SUPREME COURT OF INDIA

Renikuntla Rajamma (D) By Lrs.

Vs.

K.Sarwanamma

C.A.No.4195 of 2008

(T.S.Thakur,V.Gopala Gowda and C.Nagappan JJ.)

17.07.2014

JUDGMENT

T.S. THAKUR, J.

1. An apparent conflict between two earlier decisions rendered by this Court one in Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker & Ors. (1997) 2 SCC 255 and the other in K. Balakrishnan v. K. Kamalam & Ors. (2004) 1 SCC 581 has led to this reference to a larger bench for an authoritative pronouncement as to the true and correct interpretation of Sections 122 and 123 of The Transfer of Property Act, 1882. Before we deal with the precise area in which the two decisions take divergent views, we may briefly set out the factual matrix in which the controversy arises.

2. The plaintiff-respondent in this appeal filed O.S. No.979 of 1989 for a declaration to the effect that revocation deed dated 5th March, 1986 executed by the defendant-appellant purporting to revoke a gift deed earlier executed by her was null and void. The plaintiff case as set out in the plaint was that the gift deed executed by the defendant-appellant was valid in the eyes of law and had been accepted by the plaintiff when the donee-defendant had reserved to herself during for life, the right to enjoy the benefits arising from the suit property. The purported revocation of the gift in favour of the plaintiff-respondent in terms of the revocation deed was, on that basis, assailed and a declaration about its being invalid and void ab initio prayed for.

3. The suit was contested by the defendant-appellant herein on several grounds including the ground that the gift deed executed in favour of the plaintiff was vitiated by fraud, mis-representation and undue influence. The parties led evidence and went through the trial with the trial Court eventually holding that the deed purporting to revoke the gift in favour of the plaintiff was null and void. The Trial Court found that the defendant had failed to prove that the gift deed set up by the plaintiff was vitiated by fraud or undue influence or that it was a sham or nominal document. The gift, according to trial Court, had been validly made and accepted by the plaintiff, hence, irrevocable in nature. It was also held that since the donor had taken no steps to assail the gift made by her for more than 12 years, the same was voluntary in nature and free from any undue influence, mis-representation or suspicion. The fact that the donor had reserved the right to enjoy the property during her life time did not affect the validity of the deed, opined the trial Court.

4. In the first appeal preferred against the said judgment and decree, the first Additional District Judge, Warangal affirmed the view taken by the trial Court and held that the plaintiff had satisfactorily proved the execution of a valid gift in his favour and that the revocation of a validly made gift deed was legally impermissible. The First Appellate Court also held that the gift deed was not a sham document, as alleged by the defendant and that its purported cancellation/revocation was totally ineffective. The defendant case that she had apprehended grabbing of the property by Sankaraiah forcing her to make a sham gift deed was held not established especially when Sankaraiah had died three years prior to the execution of the revocation deed by the defendant. If the gift deed was executed by the donor to save the property from the covetous eyes of Sankaraiah, as alleged by the defendant, there was no reason why the defendant should have waited for three years after the death of Sankaraiah before revoking the same reasoned the Court. The first Appellate Court also affirmed the finding of the trial Court that the donee had accepted the gift made in his favour. The appeal filed by the defendant (appellant herein) was on those findings dismissed.

5. Concurrent findings of facts recorded by the Courts below did not deter the appellants from preferring Civil Second Appeal No.809 of 2003 in which the appellants made an attempt to assail the said findings. The High Court, however, declined to interfere with the judgments and orders impugned before it and dismissed the second appeal of the appellant holding that the case set up by the defendant that

the gift was vitiated by undue influence or fraud had been thoroughly disproved at the trial. The present appeal is the last ditch attempt by the defendants to assail the findings recorded against them.

6. When the special leave petition came up for preliminary hearing before a Division bench of this Court, the only question which was urged on behalf of the appellant was whether retention of possession of the gifted property for enjoyment by the donor during her life time and the right to receive the rents of the property in any way affected the validity of the gift. That a gift deed was indeed executed by the donor in favour of the donee and that the donee had accepted the gift was not challenged and the finding to that effect has not been assailed even before us. So also the challenge to the gift on the ground of fraud, misrepresentation and undue influence, having been repelled by the Courts below, the gift stands proved in all material respects. All that was contended on behalf of the appellant was that since the donor had retained to herself the right to use the property and to receive rents during her life time, such a reservation or retention rendered the gift invalid. A conditional gift was not envisaged by the provisions of the Transfer of Property Act, argued the learned counsel of the appellant. Inasmuch as the gift deed failed to transfer, title, possession and the right to deal with the property in absolute terms in favour of the donee the same was no gift in the eyes of law, contended learned counsel for the appellant. Reliance in support of that submission was placed by the learned counsel upon the decision of this Court in Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker and Ors. (1997) 2 SCC 255.

7. On behalf of the respondents it was per contra argued that the validity of the gift having been upheld by the Courts below, the only question that remains to be examined was whether a gift which reserved a life interest for the donor could be said to be invalid. That question was, according to the learned counsel, squarely answered in favour of the respondents by the decisions of this Court in K. Balakrishnan v. K. Kamalam & Ors. (2004) 1 SCC 581.

8. Reliance was also placed by the learned counsel upon Bhagwan Prasad & Anr. v. Harisingh AIR 1925 Nagpur 199, Revappa v. Madhava Rao AIR 1960 Mysore 97 and Tirath Singh v. Manmohan AIR 1981 Punj. & Haryana 174 in support of the submission that transfer of possession was a condition under the Hindu Law for a valid gift which Rule of Hindu Law stood superseded by Section 123 of The Transfer

of Property Act.

9. Chapter VII of the Transfer of Property Act, 1882 deals with gifts generally and, inter alia, provides for the mode of making gifts. Section 122 of the Act defines ˜gift as a 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. In order to constitute a valid gift, acceptance must, according to this provision, be made during the life time of the donor and while he is still capable of giving. It stipulates that a gift is void if the donee dies before acceptance.

10. Section 123 regulates mode of making a gift and, inter alia, provides that a gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. In the case of movable property, transfer either by a registered instrument signed as aforesaid or by delivery is valid under Section 123. Section 123 may at this stage be gainfully extracted:

> 123. Transfer how effected " For the making of a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.
>
> For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.
>
> Such delivery may be made in the same way as goods sold may be delivered.

11. Sections 124 to 129 which are the remaining provisions that comprise Chapter VII deal with matters like gift of existing and future property, gift made to several persons of whom one does not accept, suspension and revocation of a gift, and onerous gifts including effect of non-acceptance by the donee of any obligation arising thereunder. These provisions do not concern us for the present. All that is important for the disposal of the case at hand is a careful reading of Section 123 (supra) which leaves no manner of doubt that a gift of immovable property can be made by a registered instrument singed by or on behalf of the donor and attested by at least two witnesses. When read with Section 122 of the Act, a gift made by a registered instrument duly signed by or on behalf of the donor and attested by at least two witnesses is valid, if

the same is accepted by or on behalf of the donee. That such acceptance must be given during the life time of the donor and while he is still capable of giving is evident from a plain reading of Section 122 of the Act. A conjoint reading of Sections 122 and 123 of the Act makes it abundantly clear that transfer of possession of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of Transfer of Property Act, 1882. Judicial pronouncements as to the true and correct interpretation of Section 123 of the T.P. Act have for a fairly long period held that Section 123 of the Act supersedes the rule of Hindu Law if there was any making delivery of possession an essential condition for the completion of a valid gift. A full bench comprising five Honble Judges of the High Court of Allahabad has in Lallu Singh v. Gur Narain and Ors. AIR 1922 All. 467 referred to several such decisions in which the provisions of Section 123 have been interpreted to be overruling the Hindu Law requirement of delivery of possession as a condition for making of a valid gift. This is evident from the following passage from the above decision where the High Court repelled in no uncertain terms the contention that Section 123 of the T.P. Act merely added one more requirement of law namely attestation and registration of a gift deed to what was already enjoined by the Hindu Law and that Section 123 did not mean that where there was a registered instrument duly signed and attested, other requirements of Hindu Law stood dispensed with:

> 7. Dr. Katju, on behalf of the appellant, has strongly contended that by Section 123 it was merely intended to add one more requirement of law, namely, that of attestation and registration, to those enjoined by the Hindu Law, and that the Section did not mean that where there was a registered document duly signed and attested, all the other requirements of Hindu Law were dispensed with. Section 123 has, however, been interpreted by all the High Courts continuously for a vary long period in the way first indicated, and there is now a uniform consensus of opinion that the effect of Section 123 is to supersede the rule of Hindu Law, if there was any, for making the delivery of possession absolutely essential for the completion of the gift. We may only refer to a few cases for the sake of reference, Dharmodas v. Nistarini Dasi (1887) 14 Cal. 446, Ballbhadra v. Bhowani (1907) 34 Cal. 853, Alabi Koya v. Mussa Koya (1901) 24 Mad. 513, Mudhav Rao Moreshvar v. Kashi Bai (1909) 34 Bom. 287, Manbhari v. Naunidh (1881) 4 All. 40, Balmakund v. Bhagwandas (1894) 16 All. 185, and Phulchand v. Lakkhu (1903) 25 All. 358. Where the terms of a Statute or

> Ordinance are clear, then even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the clear meaning of the enactment but where such is not the case, then it is our duty to accept the interpretation so often and so long put upon the Statute by the Courts, and not to disturb those decisions, vide the remarks of their Lordships decisions, of the Privy Council in the case of Tricomdas Cooverji Bhoja v. Sri Sri Gopinath Thakur AIR 1916 P.C. 182. We are, therefore, clearly of opinion that it must now be accepted that the provisions of Section 123 do away with the necessity for the delivery of possession, even if it was required by the strict Hindu Law.

12. The logic for the above view flowed from the language of Section 129 of the T.P. Act which as on the date of the decision rendered by the High Court of Allahabad used the words save as provided by Section 123 of the Act. Section 129 of the T.P. Act was, before its amendment in the year 1929, as under:

> 129. Saving of donations mortis causa and Muhammadan Law.-Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law or, save as provided by section 123, any rule of Hindu or Buddhist law.

13. A plain reading of the above made it manifest that the rules of Hindu law and Buddhist Law were to remain unaffected by Chapter VII except to the extent such rules were in conflict with Section 123 of the Transfer of Property Act. This clearly implied that Section 123 had an overriding effect on the rules of Hindu Law pertaining to gift including the rule that required possession of the property gifted to be given to the donee. The decisions of the High Courts referred to in the passage extracted above have consistently taken the view that Section 123 supersedes the rules of Hindu law which may have required delivery of possession as an essential condition for the completion of a gift. The correctness of that statement of law cannot be questioned. The language employed in Section 129 before its amendment was clear enough to give Section 123 an overriding effect vis-a-vis rules of Hindu Law. Section 129 was amended by Act No. 20 of 1929 whereby the words or, save as provided by Section 123, any rule of Hindu or Buddhist Law have been deleted. Section 129 of the T.P. Act today reads as under:

> 129. Saving of donations mortis causa and Muhammadan Law " Nothing in this

Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law.

14. The above leaves no doubt that the law today protects only rules of Muhammadan Law from the rigors of Chapter VII relating to gifts. This implies that the provisions of Hindu Law and Buddhist Law saved under Section 129 (which saving did not extend to saving such rules from the provisions of Section 123 of the T.P. Act) prior to its amendment are no longer saved from the overriding effect of Chapter VII. The amendment has made the position more explicit by bringing all other rules of Hindu and Buddhist Law also under the Chapter VII and removing the protection earlier available to such rules from the operation of Chapter VII. Decisions of the High Court of Mysore in Revappa v. Madhava Rao and Anr. AIR 1960 Mysore 97 and High Court of Punjab and Haryana in Tirath v. Manmohan Singh and Ors. AIR 1981 Punjab and Haryana 174, in our opinion, correctly take the view that Section 123 supersedes the rules of Hindu Law insofar as such rules required delivery of possession to the donee.

15. The matter can be viewed from yet another angle. Section 123 of the T.P. Act is in two parts. The first part deals with gifts of immovable property while the second part deals with gifts of movable property. Insofar as the gifts of immovable property are concerned, Section 123 makes transfer by a registered instrument mandatory. This is evident from the use of word transfer must be effected used by Parliament in so far as immovable property is concerned. In contradiction to that requirement the second part of Section 123 dealing with gifts of movable property, simply requires that gift of movable property may be effected either by a registered instrument signed as aforesaid or by delivery. The difference in the two provisions lies in the fact that in so far as the transfer of movable property by way of gift is concerned the same can be effected by a registered instrument or by delivery. Such transfer in the case of immovable property no doubt requires a registered instrument but the provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. If the intention of the legislature was to make delivery of possession of the property gifted also as a condition precedent for a valid gift, the provision could and indeed would have specifically said so. Absence of any such requirement can only lead us to the conclusion that delivery of possession is not an essential prerequisite for the making of a valid gift in the case of immovable property.

16. That brings us to the decisions of this Court which have led to this reference. In K. Balakrishnan case (supra) the donor executed a gift deed of a specified share of the property inherited by her from her maternal grandfather in favour of her minor son who was the donee-appellant before the Court and her four year old daughter. The property gifted included a school building. The gift deed stipulated that the responsibility to sign in regard to the said school and the right to income would be with the donor during her lifetime and thereafter would be vested in the donee. After the execution of the gift deed the donor cancelled the same and made a will bequeathing the property in favour of her daughter whereupon the donee-appellant filed a suit for declaration of his title to the suit property on the basis of the gift and a further declaration for annulment of the cancellation deed and the will executed by the donor. The Trial Court dismissed the suit while the First Appellate Court decreed the same. The High Court restored the view taken by the Trial Court and held that when the donor had reserved to herself the right to sign the papers with respect to management of the school and the right to take usufruct from the property where the school was situated, no property was transferred under the deed. In appeal before this Court, the view taken by the High Court was reversed and that taken by the First Appellate Court restored. This Court held:

> 10. We have critically examined the contents of the gift deed. To us, it appears that the donor had very clearly transferred to the donees ownership and title in respect of her 1/8th share in properties. It was open to the donor to transfer by gift title and ownership in the property and at the same time reserve its possession and enjoyment to herself during her lifetime. There is no prohibition in law that ownership in a property cannot be gifted without its possession and right of enjoyment. Under Section 6 of the Transfer of Property Act property of any kind may be transferred except those mentioned in clauses (a) to (i). Section 6 in relevant part reads thus:
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> 6. What may be transferred.”Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.
>
> (a) * * *
>
> (b) A mere right to re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.

(c) * * *

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue cannot be transferred.

11. Clause (d) of Section 6 is not attracted on the terms of the gift deed herein because it was not a property, the enjoyment of which was restricted to the owner personally. She was absolute owner of the property gifted and it was not restricted in its enjoyment to herself. She had inherited it from her maternal father as a full owner. The High Court was, therefore, apparently wrong in coming to the conclusion that the gift deed was ineffectual merely because the donor had reserved to herself the possession and enjoyment of the property gifted.

(emphasis supplied)

17. We are in respectful agreement with the statement of law contained in the above passage. There is indeed no provision in law that ownership in property cannot be gifted without transfer of possession of such property. As noticed earlier, Section 123 does not make the delivery of possession of the gifted property essential for validity of a gift. It is true that the attention of this Court does not appear to have been drawn to the earlier decision rendered in Naramadaben Maganlal Thakker (supra) where this Court had on a reading of the recital of the gift deed and the cancellation deed held that the gift was not complete. This Court had in that case found that the donee had not accepted the gift thereby making the gift incomplete. This Court, further, held that the donor cancelled the gift within a month of the gift and subsequently executed a Will in favour of the appellant on a proper construction of the deed and the deed cancelling the same this Court held that the gift in favour of the donee was conditional and that there was no acceptance of the same by the donee. The gift deed conferred limited right upon the donee and was to become operative after the death of the donee. This is evident from the following passage from the said judgment:

7. It would thus be clear that the execution of a registered gift deed, acceptance

> of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property. The question is whether the gift in question had become complete under Section 123 of the TP Act? It is seen from the recitals of the gift deed that Motilal Gopalji gifted the property to the respondent. In other words, it was a conditional gift. There is no recital of acceptance nor is there any evidence in proof of acceptance. Similarly, he had specifically stated that the property would remain in his possession till he was alive. Thereafter, the gifted property would become his property and he was entitled to collect mesne profits in respect of the existing rooms throughout his life. The gift deed conferred only limited right upon the respondent-donee. The gift was to become operative after the death of the donor and he was to be entitled to have the right to transfer the property absolutely by way of gift or he would be entitled to collect the mesne profits. It would thus be seen that the donor had executed a conditional gift deed and retained the possession and enjoyment of the property during his lifetime.

18. The above decision clearly rests on the facts of that case. If the gift was conditional and there was no acceptance of the donee it could not operate as a gift. Absolute transfer of ownership in the gifted property in favour of the donee was absent in that case which led this Court to hold that the gift was conditional and had to become operative only after the death of the donee. The judgment is in that view clearly distinguishable and cannot be read to be an authority for the proposition that delivery of possession is an essential requirement for making a valid gift.

19. In the case at hand as already noticed by us, the execution of registered gift deed and its attestation by two witnesses is not in dispute. It has also been concurrently held by all the three courts below that the donee had accepted the gift. The recitals in the gift deed also prove transfer of absolute title in the gifted property from the donor to the donee. What is retained is only the right to use the property during the lifetime of the donor which does not in any way affect the transfer of ownership in favour of the donee by the donor.

20. The High Court was in that view perfectly justified in refusing to interfere with the decree passed in favour of the donee. This appeal accordingly fails and is hereby dismissed but in the circumstances without any orders as to costs.