(1977) 09 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2106 of 1977

Raghubar Datt Joshi — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 08-09-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 2
Transfer of Property Act, 1882 — Section 122, 4, 5
Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 5(6)

Citation : (1977) AWC 531

Hon'ble Judges : K.C. Agrawal, J

Bench : Single Bench

Advocate : M.P. Singh, for the Appellant;

Final Decision : Allowed

Judgement

K.C. Agrawal, J.—This is a petition under Article 226 of the Constitution of India challenging the judgment of the learned Civil Judge, Nainital dated 10th March, 1977. The facts necessary to appreciate the controversy lie in a narrow campus. The same are that a notice dated 22-10-75 was served on the Petitioner u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the Act). By the said notice the Prescribed Authority proposed 7.718 hectares land of the Petitioner as surplus. The Petitioner filed an objection in reply to the said notice and claimed certain exemptions. One of the exemptions claimed by him was in respect of a gift deed dated 15-12-1972. The Prescribed Authority held that the said gift deed having been executed after 24th January, 1971 was liable to be ignored and could not be taken into account. Taking this view of the matter he held that the land of the gift deed belonged to the Petitioner. Aggrieved by this judgment the Petitioner went in appeal before the learned Civil Judge. The appeal was dismissed. Hence this petition.

2. The only contention raised on behalf of the learned Counsel for the Petitioner

was that the gift deed having been executed by the Petitioner in good faith and for adequate consideration, the ceiling authorities committed an error of law apparent on the face of the record in holding that the gift-deed was liable to be ignored. The learned Counsel relied upon the proviso (b) to Sub-section (6) of Section 5 of the Act and contended that so long as the transfer was not proved to be not in good faith and for adequate consideration, the transaction had to be accepted. I am not prepared to accept that under the proviso the Prescribed Authority was required to record the finding with regard to the transfer to be in good faith and for adequate consideration on his own. This proviso requires the person who intend to take its benefit to prove to the satisfaction of the Prescribed Authority that the transfer made was in good faith and for adequate consideration. If no evidence is adduced on this matter, by the person concerned, he cannot be heard to make any complaint against the finding recorded by the Prescribed Authority.

3. Apart from the above, it appears to me that the said proviso does not apply to a gift. Section 5 of the Transfer of Property Act defines the expression "transfer of property". It includes a gift deed as well inasmuch as by the gift-deed a living person conveys property to one or more other living person. Accordingly, under Sub-section (6) of Section 5 of the Act, a gift being a transfer, if made after 24th day of January, 1971 would be liable to be ignored and not to be taken into account. So far as the proviso is concerned, it does not take within its ambit or sweep all the transfers covered by Sub-section (6) of Section 5. Transfers covered by the proviso (b) are only those which are made for adequate consideration. A transfer not made for consideration is not one covered by it. Section 122 of the Transfer of Property Act defines gift as follows:

122. "Gift" is the transfer of certain existing moveable 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.

A gift is essentially a gratuitous transfer. In Halsbury''s Law of England, Vol. XVIII page 364 para 692, it is observed as follows:

A gift intervivos may be defined shortly as the transfer of any property from one person to another gratuitously while the donor is alive and not in expectation of death....

The word "consideration" in Section 122 of the Transfer of Property Act is used in the same sense as the term is defined in the Indian Contract Act. Section 4 of the Transfer of Property Act provides that the Chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872. Accordingly, the word consideration in reference to transfer of properties for consideration, has to be read in the light of its definition given in the Contract Act. It is indisputable that a transfer in consideration of natural love and affection is not a transfer for consideration within the meaning of Section 2 of the Contract Act. Under the law a consideration must be a good and valuable consideration.

Therefore, a gratuitous consideration such as natural love and affection or obedience and submission by way of respect or love may at best be a meritorious or a gratuitous consideration and in no case can be a good consideration or a valuable consideration. See: Patridge v. Gobb (1758) 28 ER 647.

4. In English law the term "consideration" bears the meaning given to it in the classical judgment of Currie v. Misa (1875) 10 Exch. 153 . Although Indian Contract Act does not say that consideration must be good or valuable to sustain a contract, it has, however, always been understood that consideration means something which is of some value and is not illusory. In the light of what I have said above, it is clear that a gift being not for consideration, the question of applying the proviso does not arise. The proviso applies only to a transfer which has been made in good faith and for adequate consideration. It is important to note that the expression "adequate" used before the word "consideration" also signifies it as to be monetary consideration and not consideration of love and affection otherwise the word adequate would become redundant.

5. Counsel, however, attempted to argue that even where a transfer is in good faith alone, the same would be covered by proviso (b) to Section 5(6) of the Act. I am unable to agree with his contention. The proviso has to be read as a whole. Reading it as a whole and in the context in which it has been used, it is not possible to give that meaning. Further more, what is more important is that after the words "good faith" and before the words "for adequate consideration" the word "and" has been used. This word "and" has to be interpreted in conjunctive sense. Accordingly, it is not possible to read them disjointly and to uphold a transfer proved to be made in good faith irrespective of the fact that it is not for adequate consideration. In my view, Sub-section (6) of Section 5 lays down the general law that all the transfers made after 24th day of January 1971 would be ignored and not taken into account. Proviso (b) only carves out an exception. The exception is only with respect to those proceedings which are in good faith and for adequate consideration. Where, as here, consideration is not provided for a transfer in terms of money, the same would not be covered by proviso (b) to Sub-section (6) of Section 5. As observed by Hidayat Ullah, J. (as he then was), in Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha, a proviso, as a general rule, is added to the enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. This would show that the normal function of the proviso is to except something out of the enactment. In the instant case, the Legislature has enacted the proviso in order to take out the transfers made in good faith and for adequate consideration from the ambit of Sub-section (6) of Section 5 which lays down that all transfers made after 24th January 1971 would be ignored and not taken into account. The proviso only removes special cases from the general enactment and provides for them specially.

6. No other point was pressed in this petition.

7. For these reasons, I find no merit in the writ petition. It is accordingly rejected.