

(1946) 03 MAD CK 0047
In the Madras High Court

Murikipudi Ankamma

APPELLANT

Vs

Tummalacheruvu Narasayya and Others

RESPONDENT

Date of Decision : 12-03-1946

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : AIR 1947 Mad 127 : (1946) 59 LW 663 : (1946) 2 MLJ 357

Hon'ble Judges : Yahya Ali, J

Bench : Division Bench

Judgement

Yahya Ali, J.—The first defendant in O.S. No. 290 of 1942, District Munsiff's Court, Gurzala, is the appellant in this appeal. K. Papayya who owned certain properties in Piduguralla and another village executed a deed of gift Ex. D-3 on 10th June, 1931, in favour of the 5th defendant, T. Hanumayya. It would appear that Papayya had a son who died and subsequently there was a partition between Papayya and his grandson and thereafter there was nobody to take care of him. He therefore took the 5th defendant Hanumayya to his house for the purpose of looking after him and assisting him in the management of the property. It is for this reason that the gift was made in favour of the 5th defendant who was closely related to the donor. It is the appellant's case that Hanumayya after a short stay with Papayya left Piduguralla and went back to his own native place Mallavolu and ceased to bestow any attention on Papayya or render him any assistance as expected. For this reason, it is alleged, Papayya revoked the gift deed Ex. D-3 by means of the deed of revocation Ex. D-4 dated 26th September, 1933. The differences between them are said to have been ultimately composed by mediators in 1934 under an arrangement by which half the suit properties were to revert to Papayya and the remaining half to continue to belong to the 5th defendant, the donee. Papayya sold under Ex. D-1 on 6th December, 1937, the suit properties to the appellant and the appellant claims that in spite of the gift deed Ex. D-3, Papayya had continued to be in possession of the suit properties until the date of Ex. D-1 and that after the sale under Ex. D-1 the appellant continued to be in possession of those properties until the date of

suit. On 11th September, 1941, the 5th defendant Hanumayya sold the suit lands under Ex. P-1 to the plaintiff, the 1st respondent. The plaintiff's case is that ever since the date of the gift Ex. D-3, dated 10th June, 1931, the donee (his vendor) was in possession of the properties until his sale and that soon after that sale, that is, in December, 1941, or thereabouts, he, the plaintiff, was dispossessed by the defendant and his party. The plaintiff therefore brought the suit for a declaration of his right under the sale, Ex. P-1 dated 11th September, 1941, for possession of the property, for a permanent injunction against the defendants and for past and future mesne profits. The trial Court dismissed the suit holding that the gift deed, Ex. D-3, was conditional and that consequently, the donor was entitled to revoke it, the condition that was not fulfilled being that the donor must be maintained by the donee during his lifetime. It was therefore held that the revocation was valid. With reference to the oral arrangement that was said to have been made by the mediators, that was also found to be true. The plaintiff-respondent was therefore held to be estopped from disputing the title of the appellant. On appeal the learned Subordinate Judge reversed the decree of the trial Court and found that the gift was not conditional but absolute, that the donor had no power to revoke it and that consequently the revocation was not valid. He also found against the mediation and the oral arrangement and held that without such a plea there was no estoppel.

2. The main question for determination in the appeal is whether the gift under Ex. D-3 was conditional in the sense that if that condition was not fulfilled, it was open to the donor to revoke the deed. The relevant portion in Ex. D-3 is this:

I had a son and he died. My wife also died. I am now aged 60 years and I have no strength to look after my own affairs and my agricultural duties. So about 4 years ago I brought you who are my uterine younger brother's son and kept you in my house. From that time, you alone have been looking after my cultivation works, etc., in my house, have been living in my house alone and maintaining me well. I have a belief that you would maintain me well during my lifetime. And as I bear affection towards you, I have got the idea of conveying my property to you. Therefore, I have conveyed to you under dhakal the property worth Rs. 800.

The particular portion upon which reliance is placed to show that the deed of gift was conditional has been underlined (italicised) in the above passage. In the context of the document all that appears to have been entertained in the mind of the donor at the time was a hope or a wish that the donee would continue to bestow the same care and attention on him as he used to do before and that he would maintain him well during his lifetime. I am in agreement with the view taken by the learned Subordinate Judge that the obligation to maintain was not cast upon the donor as a necessary or an essential condition of the grant. The gift was entirely out of love and affection and the reference to maintenance was only as a matter of fond wish. In this view, it is not possible to agree with the appellant's contention that in the absence of any express reservation of a power of revocation, the donor continued to have that right, even after he had divested

himself of all the right, title and interest in the property by means of this gift and after he had duly vested the property in the donee. The document itself further recites that the property had then alone been delivered into the possession of the donee.

3. A great deal has been said about the non-delivery of the deed of gift to the donee and about the continuance of the gifted property in the possession of the donor. The learned Subordinate Judge considered both these aspects and has found with reference to possession that the donee obtained possession of the property, and with regard to the retention of the gift deed by the donor, that that circumstance by itself did not indicate that the gift was not intended to be acted upon or that the 5th defendant had not accepted it. The entire course of conduct of the 5th defendant (the donee) shows that he accepted the gift. With regard to the custody of the document, it would appear, as remarked by the lower appellate Court, that the document was kept in the family box to which the 5th defendant also had access. When he left the donor's village, he had no idea at all that the gift deed would be revoked sometime later. Therefore there was no necessity to take away the gift deed with him. In these circumstances, the learned Subordinate Judge was right in holding that the mere custody of the document does not lead to any adverse conclusion against the 5th defendant.

4. With reference to possession, reliance is placed on behalf of the appellant on cist receipts, lease deeds and also on the transfer of the patta which was made on 19th February, 1939, under Ex. D-5. It has been pointed out by the learned Subordinate Judge that the transfer was admittedly done without notice to the 5th defendant who was then the pattadar and without any enquiry. That statement has not been challenged before me. The cist receipts do not specifically refer to the suit lands by their survey number. The survey numbers of the suit lands are 795/4-A and 795/1-B. Such of the receipts as relate to Piduguralla refer to certain other number and there is no evidence to connect this number with the suit lands. The learned Subordinate Judge, however, adverted to Ex. P-3, Ex. P-4 and Ex. D-9, and said that those cist receipts show that it was the 5th defendant who paid the cist on the lands from fasli 1342 to fasli 1346 and that the patta for the lands stood in the 5th defendant's name till the mutation was effected in February, 1939. The other cist receipts do not throw any further light on the question. The lease deeds which have been filed by the appellant relate to a period subsequent to 1937. They are Ex. D-6 dated 10th May, 1938, Ex. D-7 dated 16th May, 1940, and Ex. D-8 dated 23rd March, 1942. These lease deeds are also not of much evidentiary value, because none of the lessees who is said to have taken the lease has been examined to show that there was actually enjoyment of the suit lands on behalf of the appellant during that period. In this state of the evidence, I find little difficulty in accepting the finding of the learned Subordinate Judge that the gift deed is true and valid, that it is not conditional and that it was intended to be given effect to and was actually acted upon. The revocation of that gift under Ex. D-4 is, it follows, not valid and operative.

5. Turning next to the alleged oral arrangement of 1934 under which some partition of the property is said to have been made between the donor and the donee, the matter has been gone into fully by the learned Subordinate Judge and he finds after examining the evidence of P. Ws. 4, 5 and 6 who spoke to this part of the case that the entire story about the mediation and settlement is. not true and that the evidence of P. Ws. 4, 5 and 6 is not to be relied upon. In view of that finding of fact with which I agree, it is not necessary to examine in detail the evidence relating to the oral arrangement.

6. Mr. Subramaniam, the learned advocate for the appellant, has drawn attention to a decision of the Allahabad High Court in Balbhadar Singh Vs. Lakshmi Bai and argues on the authority of that case that even if it was a mere expectation that was entertained by the donor at the time of the gift, so long as that expectation was not fulfilled, it was open to the donor to revoke the gift. I do not read that decision to lay down any such broad proposition. That was a case which proceeded on its own facts and on those facts there can be no doubt that the particular provision contained in the deed there, namely, that the donee should discharge the specified debts of the donor amounted to a condition whose non-performance by the donee entitled the donor to revoke the deed. Although the word " expectation" is used in the judgment, it is clear that what the learned Judges meant to convey was that the provision in question amounted to a condition. The relevant passage is this:

Under Hindu Law, if a person makes a gift to another in expectation that the donee will do some work in consideration of the gift, it follows that if the donee failed to do that which it has conditioned he should do, the gift is revocable : Mahadeo v. Badamo (1873) 5 N.W.P. H.C.R. 5. It is arguable that in the absence of an express power of revocation for failure of a condition, the gift cannot be impugned or revoked.

While I am on this decision, I would advert to another part of the judgment where a passage has been extracted from White and Tudor's Leading Cases, which has a relevant bearing upon the question at issue in this appeal. The passage runs thus:

if a man will improvidently bind himself up by a voluntary deed, and not reserve a liberty to himself by a power of revocation, a Court of Equity will not loose the fetters he has put upon himself, but he must lie down under his own folly." (White and Tudor's Leading Cases, 6th edition, page 353.)

The next argument of the learned advocate for the appellant is that the case falls within Section 41 of the Transfer of Property Act and that he is entitled to the equity contemplated in that provision. He complains that although there was a finding in his favour in the judgment of the trial Court, the learned Subordinate Judge did not go into that aspect. The so-called finding in the trial Judge's judgment that is relied on is a stray sentence in the paragraph headed " issue 3 " to the following effect " Moreover it is clear that the sale in favour of the plaintiff

is not a " bona fide one." There is no discussion with regard to the essential features that fall to be examined u/s 41 of the Transfer of Property Act. In fact, there were no averments in the plaint such as were necessary for the purpose of invoking this equity; nor was any issue taken specifically on that question. Mr. Subramaniam is not in a position to state that this question was definitely raised or argued before the learned Subordinate Judge. In these circumstances I do not see any substance in the complaint that the question of the applicability of Section 41 of the Transfer of Property Act was not examined by the lower Appellate Court. I do not consider that even otherwise this case is one which falls u/s 41. This is a case where a donor contends that the gift was duly revoked by him on account of the failure of a certain condition which was laid down in the deed. If he had the power of revocation, and he validly revoked the gift, he became the absolute owner. If he had no power of revocation at all, he ceased to have any interest or right in the property on his divesting himself of his title in favour of the donee in which case there is no question of the donor continuing after the gift to be an. ostensible owner, and of any equity arising in his favour within the meaning of Section 41 of the Transfer of Property Act.

7. In the result the appeal is dismissed with costs. No leave.

8. In the forefront of his judgment the learned Subordinate Judge has chosen to make this observation about the judgment of the learned District Munsiff:

I may at once state that I am not concerned here with the grammatical errors, incorrect use of words or phrases, incoherency of sentences and confusion in the judgment of the lower Court. All these could have been avoided with a little patience and care.

I must say in fairness to the learned District Munsiff that I have been through his judgment and I do not agree with this criticism.