
(2006) 07 MP CK 0075
In the Madhya Pradesh High Court
Case No : Second Appeal No. 528 of 1991

Nanhibai

APPELLANT

Vs

Govindrao

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Evidence Act, 1872 — Section 91, 92
Limitation Act, 1963 — Article 59
Transfer of Property Act, 1882 — Section 126

Citation : (2007) 1 CGLJ 6

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : L.N. Sakle and Akshat Tiwari, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—This Second Appeal has been filed at the instance of Plaintiff whose suit has been dismissed by learned First Appellate Court by allowing the appeal of Respondent thereby setting aside the judgment and decree of the Trial Court decreeing the suit of Plaintiff.

2. No exhaustive statement of facts are necessary for disposal of this appeal. Suffice it to state that the Plaintiff filed suit for declaring the Bakhshishnama (Gift deed), dated 6-2-1976 to be null and void and for possession of suit property, which is agricultural land. She has also claimed mesne profit. On going through the plaint averments, it is gathered that the suit property was gifted to Defendant by Plaintiff who was owner of the same. The document of gift deed dated 6-2-1976 is a registered document. According to the plaint averments, Plaintiff is an illiterate lady and she is literate only to the extent that she could sign. The Defendant under the pretext that he will carry on "Puja-Archana" in the temple and for that purpose the suit property be given to him and in case he abandoned the task of iPuja-Archana" the property in dispute, be given back to the Plaintiff. Since the Defendant is not doing iPuja-Archana" in the temple,

therefore, the Plaintiff is entitled to take back the possession of the suit property. It has also been pleaded by her that this condition was fraudulently not mentioned in the gift deed Ex. D-1.

3. The Defendant by filing written statement refuted the plaint averments. It has been pleaded by (he Defendant that Plaintiff voluntarily gifted the suit property to him and the document of gift deed was executed and the same was registered. Since the property has been gifted to him and the gift has been accepted, he has become the Bhumiswami, therefore, this suit be dismissed.

4. The Trial Court after framing necessary issues, decreed the suit of the Plaintiff. The Defendant thereafter filed an appeal before the First Appellate Court which has been allowed and the suit has been dismissed. Hence this second appeal has been filed by the Plaintiff.

5. This Court on 9-4-1992 admitted this second appeal on the following substantial questions of law :

(a) Whether, in view of the finding that the Respondent has committed breach of condition of the gift, the Respondent acquired any right or title in the suit property ?

(b) Whether the suit of Appellant was in view of the facts and circumstances of the case, barred by limitation ?

6. I have heard Shri L.N. Sakle and Shri Akshat Tiwari, Learned Counsel for the Appellant and perused the record.

7. Regarding substantial question of law No. (a) :

The execution of registered document of gift deed has been admitted by the Plaintiff, as a result of which it is for her to prove that the same was fraudulently executed. On going through the document of gift deed Ex. D-1, no such condition has been mentioned that in case Defendant fails to discharge the act of "Puja-Archana" he will be ceased to the owner of the suit property. According to Sections 91 and 92 of the Indian Evidence Act, 1872 such an oral agreement which has been set up by the Plaintiff, is to be excluded. The First Appellate Court in the impugned judgment has held that the essential ingredients of constituting fraud are lacking.

8. u/s 126 of the Transfer of Property Act, 1882, the instances are given when a gift deed can be revoked or suspended. However, the provisions of Section 126 of the said Act can be made applicable only when the following conditions are fulfilled :

(i) that the donor and donee must have agreed that the gift shall be suspended or revoked on the happening of specified event;

(ii) such event must be one which does not depend upon the donor's will;

(iii) the donor and donee must have agreed to the condition at the time of

accepting the gift; and

(iv) The condition should not be illegal or immoral and should be repugnant to the state created under the gift.

On bare perusal of this section, one can say that there should be an agreement between donor and donee that on the happening of the particular event which does not depend on the will of the donor, the gift shall be suspended or revoked, otherwise a gift cannot be revoked. Since there is nothing on record in order to hold that Defendant agreed with the Plaintiff that in case he fails to discharge the work of "Puja-Archana", the gift deed shall be suspended or revoked, therefore, I am of the view that the First Appellate Court did not commit any error in passing the impugned judgment. Substantial question of law No. (a) is thus answered accordingly.

8-A. Regarding substantial question of law No. (b) :

The gift deed is dated 6-2-1976 and the suit for its cancellation has been filed by the Plaintiff on 6-4-1986. Under Article 59 of the Indian Limitation Act, the prescribed period/of limitation is three years from the date of execution of instrument first become knowledge to the Plaintiff. It is no more in dispute that Ex. D-I gift deed dated 6-2-1976 is very well in the knowledge of the Plaintiff right from the day of its execution and, therefore, the suit for cancellation of document ought to have been brought within three years from this date. Since the suit has been filed on 8-4-1986, therefore, it has become time barred. Substantial question of law No. (b) is thus, answered accordingly.

9. Resultantly, this appeal is found to be devoid of any substance and the same is hereby dismissed with no order as to costs.