Mohammed MoinuddIn Vs. Mohammed Mahmood Ali and ors.

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Court : Andhra Pradesh

Decided On : Jun-17-2005

Reported in : 2005(6)ALD109

Judge : L. Narasimha Reddy, J.

Acts : Transfer of Property Act, 1882 - Sections 123

Appeal No. : CRP No. 29 of 2005

Appellant : Mohammed Moinuddin

Respondent : Mohammed Mahmood Ali and ors.

Advocate for Def. : K.K. Waghray, Adv.

Advocate for Pet/Ap. : M. Basith Ali Yavar, Adv.

Disposition : Petition dismissed

Judgement :

L. Narasimha Reddy, J.

1. The plaintiff in O.S. No. 1332 of 2000 on the file of the VIII Senior Civil Judge (Fast Track Court), City Civil Court, Hyderabad, filed this revision. He assails the order dated 5-11-2004, passed by the trial Court, through which, an objection raised by the petitioner, as to the admissibility of a document, was overruled.

2. The petitioner and the respondents are brothers. The petitioner filed the suit for partition of the suit schedule properties and allotment of the corresponding share to him. The suit was resisted by the respondents. The 1st respondent pleaded that his mother, Smt. Khaja Begum, orally gifted property in house No. 18-3-431, of Chowni Gulani Murtuza, Hyderabad, admeasuring 334.5 sq.yards on 3-3-1995. He further pleaded that the factum of oral gift was incorporated in a memorandum dated 7-6-1995.

3. The trial of the suit commenced. During the course of adducing his evidence, the 1st respondent referred to, and relied upon the memorandum of confirmation of the oral gift, dated 7-6-1995 (for short 'the memorandum'), and sought to get it marked. The petitioner raised an objection.

4. Sri Basith All Yavar, learned Counsel for the petitioner submits that thought the document in question is named as memorandum confirming the oral gift, the contents thereof disclose that the alleged gift was made through that document, and since it was not registered, it is inadmissible in evidence. He relies upon the judgment of a Full Bench of this Court in I.G. of Registration and Stamps v. Tayyaba Begum, AIR 1962 AP 199 (FB), and submits that the Court is required to be guided to the contents, than the nomenclature of the document.

5. Sri K.K. Waghray, learned Counsel for the respondents, on the other hand, submits that it is permissible for a muslim to make an oral gift, and that such a gift was made in favour of the 1st respondent, by his mother on 3-3-1995. He submits that the document in question is nothing, but a memorandum, to evidence a past transaction, and, as such, cannot be treated as a gift deed, by itself. He too relied upon certain decisions rendered by this Court.

6. The narrow controversy in this revision is, as to the admissibility of the memorandum of confirmation of an oral gift. Both the parties agree that it is competent for a muslim to make an oral gift and that Section 123 of the Transfer of Property Act, which requires that a gift of an immovable property, exceeding the value of Rs. 100/-, shall be registered, does not apply to such transactions.

7. The 1st respondent pleaded that an oral gift took place in his favour on 3-3-1995, and that it was confirmed as a measure of precaution, through a memorandum dated 7-6-1995. The petitioner, on the other hand, contends that the so called gift in favour of the 1st respondent was made during the memorandum itself, and since it was not registered, it is inadmissible in evidence.

8. Instances of oral gift, by a muslim, followed by written documents, are not lacking. In such cases, the document does nothing more than evidencing a previous transaction of oral gift. It does not require any registration. On the other hand, if the transaction of oral gift is found to have taken place contemporaneously with the document itself, it requires registration. Reference in this regard may be made to the judgment of this Court in Syed Fatahuddin v. Golla Shadrak, 2004 (6) ALD 562 : 2004 (6) ALT 753. Therefore, much would depend on whether the document refers to the past transaction, or it is contemporaneous with the very transactions.

9. In the instant case, the document is dated 7-6-1995 and it contains recital that the oral gift was made in favour of the 1st respondent on 3-3-1995, and that physical possession of the gifted property was delivered on that day itself. Learned Counsel for the petitioners places heavy reliance upon a recital in the document, which is to the effect that the donor confirms the oral gift as a memorandum for 'proving the ownership, title of the Donee, in respect of the schedule property, to hold the same unto the Donee as absolute owner'. According to him, this constitutes the very transaction of the gift. He also places reliance upon one or two similar clauses. However, once the document, has referred to an oral gift made on 3-3-1995 and delivery of physical possession of the property on that day, recitals in a subsequent document are to be understood in the context of the object of executing the document, namely, to provide a proof for the previous oral gift. The principle laid down by the Full Bench of this Court in I. G. of Registration and Stamps v. Tayyaba Begum, (supra), requires that the document has to be read as a whole, and its contents have to be taken into account. Viewed from that angle, the document is nothing, but a memorandum, confirming the past transaction of oral gift. Hence, no exception can be taken to the order under revision.

10. The CRP is accordingly dismissed. There shall be no order as to costs.