
(2014) 01 RAJ CK 0213
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3199/09

Ram Babu and Others

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227
Registration Act, 1908 — Section 17

Citation : (2015) 1 WLN 120

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : R.K. Agrawal and Mr. Sachin Kumar, for the Appellant; Hari Barath, Dy. G.C., for the Respondent

Final Decision : Allowed

Judgement

Bela M. Trivedi, J.—With the consent of the learned counsels for the parties, the writ petition is decided finally at the admission stage. The present writ petition is filed under Article 226 and 227 by the petitioners-plaintiffs challenging the order dated 25.2.09 passed by the Civil Judge (JD) Tonk, District Tonk (hereinafter referred to as "the trial court") in Civil Suit No. 121/2000, whereby the trial court has allowed the application filed by the respondents-defendants and refused to take on record the document produced by the petitioners-plaintiffs for want of registration and stamp duty.

2. In the instant case, it appears that the petitioners-plaintiffs have filed the suit against the respondents-defendants seeking permanent injunction in respect of the suit plot, on the basis of a memorandum of gift deed (Bakhshishnama) dated 25.1.63 executed by the Nawab of Tonk in favour of Shri Ramanand, (since deceased) the predecessor-in-interest of the petitioners-plaintiffs. The said suit has been resisted by the respondents-defendants by filing the written statement disputing the validity of the said gift deed. When the suit was fixed for the examination of the plaintiffs witnesses, the petitioners-plaintiffs had filed an

affidavit of the witness Kedar Vijayvargiya (P.W. 1) as his examination-in-chief and also produced the gift deed dated 25.1.63, marking it as Ex. 5. When the said witness was to be cross-examined on the admissibility of the said document, the respondents had filed an application objecting the admissibility of the said document contending inter-alia that the document was not registered one, though a memorandum of gift in respect of an immovable property. The trial court vide the impugned order allowed the said application and did not admit the said document in evidence.

3. The learned senior counsel Mr. R.K. Agrawal placing heavy reliance on the judgment of the Apex Court in case of Hafeeza Bibi and Others Vs. Shaikh Farid (dead) by L.Rs. and Others, , submitted that merely because a gift is reduced to writing by the Nawab of Tonk, who was a Mohammedan, it does not become a formal document of gift requiring registration under the Registration Act. According to him the trial court has committed an error in law in not admitting the said document in evidence.

4. However, the learned Dy. Government Counsel Mr. Hari Barath for the respondents vehemently submitted that the document in question required registration as per the provisions contained in Section 17 of the Registration Act, and therefore, the trial court has rightly not admitted the said document in evidence. He also submitted that the document in question did not meet with the requirements of a gift under the Mohammedan Law, and therefore could not be said to be a valid gift, and that the alleged donar also had no authority to execute such document.

5. Having regard to the submissions made by the learned counsels for the parties and to the impugned order passed by the trial court, it appears that the ratio of the decision laid down by the Apex Court in the case of Hafeeza Bibi & Ors. Vs. Shaik Farid (dead) by Lrs. & Ors. (supra) relied upon by the learned counsel for the petitioners clinches the issue. In the said decision the Apex Court after considering the precise issue and the earlier decisions of the Apex Court, has categorically held in para 27 as under:-

29. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law.

6. In view of the above stated position and in view of the copy of the document in question annexed by the petitioners alongwith the writ petition, it prima facie appears the document is in the nature of a gift deed executed by the donor who was a Mohammadan. Whether he had any authority to execute such document in respect of the suit property or not and whether such gift is valid gift under the Mohammadan Law or not would be the questions to be examined by the trial court after appreciating the evidence on record. However, in view of the aforestated observations made by the Apex Court, the said document is required to be taken on record and exhibited for being read in evidence though not registered one. It is clarified that the court has not expressed any opinion on the validity of the said document nor on the contents thereof. In that view of the matter, the impugned order dated 25.2.09 is set aside. The document in question is ordered taken on record and exhibited. The writ petition stands allowed accordingly.