

(2013) 12 GAU CK 0014

In the Gauhati High Court

Case No : Regular Second Appeal No. 35 of 2002

Sri Sudhangshu Kumar Das alias Sudhangshu Das, Sri Nirmal Kumar Das alias Nirmal Das and Sri Gopiraman Das alias Gopiram Das APPELLANT

Vs

Sri Jagadish Chandra Das and Others RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : AIR 2014 Guw 19

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : B.R. Dey, Mr. K.K. Nandi, Ms. B. Sarkar and Ms. D. Choudhury, for the Appellant; B.K. Goswami and Ms. T. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

Brojendra Prasad Katakey, J.—This appeal by the plaintiffs, is directed against the judgment and decree dated 21.08.2001 passed by the learned District Judge, Bongaigaon, in Title Appeal No. 49/1993, allowing the appeal preferred by the defendants by setting aside the judgment and decree dated 30.07.1977 (decree drawn on 01.08.1977) passed by the learned Asstt. District Judge, Dhubri, in Title Suit No. 17/1976, whereby and whereunder the plaintiffs' right, title and interest in respect of the suit land has been decreed by declaring the gift deeds both dated 10.11.1953 (Ext.-Kha and Ext.-Gha) as void by holding that the said gift is not valid as the donee during the lifetime of the donor did not accept the gift, as required u/s 122 of the Transfer of Property Act (in short the Act). The appellants as plaintiffs instituted the said suit for declaration of right, title and interest over the land described in Schedule-A to the plaint and for recovery of khas possession by evicting the defendants from the land and the houses described in Schedule-B and Schedule-C to the plaint and Dag No. 1 of Schedule-A land, apart from declaration that the gift deeds, both dated 10.11.1953, as well as the Will are fictitious deeds and liable to be cancelled and the defendants

have not acquired any title by the said deeds, contending inter alia that Schedule-A land originally belonged to Sashi Mohan Das, the grandfather of the plaintiffs, who died on 16.12.1954 and after his death the property devolved on the plaintiffs being the sons of Satish Chandra Das, son of Sashi Mohan Das. It has also been pleaded that two sisters of Satish Chandra Das, namely, Shyamala Sundari Das and Champa Rani Das would not inherit any property belonged to Sashi Mohan Das, he having died in the year 1954. The further pleaded case is that the defendants taking advantage of two fictitious deeds both dated 10.11.1953 (Ext.-Kha and Ext.-Gha) as well as a Will claimed the property, though Sashi Mohan Das never executed any gift deed and the Will. It has also been pleaded that in any case Shyamala Sundari Das and Champa Rani Das cannot acquire any right, title and interest by virtue of the gift deeds both dated 10.11.1953, such gift having not been accepted by them during the lifetime of the donor, namely, Sashi Mohan Das.

2. The suit of the plaintiffs has been contested by the defendants by filing written statement, contending inter alia that out of the total land belonging to Sashi Mohan Das, land measuring 2 kathas 8 lechas and 4 kathas 8 lechas were gifted by him in favour of Shyamala Sundari Das and Champa Rani Das, both daughters of Sashi Mohan Das, by executing two gift deeds both dated 10.11.1953 and the land in Dag No. 1 of Schedule-A has been given to them by an Will.

3. Based on the pleadings of the parties, the Trial Court framed the following issues for determination:--

(i) Have the plaintiffs proved the accrual of the cause of action as alleged?

(ii) Is the suit barred by limitation?

(iii) Are the gift and the Will valid and voluntarily made by Sashi Mohan Das?

(iv) Was the "Mahamaya Stores" looted in the riots of 1955?

(v) Was the "Mahamaya Basanalaya" established by the defendants as stated in Part-II of the written statement?

(vi) Did defendant Nos. 1 and 2 acquired the "C" schedule property out of the income of the business left by Sashi Mohan as alleged by the plaintiffs or did they acquire the said properties out of their own income?

(vii) Did the plaintiffs live during their minority under the guardianship of their mother Smt. Moni Bala Das?

(viii) Is the suit property valued and properly stamped?

(ix) Have the plaintiffs' right, title and interest in "A", "B" and "C" schedule properties?

(x) Are the plaintiffs entitled to delivery of khas possession of "C" and "B" schedule properties as also of Dag No. 1 of "A" schedule property?

(xi) To what relief, if any, are the plaintiffs entitled?

4. The Trial Court upon appreciation of the evidence on record, both oral and documentary, decreed the suit of the plaintiffs by holding that the plaintiffs have acquired right, title and interest in respect of the suit land and neither Shyamala Sundari Das nor Champa Rani Das or the successor-in-interest of Champa Rani Das could acquire any right, title and interest by virtue of the gift deeds both dated 10.11.1953, the same having not been accepted by the donee prior to the death of Sashi Mohan Das, the donor.

5. Being aggrieved, the defendants preferred the aforesaid appeal, which has been allowed by setting aside the judgment and decree passed by the Trial Court by holding that the defendants could prove the acceptance of the gift during the lifetime of Sashi Mohan Das and also due execution of the gift deeds both dated 10.11.1953 and hence they have acquired right, title and interest in respect of the land, which has been gifted away by the aforesaid gift deeds both dated 10.11.1953. The judgment and decree passed by the Trial Court accordingly has been set aside. Hence the present appeal.

6. The appeal was admitted for hearing vide order dated 25.02.2002 on the following substantial questions of law:--

(i) For that the Gift Deed Ext.-Kha having been executed on 10.11.53 in favour of Smt. Champa Rani Das by Sri Sashimohan Das and the donor having died on 16.12.54 and there being no proof of acceptance of the Gift during the life time of the donor, the substantial question of law arises whether the Gift is a legally valid one as per provision of Section 122 of the Transfer of Property Act, 1882?

(ii) For that in the Gift Deed it is mentioned that the possession of the property gifted has already been given to the donee and from the Ext.-Ga it appears that said Champa Rani Das got Khatian only on 5.9.61 long after the death of the donor and as such, the substantial question of law arises whether such writing in the gift deed amounts to acceptance in the eye of law as required u/s 122 of the Transfer of Property Act, 1882?

7. I have heard Mr. B.R. Dey, learned Sr. counsel for the appellants/plaintiffs and Ms. T. Goswami, learned counsel appearing for the respondents/defendants.

8. Mr. Dey, the learned Sr. counsel referring to the provisions contained in Section 122 of the Act, has submitted that to constitute a valid gift within the meaning of the said provisions of law, the donee must accept the gift during the lifetime of the donor. In the instant case, according to learned Sr. counsel, since the donee could not prove the acceptance of the gift during the lifetime of the donor, who died on 16.12.1954, the gift executed by Sashi Mohan Das on 10.11.1953 (Ext.-Kha and Ext.-Gha) is not valid and consequently no right, title and interest can be passed on to the defendant No. 3 Shyamala Sundari Das and the defendant Nos. 1 to 10, the successors-in-interest of Champa Rani Das. It has also been submitted that in the absence of the gift the property would be

inherited by the plaintiffs, they being the sons of Satish Chandra Das, who was the son of Sashi Mohan Das and Sashi Mohan Das having died in the year 1954, i.e. before coming into force the Hindu Succession Act, 1956.

9. On the other hand, Ms. Goswami, the learned counsel appearing for the respondents, referring to the finding recorded by the First Appellate Court has submitted that it is evident from the recital of Ext.-Kha and Ext.-Gha, gift deeds, that the daughters, namely, Shyamala Sundari Das and Champa Rani Das were put into possession and based on such possession khatians were also issued in the year 1961, which implies acceptance of the gift by the donee. Referring to Ext.-1, the letter issued by the donor, namely, Sashi Mohan Das to his wife, it has also been submitted that the donor has also in the said letter has indicated about execution of the gift deeds in favour of two daughters, who in normal circumstances would have been deprived from the property, as Sashi Mohan Das died in the year 1954. The learned counsel, therefore, submits that since the gift was accepted by two daughters, namely, Shyamala Sundari Das and Champa Rani Das, the same is valid within the meaning of Section 122 of the Act and hence the judgment and decree passed by the First Appellate Court needs not interference.

10. I have considered the submissions advanced by the learned counsel for the parties, in the light of the substantial questions of law formulated.

11. Ext.-Kha and Ext.-Gha are two gift deeds, both dated 10.11.1953, executed by Sashi Mohan Das in favour of Shyamala Sundari Das and Champa Rani Das, his daughters. Execution of such gift deeds by Sashi Mohan Das in favour of his aforesaid two daughters has been proved and such finding has not been challenged in the present appeal. In this appeal the only question which arose for consideration is whether there was acceptance of gift by the donee, namely, Shyamala Sundari Das and Champa Rani Das, prior to the death of Sashi Mohan Das, the donee. It appears from the recital in Ext.-Kha and Ext.-Gha gift deeds that both Shyamala Sundari Das and Champa Rani Das were put into possession of the property gifted away. It is also evident from the deposition of witnesses and as found by the First Appellate Court that the land revenue was also paid in respect of the said property by or on behalf of Shyamala Sundari Das and Champa Rani Das. Ext.-Ga and Ext.-Uma are the final khatians issued in favour of Champa Rani Das and Shyamala Sundari Das, respectively. These khatians were issued in the year 1961. Issuance of the khatians presupposes the possession of both Shyamala Sundari Das and Champa Rani Das, which also lends support to the case of the defendants relating to acceptance of the gift. It also appears from Ext.-1, letter written by the donor to his wife, that he has executed the gift deeds in favour of his two daughters, namely, Shyamala Sundari Das and Champa Rani Das and they have been put to possession thereby indicating the acceptance of the gift.

12. Having regard to the aforesaid position and the evidence as discussed above, I am of the view that the First Appellate Court has rightly held that the donee

have accepted the gift during the lifetime of the donor. Hence the judgment and decree passed by the First Appellate Court does not require any interference.

13. The appeal is, therefore, dismissed. No costs. Registry is directed to send down the records.