

SUPREME COURT OF INDIA

Baby Ammal

Vs.

Rajan Asari

(K Ramaswamy and G Nanavati JJ.)

02.12.1996

ORDER

We have learned counsel on both sides. This appeal by special leave arises from the judgment of the Division Bench of the Kerala High Court, made on March 17, 1995 in Second Appeal No. 358/94. The appellant is admittedly the owner of the property bearing Survey No.1960/6 in Chettivilakam Village of Trivandrum District. The appellant had filed a suit for possession and declaration that the respondent is a licensee. The trial Court decreed the suit on November 3, 1981 and the appeal was dismissed on July 22, 1993. In the second appeal, the High Court has reversed the finding holding that the appellant had executed the gift deed on October 11, 1966 under Ex.A-1 and, therefore, the respondent had become the donee and remained in possession as owner of the property. Accordingly, the suit cannot be decreed. Thus, this appeal by special leave.

The recitals in the deed do indicate thus:

"All the right to enjoy the property and the right to reside in the building will remain with me during my life time and Rajan Asari will derive the said rights with full freedom after my life time."

A reading of the above would indicate that the appellant had retained the title to the enjoyment of the property during her life time as full owner with all rights. Section 122 of the Transfer of Property Act defines gift executive in the manner indicated thereunder divesting the title to and possession of the donor in the property and vesting the same in the donee under Section 123. These must be proof of delivery and acceptance of possession of the gifted property. In this case, both the title and possession in respect of the property remained with the plaintiff. There is no acceptance of possession by the respondent in the light of above recital. As a consequence, the appellant remained to be the owner during her life time. Under these circumstances, It cannot be construed to be a gift deed in favor of the respondents. At best, it would be only a licence in favour of the respondent to remain in possession jointly with the appellant. Therefore, the High Court was not right in concluding that Ex.A-1 is a gift deed and that the appellant has no title to the property for declaration as he had parted with possession.

The appeal is accordingly allowed. The judgment and order of the High Court stand set aside and that of the trial Court and the appellate Court stand confirmed. The decree of manse profits granted

by the High Court to that extent stands confirmed. Six months' time from today is granted to the respondent to vacate the premises. No costs.