
(2009) 08 P&H CK 0246
In the Punjab And Haryana At Chandigarh

Smt. Chameli and Others

APPELLANT

Vs

Smt. Naresh Kumari and Others

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Transfer of Property Act, 1882 — Section 10, 126

Citation : AIR 2010 P&H 55

Hon'ble Judges : H.S. Bhalla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.S. Bhalla, J.—The facts required to be noticed for the disposal of this appeal are that respondents (hereinafter referred to as "the plaintiffs") filed a civil suit for declaration and possession alleging therein that their predecessor-in-interest was owner in possession of the suit land measuring 38 Bighas 8 Biswas detailed in para 2 of the plaint and that the said land was gifted by Rao Bahadur Randhir Singh vide mutation No. 752, dated 13-12-1953 to Sanwalia, Ratti Ram and Sheo Chand, i.e., the predecessor-in-interest of the appellants. It was alleged that the gift was in consideration of services and was to revert back to Rao Bahadur Randhir Singh or his heirs in case the donees refuse to render services. It was alleged that since the defendant-appellants refused to render services so the legal heirs of Rao Bahadur Randhir Singh were entitled to get back the disputed land from the defendants.

2. The suit was contested by the defendants on the ground that the same was barred by time and it was submitted that mutation No. 752, dated 13.12.1953 sanctioned in favour of Sanwalia, Ratti Ram and Sheo Chand, the donees, whereby land in question was gifted. It was denied that the land was to revert back to the plaintiff-respondents. The defendant appellants also pleaded that they never refused to render service and that the present suit was filed on false plea. It was pleaded that the plaintiff-respondents were not entitled to take the possession of the land as the appellants have not violated any condition of the

gift deed.

3. The other facts of the case are not required to be reproduced herein since they have been recapitulated in detail in the judgments passed by the learned courts below.

4. On these conflicting pleadings of the parties, the learned lower court after framing necessary issues and assessment of evidence on record, decreed the suit of the plaintiffs.

5. While admitting this appeal, the following substantial questions of law were framed by this court:

1. Whether in the facts and circumstances of the case, when a gift is made without any consideration, but reserving the right of being served during the lifetime, the donees or their successor-in-interest would be under obligation to serve the heirs of the donor and in case of refusal, the subject-matter of the gift would revert to the successors-in-interest of the donor or not?

2. Whether in the facts and circumstances of the case the judgment and decree passed by the courts below is based on misreading of evidence and is, thus, illegal and unsustainable in the eye of law?

3. Whether in the facts and circumstances of the case, the suit filed by the plaintiffs is within limitation?

4. Whether in the facts and circumstances of the case, the suit, the property in dispute, which was gifted by the ancestors of the plaintiffs, could revert to the successors-in-interest of the donor or not?

6. I have heard the learned Counsel for the parties and have also gone through the record of the case.

7. A thick battle took place between the parties on the platform of gift deed dated 13.12.1953 and the entire controversy of the parties revolves around this gift deed Ex. P-1.

8. Before proceeding further with regard to the controversy between the parties, I would like to reproduce the gift deed/Mutation dated 13.12.1953, Ex. P-1 along with the proceedings recorded therein, which runs as under:

In the general gathering Rao, Bahadur Randhir Singh, donor, identified by Neki Ram, Lambardar having appeared and stated that he has gifted land measuring 38-8 on consideration of rendering life long services, in favour of Sanwalia etc. and that the possession has been delivered. If the donee refuses to render services the land will revert to the donor or his heirs (1) Sanwalia, (2) Ratti Ram, (3) Sheo Chand, donees are also present who verify the above statement to be true and correct.

Therefore, as per consent of the parties, land comprised in Khewat No. 64 bearing Khasra Nos. 1169(13-18), 1171(6-11), 1173(7-0) and 1174(0-19) total

38-8 by Rao Bahadur Randhir Singh donor in favour of Sanwalia-Ratti Ram, Sheo Chand donees in equal shares on consideration of rendering life long services is approved.

Sd/- Naib Tahsildar Camp at Surah 13.12.53

9. Learned Counsel appearing for the appellants referring to question Nos. 1 and 2 in the first instance submitted that plaintiff-respondents were not entitled to any relief inasmuch as gift deed in question was absolute and the condition attached thereto could not be held to be legal. In order to lend support to his contention, he referred to the law contained in Soma Vs. Brij Lal, Manohar Lal Aggarwal and Another, and Giani Ram Narsingh Vs. Balmakand and Another, . It was argued that wherein an earlier part of documents, some properties were given absolutely to a person but later on, other directions are inserted in that document which conflicts with and take away from the absolute title given in the earlier partition, in such an event the earlier disposition of absolute title would prevail and later direction is to be disregarded. Para 6 of the judgment reported in Smt. Soma's case (supra) reads as under:

6. In Letters Patent Appeal it has been argued by Mr. Jain on behalf of the appellant that Shrimati Indi became absolute owner of the land in dispute under the deed of gift and that the learned single Judge erred in reversing the findings of the courts below in this respect. After giving the matter my earnest consideration I am of the view that there is considerable force in the above contention. It is recited in the gift deed that Kishan Chand was making a gift of the land in dispute along with all the appurtenant rights in favour of his wife Shrimati Indi and that she had taken possession of the gifted land as an owner in the same manner as he had been doing it previously. It was further distinctly stated that whatever rights or powers of ownership the donor had in the gifted land would vest and would remain vested in the donee and that the donor or his heirs would have no right, title or interest in that land, and that if any one of them ever set up such a claim he would be deemed to be a false claimant. The above words used in the deed of gift, in my opinion clearly go to show that the intention of Kishan Chand in executing the deed of gift was to vest the same right of ownership in the land in dispute in Shrimati Indi as had been vested in him. It was no doubt further added in the gift deed that the donee would have no right to alienate the gifted property but these words have to be read in the context of the words used earlier in the deed of gift and the language used in the deed of gift taken as a whole conveys the impression that the intention of the donor was to vest an absolute estate in Shrimati Indi. Apart from that, the proposition seems to be fairly settled that where in an earlier part of a document some property is given absolutely to a person but later on other directions are inserted in that document which conflicts with and take away from the absolute title given in the earlier portion, in such an event the earlier disposition of absolute title would prevail and later direction is to be disregarded. I may in this context refer to the following observations of their Lordships of the Supreme

Court in Ramkishore Lal Vs. Kamal Narain, :

Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is where in an earlier part of the document some property is given absolutely to one person but later on other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion. What is to be done where this happens? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given (See Sahebzada Mohammad Kamgar Shah Vs. Jagdish Chandra Deo Dhabal Deo and Others, . It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible, it is only when this is not possible e.g. where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void.

The learned single Judge relied on case Radhey Shiam and Others Vs. Official Receiver of the Estate of Ram Charan Das and Others, but perusal of that case would go to show that the decision in that case was arrived at in the context of its own facts. The gift in that case had been made in favour of the wife with the object of safeguarding her comforts against all possible trouble in future that might arise from the adopted son of donor. In any case, in view of the later pronouncement reproduced above of their Lordships of the Supreme Court, the rule of construction must be held to be well settled that in case of a conflict between an earlier disposition of an absolute title and a later direction curtailing the conferment of absolute title the earlier disposition should prevail and the later direction should be disregarded. I would accordingly hold that Shrimati Indi became absolute owner of the land in dispute as a result of the gift made in her favour under the deed of gift.

10. In para 3 of another judgment, reported in Giani Ram Narsingh Vs. Balmakand and Another, , it was held as under:

3. The learned District Judge has held that to, transactions of this kind Section 126 the T.P Act is applicable, it provides that the donor and the donee may agree that on the happening of any specified event which does not depend on the Will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable--at the mere Will of the donor is void.

The case which is now before me is of a different nature. An absolute gift has been made in favour of a "prohat" but it is subject to a condition restricting the alienation. In cases such as this the condition is void. It has been so held in "Dugdale v. Dugdale" (1888) 38 Ch D 176 (A) and the law is so stated at P. 756 of Mulla's Transfer of Property Act.

A gift is a transfer of property and is therefore subject to the rules enacted in Chap. II of this Act. Thus if an absolute gift is made, subject to a condition restricting alienation the condition would be void.

11. On the strength of these judicial precedents read with Section 10 of the Transfer of Property Act, it was further submitted that gift deed dated 13.12.1953 was absolute and any restriction/condition attached thereto deserves to be disregarded. In any case, it was further submitted that Rao Bahadur Randhir Singh had died soon after making the gift dated 13.12.1953 and there was no condition/restriction attached to the gift dated 13.12.1953 that the predecessors-in-interest of the appellants, i.e., the donees or the appellants were required to serve even the heirs of Rao Bahadur Randhir Singh. This contention of the learned Counsel is liable to be accepted since to my mind, in order to find out the intention of the parties and the nature of the document, it is the substance of the document that matters and form of a document sometime is liable to be ignored since it has been seen that clever drafting can camouflage the real intention of the parties. Whether the donees or the appellants were required to serve even the heirs of Rao Bahadur Randhir Singh, is such a question, which can be answered from the substance of the gift deed dated 13.12.1953 Ex. P-1, the mutation of which, has already been reproduced above. A perusal of the same clearly spells out that it was not the intention of the donor and no where it is mentioned therein that the donees were required to serve even the heirs of donor. It is not a good case of the plaintiff-respondents that the donees refused to serve even Rao Bahadur Randhir Singh Meaning thereby that it can safely be presumed that proper service was rendered as per the intention of the donor and he was served till he met his edge of doom. The proceedings contained in gift deed dated 13.12.1953 Ex. P-1 further advance the case of the present appellants because it clearly spells out that the predecessors-in-interest of the appellants were required to render services, but to Rao Bahadur Randhir Singh, the donor only. In this regard, a reference was also required to be made to para 14 of the plaint, which reads as under:

14. That because, the disputed and, as mentioned in paras 2 to 4 of the plaint, was gifted to the ancestors of the defendants in lieu of rendering service till the lifetime (life estate in lieu of services) vide mutation No. 752, dated 13.12.1953 and as per the stipulations of the gift, if the donees or their legal heirs do not render services to the donor or his heirs (children) then the donor or his children shall be entitled to get back the disputed land. The defendants have refused to render services to the plaintiffs. Moreover, the original donor has also died. Therefore now the plaintiffs as legal heirs of the deceased donor Rao Bahadur Risaldar Randhir Singh are entitled to get back the disputed land.

12. Having gone through para 14 of the entire plaint, I find that no particulars have been mentioned in the plaint and it has not been specified as to when or which of the donees refused to render service which could give any cause of action to the plaintiffs to institute the suit and in the absence of any specific

instance of refusal to render service the suit could not be instituted.

13. Learned Counsel for the appellants has rightly referred to the solitary, statement of Sampuran Singh, who appeared as PW-1 wherein in examination-in-chief, he gave no particular nor gave any specific instance when any, of the donees refused to render service which Could give cause of action to the plaintiffs to institute the suit. Rather in his cross-examination Sampuram Singh admitted that Rao Bahadur Randhir, Singh had died 40-45 years back. The statement of Sampurari Singh was recorded on. 17.5.2000. Meaning thereby that Rao Bahadur Randhir Singh died in late fifties that is soon after the gift deed dated 13.12.1953 was executed. That a part even if it is assumed that there was a condition attached to the gift deed dated 13.12.1953 that the donees were required to serve Rao Bahadur Randhir Singh, such a condition stood nullified by the death of Rao Bahadur Randhir Singh. A perusal of mutation dated 13.12.1953 would also show that the gift was complete on 13.12.1953 itself as in pursuance of the gift deed, the possession was delivered to the donees.

14. On behalf of the appellants, only Maghu Ram, DW-1 stepped into the witness box wherein he specifically averred that the land in question was gifted to them in lieu of services and that after the death of Rao Bahadur Randhir Singh, his heirs had left the village. There has been no cross-examination on this material aspect by the plaintiff-respondents. The statements of PW-1 Sampuran Singh (PW-1) and Maghu Ram (DW-1) are reproduced as under:

PW-1 : Statement of Sampuran Singh

Stated that Randhir Singh was owner of the disputed land. Land was given to Sanwalia, Ratti Ram and Sheo Chand so that these people would keep serving us. Period was not fixed as to till when the land would remain with them. Now, they do not render their services. All the aforesaid three persons have died. After death of Sanwalia etc. the land was to come back to us. Defendants are the children of Sanwalia etc. Sampuran has died. We are his legal heirs. We have right to get the land.

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I do not know as to when the heirs of Sanwalia had died. Randhir Singh had died 40/45 years ago. Death of my father had not taken place in my presence. I do not remember as to when Sanwalia had died. It is wrong to say that defendants are serving us. It is wrong that due to greed land is being taken.

R.O. & A.C. LTI Sampuran Singh

Sd/- C.J. (Junior Division) Jhajjar

DW1 : STATEMENT OF MAGHU RAM

Stated that Randhir Singh had given the land in dispute to my father Ratti Ram, Sanwalia and Chhailu and mutation thereof had since been entered in favour of these persons. This land was given to us in lieu of rendering the services. After

death of Randhir Singh his children had left the village. When nobody remained here whom should we have served? The plaintiffs had not raised any objection to any of the mutations entered after the death of Sanwalia

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Mutations, about which I have stated above, were entered in Surah. No notice was served either to the plaintiffs or to us. It is wrong to say that after the death of Sanwalia, the land was to revert to the plaintiffs....

15. It is well established rule of evidence that a party should point out to the opponent witness so much of the case which is concerned with a particular witness. If no such questions are put, the courts presume that the witness account has been accepted. If it is intended to suggest that the witness was not speaking truth at a particular point of time, his intention must first be directed to the fact by cross-examination so that he may have an opportunity of giving an explanation. A perusal of the statement of the plaintiff clearly spells out that he has nowhere stated that it was the intention of Rao Bahadur Randhir Singh while executing the gift deed that after his death the defendant-appellants would also serve the legal heirs of the donor. It is an admitted case that the predecessors-in-interest of the appellants and thereafter the appellants are continuing in possession of the disputed land as absolute owner as also evident from the fact that Sanwalia had died in the year 1965 and Mutation No. 862, dated 26.4.1965 was sanctioned in favour of defendant/appellants (defendant Nos. 1 to 20). After the death of Ratti Ram, Mutation No. 924, dated 17.2.1970 was sanctioned in favour of appellant-defendant (defendant Nos. 8 to 34) and at no point of time any one from the plaintiff/respondents raised any objection. Since the defendant-appellants are coming in possession of the land as owners, the suit filed by the plaintiff-respondents on 23.7.1997 is clearly barred by time, as the defendant-appellants are continuing in possession as owners since 13.12.1953. The learned court below fell in error despite vague pleadings of the plaintiff-respondents contained in para 14 of the plaint referred to above, have proceeded to hold that no service was rendered to the descendants of the donor. In the first instance there was no inconsistency in the stand of the appellants that they have ever denied to render service and that after the death of Rao Bahadur Randhir Singh nobody was living in the village to whom the service could be rendered. The learned courts below have proceeded to assume the facts in holding that the plaintiff-respondents were entitled to possession as the appellants were not rendering services. Neither there was any such evidence on record nor the plaintiff-respondents had led any affirmative evidence to substantiate the same. In this view of the matter the substantial question Nos. 1, 2 and 4 deserve to be answered in favour of the appellants and while setting aside the judgments of the courts below the suit filed by the plaintiff-respondents deserves to be dismissed.

16. As regards substantial question No. 3, it was argued by the learned Counsel for the appellants that the donees and after their death, their heirs, i.e.,

defendant-appellants are continuing in possession of the suit land. The plaintiffs have not been able to point out as to how defendants had breached the conditions justifying grant of relief of possession as already discussed above and at the cost of repetition, to my mind, there was nothing in the mutation dated 13.12.1953, Ex. P-1, that the condition requiring to render services was also available to the heirs of the donor, the so called condition stood extinguished with the death of Rao Bahadur Randhir Singh in late fifties, i.e., soon after the execution of the gift deed and seen from every angle, the suit is barred by limitation and then again no such condition existed nor there existed any clause in the gift deed that the donees, were required to render services even to the heirs of the donor nor there is anything on the record to spell out that donees refused to serve Rao Bahadur Randhir Singh or did not serve him till his death. In the final analysis, appeal is allowed. "Judgments and decrees passed by the courts below are set aside and suit filed by the plaintiffs is dismissed.