Smt. Shakuntala and Others

Vs

State of Haryana

Civil Appeal Nos. 1829-1831 of 1969

(P. N. Shinghal, D. A. Desai JJ)

16.02.1979

JUDGMENT

SHINGHAL, J. -

1. The appellants in these three appeals are aggrieved against a common judgment of the Punjab and Haryana High Court dated January 14, 1969, by which the judgment of a learned single Judge of that Court dismissing their writ petitions was upheld on the ground that the gifts to them did not fall within the purview of the saving clause of Section 32-FF of the Pepsu Tenancy and Agricultural Lands Act, 1955, hereinafter referred to as the Act.

2. It is not in dispute that a gift was made in each of these cases before July 30, 1958, and in one case after August 21, 1956 but before July 30, 1958. The donees were not persons who were not related to the donors, and were persons to whom gifts were made of agricultural lands for love and affection. The revenue authorities took the view that the gifts were not transfers of lands of the nature protected by Section 32-FF of the Act as there was no valuable consideration, and mere love and affection was not "consideration" within the meaning of that section. As the High Court has upheld that view, the appellants feel aggrieved and have come up in appeal to this Court by special leave.

3. Section 32-FF of the Act which deals with certain transfers which are not to affect the surplus area of a landowner provides as follows :

> Save in the case of land acquired by the State government under any law for the time being in force or by an heir by inheritance or up to July 30, 1958 by a landless person, or a small landowner, not being a relation as prescribed of the person making the transfer or disposition of land, for consideration up to an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit, no transfer or other disposition of land effected after August 21, 1956, shall affect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposition;
>
> Provided that any person who has received any advantage under such transfer or disposition of land shall be bound to restore it, or to make compensation for it, to the person from whom he received it.

The section therefore provides that no transfer or other disposition of land effected after August 21, 1956, shall affect the rights of the State Government under the Act to the surplus area to which it

would be entitled but for such transfer or disposition "save" in the case of land acquired by the State Government under any law for the time being in force, or by an heir by inheritance or up to July 30, 1958 by a landless person, or small landowner, not being a relation as prescribed of the person making the transfer or disposition of land, provided that it is for "consideration", up to an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit. The only point in controversy before us is whether the gifts of land which were made in the three case under appeal on account of natural love and affection, could be said to be transfers of the lands for consideration ? It has been argued on behalf of the appellants that the aforesaid gifts were in the nature of transfer of property as defined in Section 5 of the Transfer of Property Act and it did not matter if they were by way of gift and did not amount to sale or exchange.

4. Section 5 of the Transfer of Property Act defines "transfer of property" to mean an act by which a living person conveys property, in present or in future, inter alia, to one or more other living persons. Such transfer of property may be made by one of the several modes known to law, e.g. by sale, exchange or gift, etc. It is not the case of the appellants that the transfers under consideration were by way of sale or exchange or that they were made otherwise than by way of gifts to them.

5. Section 122 of the Transfer of Property Act defines "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 donor, and accepted by or on behalf of the donee.

It is therefore one of the essential requirements of a gift that it should be made by the donor "without consideration". The word "consideration" has not been defined in the Transfer of Property Act, but we have no doubt that it has been used in that Act in the same sense as in the Indian Contract Act and excludes natural love and affection. If it were to be otherwise, a transfer would really amount to a sale within the meaning of Section 54 of the Transfer of Property Act, or to an exchange within the meaning of Section 118 for each party will have the rights and be subject to the liabilities of a seller as to what he gives and have the rights and be subject to the liabilities of a buyer as to that which he takes. It is not necessary for us to examine the other modes of transfer, for they have no bearing on the nature of the controversy before us. If would thus appear that it is of the essence of a gift as defined in the Transfer of Property Act that it should be without "consideration" of the nature defined in Section 2(d) of the Contract Act.

6. Now what Section 32-FF of the Act saves is transfer or disposition of land for "consideration" up to the limit specified in it, and as a gift is always without consideration, the gifts which are the subject-matter of controversy before us will not fall within the purview of that section, and have rightly been excluded while calculating the surplus area in the three cases before us. Any other view of the section would defeat the purpose of Chapter IVA of the Act which provides for ceiling on land and acquisition and disposal of surplus area.

7. Mr. Mahajan for the appellants tried to argue that "good consideration" has been defined in Black's Law dictionary (fourth edition) to mean "such as is founded on natural duty and affection", and would amount to consideration within the meaning of Section 32-FF of the Act. But even there it has been clarified that "good" is generally used "in antithesis to valuable consideration", which has necessarily to be excluded in the case of a gift by virtue of its definition in Section 122 of the Transfer of Property Act. The argument of learned Counsel becomes untenable on a reference to 17

C.J.S. Contract 91-92 on which he has placed considerable reliance. We have also gone through James Newton v. Robert Hargreaves (135 ER 905), but it cannot avail the appellants for there the conveyance was by the father to his two sons in consideration of natural love and affection and the law acknowledged that to be a "good" consideration, which is not so in the cases before us.

8. There is thus no force in these appeals and they are dismissed with costs.

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