

SUPREME COURT OF INDIA

Jagdish Chancier

Vs.

Satish Chander

C.A.No.2361 of 2019

(R.Banumathi and R.Subhash Reddy,JJ.,)

27.02.2019

JUDGMENT**R.Subhash Reddy, J.,**

SLP(C) No.36299 of 2016

1. Leave granted.
2. The appellant in this appeal was the first defendant in the suit in, Civil Suit No.RBT 1251/95/92 filed before the Sub-Judge, 1st Class, Jawali, District Kangra, Himachal Pradesh. This appeal is filed aggrieved by the judgment dated 25.10.2016 in Regular Second Appeal No. 383 of 2007 passed by the High Court of Himachal Pradesh, at Shimla.
3. The first respondent-plaintiff has filed the aforesaid suit for declaration to the effect that he is joint owner to the extent of 435/924 shares i.e 0-04-57 hectares in the suit scheduled land. It was his case in the suit that Smt. Vidya Devi, the mother of the plaintiff and the first defendant was the original owner of the suit land. She executed a registered Will in favour of him and the appellant herein on 09.04.1991. As per the Will, 0-03-84 hectares of land was bequeathed to the plaintiff and 0-02-85 hectares of land was bequeathed to the appellant herein. Smt. Vidya Devi had also executed a Will in respect of other land in favour of the proforma respondent nos.2 & 3 herein. It is the allegation of the respondent no.1-plaintiff that the appellant herein by playing fraud on Smt. Vidya Devi, on 23.04.1991, got executed a fictitious gift deed without her knowledge and consent. It is further pleaded that the suit land is ancestral property and the parties are governed by Kangra Customary Law to inherit the land as such he is entitled for declaration as prayed for.
4. The appellant-defendant No.1 has contested the suit. While denying various allegations made by the plaintiff, it was the case of the appellant herein that Smt. Vidya Devi had executed a valid gift deed in his favour out of her free will, consent and without undue influence. The gift deed was registered with the Sub-Registrar as such question of fraud does not arise. It was pleaded, by virtue of the gift, the appellant has become the owner of 558 shares out of 924 shares, out of which 285 shares were due on account of the gift deed.

The appellant also denied the allegation of the respondent no.1-plaintiff that the suit land was ancestral property and governed by Kangra customary law.

5. The trial Court by judgment dated 2nd June, 2003 has dismissed the suit filed by the first respondent herein. The trial Court on appreciation of evidence on record has held that the donor Smt. Vidya Devi has never challenged the gift deed during her lifetime. The first respondent-plaintiff being a third party to the gift deed, it is not open to him to challenge the validity of the gift on any ground. Further the trial Court has held that the evidence on record is not sufficient to hold that any fraud has been played on Smt. Vidya Devi for execution of the gift deed. The plea of the plaintiff that as the document of gift is evidenced by consideration of Rs. 5,000/- the same is in violation of provision under Section 122 of the Transfer of Property Act, 1882 is also negated by recording a finding that there is no endorsement of receipt of consideration amount. On the allegation of the plaintiff that the suit land is ancestral property and they are covered by Kangra Customary law, the trial Court has held that Vidya Devi has derived title by way of will from her late father as such suit property is to be considered as self acquired property of Smt. Vidya Devi.

6. With the aforesaid findings, the trial Court has dismissed the suit.

7. Aggrieved by the judgment and decree passed by the trial Court dismissing the suit, the first respondent has filed first appeal before the Additional District Judge, Fast Track Court, Kangra at Dharamsala, Himachal Pradesh. Even the First Appellate Court has agreed with the findings of the trial Court by judgment dated 2nd August, 2007 and the First Appeal (Civil Appeal No. 147-J/05/03) was dismissed.

8. Aggrieved by the same, the first respondent- plaintiff has preferred second appeal in the High Court in Regular Second Appeal No. 383 of 2007.

9. The High Court, by impugned judgment, has allowed the appeal by reversing the judgments of both the courts below, mainly on the ground that the gift deed was executed by receiving consideration of Rs.5,000/-. It is held that in view of such consideration received by the donor, same is not in accordance with the provisions of T.P. Act. Further, the High Court also has taken into consideration the document of mutation (Ext.PW-3/F) with regard to suit property, where delivery of possession of the land is recorded on receipt of Rs.5,000/-. Further, the High Court opined that as much as Will was executed on 09.04.1991 in favour of Respondent no.1 and the appellant herein, there was no reason to execute gift deed within a short span of time, i.e, on 23.04.1991. With the aforesaid findings, the appeal is allowed, by decreeing the suit for declaration as prayed for.

10. We have heard the learned counsel for the appellant and also learned counsel for the respondents.

11. In this appeal, it is mainly contended by learned counsel for the appellant that the High Court, without deciding any substantial question of law, has interfered with the factual findings recorded by the Trial Court as well as the First Appellate Court, by re-appreciating the evidence on record. It is submitted that in exercise of power under Section

100 of the Code of Civil Procedure, it is not open for the High Court to re- appreciate the evidence on record and to come to a different conclusion by disturbing the findings recorded by the trial Court, as confirmed by the First Appellate Court. Further, it is contended that the High Court while relying on the document (Ext. PW-3/F) held that gift deed was executed by receiving consideration amount of Rs.5,000/-. It is submitted that the original document is in vernacular language. The figure '5,000' as mentioned, on the first page of the document, is only for the purpose of valuation, for payment of stamp duty, but same is erroneously considered as consideration by the High Court. It is further submitted that as the gift deed was not under challenge, it was not open for the High Court to overturn the findings recorded by the Trial Court and the First Appellate Court, for granting relief of declaration as prayed for.

12. On the other hand, it is contended by learned counsel appearing for the respondents that there was absolutely no reason for executing the gift deed by Smt. Vidya Devi, on 09.04.1991, within a short span of time, after executing the Will. It is contended that as much as the gift deed is executed within few days after the execution of Will, that itself creates an amount of doubt on the genuineness of gift deed. It is submitted that such gift deed was got executed without her knowledge and consent. It is also submitted that as the gift deed is evidenced by receipt of consideration, and further in view of the documentary evidence relating to mutation (Ext.PW-3/F), there are no grounds to interfere with the judgment of the High Court.

13. Having heard the learned counsels on both the sides, we have perused the impugned judgment of the the High Court and other material placed on record. At the outset, it is to be noted that the gift deed which is executed in favour of the appellant herein, is a registered gift deed. It is also clear from the evidence on record that Smt. Vidya Devi has acquired title to the property by way of Will. Same is evident from the Ext.D-4, a judgment in Civil Suit No.163 of 1987, decided on 22.08.1989. In the said suit, it is clearly held that Smt. Vidya Devi has acquired title to the property by way of Will, as such, the property is to be considered as a self-acquired property of Smt. Vidya Devi.

14. As there is a serious dispute with regard to receipt of consideration of Five Thousand Rupees for executing the gift deed, we have carefully perused the copy of the gift deed which is placed on record. A perusal of the gift deed makes it clear that what is mentioned on the first page of the document, is the valuation of the property for the purpose of stamp duty and registration charges which is arrived at Rs.5,000/-, but not the consideration received by the donor for executing the gift deed. The gift deed is correctly interpreted by the Trial Court and the First Appellate Court. But by misconstruing the same, the High Court has held that gift was evidenced by a consideration amount of Rs.5,000/-. It is true that if the gift is evidenced by consideration,same cannot be valid one within the meaning of Section 122 of the T.P. Act. But it is clear from the document itself that no consideration is passed on as per the registered gift deed. Mentioning of Rs.5,000/- in the first page, for the purpose of valuation, cannot be said to be a consideration received by the donor for executing the gift deed.

15. With reference to the order of mutation Ext.PW3/F, the High Court held that the order of mutation embodied in Ext.PW3/F conveys the alienation under Ext.DW2/A and that the

same being a coloured transaction or a sham transaction. In Ext.PW3/F-mutation, it is stated that "Gift Deed registered valuating Rs.5,000/-." The order of mutation reads as under:-

"Mutation of the Gift Deed executed by Smt.Vidya Devi to Jagdish Chander as identified by Tilak Raj, Advocate at Nurpur which has the value of Rs.5,000/-. Registry put up for transfer of ownership and possession valuing Rs.5,000/-. Therefore, mutation of the registry bearing No.162 dated 23.04.1991 regarding land Khasra No.235/710, New Khasra No.2132, 2133, area 0-02-85 hectare out of 0-06-1 hectare is sanctioned."

By perusal of the above order of mutation, it is seen that the order of mutation also only refers to the valuation of the property as Rs.5000/-. There is nothing to indicate that the said amount of Rs.5,000/- has been paid as consideration to the donor. Both the Gift Deed Ext.DW2/A as well as the order of the mutation only indicate the valuation of the property as Rs.5,000/- only for the purpose of stamp duty or registration charges and for payment of fees for mutation respectively. The High Court erred in saying that Ext.DW2/A when read with Ext.PW3/F candidly convey qua the alienation of the suit land under Ext.DW2/A and the donor receiving consideration from the donee.

16. Though, it is the contention of the respondent that such gift deed was not executed by Smt.Vidya Devi on her free will and consent, there is no evidence on record placed to substantiate such allegation. Further, in absence of challenge to the gift deed, it is not open to record any findings on the validity of the gift. The High Court also committed error in relying on the mutation proceeding, which itself is based on the registered gift deed. Further, the High Court fell in error in re-appreciating the evidence on record to come to a different conclusion than the findings recorded by the Trial Court, in exercise of power under Section 100 of the Code of Civil Procedure. As the findings recorded by the Trial Court and the First Appellate Court are in accordance with the evidence on record, and further the High Court has misconstrued the document of gift, we are of the view that judgment of the High Court is liable to be set aside.

17. For the aforesaid reasons, we allow this appeal and set aside the impugned judgment of the High Court dated 25.10.2016 passed in Regular Second Appeal No.383 of 2007. Consequently, the suit filed in Civil Suit No. RBT1251/95/92 on the file of Sub-Judge, First Class Jawali, Kangra, Himachal Pradesh, stands dismissed, with no order as to costs.