Tila Bewa Vs. Mana Bewa

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Court : Orissa

Decided On : Nov-30-1960

Reported in : AIR1962Ori130

Judge : S. Barman, J.

Acts : Transfer of Property Act, 1882 - Sections 122 and 126

Appeal No. : Second Appeal No. 15 of 1959

Appellant : Tila Bewa

Respondent : Mana Bewa

Advocate for Def. : S.K. Mohanty and ;D.N. Biswal, Advs.

Advocate for Pet/Ap. : R.N. Sinha, Adv.

Disposition : Appeal partly allowed

Judgement :

S. Barman, J.

1. The plaintiff is the appellant, in this second appeal, from a decision of the learned Subordinate Judge of Cuttack, whereby he allowed in part, an appeal from the decision or the learned Munsif, Cuttack and decreed the plaintiff's suit with certain conditions.

2. The plaintiff is the daughter-in-law of the defendant, as appears from a short genealogical table set out below-

Mana Bawa

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First Wife=Natbar (dead)=Tila Bewa

(Plaintiff)

3. On May 10, 1951, the defendant mother-in-law gifted away the suit lands in favour of the plaintiff daughter-in-law, by a registered deed of gift (Ext. 1). Until 1953, the plaintiff remained in possession of the suit lands and lived with her husband Natabar who died in 1953, After Natabar's death, the plaintiff lived with the defendant mother-in-law till 1954. In 1954, the plaintiff having been neglected by the mother-in-law she (plaintiff) left for her father's house. Thereafter the plaintiff a applied for mutation in respect of the suit lands. On May 31, 1954 the defendant mother-in-law executed a deed of cancellation of the gift deed (Ext. A). Thereafter on September 19, 1954, this suit was filed by the plaintiff for declaration of title and possession in respect of the suit lands. The defendant mother-in-law's defence,--as taken in the suit, shortly stated--is this; her son Natabar's first wife, after marriage, did not come to live with him. Thereafter the defendant got her son married to plaintiff; during the marriage negotiations, the defendant executed the deed of gift, in order to induce the plaintiff to come and live with her son; that the deed off gift was not acted upon; that it was a conditional gift to the plaintiff on condition that the plaintiff will maintain the defendant; the plaintiff having failed to maintain the defendant, she (defendant),--according to her,--is entitled to revoke the deed of gift and accordingly she cancelled the deed of gift by Ext. A : further that the plaintiff having re-married, she is not entitled to the property under the deed of gift.

4. The trial Court found that the gift was genuine and valid; that the gift was accepted by the plaintiff through her husband who then was alive; that she was entitled to the suit lands, even after the plaintiff's remarriage; and accordingly the

suit was decreed in favour of the plaintiff. In appeal the learned lower appellate Court found that there was no clause for revocation of the gift under any contingency; that the (plaintiff carried on the Seva of the defendant till her husband's death; that the plaintiff had remarreid; that there was no fraud, coercion, undue influence, misake or mis-representation in executing the deed of gift in favour of the plaintiff; the defendant accepted the terms of the gift; that the defendant knew fully well the terms when executing the deed; that the transaction, was not a nominal nor make-believe; in fact it was acted upon; that the deed of gift cannot thus be revoked; that the plaintiffs title to the suit property as property gifted to her by the defendant, was declared with the condition that the defendant mother-in-law will remain in possession till her death; and accordingly the suit was decreed in favour of the plaintiff declaring the title in her favour but she will get (sic) possession during the life-time of the defendant. From this decision of the learned lower appellate Court this Second appeal has been filed by the plaintiff as the appellant. A cross-appeal was also filed by the defendant mother-in-law on the ground that the deed of gift was not valid because of undue influence, fraud and coercion.

5. The points, urged on behalf of the plaintiff appellant, were that the document having been registered and attested as required under Section 123 of the Transfer of Property Act, the gift became complete; that it cannot be revoked unless there is an agreement between the donor and the donee that on the happening of a specified event which does not depend on the will of the donor of the gift, it shall be suspended or revoked as provided in Section 126 of the Transfer of Property Act. On a plain reading of the document itself, it does not provide that the defendant mother-in-law was to remain in possession of the gifted lands during her life-time.

6. The well settled legal position, based on authorities, is that a gift, subject to the condition that the donee should maintain the donor, cannot be revoked under Section 126 of the Transfer of Property Act for failure of the donee to maintain the donor, firstly for the reason that there is no agreement between the parties that the gift could be either suspended or revoked; and secondly, this should not depend on the will of the donor; again, the failure of the donee to maintain the donor as

undertaken by her in the document is not a contingency which should defeat the gift; all that could be said is that the default of the donee in that behalf amounts to want of consideration; Section 126 thus provides against the revocation of a document of gift for failure of consideration; if the donee does not maintain the donor as agreed to by the donee, the latter (donor) could take proper steps to recover maintenance; it is not open to a settler to revoke a settlement at his will and pleasure and he has got to get it set aside in a court of law by putting forward such pleas as bear on the invalidity of a deed of gift. Under Section 122 the Transfer of Property Act, a gift is complete when it is accepted by or on behalf of the donee; where there is evidence that the gift of property by a person to his wife and children was accepted by the donees, the fact,--that the donor, who had no other property,--stayed on the property, even after the gift,--does not show that the gift had not taken effect; where no right in the property is reserved in the donor, the fact that there is a clause in the deed (as in the present case) that the donee should maintain the donor, does not show that the donor continued to be the beneficial owner; a direction in a gift deed that the donee should maintain the donor till his death will not make the gift a conditional one; if the terms of the gift deed were ,that there had been an absolute transfer of the property in favour of the donee, such a direction for maintenance shall be regarded only as an expression of pious wish on the part of the donor.

On the aspect of such pious wishes, the legal position is that where a gift deed, after the operative portion of the deed, provided that the donee was to render services to the donor and to meet the donor's funeral expenses, such directions are only pious wishes and do not give any right to the donor to revoke the gift if the conditions are not observed; when, therefore, there is an out and out transfer, followed by a direction to the donee to maintain the donor, the latter direction is only a pious wish; on the other hand if the gift deed starts with a statement that it is made with the object of providing for maintenance of the donor, and this statement is followed by the operative clause,--there can be no doubt that the gift is subject ,to the liability to maintain the donor.

7. This leads me to the construction of the deed of gift, in the present case, in the light of the legal position as stated above. On a plain reading of the document, it is

clear that the defendant donor makes a complete gift of the suit lands in the operative portion of the document, making the plaintiff full owner in possession from the date thereof 'Aja dina tharu sampuma malik dakhalkar karai" (in vernacular); it is after making the plaintiff full owner, in respect of the suit lands, that the defendant expresses her pious wish later on in the document to the effect that the plaintiff would render to the defendant 'Sebadharma and Bharan Poshan,' that is to say, to render to the defendant services and maintain her during her lifetime and she further expressed a wish that after her death the plaintiff would perform her funeral rites; then the document ends, by providing that the defendant or her heirs will not have. In any way any right to the suit lands and if they claim any right then on the strength of this document such claim will be invalid in law courts; the only condition attached to the gift as stated in the last sentence is that the plaintiff will not be able to sell or mortgage without the consent of her husband (plaintiff's husband), and that the plaintiff will not alienate the suit lands by sale or mortgage etc. during the lifetime of the defendant, and that if she does so, it will be invalid; thus, reading the document as a whole, it is clear that it was an out and out gift, and that the directions as to her maintenance and Sebadharma are only pious wishes expressed by the defendant in the document.

8. Mr. S. Mohanty, learned counsel for the defendant respondent,--while pressing his cross-appeal,--submitted that the gift was an unconscionable bargain, as it was by coercion, undue influence and fraud on defendant, that the defendant executed the document without knowing the full implications of the document; that the gift was not acted upon inasmuch as no mutation took place. In my opinion, in view of there having been no specific issue as to the alleged coercion, undue influence, fraud, mistake or misrepresentation as alleged, the defendant's cross-appeal, challenging the deed of gift as altogether a void document, on the grounds as alleged, has no substance.

9. In support of his proposition, that the deed of gift is revocable, the learned counsel for the defendant respondent relied on a decision of the Allahabad High Court in Balbhadar Singh v. Lakshmi Bai, AIR 1930 All 669, holding that under Hindu Law if a person makes a gift to another in expectation that the donee will do more work in consideration of the gift, it follows that if the donee failed to do that

which it has conditioned he should do, the gift is revocable. The learned counsel's point is that in order that the defendant may get Sebadharma (services) from the plaintiff she (plaintiff) has to remain in the house; but the plaintiff having remarried, she cannot perform the Sebadharma of the defendant because the plaintiff has left the house of the defendant and remarried. In my opinion, this argument cannot stand, in view of the legal position as stated above. With regard to the decision, relied on by the learned counsel, it appears that the Allahabad High Court observed that it was arguable that in the. absence of an express power of revocation for failure of the condition the gift cannot be impugned or revoked. Therefore, the Allahabad decision,--which was decided on the particular facts of the case,--does not support the defendant's contention. In the present case, as is clear from the document itself, there is no agreement that on failure on the part of the plaintiff to perform any of the conditions, namely, Sebadharma etc. the gift will be invalid. In other words, there must be a defeasance or default clause in order to make the gift revocable; if there was a condition that on failure to perform any of the conditions the gift will be void, then certainly the gift could have been revoked; the document 'does not make any provision to that effect. Here, the defendant cancelled the gift,--as appears from the deed of cancellation,--in apprehension that the plaintiff might waste the property by transfer; it is not the defendant's case that, by reason of the plaintiff's having failed to perform her Sebadharma etc. that she revoked the deed of gift.

It is, however, expected that the plaintiff will respect the pious wishes of the defendant that the plaintiff will perform her Sebadharma in the manner, that is possible under the circumstances and also carry out her other obligations as contained in the deed of gift,--all out of the income of the suit lands, in terms of the deed of gift.

10. In this view of the case, the decision of the learned lower appellate Court is modified to the extent that Clauses (3) and (4) of Ordering portion in paragraph 18 of the judgment are set aside; the rest of the decision of the learned lower appellate Court is confirmed; it is further declared that the plaintiff is entitled to immediate possession of the suit lands, and that she be given such possession accordingly. The result, therefore, is that the appeal is partly allowed with the

modifications as aforesaid. The cross-appeal is dismissed. In the circumstances of the case, each party to bear own costs throughout, except that the court-fees for the plaint will be paid by the parties in equal shares to the State Government as per Clause 2 of the ordering portion of the judgment of the learned lower appellate Court.