

K.Padmini Vs. N.Mathu

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Court : Kerala

Decided On : Feb-07-2014

Judge : Honourable Mr.Justice S.S.Satheesachandran

Appellant : K.Padmini

Respondent : N.Mathu

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN FRIDAY,THE7H DAY OF FEBRUARY201418TH MAGHA, 1935 AS.No. 217 of 2001 (F) ----- AGAINST THE

JUDGMENT

IN OS21996 of SUB COURT, THALASSERY =====
APPELLANT/PLAINTIFF: ----- KUTTIAN PADMINI, D/O
GOPALAN AGED42YEARS, NO OCCUPATION PATTIAM AMSAM DESAM NOW
RESIDING AT GOA BY ADVS.SRI.K.V.PAVITHRAN SRI.V.BINOY RAM
RESPONDENTS/DEFENDANTS: ----- 1.
NELLIYULLAPARAMBATH MATHU D/O. KUNKICHI, AGED62YEARS NO
OCCUPATION, NELLIYULLA PARAMBATH HOUSE, PATTIAM AMSAM DESAM,
TELLICHERRY TALUK (DIED) 2. SON RAJU, AGED38YEARS, BUSINESS
RESIDING AT NELLIYULA PARAMBATH HOUSE, PATTIAM AMSAM DESAM
TELLICHERRY TALUK (DIED) SUPPLEMENTAL

RESPONDENTS 3 TO 10 IMPEALED 3 NELLIYULLA PARAMBATH SATHI W/O. RAJU, AGED ABOUT 45 YEARS PATTIAM AMSOM & DESOM P.O. PATHAYAKUNNU, THALASSERI TALUK 4 NELLIYULLA PARAMBATH SAJINI D/O. RAJU, AGED 26 YEARS, PATTIAM AMSOM & DESOM, P.O. PATHAYAKUNNU THALASSERI TALUK *5. NELLIYULLA PARAMBATH REESHNA D/O. RAJU, AGED 24 YEARS, PATTIAM AMSOM & DESOM, P.O. PATHAYAKUNNU THALASSERI TALUK (CORRECTED) A.S. NO. 217/01 -2- *6. NELLIYULLA PARAMBATH AMBADI S/O. RAJU, AGED 22 YEARS, PATTIAM AMSOM & DESOM, P.O. PATHAYAKUNNU THALASSERI TALUK (CORRECTED) 7. PATTASSERI VILASINI, W/O. ASHOKAN AGED ABOUT 38 YEARS, PATTASSERI HOUSE, CHENGAYAD, PUTHUR AMSOM CHENDAYAD DESOM, P.O. CHENDAYAD THALASSERI TALUK 8 PATTASSERI AKHILA, D/O. ASHOKAN AGED 20 YEARS, PATTASSERI HOUSE CHENDAYAD, PUTHUR AMSOM CHENDAYAD DESOM, P.O. CHENDAYAD THALASSERI TALUK 9 NELLIYULLA PARAMBATH VALSAN S/O. GOPALAN, AGED 45 YEARS NELLIYULLA PARAMBATH HOUSE PATTIAM AMSOM DESOM P.O. PATHAYAKUNNU, THALASSERI TALUK 10 NELLIYULLA PARAMBATH MOHANAN S/O. GOPALAN, AGED 43 YEARS NELLIYULLA PARAMBATH HOUSE, PATTIAM AMSOM DESOM, P.O. PATHAYAKUNNU THALASSERI TALUK THE LEGAL HEIRS OF THE DECEASED 1 AND 2 RESPONDENTS ARE IMPEALED AS SUPPLEMENTAL RESPONDENTS 3 TO 10 AS PER

ORDER

DATED 25.03.2009 IN I.A. NO. 575/09 *THE NAME OF 5 AND 6 RESPONDENTS ARE CORRECTED AS JISHNA AND JITHESH RESPECTIVELY AS PER

ORDER

DATED 25.03.2009 IN I.A. 1125/09 R1 & R2 BY ADVS. SRI.T.A. RAMADASAN SMT.S. ANITHA ADDL.R3 TO 10 BY ADV. SRI.CIBI THOMAS THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 30.02-2014, THE COURT ON 07.02-2014 DELIVERED THE FOLLOWING: SD C.R. S.S.SATHEESACHANDRAN,J.

JUDGMENT

Appeal involves the short question whether Ext.A1 gift had been accepted by the donee, plaintiff in the suit.

2. Suit was instituted for a decree of injunction, but, later amended for declaration that Ext.A1 gift deed has been accepted by plaintiff, and it is valid and binding on the first defendant her mother.

3. Property covered by Ext.A1, with 8 cents land also, belonged to first defendant and her mother Kunkichi. On the death of Kunkichi entire property vested with the first defendant. She executed Ext.A1 gift A.S.217/2001 2 deed excluding 8 cents in favour of plaintiff. Plaintiff is settled in Goa where her husband is carrying on business. She received a notice sent by the mother informing revocation of Ext.A1 gift deed under Ext.B2 deed. Suit was thereupon instituted for a decree of injunction to restrain the two defendants, her mother and brother, from committing waste in the property imputing that cancellation deed was created at the instance of the brother. Subsequently plaintiff was amended to seek a declaration that Ext.A1 gift deed has been accepted by her, it has come into effect, and it is binding on first defendant. Both defendants, mother and son together, resisted the suit contending that first defendant continued as the owner of property, and there was no parting of possession of property to plaintiff and acceptance of gift by her. Some disputes arose between the sons of first defendant with demands for sale of portions of plaintiff property, and then, she executed Ext.A1 gift deed in favour of A.S.217/2001 3 plaintiff to save the property from transfer at the compulsion of some of her children, according to defendants. Original of the gift deed (Ext.B1) was retained by first defendant, and title and possession over property was not transferred in favour of plaintiff, was the further case of defendants.

4. On the pleadings of parties the court below framed the following issues:- 1. Whether the suit is maintainable? 2. Whether the plaintiff has any right for declaration as prayed for? 3. Whether the gift deed dated 13.5.86 executed by the first defendant is valid? 4. Whether the plaintiff has any possession over the plaintiff

schedule property? 5. Relief and cost? A.S.217/2001 4 On the materials placed by both sides which consisted of the evidence of plaintiff as PW1 and Exts.A1 to A3 and that of first defendant as DW1 and Exts.B1 and B2 for defendants and, appreciating the questions of fact and law involved in the case, learned Sub Judge came to the conclusion that there was no acceptance of Ext.A1 deed by the donee (plaintiff) and even after execution of the gift deed donor (first defendant) continued as owner with possession of that property. Ext.B2 cancellation deed revoking Ext.A1 deed was found valid, and plaintiff was nonsuited.

5. Pending the appeal first and second respondents, both of them had passed away, and their legal representatives have been brought on record as additional respondents 3 to 10.

6. Close relationship of the donor and donee in Ext.A1, plaintiff is settled at a far away place with her family, and the recitals in Ext.A1 gift deed evidencing outright transfer of property to donee reserving life interest alone with donor A.S.217/2001 5 were not taken into account by learned Sub Judge while forming a conclusion that the gift has not been accepted by plaintiff, is the submission of her counsel. In evidence first defendant as DW1 has stated that Ext.A1 was not a gift deed but a will and that her children were not aware of the execution of Ext.A1. Second defendant, her son, is one of the attestors in Ext.A1 gift deed and the case projected by her in evidence that Ext.A1 is only a will is against the recitals in that deed and also Ext.B2, cancellation deed, later executed by her, submits the counsel. On transfer under Ext.A1 only life interest to first defendant, the donor, for enjoyment of property is reserved, cannot be considered as a circumstance to hold that the gift has not been accepted by donee, submits the counsel. Ext.A3 deed was executed by plaintiff donee the next day after execution of Ext.A1 gift deed, and under that deed she released in favour of her brothers her rights over a property which devolved upon all children on the death of her A.S.217/2001 6 father. Ignoring the above circumstances according to counsel, Sub Judge has formed an erroneous conclusion that Ext.A1 gift deed has not been accepted by plaintiff and title and possession of the property even after execution of that deed continued with the donor and Ext.B2 revocation deed executed by her is valid. Decree of dismissal rendered in the suit is liable to be reversed, is the submission

of counsel urging for allowing the appeal.

7. Learned counsel for respondents contended that plaintiff has miserably failed to show that she had accepted Ext.A1 gift deed. Suit was for a declaration that she had accepted the gift and it was binding on first defendant. When such a declaratory relief was canvassed plaintiff was bound to establish that on execution of Ext.A1 gift title passed on to her with delivery of possession of property, according to counsel. Recitals in Ext.A1 deed demonstrating that possession of property continued with the donor A.S.217/2001 7 (first defendant), Original gift deed (Ext.B1) was retained by her, revenue charges over the property continued to be paid by her and mutation was not effected in the revenue records in favour of plaintiff after Ext.A1 deed, are circumstances showing that the gift has not come into effect, according to the counsel. Where donor retained possession and enjoyment of property under the gift and no evidence was available to prove acceptance of the gift it is a case where gift has not been acted upon and come into operation, is the submission of counsel. Revocation of Ext.A1 gift by first defendant under Ext.B2, as held by court below, is valid, and there was no legal impediment for the donor to cancel the gift executed in favour of plaintiff which never come into effect, is the submission of counsel. Learned counsel relied on *Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker and others* (1997) 2 SCC255 and *Baby Ammal v. Rajan Asari* (1997(1) KLT340SC) to contend that a gift will become complete only on A.S.217/2001 8 its acceptance and delivery of property, and where possession is not handed over the gift is ineffective and inoperative. When possession and enjoyment are retained there is no absolute gift in praesenti and cancellation of gift by the donor is valid, is the submission of counsel relying on *Omana v. Kesavan* (2005(1) KLT893 Decree of dismissal of suit has only to be affirmed, and the appeal has no merit, submits the counsel.

8. The recitals in Ext.B1 read thus:- RIG_5O_f\ XbJa" %D_f\ XVUnDa" 'Ka Na DW H_fa XbL" zN^O_ h5UV" fU:na" N D_x_:na" .fa NxCg VW" 5^\^Ha MU" %?A_Oa" %DNa DWA %]m:_\U NaD\^Oq f:Oqa" H_5aD_ f5^?aJa" H_fa XbfO; dI5^x" H?KHaMU_:naf5^fUIDa" &5aKa.Q A translation of the above would be thus:- "From this day onwards the property in the schedule and everything in it shall be

kept in A.S.217/2001 9 your possession as its title holder(rights of jenmom) and mutate the land records and after my death, enjoy the usufructs and from that onwards pay the expenses etc, remit tax and enjoy as per your will." The deed states that the donor during her life time shall continue in enjoyment of property paying its revenue charges and effecting improvements. A declaration is also made, as the last sentence in the deed, that the donee would not have any right in respect of the other properties of donor. The recitals in Ext.A1 would clearly indicate that it was a gift in praesenti by which the donor divested her jenm right in favour of donee reserving only the right to enjoy the property till her life.

9. In Ext.A2 notice sent by the donor to donee (plaintiff), after revocation of the gift by Ext.B2, it is stated that Ext.B1 was not a gift A.S.217/2001 10 but a will and it has not come into effect. Such a case has not been pleaded in the joint written statement filed with her son second defendant nor stated when she was examined as DW1. Defendants have set forth three different versions over Ext.B1 at different stages. In the written statement defence canvassed was that the transfer of property under Ext.B1 in favour of plaintiff was made since there were disputes among the sons of donor with demands by some of them to sell portions of the property. To avoid such transfer and protect the property Ext.B1 gift deed was executed in favour of plaintiff with no intention of giving effect to that deed and it was only a sham transaction, was the case of defendants. In Ext.A2 notice sent by first defendant to plaintiff after revoking the gift under Ext.B2 her case is that Ext.B1 is executed as a will with the intention that after her death plaintiff, her daughter, who then was looking after her with love and affection, should get the A.S.217/2001 11 property. However, later, plaintiff, did not maintain cordial relationship with her nor treat her with love and affection as expected from a daughter to the mother and thereby she lost her love confidence and faith in the daughter. After execution of Ext.B1 deed she continued in possession and enjoyment, that deed had been brought into existence by fraud practised on her by the husband of donee misrepresenting that it was her will, that, the deed was nothing but an offer to give the land and it had been revoked under Ext.B2 was her case in Ext.A2 notice. In evidence as DW1 retention of the original gift deed (Ext.B1), continuous enjoyment of the property with possession after execution of that deed, payment of revenue charges for the property, all the above by the

donor, with the case that donee has not done any act in the property cancellation of the gift under Ext.B2 was sought to be sustained. She had another version in evidence that Ext.B1 was a temporary document A.S.217/2001 12 executed on the threat from her daughter, and, later when possession was demanded by her she revoked the gift under Ext.B2. These three different versions presented at various stages were not even looked into or appreciated by the learned Sub Judge with reference to the recitals in the deed to consider what is the true effect of the deed. Whether there was an outright transfer of title and possession over the property by gift in favour of donee under Ext.B1, and if so, was there acceptance by donee was not examined with reference to the recitals in the deed. Statements made by plaintiff, examined as PW1, in her evidence conceding that she has no document to prove her possession, that she has not done any act to improve the land, and, that her right of enjoyment over property is only after the life of her mother, were considered decisive by the learned Sub Judge to hold that there was no delivery possession of property to the donee and the gift was not completed. The recital in the A.S.217/2001 13 deed, which has been reproduced above unmistakably showing that title and possession passed on to the donee on execution of the deed, life interest for enjoyment alone was reserved with donor, and, that she has to pay the revenue charges and improve the property till her life were lost sight by the learned Sub Judge. The recital in the deed RIG_5O_f\ XbJa" %D_f\ XVUnDa" 'Ka Na DW H_fa XbL" zN^O_ h5UV" fU:na" N D_x_:na" .fa NxKg VW" 5^\^Ha MU" %?A_Oa"" clearly spell out that title and possession vested on the donee by transfer on execution of the deed. When such be the case, the only question that warranted consideration by the court was whether Ext.B1 gift deed had been accepted by the donee, and that alone.

11. The most pivotal requirement to constitute a valid gift is acceptance by the donee. However it is to be noticed that no particular mode is prescribed under the law as to what is the requirement needed to prove acceptance. A.S.217/2001 14 Circumstances surrounding the execution of the deed and also what transpired thereafter would throw light whether the gift has been accepted or not. A gift in order to become valid has to be accepted during the life time of the donor. When the gift is not onerous the normal presumption under law is that even knowledge of that gift by the donee can be treated as sufficient to hold that there was

acceptance. When a benefit is conferred on one person and it is not coupled with any condition requiring fulfilment of some obligation from him it is prudent to hold that he would receive such benefit provided he has knowledge of it. Ext.A1 gift deed is a registered deed. Different versions given by first defendant at different points of time, under Ext.A2 reply notice, in her joint written statement with her first defendant, her son, in her evidence as DW1, though mutually conflicting and contradictory, all of them, would show that donee (plaintiff) has knowledge of the gift as and when it was A.S.217/2001 15 executed. Ext.A1 deed contains a specific recital that possession with title has been given to the donee and that no doubt raises a presumption of acceptance. When life interest is reserved with the donor with an obligation on her part to pay the revenue charges over the property she continued in possession, improved the property and paid revenue charges cannot be viewed as circumstances to hold that there was no acceptance of gift by donee. Mutation of the property under Ext.B1 in the name of donee has not been effected in the revenue records cannot be given much significance considering her relationship with donor, her mother, in whose favour life interest for enjoyment of the property is reserved under the gift. Where a mother made a gift to his daughter and where there is a recital in the deed that mother has to enjoy the income from the property having regard to the relationship of the parties it could not be said that there was no acceptance of gift by the donee even assuming that A.S.217/2001 16 the donor continued to be in possession and enjoyment of the property gifted. Delivery of possession of the gifted property is an essential requirement under the Muslim Law of gifts for its completeness. That is not so in respect of gifts in the case of others in considering the question whether there was acceptance. Where legal possession with title has been transferred to the donee under the deed, as evident from its recitals, retention of physical possession of the property by donor who has been provided right of enjoyment over the property till her life cannot be viewed as a circumstance that there was no acceptance of the gift by donee. Ext.B1 gift deed would show that second defendant, one of the sons of donor, was also an attester to that deed. That belies the version of the donor in evidence as DW1 that the deed was created without the knowledge of her sons. Circumstances presented would clearly show that there was acceptance of Ext.B1 gift by the donee. Where the A.S.217/2001 17 gift became complete on such acceptance no

right remained with the donor (first defendant) to revoke that gift.

12. In the cases covered by the decisions relied by learned counsel for respondents, namely, *Naramadaben Maganlal Thakker v. Pranjivanda Maganlal Thakker* (1997) 2 SCC255, *Baby Ammal v. Rajan Asari* (1997(1) KLT340 and *Omana v. Kesavan* (2005 (1) KLT893 there was no gift in praesenti divesting title and possession of donor by transfer to the donee under the deed executed. In *Naramadaben's* case (supra) the gift was to become operative after the death of donor, whose entitlement to transfer the property absolutely by way of gift and also to collect mesne profits were reserved under the deed. In *Baby Ammal's* case (supra) title and possession of the gifted property remained with the donor and the recital in the deed was to the effect that the donee will derive such rights after his life time. In *Omana's* case (supra) the donor executed a A.S.217/2001 18 conditional deed retaining possession and enjoyment and also the right to mortgage the property during his life time, which was inconsistent with an absolute gift in praesenti. That is not so in the present case where the recitals of the deed would clearly show that the donor on transfer had divested her title and possession to the donee reserving only the life interest to enjoy the property paying revenue charges thereof. That reservation would not enable her after such transfer to revoke the gift if it had been accepted by the donee. Ext.B1 not being an onerous gift slightest evidence of acceptance of that gift, which was beneficial to her, was sufficient to show completeness of the gift. Where the donor first defendant unequivocally conceded that the gift was made with the knowledge of donee it is a case where acceptance of gift by donee can be presumed. Where it is shown that the donee had knowledge of the gift it is normal to assume that the donee had A.S.217/2001 19 accepted the gift because the acceptance would only promote her own interest. No express acceptance by the donee is necessary for completeness of the gift. Legal possession with title has vested with the donee under Ext.B1 , as shown by the recitals in the deed. Physical possession by donor over the property whose right to enjoy the property till life is preserved under the deed. When that be so, delivery of possession was not possible nor required to complete the gift. Mutation over the property in the name of the donee has not been effected in the revenue records cannot also be given much significance where the donor, her mother, continued in enjoyment of the property and the

recitals in the deed stipulated that she has to pay the revenue charges over the property during her enjoyment. Dismissal of the suit in such circumstances holding that Ext.B1 gift has not been accepted by plaintiff cannot be sustained. Plaintiff's case that Ext.B2 has been accepted by A.S.217/2001 20 her, in the proved facts, has only to be upheld. Defences advanced by first defendant at different stages, each one of them militating against the other, to impeach the validity of Ext.A1 gift have no merit. In such circumstances I hold that plaintiff is entitled to the declaration and injunction applied for in her suit. In the result, reversing the dismissal of suit by the court below, plaintiff is granted a decree declaring that Ext.A1 gift deed has been accepted by her, it is valid and binding on first defendant, and the revocation deed, Ext.B2, is null and void. Defendants are restrained by a decree of injunction from committing waste in the property. Considering the close relationship of parties they are directed to suffer their respective costs in the appeal. Sd/- S.S.SATHEESACHANDRAN JUDGE tpl/- A.S.217/2001 21 S.S.SATHEESACHANDRAN,J.

----- A.S.NO.217/2001 -----

JUDGMENT

7H FEBRUARY, 2014 A.S.217/2001 22 3rd October,2013

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