

(2017) 12 OHC CK 0083

In the Orissa High Court

Case No : 285 of 1990

Rankanidhi Das (dead) through his L.Rs	APPELLANT
Vs	
Kartika Charan Das (dead) through his L.Rs. and another	RESPONDENT

Date of Decision : 18-12-2017

Acts Referred:

Citation : (2017) 12 OHC CK 0083

Hon'ble Judges : A.K.Rath

Bench : SINGLE BENCH

Advocate : Soumya Mishra, Prasanna Kumar Panda

Judgement

1. This appeal is directed against the judgment and decree of the learned Additional District Judge, Bhadrak in T.A.No.43 of 1986, whereby the learned appellate court dismissed the appeal and confirmed the judgment and decree passed by the learned Munsif, Bhadrak in O.S.213/82-I.

2. Bihari Das, the predecessor-in-interest of the appellants as plaintiff instituted the suit for cancellation of the gift deed, confirmation of possession and permanent injunction. The case of the plaintiff was that he was an old man and had no near relation to look after him. The defendant persuaded him to execute a gift deed in respect of the suit land. Possession of the suit land had not been delivered to the defendant. Since the defendant did not act in terms of the deed, he cancelled the deed. Taking advantage of his illness, the defendant threatened to dispossess him from the suit land. It is apt to state here that during pendency of the suit, sole plaintiff died, whereafter his widow Kini Bewa was substituted. During pendency of the first appeal, she died, whereafter one Rankanidhi Das was substituted. During pendency of this appeal, Rankanidhi Das having died, his legal representatives have been substituted. The sole respondent also died during pendency of this appeal, whereafter his legal heirs have been substituted.

3. The defendant entered contest and filed a written statement stating, inter alia, that after execution of gift deed, the plaintiff delivered possession of the suit land

to him. He is in possession of the suit land. The gift deed has been acted upon.

4. On the inter se pleadings of the parties, the learned trial court framed seven issues. The learned trial court came to hold that the gift deed had been acted upon. The defendant was in possession of the suit land. Held so, it dismissed the suit. The unsuccessful defendant filed T.A.No.43 of 1986 before the learned Additional District Judge, Bhadrak, which was eventually dismissed.

5. The Second Appeal was admitted on 21.11.1990 on the following substantial question of law : "Whether the finding that the gift was duly accepted can be sustained in the absence of the donee being examined in the suit."

6. Ms.Soumya Mishra, learned Advocate on behalf of Mr.S.N.Mishra-I, learned Advocate for the appellants and Mr.Prasanna Kumar Panda, learned Advocate on behalf of Mr.S.Mohapatra, learned Senior Advocate for the respondents.

7. Ms.Mishra, learned Advocate for the appellants submitted that the original plaintiff was an old man. The defendant persuaded the plaintiff to execute the gift deed in his favour in respect of the suit land for which he will look after him. The defendant did not take care of the plaintiff. Thereafter the plaintiff cancelled the gift deed. The gift deed has not been acted upon. Both the courts below committed a manifest illegality in holding that the gift deed has been acted upon.

8. Conversely, Mr.Panda, learned Advocate for the respondents submitted that the courts below concurrently held that the gift deed has been acted upon.

9. The apex Court, in the case of Asokan vs. Lakshmikutty and others, (2007) 13 SCC 210, on an interpretation of Sec.122 of the Transfer of Property Act, held: "13. xxx xxx xxx

The definition of "gift" contained in Section 122 of the Transfer of Property Act provides that the essential elements thereof are:

- (i) the absence of consideration;
- (ii) the donor;
- (iii) the donee;
- (iv) the subject-matter;
- (v) the transfer; and
- (vi) the acceptance.

14. Gifts do not contemplate payment of any consideration or compensation. It is, however, beyond any doubt or dispute that in order to constitute a valid gift acceptance thereof is essential. We must, however, notice that the Transfer of Property Act does not prescribe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question. There may be various means to prove acceptance of a

gift. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raises a presumption of acceptance. (See *Sajukta Ray v. Bimelendu Mohanty*, *Kamakashi Ammal v. Rajalakshmi* and *Samrathi Devi v. Parasuram Pandey*).

xxx xxx xxx

16. While determining the question as to whether delivery of possession would constitute acceptance of a gift or not, the relationship between the parties plays an important role."

10. Both the courts held that the defendant is in possession of the suit land. The fact that possession had been delivered to the donee. There is a presumption of acceptance. The courts below concurrently held that the gift deed has been acted upon. There is no perversity in the said findings. The substantial question of law is answered accordingly.

11. As a sequel to the above discussions, the appeal fails and is dismissed. No costs.