

Smt. Shakuntla Devi Vs. Smt. Amar Devi

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Court : Himachal Pradesh

Decided On : Apr-02-1985

Reported in : AIR1985HP109

Judge : H.S. Thakur and; V.P. Bhatnagar, JJ.

Acts : [Transfer of Property Act, 1882](#) - Sections 122 and 126

Appeal No. : L.P.A. No. 14 of 1976

Appellant : Smt. Shakuntla Devi

Respondent : Smt. Amar Devi

Advocate for Def. : P. Malhotra and; H.K. Bhardwaj, Advs.

Advocate for Pet/Ap. : D.D. Sud, Adv. vice Chhabil Dass, Adv.

Disposition : Appeal dismissed

Judgement :

H.S. Thakur, J.

1. This is a Letters Patent Appeal against the judgment of the learned single Judge of this Court.

2. A few facts relevant to decide this appeal may be stated. Shri Sansar Chand filed a suit for redemption of a mortgage. It was a mortgage with possession. Shri Sansar Singh alleged that he mortgaged the property in dispute in May, 1950 in favour of Smt. Amar Devi for a consideration of Rs. 300/-. It was contended by him that the entire amount stood paid off because the mortgagee was in possession and she felled a number of trees and thereby the entire mortgage money stood paid off and that he was entitled to the possession of the property without payment of any amount. Smt. Amar Devi controverted the allegations of Shri Sansar Singh plaintiff and contended that no trees were cut by her and the entire mortgage money was due to her though she remained in possession. It was also contended by her that Shri Sansar Singh executed a gift deed on March 12, 1959 in favour of Shri Bharat Singh, Smt, Shakuntla Devi and Smt. Ram Devi. As such, it was contended that he ceased to have any interest in the landed property and had no locus standi to file the suit. It was, however, contended by Shri Sansar Singh that the gift was the result of fraud and undue influence and that it was also hit by a custom besides being onerous and not binding on the parties. It was also pleaded that it was a conditional gift and the donees Bharat Singh and others did not fulfil the condition and the gift is deemed to have been revoked. He also executed a registered deed of cancellation of gift on April 20, 1959. It may be pointed out that the aforesaid donees were not made parties to the suit. The trial Court, however, dismissed the suit holding that Shri Sansar Singh had no locus standi to file the suit.

3. Aggrieved by the said decree and judgment passed by the trial Court, Shri Sansar Singh preferred an appeal before the learned District Judge. Shri Sansar Singh died during the pendency of the appeal and Smt Shakuntla Devi his daughter, who was also one of the donees, was substituted as a legal representative of Shri Sansar Singh. The learned District Judge held that the gift was defective because it was not accompanied by delivery of possession. He further held that since trees were not felled by the mortgagee, the entire amount of Rs. 300/- was payable to her for the redemption of mortgage. The appeal was accordingly allowed and the suit was decreed.

4. Smt. Amar Devi preferred a second appeal before the High Court and it was held that Bharat Singh, Smt. Shakuntla Devi and Smt. Ram Devi were necessary parties. The plea, however, regarding gift was left open for a fresh decision in the presence of the said persons. The case was remanded for impleading Bharat Singh, Shakuntla Devi and Ram Devi. They were also allowed to file their written statements. The issues were to be framed and a fresh decision was required to be given. The learned trial Court in compliance with the order, framed elaborate issues and considered every aspect of the case relating to the gift made by Shri Sansar Singh. The learned trial Court held that the gift was valid and could not be invalidated on any ground. The trial Court further held that no tree was cut and the entire amount of Rs. 300/- was due. Ultimately, it was found that Shri Sansar Singh had no locus standi and the suit deserved to be dismissed. The said Court considered the plea of Smt. Shakuntla Devi that she was not only a legal representative but also a donee from Shri Sansar Singh and, as such, she was competent to maintain the suit even as a donee, if not as a legal representative. The said Court, however, held that she could not set up a title independent of the title set up by Shri Sansar Singh and that she was only a legal representative and was substituted in place of Shri Sansar Singh. It was also observed that she could not superimpose her title as donee-mortgagor and that if Shri Sansar Singh was non-suited, she could not claim a better right.

5. Against the findings arrived at by the trial Court, no objections were filed by either party. It was contended on behalf of the respondent Amar Devi that Smt. Shakuntla Devi appellant could not set up a title independent of the one claimed by Shri Sansar Singh. The learned single Judge observed that it is the party's rights and disabilities that have to be considered and not those of the legal representatives. It was also observed that person who is impleaded as the legal representative of deceased-party can raise only such objections as could have been taken by the deceased-party itself. The learned single Judge has placed reliance on a decision in *V. T. Elaya Pillai v. Ramasami Jadaya Goundan*, AIR 1947 Mad 165, in which it was held that where the amendment sought is one which the deceased-party himself could not have asked, his legal representatives cannot ask for it.

6. It is contended by Shri D. D. Sud, vice Shri Chhabil Dass, learned counsel for the appellant that the gift made by Shri Sansar Singh being void, he as also his legal representatives were entitled to redeem the mortgage. It is stated by him that the gift was rightly cancelled by Shri Sansar Singh as the donees failed to fulfil the conditions contained in the gift deed. It is also urged that the possession of the property was not delivered to the donees as also the gift was not accepted by them. He has placed reliance on a decision in *Mt. Anandi Devi v. Mohan Lal*, AIR 1932 All 444. It is convenient to extract relevant observations made in the said decision :

'..... We accept the findings of the learned Judge as regards the value to be attached to the oral evidence called on behalf of the plaintiff, and his finding that an express acceptance by Mt. Kapuri has not been proved. The learned Judge however merely finds acceptance not proved, because he disbelieves the actual case set up by the plaintiff as regards express acceptance. He never directed his mind to the vital question as to whether there was proof of acceptance within the meaning of Section 3, Evidence Act. It has been argued here by counsel for the respondents that the only acceptance under Section 122, T. P. Act, contemplated by that section is an express acceptance. We however do not find anything in the section to limit acceptance to an express acceptance, and we must take it that acceptance may be either express or implied. As the learned Judge has not considered the question of an implied acceptance based upon circumstantial evidence at all, we must consider it. It has been argued by counsel for the appellant that the law in India based upon Section 122, T. P. Act, is similar to the Common Law of England with regard to acceptance. There is no doubt that in England the law is that acceptance of a gift will be presumed unless dissent is shown. That would mean that in this case, it would be for the defendants to prove that Mt. Kapuri had dissented from the gift. Lord Halsbury in his *Laws of England* (Vol. 15, p. 418) says: 'Express acceptance by the donee is not necessary to complete a gift. It has long been settled that the acceptance of a gift by the donee is to be presumed until his dissent is signified, even though he is not aware of the gift, and this is equally so although the gift be of an onerous nature or of what is called an onerous trust. This rule of law has been applied to India by a single Judge of the Patna High Court in the case of *Muhammad Abdul Nayeem v. Jhonti*

Mahton. We however are not prepared to go so far. If Section 122 stopped short at saying that the gift must be accepted by or on behalf of the donee as it would be natural for any person to accept a non-onerous gift, we might be prepared to hold that the English law applied in India.'

The aforesaid observations in the above quoted decision do not help the appellant. The acceptance of a gift can be 'either express or implied. In fact, there is no evidence on record to show that the donees had dissented from accepting the gift.

7. The learned trial Court has also held the gift to be valid. No objections have been filed to the findings of the trial Court. We have gone through the evidence adduced before the trial Court. It is not proved that the gift was based on any fraud, undue influence or mis-representation. It is also not an onerous gift. No doubt. Sansar Singh executed a registered deed of cancellation of gift but it was an unilateral act. The gift deed could be cancelled only by resorting to legal remedy in a competent Court of law. As such, we are not satisfied that the possession of the property was not delivered to the donees or they had not accepted the gift.

8. For the foregoing reasons, we are of the view that there is no merit in this appeal. As such, the Letters Patent Appeal is dismissed but with no order as to costs.