

Raj Bishambhar

Vs

State of Uttar Pradesh

Civil Appeal No. 1165 of 1981

(Syed M. Fazal Ali, R.B. Misra JJ)

30.03.1981

JUDGMENT

1. The short point that arises in this appeal by special leave is regarding the validity of the deeds of gift executed by the tenure-holder in favour of Chandra Kanta widow of Rajinder Kumar and another in favour of his grandson Raj Kishore. Both these deeds of gift were executed on February 21, 1970. The Prescribed Authority rejected the deeds of gift were not bona fide and rally meant to evade the ceiling law. On appeal the District Judge affirmed the finding of the Prescribed Authority and held that as the tenure-holder continued to be in possession of the land covered by the deeds of gift, the gift was not acted upon. The High Court affirmed the order of the District Judge.
2. Mr. Asthana appearing for the appellant submitted that the finding arrived at by the District Judge is contrary to the evidence on record. It was pointed out that from the mutation record, it is manifest that the donees were entered therein on the basis of the deeds of gift executed by the tenure-holder and the very Lekhpal who has appeared as a witness during the ceiling proceedings had given a statement while attesting the mutation making a categorical admission that the donees were in possession of the land which was the subject-matter of the deeds of gift. Subsequently, however, during the proceedings before the Prescribed Authority the Lekhpal stated in his examination-in-chief that the donor continued to be in possession but made a complete volte-face in his cross-examination when he said that the land was recorded in possession of the donees. In view of this conflicting state of evidence, it is not possible to reach the conclusion that the deed of gift was not a bona fide one and the mater requires a thorough investigation because if the deeds of gift are valid and were acted upon, then valuable rights of the donees are involved in the case.
3. Mr. Dixit appearing for the respondent submitted that the conclusive evidence in the case would be Khasra entry which would show that the tenure-holder continued to be in possession of the land on the date in question. Neither party produced the Khasra entry before the Prescribed Authority.
4. In these circumstances therefore we allow this appeal and remand the case to the District Judge who will, after taking such evidence ass may be offered including the Khasra entry, come to a clear finding whether the deeds of gift were valid and acted upon and the done entered into possession of the land or the deeds of gift were merely a cover to evade the provisions of the Ceiling Act.
5. Parties are directed to appear before the District Judge on April 14, 1981 and the District Judge will start taking evidence as soon as possible without giving unnecessary adjournments and decide the appeal within two months from today.
6. Stay to continue until the judgment of the District Judge.

</html