a past event but it is the Gift Deed itself, it was compulsorily registerable, but being not so, it is an invalid document and did not convey any title to the respondents.

7. Even the learned Single Judge, discussing Ex. A-13 under which licence fee was paid in the name of the respondents from 1983-84, reached the conclusion :

"Thus there is clinching evidence to show that the claimants-petitioners were paying the licence fee for the flour mill from 1978 onward. Ex. A-19 clinchingly shows that transfer of the licence of the flour mill was effected with effect from 1.4.1978 and from 1978-79 onwards the Sanitary Inspector was directed to collect the D and O trade licence fee as per rules from the transferees". Such a fact would show that the respondents were never in possession since 1967 as claimed.

8. In this view of the facts, we are unable to sustain the judgment of the learned Single Judge, for which reason, the judgment under appeal is set aside and that of the Executing Court is confirmed.

9. The appeal is, accordingly, allowed with costs.