

(1986) 09 KL CK 0026
In the High Court Of Kerala
Case No : C.R.P. No. 639 of 1980

Mathai Joseph

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 30-09-1986

Acts Referred:

Evidence Act, 1872 — Section 92

Kerala Land Reforms Act, 1963 — Section 82, 82(1), 82(1)(b), 84

Citation : (1986) 23 KLJ 957

Hon'ble Judges : V. Sivaraman Nair, J;P.K. Shamsuddin, J

Bench : Division Bench

Advocate : Joseph A. Vadakkal and Joseph J. Therattil, for the Appellant;

Judgement

P.K. Shamsuddin, J.—The declarant is the revision-petitioner. By an order dated 28-2-1977 the Taluk Land Board, Thodupuzha, directed the revision-petitioner to surrender an extent of 8 acres and 25 cents of land. Aggrieved by the said order, the declarant filed C.R.P. No. 1344 of 1977 before this court. The declarant's son also filed another revision C.R.P. No. 1343 of 1977 challenging the same order. It was contended before this court that in 1966 the dtclaram had gifted to his sons Mathai and George 9 acres and 61/4 cents of land and in determining the total extent to be surrendered, the Taluk Land Board did not exempt this area and treated these lands as the properties owned and possessed by the declarant. It was also contended that the gift deeds are evidenced by registered documents and are of the year 1966. this court set aside the impugned order and directed the Taluk Land Board to consider the question afresh after hearing the declarant as well as his sons who are persons interested before taking a fresh decision on the excess land to be surrendered by the declarant. After remand, the declarant produced document No. 910 of 1966 on the file of the Thodupuzha Sub Registry which showed that 9 acres and 6 cents of land was sold to his sons Mathai and George for a consideration of Rs. 600/-. It is also recited in the document that the consideration was paid in cash by the transferees. Affidavit of one of the transferees was also produced in which it was stated that an extent of 4 acres

and 531/4 cents of land was transferred to him and though the document was styled as a sale deed and consideration of Rs. 300/- was mentioned as having been paid in cash by him, in fact, no consideration was paid. The declarant also filed an affidavit in similar terms Another affidavit of one Chacko who is stated to be a neighbouring owner, has also been filed which stated that at the time of the sale, the land value was not less than Rs. 5000/- per acre in this area. The Taluk Land Board was not inclined to act upon the affidavits as against the clear recital in the document that the consideration was paid in cash.

2. The learned counsel for the petitioner brought to our notice the decision in *State of Kerala v. Thomas* (1986 KLT 861) in support of His contention that he can prove that no consideration has passed, despite the recital in the document to the contrary. In that decision this court relied on the decisions in *Thomman v. Taluk Land Board* (1976 KLT 840). *Ponnu v. Taluk Land Board* (1981 KLT 780). *Bakhshi Ram Baisakhi Ram Vs. Dewat Ram and Others*, and in *Hajif-Un-Nisa v. Faiz-Un-Nisa* (38 Indian Appeals 85) and held that though a document is styled as a sale it is open to prove that the transaction is not really a sale but only a gift and Section 92 of the Evidence Act is not a bar in such cases for proving the absence of consideration. this court found in that decision that though the transferor mentioned therein a sale consideration in respect of two deeds executed in favour of his son, he acknowledged the receipt of part of it towards love and affection for the transferees and regarding the other part, directed the transferees to discharge two of his antecedent debts. On these facts, this court held that no consideration was paid and therefore notwithstanding the tenor of the document as sale, really it is a gift.

3. In the instant case, apart from the affidavits filed by the declarant and one of the transferees, there is no material to show that consideration was not paid. In fact, there is a clear recital in the document that Rs 600/- was paid in cash, by the two transferees as a consideration for the sale. However, it is contended that the consideration mentioned is very low compared to the extent of the land transferred and therefore it has to be held that really there is no consideration. After careful consideration of the facts proved in the case, we are not in a position to accept the contention that no consideration has passed in the case and the transaction is really a gift. Though the tenor of the document is not conclusive, it is a matter which has to be given due weight in determining the nature of the transaction. Even on the assumption that consideration shown is low that alone cannot be considered as valid reason to hold that the transaction is really not a sale but a gift.

4. In the circumstances., we find no way to accept the contention of the revision-petitioner that the transaction evidenced by document No. 910 of 1966 was a gift and the area covered by the said document would be exempted in determining the total extent of land that is available to be surrendered by the revision petitioner.

5. A more substantial contention has been raised by the revision-petitioner that

at the time of transfer the revision-petitioner's wife was alive. A certificate has been issued by the Vicar of St. Augustine's church, Kadanad, which would show that the declarant's wife died only on 20-7-1968. This fact has not been disputed by the Government Pleader also. The document in question was executed in the year 1966.

6. Section 82 of the Kerala Land Reforms Act lays down that the ceiling area of land shall be, in the case of an adult unmarried person or a family consisting of a sole surviving member, five standard acres, so however the ceiling area shall not be less than twelve and more than fifteen acres in extent. This provision came into force on the 1st day February, 1964. In the circumstances, at the time when the document was executed the status of the declarant was that of a family consisting of two members. It follows that the ceiling area in the case of the declarant shall be 10 standard acres so however that the ceiling area shall not be less than 12 and more than 15 acres in extent. Though this aspect was raised before the Taluk Land Board it has not considered this question and has treated the status of the declarant at the time when the transaction took place as a sole surviving member. This is illegal.

7. A full Bench of this court in the decision in *Kesavan Namboodiri v. State and others* (1976 KLT 427) has held that the transfers declared invalid u/s 84 of the Act would be invalid only to the extent that they would operate to defeat the provisions of the Act.

8. As indicated above, at the time when document No.910 of 1966 was executed, the status of the declarant was a family consisting of two members and therefore the ceiling area shall be, as provided in clause (b) of Section 82(1) of the Act, and the transfers effected under the document will be invalid u/s 84 of the Act only relating to the excess of the ceiling area after calculating the ceiling area on the basis that the declarant's status is a family consisting of two members as provided in Section 82 (1) (b) of the Kerala Land Reforms Act. In the circumstances, the order passed by Taluk Land Board on the basis that the entire area of the 9 acres and 6-cents transferred to his major sons is invalid as being hit by Section 84 of the Act and has to be treated as the property owned and possessed by the declarant himself, is unsustainable.

In the circumstances, the C.R.P. is allowed, the order of the Taluk Land Board is set aside and the matter is remanded to the Taluk Land Board to consider the question as to what extent the transfers in favour of his two sons are hit by Section 84 of the Act, in accordance with law and in the light of the observations contained in this judgment and pass appropriate orders. In the peculiar circumstances of the case, the parties will bear their respective costs.