

(1991) 03 SC CK 0042

In the Supreme Court Of India

Case No : Civil Appeals No's. 1913-16 of 1980

Major V.P. Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 20-03-1991

Acts Referred:

Transfer of Property Act, 1882 — Section 122

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 5(6)

Citation : AIR 1991 SC 1502 : (1993) 199 ITR 188 : (1991) 3 JT 14 : (1991) RD 316 : (1991) 2 SCC 346 Supp

Hon'ble Judges : Ranganath Misra, C.J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These appeals by special leave are directed against the decision of the Allahabad High Court in writ petitions arising out of proceedings under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, as amended subsequently. The landholders are the appellants.

2. There is no dispute that 24th January, 1971, is the appointed date under the statute. Section 5(6) of the Act categorically provides that any transfer of land after that date would be inoperative, if in the absence of transfer, that land in the hands of the transferor, would have been subjected to the provision of the Act. It is not in dispute that the land in question is affected by that provision.

3. Reliance has been placed on the second clause of the proviso which saves transfers for adequate consideration between the appointed date and the date on which the statute came into force being 8th June, 1973. We are concerned with the gift which is the alienation in question, in favour of the landholder's wife's brother. The High Court dismissed the claim of the appellants by holding that Clause (b) of the proviso did not apply. That clause provides :

A transfer proved to the satisfaction of the prescribed authority to be in good

faith and for adequate consideration and under an irrevocable instrument not being a benami transaction or for the immediate or deferred benefit of the tenure-holders or other members of his family.

4. One of the basic requirements for availing the benefit of the proviso is that the transfer should be for adequate consideration. "Adequate consideration" has not been defined by the Act and, therefore, the High Court has relied upon the concept of gift in the Transfer of Property Act. This being a gift, reference has been made to Section 122 of the Transfer of Property Act where gift has been defined as under :

"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.

5. A gift is a transaction without consideration whereas exception under the proviso is in regard to a transaction for adequate consideration. In the absence of a definition of the phrase "adequate consideration", the common parlance meaning of the term has to be accepted. A reference to the decision of Hidayatullah, J. as he then was in *Tulsidas Kilachand Vs. The Commissioner of Income Tax, Bombay City I*, shows that the words "adequate consideration" were held to denote consideration other than mere love and affection which, in the case of a wife, may be presumed. When the law insists that there should be "adequate consideration" and not good consideration, it excludes mere love and affection. The same view has been taken by this Court in *Commissioner of Wealth Tax Vs. Khan Saheb Dost Mohd. Alladin and Another*, . Mr. Jain wanted us to accept his submission that these cases related to tax aspects and the meaning ascribed to the term in tax law should not be introduced into the present matters. We do not think this submission should be accepted. The appeals are devoid of merit and are dismissed. No costs.