
(2008) 11 MP CK 0055
In the Madhya Pradesh High Court
Case No : First Appeal No. 15 of 2006

Ram Babu Vaishya (d) through LRs	Vs	APPELLANT
Scindia Kanya Vidyalaya and Another		RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:

Evidence Act, 1872 — Section 90, 92
Transfer of Property Act, 1882 — Section 1, 106, 118, 123, 130

Citation : (2008) ILR (MP) 3259 : (2009) 1 JLJ 141 : (2009) 1 MPLJ 180

Hon'ble Judges : Subhash Samvatsar, J; Indrani Dutta, J

Bench : Division Bench

Advocate : K.S. Tomar and K.S. Kaurav, for the Appellant; A.K. Chitley and Ankur Mody for Respondent No. 1 and Vivek Khedkar, Government Advocate for Respondent No. 2-State, for the Respondent

Final Decision : Allowed

Judgement

Subhash Samvatsar, J.

This first appeal is filed by Defendants No. 1 and 2 being aggrieved by the judgment and decree dated 20th December, 2005 delivered by Special Judge (Atrocities) and First Additional District Judge to the Court of District Judge, Gwalior in Civil Suit No. 22-A/03 by which the learned trial Court has decreed the suit filed by Plaintiff Respondent No. 1 Scindiya Kanya Vidyalaya Society for declaration of title and injunction.

Facts of the case, briefly stated, are that the Plaintiff Scindiya Kanya Vidyalaya society is a society registered under the United State of Gwalior, Indore and Malwa (Madhya Bharat) Societies Act, 1950 having its registration at No. 306/56 dated 1.8.1956 having its registered office at Motimahal Road, Gwalior. Said society is imparting education to the students upto 12th standard and nearly 750 students are studying in the said institution.

Present suit is filed by one Shrimati Suniti Sharma on behalf of the said society,

being Secretary to the society and the Principal of the said school. A resolution authorising Shrimati Suniti Sharma to file suit was passed by the governing body of the society on 6.3.2002.

As per the plaint allegations, land admeasuring 9229 square "Gaj" (one Gaj approximately 33 inches), belongs to the Plaintiff society, out of which 2045 square Gaj of the land is under dispute in the case in hand which is delineated in red ink in the map attached to the plaint. Land delineated in green ink on in the plaint map on the northern side of the land in dispute belongs to the State.

According to the plaint allegation, the then ruler Jiwajirao Madhavrao Scindia executed a gift-deed dated 30th of April, 1959 in favour of the Plaintiff society of the land in dispute and the Plaintiff society is in possession of the aforesaid land. The land is also recorded in the name of the Plaintiff in the revenue records.

It is alleged that before execution of the gift-deed, meter gauze and narrow gauze railway lines were passing through the said land and a marble factory was situated there which was run by the then Gwalior State. Big rocks of marbles used to be brought to the factory from Shivpuri through railway and used to be unloaded there. Weight of those rocks was so heavy, that they could not be either moved or lifted. It is alleged that the Plaintiff society used to look after and take care of those rocks and those rocks are still lying on the spot which shows that the Plaintiff is in possession of the land in dispute.

It is alleged that the land shown in green colour in the map attached to the plaint is a Government land which was the property of the then Commerce Department of the Gwalior State and recorded in the name of Escher factory. Said land was taken on lease by M/s. Crompton Mumbai Limited from the then Gwalior State on rent of Rs. 68 per annum which had constructed a show room there. Subsequently, due to some reasons, M/s. Crompton Mumbai Limited executed registered sale-deed of the show room on 22.7.1921 in favour of one Lala Ramjidas Vaishya, father of Defendant No. 1. It is mentioned in the aforesaid sale-deed that only the building of the show room was sold and the land on which the show room is built was not transferred and it was agreed that lease of the land on which the building of the show room situate was to be taken by Ramjidas from the State.

In para 8 of the plaint, it is further averred that the Defendants in collusion with the Government officials got their names mutated in the revenue records. It is further alleged that Crompton Mumbai Company had given the show room on rent to one Lala Kashinath Vaishya, uncle of the Defendants c/o Pandit Shivnarayan Sharma, on the rent of Rs. 200/- per month. After the death of Pandit Shivnarayan Sharma, said show room continued in possession of his heirs. Defendant No. 1 had filed civil suit against them on 21.1.1969 which was numbered as Civil Suit No. 2-A/69. Said suit was decreed on 15.7.1996 and decree for ejectment was passed in favour of Defendant No. 1. Possession of the aforesaid property was obtained by the Defendants by executing said decree on

7.9.2001 through Court.

Present suit is filed by the Plaintiff claiming its ownership to the said property on the basis of gift-deed executed by the erstwhile ruler of the Gwalior State in favour of Plaintiff-society.

In the plaint, the Plaintiff has prayed that it be declared that the Plaintiff is the owner of the land delineated by red ink in the plaint map and he is in possession of the said land. He also prayed for relief of permanent injunction against Defendants 1 and 2 restraining them from interfering in the suit land. The third relief claimed by the Plaintiff was that it be declared that the land shown in green ink in the plaint map is the Government land on which Crompton Mumbai Company had constructed a show room and the Defendants No. 1 and 2 have no title or interest in the said land. Fourth relief claimed by the Plaintiff was that mandatory injunction be issued against Defendant No. 3 to take back possession from Defendants No. 1 and 2.

On service of notice, Defendants 1 and 2 and 3 have filed their separate written statements. The trial Court on the basis of pleadings of the parties, has framed as many as six issues and after recording evidence decreed the suit of the Plaintiff, hence, this first appeal at the instance of Defendants No. 1 and 2.

The first contention raised by Shri K.S. Tomar, learned senior advocate appearing on behalf of Appellants Defendants 1 and 2 is that the decree passed by the trial Court in favour of the Plaintiff is erroneous and without jurisdiction. He pointed out that so far as reliefs No. 3 and 4 claimed by the Plaintiff in para 21 of the plaint are concerned, same cannot be granted in the present case. Said reliefs are claimed by the Plaintiff in favour of Defendant No. 3 State of Madhya Pradesh which has not filed any separate suit or counter-claim, hence, in the absence of any suit on behalf of Defendant State, decree in favour of Defendant State of Madhya Pradesh declaring the land delineated in green hues cannot be granted in favour of the Plaintiff. Similarly, no decree can be passed in favour of Defendant No. 3 State of Madhya Pradesh for taking possession of the land from Defendants No. 1 and 2 as Defendant No. 3 is not the Plaintiff in the suit.

In the present case, the learned trial Court has passed decree in favour of Defendant No. 3-State of Madhya Pradesh declaring Defendant No. 3 State of Madhya Pradesh to be the owner of the land delineated in green ink in the plaint map and also passed decree in favour of Defendant No. 3 State of Madhya Pradesh for possession in respect of the said land. Shri A.K. Chitley, learned senior advocate assisted by Shri Ankur Mody, advocate appearing for the Respondent-Plaintiff as well as the learned Government Advocate appearing for the Respondent-Defendant State of Madhya Pradesh, could not, in any manner, justify that part of the impugned decree.

It is a well settled principle of law that decree in civil suit can be passed only in favour of Plaintiff who has approached the Court by filing suit. In the present case, Defendant State of Madhya Pradesh had neither filed civil suit nor any

counter-claim. Hence, that part of the impugned decree is totally without jurisdiction and cannot be sustained in the eyes of law and as such, the impugned decree in respect of the land shown in green ink in the plaint map deserves to be set aside and is hereby set aside.

Now the question remains for consideration is about the part of the impugned decree in respect of the land which is shown by red ink in the plaint map.

The learned trial Court has, on the basis of the gift-deed (Ex.P-3) has held that the land in question was gifted to the Plaintiff society by the erstwhile ruler of the Gwalior State. On perusal of the gift-deed (Ex.P-3) it does appear that the said gift was accepted by Shri G.K. Shinde, Ex-Chief Justice, Madhya Bharat High Court (as he then was) as a donee. The trial Court has found to be this gift-deed (Ex.P-3) to be legally proved and decreed the suit.

Shri K.S. Tomar, learned senior advocate appearing on behalf of the Defendants 1 and 2 contended that the gift-deed in the present case is not a valid document of title and does not confer any title upon the Plaintiff. In support of his argument, he invited attention of this Court to Section 123 of the Transfer of Property Act, 1882 (for brevity the "Act"). Relevant portion of Section 123 reads as under:

123. Transfer how effected. - For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

Section 123 of the Act, thus provides that for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

It is contended by Shri Tomar, learned Counsel for the Appellants Defendants that from perusal of the gift-deed (Ex.P-3), it is apparent that the said document is not attested by two witnesses although the gift-deed is registered in presence of the Registrar. Shri Tomar contended that the requirement of two attesting witnesses to the gift-deed is not a valid document and no title is conveyed in favour of the Plaintiff on the basis of aforesaid gift-deed.

It is also contended by Shri Tomar that no oral evidence to prove the execution of the gift-deed is permissible in view of Section 92 of the Evidence Act which provides that when the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, no oral evidence is permissible to prove such written document. Therefore, it is contended that the oral evidence led by the Plaintiff to prove the gift-deed (Ex.P-3) is not admissible. Gift-deed not attested as per the provisions of Section 123 of the Act is not admissible in evidence, and therefore, in absence of such evidence, the learned trial Court has committed error in passing decree, decreeing the suit in favour of the Plaintiff. It is further contended by Shri Tomar, the learned senior counsel for the Appellants Defendants that the trial Court has

committed a grave error in holding the document to be legal only on the ground that the said gift-deed is thirty years old by application of Section 90 of the Evidence Act. Said section merely provides for deeming presumption in respect of handwriting and signatures of thirty years old document, however, it does not dispense with the legal requirement of registration or attestation.

Shri Tomar, learned senior counsel for the Appellants Defendants 1 and 2 also contended that mere registration of the document will also not be fulfilment of requirement of attestation. It is contended that Registrar is an officer who registers the documents in discharge of his official duty and by registration of the document, the requirement of attestation, as provided by Section 123 of the Act cannot be dispensed with. For this purpose, he has relied upon a judgment of the apex Court in the cases of *M. L. Abdul Jabbar Sahib Vs. M. V. Venkata Sastri and Sons and Others*, , *Ramesh Dutt Salwan v. State and Ors.* AIR 1989 (Delhi)(NOC) 47 .

In reply to these contention, Shri A.K. Chitley, learned senior advocate contended that the Act was not in force in the State of Madhya Bharat which was part B State as per the provisions of Constitution of India. Section 1 of the Act provides that it extends at the first instance to the whole of India except the territories which, before the 1st November, 1956, were comprised in part B States. However, this section further provides that the provisions of the Act may be extended to the whole or any part of the territories by issuing notification in the official gazette by the State Government concerned.

From perusal of the Commentary on the Transfer of Property Act, 1882 by Dr. Sir Hari Singh Gour, 10th Edition, it appears that the contention raised by Shri Chitley is not correct. Notification No. 285-VI issued by the Madhya Bharat Government in its Gazette, dated 25th December, 1952 page 627 shows that the Act came into force in Madhya Bharat State from 1st of January, 1953. Gift-deed (Ex.P-3) in the present case was executed on 13th April, 1959 and thus, on the date of execution of the gift-deed, the provisions of the Act were applicable in the area.

Next contention raised by the counsel for the Plaintiff Respondent is that the provisions of Section 123 of the Act are ultra vires. He contended that there are other modes of transfer provided in the Act i.e. "sale" u/s 54, "mortgage" u/s 58, "lease" u/s 106 "exchange" u/s 118 and "actionable claim" u/s 130. But except the gift-deed, no other transfer requires attestation of two witnesses and therefore, the provisions of two attesting witnesses cannot be said to be in accordance with the law. This argument is without any merit, because except the "gift" and "will" under Indian Succession Act, consideration for other transfers is mandatory. In case of "will" as well as "gift" consideration is not necessary and therefore, the Legislature in its wisdom has put proof of these documents in more strict manner. Apart from this, Section 59 of the Act also requires that the mortgage be attested by at least two witnesses. In such a situation, the argument of Shri Chitley cannot be accepted. That apart, this argument was not

raised by the Plaintiff before the trial Court.

Next contention raised by the counsel for the Respondent Plaintiff is that the requirement of Section 123 of the Act which requires the gift-deed to be attested by two witnesses is not a mandatory requirement, but this requirement is directory in nature. He contended that in the present case, the Registrar was personally knowing the donor and the donee who were ex-ruler and ex-Chief Justice of Madhya Bharat High Court. Registrar had also put an endorsement on the gift-deed he personally knows both the donee and donor, and therefore, the condition of attestation by two witnesses can be dispensed with in the present case.

This argument is again without any merit because when the law requires that a particular thing is to be done in a particular manner, that act should be done strictly in accordance with that manner. Section 123 of the Act provides for the attestation of the gift-deed by two witnesses. The word "attested" is defined u/s 3 of the Act which reads as under:

"Attested" in relation to an instrument means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at (he same time, and no particular form of attestation shall be necessary.

So as per Section 123 of the Act, the document of gift-deed must be attested by two witnesses provided by Section 3 of the Act.

The apex Court in the case of Abdul Jabbar (supra), has already held that the Registrar registering the document is not an attesting witness. The Registrar registers the document in performance of his official duty and will not dispense with the requirement of two attesting witnesses provided u/s 123 of the Act.

Now the contention of Shri Chitley, learned senior advocate for the Respondent Defendant is that said requirement is not mandatory. In support of his argument, he relied on page No. 362 of the Book Principles of Statutory Interpretation by Justice G.R. Singh (Tenth edition). The author has laid down principles to find out which of the provision is mandatory and which is directory in nature. Quoting large number of cases, it lays down no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Courts of justice to get at the real intention of the Legislature by carefully attending to whole scope of the statute to be considered. The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention

of the Legislature must govern and these are to be ascertained not only from the phraseology of the provision, but also considering its nature, its design, and the consequences which would follow from construing it the one way or the other.

Thus, the principle which is followed by the apex Court in number of cases is that the Court may consider *inter alia*, the nature and design of the statute and the consequences which would follow from construing it the one way or the other and impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provision is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered.

Shri Chitley, learned senior advocate of the Respondent-Plaintiff contended that as per law laid down by the apex Court, in absence of any consequence or penalty provided for non-compliance of the provision, the provision is to be construed as directory and not mandatory. We find that this argument is also without any merit in the present case. It is true that no penalty is imposed for non-compliance of the condition of attestation of two witnesses on the gift-deed, but in the absence of this condition, the gift-deed itself cannot be said to be legally complete and does not convey any title in favour of the donee because when the law requires that a particular thing is to be done in a particular manner, then the same has to be done in the manner provided by law else the act is illegal. Therefore, consequence of absence of two attesting witnesses cannot be said to be directory but it is mandatory in nature.

Patna High Court in the case of *Mst. Samrathi Devi Vs. Parasuram Pandey and Others*, has considered the validity of the gift-deed which was not attested by two witnesses and held in para 11 of its judgment as under:

With respect to the question of the due attestation of the document in question according to Section 123 of the Transfer of Property Act "for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses". The word "attested" has again been defined in Section 3 of the said Act, which in relation to an instrument, means "attested by two or more witnesses each of whom has seen the executant.

Patna High Court in the aforesaid case has held that in the absence of attestation as provided in Section 123 read with Section 3 of the Act of the gift-deed, the transfer is not valid. Similar view is taken by the Allahabad High Court in the case of *Lachman Singh v. Surendra Bahadur* AIR 1932 Allahabad 527, wherein the question was whether the mortgage-deed in the absence of two attesting witnesses can be admitted in evidence and Full Bench of Allahabad High Court has held that where a mortgagee sues to enforce his mortgage and the execution and attestation of the deed are not admitted, the mortgagee need prove only this

much that the mortgagor signed the document in the presence of an attesting witnesses and one man attested the document, provided that the document on the face of it bears the attestation of more than one person; but if the validity of the mortgage be specifically denied, in the sense that the document did not effect a mortgage of law, then it must be proved by the mortgagee that the mortgage-deed was attested by at least two witnesses.

Aforesaid view is followed by Hon'ble Mr. Justice V.N. Khare (as he then was) sitting singly in the case of Smt. Mallo Vs. Smt. Bakhtawari and Others, wherein it was held that admission by executant donor about the existence of gift-deed obtained by fraud did not dispense with proof of attestation.

In the present case, from the face of the gift deed (Ex.P-3) itself, it is clear that the document is not attested by any of the attesting witnesses, hence, the said deed is not a legal gift-deed and does not convey any title to the Plaintiff.

Shri Chitley, learned senior advocate for the Respondent-Plaintiff further contended that the present Appellant has no right to challenge the gift-deed as he is stranger to that transaction; no stranger can challenge the transaction between the donor and the donee. In support of his contention, he lay hand on the judgment of the apex Court in the cases of State of West Bengal v. The Dalhousie Institute Society (1970)3 SCC 803 Collector of Bombay v. Municipal Corporation of the Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, , and Smt. Bhanumati Chouhan Vs. Chetan Singh and Others, . Those cases do not support the case of the Plaintiff in the present case, because in those cases, gift-deed was admitted in the written statement.

The argument of Shri Chitley that the Defendants being stranger to the gift-deed cannot challenge the transaction between the donor and donee is concerned, that argument also does not hold water because present suit is filed by the Plaintiff for declaration of its title on the basis of the gift-deed and unless and until the Plaintiff establishes its title against the Defendant, it is not entitled to a decree for declaration in the present case. Plaintiff's case is solely based on proof of title on the basis of the gift-deed (Ex.P-3) which on the face of it is not attested by two witnesses and therefore, the Plaintiff cannot get decree for declaration of its title in the present case in the absence of valid transfer in its favour. Hence, the learned trial Court has committed error in granting said decree and the finding of the trial Court that the title is proved only because the document is thirty years old cannot be sustained. Section 90 of the Evidence Act will not dispense with the requirement of Section 123 of the Act.

Next contention raised by the counsel for the Plaintiff Respondent is that even in absence of title, the Plaintiff is entitled for decree of injunction against the Defendants in the light of the judgment of the apex Court in the case of Nair Service Society v. K.C. Alexander AIR 1968 SC 1167, and Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another, In both the aforesaid decisions, the apex Court has laid down that if the Plaintiff is in settled

possession of the property in question, injunction can be granted in his favour to protect his possession in spite of the fact that his title is not proved.

There is no dispute about this proposition. However, question in the present case is whether the Plaintiff is in possession of the suit land. Plaintiff in para 5 of the plaint has stated that name of the Plaintiff is recorded in the revenue record as owner. However, no revenue entry is produced by him. It is also averred by the Plaintiff in para 6 of the plaint that the Plaintiff was managing the property from the time when a marble factory was existing there i.e. from the time of Ex-Ruler. However, no document to that effect is produced by the Plaintiff.

Only evidence led by the Plaintiff is the oral statement of Lt. Col. Virendra Chaturvedi (PW2) and Virendra Singh Chouhan (PW3). Lt. Col. Virendra Chaturvedi (PW2) in his statement before Court has given description of the property and stated that the suit land was given by the Ex-Ruler to the Plaintiff society on 1.3.4.1959. Broad gauze and narrow gauze railway lines were passing through the land on which marble factory was situated. Certain marble rocks are still lying on the spot. In para 9 of his statement, he has contended that Defendants 1 and 2 never remained in possession of the suit land. In para 23 of his cross-examination, he has stated that he does not know whether the land was measured by the Sub-Divisional Officer at the instance of Defendants 1 and 2. He also denied that Scindia Kanya Vidyalaya has raised any objection for said measurement. In para 31 of his cross-examination, he further says that he had seen the building 25-30 years ago and thereafter he had not seen the spot as he was in service. He got knowledge of the case, only in September, 2004 when he returned back from service. He deposed that he was not present when possession of the land was delivered to Defendants 1 and 2 in a civil suit filed against Sharma brothers. He is unable to give the khasra numbers of the land which is in possession of the Plaintiff. In para 33, he admitted that till the civil suit was pending between the Defendants and Sharma brothers, the Plaintiff has not raised any objection nor taken any step because the Plaintiff was in possession and there was no need to take any objection.

Thus, this witness has admitted that the decree in the civil suit against Sharma brothers was in respect of some other land. In para 36, this witness has further admitted that in the revenue record name of Ramjidas i.e. the father of the Defendant was entered in the year 1940 on the basis of the sale-deed executed in the year 1921 and the name of the Defendant still continues in the revenue record. He says that it is true that in the revenue entry Ex.D-2 name of Ramjidas i.e. father of the Defendants is recorded. This is the Khasra of Samvat 2004 i.e. year 1948. Again in para 38, he admitted that Ramjidas is in possession of the land bearing survey number 392 and after his death present Defendants are in possession. He further admitted that from the year 1940 till today, no objection is raised by the Plaintiff against recording of the Defendants' name against the said land. He further says that no objection was raised as the Plaintiff was in possession. In para 43, he further admitted that even after the death of

Ramjidas they have not taken any step for correcting the revenue entries.

Another witness examined by the Plaintiff in support of its case is Virendra Singh Chouhan (PW3) who says that he has seen the land for the first time in November, 1995 when he was appointed in the said institution. Thus, this witness also does not prove the possession of the Plaintiff on the land in question.

Defendants 1 and 2, in rebuttal, have filed copies of revenue entry i.e. Ex.D-2 which shows that name of Ramjidas is recorded against the suit land to be in possession. This revenue entry is of the year 1940. Ex.D-3 is the revenue entry of the year 1987-88 which also shows the names of the present Appellants to be in possession of the suit land. Ex.D-4 is the revenue entry of the year 1998-99 and 2000-2001 which shows that Defendants 1 and 2 are in possession of the property. Ex.D-5 is the revenue entry showing entries from Samvat 2026 to 2030. These revenue entries show the name of Ramjidas, father of the Defendants 1 and 2 to be recorded as owner of the land in question.

Contention of the Plaintiff in respect of the revenue entries produced by the Defendants 1 and 2 is that these revenue entries were created by manipulation by the Defendants. Defendant State of Madhya Pradesh has filed separate written statement in the matter and the Defendant State in its written statement has admitted in para 7 that the sale-deed was executed in respect of the suit land in favour of the Defendants on 22.7.1921 and on that basis, name of Defendant No. 1 was recorded as Up Krishak. In para 13, it is averred that the land bearing survey numbers 379, 380, 389, 390 and 391 was recorded in the name of M/s. Crompton Company. It is specifically denied that there is any collusion between the Government employees and the Defendants. In para 15 of the written statement, it is denied by the Defendant-State that the revenue entries were manipulated with the collusions of officials of the Government. Apart from this evidence, Ex.D-1 shows that the Defendants 1 and 2 were put in possession of the property in execution of a decree passed by the civil Court in Civil Suit No. 13/89 in March, 1990.

Thus, it is an admitted position that name of the Defendant is recorded in the revenue record against the suit land. In the present case, this Court is not required to decide the title of the Defendants and this Court is called upon only to decide the title of the Plaintiff. Plaintiff has failed to prove his title to the suit property nor it is in possession of the property in question. The learned trial Court in para 19 of its judgment has held title of the Plaintiff proved only because the alleged gift-deed (Ex.P-3) is thirty years old document and therefore, presumption can be drawn in favour of the Plaintiff about genuineness of the document. This approach of the learned trial Court is contrary to law because Section 90 of the Evidence Act attaches presumption about the signature and does not dispense the legal requirement of attestation. Hence, merely because the gift-deed is 30 years old, it cannot be said that the transaction is proved in absence of mandatory requirement of Section 123 of the Act.

So far as finding about possession is concerned, the learned trial Court in para 29 of the impugned judgment has come to the conclusion that since the Plaintiff has title to the suit property, it is presumed that it is in possession of the suit property. For arriving at this conclusion, the learned trial Court has not at all discussed evidence on record and straightway came to the conclusion without any reference to the revenue entries.

So far as revenue entries filed by the Defendants 1 and 2 are concerned, they are certified copies of the public documents. It is true that revenue entry can be rebutted by leading oral evidence, but in the present case, there is absolutely no evidence on the part of the Plaintiff to rebut the revenue entries filed by the Plaintiff. On the contrary, Defendant State of Madhya Pradesh in its written statement has admitted the revenue entries filed by Defendants 1 and 2 to be genuine. Apart from it, Ex.D-1 shows that the Defendants 1 and 2 were put in possession of the property in execution of a decree. Hence, the finding of the trial Court that the Plaintiff is in possession of the disputed land can also not be sustained and is hereby set aside.

Considering all these aspects of the matter, decree in favour of the Plaintiff for declaration as well as injunction cannot be sustained in the eyes of law and is hereby set aside.

Resultantly, appeal, stands allowed with costs setting aside the judgment and decree impugned herein and the suit of the Plaintiff is dismissed with cost.