Mool Raj Vs. Jamna Devi and ors.

Mool Raj Vs. Jamna Devi and ors.

SooperKanoon Citation : sooperkanoon.com/889079

Court : Himachal Pradesh

Decided On : Aug-10-1994

Reported in : AIR1995HP117

Judge : A.L. Vaiday, J.

Acts : Transfer of Property Act, 1882 - Section 126

Appeal No. : Regular Second Appeal No. 21/88

Appellant : Mool Raj

Respondent : Jamna Devi and ors.

Advocate for Def. : S.S. Kanwar, Adv.

Advocate for Pet/Ap. : Anand Sharma, Adv.

Disposition : Appeal allowed

Judgement :

A.L. Vaiday, J.

1. Smt. Jamna Devi respondent executed a gift deed in favour of the defendants of the property owned by her. The gift deed was pleaded to be conditional one and the condition was that the defendants would render services to her. As the defendants did not comply with the condition of the gift deed, therefore, Smt.

Jamna Devi filed a suit for possession of the gifted land as, according to her, by non-compliance with the mandatory provisions of the gift deed the same should be revoked. She also pleaded that the parties, being Rajput by caste and agriculturists by occupation, were governed by custom, which amongst them was that a conditional gift in lieu of services was liable to be revoked, if the condition was not fulfilled.

2. The defendants contested the suit and pleaded that the gift was irrevocable, being unconditional one. On merit, they pleaded that they have been rendering the services to the plaintiff. The suit was also resisted on the ground of locus standi, limitation, res judi-cata and maintainability.

3. The trial Court framed the following Issues on the pleading of the parties:

1. Whether the gift deed dated 26-5-1973 was conditional. If so, to what effect?

OPP

2. Whether the defendants breached theconditions of the gift deed and if so to whateffect?

OPP

3. Whether the parties are Rajputs by casteand are governed by the agricultural customof Kangra District ?

OPD

4. Whether the plaintiff has no locus standito file the present suit ?

OPD

5. Whether the suit is time barred ?

OPD

6. Whether the suit is barred by theprinciple of res judicata ?

OPD

7. What is the effect of minority of thedefendants at the time of execution of the giftdeed on this suit?

OPD

8. What is the effect of the minority ofdefendant No. 3 on this suit?

OPD

9. Whether the suit is not maintainable?

OPD

10. Relief.

4. Issue No. I was decided in favour of the plaintiff and under Issue No. 2 it was held that the defendants had breached the condition of maintenance of the plaintiff. Issue No. 3 was also disposed of in the affirmative while Issue No. 4 in the negative. The trial Court held the suit to be within limitation and also gave a finding under Issue No. 6 against the defendant. Issues Nos. 7 and 8 were again decided against the defendants and Issue No. 9 was also answered in the negative. The suit of the plaintiff, as prayed for, was decreed.

5. The judgment and decree of the trial Court were assailed before the lower appellate Court which, after hearing the parties, maintained the same.

6. The aforesaid judgment and decree have been assiled in the present appeal on various grounds.

7. I have heard the learned counsel for the parties and have also gone through the record.

8. This Court admitted the present appeal on the following question of law :

'Whether the gift deed could be revoked due to the failure of the donee to render services ?

9. It has been contended on behalf of the appellant that as there was no specific condition incorporated in the gift deed for, revocation of the same for not rendering the services, therefore, under the provisions of the Transfer of Property Act such a gift could not be revoked but, on the other hand, in the event of failure of the defendants to render services, the donor could ask for maintenance or some amount in lieu of services.

10. It has been contended on behalf of the plaintiff-respondent that the parties were governed by agricultural custom of Kangra in the matter of gift and in a case of present nature the gift, executed for services, could be revoked in case the services were not being rendered. It has come in evidence and also held by the two Courts below that the parties were governed by agricultural custom in the matter of gift.

11. Customary Law of the Kangra District, compiled by L. Middleton, Esquire, I.C.S., Settlement Officer, Kangra District also can be taken note of to solve the controversy between the parties. Question No. 94 can safely be referred to in this regard:

'Question 94 : State in what circumstances a gift is revocable, and in what circumstances irrevocable Specify particularly the effects of:

(i) Possession on the part of the donee.

(ii) Relationship between the donee and the donor.

Answer. Conditional gift e.g. in return for services are revocable if the conditions are not fulfilled. Otherwise gifts are not revocable. Possession and relationship do not affectthis.'

12. What is conditional gift has not been explained or elucidated or defined in this customary law. There is no doubl that gift in return of services are revocable, if the conditions are not fulfilled. The answer is silent as to when and under what circumstances the gift would be conditional one. It has not been provided in the answer whether there should be a specific agreement that in case the services where not rendered, as agreed upon, the property shall revert back to the donor or

that where the gift for past and future services had been made, non-rendering of services would automatically bring an end to the gift, without there being any specific condition in that behalf.

13. In order to appreciate the aforesaid proposition, at the first instance, the pleadings and the evidence adduced in this behalf have to be appreciated.

14. It has been pleaded by the plaintiff in the plaint that the said deed of gift dated 26-5-1973 was a conditional and the defendants were burdened with the obligation to render future services towards maintenance of the plaintiff. The plaintiff also pleaded that the parties were Rajput by caste and were governed by Kangra Agricultural Custom in the matter of gift pertaining to rendering of future services and revocation thereof on ground of breach of condition. These pleadings, no doubt, made averments that, on the basis of custom, the gift made of future services, could be revoked in case services were not rendered. However, there is no specific plea raised by the plaintiff in this regard that under custom the gift, without there being any specific condition for revocation on account of non-rendering of services, even otherwise could be revocable. It has been contended on behalf of the plaintiff that reference of past and future services to be the purpose of gift, the non-performance of these services automatically would bring the gift to an end and the donor was legally competent to revoke the same. It is not so simple a matter, as has been contended on behalf of the plaintiff.

15. The evidence examind by the plaintiff did not establish this fact by quoting instances that without there being a specific condition for revocation of the gift deed for non-rendering services, it would be revocable when the services agreed to be rendered were not so rendered to the donor.

16. P.W. 1 is the plaintiff Jamna Devi. She nowhere stated that in such like cases where no specific condition for revocation of the gift deed was there, it could be so revoked for the non-performance of the services at the option of the donor. She only stated that the defendants had agreed to serve her at the time when the gift was made in their favour but they have stopped to render services and had started beating her.

17. P.W. 2 is one Giano. She also stated that the defendants were not rendering any services to the plaintiff. Similar is the version given by PW 3. He further added that the plaintiff was maintaining herself by doing some manual work. PW2 was the memberof Panchayat while PW 3 was the previous Pradhan of the Panchayat.

18. On the other hand the defendants examined three witnesses and their main statement has been that the plaintiff was being served by the defendants and they were ready even to serve her in furture. The father of the defendants DW 1 also stated that it was correct that the gift was made in lieu of services.

19. From the aforesaid evidence examined by the parties it could only be inferred that the gift was for past and future services and at the most the donees have stopped rendering services to the donor. In so far as the main aspect under the custom is concerned, that has not been stated by these witnesses. Even not a single instance has been brought on record on the basis of which it could be said that, under the custom, in case the gift was executed for past and future services and without there being any specific condition for revocation, it would automatically revoke in favour of the donor when the donee stops rendering services.

20. In the absence of any instance referred to above, one has to fall back upon the case law covering this aspect of the matter. Gian Singh v. Smt. Basanti ((1969) 71 Punjab Law Reporter, Delhi Section 9), can safely be relied upon while interpreting the aforesaid custom of gift, referred to in answer, to question 94. In the reported case (supra) the facts were little different but the ratio can be of much help to resolve the controversy in the present appeal. In the reported case (supra) the gift deed stated that the donee had served the donor in the past and agreed to serve her in future and in case the donee failed to serve the donee in future the donor was entitled to proper maintenance from the donee. However, in spite of the aforesaid recital in the gift deed it was argued that, under the custom, the gift was conditional one and could be revoked. Paras 5, 6 and 7 of this judgment are very much relevant which are reproduced hereunder:

'5. The learned counsel for the respondent, however, brought to my notice that theanswer given to question No. 94 in Mid-dleton's Customary Law of Kangra District is different. The answer therein is that the conditional gifts, e.g., in return for services, are revocable if the conditions are not fulfilled, otherwise gifts are not revocable. He also relied upon the observation in Mt. Aishan Bibi v. Allah Ditta, that when the original vernacular version and the English version differed slightly, the English version should be prferred on the ground that it is the final draft. The observation was made by Hilton, J. The learned counsel for the appellant on the other hand, contended that Middleton's book was a digest for the whole of the District of Kangra. It was, therefore, a more general authority while Exhibit D3 was the particular authority for the village Bhabour of Tehsil Hamirpur with which alone we are concerned here. To me, it seems, that there is no real difference between the vernacular and the English versions if we consider all the instances given in both the versions. Even the English version says that only the conditional gifts are revocable if the conditions are not fulfilled.

6. The learned counsel for the respondent further relied upon three judgments upholding the custom of revocability (1) RSA No. 242 of 1967, Fateh Singh v. Bidi Singh, decided on 5th April, 1968, by the Hon'ble the Chief Justice, (2) Civil Appeal No. 189 of 1958, Hari Chand v. Lachman, decided on llth July, 1959, by the District Judge, Hoshiarpur, and (3) Civil Appeal No. 27/ 58/202/4 of 1959, Hans Raj v. Prasannu decided on 23rd January, 1959, by the District Judge, Kangra. With great respect, the terms of the gift deed in the present case differ from the terms of the gift deeds in all the above three cases. In the present case, the consequence of the non-performance of the services are expressly stated to be the grant of proper maintenance by the donee to the donor. This circumstance was not present in any of the above cases. The above judgments are therefore distinguishable at any rate on this ground.

To sum up, the Customary Law as found in the rewaz-i-am of the village (Ex. D3) doesnot allow revocation of a gift at all, in any circumstances. The Customary Law as reproduced in the answer to question No. 94 in Middleton's Customary Law of Kangra District is that 'conditional gifts e.g. in return for services are revocable if the conditions are not fulfilled, otherwise gifts are not revocable. The real question for decision is whether the gift embodied in Ex. Dl is a conditional gift within the meaning of the answer to question No. 94 in Middleton's Customary Law. Since the Customary Law does not define 'conditional gift', we have to understand this expression in its ordinary meaning. A gift may be conditional in either of the two senses. Either the creation of the interest may depend on the happening of an event when it would be a contingent interest analogous to the interests referred to in Sections 21, 33 and 34 of the Transfer of Property Act, which are referred to only by way of analogy and not because they apply in terms. We are not concerned with such a conditional gift in this case. In another sense, a gift may be conditional when to the interest created by it, is superseded a condition that the interest shall cease to exist in case a specified uncertain event shall happen or not happen. Such a condition is called a condition subsequent which makes the interest created by the gift defeasible by the happening or not happening of a certain event. The analogous principle is embodied in Section 126 of the Transfer of Property Act. Though the terms of Section 126 are not applicable, the principle embodied therein is that the gift may be superseded or revoked on the happening or not happening of a specified event which does not depend on the Will of the donor. It is clear that in the gift deed in the present case, there was no such agreement between the parties. A gift may also be revoked in any of the cases (save want or failure of consideration) in which if it were a contract, it might be rescinded. Section 27 of the Specific Relief Act, 1963 (corresponding to Section 35 of the old Act of 1887) deals with rescission of contracts. The other Sections in Chapter IV of the Specific Relief Act deal with particular cases of rescission or consequences of rescission with which we are not concerned. UnderSection 27(1), a person interested in a contract may sue to have it rescinded in any of the following cases, viz.

(a) where the contract is voidable or terminable by the plaintiff; and

(b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

The second clause is not relevant. Under the first clause, the rescission of contract can be made for the same reasons for which a contract is voidable or terminable by the plaintiff. It is well known that a contract is voidable if it is induced by such causes as misrepresentation, fraud, undue influence or coercion. None of these causes exist here, Fraud had been alleged, but was not proved..

7. A terminable contract is one which contains a stipulation that in a certain event it may be put an end to (Collett's Specific Relief Act page 274). Such a contract is generally one which may be put an end to by one or both the parties upon certain terms without a change in the circumstances or upon the happening of a certain event or on the default by one of the parties in the performance of his part of the contract or where the contract reserves to one or both of the contracting parties a power in certain specified circumstances to rescind the contract (Fry on Specific Performance, page 486). The only reason why the respondent wished to revoke the gift was that the appellant discontinued his rendering of services of her. The gift was made for rendering of past and future services. The he non-rendering of future services therefore amounted to a partial failure of the consideration for the gift if the gift were to be treated a contract. But the failure of not only partial but even the entire consideration is expressly stated not to be a reason for which a gift may be revoked. The non-rendering of the future services may also be regarded as a breach to perform his part of the contract by the donee, treating the gift as a contract. The question is whether the donor had the power to revoke the gift for such a non-performance. It would appear that she did not have such a power inasmuch as the gift deed expresslyprovided what was to happen in case of such non-performance. The only remedy provided by the gift deed was that the donee would give proper maintenance to the donor. In view of the specific remedy given by the gift deed itself, it would not be unfair to presume that the other remedy of rescission or termination of contract was not to be available to the donor.'

21. In the case under reference there is no specific condition either for giving maintenance or for revocation of the gift deed in case the services were stopped to be rendered by the donee. Any way, the fact remains, as has been admitted by the father of the donees, while appearing as D. W. 2, that the gift was in lieu of services meaning thereby that the donees had to render services but in the absence of any specific condition in the event of failure of the donees to render services, the gift could not be revoked. Even under the Custom, as referred to above, various provisions of the Transfer of Property Act, dealing with the gift, can be taken note of while interpreting the present gift.

22. In the present case the gift deed is Ex. PZ. The relevant recitals were as under:

^^esjs dksbZ lUrku ugh gS A esjsrhu gdhdh nsoj tknk gS A buls esjk I;kj gS A budk okYn tks esjk nsoj gS] us eq>sHkjkslk fnyk;k gS fd og vkSj mlds filjku esjh Vgy f[kner djsaxs A eSa fcekj jgrhgw & ljykt cxSjk esjs nsojtknk o rtohtks esjk nsoj esjh Vgy f[knen dj jgsgSaa A vkxs Hkh buls vPNs lywd dh vk'kk gS A eS viuh [kq'kh o gks'k gokl ls viuhvjkth okyk ekyh;rh 5]000-00 :i;k dks e; dqy gdwd ekydh;r ljykt] ewyjkt] rglhyuwjiwj] ftyk dkaxM+k ofgLlk cjkcj fgCok o c[k'kh'k djds bdjkj djrh vkSj fy[knsrh gw fd vjkth egowck okyk dk dCtk ekydkuk vkt ls egqovye ds }kjk rtohtksfirk egqovye ns fn;k gS--**

23. The aforesaid recitals only amount that the gift was made for past and future services, to be rendered by the donees or by their father. There is nothing in the gift deed itself that in the event of failure to render services, it would be revoked. No specificcondition has been laid down in the gift deed.

24. The appellant's counsel has cited some law on the basis of various provisions of the Transfer of Property Act, dealing with the gift, in order to find support to the assertions made by him.

25. In Tila Bewa v. Mana Bewa (AIR 1962 Orissa 130) it has been held as under:

'A gift subject to the condition that the donee should maintain the donor cannot be revoked under Section 126 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 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) can take proper steps to recover maintenance. If under the terms of the gift deed there has been an absolute transfer of the property in favour of the donee, a direction for maintenance of the donor by the donee shall be regarded only as an expression of pious wish on the part of the donor.'

26. Smt. Gaurju v. Tara Chand (AIR 1962 HP 4) is another case which has been relied upon by the appellant. The following observations made in this reported case are very much relevant.

'The donor alleging that she had gifted the suit land on the condition that the donee would maintain her during her lifetime sought the cancellation of the gift on the ground that the donee had ceased to maintain her. There was no express provision in the deed for the cancellation or suspension of the gift. There was no allegation or proof by the donor that the gift was vitiated by fraud, coercion or undue influence or that it was made with the intention to defeat creditors.

It was held that the gift, which was an unconditional gift that had been completed, could not be revoked under the Hindu Law.

It was further held that Section 126 of the T.P. Act did not apply to the case because there was no agreement between the parties that the gift should be either suspended or revoked on the donee's failure to maintain the donor.'

27. Thus, the present gift deed, whetherconsidered as an outcome of custom or ofgeneral law, cannot be said to be revocableone on the ground that it was executed forpast and future services. When no specificcondition for revocation has been made in thedeed itself in the event of failure of the doneeto render services to the donor or maintain thedonor, the gift cannot be revoked.|

28. Both the Courts below acted illegally in considering the gift deed to be a conditional and revocable one under the custom by which the parties were governed. The question of law formed at the time of the admission of the appeal, accordingly, stands answered in the negative and as a consequence thereof it is held that, as per recitals made in the gift deed Ex. PZ, it could not be revoked on account of the failure of the donees to render services but on the other hand in that eventuality the donor has a legal right to ask for the maintenance from the donees.

29. As held above, the gift under reference was not a conditional one and could not be revoked. But on the other hand the donor could ask for maintenance from the defendants. To the donor to get maintenance through the Court would amount to perpetuate her agony in case the donees were not rendering any service and were not maintaining donor. The donees in the present case are none else but donor's husband's brother's sons. It is expected of them to look after the donor who happens to be their uncle's wife. Under the circumstances, it would be essential, in the interests of justice, to direct the donees to maintain and look after the donor properly throughout her life. Such an obligation, otherwise also rested upon the defendants and their father and this obligationbecomes legal when the defendants have bound down themselves to render services to the donor throughout her life on account of the averments made in the gift deed. The defendants, as such, are directed to render proper services and maintain the plaintiff-donor throughout her life failing which the donor shall be at liberty to take such legal action against the donees as would be permissible to her under the law.

30. In view of the foregoing reasons, the present appeal succeeds and the suit of the plaintiff for possession of the suit land by revocation of the gift deed under reference stands dismissed and the judgment and decree appealed against are set aside. In the peculiar circumstances of the case the parties are left to bear their own costs.