

(1986) 02 KL CK 0035
In the High Court Of Kerala
Case No : C. R. P. No. 1877 of 1981

State of Kerala

APPELLANT

Vs

Nedumbakkaran Kuriappan Thomas and Others

RESPONDENT

Date of Decision : 27-02-1986

Acts Referred:

Evidence Act, 1872 — Section 92

Kerala Land Reforms Act, 1963 — Section 84, 84(1), 84(1A), 841A, 85

Transfer of Property Act, 1882 — Section 122

Citation : (1986) 23 KLJ 304

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : M.C. John for State, for the Appellant; Joseph J. Therattil, Itterra Kalliaih and N.K. Sreedharan, for the Respondent

Judgement

K.T. Thomas, J.—The Taluk Land Board, Mukundapuram (for short "the TLB") has determined the extent of land to be surrendered by the 1st respondent as per section 85 of the Kerala Land Reforms Act (for short "the Act"). It was finally determined that the 1st respondent shall surrender 3.97.625 acres of land, when the TLB's order was revised in a Civil Revision Petition disposed of by this Court. The Tahsildar took possession of the excess land from the 1st respondent on 8-1-1977. Subsequently, the Kerala Land Reforms (Amendment) Act, Act 27 of 1979 came into force on 7-7-1979, inserting sub-section 1A in section 84 of the Act. As per the said sub-section, a transfer "effected by means of a gift deed executed during the period commencing on 1-1-1970 and ending with 5-11-1974 by a person owning or holding land in excess of the ceiling area, in favour of his son or daughter or the son or daughter of his predeceased son or daughter" is deemed to be valid (There are some other conditions also to be satisfied to have the benefits of the subsection, but among those conditions only one is relevant in this case, and reference to that condition will be made later). Sub-section (1) of section 84 (inserted by Act 27 of 1979) entitles a person to apply, within 60 days of the coming into force of the said Amendment Act, to the Taluk Land Board for

restoration of the ownership or possession or both of any land covered by section 84-1A. Availing the said right, the 1st respondent along with his two sons (who are respondents 2 and 3) filed an application for restoration of an area of 256 acres of land. It is stated in the application that the 1st respondent had executed two gift deeds on 8-8-1972 one is deed No. 2294 in favour of the 3rd respondent and the other is deed No 2294 in favour of the 2nd respondent, each for an area of 1.28 acres. The TLB revised its earlier order and found that there is no excess land to be surrendered by the 1st respondent and directed the Tahsildar to return the lands already taken possession of. Aggrieved by the aforesaid revised order of the TLB, this Civil Revision Petition has been filed by the State of Kerala. Two contentions are raised by the learned Government Pleader in this revision. The first is that the TLB was wrong in holding that the two deeds are gift deeds since those instruments are clearly sale deeds. The second contention is that the benefit envisaged in section 84(1A) of the Act cannot be extended to those lands already assigned on registry before the coming into force of the K L R (Amendment) Act, 1979. According to the learned Government Pleader, the land surrendered by the 1st respondent was assigned by the Land Board as provided in section 96 of the Act and the assignees had paid the first instalment of the purchase price thereof. The TLB took the view that those deeds, though styled as sale deeds, are, in effect, instruments of gifts made by the 1st respondent. The second contention does not appear to have engaged the attention of the TLB.

2. The two deeds were executed by the 1st respondent on the same day as mentioned above. They are styled as sale deeds and the sale consideration mentioned in each of the deeds is Rs. 2000/-. But no amount was, in fact, received by the executant. Each of the transferees was directed to pay a sum of Rs. 1366.67 to a creditor of the executant. According to the recitals in the deeds, the balance sale consideration was adjusted towards "love and affection" of the executant for the transferees. Thus, even as per the recitals in the deed, neither of the transferees had paid any amount to the executant. As to the direction stipulated in the deeds to pay off the antecedent debts of the executant, the TLB has found that the said debts were cleared by the executant himself. The learned Government Pleader does not dispute that the debts were cleared by the 1st respondent himself. It is also to be noted that there is no contention that the transferees had not obtained possession of the properties mentioned in the deeds. The question is whether the said deeds are really deeds as mentioned in section 84 (1) of the Act.

3. "Gift" is not defined in the Act. Therefore, the ambit of that term as understood in law must be first ascertained. It will be useful to refer to the definitions given to that word in other statutes. Section 122 of the Transfer of Property Act, 1882 defines a gift as follows: "Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee and accepted by or on behalf of the donee" (emphasis supplied). The Gift Tax Act, 1958 contains a definition of the word "gift" in section 2 (xii) of that enactment:

"Gift means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth", (emphasis supplied). There appears to be no substantial distinction between the above two definitions contained in those two different enactments. Black's Law Dictionary (Fourth Edition) defines gift as a voluntary transfer of personal property without consideration (emphasis supplied). Webster's Third New International Dictionary defines gift as "a voluntary transfer of real or personal property without any consideration or without a valuable consideration, as "distinguished from a sale" (emphasis supplied). Volume XVIII of Words and Phrases (permanent edition) provides the following meaning for the word "gift". "It is a voluntary transfer of property from one person to another without consideration or compensation" (emphasis supplied).

4. Thus, either in lexicographical or in legislative exercises the cardinal ingredient supplied to "gifts" is the absence of consideration in a transfer of property. Love or affection or any such mental disposition made perspicuous in a transfer of property cannot be regarded as its consideration, for, the mental propensity is only the motive or guiding spirit behind such transfers. Consideration is something which is of value in the eye of law (Vide Black's Law Dictionary--Fourth Edition). Thus, if a transfer is made in return for something which can be counted in terms of money, it is not a gift. But in a transfer of property, when the transferor does not get anything in return which can be valued in terms of money, it is ordinarily a gift. Voluntariness of the transfer actuated by some mental inclination towards the transferee is, of course, one of the essentials of a gift. An instrument can be a gift deed, though sometimes it is camouflaged differently. Similarly, the nomenclature employed in an instrument of transfer may show it to be a sale or a settlement or partition, and yet the real purport of it is only a transfer without consideration in which case it really is a gift. If there is recital in an instrument that the transfer is made for consideration, there of course is a presumption that the transfer is made for consideration. However, if the parties succeed in showing that the recital therein about consideration is not a true statement, evidence is admissible to prove that transfer is only a gift. Section 92 of the Evidence Act will not be a bar, in such cases, for proving the absence of consideration.

5. The Privy Council in a decision rendered as early as 1911 in *Hanif-Un-Nisa v. Fiaz-Un-Nisa* (38 Indian Appeals 85) (It is also reported in 33 All 340) had occasion to consider the admissibility of evidence to show that a deed which was, in form, a deed of sale, was, in reality, intended to operate as a deed of gift. It was, contended in that case that section 92 of the Evidence Act is a bar to allow such evidence being let in. Repelling the said contention, the Privy Council held that "extrinsic evidence is admissible to show that a deed in reality was a gift though in form it appear to be a deed of sales with a receipt for consideration".

6. In *Barkat Rai v. Union of India* (AIR 1954 Punj. 116) the question considered was whether a deed which was styled as a sale deed was in fact an instrument of

gift. The deed, in that case, had recited that the sale consideration of Rs. 190/- had already been paid but when it was contended that it was only a gift, evidence was let in to show that no amount was in fact paid as consideration and the deed was executed to help some persons who had worked or served the vendors. Kapur, J. (as he then was) has observed that: "A duty is cast upon the courts to determine the nature of the transaction, when such a question is raised by the pleadings of the parties and the courts should not be satisfied merely by the apparent tenor of a document". The deed in that case was found to be a gift, despite its apparent tenor otherwise. The said observations have weighed with Balagangadharan Nair J. when he considered a similar question in *Thomman v. Taluk Land Board* (1976 K. L. T. 840). The learned Judge has held that section 92 of the Evidence Act does not stand in the way of proving that a transfer which is styled as a sale deed is in fact a deed of gift.

7. In this context, it is useful to make a reference to the observations of Bhat, J. in *Ponnu v. Taluk Land Board* (1931 K. L. T. 780)

.....Whatever be the nomenclature given by the parties to a transaction, a Court or Tribunal is entitled to go behind it and look into the real nature of the transaction. It is clear that too much importance should not be attached to the nomenclature of a document. Nomenclature of the document may at times conceal the real transaction. Nomenclature may be given with or without any motive or under a wrong understanding of the parties or of the law applicable to them. When the question regarding construction of such a document arises for consideration, one may have to look behind the facade or the covering and identify the essence and reality of the transaction.

8. I am fortified by the above observations in the decisions cited supra.

9. By the two deeds involved in this case, the father has transferred the property to his sons. Though he mentions therein a sale consideration, he acknowledges receipt of part of it towards love and affection for the transferees and regarding the other part, he directs the transferees to discharge two of his antecedent debts. The TLB finds that the transferees had not paid off those debts, but the transferor himself paid off those debts. Thus in effect no consideration had proceeded from the transferor either before or at the time of or even subsequent to the execution of the two deeds. Judged from the standard discussed above, I hold that the two instruments can be treated as transfers made by means of gift deeds.

10. The second contention is that the TLB should not have allowed the application for restoration because the benefits conferred in section 84(1A) of the Act do not apply to lands "which had been assigned on registry u/s 96, before the commencement of the Kerala Land Reforms [Amendment] Act, 1979". The learned Government Pleader has referred me to some records to show that the assignees have paid or deposited the first instalment of the purchase price for the lands assigned to them on registry. The proviso to section 84 [1A] of the Act

says that nothing contained in sub-section shall apply in respect of any land which has been assigned on registry u/s 96, before the commencement of Act 27 of 1979.

11. Learned counsel for the respondents has contended that this fact was not raised before the TLB and they had no opportunity to contest the same. A reading of the impugned order reveals that this point has not engaged the attention of the TLB. The TLB is directed to consider this aspect and decide whether the benefit conferred by section 84 (1A) of the Act is not applicable to the lands involved in this revision for the said reason. In the result, I allow this C. R. P. and set aside the impugned order and remand the case to the TLB for disposal of the matter afresh In the light to the observations made above. No costs.